



SPONSOR: Sen. Bonini & Rep. Walls

DELAWARE STATE SENATE

145th GENERAL ASSEMBLY

SENATE BILL NO. 253  
AS AMENDED BY  
SENATE AMENDMENT NOS. 2, 3 & 4

AN ACT TO REINCORPORATE THE TOWN OF MAGNOLIA.

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 Magnolia, Chapter 264, Laws of Delaware, Volume 52, as amended, by repealing said Charter and the following is hereby adopted as the municipal charter of the Town of Magnolia:

**“CHARTER OF THE TOWN OF MAGNOLIA**

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## **CHARTER OF THE TOWN OF MAGNOLIA**

### **1. Incorporation.**

The inhabitants of the Town of Magnolia within the corporate limits as hereinafter defined in this Charter or as extended as hereinafter provided, are hereby constituted and declared to be a body politic incorporated in law and equity, by the corporate name of the "Town of Magnolia " (hereinafter "Town"), with power to govern themselves by such ordinances, rules, resolutions, and regulations for municipal purposes as they, through their duly-elected officers and agents may deem proper, not in conflict with the provisions of this Charter of government, nor with the Constitution and Laws of the State of Delaware, or of the United States; and as such shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts. The Town shall have perpetual succession and shall succeed to own or possess all property, whether real, personal, or mixed, tangible or intangible, of whatever kind and nature, and all the powers, rights, privileges or immunities now or heretofore belonging to, possessed, or enjoyed by the Town of Magnolia previously incorporated at Chapter 264, Volume 52 Laws of Delaware, as amended.

### **2. Territorial Limits.**

That the limits of the Town of Magnolia shall be determined by measuring from a stone in the center of the main roads leading from Dover to Frederica and from Canterbury to Barker's Landing, at the intersection of the said roads in the Town of Magnolia, and measuring from the said stone one-fourth (1/4) of a mile in all directions, forming a circle of one-half mile in diameter through the center of the said circle in any and all directions.

The Council may, at any time hereafter, cause a map or plot to be made of said Town, and the said map or plot, or any supplement thereto, when made and approved by said Council and signed by the Mayor, and attested to by the Town Clerk, with the municipal seal affixed, upon being recorded in the Office of the Recorder of Deeds in and for Kent County, State of Delaware, or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of law and equity in this State.

### **3. Powers of the Town.**

#### **3.1 General.**

The Town shall have and enjoy all the powers possible for a municipal corporation to have under the Constitution and laws of the State of Delaware, as fully and completely as though they were specifically enumerated in this Charter.

#### **3.2 Enumeration of Powers.**

Not by way of limitation upon the scope of the powers vested in the Town Council to exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary), but rather by way of enumeration

and for purposes of clarity, the Town Council is vested by this Charter with the following powers, that is to say, the Town Council:

3.2.1 May have and use a corporate seal which may be altered, changed, or renewed at pleasure.

3.2.2 May hold and acquire by gift, negotiation and purchase, devise, lease, or condemnation, property both real (improved or unimproved) and personal, or mixed, within or without the boundaries of the Town, in fee or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to, providing sites for constructing, improving, extending, altering, or demolishing:

(a) public buildings;

(b) parks;

(c) streets, squares, lanes, alleys, and sidewalks;

(d) sewer systems, including but not limited to sewage lines, conduits, lift stations, sewage disposal or treatment plants, and all appurtenances thereto;

(e) water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;

(f) electric systems, including but not limited to, electric plants, substations, distribution systems, lines, conduits and all appurtenances thereto;

(g) gas systems, including but not limited to storage tanks, distribution systems, conduits and all appurtenances thereto;

(h) recreational facilities, including but not limited to public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;

(i) for redevelopment, urban renewal, revitalization, or rehabilitation of blighted areas or removal of dangerous buildings;

(j) for the protection of the health of the citizens of the town;

(k) for the proper furnishing of adequate municipal services to the citizens of the Town and those persons residing in such proximity to, but beyond, the corporate limits of the Town who can be furnished with such municipal services, in the discretion of the Town Council to the mutual benefit and advantage of the Town and such non-residents thereto, upon such terms, charges, and conditions as the Town Council may determine and approve.

3.2.3 May sell, grant, alienate, lease, mortgage, manage, hold and control such property as the interests of the Town may require except as prohibited by the Constitution of the State of Delaware or as restricted by this Charter.

3.2.4 May pay for the acquisition, construction, improvement, repair, extension, alteration, or demolition of any municipal or public property, real, personal, or mixed, from the general fund of the Town, from the proceeds of any bond issue which may be authorized and sold for any of the purposes for which lands and premises are authorized by

this Charter to be acquired, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this Charter to be acquired.

3.2.5 May acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town.

3.2.6 May purchase, take and hold real and personal property when sold for any delinquent tax, assessment, trash bill, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances and the like, laying-out and repairing sidewalks, or other charge due the Town, and may sell the same.

3.2.7 May ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair and replace any new or present street, highway, lane, alley, water course, park, crosswalk, sewer, drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town; may specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; may enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the Town.

3.2.8 May enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners.

3.2.9 May prohibit, remove, or regulate the erection of any stoop, step, platform, bay window, cellar door, gate, area, descent, sign, post or any other erection or projection in, over, upon or under any street, highway, alley, lane, water course, park, sidewalk, crosswalk, sewer, drain, aqueduct or pipeline of the Town.

3.2.10 May direct, regulate and control the planting, rearing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and grounds of the Town and may authorize or prohibit the removal or destruction of said trees.

3.2.11 May fully control within the Town the drainage of all water and to that end may alter or change the course and direction of any natural water course, runs or rivulet within the Town, may regulate, maintain, clean and keep the same open, clean and unobstructed, and may provide, construct, extend and maintain, manage and control a surface water drainage system and facilities for the health, sanitation and convenience of the inhabitants of the Town.

3.2.12 May provide an ample supply of potable water for the Town and its inhabitants and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants, and all other

equipment, property, or rights used in or about the collection, storage, purification, conveyance, or distribution or sale of water; may regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town; in the interest of the public's health, may compel any and all properties in the Town to be connected to the water system of the Town; may furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and may contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself.

3.2.13 May provide, construct, extend, maintain, manage and control the plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the Town and for lighting the streets, highways, lanes, alleys, parks, sidewalks, crosswalks, wharfs, docks, public buildings or other public places in the Town, and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the Town and to furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; may regulate and prescribe for what private or public purpose the current or gas furnished by the Town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; may furnish or refuse to furnish electric current or gas from the Town's system or systems, to places and properties outside the Town limits; and may contract for and purchase electric current or gas and distribute the same to users within or without the Town with the same full powers as though such current or gas had been initially reduced to usefulness by the Town itself.

3.2.14 May regulate, control or prevent the use or storage of gasoline, naphtha, gun powder, fireworks, tar, pitch, resin, and all other combustible or dangerous materials and the use of candles, lamps, and other lights in stores, shops, and other places; may regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may pose a danger of causing fires.

3.2.15 May provide for the organization of a fire department and the control and government thereof; may establish fire limits and do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, may contribute, donate or give an amount or amounts to any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and



operating fire fighting equipment and service to the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable.

3.2.16 May provide for the organization of ambulance, rescue or paramedic services(s) and the control and government thereof; may, at the discretion of the Town Council, contribute, donate or give an amount or amounts to any such service formed or incorporated under the laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations to the use thereof as the Town Council may deem advisable.

3.2.17 May prevent vice, drunkenness, and immorality.

3.2.18 May prohibit gaming and fraudulent devices.

3.2.19 May prevent and quell riots, disturbances, and disorderly assemblages.

3.2.20 May adopt and enforce such ordinances regulating traffic on all streets, alleys, avenues, and public ways within the Town as are not inconsistent with the motor vehicle laws of the State of Delaware.

3.2.21 May regulate or prohibit the use of public streets, alleys, sidewalks, parks, rights-of-way, public places and Town-owned lands for commercial uses or activities not otherwise protected from such regulation or prohibition by the Constitutions of either the United States or the State of Delaware, or by any controlling federal statute.

3.2.22 May regulate or prevent the use of guns, air guns, spring guns, pistols, sling shots, bow and arrows, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and may regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds.

3.2.23 May provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants.

3.2.24 May prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements, and games.

3.2.25 May direct the digging down, draining, filling up, cleaning, cutting, or fencing of lots, tracts, pieces, or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter and may assess the cost thereof against the owner thereof.

3.2.26 May define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare; and may cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist.

3.2.27 May adopt ordinances regulating the maintenance and upkeep of buildings, dwellings, structures, and property and authorizing the Town to require the repair or condemnation of the same upon proper inspection if the Town determines, based on standards set forth in such ordinance(s), that the building, dwelling, structure and/or property is a fire hazard or otherwise unsafe, and the Town may cause the same to be repaired, torn down, or removed; and may cause the cost of such repair, demolition, and/or removal to be paid by the legal entity causing or permitting the same to exist.

3.2.28 May establish and regulate pounds and may restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and may authorize the destruction of the same; and may regulate the keeping of dogs within the Town, and may provide for registration and fees thereof.

3.2.29 May provide for the punishment of a violation of any ordinance of the Town by imposition of a fine, not exceeding \$1000 for each offense.

3.2.30 May provide for payment of any tax, license, assessment, fee, charge, or other amount due the Town by the performance of labor or service for the town by any person owing the same.

3.2.31 May regulate and control the manner of building, moving, or removal of dwellings or other structures and may provide for granting permits for same.

3.2.32 May prohibit and prevent the carrying on of construction by private persons or companies at such times and seasons of the year and at such hours of the day as the Town Council may determine necessary and appropriate for the public health and welfare.

