

## Cheswold

### Section 1. Incorporation

The inhabitants of the Town of Cheswold 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 Cheswold", (hereinafter "Town") with power to govern themselves by such ordinances, rules, resolutions, and regulations for municipal purposes as they, through their duly elected officers and agents may deem proper, not in conflict with the provisions of this Charter of government, nor with the Constitution and Laws of the State of Delaware, or of the United States; and as such shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts.

The Town shall have perpetual succession and shall succeed to own or possess all property, whether real, personal, or mixed, tangible or intangible, of whatever kind and nature, and all the powers, rights, privileges or immunities now or heretofore belonging to, possessed, or enjoyed by the Town of Cheswold previously incorporated at Chapter 171, Volume 58, 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:

The initial point shall be where a line drawn in an easterly and westerly direction in the middle of the public road leading from Moore's Corner to Leipsic, would intersect a line drawn in a northerly and southerly direction in the middle of the public road running on the west side of the Delaware Railroad, and parallel therewith.

From this initial point, the Town shall extend North three hundred and fifty yards, and, from the same point South four hundred and fifty yards, and, from the same point East three hundred yards, and from the same point West four hundred yards, forming a parallelogram, whose east and west sides shall be eight hundred yards (800 yards) long, and whose north and south sides shall be seven hundred yards long, and the commissioners may at any time have the same surveyed and plotted and may have said plot recorded in the Recorder's Office of Kent County, and being so recorded, it, or a duly certified copy thereof, shall be evidence of what is therein properly set forth.

The streets as now known and established are as here stated:

The public road leading from Moore's Corner to Leipsic, and within the above limits shall be called Main Street, and was originally established as forty feet wide; the public road running along the Delaware Railroad, on the west side, within the limits above given shall be called Commerce Street, and was originally established as thirty feet wide; the street running from Commerce Street to West Street shall be called New Street, and was originally established as thirty feet wide; the street running from New Street to Main Street shall be called West Street, and was originally established as thirty feet wide.

In addition to the limits of the said Town of Cheswold as set forth above, the limits of said Town of Cheswold shall include all the lands and premises of Cheswold Volunteer Fire Company, a corporation of the State of Delaware, as such lands and premises were conveyed unto said Cheswold Volunteer Fire Company by deed of Harry Andrew Smith and Naomi R. Smith, his wife, dated October 22, 1962, and of record in the office of the Recorder of Deeds in and for Kent County, Delaware, in Deed Record A, Volume 23, at page 297, the said lands and premises are described in said deed as follows:

All that certain tract, piece or parcel of land and premises situated in Little Creek Hundred, Kent County and State of Delaware lying on the southerly side of the public highway leading from Bishop's Corner to Cheswold, the metes and bounds, course and distances whereof are as follows, to wit:

Beginning at a point along the south line of the State Highway leading from Bishop's Corner to Cheswold, a corner for those lands and lands of the Methodist Church Parsonage at the northwest corner of the driveway leading into the lands and premises hereby conveyed; thence with the southern right of way line of the aforesaid highway north sixty-nine (69) degrees east six hundred eighty-eight (688) feet to a new corner now established for the lands hereby conveyed and lands now or formerly of Vaughn; thence by a new line now established separating the lands hereby conveyed from lands now or formerly of Vaughn, south eleven (11) degrees fifteen (15) minutes east three hundred (300) feet to another new corner now established; thence by another new line now established separating the lands hereby

conveyed from lands now or formerly of said Vaughn, north sixty-nine (69) degrees east two hundred ten (210) feet to another corner for these lands and in line of lands of Smith Orchards Company; thence running with line of lands of said Smith Orchards Company south eleven (11) degrees fifteen (15) minutes east twenty-one hundred fifteen (2,115) feet to another corner for these lands and in line of lands of Edgar Farrow where a stone is set in an old hedge fence; thence with said Farrow lands the following courses and distances: north seventy-one (71) degrees thirty (30) minutes west three hundred forty-five (345) feet to a stone, north forty-seven (47) degrees thirty (30) minutes west five hundred twenty (520) feet, north eighty-four (84) degrees thirty (30) minutes west two hundred seventy-five (275) feet to a stone, south sixty (60) degrees west one hundred ninety-seven (197) feet to an iron post, a corner for these lands and in line of lands of the Delaware Railroad Company; thence with line of lands of said Railroad Company north twenty-three (23) degrees forty-five (45) minutes west thirteen hundred (1300) feet to a point in a deep ditch, a corner for these lands and in line of lands of Lewis Anderson; thence with said ditch and lands of said Anderson north eight (8) degrees thirty (30) minutes west one hundred fifty-two (152) feet to another corner for these lands and in line of lands of Delaware Power and Light Company; thence with line of lands of said Delaware Power and Light Company, lands of Norris L. Remley, lands of Bennett H. Emory, lands of George Anderson and lands of the Methodist Church Parsonage north sixty-nine (69) degrees east four hundred seventy-nine (479) feet to another corner for these lands and in line of lands of said Parsonage; thence with line of lands of said parsonage and along the west side of the driveway leading into the lands and premises hereby conveyed north twenty-one (21) degrees west one hundred forty (140) feet to the southern right of way line of the aforesaid State Highway, the place of beginning, and containing forty-six and five-tenths (46.5) acres of land, be the same more or less.

