

**Bethany Beach****Section 1. Incorporation**

The inhabitants of the Town of Bethany Beach 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 Bethany Beach", (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 imploded, 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, possess, or enjoyed by the Town of Bethany Beach previously incorporated at Chapter 212, Volume 25, Laws of Delaware, as amended.

**Section 2. Territorial Limits**

The present territorial limits of the Town are hereby established and declared to be as follows:

Beginning at a point situate on the low water line of the Atlantic Ocean and being on the north side of Fifth Street Extended, thence, by and with the north side of Fifth Street Extended South 80 degrees, 06 minutes, 25 seconds West 417.79 feet more or less to a concrete marker being situate on the west side of Surf Road and being a corner of Lot 12 in a Subdivision known as "Sussex Shores, Section One", thence continuing on the same bearing with the north side of Fifth Street a distance 1,017.60 feet to a concrete marker situate on the north side of Fifth Street on the west side of Delaware Route #1, in line of lands on the Delaware Army National Guard Camp;

Thence, with the westerly right of-way line of Route 1 and lands of the Delaware Army National Guard Camp and lands of William P. Short in a southwesterly direction, curving to the right, approximately 72 feet to lands now or formerly of John E. Gibson/Victor G. Trapasso Limited Partnership;

Thence, leaving said westerly right of way of Delaware Route #1, North 02 degrees, 49 minutes, 23 seconds West 81.3 feet to a point in line of lands of the Delaware Army National Guard Camp;

Thence, by and with the line of lands of said Delaware Army National Guard Camp: (1) South 87 degrees, 20 minutes, 10 seconds West 597.18 feet to a concrete marker being a point on said line; thence continuing with the same bearing, a distance of 776.21 feet (in all making a total of 1,373.39 feet) to a concrete marker, said concrete marker being situate on the north bank of the Bethany Beach Canal and being a corner of lands of the Delaware National Guard Camp;

Thence, with the northerly line of the canal right-of-way owned by the Bethany Beach Improvement Company (a now-dissolved corporation of the State of Delaware) to the westerly right-of- way line of the Assawoman Canal (sometimes known as the "Free Inland Waterway") connecting Assawoman Bay with the Delaware Bay;

Thence, with the westerly right-of-way line of said Assawoman Canal to the northerly line of lands formerly of Hiram James and being also the southwesterly corner of the Bethany West Subdivision (see Plot Book 8, page 99 in the Sussex County, Delaware Recorder of Deeds Office);

Thence with the southerly line of the Bethany West Subdivision in a generally easterly direction to a point being the southwest corner of the Beach Wood Subdivision a point being the southwest corner of the Beach Wood Subdivision (see Plot Book 26, page 26 in the Sussex County, Delaware Recorder of Deeds office);

Thence, with the southerly boundary line of the Beach Wood Subdivision in a generally easterly direction and crossing over County Route 361 (also known a, "Kent Avenue") to the easterly side of County Rt. 361;

Thence, with the east side of County Rt. 361 in a northerly direction to a point being the southwesterly corner of the Bethany Proper Limited Partnership Subdivision Phase III. (see Plot Book 26, page 251 in the Sussex County, Delaware Recorder of Deeds Office);

Thence, in a generally easterly, southerly, and then easterly direction with the southern boundary of the Bethany Proper Limited Partnership Subdivision Phase III to the west side of Delaware Route #1; (also known as "Delaware Avenue");

Thence, crossing over said Delaware Route #1 in an easterly direction to a point in the eastern right-of-way of Delaware Route #1 being also the southwestern corner of the Bethany Proper Limited Partnership Subdivision, Phase I (see Plot Book 17, page 110 in the Sussex County, Delaware Recorder of Deeds Office);

Thence, continuing in a generally easterly direction with the southern boundary of said Bethany Proper Limited Subdivision Phase I to a point on the west side of Pennsylvania Avenue;

Thence, crossing over Pennsylvania Avenue in an easterly direction to a point on the east side of Pennsylvania Avenue being the southwestern corner of Sea Villa Subdivision (see Plot Book 8, page 434 in the Sussex County, Delaware Recorder of Deeds Office);

Thence, with the southern boundary of said Sea Villa Subdivision North 88 degrees, 37 minutes, 50 seconds East to the low water mark of the Atlantic Ocean;

Thence, with the low water mark of the Atlantic Ocean, in a northerly direction to the point and place of beginning.

The above boundaries having previously been established as follows: (1) By an Act to Incorporate the Town of Bethany Beach, 25 Del. Laws Chapter 212 dated March 26, 1909; by Ordinance 93 of the Town Commissioners of Bethany Beach, annexing 36,001 square feet, dated 18 April, 1980; by Ordinance 103 of the Commissioners of Bethany Beach annexing 14.927 acres, dated 16 October 1981; and by Resolution of the Town Commissioners of Bethany Beach annexing .52 acres, dated August 12, 1971.

The Council may, at any time hereafter, cause a survey and plot to be made of said Town, and the said plot, or any supplement thereto, when made and approved by said council, signed by the Mayor, and attested to by the Secretary, with the municipal seal affixed, upon being recorded in the Office of the Recorder of Deeds in and for Sussex 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.

### **Section 3. Annexation of Territory**

The Town shall have power to annex any additional contiguous territory adjoining the corporate limits of the Town as hereinbefore set forth or as hereafter extended pursuant to the procedure set forth in this section, and to apply to all such additional territory all laws, ordinances, resolution and policies in force in the Town so far as they may be locally applicable.

#### **3.1 Initiation of Annexation Proceedings.**

3.1.1 By petition of the Property Owners. Any property owner(s) holding record fee title to real property in territory contiguous to the then existing corporate limits of the Town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein, and state the reasons for the requested annexation. The Town Council may, within 90 days following the filing of such petition in the Town Office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. A petition not so accepted within said 90 days shall be null and void. For purposes of this §3.1.1 and 3.1.2, "territory contiguous to the then existing corporate limits of the Town" shall include both real property which, through itself not contiguous to the Town's then existing corporate limits, is contiguous to other real property which is proposed to be included in the annexation and real property which would be contiguous under §3.2.9(b).

3.1.2 By Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory contiguous to the Town. Such resolution shall describe, with reasonable certainty, the territory proposed to be annexed and state the reasons for the proposed annexation. Upon adoption of such resolution, the Town Council shall proceed as hereafter provided.

#### **3.2 Annexation Procedure. Whether annexation is proposed by petition of the property owners or by resolution of the Town Council, the following procedure shall be complied with:**

3.2.1 Resolution and Notice. The Town Council shall adopt a resolution notifying the property owners and the residents of both the Town and the territory proposed to be annexed, that the Town proposes to annex certain territory which adjoins its then corporate limits. The resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation. The Resolution setting forth the information shall be published at least once in at least two newspapers both of which shall be of general circulation in the Town and in the territory proposed to be annexed. Such publication shall appear not less than 21 days nor more than 60 days before the date

set for the hearing. In the event that such publications do not appear on the same date, the date of the last publication shall control. 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. not less than 21 days nor more than 60 days before the date of such hearing: (1) cause a public notice, containing the full text of the Resolution, to be posted in at least 5 public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed; and (2) send a copy of such notice, certified mail, to the owners of record of the lands proposed to be included in the annexation at their address as shown on the public tax records. Written notice to one co-owner shall be notice to all. **67 Del. Laws, c. 38**

- 3.2.2 Public Hearing. At the time, date, and place specified in the Resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in 3.2.1) the Town Council shall sit to hear comments and opinion from any concerned party regarding the proposed annexation. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding and the Town Council shall not be bound, in any way, to act in response to any information or comments offered at such hearing.
- 3.2.3 Resolution Ordering Special Election. At any time following the public hearing, the Town Council may pass a resolution ordering a special election to be held not less than 21 days, nor more than 60 days after the date of such resolution proposing the special election. The passage of this Resolution shall ipso facto be considered the determination of the Town Council to proceed with the matter of the proposed annexation. provided, however, that if the annual municipal election is to be held within 120 days of the date of the resolution adopted by Council pursuant to this section, the election on the proposed annexation may be held in conjunction with the annual municipal election and all provisions hereof shall be construed and applied accordingly. **67 Del. Laws, c. 38**
- 3.2.4 Notice of Special Election. Notice of the time and place of said special election shall be published not less than 21 days nor more than 60 days before the date set for said Special Election. Notice shall be published at least once in two newspapers, both of which shall be of general circulation in the Town and in the territory proposed to be annexed. In the event that such publications do not appear on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to such publication as herein provided, the Town Council shall. not less than 21 days nor more than 60 days before the date of such special election cause, a public notice, containing the full text of the Resolution proposing such Special Election, to be posted in at least 5 public places in the Town and in at least 1 place, viewable to the public, in the territory proposed to be annexed. **67 Del. Laws, c. 38**

- 3.2.5 Those Entitled to Vote.
- (a) At such special election, any person who is lawfully entitled to vote at the annual town election, if it were being held on that day, and any person who would be so entitled if the area proposed to be annexed was already included in the Town, shall be entitled to one vote. (For purposes of this section "lawfully entitled to vote" shall include "registered to vote" if registration is required; but all persons in the area to be annexed shall be deemed to be registered if they would otherwise be entitled to vote.) In addition, each legal entity, other than a natural person, owning property in its own name, either in the Town or in the territory proposed to be annexed, shall be entitled to one vote.
  - (b) These provisions shall be construed so as to permit only "one man, one vote". Where a voter is entitled to vote by virtue of both residence and ownership of property, that voter shall be entitled to only one vote; where a voter is entitled to vote by ownership of two or more properties, that voter shall be entitled to only one vote.
  - (c) 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 Manager. 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 legal entity granting the power.
- 3.2.6 Conduct of the Special Election. The Town Council may cause voting machines, electronic voting system, or paper ballots to be used in the Special Election, as required by law, the form of ballot to be printed as follows:

For the proposed annexation. \_\_\_\_\_

Against the proposed annexation. \_\_\_\_\_

The Mayor shall appoint three (3) persons to act as a Board of Special Election. One (1) of the said persons so appointed shall be designated the Presiding Officer. The Board of Special Elections 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 natural persons and other legal entities voting. Voting shall be conducted in a public place as designated by the Resolution calling the Special election. The polling place shall be open for six consecutive hours as set by the Town Council, on the date set for the special Election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls.

All ballots cast by those persons or other legal entities authorized to vote as residents or property owners in the territory proposed to be annexed shall be deposited in designated ballot box(es) or cast in designated voting machine (s), and all ballots cast by those persons or other legal entities who are authorized to vote as residents or property owners of the Town shall be deposited in other designated ballot box (es) or cast in other designated voting machine (s). **67 Del. Laws, c. 38**

### 3.2.7 Results of Special Election.

- (a) In order for the territory proposed to be annexed to be considered annexed, a majority of the votes cast both from the Town and from the territory proposed to be annexed must have been cast in favor of the proposed annexation.
- (b) In the event that the Special Election results in an unfavorable vote for annexation in either or both the Town and the territory proposed to be annexed, no part of the territory proposed to be annexed shall again be considered for annexation for a period of at least one year from the date of the Special Election.
- (c) If the vote in both the Town and in the territory proposed to be annexed is favorable to the proposed annexation, the Town Council shall at its first meeting following the Special Election adopt a resolution annexing the said territory and including it within the limits of the Town. Upon the adoption of said resolution of annexation, a copy thereof, signed by the Mayor, and certified by the Secretary, with municipal seal affixed, together with a plot of the area annexed, shall forthwith be filed for record in the Office of the Recorder of Deeds in and for Sussex County, Delaware. The territory so annexed shall be considered to be a part of the Town from the moment the last mentioned resolution is adopted by the Town Council. Failure to record said resolution, or the plot accompanying same, shall not invalidate the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction.