3.2.33 May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues.

3.2.34 May, for the prevention of fire and the preservation of the beauty of the Town, establish a building line for buildings to be erected; may zone or district the town and make particular provision for particular zones or districts with regard to building or building materials; may prohibit any building or construction except those for which a building permit has been issued as prescribed by the Town Council; and generally may exercise all powers and authorities vested by virtue of 22 *Del. C. Ch. 3* ("Municipal Zoning Regulations"), as it may hereafter from time to time be amended, or any future corresponding provision of law.

3.2.35 May license, tax and collect fees of such various amounts as the Town Council from time to time shall fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation, or renting out any real or personal property, within the limits of the Town.

3.2.36 May impose upon new development or construction or upon first time occupancy of new construction, such "impact fees" as are reasonably and proportionally calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements which have a rational nexus to such new construction.

3.2.37 May grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits of the Town.

3.2.38 May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restrictions, stipulations and conditions and for such consideration as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, parks, sidewalks, crosswalks, and other public places of the Town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, railroad (excepting railroads or railways engaged in Interstate Commerce), bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof; provided, however, that whenever any state or federal law grants jurisdiction over any such activity to a state or federal agency, the Town shall have no authority inconsistent therewith.

3.2.39 May regulate and control the exercise of any license or franchise mentioned in section 3.2.38 of this Charter, or intended so to be.

3.2.40 May appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and may transfer temporarily money from one fund to another fund of the Town in case of emergency.

3.2.41 May inquire into and investigate the conduct of any officer, agent or employee of the Town or any municipal affair and for such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena.

3.2.42 May establish a Pension, Health, Dental, or other insurance plan, (including participation in any pension, health, dental, or insurance plan offered by or through the State of Delaware) for the employees of the Town under such terms and conditions as the Town Council, in its discretion, may deem most appropriate. The method of funding may, if deemed desirable by the Town Council, be accomplished through an insurance company or brokerage firm licensed by the State of Delaware or authorized to do business in this State.

3.2.43 May determine what purposes are deemed to be public government purposes or proprietary municipal purposes.

3.2.44 May make, adopt, and establish, alter and amend all such Ordinances, Regulations, Rules, and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which

they may deem proper and necessary for the order, protection and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants; provided, however that any Ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one (1) mile from said limits.

### 3.3 Liberal Construction; Manner of Exercise.

The powers of the Town under this Charter shall be liberally construed in favor of the Town, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise thereof, the Town shall have and may exercise any and all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate.

### 3.4 Manner of Exercising Powers.

All powers of the Town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in the manner provided by ordinance or resolution of the Town Council. The Council may, by resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters in this Charter duly authorized.

### 3.5 Intergovernmental Cooperation.

The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of Delaware or with any agency or political subdivision thereof, or the United States or any agency thereof, except as prohibited or restricted by the Constitution or laws of the State of Delaware or by this Charter.

## **4. Town Council.**

### 4.1 Governing Body.

#### 4.1.1 Governing Body.

The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in and exercised by a Town Council composed of five (5) council members to be chosen as hereinafter provided. Unless the context is clearly to the contrary, the term "Council" or "Town Council" herein shall mean the Mayor and council members.

#### 4.1.2 Length of Term.

Each council member shall be elected for a term of two (2) years. There shall be no limit to the number of terms a council member may serve on the Town Council.

#### 4.2 Qualifications.

Candidates for the office of council member shall be at least twenty-one (21) years of age, shall not have been convicted of a felony, shall have been a bona-fide domiciliary of the Town for at least one year prior to the date of the election, and shall be otherwise qualified to vote at the annual Town election as provided in section 4.4.2. Any person elected to the office of council member must continue, throughout his/her term of office, to meet these qualifications or forfeit his/her office. 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.

#### 4.3 Notice of Solicitation of Candidates; Notice of Candidacy; Determinations Concerning Qualifications; Filing Certificate of Intention and Statement of Organization.

##### 4.3.1 Notice of Solicitation of Candidates; Notice of Candidacy.

Notice of solicitation of candidates shall be posted conspicuously within the municipality twenty (20) days prior to the filing deadline for the offices up for election and shall include the terms of the offices up for election, the qualifications to run for each office, and the filing procedures and deadline to run for office. In order to be listed on the ballot at any regular or special town election, each candidate shall file a written and signed notice of intention to seek office with the Town Clerk, on a form prescribed by the Town, before the regularly-scheduled Town Council meeting in November. Such form shall contain an affidavit that the candidate meets all the qualifications for office. The Town Clerk shall present all timely received notices of candidacy to the Town Council at the regularly-scheduled meeting in November. No later than one (1) business day following the regularly-scheduled meeting in November, the Town shall submit the names of candidates for each office up for election to the Department of Elections. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the notice of solicitation of candidates.

##### 4.3.2 Determinations Concerning Qualifications.

If the Town Clerk determines that a candidate may not meet the qualifications for office, the Town Clerk shall notify the Mayor who shall call a special meeting of the Town Council to be held not less than twenty-one 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 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/her 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 competing for that seat shall be entitled to vote on the question.

#### 4.3.3 Filing Certificate of Intention and Statement of Organization.

All candidates shall file a Certificate of Intention or Statement of Organization if either is applicable and required under 15 *Del. C. Ch. 75* ("Municipal Elections") as those provisions may from time to time hereafter be amended, or with any future corresponding provision of law.

#### 4.4 Elections.

##### 4.4.1 Compliance with State Regulations.

The Town is hereby authorized to act in accordance with the state laws governing municipal voting found in 15 *Del. C. Ch. 75* ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or 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 voting.

##### 4.4.2 Voter Qualifications.

Any person shall be qualified to vote who, on the date of the election:

- (a) is a United States citizen;
- (b) has attained eighteen (18) years of age;
- (c) has been continuously domiciled in the Town for at least thirty (30) days;
- (d) has not been adjudged a mentally incompetent person by a court of competent jurisdiction; and
- (e) has not been disenfranchised pursuant to sections 3 or 7 of Article V of the Constitution of the State of Delaware.

Persons appearing to vote shall present proof of identity and address pursuant to 15 *Del C Ch 75* (Municipal Elections). For purposes hereof, a person is "domiciled" in the Town when he/she physically resides within the corporate limits of the Town with the actual intent to make that residence his/her fixed and permanent home; however, any person who is enlisted or engaged in any government service of the United States or any military organization of this State of the United States, which service requires him/her to reside outside the limits of the Town, shall be considered to be a domiciliary of the Town during the period of his/ her service so long as it remains his/her actual intention to retain Magnolia as his/her fixed and permanent home.

##### 4.4.3 Voter Registration.

The Town Council may enact such ordinances concerning the registration of qualified voters for municipal elections in the Town as it deems reasonably necessary to provide for the orderly and efficient conduct of municipal elections; provided that no such ordinances shall alter the qualifications of voters as hereinabove set forth, nor shall any such ordinances unduly impair the right to vote in a municipal election.

#### 4.4.4 Uncontested Elections; Write-In Candidates.

(a) Where there is only one official candidate for each office up for election, if none of the official candidates has a formal opponent on the day of election, the official candidates may assume office without the holding of a formal election.

(b) No person or candidate whose name does not appear on the ballot shall be eligible for election, and votes for "write-in" candidates shall not be counted.

#### 4.4.5 Date, Time, Place and Manner of Conducting.

(a) Date, Time, and Place. There shall be an election held the second Monday in January of each year. As derived from the first election held in 1960, in odd election years, two (2) council members shall be elected, and in even election years, three (3) council members shall be elected. The annual Town Election shall be held at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for at least three (3) hours, the times to be determined by the Town Council.

(b) Notice of Elections. Notice of elections shall be posted in a conspicuous public place no later than twenty (20) days prior to the election date. The notice of elections shall include the date, time, and place of the election, the candidates for each office, and qualifications to vote. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the notice of elections.

(c) Voting Machines. Elections shall be by voting machines provided by the Department of Elections in accordance with 15 *Del. C. Ch. 75* ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law.

(d) Absentee Voting. The Town Council may, by ordinance, provide for a qualified voter (duly registered if required by ordinance) who shall be unable to appear in person, to cast his or her ballot at any municipal election by absentee ballot. All absentee voting authorized by the Town shall be submitted in accordance with 15 *Del. C. Ch. 75* ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provision of law.

(e) Rules Governing Conduct of Elections. The Town shall follow the rules governing the conduct of elections found in 15 *Del. C. Ch. 75* ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the conduct of elections.

(f) Election Board. Every election shall be held under the supervision of an Election Board. The Election Board shall consist of three (3) or five (5) persons (as determined by the Town Council) who shall be qualified voters of the Town and shall not be an elected official or candidate or an immediate family member of such (mother, father, son, daughter, brother, sister, including half-brothers and sisters, step-family members and in-laws) and who shall be appointed for that purpose by the Town Council at least twenty (20) days before such election. The term of the Board of Elections shall correspond to the election for which the board was appointed and shall expire once all matters relating to the election have been resolved. Each board member shall be confirmed and have his/her name and contact information publicly posted in accordance with the 15 *Del. C. Ch. 75* ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. If, at the opening of the polls, there shall not be present the members of the Election Board, then 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 such vacancies caused by the absence of the previously-appointed members of the Election Board through the conclusion of the election. Members of the Election Board shall be the sole and final judges of the conduct of the election and of the legality of the votes offered. The Election Board shall keep a list of all voters voting at said election. The Election Board shall have the power to subpoena persons, and officers of the Town, and books, records and papers relative to the determination of the qualifications of voters and the legality of any vote or votes offered.

(g) Election Results. Upon the close of the election, the Election Board shall count the votes, and the candidates having the highest number of votes for each office shall be declared, by the Election Board, to be duly elected to such office.