And being all the same lands and premises conveyed unto the said Harry Andrew Smith and Naomi R. Smith, his wife, by deed of Abram F. Vaughn and Elizabeth A. Vaughn, his wife, bearing date the 13th day of September, 1944, of record in the office of the Recorder of Deeds of the State of Delaware in and for Kent County in Deed Record Book R, Volume 16, Page 280, EXPRESSLY EXCEPTING therefrom all that certain piece or parcel of land and premises heretofore conveyed by the said Harry Andrew Smith and Naomi R. Smith, his wife, to Raymond Morgan and Mary Virginia Morgan, his wife by deed bearing date the 12th day of April, 1955, and more particularly described as follows, to wit:

All that certain triangular piece or parcel of land and premises situated in Little Creek Hundred, Kent County, State of Delaware, lying on the southerly side of the public highway leading from Bishop's Corner to Cheswold, bounded on the North by said public highway, on the East by lands of Elmer S. Strimel, on the Southwest by a ditch separating the lands hereby conveyed from other lands of the Grantors, the metes and bounds, courses and distances whereof are as follows, to wit:

Beginning at a point in the southerly right of way line of the public highway leading from Bishop's Corner to Cheswold, a corner for these lands for lands of Elmer S. Strimel; thence with said Strimel lands and south nine (9) degrees ten (10) minutes east a distance of two hundred one (201) feet to another corner in the center of a small ditch; thence by a new line now established and separating the lands hereby conveyed from other lands of the Grantors along and with the center line of a small ditch north fifty-four (54) degrees four (4) minutes west two hundred forty-one and four-tenths (241.4) feet to another corner in the center of said ditch and in the southerly line of the aforesaid public road; thence with the southerly right of way line of the aforesaid public road north Seventy (70) degrees fifty (50) minutes east one hundred seventy-three (173) feet to the place of beginning and containing four-tenths (4/10) of an acre of land, be the same more or less.

And further expressly excepting therefrom, a certain easement, wherein the said Harry Andrew Smith, and Naomi R. Smith, his wife, by deed dated February 6, 1961, of record in the office of the Recorder of Deeds aforesaid in Deed Record Book O, Volume 22, page 395, granted unto Delaware Power and Light Company a right of way agreement in relating to certain privileges for utility purposes.

And further expressly excepting therefrom, a certain easement, wherein the said Harry Andrew Smith and Naomi R. Smith, his wife, by deed dated July 20, 1962, of record in the office of the Recorder of Deeds aforesaid in Deed Record Book Z, Volume 22, Page 349, granted unto Delaware Power & Light Company a right of way agreement in relation to certain privileges for utility purposes.

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 Kent County, State of Delaware. or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of law and equity in this State.

### **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, resolutions, 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. Any 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, though 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 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: (a)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; and (b) if required by statute, to such other state agencies or political subdivisions as provided under the Delaware Land Use Planning Act, as it may from time to time hereafter be amended, or any future corresponding provision of law.

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.

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.

3.2.5 Those Entitled to Vote.

(a) At such special election, any person residing in the territory proposed to be annexed who would be entitled to vote at the annual Town election 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 (e.g. natural person, corporation, partnership) owning property in its own name, 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 with the Town's official records. 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 systems, 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 not less than two 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).

**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 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, 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 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 Kent 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 § 3.2.1., § 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 that 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, Contiguous with the Town's existing corporate limits, or with other territory which is itself contiguous with 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 within 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.
- 3.2.11 Zoning of Newly Annexed Lands. In order to eliminate the possibility of un-zoned lands in the Town and to expedite the zoning newly-annexed lands in the Town, the Council may, in the resolution proposing the inclusion of territory(s) and calling for a special election, or by separate resolution, propose the zoning classification(s) of the territory(s) (or portions thereof) proposed to be annexed, and direct the taking of such actions (including the publication of notice and the holding of public hearings) prior to the holding of the special election, as necessary to enable the Town Council to amend the Town Zoning Map to designate the zoning classification(s) of the newly-annexed territory(s) (or portions thereof), if a majority of the votes cast in the special election are in favor of such annexation.