### 3.2.8 Annexation Agreements. Notwithstanding any provision herein to the contrary, where, pursuant to §3.1.1 of this Charter, annexation proceedings are initiated by a property owner (s) holding record title to real property in territory contiguous to the then existing corporate limits of the Town, such petition may be made contingent upon an annexation agreement with the Town which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision approval, tax relief, public utilities, and public improvements. In the event the Town Council approves such an agreement and votes to accept a petition under §3.1.1 of this Charter, such Annexation Agreement shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure; that is: (1) the resolutions and notices adopted by the Town Council pursuant to §3.2. I. §3.2.3, §3.2.4, and §3.2.10 shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms. and shall state that copies of the Agreement are available upon request at the Town Hall; (2) if the results of the election are favorable to the proposed annexation as provided by §3.2.7(a) of this Charter, the resolution annexing the territory (as provided by §3.2.7(c) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and the Town shall be bound to honor the provisions of such agreement unless released therefrom by the petitioner(s).

Provided Further, that no agreement made at the time of annexation under this §3.2.8 shall extend beyond seven years from the date the property is annexed into the Town; and such agreements shall be null, void, and unenforceable after the expiration of said seven years.

An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special election pursuant to §3.2.3 of this

Charter, but any material modification or amendment shall be deemed to be the withdrawal of the original petition and the filing of a new petition under §3.1.1.

- 3.2.9 Property Owned by the State of Delaware Highways, Streets, Roads and Alleys; Ponds, Canals, Streams and Other Waters
- (a) Real property owned by the State of Delaware may be annexed into the Town without the State's casting a vote in the Special Election, provided the state agency having control and supervision thereof does not notify the Town, in writing, of its objection to such annexation within 30 days after receiving written notice of the resolution proposing the annexation as provided in §3.2.1.
  - (b) Highways, Streets, Roads, and Alleys & Ponds, Canals, Streams, and Other Waters. Contiguity with the Town's existing corporate limits, or with other territory which is itself contiguous within the Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, pond, canal, stream, or other body of water which passes through, or lies within the territory to be annexed.
- 3.2.10 Limitations. No action contesting the annexation of any territory under this Section shall be brought after the expiration of 60 days from the publication of a notice in at least two newspapers, both of general circulation in the Town and in the territory annexed, which notice shall contain the following information
- (a) Notice that the Town has annexed such territory and a description thereof.
  - (b) Notice that any person or other legal entity desiring to challenge such annexation must bring his/her/its action with 60 days from the date of publication of such notice or forever be barred from doing so.
  - (c) Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.
  - (d) In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (a) and (b) above (using date of "posting" for date of "publication"), to be posted in at least five public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed.
  - (e) In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control. **67 Del. Laws, c. 38**

#### **Section 4. Powers of the Town.**

- 4.1 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.
- 4.2 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:
- 4.2.1 May have and use a corporate seal which may be altered, changed, or renewed at pleasure.
  - 4.2.2 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 site for constructing, improving, extending, altering, or demolishing:
    - (a) public buildings;
    - (b) parks;
    - (c) streets, squares, lanes, alleys, and
    - (d) sewer systems, including but not limited to sewage lines, conduits, 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 system, including but not limited to, storage tanks, distribution system conduits and all appurtenances thereto;

- (h) recreational facilities, including but not limited to, public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddleball courts and all appurtenances thereto;
  - (i) for slum clearance and 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.
- 4.2.3 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.
- 4.2.4 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.
- 4.2.5 May acquire, build, erect, and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town.
- 4.2.6 May purchase, take and hold real and personal property when sold for any delinquent tax, assessment, 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 to sell the same.
- 4.2.7 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, lake, crosswalk, wharf, dock, sewer, drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town and the beach or beach strand in or contiguous to the Town; to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; to 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.
- 4.2.8 May enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners;
- 4.2.9 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 projections in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, wharf, dock, sewer, drain, aqueduct or pipeline of the Town;
- 4.2.10 May provide, construct, extend, maintain, manage and control jetties, bulkheads, embankments, flood gates, piers, or fills for the presentation of any strand or high land within the limits of the Town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof.
- 4.2.11 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 to authorize or prohibit the removal or destruction of said trees.
- 4.2.12 May fully control within the Town the drainage of all water and to that end to alter or change the course and direction of any natural water course runs or rivulet within the Town, to regulate, maintain, clean and keep the same open, clean and unobstructed, and to 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.

- 4.2.13 May provide an ample supply of potable water for the Town and its inhabitants and to this end to 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; to 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 men 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; to furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and to 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.
- 4.2.14 May provide, construct, extend, maintain, manage and control a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town; to regulate and prescribe for what private or public uses or purposes the system 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 said system, plant or facilities. To furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits. In the interest of the public's health, to compel any and all properties in the Town to be connected to the sewer system of the Town; and to contract for and purchase sewer disposal service and to resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself.
- 4.2.15 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, water courses, parks, lakes, strands, sidewalks, crosswalks, wharfs, docks, public buildings or other public places in the Town, and to this end to 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; to 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; to 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 to 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.
- 4.2.16 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; to regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may pose a danger of causing fires.
- 4.2.17 May provide for the organization of a fire department and the control and government thereof; to establish fire limits and to do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, to 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;
- 4.2.18 May provide for the organization of ambulance, rescue or paramedic services (s) and the control and government thereof, may establish territories within the Town for such services; 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.
- 4.2.19 May prevent vice, drunkenness and immorality;

- 4.2.20 May prohibit gaining and fraudulent devices;
- 4.2.21 May prevent and quell riots, disturbances, and disorderly assemblages;
- 4.2.22 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.
- 4.2.23 May regulate or prohibit the use of public streets, alleys, sidewalks, boardwalks, beaches, parks, right-of-ways, 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 and the State of Delaware, or by any controlling federal statute.
- 4.2.24 May regulate or prevent the use of guns, air guns, spring guns, pistols, sting shots, bean shooters, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and to regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds;
- 4.2.25 May provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;
- 4.2.26 May prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games;
- 4.2.27 May direct the digging down, draining, filling up, cleaning, cutting or facing 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 to assess the cost thereof against the owner thereof.
- 4.2.28 May define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare; and to cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist.
- 4.2.29 May adopt ordinances providing for the condemnation, upon inspection, of any building or structure in the Town which is determined, on the basis of standards set forth in such ordinance(s) to be a fire hazard or otherwise unsafe, and cause the same to be torn down or removed.
- 4.2.30 May establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and to authorize the destruction of the same; and to regulate the keeping of dogs within the Town, and to provide for registration and fees thereof.
- 4.2.31 May provide for the punishment of a violation of any ordinance of the Town by the imposition of a civil penalty or a criminal fine, not exceeding \$1,500.00 for each offense. **77 Del. Laws, c. 305**
- 4.2.32 May acquire, build, erect and maintain a suitable place as a lock-up or jail for the Town which shall be used as a place of detention of persons convicted of violations of law or ordinance, or for detention of persons accused of violations of law or ordinances, for a reasonable time in cases of necessity prior to hearing and trial; provided that any correctional institution located in Sussex County may be used for any such purpose, in which event the Town shall pay for the board of persons committed thereto for violations of ordinances which are not violations of any general law of the State.
- 4.2.33 May provide for payment of any tax, fine, penalty, license, forfeiture, 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.
- 4.2.34 May regulate and control the manner of building or removal of dwellings or other structures and to provide for granting permits for same.
- 4.2.35 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.
- 4.2.36 May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues.
- 4.2.37 May, for the prevention of fire and the preservation of the beauty of the Town, establish a building line for buildings to be erected; to zone or district the town and make particular provision for particular zones or districts with regard to building or building materials; and may prohibit any building or construction except those for which a building permit has been issued as prescribed by the Town Council; and generally to exercise all powers and authorities vested by virtue of 22 Del. C., Chapter 3, as it may hereafter from time to time be amended, or any future corresponding provision of law.
- 4.2.38 May license, tax and collect fees annually for any and all municipal purposes 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 within the limits of the Town;



- 4.2.39 May impose, upon new development or construction or upon first-time occupancy of new construction, such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements which have a rational nexus to such new construction.
- 4.2.40 May grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits of the town, specifically including any beach property, whether previously dedicated to or owned by the State of Delaware or the Town;
- 4.2.41 May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restriction, stipulation 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, water courses, parks, lakes, strands, sidewalks, boardwalks, crosswalks, wharfs, docks, beaches 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, and for the purpose of erecting wharfs and piers; provided, however, that whenever any state or federal law grants exclusive jurisdiction over any such activity to a state or federal agency, the Town shall have no authority inconsistent therewith.
- 4.2.42 May regulate and control the exercise of any license or franchise mentioned in Section 4.2.40 of this Charter, or intended so to be.
- 4.2.43 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 to transfer temporarily money from one fund to another fund of the Town in case of emergency.
- 4.2.44 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.
- 4.2.45 May establish a Pension Plan or a Health and Welfare Plan, or both, 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 licensed by the State of Delaware or authorized to do business in the State and approved by a majority of the elected members of the Town Council.
- 4.2.46 May determine what purposes are deemed to be public purposes or municipal purposes.
- 4.2.47 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.
- 4.2.48 In the event that Town brings any action at law (including seeking the imposition of a fine or penalty, the establishment of a lien, or the collection of an amount owed to the Town in an action for debt), or in equity, to enforce compliance with any Town Ordinance, or to correct and abate any nuisance, the Town shall, if it is the prevailing party in such action, be entitled to recover, as part of the judgment, in addition to any other amounts recovered, and the Town's court costs (including all filing fees, court reporting charges, and expert witness fees). **75 Del. Laws, c. 343**
- 4.2.49 May make or, adopt, by specific reference, any or all State motor vehicle statute or corresponding penalties of the State of Delaware, including (without further action by Town Council), all subsequent amendments thereto enacted by the State, as the motor vehicle ordinance of the Town. **75 Del. Laws, c. 343**
- 4.3 Liberal Construction Manner of Exercise. The powers of the Town under this Charter shall be liberally construed, 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.

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.

- 4.4 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 any one or more States or civil divisions or agencies 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.