(h) Ties. In the event of a tie vote for any office, the Election Board shall determine such tie by a majority vote of the entire Election Board.

(i) Preservation of Ballots and Records. All ballots cast and all records of the election kept by the Election Board shall be preserved in the custody of the Election Board for a period of thirty (30) days, unless the election is contested or an appeal is filed in a court of appropriate jurisdiction, in which case such ballots and records shall be preserved until further direction of the reviewing body or court having jurisdiction.

(j) Election Record Book. The Election Board shall enter in a book, to be provided for that purpose, the results of the election, containing the names of the persons elected. The members of the Election Board shall subscribe the same. The book, containing such matters, shall be preserved by the Town Council.

## **5. Town Council.**

### **5.1 Annual Meeting.**



On the second Monday in February of each year, the newly elected members of the Town Council and the hold over members of the Town Council shall meet for the purpose of organizing by the election of officers and conducting such other business as may come before such meeting. The Annual Meeting shall be held at the usual place for holding regular meetings. The newly elected council members shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity, which oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, the Mayor, or by one of the holdover council members. At the organizational meeting, one of the members of the Town Council shall be designated and elected by the members of the Council as and for the Mayor of the Town of Magnolia, and one of the members of the Town Council shall be designated and elected by the members of the Council as and for the Vice-Mayor of the Town. Each of these officers shall serve until the Annual Meeting after the next succeeding election, unless sooner removed from such office by action of the Town Council.

## 5.2 Officers.

The office of council member shall be elective. All other offices shall be appointed offices, such appointment to be made by the Town Council, as provided in section 6 of this Charter.

### 5.2.1 Mayor.

It shall be the duty of the Mayor to preside at all meetings of the Town Council, to serve as the head of the Town government for all ceremonial purposes or for purposes of military law, and to perform such other duties as may be prescribed by any ordinance or resolution adopted by the Town Council. The Mayor shall have the same right as other council members to vote on all matters and may at any time appoint another council member to preside if he/she desires to make a motion, move the adoption of a resolution, second either, or debate any question from the floor, and may thereafter immediately resume his/her duties as presiding officer. For purposes of establishing a majority vote or quorum, the Mayor shall be counted as a member of Council. The Mayor shall be authorized to act on behalf of the Town, without prior Council approval, in the event of some sudden emergency requiring prompt action in order to protect the public health, safety, and welfare of the Town, its residents 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, a serious storm threatening significant damage, a civil 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 of Magnolia. If reasonably possible, the Mayor shall notify each council member, in writing, by U.S. mail, personal delivery, fax, or email of the action so taken within forty-eight (48) hours. Notice shall be complete upon depositing such notice in the U.S. Mail, proper postage affixed, to each council member at his/her last known address, by personal delivery, or by confirmation of receipt of a fax or an email transmission. Any action taken by the Mayor under the powers vested in

him/her under this section shall be as good as the act of the entire Council, provided that the Council may at a regular or special meeting held within fifteen (15) days of the Mayor's action, cancel the further implementation of any such action not yet completed and notify any persons or legal entities affected.

#### 5.2.2 Vice Mayor.

The Vice-Mayor shall act as Mayor during the absence or disability of the Mayor, and while so acting, shall be vested with all the powers, duties, and authority of the Mayor. The Vice-Mayor shall perform such other duties as may be assigned to him by the Mayor or by ordinance or resolution adopted by the Town Council.

#### 5.2.3 Succession of Authority.

In the event that the Mayor is unavailable or incapable of assuming his/her responsibilities in a sudden emergency (as defined in section 5.2.1) the emergency powers therein vested in the Mayor shall devolve upon the following officers and officials of the Town in the following order of sequence: (1) Vice-Mayor, (2) each of the three remaining council members in order of their total number of years served on Council (and if two council members have served the same number of years, priority shall be given to the council member whose last name comes first in the alphabet), (3) the Town Clerk, and (4) the Water Commissioner.

### 5.3 Prohibitions.

#### 5.3.1 Holding Other Office and Employment Restrictions.

Except where authorized by law, no member of the Town Council, nor the Mayor, shall hold any other Town Office or Town employment while serving in office.

#### 5.3.2 Contracts with the Town.

Contracts with the Town and other conflicts of interest are governed by 29 Del. C. Chapter 58 ('Laws Regulating the Conduct of Officers and Employees of the State'), as the same may from time to time hereafter be amended, or in accordance with any future corresponding provision of law. Any town official or employee shall file a disclosure with the Public Integrity Commission pursuant to 29 Del. C. Ch. 58 before entering into a contract with the Town that is not prohibited as being with the town agency of the employee or official (i.e. a council member cannot contract with the council). All contracts that would otherwise violate 29 Del. C. Ch. 58 shall not be entered into without the written approval of the State Public Integrity Commission or the Town of Magnolia Integrity Commission, if such Commission exists within the Town.

### 5.4 Vacancies; Forfeiture of Office.

#### 5.4.1 Vacancies.

The office of Mayor or council member shall become vacant upon his/her death, resignation, lawful removal from, or forfeiture of his/her office.

#### 5.4.2 Forfeiture Proceedings.

A forfeiture of office shall occur when the Mayor or any council member:

- (a) lacks, at any time during his/her term of office, any qualification for his/her office prescribed by this Charter or by law;
- (b) willfully violates any express prohibition of this Charter;
- (c) is convicted of a felony or any crime involving moral turpitude;
- (d) fails to attend three (3) consecutive regular council meetings without being excused by Council; or
- (e) is physically, mentally, or emotionally incapable of performing the functions of his/her office.

#### 5.4.3 Determination Concerning Forfeiture.

Where the conditions set forth in 5.4.2 (c) or (d) occur, forfeiture shall be automatic. Where the conditions set forth in 5.4.2 (a), (b), or (e) are alleged to have occurred, a determination concerning such alleged forfeiture shall be made by the Council, but the affected party shall not have a vote in any such decision. Such deliberations may be had in executive session, but subsequent votes by Council must take place in open session. If the Council determines by unanimous vote of the council members entitled to vote on the question that a forfeiture has occurred, it shall, within forty-eight (48) hours of that determination, provide written notice thereof to the affected council member, stating specific reasons. The affected party shall then have ten days in which to make a written demand for a public hearing before the Council, to be held within twenty (20) days of the written demand, at which hearing he or she may appear with the assistance of counsel and present evidence to the relevant issues. Thereafter, the Council shall hear any other relevant evidence and vote again on the question of forfeiture; and if a determination of forfeiture is again made by a unanimous vote of the disinterested council members entitled to vote on the question, the decision shall be final.

#### 5.4.4 Failure to Request Hearing as a Bar.

Failure of the affected person to make written demand for a public hearing as hereinabove stated shall be an absolute bar to the right to challenge the Council's decision. During, or in connection with, any such proceedings, the 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.

### 5.5 Filling Vacancies on the Town Council.

#### 5.5.1 Council Members.

In case of a vacancy among the council members, the remaining members of the Town Council shall, at the next regularly scheduled Town Council meeting, elect another qualified person to fill that vacant seat until the next ensuing regular municipal election. At the municipal election, the qualified voters of the Town shall elect a qualified candidate to fill the seat for the remainder of the original term. Each such vacancy shall be separate and distinct from any other

such vacancy and from the full-term seats to be filled at such election; and shall be so designated on the ballot. The written notice of candidacy for election to fill a vacancy under this section shall specify the vacant seat for which the notice of intention to run is made, and no candidate shall file a notice of intention to run for more than one seat. The candidate receiving the highest number of votes for each such vacant seat shall be declared the winner.

#### 5.5.2 Mayor.

In case of a vacancy in the office of Mayor, the Vice-Mayor shall assume the office of Mayor until the next regularly-ensuing municipal election and subsequent Annual Meeting, at which time the qualified voters of the Town shall elect a qualified candidate to fill the Mayor's seat on council for the remainder of the original term, if any. If the vacancy in the office of Mayor occurs more than three (3) months prior to the next regularly-ensuing municipal election, the Town Council may, at the next regularly scheduled Town Council meeting, after appointing a qualified person to fill the Mayor's seat on Council in accordance with section 5.5.1, elect a council member to fill the temporary vacancy of the Vice-Mayor position created by the Vice-Mayor assuming the office of Mayor. Such person shall serve only until the next regularly-ensuing town election and corresponding Annual Meeting whereat the sitting Town Council shall elect the next Mayor and Vice-Mayor.

#### 5.5.3 Vice-Mayor.

If a vacancy shall occur in the office of Vice-Mayor, after the corresponding seat has been filled on Council pursuant to section 5.5.1 and at the next regularly scheduled Council meeting, the Council shall elect a member of the Town Council to fill such vacancy until the next regularly-ensuing town election and corresponding Annual Meeting whereat the sitting Town Council shall elect the Mayor and Vice-Mayor.

### 5.6 Compensation; Reimbursement of Expenses.

#### 5.6.1 Compensation.

No compensation shall be paid members of Council except as otherwise herein provided unless the same shall be first approved at the annual election or at a special election of the voters qualified to vote at the municipal elections of the Town. No compensation shall be paid to the Mayor unless approved by a majority vote of council (with the Mayor abstaining from voting).

#### 5.6.2 Reimbursement of Expenses.

The Mayor and members of Council shall be reimbursed for their documented actual and necessary expenses incurred on town business if approved by the Town Council. No member of the Town Council shall be entitled to vote upon their own request for reimbursement unless similar expenses were incurred by four or more members of the Town Council in connection with the same event or activity.