## Section 5. Town Council.

- 5.1 Governing Body. The government of the Town and the exercise of all powers conferred by this Charter except as otherwise provided herein shall be vested in and exercised by a Town Council composed of seven members to be chosen as hereinafter provided.
- 5.2. Qualifications.
- 5.2.1 General. Candidates for the Town Council must be at least 21 years of age and otherwise qualified to vote at the annual Town election as provided in §5.4.2. No person having been convicted of a felony shall be qualified to be a candidate for office on the Town Council. Town Council candidates who only qualify to vote as a "freeholder" shall have been a freeholder for at least six (6) months prior to the election. **78 Del. Laws, c.126**
- 5.2.2 Resident and Non-Resident Members. At least four of the seven members of Town Council must be residents of the Town, but all may be residents of the Town.
- (a) Resident Members. Any person who, on the date of the filing of notice of intention to run (or on the date of his or her appointment to fill a vacancy), has been a permanent full-time resident of the Town for at least six (6) months prior to such date of filing (or prior to the date of his or her appointment to fill a vacancy) and certifies his or her intention of remaining a permanent, full-time resident of the Town, shall be deemed to be a "resident" Town Council member upon taking office, whether or not such person is also a freeholder in the Town; and if such person subsequently fails to maintain residency in the Town, but continues to be a freeholder in the Town, during his or her term of office, that person shall continue to be deemed a "resident" member of the Town Council. **67 Del. Laws, c. 38**
- (b) Any person who, on the date of filing of the notice of intention to run (or on the date of his or her appointment to office in the case of a vacancy), is not a resident, but is a freeholder in the town and otherwise qualifies to serve on the Town Council, shall be deemed to be a "non-resident" member of the Town Council." **70 Del. Laws, c. 557**
- 5.2.3 Council to Act as Final Judge. The Town Council, by majority vote of its disinterested members, shall be the sole and final judge of the qualifications of its members, and shall interpret and apply the standards set forth in this Charter.
- 5.3. Term of Office. Staggered Terms.
- 5.3.1 Term of Office. The term of office for each member of the Town Council shall be two years, or until their successors are duly elected and qualified at the organizational meeting held pursuant to Section 6.1 of this Charter, or until their successors are duly elected and qualified at the organizational meeting held pursuant to Section 6.1 of this Charter. **73 Del. Laws, c. 220**
- 5.3.2 Staggered Terms. The present Commissioners of the Town of Bethany Beach, and other officers appointed to serve, in the office under Chapter 212, Volume 25, Laws of Delaware, as amended, shall continue to serve as Commissioners and officers of the Town from and after the effective date of this Charter, until their successors are duly elected or appointed. At the annual Town Election in 1986 four persons shall be elected to the Town Council to fill the vacancies created by the expiration of the terms of office of the four then outgoing Commissioners and at the annual Town election in 1987, three persons shall be elected to fill the vacancies created by the expiration of the terms of office of the three then outgoing Commissioners. Thereafter, three members of the Town Council shall be elected in odd years, and four members shall be elected in even years.
- 5.4 Election of Town Council.

- 5.4.1 Notice of Candidacy. In order to be listed on the ballot at any regular or special election for election of Town Council members, each candidate shall file a written notice of intention to seek office with the Town Manager at least forty-five (45) days prior to the date set for the election. If the Town Manager determines that any candidate may not meet the qualifications for office, he shall notify the mayor who shall call a special meeting of the Town Council to be held not less than thirty 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 notice of intention to seek office and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the question.
- 5.4.2 Voter Qualifications. Any person shall be qualified to vote who, on the date of the election, is a United States citizen and has attained eighteen (18) years of age; is registered under the Town's Voter Registration ordinances, and is either: (a) a freeholder in the Town, as defined herein, for a period of ninety (90) consecutive days immediately preceding the date of the election, or (b) has been a permanent, full-time resident of the Town for at least six (6) months prior to the date of the election in which he or she seeks to vote. For purposes of this Charter: (i) a "freeholder" shall be deemed to include any natural person who holds title of record either in their own name or as trustee, to a fee simple estate or a life estate, in and to real property located within the Town boundaries; (ii) a "resident" shall mean any person who has been a permanent, full-time resident of the Town for at least six (6) months prior to the date of election; provided, however, anything herein to the contrary notwithstanding, not more than eight (8) persons per property shall be entitled to vote either as a "freeholder". **67 Del. Laws, c. 38; 77 Del. Laws, c. 436, §§ 6-7**
- 5.4.3 Voter Registration. The Town Council shall 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.
- 5.4.4 Uncontested Elections. Where there is only one official candidate for each office, 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.
- 5.4.5 (a) Date, Time, and Place. Unless revised as hereinafter-provided, annual elections for Town Council shall be held on the first Saturday after Labor Day at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for a six-hour period to be determined by the Town Council, provided however, that the Town Council may, not later than July 1<sup>st</sup> in any year, change the date of the annual election to another Saturday in September in that calendar year. In the event the Town Council acts to change the date of the annual election to a date other than the first Saturday after Labor Day, public notice of such change shall, within 15 days of such vote, (in addition to the notice required under Section 5.4.5 (b) of this Charter) be posted in five (5) public places in the Town and published in a newspaper of general circulation in the Town in bold print or bordered in black in such manner as to call attention thereto. **67 Del. Laws, c. 38**
- (b) Notice of Elections. Notice of any election to elect members to the Town Council shall be given by posting notice thereof in at least five public places in the Town not less than twenty one (21) days before the day of such election and by publishing notice in two newspapers of general circulation in the Town at least twenty one (21) days before the day for the election. Such notices shall state the date, time, and place of the election as well as a description of the positions to be filled and the qualifications to vote, along with information about how to obtain an absentee ballot. Such notices shall be in bold print or bordered in black in such manner as to call attention thereto. In the event that the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control. **67 Del. Laws, c. 38; 78 Del. Laws, c. 126**
- (c) Voting Machines, Paper Ballots. Elections shall be by voting machine, electronic voting system, or by paper ballot as the Town Council shall determine; provided however that voting machines or electronic voting systems shall be used if required by general statute.
- (d) Absentee Voting. The Town Council may, (but shall not be required to), by ordinance, provide for a qualified voter (duly registered if required by ordinance) who is absent from the Town or otherwise unable

to appear in person, to cast his or her ballot at any municipal election by absentee ballot, and to provide that at any time after all absentee ballots have been voted, such absentee ballots may be counted, provided that such count is kept secret until the closing of the polls. **74 Del. Laws, c. 50; 78 Del. Laws, c. 126**

(e) Rules Governing Conduct of Elections. The Town Council may, by resolution, adopt such rules, not inconsistent with the provisions of this Charter or with applicable 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 one (1) Inspector of the Election and two (2) Judges of the Election. The Inspector and Judges constituting the Election Board shall be qualified voters of the Town and shall be appointed for that purpose by the Town Council at least twenty (20) days before such election. 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 members of the Election Board. 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 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 votes shall be read and counted and the persons having the highest number of votes shall be declared, by the Election Board, to be duly elected to such vacant offices as then exist, and such persons shall continue in office during the terms for which they were chosen, or until their successors are duly elected or appointed and qualified.

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

(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 at least 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. **78 Del. Laws, c. 126**

(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.

## **Section 6. Organization of Town Council**

6.1 Organizational Meeting. An organizational meeting of the Town Council shall be held as soon as practicable, upon the expiration of seven days following the election. Such 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 Town Alderman, or by one of the holdover Council members. **77 Del. Laws, c. 117, §1**

6.2 Officers. The seven members of the Town Council shall be elective. All other officers shall be appointed offices, such appointment to be made by the Town Council, as provided in §7 of this Charter. At the organizational meeting, the Town Council members shall elect from among their own members the following officers each and all of whom must be residents of the Town. If, during their term of office, any of these officers shall cease to be a resident of the Town, they shall ipso facto be deemed to have vacated their positions as an officer of the Town Council, but shall not be deemed to have vacated their seat on the Town Council unless they also disqualify by virtue of those provisions of this Charter governing qualifications for Town Council. Each of the following officers of the Town Council shall serve in that position for a term of one year or until the organization meeting after the next succeeding election.

6.2.1 Mayor. The presiding officer of the Town Council shall have the title of '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; to appoint committees, subject to council confirmation, 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 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 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, or serious storm threatening significant damage, a civic disturbance, or a toxic spill. A 'sudden emergency' shall also include any emergency situation as declared by any County, State, or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town of Bethany Beach. If reasonably possible, the Mayor shall notify each Council member, in writing, of the action so taken within 48 hours. Notice shall be complete upon depositing such notice in the U.S. Mail, proper postage affixed, to each Council member at his or her last known address.

Any action taken by the Mayor under the powers vested in him 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 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.

6.2.2 Vice Mayor. The Vice-Mayor shall act as Mayor during the absence or disability of the Mayor, and shall perform such other duties as may be assigned to him by the Mayor or by ordinance or resolution adopted by the Town Council.

6.2.3 Secretary-Treasurer. The Secretary-Treasurer shall have general supervision of the Town's records, documents, funds, and resources. The Secretary-Treasurer shall cause to be kept a true and faithful record of the proceedings of the Town Council. The Town Council shall cause the preparation of an annual report of the financial condition of the Town showing its receipts and expenditures which report shall be prepared by such skilled accountants or auditors as the Town Council shall, by resolution select. Such annual report, once accepted by the Town Council, shall be open to the inspection of any bona fide resident or freeholder of property in the Town. The Secretary-Treasurer shall give such bond as shall be determined and approved by the Town Council. The Secretary-Treasurer shall also have such other duties as directed by ordinance or resolution of the Town Council.

6.2.4 Filling Vacancies. If a vacancy shall occur in the office of any officer elected by the Town Council, the Council shall fill such vacancy for the unexpired term by a person qualified to fill the post.

6.2.5 Choice by Lot in Event of Deadlock. In the event the Town Council is unable to elect from among their qualified members a Mayor, Vice-Mayor, or Secretary-Treasurer, such office shall be filled by 'lot' from among them.

### 6.3 Prohibitions

6.3.1 Holding Other Office. Except where authorized by law, no member of the Town Council, shall hold any other Town Office or Town employment during the term for which he was elected to Council and any former Council member shall not hold any compensated appointed Town Office or employment until one year after the expiration of the term for which he or she was elected to the Council.

6.3.2 Contracts with the Town. It shall be unlawful for the Council or the Town officers, agents, or employees, to make or enter into any contract for materials, supplies, work or labor for the use and benefit of the Town with any member of Council or with any partnership in which any member of Council is a partner, or with any corporation in which any member of Council is a director or has a controlling interest, except with the unanimous consent of the disinterested Council members, and such contract shall be absolutely null and void without such unanimous consent; provided however, that nothing herein shall prohibit the council, the Town's officers, agent or employees, from entering into any such contract without such unanimous approval where the amount involved in the transaction does not exceed the sum of \$500.00. No transaction exceeding said \$500.00 may be fragmented into two or more smaller transactions so as to avoid the \$500.00 limitation. The disinterested members of the Council shall be the final arbiters in determining whether any transaction or series of transactions were so fragmented, and in making such determination shall consider the totality of the circumstances surrounding such transactions.

### 6.4 Vacancies, Forfeiture of Office

6.4.1 Vacancies. The office of a Town Council member shall become vacant upon his death, resignation, lawful removal from, or forfeiture of his office.