### 5.7 Meetings.

#### 5.7.1 Regular Meetings.

The Town Council shall meet regularly the second Monday of each month, provided that when any meeting date falls on a Town holiday, that meeting may be held on the next business day. The time and place of each regular meeting shall be set by Council each year at their Annual Meeting, but Council shall not hereby be prohibited from rescheduling such meetings from time to time during the year as need arises.

#### 5.7.2 Special Meeting; Waiver of Notice.

Special meetings shall be called by the Mayor, or in his or her absence, the Vice-Mayor, or upon the written request of any two (2) council members, one of whom may be the Mayor or Vice-Mayor, stating the day, hour, and place of the special meeting requested and the subject or subjects proposed to be considered thereat. Such notice shall be given at least forty-eight (48) hours prior to the time set for such special meeting and shall be effective if delivered and received by the person to whom sent, or by an adult person residing in the household of the person to whom sent, if sent by personal delivery, overnight courier or special delivery service, telephonic message, facsimile message ("fax"), telegram, or "e-mail". Receipt of such notice may be established by reasonable proofs of same according to the means of delivery utilized. Anything herein to the contrary notwithstanding, any member of the Town Council entitled to notice of a special meeting under this section may at any time, before, at, or after the holding of such special meeting, submit a written waiver of notice which written waiver shall make valid the holding of such special meeting at any time and for any purpose named in such waiver, or the transaction of any other business at the meeting, if the waiver so states. Additionally, attendance at any such meeting, except for the express and limited purpose of objecting to the holding of such meeting, shall constitute a waiver of notice for such meeting. Subject to the scope of the notice, the Town Council of the Town 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 such special meeting, called as aforesaid, as Council has at a regular meeting.

#### 5.7.3 Adjourned Meetings.

The Town Council may adjourn its meetings from time to time, stating the date, place, and time to which such meeting shall be adjourned.

#### 5.8 Manner of Acting.

##### 5.8.1 Rules of Procedure; Record of Proceedings.

The Town Council may determine its own rules of procedure and order of business. It shall keep a record of its proceedings.

##### 5.8.2 Ordinances.

The Council is hereby vested with the authority to enact ordinances or resolutions relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, its 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 or resolutions, and no provision of this Charter as to ordinances on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated. In addition to other acts required by law or by specific provisions of this Charter to be done by ordinance, those acts of the Town Council shall be by ordinance which:

- (a) Adopts or amends an administrative code; provided that no ordinance shall be required to amend the personnel policy, or any component thereof, unless so required by a duly adopted ordinance.
- (b) Provides for a fine or other penalty or establishes a rule or regulation for violation of which a fine or other penalty is imposed.
- (c) Grants, renews or extends a franchise.
- (d) Amends or repeals any ordinances previously adopted.
- (e) Revises the Town's fiscal year.

Acts other than those referred to in the preceding may be done either by ordinance or by resolution. Every ordinance shall be introduced in writing. Vote on any ordinance may be by voice vote or written vote and the vote of each council member on any ordinance shall be entered on the record. No ordinance shall be passed unless it shall have the affirmative vote of a majority of all members of the Town Council.

#### 5.8.3 Quorum.

Three (3) members of the Town Council shall be physically present in order to constitute a quorum to conduct business, but if a lesser number be present at any regular or properly called special meeting, they may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance adopted by the majority of the entire Council.

#### 5.8.4 Participation and Voting by Remote Access.

The Town Council is hereby authorized, by duly enacted ordinance, to provide that whenever unavoidable circumstances prevent 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 through remote access and provided that the person participating by remote access

can hear and speak to all persons participating at the meeting; provided further, however, that the meeting shall not be presided over by any person not physically present at the meeting.

#### 5.8.5 Vote Necessary to Carry Action.

All powers of the Town Council, whether express or implied, shall be exercised in the manner provided herein, or if not prescribed herein, then by ordinance or resolution. In the general performance of their duties, the acts, doings, and determinations of a majority of the entire Town Council shall be as good as the acts and determinations of all the members of the Council. No ordinance, resolution, motion, order, or other act of the Town Council, except as herein specifically authorized, shall be valid unless it receives the affirmative vote of a majority of all members of the Town Council.

### **6. Appointed Officers.**

#### 6.1 Town Clerk.

##### 6.1.1 Appointment; Term.

The Town Council may appoint a Town Clerk. The Town Clerk shall be appointed on the basis of his or her professional, executive and administrative qualifications. The Town Clerk is an “at will” employee and as such may be terminated by the Town Council at any time with or without “just cause.”

##### 6.1.2 Duties.

The Town Clerk shall be responsible to the Town Council for the proper administration of all affairs of the Town placed in his or her charge, and the Town Clerk shall have such powers and duties as shall be established by the terms of this Charter or any ordinance or resolution duly adopted, or from time to time amended, by the Town Council. By way of example and not limitation, the Town Clerk shall have general supervision of the Town’s records and documents, and the Town Clerk shall cause to be kept a true and faithful record of the proceedings of the Town Council.

##### 6.1.3 Vacancy from Office.

In the event of a vacancy in the office of Town Clerk, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges and powers theretofore reposed in his or her predecessor or predecessors in office in the same manner as though all acts, deeds and steps theretofore taken by any such predecessor or predecessors with respect to any matter or thing pertaining to said office had been taken or performed by the successor to such office.

#### 6.2 Other Officers, Agents, and Boards.

##### 6.2.1 Appointment and Hiring.

The Town Council may provide for the appointment or hiring of such other officers, agents, employees, inspectors, and boards of the Town, which it may deem proper and necessary, for the proper conduct and management of the

Town, including by way of example and not in limitation, a town manager, consulting engineer, financial auditor, Board of Adjustment, Planning & Zoning Commission, and Election Board. Except as otherwise provided by written agreement approved by the Town Council, or as provided elsewhere in this Charter or in any governing statute or ordinance, such officers, agents, and board members shall serve at the pleasure of the Town Council.

#### 6.2.2 Compensation.

(a) Officers and Agents. The Town Council shall by ordinance, resolution, or written contract fix the amount of any salaries or compensation of the officers and agents employed by the Town.

(b) Members of Boards and Commissions. The amount (if any) to be paid to the members of any board or commission appointed or confirmed by the Town Council for attendance at each meeting of such board or commission shall be established by the Town Council based upon the written recommendations of a "Compensation Committee" which shall be comprised of five (5) members who shall be the citizen members (i.e. shall not be employees or elected officials of the Town) of not less than three (3) standing committees of the Town, one of which committees shall be that standing committee which has primary oversight for the town budget (i.e. the

"Budget Committee" by whatever title known). The Compensation Committee's recommendations, if any, shall be submitted to the Town Council by July 1st of any year, but no action by the Town Council to modify the then-existent amount of compensation shall take effect until after the next town election.

#### 6.3 Personnel Records.

The Town Council shall cause to be kept appropriate personnel records for all town employees as necessary to comply with all applicable federal and state laws and regulations and in accordance with commonly-accepted personnel practices for municipal employees. Such records shall not be "public records" and shall not be subject to public inspection.

#### 6.4 Surety Bonds.

The Town Council may, at the Town's expense, require any Town employee to be bonded by a commercial bonding company in such amount and according to such terms as deemed necessary and appropriate by the Town Council.

### **7. Town Finances.**

#### 7.1 Use of Town Monies.

The Town Council of said Town shall have full power and authority to use the money in the Treasury of said Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation and best interests of the said Town, as Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of Delaware, this Act, and all lawful ordinances and resolutions of Council.



## 7.2 Fiscal Year.

Unless revised by ordinance duly adopted by the Town Council, the fiscal year of the Town shall begin with the first day of July in each year and end with the next-succeeding thirtieth day of June.

## 7.3 Annual Budget.

The Town Council shall annually, at or before the regular Town Council meeting in June of each year, adopt a budget for the upcoming fiscal year.

### 7.3.1 Determination of Revenue Needs.

The Town Council shall determine, in its best judgment and knowledge, the total amount necessary to be raised by the Town to meet the fixed and anticipated expenses and obligations of the Town, including reasonable and appropriate reserves, for the then upcoming fiscal year plus a reasonable amount to cover unanticipated expenses and emergencies.

### 7.3.2 Determination of Revenue Sources.

The Town Council shall determine, in its sole discretion, from which sources of the authorized revenues of the Town the amount so determined by them shall be raised and, within the limits prescribed by this Charter with respect to any such source, the amount to be raised from each such source:

- (a) Real Estate and Improvements and Public Utility Property. One proposed rate of tax on both real estate including improvements thereon and taxable property of public utilities per One Hundred Dollars (\$100) of the assessed value; and/or
- (b) License Fees. The several license fees to be charged for carrying on or conducting of the several businesses, professions or occupations more particularly mentioned or intended so to be in sections 3.2.36 and 3.2.38 of this Charter; and/or
- (c) Municipal Services. The several rates to be charged for furnishing water and sanitary sewer service and front footage assessment; electric supply and distribution service; trash collection; and/or
- (d) Other Services. The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (b), (c) and (d) aforementioned may be determined, fixed, assessed, levied and/or altered or changed upon other than a fiscal year basis at any regular or special meeting of the Town Council as the Town Council, in its own proper discretion, shall determine; and provided further that the rate of tax upon taxable real property and taxable property of public utilities may be revised at such time the Town Council finally approves and accepts the annual assessment list for Town property taxes pursuant to section 8.4.2.

## 7.4 Annual Audit.

The Town Council shall retain a certified public accountant to be the auditor of accounts of the Town of Magnolia. It shall be the duty of the auditor to audit the accounts of the Town and all its officers whose duty involves the collection, custody and payment of monies to or by the Town. The auditor shall on or before December 1 of each year make and deliver a detailed report of any and all accounts, records, and books from the previous fiscal year by him or her examined and audited which report under his/her hand and seal shall be available for public inspection; provided however, anything herein to the contrary notwithstanding, the date for submission of the auditor's report may be extended by the Town Council beyond December 1 at the written request of the auditor for reasonable cause shown. Notice of the filing of the auditor's report shall be published at least once in a newspaper of general circulation in the Town of Magnolia within ten (10) days of its receipt by the Town Council. The auditor, in the performance of his/her duties, shall have access to all records and accounts of the offices of the Town.

#### 7.5 Recovery of Legal Expenses Incurred in Enforcement of Town Ordinances and/or Collection of Amounts Due to the Town.

Whenever it becomes necessary or expedient for the Town to file any legal action or proceeding to enforce compliance with a Town ordinance and/or to collect an amount due to the Town before any court or administrative agency having jurisdiction thereof, if the Town is the prevailing party in such action, the court or administrative agency having jurisdiction shall be authorized, in the exercise of the court's or administrative agency's reasonable discretion, to award judgment to the Town in an amount deemed appropriate by the court or administrative agency to reimburse the Town for its costs of prosecution, including court costs, expert witness fees and other documented out-of-pocket expenses incurred in connection with such prosecution; provided, however, that in order to recover such amounts under this section, the Town shall, prior to the filing of such legal action or proceeding, make written demand upon the responsible party for compliance with the ordinance and/or payment of the amount due (as the case may be), which written demand shall include notice of this provision of the Town Charter.

### **8. Assessment for Taxes.**

#### 8.1 Adoption of Appraised Values Implicit In Kent County Assessments.

The Town Council shall adopt the appraised values implicit in the assessments established by Kent County for all property located within the corporate limits of the Town of Magnolia. The appraised values implicit in the appraisals established by Kent County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals (under section 8.4) regarding same.

#### 8.2 Delivery of Assessment List.

Prior to the regular Town Council meeting in May, the Town Clerk shall deliver to the Town Council of the Town of Magnolia a list containing the names of owners of all properties assessed and the amount of assessment against each.

### 8.3 Additions to Tax Bills.

The Town Clerk shall annually, prior to the posting of the assessment list, provide the Town Council a list of any and all charges, costs, or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: sidewalk assessments, waterline assessments, water service charges, weed and grass cutting bills, sanitary sewer service charges, trash collection bills, past due electric charges, costs for demolition or repair of any building or structure in accordance with governing town ordinances, and the amount of any unpaid penalty imposed by any court of competent jurisdiction for violation of any municipal ordinance. Said amounts, when adopted and set forth by resolution of the Mayor and Council, shall be shown on the copies of the assessments posted pursuant to the provisions of section 8.4.1 of this Charter.

### 8.4 Appeals of Additions to Tax Bills.

#### 8.4.1 Posting of Annual Assessment List; Notice.

Immediately upon receiving the annual assessment list from the Town Clerk, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each taxable, to be made available for public inspection at the Town Office, and there it shall remain for a period of at least fourteen (14) days for the information of and examination by all concerned. Public notice of the posting of the assessment list and the date, place, and time where the Town Council will sit as a Board of Revision and Appeal to hear appeals from the said assessment and to make such corrections and revisions as it deems appropriate shall be posted in at least five (5) public places in the Town and published at least once in a newspaper of general circulation in the Town not less than fourteen (14) days prior to the date set for the hearing of such appeals.

#### 8.4.2 Appeals of Additions to Tax Bills.

The Council may direct that appeals from any additions to tax bills under section 8.3 be heard by a committee of not less than three (3) council members appointed by the Town Council. The committee of council members shall sit at the stated place and time to hear the appeals of all taxpayers dissatisfied with additions made to their tax bills, shall collect such information as they consider proper and necessary, and shall report their findings and recommendations, together with such other information as the Council shall permit or require, to the full Council at its next ensuing meeting, at which time the appeal of each dissatisfied taxpayer shall be heard. The Town Clerk shall be present on the day fixed for hearing appeals and shall furnish to the Town Council such information and answer such questions as the Town Council may require in respect to any addition to a tax bill for which an appeal has been taken. No member of the Town Council shall sit on his/her own appeal, but the same shall be heard and determined by the other members of the Town Council. The Town Council shall have full power and authority to alter, revise, add to, and take from the said addition to the tax bill. The decision of a majority of the Council shall be final and conclusive. Upon completion

of the appeal process under this section for any appeals made to the Town, the Town Council shall at that meeting or at the next ensuing regular meeting, adopt a resolution approving the final assessment list (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list under section 8.3), and setting the tax rate per \$100 of assessed value.

## **9. Taxation; Tax Limit.**

### **9.1 Taxation.**

The Town Council is authorized to levy and collect from the taxables of the Town, according to the terms and provisions of this Act, such sum of money as may be deemed by the Town Council as necessary and proper for the general municipal needs of the Town, including sufficient monies to pay interest and principal on any municipal bond issued by the Town pursuant to sections 12.1 and/or 12.2 of this Charter, or pursuant to any special act of the General Assembly.

### **9.2 Levy of Tax.**

After the valuations and assessments have been examined, adjudged, and approved by the Town Council as provided in section 8.4.2, the Town Clerk shall proceed immediately to collect all taxes and other amounts set forth on the approved assessment list (each and all of which shall hereafter be referred to as "taxes" for sake of convenience) as hereinafter provided.

### **9.3 Savings Clause.**

Nothing contained in this Charter shall be construed to affect or impair in any way the validity of any tax, fee, assessment or other charge lawfully levied, assessed or due the Town of Magnolia under the existing laws in reference to said Town, and the same are hereby declared to be valid, binding and vested in the Town of Magnolia created hereby.

### **9.4 Limitation on Taxes.**

The total amount of money to be raised by real property taxes and utility fixture taxes shall in no year exceed two percent (2%) of the total assessed valuation of all taxable real estate (and improvements thereon) in the Town; provided, however, that this limit on taxes for general Town purposes shall not limit or prohibit the Town from levying and collecting such further and additional taxes or sums of money in any year as may be necessary or expedient to pay the interest on, or to retire the principal of, any bonds or certificates of indebtedness issued by the Town pursuant to sections 12.1 and/or 12.2 as the same become due, or before they become due; or to create an adequate sinking fund reserve for the retiring of such indebtedness either before or at the time they become due.

## **10. Collection of Taxes.**

### **10.1 Collection by Town Clerk.**

The Town Clerk shall, as soon as the Town Council shall have set the tax rate pursuant to section 8.4.2, proceed at once to collect the taxes so levied.

#### 10.2 Lien.

All taxes so laid or imposed by the Town of Magnolia shall be and constitute a lien for a period of ten (10) years from the date so levied upon the real estate against which such taxes are laid and imposed; provided that if the real estate remains the property of the person(s) or legal entity(s) who was/were the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Such lien shall have preference and priority to all other liens on such real estate as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes.

#### 10.3 Due Date; Deposit.

All taxes shall be deemed levied and shall be due and payable at and from the time the tax rate is set under section 8.4.2. All taxes, when and as collected by the Town Clerk, shall be paid to or deposited to the credit of the Town of Magnolia in such financial institutions as directed by the Town Council.

#### 10.4 Place of Payment.

All taxes shall be payable at the Town Office of the Town of Magnolia during the regular business hours of that office.

#### 10.5 Discount for Prompt Payment; Penalty for Late Payment; Collection Fee.

To all taxes paid on or before August 15 next following the levy, there may be applied a discount as established, from time to time, by resolution of the Town Council. On all taxes paid after September 30 of each year, there shall be added a penalty, to be determined by Council, for each month or fraction thereof such taxes shall remain unpaid, said penalty to be effective after September 30, and said penalty shall be collected in the same manner as the original amount of the tax. The Town Council shall have the power to make just allowances for delinquencies in the collection of taxes. All taxes unpaid after September 30 of each year shall be considered delinquent. In effecting a collection of any delinquent tax, the Town Council may impose a collection charge reasonably calculated to recover the costs of collection, including all court costs, sale costs, reasonable and necessary out-of-pocket expenses, and reasonable attorney fees incurred by the Town in such collection proceedings.

#### 10.6 Applicability to Taxes.

The provisions of this section and of section 11 of this Charter apply to all taxes levied by the Town Council of the Town of Magnolia, pursuant to section 12.4 of this Charter, provided that all references in this section and in section 11 to an Annual Tax List or Taxes shall, for all purposes relating to such special taxes, be deemed to refer to the tax list showing the amounts of special taxes levied against the real property.

## **11. Remedies, Powers, and Methods for Collection of Delinquent Taxes and Other Charges Due to the Town.**

### **11.1 Notice Prior to Exercise.**

Before instituting any legal action for the collection of taxes, written notice of the amount due shall be sent to the taxable at his/her last known address.

### **11.2 Town Clerk to Have Delinquent Tax Collection Powers as Conferred Upon the Kent County Government.**

In the collection of delinquent taxes (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list pursuant to section 8.3), the Town Clerk shall have all of the same powers, remedies, and authority as conferred upon the Kent County Government under 9 *Del. C. Ch. 87* ("Collection of Delinquent Taxes"), as the same may from time to time hereafter be amended, or in accordance with any future corresponding provision of law.

## **12. Borrowing Powers.**

### **12.1 Short-Term Borrowings by Town Council Without Voter Approval; Limit on Borrowing; Tax Exempt.**

The Town Council shall have the power to borrow money on the full faith and credit of the Town without approval of the voters and without regard to the provisions of sections 12.2 of this Charter, such sum or sums not exceeding in the aggregate fifteen thousand dollars (\$15,000.00), for any municipal or public purpose when, in the opinion of the majority of the Town Council elected, the needs of the Town require it; provided, however, that any new borrowings under this section 12.1 made after the effective date of this Act shall, by their terms, be repayable in full within five (5) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by Resolution of the Town Council and signed by the Mayor and attested by the Town Clerk with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under this section 12.1 shall at no time exceed fifteen thousand dollars (\$15,000.00).