6.4.2 Forfeiture Proceedings. A forfeiture of his office shall occur when any Council member:

- (a) lacks, at any time during his or her term of office, any qualification for the office prescribed by this Charter or by law.
  - (b) wilfully violates any express prohibition of this Charter.
  - (c) is convicted of a felony or any crime involving moral turpitude.
  - (d) fails to attend three consecutive regular council meetings without being excused by Council.
- 6.4.3 Determination Concerning Forfeiture. Where the conditions set forth in 6.4.2 (c) or (d) occur, forfeiture shall be automatic. Where the conditions set forth in 6.4.2 (a) or (b) 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 and if the Council determines by a unanimous vote of the Council members entitled to vote on the question, that a forfeiture has occurred, it shall, within forty eight 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 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 Councilmembers entitled to vote on the question, the decision shall be final.
- 6.4.4 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 his right to challenge that 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.
- 6.5 Filling Vacancies on Council.  
In case of a vacancy on the Council, the remaining Council members shall elect another qualified person to serve for the remainder of that vacant seat's term.
- 6.6 Reimbursement of Expenses.  
The Mayor and members of Council shall be reimbursed for their actual and necessary expenses while out of the said Town on business which has been duly authorized by motion, resolution or order of Council.
- 6.7 Meetings.
- 6.7.1 Regular Meetings. The Town Council shall meet regularly during the year. The time and place of each regular meeting shall be set by Council each year at their organizational meeting, but Council shall not hereby be prohibited from rescheduling such meetings from time to time during the year as need arises.
- 6.7.2 Special Meeting; Waiver of Notice. Special meetings shall be called by the Town Clerk upon the written request of the Mayor, or upon the written request of any four members of Council, stating the day, hour and place of the special meeting requested and the subject or subjects proposed to be considered thereat. Such notice must be deposited in the U.S. mail in the main post office in the Town at least 96 hours prior to the time set for such special meeting, provided, however, that a waiver of such notice, (written, telegraphic, or recorded telephonic message) by all members of Council prior to or immediately upon the convening of such special meeting shall make the 96 hour written notice unnecessary and shall authorize and make valid the holding of a 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. 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.
- 6.7.3 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.
- 6.7.4 Place of Meetings. No action of the Town Council may be taken by the Town Council except at a duly convened regular or special meeting held in the Town of Bethany Beach.
- 6.8 Manner of Acting.
- 6.8.1 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.
- 6.8.2 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) Adopt or amend an administrative code or establish, or abolish any town department, office or agency;
- (b) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (c) Grant, renew or extend a franchise;
- (d) Amend or repeal any ordinances previously adopted.

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 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 the Commissioners elected.

- 6.8.3 Quorum. Four 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.
- 6.8.4 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.

6.9 Succession of Authority.

In the event that the Mayor is unavailable or incapable of assuming his responsibilities in a sudden emergency (as defined in §6.2.1) 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) Secretary-Treasurer, (3) Each of the four remaining Council members in order of their total number of years served on Council, (4) the Town Manager, (5) the Chief of Police, (6) the Building Inspector.

## Section 7. Appointed Officers

7.1. Town Manager.

- 7.1.1 Appointment, Term. The Council shall appoint a Town Manager who, subject to §16.1 hereof, shall be the Chief Administrative Officer of the Town. He shall be appointed solely on the basis of his professional, executive and administrative qualifications. He need not, when appointed, be a resident of the Town or of the State of Delaware, but shall, within six months of his appointment, as a condition of his employment, become domiciled within such radius of the Town Hall as determined by Council at the time of his appointment. No member of Council shall, during the term for which elected, be appointed to act as Town Manager. The Town Manager shall be removable as provided by ordinance or by the terms of a written agreement between the Town Manager and the Town. In case of the absence, disability, or suspension of the Town Manager, the Council may designate some other competent person to perform the duties of the office during such absence, disability or suspension. **73 Del. Laws, c. 156**

- 7.1.2 Vacancy from Office. In the event of a vacancy in the office of Town Manager, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges and powers theretofore reposed in his 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.

- 7.2 Town Solicitor. The Town Council shall select and appoint a Town Solicitor for an indefinite term who shall be removable at the pleasure of the Town Council. The Solicitor shall be a member in good standing of the Bar of the State of Delaware with offices in Sussex County. It shall be his duty to give legal advice to the Council, the Town Manager, and other officers of the Town, and to perform other legal services as may be required of him by the Council.

- 7.3 Other Officers, Employees, and Agents. The Town Council may provide for the appointment or hiring of such other officers, employees and agents of the Town, which it may deem proper and necessary, for the proper

conduct and management of the Town. Unless governed by the terms of a written contract, a written personnel policy, a written personnel classification or merit system, or a written grievance or disciplinary procedure duly adopted by the Town Council, any such officers, employees and agents of the Town, may be removed at any time by the Town Council at their pleasure.

- 7.4 Compensation. The Town Council shall by ordinance or resolution fix the amount of any salaries or compensation of the employees, officers and agents of the Town. No officer, employee or agent of the Town shall in any form have, take, or receive from the Town any compensation, in addition to the salary or compensation fixed by the Town Council, except for reimbursement for actual and necessary expenses incurred by them in the performance of their duties, if such reimbursement be authorized and approved by motion, resolution or order of Council.
- 7.5 Personnel Records. The Town Council shall cause to be kept a full and complete record of all officers appointed, and employees and agents hired by the Town, containing the names of such officers, employees and agents, the dates of their employment, any salary or compensation to be by them received and the date of the termination of their services.

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

### **8.1 Board of Assessment.**

- 8.1.1 Appointment. Indefinite Term. The Mayor may with the advice and consent of a majority of the entire Council, appoint a Board of Assessment composed of three (3) members, each of whom shall be domiciled within the corporate limits of the Town. and who shall serve for an indefinite term.
- 8.1.2 Oath, Duties, Compensation. The Board of Assessment shall be sworn or affirmed by the Mayor of the Town of Bethany Beach, or by a Justice of the Peace, or Town Alderman, to perform their duties diligently, with fidelity and without favor to the best of their ability, knowledge, and judgment. It shall be the duty of the Board of Assessment to make a fair and impartial assessment of property subject to taxation situate within the limits of the Town of Bethany Beach and to perform such other duties with reference thereto as shall be prescribed from time to time by the Town Council. The compensation to be by them received for the performance of their duties and the hiring of employees to assist them in the performance of their duties, shall be fixed by and subject to the approval of the Town Council.
- 8.1.3 Professional Assessors to Assist. In addition to the appointed Board of Assessment, it shall be within the discretion of the Council to appoint a professional assessor to assist the Board of Assessment in performing the duties of the office to which they were appointed, but the Board of Assessment shall in all instances be responsible for making the final determination.
- 8.1.4 Adoption of Sussex County Assessments. The Town Council may adopt the assessment of Sussex County for any or all property located within the corporate limits of the Town of Bethany Beach, in lieu of making its own independent assessment and valuation, anything herein to the contrary notwithstanding. In such event, the assessed values established by Sussex County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals (under §8.3) regarding same. If the Town Council elects to adopt the Sussex County Assessments, only this section and §8.2.4 of §§8.1, 8.2 and 8.3 shall have effect; but the Town Council will have authority to consider appeals concerning any additions to tax bills under §8.2.4 at any regular or special meeting.

### **8.2 Assessment Procedure.**

- 8.2.1 Making the Assessment. If appointed, the Board of Assessment shall, prior to the first day of April of each year, make a just, true and impartial annual valuation or assessment of all real estate and improvements located within the Town of Bethany Beach. All real estate shall be described with sufficient particularity to be identified. Real estate shall be assessed to the owner or owners if he or they be known. If the owner or owners of real estate cannot be found or ascertained, it may be assessed to 'Owner Unknown'. A mistake in the name of the owner or owners or a wrong name or an assessment to 'Owner Unknown' shall not affect the validity of the assessment of any municipal tax or assessment based thereon; provided,, however, the assessment shall specify the last record owner or owners thereof as the same shall appear from the records in the Office of the Recorder of Deeds, in and for Sussex County.
- 8.2.2 Assessment of Members of Board of Assessment. The real property of the members of the Board of Assessment shall be assessed by the Town Council of the Town of Bethany Beach.
- 8.2.3 Delivery of Assessment List. The Board of Assessment, after making such annual assessment, shall deliver to the Town Council of the Town of Bethany Beach a list containing the names of owners of all



properties assessed and the amount of assessment against each. The Board of Assessment shall also deliver at such time as many copies of said list as the Town Council shall direct.

- 8.2.4 Additions to Tax Bills. Whether utilizing the Sussex County assessments or those prepared by the Town's own Board of Assessment, the Town Council shall annually, prior to the posting of the assessment list, by resolution, provide for the Town Manager 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: water bond sinking funds assessments, curb and gutter assessments, water assessments, weed and grass cutting bills, trash collection bills, and past due water rents. 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 8.3.1 of this Charter.

8.3 Assessment Appeals.

- 8.3.1 Posting of Assessment List; Notice. Immediately upon receiving the annual assessment list from the Board of Assessment, 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 thirty (30) days for the information of and examination by all concerned. Appended thereto, and also in five or more public places in the Town, shall be posted notice advertising to all concerned the date and place where the assessment list has been made available, and that, upon a certain day mentioned therein (Not earlier than 30 days after the availability of the true and correct copy of the assessment list), 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. Such notice shall also be published at least once in a newspaper of general circulation in the Town of Bethany Beach not less than 15 days prior to the date set for such appeals.

- 8.3.2 Appeals Day. On the day set for such appeals, the Town Council shall sit as a Board of Revision and Appeal to hear appeals from the said assessment and to correct and revise the assessment as they deem appropriate. The Town Council shall have full power and authority to alter, revise, add to, and take from the said assessment. The decision of a majority of the Council shall be final and conclusive, unless an appeal is taken to the Superior Court of the State of Delaware in and for Sussex County within ten (10) days from the date of the Town Council's decision.

No member of the Town Council shall sit on his own appeal, but the same shall be heard and determined by the other members of the Town Council.

The Board of Assessment 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 assessment for which an appeal has been taken. The Town Council shall have the authority to enforce the attendance of the Board of Assessment by appropriate process.

**Section 9. Levy of Taxes, Tax Limit.**

- 9.1 Determination of Revenue Needs. After the valuation and assessment shall have been examined, revised, and completed 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 that fiscal year as set forth in the Town Budget for such year plus a reasonable amount to cover unanticipated expenses and emergencies.

- 9.2 Determination of Revenue Sources. The Town Council shall then proceed to 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. They shall then proceed to determine, assess, fix and/or levy as follows:

- 9.2.1 Real Estate and Improvements.

The rate of tax on real estate including improvements thereon per One Hundred Dollars (\$100) of the assessed value; and/or

- 9.2.2 Utility Fixtures. The rate of tax upon all poles, construction, erections, wires and appliances more particularly mentioned, or intended so to be in Section 4.2.40 of this Charter and/or

- 9.2.3 License Fees. The several license fees to be charged for carrying on or conducting of the several businesses, professions or occupations as authorized by Sections 4.2.38 and 4.2.39 of this Charter; and/or

- 9.2.4 Municipal Services. The several rates to be charged for furnishing water service, front footage assessment, trash collection; and/or

- 9.2.5 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 9.2.3, 9.2.4, and 9.2.5 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.
- 9.3 Levy of Tax. The setting of the tax rate pursuant to 9.2.1: (a) shall constitute the levy of such taxes and charges in accordance with the assessment list (subject to any pending assessment appeals to the Superior Court) and (b) shall constitute the Council's direction and authorization to the Town Manager to make collection, when due, of such taxes and charges. The Town Council shall obtain a bond for the Town manager and Finance Director in form suitable to the Town Council with sufficient surety, in favor of the Town of Bethany Beach, in a sum to be determined by the Town Council conditioned upon the faithful discharge of the trusts imposed in them and for the collection of all taxes committed to them, and for the payment by them of the amount of all such taxes, excepting only as far as the Town Council shall make allowances for. The Town Manager shall immediately proceed to collect the same as hereinafter provided.
- 9.4 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 Bethany Beach 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 Bethany Beach created hereby.
- 9.5 Limitation on Taxes. The total amount of money, to be raised by real property taxes (§9.2.1), utility fixture taxes (§9.2.2), and special taxes levied or imposed in connection with any municipal bond (§12.2.7) shall in no year exceed three percent (3%) of the total assessed valuation of all taxable real estate (and improvements thereon) in the Town.

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

- 10.1 Collection by Town Manager. The Town Manager shall, as soon as the Town Council shall have set the tax rate pursuant to §9.2.1, proceed at once to collect the taxes so levied.
- 10.2 Lien. All taxes so laid or imposed by the Town of Bethany Beach 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. 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. All taxes, when and as collected by the Town Manager, shall be paid to or deposited to the credit of the Town of Bethany Beach, in federally insured banking institutions approved by the Town Council. All taxes shall be due and payable at and from the time the tax rate is set under §9.2.1
- 10.4 Place of Payment. All taxes shall be payable at the Town Office of the Town of Bethany Beach during regular business hours of that office.
- 10.5 Penalty for Late Payment; Collection Fee. On all taxes paid on or after September 1st of each year re 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 on the first day of September, 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 on September 1st 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.

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

- 11.1 Notice Prior to Exercise. Before exercising any of the powers hereinafter given for the collection of taxes, written notice of the amount due shall be sent to the taxable at his last known address.
- 11.2 Debt Action. The Town Manager, when any tax has become delinquent, may, in the name of the Town of Bethany Beach institute suit before any Justice of the Peace or in the Court of Common Pleas of the State of Delaware, in and for Sussex County, or in the Superior Court of the State of Delaware, in and for Sussex County, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs

of execution as in the case of other judgments recovered before a Justice of the Peace Court or in the Court of Common Pleas, or in the Superior Court as the case may be, provided however that, as to any personal property of the taxable in Sussex County levied upon by the Sheriff within 60 days after the writ of execution was delivered into his hands, the lien of judgment shall have priority over all other liens against such personal property created or suffered by the taxable, (excepting only the liens of the Federal, State or Sussex County government), although such other liens be of date prior to the time of the attachment of the said tax liens to the personal property so levied upon.

11.3 Sale of Lands. Should the Town Manager so elect, and without necessity of employing any or all of the other remedies provided herein, the Town Manager is authorized and empowered to sell the lands and tenements of a delinquent taxpayer or the lands and tenements alienated by a delinquent taxpayer subsequent to the levy of the tax by the following procedure:

11.3.1 The Town Manager shall present in the name of the Town of Bethany Beach to the Superior Court of the State of Delaware. in and for Sussex County, a petition in which shall be stated:

- (A) The name of the taxable or assessee;
- (B) The year for which the tax was levied, assessed, or charged;
- (C) The rate of tax, assessment, or other charge;
- (D) The total amount due;
- (E) The date from which the penalty for nonpayment, if any, shall commence and the rate of such penalty and any collection charge permitted;
- (F) A short description of the lands and tenements proposed to be sold, sufficient to reasonably identify same;
- (G) A statement that the bill of said tax, assessment or other charge has been mailed to the taxable at his last known post office address with return receipt requested by certified mail and postage prepaid, together with a notice that the Town Manager would proceed to sell the lands and tenements of the taxable for payment of the tax. assessment, or other charge due the Town; and the date of such mailing;

(H) The petition shall be signed by the Town Manager and shall be verified before a Notary Public.

11.3.2 At least ten (10) days prior to the filing of any such petition as described herein, the Town Manager shall deposit in the mail in a sealed and stamped envelope and addressed to the taxable at his last known address requiring a registered receipt returnable, an itemized statement of the tax, assessment or other charge due, together with all penalties, collection charges, and costs then due thereon, together with a notice to the delinquent taxpayer that he shall proceed to sell the lands and tenements of the taxpayer for the payment of the tax assessment, or other charge. The Town Manager shall exhibit the return registry receipt to the Court by filing the same with the petition; provided, however, that if the taxpayer cannot be found, or if delivery is refused, it shall be sufficient for the Town Manager to file with said petition the evidence that such statement has been mailed in accordance with this subsection and has been returned.

11.3.3 Upon the filing of the petition, the Prothonotary shall record the same in a properly indexed record of the Superior Court, in and for Sussex County, and shall endorse upon the said record of said petition the following:

This petition, filed the \_\_\_ day of \_\_\_, A.D. \_\_\_, (giving year and date), and the Town Manager of the Town of Bethany Beach is hereby authorized to proceed to sell the lands and tenements herein mentioned or a sufficient part thereof as may be necessary for the payment of the amount.

This endorsement shall be signed by the Prothonotary.

11.3.4 Any sales of lands and tenements of a delinquent taxpayer shall be advertised in five (5) public places in the Town of Bethany Beach, one of said public places shall be the Town Office and one of which shall be on the premises and by printing the notice of said sale at least one (1) time in a newspaper of general circulation in the Town. The notice shall contain the day, hour, place of sale and a short description of the premises sufficient to identify the same. The handbills shall be posted at least fifteen (15) days before the day fixed for the sale and the newspaper advertisement shall be published at least fifteen (15) days before the day of the sale.

11.3.5 Each sale of lands and tenements shall be returned to the Superior Court of the State of Delaware, in and for Sussex County. at the next Motion Day thereof following the sale, and the Court shall inquire into the

circumstances and either approve or set aside the sale. If the sale be set aside, the Superior Court may order another sale and so on until the tax be collected. No sale shall be approved by the Superior Court if the owner be ready at court to pay the taxes, penalty, collection fees and costs. If the sale be approved, the Town Manager making the sale shall make a deed to the purchaser which shall convey the right, title and interest of the delinquent taxpayer or his alienee; provided however, that no deed shall be delivered to the purchaser until the expiration of one (1) year from the date of the sale within which time the taxpayer or his alienee, heirs, executors, administrators, or assigns, shall have the power to redeem the lands on payment to the purchaser, his personal representatives or assigns, the costs, the amount of the purchase price, plus twenty percent (20%) and the expense of having the deed prepared. All taxes assessed after the sale and before the delivery of the deed shall be paid by the purchaser at said sale who shall be reimbursed by the delinquent taxpayer in the event of redemption to which shall be added twenty percent (20%) thereon.

In the event the purchaser refuses to accept the same, or in the event he, his heirs or assigns, cannot be located within the State of Delaware, it shall be lawful for the owner, his heirs, executors, administrator, and assigns, to pay the redemption money to the Town Manager of Bethany Beach and upon obtaining from him a receipt therefore, such receipt shall be considered for all intents and purposes a valid and lawful exercise of the power to redeem the said lands.

In the event the lands have not been redeemed within the redemption year, the Town Manager shall deliver to the purchaser, his heirs, executors, administrator, or assigns, a deed which shall convey the title of the taxable or assessee.

The petition, return and deed shall be presumptive evidence of the regularity of the proceeding.

- 11.3.6 After satisfying the tax, assessment, or other charge due and the costs and expenses of sale from the proceeds of sale, the amount remaining shall be paid to the owner of the land. If he shall refuse to accept said residue, or if the owner is unknown or cannot be found, the amount remaining shall be deposited in some bank either to the credit of the owner or in a manner in which the fund may be identified.
- 11.3.7 In the sale of lands for the payment of delinquent taxes, assessments, or other charges the following costs shall be allowed to be deducted from the proceeds of the sale or chargeable against the owner, as the case may be, in the amount customarily charged:
- (A) To the Prothonotary for filing and recording the petition.
  - (B) For filing and recording the return of sale.
  - (C) To the Town Manager for (1) preparing the Certificate, (2) making the sale of lands, (3) preparing and filing a return, (4) posting sale bills. In addition, the costs of printing handbills, the publication of the advertisement of sale in a newspaper, and the auctioneer's fee, if any, shall be chargeable as costs. The costs of the deed shall not be chargeable as costs, but shall be paid by the purchaser of the property of the delinquent taxpayer. The total of any Delaware transfer tax shall be paid by the purchaser of said lands at the tax sale.
- 11.3.8 If the owner of any lands and tenements against which a tax shall be levied and assessed shall be unknown, this fact shall be stated in the advertisement of sale and in the Petition to the court.
- 11.3.9 If any person is assessed for several parcels of land and tenement, in, the same assessment in the Town of Bethany Beach, the total of said taxes, assessments, or other charges may be collected from the sale of any part or portion of said lands and tenements.
- 11.3.10 In the event of death, resignation or removal from office of the Town Manager of the Town of Bethany Beach before the proceedings for the sale of lands shall have been completed, his successor in office shall succeed to all of his powers, rights, and duties in respect to said sale. In the event of the death of the purchaser of said sale prior to his receiving a deed for the property purchased thereat, the person having right under him by consent, devise, assignment, or otherwise, may refer to the Superior Court of the State of Delaware, in and for Sussex County, a petition representing the facts and praying for an order authorizing and requiring the Town Manager to execute and acknowledge a deed conveying to the petitioner the premises so sold, and thereupon the court may make such order touching the conveyance of the premises as shall be according to justice and equity.
- 11.3.11 The Town Manager shall have the same right to require the aid or assistance of any person or persons in the performance of his duty of sale which the Sheriff of Sussex County now has by law or may hereafter have.