### **12.2 Long-Term Borrowings; Voter Approval Required.**

In addition to other borrowing powers granted to the Town under this Charter or by special act, the Town Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town for the payment of principal thereof and interest due thereon.

#### **12.2.1 Proper Municipal Purpose.**

By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to the following:

(A) erecting, extending, enlarging, maintaining, repairing, or replacing any plant, building, structure, machinery, or equipment for the production, treatment, collection, storage, supply, distribution or disposal of water, electricity, sanitary sewage, or storm-waters, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefor;

(B) laying-out, constructing, paving, widening, or extending streets, lanes, alleys and public ways, curbs and gutters, including storm sewers along the same, and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;

(C) erecting, enlarging, repairing, or replacing any municipal building including, by way of example, a Town Hall, a Police Department Building, a municipal warehouse, and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;

(D) constructing, laying-out, widening, extending, repairing, and maintaining sidewalks, cross walks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;

(E) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and

(F) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

#### 12.2.2 Limit of Aggregate Indebtedness.

In no event shall the total outstanding indebtedness of the Town of Magnolia, authorized by sections 12.1 and 12.2 at any one time exceed, in the aggregate, fifteen per cent (15%) of the assessed valuation of all real property within the corporate limits of the Town of Magnolia and subject to assessment for the purpose of levying the annual town taxes as provided in this Charter.

#### 12.2.3 Procedure; Notice, Hearing, Election.

In order to proceed under the power granted in this section 12.2, the Town Council shall authorize such borrowing in the following manner:

(A) The Town Council by resolution shall give notice to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.

(B) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than fourteen (14) days, nor more than sixty (60) days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing, such notices shall contain the same information as required under section 12.2.3(A) above. (2) In addition to publication as herein provided, the Town Council shall, not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.

(C) If, at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing, it shall pass a second resolution ordering a special election to be held, upon not less than fourteen (14) nor more than sixty (60) days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the Town Council to proceed with the matter in issue; provided however, that the Town Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution to cancel the Special Election and abandon the proposed borrowing.

(D) (1) The notice of the time and place of holding the said Special Election shall be printed in two newspapers of general circulation in the Town, not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under section 12.2.3(A). Such notice shall be in bold print or bordered in black so as to call attention thereto.

(2) In addition to such publication as herein provided, the Town Council shall, not less than fourteen (14) days nor more than sixty (60) days before the date set for the election, cause public notice, containing the information set out in subsection (D)(1) above (using date of "posting" for date of "publication"), to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.

(E) (1) At such special election, any person(s) or artificial entity(s) (e.g. partnership, corporation, limited liability company) owning record title to real property in the Town shall be entitled to cast one vote for each separate parcel of real property (identified as such on the tax maps of the governing jurisdiction) owned (but not more than one vote shall be cast for any one property); and any resident of the Town who does not own record title to real property in the Town who would be entitled to vote in the annual town election if it were held on that day, shall be entitled to one vote. (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required



for the annual town election.) (2) Any natural person entitled to vote may cast his/her vote by a duly executed and acknowledged power of attorney. Any legal entity (other than a natural person) entitled to vote must cast its vote by a duly executed and acknowledged power of attorney. Such Power of Attorney shall be surrendered to the Board of Special Election which shall file same in the Office of the Town Clerk. Such Power of Attorney so filed shall constitute conclusive evidence of the right of said person to vote in the Special Election on behalf of the person or legal entity granting the power. (3) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

☐ For the proposed borrowing.

☐ Against the proposed borrowing.

The voter shall be instructed to mark the box for which he casts his/her vote. The Town Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be opened for a minimum of three (3) hours as specified by resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

(F) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall make a certificate under their hands of the number of votes cast for and against the proposed borrowing and the number of void votes and shall deliver the same to the Town Council which said certificate shall be retained by the Town Council with the other papers of the Town.

(G) If two-thirds of the votes cast at such special election shall be in favor of such borrowing, the Town Council shall proceed with the issuance of the said bonds or certificates of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, abandon the proposed borrowing.

### 12.3 Refunding Bonds or Certificates of Indebtedness.

The Town Council may, by Resolution adopted by a simple majority of the entire Town Council, authorize the issuance of bonds or other obligations under sections 12.1 and/or 12.2 for the purposes of refinancing any outstanding bonds or obligations of the Town without the necessity of a public hearing or a special election as would otherwise be required under section 12.2, provided that the outstanding principal amount of the refunding bonds or other evidence(s) of indebtedness does not exceed the face amount refunded, plus the cost of refunding (including all bond premiums and transaction fees), and results in a present value savings to the Town. Present value savings shall be

determined by using the effective interest rate on the refunding obligations as the discount rate calculated based on the internal rate of return.

#### 12.4 Provision for Payment; Special Tax; Sinking Fund.

The Town Council shall provide for the payment of interest on and principal of any bonds or certificates of indebtedness issued under section 12.1 and/or 12.2 at the maturity thereof. The said Town Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds and/or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of sections 12.1 and/or 12.2; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed the total amount necessary to pay all currently due principal amounts of the bonded indebtedness together with all interest currently due thereon within that year, or such amounts as necessary to enable a sinking fund to accomplish its specified purpose. The special tax provided for in this section 12.4 shall be collected from the owners of real estate in the same manner as the other taxes levied by the said Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund so much of the general funds of said town as they may from time to time think advisable. The sinking fund provided for by this section 12.4 shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

#### 12.5 Full Faith and Credit Unless Otherwise Stated.

Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Town of Magnolia shall deemed to be pledged for the due payment of any bonds or certificates of indebtedness and the interest thereon issued under the provisions of sections 12.1 and/or 12.2 when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

#### 12.6 Form of Bonds.

The form of the bonds or certificates of indebtedness authorized under sections 12.1 and/or 12.2 and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after the final action required to authorize the issuance of such bonds or certificates of indebtedness has been completed (i.e. a majority vote of the Town Council under section 12.1; or a favorable vote of those natural persons and legal entities entitled to vote following the public hearing and special election procedures under section 12.2).

#### 12.7 Council Members Not Liable.

No member of the Town Council, nor any person executing any bonds or other obligations issued pursuant to sections 12.1 and/or 12.2, shall be personally liable on the bonds or other obligations, or be subject to any personal liability or accountability by reason of the issuance thereof, provided that he/she is authorized to act by Resolution of the Town Council.

#### 12.8 Exempt from Taxation.

All bonds or other kinds or forms of certificates of indebtedness issued by the Town pursuant to the provisions of sections 12.1 and/or 12.2, and the interest thereon, shall be exempt from taxation by the State of Delaware or by any political subdivision or agency thereof. Any property acquired and held by the Town from the proceeds of bonds or certificates of indebtedness issued pursuant to sections 12.1 and/or 12.2 shall be exempt from taxation by the State of Delaware or any political subdivision thereof.

#### 12.9 Public or Private Sale.

Any bonds or certificates of indebtedness authorized under sections 12.1 and/or 12.2 may be sold or issued at either public or private sale. If the bonds shall be offered for public sale they shall be sold to the best and most responsible bidder(s) therefore after advertisement in a manner to be prescribed by the Town Council for at least fifteen (15) days before offering the same for sale. All bonds or certificates of indebtedness issued pursuant to section 12.1 and/or 12.2 shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee, or other fiduciary.

#### 12.10 Statute of Limitations.

No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this section 12 shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Magnolia and one of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

(A) That the Town Council has determined to borrow a certain sum of money and to issue bonds or certificates of indebtedness therefor.

(B) That the proposal has been approved (as appropriate) by a majority of the Town Council (if the borrowing has proceeded under section 12.1) or by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing (if the borrowing has proceeded under section 12.2.)

(C) The amount of money to be borrowed, which may be stated as a "not-to-exceed" amount.

(D) The purpose for which it is to be borrowed.

(E) The security for such borrowing.

(F) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his/her action within sixty (60) days from the date of publication of such notice or forever be barred from doing so.

Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (A) through (F) above (using date of "posting" for date of "publication") to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.

### **13. Police Force.**

#### **13.1 Establishment of Police Force.**

The Town Council shall have the authority to establish and fund a municipal police force and to employ such personnel as necessary to fill those positions within the police force as authorized and funded by the Town Council. All police officers with the authority to carry firearms and/or to make arrests with or without an arrest warrant shall meet such standards and hold such certifications as required by and in accordance with state law.

#### **13.2 Power and Duties.**

Each member of the police force shall be vested with all power and authority, within the Town limits, and within one mile of said limits, of a State Peace Officer. They shall be conservators of the peace and shall suppress all acts of violence and enforce all laws relating to the safety and protection of persons and property. The police force shall preserve peace and order and enforce all ordinances enacted by the Town Council of the Town of Magnolia within the limits of the Town and shall have the authority to enforce all criminal and motor vehicle laws enacted by the State of Delaware, both within the limits of the Town and within one mile of the limits of the Town. Members of the police force shall have the power to issue summons, to arrest pursuant to a warrant issued by any court of competent jurisdiction, and to arrest without a warrant upon view of any violation of state law or of any ordinance of the Town relating to peace and good order. The police force shall execute all warrants issued by any court of competent jurisdiction directed to such officers. In the case of a pursuit of an offender, the power and authority of the police force shall extend outside the territorial limits of the Town to any part of the State. All proceedings to dismiss, demote, or otherwise remove a Police Chief shall be governed by 11 *Del. C.* Ch. 93 ("Police Chief Due Process") and all proceedings to dismiss, demote, or otherwise discipline a Police Officer shall be governed by 11 *Del. C.* Ch. 92 ("Law-Enforcement Officers' Bill of Rights").

### **14. Subdivision and Land Development.**

#### **14.1 Power to Regulate.**

In order to provide for the orderly growth and development of the Town, to promote the health, safety, prosperity, and general welfare of the present and future inhabitants of the Town, to insure the conservation of property values and natural resources, including the protection of the Town's open lands, water resources, and recreational potential, and to afford adequate provision for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town may regulate the subdivision and development of all land in the Town. Such regulation may, through ordinance, include:

- (1) Varying procedures for insuring the processing of combining, partitioning, or land subdivision and site plans, within a reasonable period of time, relative to the number of lots or parcels and the extent of improvements required.
- (2) Procedures for insuring that the arrangement of the lots or parcels of land or improvements thereon shall conform to the existing zoning at the time of recordation and that streets, or rights-of-way, bordering or within subdivided or developed land shall be of such widths and grades and in such locations as may be deemed necessary to accommodate prospective traffic, that adequate easements or rights-of-way shall be provided for drainage and utilities, that reservations of areas designed for their use as public grounds shall be of suitable size and location for their designated uses, that sufficient and suitable monuments and signage shall be required, that land which might constitute a menace to safety, health or general welfare shall be made safe for the purpose for which it is subdivided or developed, and that adequate provision for public utilities (e.g. water supply, fire protection, sanitary sewage collection, electric distribution, telephone, and cable) is made.
- (3) Procedures for encouraging and promoting flexibility and ingenuity in the layout and design of subdivisions and land development, and for encouraging practices which are in accordance with contemporary and evolving principles of site planning and development.
- (4) Requiring, through dedication of land, money in lieu of land, "impact fees," or otherwise, those subject to such regulation to provide, at their own expense, such municipal or public improvements (including enlargement, expansion, improvement, or enhancement of existing municipal or public improvements) which have a rational nexus to the proposed land subdivision, combining, or partitioning, or development, including, by way of example and not in limitation, the paving of streets, installation of sidewalks, curbs, storm sewers, water lines, sanitary sewer lines, electric distribution lines, street signs, access roads, playgrounds, parks, and open areas. In imposing such requirements, the Town may consider and take into account future as well as immediate needs, and potential as well as present population factors affecting the neighborhood in question.
- (5) Procedures for insuring that any improvements to be constructed on such lands are in compliance with all appropriate Town ordinances and that the placement and location of such improvements will not have a significant negative impact on adjoining properties.

(6) Procedures for securing financial guarantees from the developers of such lands to insure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years) beyond the actual completion of such improvements by the developer or acceptance of such improvements by the Town.

#### 14.2 Recording Unapproved Plans.

In the event an ordinance of the Town so provides, no plat, plot, or plan of land shall be received for filing or recording by the Recorder of Deeds in and for Kent County unless and until such plat, plot, or plan shall have been approved by the Town body so authorized to grant such approvals and the fact of such approvals shall have been endorsed in writing on such plan. Any plat, plot, or plan recorded in violation of such ordinance shall be void and of no legal force or effect.

### **15. Streets and Alleys.**

#### 15.1 Power to Lay Out, Locate, Open, Widen, Alter, Close, Vacate or Abandon.

The Town Council shall have the power and authority to lay out, locate, and open new streets or alleys, or to widen or alter existing streets or alleys, or parts thereof, and to close, vacate, or abandon existing or proposed streets or alleys or parts thereof, whenever the Town Council shall deem it in the best interest of the Town.

#### 15.2 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 Magnolia may be commenced by resolution of the Town Council.

#### 15.3 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. At least fourteen (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 Magnolia and shall be posted in five (5) public places in the Town.

#### 15.4 Notice to Affected Property Owners.

The Town Council shall cause notice of the proposed change 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 section 15.4 shall be provided at least fourteen (14) days before the date set for the hearing.

#### 15.5 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. The Town Council shall, within five (5) 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 15.4.

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

##### 15.6.1 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. Ch. 95* ("Real Property Acquisition") by negotiation and purchase or by condemnation in accordance with the provisions of 10 *Del. C. Ch. 61* ("Condemnation"), as hereafter amended or in accordance with any future corresponding provisions of law.

##### 15.6.2 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 directly between any public street or public alley and an existing garage, carport or improved off-street parking area located on such property such that the property owner effectively loses the use thereof for off-street parking and/or temporary storage of motor vehicles. Any property owner claiming such deprivation shall notify the Town in writing of such claim within fifteen (15) days of the resolution adopted pursuant to section 15.5. Upon receipt of such notice, the Town Council shall proceed to pay compensation for such damages in the same manner as in section 15.6.1.

##### 15.6.3 Disposal of Abandoned and Vacated Street Lands.

Whenever the land comprehended or included in any street or alley or part thereof is vacated or abandoned under this section be owned by the Town, the Town Council may, in its discretion, sell such land at public or private sale and for such consideration as the Town Council shall deem proper; provided that such lands shall first be offered equally to the owners abutting on each side. The Town Council shall have the right and power to convey to the purchaser or purchasers thereof, a good and sufficient title thereto for whatever estate the Town may have therein.

##### 15.6.4 "Street" Defined.

For all purposes of this section 15.6.4, the word "street" shall be deemed and held to comprehend the entire rights-of-way, whether or not improved, including sidewalks, curbs, lanes, alleys, roadways, streets, or other highways owned

by, titled in the name of, or under the jurisdiction and control of the Town. "Street" shall not include any road, street, highway, or other public way under the jurisdiction and control of the Delaware Department of Transportation (or any successor state agency).

#### **16. Constructing, Paving, and Repairing of Streets.**

The Town Council shall have full power and authority to re-grade, re-surface, redress and otherwise repair and rebuild all existing streets, lanes, alleys and other public thoroughfares in the Town, and to construct, build, pave, and in any manner improve all new and existing streets, lanes, alleys and other public thoroughfares now open or to be hereafter opened for public use in the Town, and in so doing, may employ such contractors, engineers, inspectors, and others as the Council shall deem expedient. To this end, the Town Council shall have full power and authority to enter into contracts or agreements with the Delaware Department of Transportation, or any successor agency, for the construction, or permanent or temporary maintenance, repair and up-keep, of any street, lane, alley, highway, or other public thoroughfare within the Town limits.

#### **17. Sidewalks, Gutters, and Curbs.**

The Town Council shall have the authority to adopt ordinances governing the installation, construction, improvement, repair, replacement, or removal of any sidewalk, curb, or gutter located in any public street or alley or on private property abutting any public street or alley or any portion thereof. Such ordinance may require the owner(s) of any private lands upon which, or abutting which, such sidewalk, curb, or gutter is located to: (a) permit the Town (or its agents or contractors) to go upon their private lands to perform such work, (b) pay all or such part of the Town's cost to perform such work as reasonably and equitably determined by the Town, or (c) perform such work as required by the Town, in accordance with standards and specifications established by the Town, at their own expense. Such ordinance shall provide for the following:

##### **17.1 Resolution.**

The Town Council shall adopt a resolution describing the work proposed to be done and identifying the streets or alleys, or portions thereof, in, on, along, or abutting which such sidewalks, curbs, or gutters are located. Such resolution shall identify the property address and owner of each property on, adjoining, along, or in front of which said proposed work will take place, and the amount, if any, proposed to be assessed against such property for such work. Such resolution shall establish a date, place, and time for the holding of a public hearing to receive public comment on the proposed work and assessments. At least fourteen (14) days prior to the hearing, such resolution shall be published in a newspaper of general circulation in the Town, posted in five (5) public places in the Town, and mailed or delivered to the owners of all affected property at their address as shown on the Town's tax records.

##### **17.2 Determination to Proceed.**



At the conclusion of such public hearing, or at a subsequent regular or special meeting, the Town Council shall decide whether or not to proceed with all or any portion of the improvements referred to in said resolution, and if it shall determine to proceed, the Town Council shall determine whether the whole or some specified portion of the costs thereof shall be assessed to the owners of those properties upon which, adjoining, along, or in front of which said proposed work will take place. The amount to be paid by the owner of each parcel for their property affected shall be determined according to the lineal footage of their parcel(s) upon which, adjoining, along or in front of which the improvement or improvements are made.

#### 17.3 Property Owner's Option to Perform Work at Property Owner's Expense.

The Town Council may, but shall not be required to, provide the affected property owners the option to have the work done at their own expense, utilizing their own contractor or the Town's contractor in accordance with all Town standards and specifications. In such event, any property owner electing to do so shall have all work completed to the satisfaction of the Town within such period of time (not exceeding one year) as specified by the Town in writing. In the event the property owner declines the option to have the work done at the property owner's expense, or, having elected that option, fails to do so, the Town may immediately proceed to have the work properly completed by the Town's staff and/or agents or contractors and assess the entire cost thereof against the property owner.

#### 17.4 Notice; Assessment and Collection of Costs; Lien.

The Town Council shall give written notice to the owner(s) of each property subject to assessment under section 17.2 of the work to be done, the amount(s) assessed, the due date for payment, the terms of any payment arrangements offered by the Town, and (if applicable) the property owner's option to have the work performed at his/her expense (specifying the terms that will govern such election). Such notice shall also inform the property owner(s) that if the Town performs the work, the cost thereof shall constitute a lien against the property which may be enforced in the same manner as a tax lien. If such owner or owners shall fail to pay the amount assessed by the date specified in the assessment notice or in accordance with any payment terms offered by the Town, or (if appropriate) shall fail to have such work properly completed by the date specified in the notice and the Town performs the work, such amount(s) together with interest and costs, (including reasonable attorney's fees) may be collected by the same procedures as are set forth in this Charter for the collection of taxes. The amount so assessed shall be and constitute a lien upon all the property upon which, adjoining, along, or in front of which the said work was accomplished for a period of ten years from the date of mailing of the notice of assessment. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Such lien shall have preference and priority to all other liens on such real estate as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to

the time of the attaching of such lien for taxes; provided that if the real estate remains the property of the person(s) who was/were the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full.