**Section 12. Borrowing Powers**

- 12.1 Short-Term Borrowings by Town Council Without Voter Approval. 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 Section 12.2 of this Charter, such sum or sums not exceeding in the aggregate one-third of the total amount of the Town's revenues for the immediately preceding fiscal year, from real property and utility fixture taxes, license fees, and fees for municipal services, for general purposes 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 Secretary of the Town Council with the town seal affixed. No Council member shall be liable for the payment of any such note or any other evidence of indebtedness because it is signed by him as a Council member, provided that he is so authorized by Resolution of Town Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. 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 §12.1 shall at no time exceed one-third of the highest amount of the Town's total revenues from the aforementioned sources in any one of the five immediately preceding fiscal years. **67 Del. Laws, c. 38**
- 12.2 Long-Term Borrowings, Voter Approval Required. 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 other evidence of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Town Council shall elect, 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:
- (A) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein, but refunding such Bonds or other indebtedness of the Town shall not require the procedure set out in §12.2.4 so long as the outstanding principal amount of the refunding Bonds or other evidence of indebtedness does not exceed the face amount refunded, plus the cost of refunding, and shall be enacted by resolution of the Town Council. **68 Del. Laws, c. 275**
  - (B) erecting, extending, enlarging, maintaining, or repairing any plant, building, machinery, or equipment for the manufacture, supplying, or distribution of gas, water, electricity, sewerage, or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and right-of-ways which may be required therefore.
  - (C) constructing, paving, laying out, widening, extending, repairing and maintaining streets, lanes, alleys and ways, and the paving, constructing, laying-out, widening, extending, repaving, and maintaining of curbing and gutters, including storm sewers, along the same, and the condemning or purchasing of lands, easements or rights of ways which may be required therefor
  - (D) constructing, laying out, widening, extending, repairing and maintaining boardwalks, pier, jetties, bulkheads, 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
  - (F) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses of bond counsel.
- 12.2.2 Exempt From Taxation. All bonds or other kinds or forms of evidence or evidences of indebtedness issued by the Town pursuant to the provisions of this section, and the interest thereon, shall be exempt from all State, County, or Municipal taxes.
- 12.2.3 Limit of Aggregate Long-Term Indebtedness. In no event shall the indebtedness of the Town of Bethany Beach, authorized by this Section 12.2, at any one time exceed, in the aggregate, fifteen percent (15%) of the assessed valuation of all real property within the corporate limits of the Town of Bethany Beach and subject to assessment for the purpose of levying the annual town taxes as provided in this Charter.

12.2.4 Procedure; Notice, Hearing, Election. In order to proceed under the power granted in this section, 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. **67 Del. Laws, c. 38**
- (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 21, days nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print on 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 §12.2.4(A) above.
- (2) In addition to publication as herein provided, the Town Council shall, not less than 21 days nor more than 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 public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control. **67 Del. Laws, c. 38**
- (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 21 nor more than 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. **67 Del. Laws, c. 38**
- (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 21 days nor more than 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 §12.2.4(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 21 days nor more than 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 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 last publication or posting shall control. **67 Del. Laws, c. 38**
- (E) At such Special Election, any person who is 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.) 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 vote. The Mayor of The Town of Bethany Beach, by and with the advice and consent of the majority of the Town Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be open for a minimum of six 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. **67 Del. Laws, c. 38**

- (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 a majority 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 evidences 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 proposing borrowing. **67 Del. Laws, c. 38**
- 12.2.5 Form of Bonds. The form of the bonds or evidences of indebtedness 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 said Special Election.
- 12.2.6 Public or Private Sale. Bonds may be sold 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 one (1) month before offering the same for sale.
- 12.2.7 Provision for Payment: Special Tax, Sinking Fund. The Town Council shall provide for the payment of interest on and principal of the said bonds or evidences of indebtedness 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 benefitted by the improvements paid for by the proceeds of such borrowing to pay interest and/or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or evidences of indebtedness which may be issued under the provisions of this Section; 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. The special tax provided for in this Section 12.2.7 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. Said 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 12.2.7 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. **72 Del. Laws, c. 321**
- 12.2.8 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or evidences of indebtedness shall provide otherwise, the full faith and credit of the Town of Bethany Beach shall deemed to be pledged for the due payment thereof and the interest thereon issued under the provisions of this section when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.
- 12.2.9 Statute of Limitations, Sixty Days. No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or evidences of indebtedness issued under this Section 12.2 shall be brought after the expiration of sixty days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Bethany Beach 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 evidences of indebtedness therefor
  - (B) That the proposal has been approved 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
  - (C) The amount of money to be borrowed
  - (D) The purpose for which it is to be borrowed
  - (E) That any person desiring to challenge the authorization of such bond(s) or evidences of indebtedness must bring his or her action within 60 days from the date of publication of such notice or forever be barred from doing so.

- (F) 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 (E) above (using date of "posting" for date of "publication") to be posted in at least 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 last publication or postings shall control. **67 Del. Laws, c. 38**

### **Section 13. 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.

### **Section 14. Annual Audit**

The Town Council shall retain a certified public accountant to be the Auditor of Accounts of the Town of Bethany Beach. 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 moneys to the Town. The auditor shall audit the books of the Alderman and the Assistant Alderman of the Town of Bethany Beach, the records of all fines, penalties, costs imposed or collected by them pursuant to any judgment, order or decree made. The auditor shall, on or before expiration of one hundred and twenty (120) days from the end of the fiscal year, annually make and deliver a detailed report of any and all accounts, records, and books by them examined and audited which report under his hand and seal shall be available for public inspection. 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 Bethany Beach within thirty (30) days of its receipt by the Town Council. The auditor, in the performance of his duties, shall have access to all records and accounts of the offices of the Town.

### **Section 15. Alderman and Assistant Alderman**

- 15.1 Appointment. An Alderman or Assistant Alderman shall be recommended by the Town, appointed by the Governor and confirmed by the Delaware State Senate. Sworn into Office by the Mayor, and recorded at the Recorder of Deeds in Sussex County.
- 15.2 Appointment and Reappointment Nomination. When a vacancy occurs the Town Council shall by majority vote, submit a qualified candidate and application to the Governor for consideration of appointment. At least 30 days prior to the expiration date of an Alderman's or Assistant Alderman's term, the Town Council shall by majority vote, determine whether or not to recommend reappointment of the Alderman or Assistant Alderman for an additional term. The Town shall submit a letter of recommendation to the Governor for consideration of reappointment or any new appointment.
- 15.3 Term of Office. The Alderman and Assistant Alderman shall serve a 2 year term and may remain in office until either reappointed or a successor is duly qualified.
- 15.4 Removal. An Alderman or Assistant Alderman may be censured or removed subject to the provisions of Article IV, Section 37 of the Delaware Constitution of 1897 and the Rules of the Court on the Judiciary. An Alderman or Assistant Alderman may also be replaced upon expiration of a term, following Senate confirmation of a new Alderman or Assistant Alderman.

If any Alderman or Assistant Alderman has been removed from office by Senate confirmation of a new nominee or by action of the Court on the Judiciary, he/she shall, within five (5) days of the Senate confirmation or Court on the Judiciary action, deliver to the Mayor all the books and papers belonging to the Town, and shall within five (5) days pay over to the Treasurer all moneys in his/her hands. Immediately after the receipt of the books and papers belonging to the office of either the Alderman or Assistant Alderman, the Mayor may require the auditor of the Town to make an audit of the books and papers of the official who has been replaced. Upon the neglect or failure to deliver all the books and papers to the Mayor within the time specified by this Charter, or to pay over all of the moneys to the Treasurer within the time specified, the Alderman or Assistant Alderman, so replaced, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each day that he fails to deliver the books and papers to the Mayor or to pay over all moneys to the Treasurer.



- 15.5 Vacancy. In the absence of the Alderman, or when a vacancy occurs in the office of Alderman, the Assistant Alderman shall exercise all the powers, duties, and responsibilities of the Alderman as set forth in this Charter.
- 15.6 Qualifications. Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-one (21) years of age, a United States citizen, of good character and reputation, shall reside within Sussex County, and shall not be a member of the Town Council or otherwise an officer or employee of the Town of Bethany Beach.
- 15.7 Oath of Office. Within 14 days of Senate confirmation the Alderman or Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of office honestly, faithfully, diligently, and to uphold and enforce the Charter of the Town of Bethany Beach and ordinances duly enacted by the Town Council of the Town of Bethany Beach.
- 15.8 Duties. It shall be the duty of the Alderman and Assistant Alderman to adjudicate actions brought under any ordinances legally enacted or established by the government of the Town and to carry into effect all legally binding orders and directions of the Town Council made pursuant to any law of this State or its Constitution. In carrying out the duties of the office, an Alderman or Assistant Alderman shall comply with the ethical responsibilities required of Aldermen in this state and shall operate the court in accordance with the Criminal Rules of Procedure for the Alderman and Mayor Courts of the State of Delaware.
- 15.9 Compensation. The compensation of the Alderman and Assistant Alderman shall be fixed by the Town Council and approved in conjunction with the Town Council's adoption of the Town operating budget. If no change is proposed and approved by the Town Council, the previously established compensation rate shall continue in effect until revised by a majority vote of the Town Council. Such compensation shall not be contingent upon or related to the amount of any civil or penal fines imposed or collected through the Alderman Court and shall not be reduced during the term of office.
- 15.10 Alderman's Docket. The Town Council shall procure suitable records for the use of the Alderman and the Assistant Alderman. Such records shall be known as the "Alderman's Docket". The Alderman and Assistant Alderman shall record all official acts and proceedings in the Alderman's Docket. All criminal matters, but not civil matters, shall be entered into the Delaware Criminal Justice Information System (DELJIS) as required by law.
- 15.11 Jurisdiction. The Alderman and Assistant Alderman shall have jurisdiction and cognizance of all breaches of the peace, offenses and violations of any civil or criminal ordinance of the Town committed within the corporate limits of corporate limits of the Town of Bethany Beach. As to such offenses or violations over which they are given jurisdiction by this Charter or by any other law of the State of Delaware, the Alderman and Assistant Alderman shall be authorized and empowered to hold for bail, set bail, impose fines, or imprison, for each offense or violation in accordance with the penalties provided by this Charter, by any Town Ordinance enacted hereunder, or as provided by any law of the State of Delaware; provided however, that the maximum fine which the Alderman or Assistant Alderman may impose shall never exceed the limits established by this Charter.
- 15.12 Civil and Criminal Penalties; Costs. Neither the Alderman nor the Assistant Alderman shall impose any penalty in excess of the penalties in the Town Charter for adjudicated offenses exclusive of costs nor imprison any offender for more than thirty (30) days, or both, except as otherwise specifically provided in this Charter or by state statute; but the Alderman and Assistant Alderman may, in addition to any other fine or term of imprisonment permitted to be assessed or imposed, impose and collect costs as are set by ordinance or resolution of the Town Council.
- 15.13 Monthly Report to Town Council. The Alderman and Assistant Alderman shall prepare and submit a written monthly report to the Town Council reporting all fines and penalties imposed during the preceding calendar month and shall pay to the Treasurer of the Town all such fines and penalties at such times as the Town Council shall direct. Neither the Town Council nor the Mayor may establish or communicate an expected revenue budget for the Alderman Court.
- 15.14 Alderman Court Facilities and Staff. The Town of Bethany Beach shall provide adequate and appropriate facilities and staff to facilitate the independent judicial operations of the Alderman Court. Facilities shall be separate from conflicting town operations, including, but not limited to, police agency functions. The town may house the Alderman Court in a common municipal building, so long as the Alderman's Court is provided space physically separate from other town functions and is further situated in such a manner to foster public confidence in the independence of the Court. Likewise, staff assigned to the Court shall not be shared with conflicting town government operations.

**Section 16. Police Force**

- 16.1 Chief of Police; Police Officers. The Chief of Police and subordinate members of the police force shall each be appointed by the Town Council for an indefinite term and may be removed for just cause by a majority vote of all the elected members of the Town Council. The police force shall preserve peace and order and shall compel obedience within the Town limits to the ordinances of the Town and the laws of the State of Delaware. The police force shall have such other duties as the Town Council, shall, from time to time prescribe. Operational control of the daily routine of the police department shall be the responsibility of the Chief of Police. The Town Council may, from time to time act, by ordinance, to provide that all other responsibilities of the Chief of Police (or only those responsibilities specified) shall be subject to supervision and approval by the Town Manager or such other person or committee as appointed by the Town Council. Absent such an ordinance, the Chief of Police shall answer directly to the Town Council.

**73 Del. Laws, c. 156**

- 16.2 Power and Duties. Each member of the police force shall have all the police powers and authority of a State Police Officer and shall be conservators of the peace throughout the Town of Bethany Beach, and they shall suppress all acts of violence and enforce all laws relating to the safety of persons and property. They shall, within the Town limits of the Town of Bethany Beach compel the enforcement of all ordinances enacted by the Town Council of the Town of Bethany Beach and all criminal case and motor vehicle laws enacted by the State of Delaware. In the case of a pursuit of an offender, the power and authority of the police force shall extend outside the territorial limitations of the Town of Bethany Beach to any part of the State of Delaware. Every person sentenced to imprisonment by the Alderman or the Assistant Alderman or a Justice of the Peace, as the case may be, shall be delivered by a member of the police force to the correctional institution located in Sussex County to be there imprisoned for the term of his sentence. It shall be the duty of the police force to suppress riotous, disorderly or turbulent assemblages of persons in all public ways and places of the Town, and upon view of the above or upon view of any violation of any ordinance of the Town relating to the peace and good order thereof, the police force shall have the right and power to arrest without warrant.
- 16.3 Arrest Where Alderman or Assistant Alderman Not Available. In the case of an arrest at any time when the Alderman or Assistant Alderman of the Town of Bethany Beach shall not be available or if no such Alderman or Assistant Alderman has been appointed, the person arrested may be taken before the nearest Justice of the Peace with offices in Sussex County who shall hear and determine the charge, and who, in such case, is vested with all the authority and powers granted by this Charter unto the Alderman or the Assistant Alderman. In the case of an arrest at a time when the Alderman or the Assistant Alderman or the Justice of the Peace shall not be available to hear and determine the charge the person arrested may be delivered to the correctional institution located in Sussex County or held in appropriate holding facilities until such reasonable time thereafter as shall enable the Alderman or Assistant Alderman or the Justice of the Peace to hear and determine the charge against such person.

**Section 17. Subdivision and Land Development**

- 17.1 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 provisions 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 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 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 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, and that adequate provision for water supply 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, 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. **67 Del. Laws, c. 38**

(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.

- 17.2 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 Sussex 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.

## **Section 18. Streets and Alleys**

- 18.1 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.
- 18.2 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 Bethany Beach may be commenced by resolution of the Town Council.
- 18.3. 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 it to hear comments and objections concerning the proposal. At least thirty (30) 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 Bethany Beach and shall be posted in five (5) public places in the Town.
- 18.4 Notice to Affected Property Owners. The Town Council shall cause to be sent, certified mail, return receipt requested, to the owner(s) of record of the real estate through or over which such street or alley may run. 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 §18.4 shall be provided at least thirty (30) days before the date set for the hearing.
- 18.5 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.
- 18.6 Payment of Compensation. In every case where the Town Council shall resolve to proceed with the plan contemplated, or a portion thereof, the Town Council shall award just and reasonable compensation to any person or persons who will thereby be deprived of property by virtue of the execution of the plan so contemplated. Such compensation, if any be awarded, shall be paid by the Treasurer of the Town of Bethany Beach, on a warrant drawn upon him by authority of the Town Council aforesaid upon delivery of

a good and sufficient deed conveying a fee simple title unto "The Town of Bethany Beach"; which title shall be clear and free of all liens and encumbrances. Notice of compensation shall be given to affected property owners as provided in §18.4.

18.7 Property Owners Right of Appeal. If the owner be dissatisfied with the amount of compensation or damages allowed by the Town, as aforesaid, said property owner may, within thirty (30) days after such notice, as aforesaid, was mailed, delivered, or posted on the property, appeal from the written notice of assessment of compensation or damages by depositing in the United States mail, written notice by certified mail with return receipt requested and postage prepaid, to the Mayor of the Town to the effect that he or she is dissatisfied with the amount of such compensation or drainage's, and that it is his or her intention to require the Town to condemn his or her property, or any compensable interest therein, in accordance with 10 **Del.C.** Chapter 61, or any future corresponding provisions of law. In such event, the Town shall proceed in accordance with 10 **Del.C.** Chapter 61, or any future corresponding provisions of law, to condemn such property, or any interest therein, for the purposes herein stated.

18.8 Disposal of Abandoned and Vacated Street Lands. Whenever the land comprehended or included in any street or part thereof 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. 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.

18.9 "Street" Defined. For all purposes of this §18, the word "street" shall be deemed and held to comprehend and include sidewalks, lanes, alleys, roadways, streets, or other highways.

#### **Section 19. Constructing, Paving, and Repairing of Streets**

The Town Council shall have full power and authority to regrade, 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 State Highway Department of the State of Delaware for the permanent maintenance, repair and up keep of any street, lane, alley, roadway or other highway within the Town limits.

The Town Council shall also have full power and authority to expend such part or parts of the money of the Town in the general fund of the Town not otherwise budgeted, towards the carrying out of any powers and authorities granted unto the Town Council under and by virtue of this Section of the Charter.

#### **Section 20. Paving, Guttering and Curbing**

In the event that it becomes feasible or necessary in the future for the Town to level, grade, flag, or reflag, curb or recurb, gutter or regutter, pave or repave the sidewalks, curbs, crosswalks or gutters of the Town of Bethany Beach or to repair or improve any curb, sidewalk, gutter or crosswalk, the following procedure shall be followed:

20.1 Resolution. The Town Council shall adopt a resolution stating that on a named day and at a named hour and place, the Town Council will meet to consider the question of laying, installing or constructing new sidewalks, curbs or gutters, or any or all of them, or the repair or replacement of particular sidewalks, curbs or gutters or any or all of them in the Town, on a named street adjoining, along or in front of the property of a named owner or owners and an assessment of the costs thereof against such owner or owners. The resolution shall be published in a newspaper having a general circulation in the Town of Bethany Beach at least three weeks prior to the meeting. The Town Council shall hold a public hearing pursuant to said resolution and thereat shall hear the aforesaid owner or owners of property and other residents of the Town appearing on the question referred to in said resolution.

20.2 Determination to Proceed. After such public hearing, the Town Council, either at said public hearing, or at a subsequent regular or special meeting, shall decide whether or not to proceed with 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 cost of the improvement adjoining, along or in front of the property of the said owner or owners named in the aforesaid resolution shall be borne by said owner or owners. If said determination shall be that the whole or a specified proportion of said cost shall be borne by the said owner or owners, then and in that event. the said owner or owners shall be compelled to pay the whole or a specified

proportion of costs aforesaid, as the case may be. 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) adjoining, along or in front of which the improvement or improvements were made.

- 20.3 Assessment and Collection of Costs; Lien. Whenever the laying, installing or constructing of new sidewalks, curbs or gutters or any or all of them, or replacement or repair of the sidewalks, curbs or gutters of any or all of them have been made, and the cost thereof ascertained, the Town Council shall ascertain the amount that the owner or owners of each parcel of property shall pay as hereinbefore stated, and shall give written notice thereof to said owner or owners. If such owner or owners shall fail to pay the specified amount within sixty days after the mailing of such notice, the same, together with interest and costs, may be collected by the same procedures as are set forth herein for the collection of taxes. The amount so assessed shall be and constitute a lien upon all the property adjoining, along or in front of which the said work was accomplished, and such liens shall have preference and priority over any other liens or encumbrances against said property for a period of ten years from the date of mailing of the notice, although such other lien or encumbrance be of a date prior to the time of the attaching of such liens for the improvements as provided thereunder.
- 20.4 Notice. Whenever written notice is required to be given to any "owner" by this section 20, notice to one co-owner shall be notice to all. Notice shall be given by mailing same, certified mail, return receipt requested, proper postage affixed, to said owner at his or her last known address; provided however, that the failure of any owner to actually receive such notice, (being returned as, among other reasons, 'unclaimed', "refused to accept". "moved, not forwarding address") shall not invalidate any action taken under this section (§20).
- 20.5 Change in Ownership. The word "owner" as used in this section shall be deemed to mean the freeholders or leaseholders of the property at the time of the resolution adopted under §20.1, and any change in ownership thereafter shall not be deemed or held to affect any of the proceedings described in this section.
- 20.6 Construction Supervision, Standards. The Town Council in exercising the authority granted by this section, may use such materials and substances and such methods of construction and may employ such contractors, engineers, inspectors and others as the Town Council may deem expedient.

#### **Section 21. Jetties, Bulkheads, Embankments and Boardwalks**

The Town Council shall have the power and authority to locate, lay-out, construct, widen, extend, improve, repair, vacate or abandon jetties, bulkheads, groins and embankments for the preservation of any beach or strand within the limits of the Town or contiguous thereto to the ends that the same may be preserved and property may be protected, or boardwalks and piers, to the end that the general public might enjoy the use thereof. In the locating, laying out, constructing, widening, extending, improving, repairing, vacating or abandoning of any such jetties, bulkheads, groins and embankments, boardwalks and piers, the Town Council shall have full power and authority to use such materials and substances and such methods of construction and shall employ such contractors, engineers, inspectors and others the Town Council shall deem expedient and advisable; subject, nevertheless, to any controlling Federal or State statutes or administrative regulations. For the purpose of this section the Town Council shall have full power and authority to expend such part or parts of the money of the Town, in the general fund of the Town not otherwise budgeted.

The Town Council may, by condemnation proceedings, take private lands or the right to use private lands for any of the purposes mentioned in this Section. The proceedings by condemnation under this Section shall be as prescribed in 10 **Del.C.** Chapter 61 or any future corresponding provision of law.

#### **Section 22. Drainage**

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 may pass ordinances for the opening of gutters, surface water and underground drains and 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 the same condemnation proceedings as hereinbefore provided by 10 Del. C. Chapter 61 or any future corresponding provision of law. 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 water drains or sewers, or any of them, within the Town limits.

**Section 23. 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, renew, replace and control wells, reservoirs, pumping machines and stations, tanks, standpipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, conveyance and distribution of water, over, on, under or through the lands controlled by the Town or belonging to any private individuals).

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; the amounts to be paid by the users thereof; the means or methods whereby the same shall be collected; 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.

The Town Council may, at its option, furnish water from the Town system to places and properties outside the Town limits and upon such special terms, charges and conditions as it shall deem wise.

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.

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.

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 use the present or future streets, squares, alleys, lanes and beach strand of the Town for the purpose of furnishing water to the Town and to the person, firm or corporations residing therein, and for the purpose of transmitting the same, or any, or all of them, through, over, across or under said streets, squares, alleys, lanes and beach strands 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.