#### 17.5 Notice.

Whenever written notice is required to be given to any "owner" by this section 17, notice to one co-owner shall be notice to all. Notice may be given by mailing same, certified mail, return receipt requested, proper postage affixed, to said owner at his or her last known address as shown on the Town's tax records; provided, however, that the failure of any owner to actually receive such notice (being returned as, among other reasons, "unclaimed", "refused to accept", "moved, no forwarding address") shall not invalidate any action taken under this section 17. Notice may also be given by personal delivery to the property owner at the last address shown on the Town's tax records by leaving a copy of such notice with an adult person residing within the premises.

#### 17.6 Change in Ownership.

The word "owner" as used in this section shall be deemed to mean the owner(s) of record of the property at the time of the resolution adopted under section 17.1, and any change in ownership thereafter shall not be deemed or held to affect any of the proceedings described in this section.

#### 17.7 Construction Supervision and Standards.

The Town Council in exercising the authority granted by this section may employ such contractors, engineers, inspectors and others as the Town Council may deem expedient, and may use or require the use of such materials and substances and such methods of construction as the Town Council shall deem appropriate, in accordance with sound design, engineering, and construction methods.

### **18. Drainage.**

Subject to any governing federal or state statutes, and subject to the regulations of any federal or state agency or political subdivision having exclusive or concurrent jurisdiction thereof, the Town shall have the full jurisdiction and control, within the limits of the Town, of the drainage of all water thereof, together with the right to alter and change the course and direction of any of the natural water courses, runs and rivulets within the limits of the Town; and the Town Council may pass ordinances for the opening of gutters, surface water and underground drains and stormwater sewers within the limits of the Town. The Town shall also have full power to regulate, maintain, clean and keep the natural water courses, runs and rivulets within the Town limits open and clean and unobstructed and for that purpose may authorize the entry upon private lands and take, condemn and occupy the same in the same manner and by substantially the same condemnation proceedings as hereinbefore provided by section 15 of this Charter which is concerned with the opening and laying-out of any streets. By like proceedings, the Town shall also have the power and

authority to enter upon private lands and take, condemn and occupy the same for the purpose of laying-down gutters, surface water and underground storm-water drains or sewers, or any of them, within the Town limits.

#### **19. Water Systems.**

Subject to any governing federal or state statutes, and subject to the regulations of any federal or state agency or political subdivision having exclusive or concurrent jurisdiction thereof:

##### **19.1 Power to Operate Water System.**

The Town shall have full power and authority to provide an ample supply of potable water for the Town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, re-new, replace and control wells, reservoirs, pumping machines and stations, tanks, stand-pipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, treatment, conveyance and distribution of water, over, on, under or through the lands controlled by the Town or belonging to any private individual(s). The Town Council shall have the power to make contracts for the purchase of water and to distribute the same to users within or without the said Town with the same full powers as if such water had been initially reduced to usefulness by the Town itself.

##### **19.2 Rules and Regulations.**

The Town Council shall have power to enact ordinances, rules and regulations in regard to the use for public or private purposes of water furnished by the Town; requiring that all properties within the Town be connected to the Town's water distribution system within such time and under such circumstances as deemed reasonable by the Town Council, the amounts to be paid by the users thereof; the means or methods whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the Town.

##### **19.3 Furnishing Water Outside Town Limits.**

The Town Council may, at its option, furnish water from the Town system to places and properties outside the Town limits upon such special terms, charges and conditions as it shall deem wise. The Town Council shall have the power to enter contracts for the sale of water outside the limits of the Town upon such terms and conditions as the Town Council shall, in the exercise of its sound discretion deem best; and also to enter into mutual aid agreements with other water suppliers conducting operations near the limits of the Town upon such terms and conditions as Town Council shall deem best.

##### **19.4 Franchises.**

The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, and lanes of the Town

for the purpose of furnishing water to the Town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, and lanes to points outside the Town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.

#### 19.5 Eminent Domain.

The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the proper furnishing of an ample supply of potable water or the creation, construction, extension, maintenance of a proper water system, or the distribution thereof as above provided. The proceedings by condemnation under this section shall be substantially the same as prescribed by section 15 of this Charter, which is concerned with the opening and laying-out of new streets.

### **20. Electric Generation and Distribution System.**

#### 20.1 Power to Operate.

The Town Council shall have the full power and authority to erect, construct, equip, maintain, repair, replace, and operate plants, facilities, and systems for the generation and distribution of electric power and energy: (a) for the use and benefit of the inhabitants and properties of the Town, (b) for the use and benefit of persons and properties lying outside the Town limits of the Town but within such proximity of the Town as to make provision of such service reasonable in the discretion of the Town Council, subject always to the authority of any governing state agency to regulate the service territories of electric distribution systems, and (c) for sale to other providers of electric capacity and energy through the Delaware Municipal Electric Company ("DEMEC"), its successors or assigns. The Town Council shall have the power to make contracts for the purchase of electric capacity and energy with any responsible persons, firms, or corporations, and to distribute the same to users within or without the said Town with the same full powers as if such electric energy and/or capacity had been initially generated or provided by the Town.

#### 20.2 Rules and Regulations.

The Town Council shall have power to enact ordinances, rules, regulations and tariffs regarding the connections and use of electric capacity and energy furnished by the Town; the rates and amounts to be paid by the users thereof; the means or methods whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the electric distribution system or equipment of the Town; provided that such ordinances, rules, and regulations shall not be discriminatory nor confiscatory.

#### 20.3 Furnishing Electric Distribution and Supply Services Outside Town Limits.

Subject always to the regulatory authority of any state agency having jurisdiction over the service territories of electric distribution service suppliers, the Town Council may, at its option, elect to furnish electric distribution and supply

service from the Town system to places and properties outside the Town limits in accordance with the same ordinances, rules, regulations, and tariffs governing service to properties within the Town. The Town Council shall have the power to enter into joint operating, back-up, or mutual aid agreements with other electric distribution and/or supply companies conducting operations near the limits of the Town upon such terms and conditions as Town Council shall deem best.

#### 20.4 Franchises.

The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, and lanes of the Town for the purpose of furnishing electric distribution services and/or energy to the Town and to the persons and properties within the Town, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, and lanes to points outside the Town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.

#### 20.5 Eminent Domain.

The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the purpose of erecting, constructing, extending, enlarging, maintaining, replacing, or removing any plant, facilities, or equipment used by the Town in the generation, transmission, and/or distribution of electrical energy and capacity as authorized by section 20.1. The proceedings by condemnation under this section shall be substantially the same as prescribed by section 15 of this Charter, which is concerned with the opening and laying-out of new streets.

### **22. Compendium.**

It shall be the duty of the Town Council, at reasonable time or times, to compile the ordinances, current regulations, orders and rules of the Town of Magnolia. The Town Council shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. From time to time, upon the enactment of new ordinances, current rules and regulations, or upon the enactment of amendments to same, the Town Council shall enroll the same in the minutes of the Town Council and shall keep copies of the same in a book or file to be provided for that purpose so that the same may be readily examined. It shall furnish the members of the Town Council copies thereof as they are enacted and therefrom may cause supplements to be compiled and printed to any compendium thereof theretofore printed as above provided.

### **23. Survival of Powers and Validating Section.**

#### 23.1 Powers Vested in Town.

All powers conferred upon or vested in the Town Council of Magnolia by any act or law of the State of Delaware not in conflict with the provisions of this Charter are hereby expressly conferred upon and vested in the Town of Magnolia and/or the Town Council of Magnolia precisely as if each of said powers was expressly set forth in this Charter.

#### 23.2 Ordinances Currently in Force.

All ordinances adopted by the Town Council of Magnolia and in force at the time of approval, acceptance and going into effect of this Charter are continued in force until the same or any of them shall be repealed, modified or altered by the Town Council of Magnolia under the provisions of this Charter.

#### 23.3 Prior Acts of Town.

All of the acts and doings of the Town Council of Magnolia or of any official, or of the Mayor, or the Town which shall have been lawfully done or performed under the provisions of any law of this State or of any ordinance of the Town of Magnolia under any provision of any prior Charter of the Town of Magnolia, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.

#### 23.4 Continuance of Debts Owed to Town.

All taxes, assessments, license fees, penalties, fines, liens, forfeitures, and other charges due to the Town of Magnolia shall be and remain due to the Town of Magnolia and all debts due from the Town of Magnolia shall remain unimpaired until paid by the Town of Magnolia.

#### 23.5 Ability to Collect Unpaid Debts.

All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges or amounts owed to the Town shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town of Magnolia.

#### 23.6 Bonds.

The bonds given by or on account of any official of the Town of Magnolia shall not be impaired or affected by the provisions of this Charter.

#### 23.7 Continuance of Town Council Office Terms.

Each member of the Town Council who holds office at the time of approval of this Act shall continue to serve until the expiration of his/her term of office, and until his/her successor is duly elected and qualified.

#### 23.8 Inconsistent Acts Repealed.

All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter shall be and the same are hereby repealed to the extent of any such inconsistency.

### **24. Separability.**

If any provision, section, subsection, paragraph, sentence, or clause of this Charter shall be held to be unconstitutional, unenforceable, or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining provisions, sections, subsections, paragraphs, sentences or clauses of this Charter, but the same shall remain in full force and effect.

**25. Special Act.**

This Charter shall be taken as and deemed to be a special act of the State of Delaware.

**26. Effective Date.**

This Charter shall take effect as of the date of its enactment.”