The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, under, over, or on the surface thereof, 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 the same as prescribed by 10 Del. C. Chapter 61 or any future corresponding provision of law.

**Section 24. Referendum**

24.1 Referendum power. The qualified voters of the Town of Bethany Beach shall have the power to require reconsideration by the Town Council any previously-adopted ordinance and to approve or reject such ordinance at an election as provided herein; provided however that such power of referendum shall not extend to the budget or capital improvement program or any emergency ordinance, or to any ordinance relating to the appropriation of money or any ordinance relating to the levy of taxes; or to any ordinance authorizing the borrowing of money under §12.2 ('Long-Term Borrowing') or to any ordinance annexing lands into the Town. **77 Del. Laws, c. 436, § 1**

24.2 'Qualified Voters'; Persons Entitled to Vote in Referendum. At any referendum election conducted under this section, a 'qualified voter' shall mean any person who is entitled to vote in the annual town election if it were held on the day the referendum election is held. Each qualified voter shall be entitled to one vote. **77 Del. Laws, c. 436, § 2**

24.3 In order to initiate a referendum under this section, a referendum petition, signed by those persons who would be qualified voters of the Town if the Town election were being held on the day that the petition is presented to the Town Council, equal in number to 15% of the qualified voters of the Town as of such date, with the local address of the person(s) so signing, shall be presented to the Town Council.

The Town shall create and provide the specific format to be used for a referendum petition which shall contain only the following:

1. statement petitioning the reconsideration of the ordinance;
2. complete text of the challenged section of the ordinance in context;
3. name and Bethany Beach address of the signer;

4. signature of the signer;
5. date the petition was signed;
6. affidavit containing the signature and Bethany Beach address of the person who circulated the petition. The affidavit shall state that:
  - a. the signer signed on the date indicated;
  - b. the signer had an opportunity to read the full text of the ordinance prior to signing;
  - c. the circulator is a qualified voter of the Town of Bethany Beach;
  - d. the circulator personally circulated the petition;
  - e. the circulator personally observed the signature by the signer;
  - f. the circulator believes that each person who signed is the person they claim to be, and that said person is qualified to sign the petition; and
  - g. the circulator is aware that submitting a false affidavit in connection with a referendum petition constitutes perjury in the second degree, a class F felony, under 11 Del.C. § 1222. **77 Del. Laws, c. 436, § 3**

#### 24.4 Determination of Sufficiency of Petition.

24.4.1 Determination by Council. The Town Council may examine, or direct the Town Manager to examine and report back to the Town Council, any petition filed under this section in order to determine its sufficiency. If the Town Council determines that such petition is insufficient for any reason, it shall publicly state such fact and the reasons therefore, and shall return such petition(s) to the person(s) submitting same. Any Petition rejected as insufficient on account of an insufficient number of signatures may be 'cured' by the addition of additional signatures of qualified voters and re-submitted within 60 days from the date such petition was first rejected by the Town Council.

24.4.2 Appeal of Council Decision. Any person or person, jointed or severally, aggrieved by the decision of the Town Council may present to the Superior Court of the State of Delaware, a petition duly verified, setting forth that such decision is invalid, in whole or in part, specifying the grounds of such invalidity. Such petition shall be presented to the Court within thirty (30) days following the determination by the Town Council as to the insufficiency of such petition. Upon presentation of the petition, the Court may allow a Writ of Certiorari directed to the Town Council to review such decision of the Town Council and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner or his attorney, which shall not be less than ten (10) days and may be extended by the Court. The Court may reverse or affirm, wholly or partly, or may modify the determination brought up for review.

24.4.3 Petition is sufficient (either by the Town Council or by the Superior Court on appeal from decision of the Town Council) the Town Council shall reconsider the referred ordinance at its first regular meeting after the Petition has been finally determined to be sufficient. If the Town Council fails to repeal the referred ordinance, it shall be submitted to the qualified voters as hereinafter provided.

24.4.4 Referendum Election (a) The election on a referred ordinance shall be held not less than sixty (60) days and no later than ninety (90) days from the date that the petition is determined to be sufficient. If the Annual Municipal Election is to be held within ninety days from the date the Petition is determined to be sufficient, such referendum shall be considered as part of that election. If the Annual Municipal Election is not to be held within ninety (90) days from the date the Petition is determined to be sufficient, the Town Council shall provide for a special election. If the Town Council fails to hold a referendum within the time specified in this section, the ordinance for which the petition was filed shall be deemed to be repealed at the expiration of ninety (90) days from the date that the petition was considered to be sufficient, and shall not be passed in the same form for a period of six (6) months from the effective date of repeal.

(b) (1) Not less than 21 days nor more than 60 days prior to the date set for the Special Election, notice of the time, date, and place of holding the Special Election shall be: (i) published in two newspapers of general circulation in the Town; (ii) posted in five public places in the Town; (iii) posted on the Town's website; and (iv) mailed, via regular mail, to all registered voters and all non-resident freeholders of the Town at their address as shown on the Town's records. Posted and published notices shall be in bold print or bordered in black so as to call attention thereto. In the event that the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control. **77 Del. Laws, c. 436, § 5**

(2) The Mayor shall appoint three persons to act as a Board of Special Election, if a Special Election is required. The polling place shall be open a minimum of six consecutive hours, the

times to be set by resolution of the Town Council. Persons in the polling place at the time set for the closing of the polls shall be entitled to vote even though such votes may be cast after the time set for the closing of the polls. **67 Del. Laws, c. 38**

- (c) Immediately after the closing of the polling place or places, the Board of Special Election, or the Board of Election if the referendum is held on the day of the Annual Municipal Election, as the case may be, shall count the ballots for and against the proposition as presented, and shall announce the results thereof. The Board of Special Election or the Board of Election, as the case may be, shall make a certificate under their hands of the number of votes cast for and against the proposed ordinance and the number of void votes, and shall deliver the same to the Town Council. The said certificate shall be filed with the papers of the Town of Bethany Beach.
- (d) The form of the ballot of the said Election, whether the same be considered at the Annual Municipal Election or at a Special Election shall be as follows:

For Repealing the Referred Ordinance\_\_\_\_\_

Against Repealing the Referred Ordinance\_\_\_\_\_

(Check your preference)

- (e) At any such Special Election, or Annual Municipal Election as the case may be, voting may be conducted by voting machine, electronic voting system, or paper ballot as the Town Council shall determine in accordance with any controlling federal or state law.
- (f) If the majority of the qualified voters voting on a referred ordinance vote in favor of repealing such ordinance, it shall be considered repealed upon the certification of the result of the election by the Board of Special Election in the case of a Special Election or upon the certification by the Board of Election in the case of such referendum being held on the day of the Annual Municipal Election. No ordinance which has been repealed as the result of a referendum shall be passed again in the same form by the Town Council or Bethany Beach for a period of six (6) months from the date of the referendum.

24.4.5 Non-binding Referendum.

Notwithstanding any other provision of this section (§24) to the contrary, the Town Council may, on its own initiative, by resolution, determine to hold an election (either a Special Election or in conjunction with the Annual Municipal election) to obtain the opinion of the qualified voters (as defined herein) of the Town on any subject which the Town Council has under consideration.

Any such election shall be conducted in such manner and with such Public notice, as the Town Council shall determine by resolution; provided however that any such resolutions, and any public notices regarding such non-binding referendum election, shall clearly specify that such referendum election is 'non-binding'. The results of any 'non-binding' referendum election conducted under this §24.4.5 shall have no legal effect whatsoever and shall not bind or obligate the Town Council to take any action or refrain from taking any action on the subject referred, but shall merely be informational in nature regarding the opinion of those qualified voters who expressed a preference at such non-binding referendum election.

24.4.6 Term. No signature on any referendum petition shall be accepted as valid if signed in excess of 180 days prior to the date the referendum petition is filed at the Town Hall. **77 Del. Laws, c. 436, § 4**

**Section 25. Action or Suits**

No action, suit, or proceeding shall be brought or maintained against the Town of Bethany Beach, its officers (including the members of any board, commission, or agency), employees, or agents, whether now, hereafter, or previously serving as such, and no judgment, damages, penalties, costs, or other money entitlement shall be awarded or assessed against the Town, its officers, (including the members of any board, commission, or agency) employees or agents, whether now, hereafter or previously serving as such, in any civil suit or proceeding at law or inequity or before any administrative tribunal, arising out of, connected with, or on account of any physical injury or injuries, death, or any other type of personal injury, (including libel or slander), or injury to property (whether real or personal) unless the person by or on, behalf of whom such claim or demand is asserted, within one year from the happening of the incident giving rise to such injury shall notify the Town of



Bethany Beach in writing of the time, place, cause, character and extent of the injury sustained or damages suffered.

Such notice shall be directed to the Mayor of the Town of Bethany Beach by certified mail with return receipt requested and postage prepaid.

**Section 26. 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 Bethany Beach. 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 to be provided for that purpose so that the same may be readily examined. It shall furnish the members of the Town Council of the Town of Bethany Beach 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.

**Section 27. Survival of Powers and Validating Section**

- 27.1 All powers conferred upon or vested in the Town Council of Bethany Beach 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 Bethany Beach and/or the Town Council of Bethany Beach precisely as if each of said powers was expressly set forth in this Charter.
- 27.2 All ordinances adopted by the Town Council of Bethany Beach 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 Bethany Beach under the Provisions of this Charter.
- 27.3 All of the acts and doings of the Town Council of Bethany Beach 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 Bethany Beach under any provision of any prior Charter of the Town of Bethany Beach, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.
- 27.4 All taxes, assessments, license fees, penalties, fines, forfeitures, and other charges due to the Town of Bethany Beach shall be and remain due to the Town of Bethany Beach and all debts due from the Town of Bethany Beach shall remain unimpaired until paid by the Town of Bethany Beach.
- 27.5 All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town of Bethany Beach.
- 27.6 The bonds given by or on account of any official of the Town of Bethany Beach shall not be impaired or affected by the provisions of this Charter.
- 27.7 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 term of office.
- 27.8 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.

**Section 28. Separability**

If any provision, section, subsection, paragraph, sentence, or clause of this Charter shall be held to be unconstitutional or invalid by any court of competent Jurisdiction, such holding shall not be deemed to invalidate the remaining provisions, sections, sub-sections, paragraphs, sentences or clauses of this Charter.

**Section 29. Public Act**

This Charter shall be taken as and deemed to be a Public Act of the State of Delaware.

**Section 30. Effective Date**

This Charter shall take effect as of October 1, 1986.

Approved June 19, 1986.

65 Del. Laws, c. 295; 67 Del. Laws, c. 38; 68 Del. Laws, c. 275; 70 Del. Laws, c. 557; 72 Del. Laws, c. 321; 73 Del. Laws, c. 156; 73 Del. Laws, c. 220; 74 Del. Laws, c. 50; 75 Del. Laws, c. 343; 77 Del. Laws, c. 117, §1; 77 Del. Laws, c. 305; 77 Del. Laws, c. 436; 78 Del. Laws, c. 91; 78 Del. Laws, c. 126; 78 Del. Laws, c. 281, §1