#### **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 sites for constructing, improving, extending, altering, or demolishing:
  - (a) public buildings;
  - (b) parks;
  - (c) streets, squares, lanes, alleys, and sidewalks;
  - (d) sewer systems, including but not limited to sewage lines, conduits, sewage disposal or treatment plants, and all appurtenances thereto;
  - (e) water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;
  - (f) electric systems, including but not limited to, electric plants, substations, distribution systems, lines, conduits and all appurtenances thereto;
  - (g) gas systems, including but not limited to storage tanks, distribution systems, conduits and all appurtenances thereto;
  - (h) recreational facilities, including but not limited to public swimming pools, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball 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 any special fund of the Town established for that purpose, from the proceeds of any borrowing or bond issue which may be authorized and/or sold for any of the purposes for which Town funds are authorized by this Charter to be expended, 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 Town funds are authorized by this Charter to be expended.
- 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 the collection of any delinquent tax, assessment, water bill, sewer bill, electric bill, gas bill, trash collection fees, 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, sewer,

- drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town; may specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; may enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the Town.
- 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 projection in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, sewer, drain, aqueduct or pipeline of the Town.
- 4.2.10 May provide, construct, extend, maintain, manage and control bulkheads, embankments, flood gates, or fills for the preservation of any strand or high land within the limits of the Town or 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 may 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 may alter or change the course and direction of any natural water course, runs or rivulet within the Town, may regulate, maintain, clean and keep the same open, clean and unobstructed, and may provide, construct, extend and maintain, manage and control a surface water drainage system and facilities for the health, sanitation and convenience of the inhabitants of the Town.
- 4.2.13 May provide an ample supply of potable water for the Town and its inhabitants and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants, and all other equipment, property, or rights used in or about the collection, storage, purification, conveyance, or distribution or sale of water; may regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town; may furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and may contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself.
- 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; may 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; may 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, may compel any and all properties in the Town to be connected to the sewer system of the Town; and may 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, sidewalks, public buildings or other public places in the Town, and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the Town, and may furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; may regulate and prescribe for what private or public purpose the current or gas furnished by the Town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; may furnish or refuse to furnish electric current or gas from the Town's system or systems, to places and properties outside the Town limits; and may contract for and purchase electric current or gas and distribute the same to users within or without the Town with the same full powers as though such current or gas had been initially generated or reduced to usefulness by the Town itself.

- 4.2.16 May regulate, control or prevent the use or storage of gasoline, naphtha, fireworks, tar, pitch, resin, and all other combustible or dangerous materials and the use of candles, lamps, and other lights in stores, shops, and other places; may regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may pose a danger of causing fires.
- 4.2.17 Subject to the authority of the State Fire Commission, or some successor state agency having authority thereover, may provide for the organization of a fire department and the control and government thereof; may establish fire limits and to do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, may contribute, donate or give an amount or amounts to any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable.
- 4.2.18 Subject to the authority of the State Fire Commission or such similar or successor state agency having authority thereover, 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 gaming 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, 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 or the State of Delaware, or by any controlling federal statute.
- 4.2.24 May 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 fencing of lots, tracts, pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter and 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 may 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, and/or razing 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 may restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and may authorize the destruction of the same; may regulate the keeping of dogs within the Town, and may provide for registration and fees thereof.
- 4.2.31 May provide for the punishment of a violation of any ordinance of the Town by fine or imprisonment or both, not exceeding \$500.00 or thirty days imprisonment.
- 4.2.32 May acquire, build, erect and maintain a suitable place as a lock-up or jail for the Town which may be used as a place for temporary 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 Kent 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, moving, or removal of dwellings or other structures and may 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; may 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.

- 4.2.41 May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restrictions, stipulations and conditions and for such consideration as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, parks, sidewalks, and other public places of the Town for the purpose of furnishing heat, Light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, railroad (excepting railroads or railways engaged in Interstate Commerce), bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof; provided, however, that whenever any state or federal law grants 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 this State and approved by a majority of the elected members of the Town Council.
- 4.2.46 May by ordinance provide for and establish a tax on the transfer of real estate within the Town similar in nature and effect as the "Delaware Realty Transfer Tax" established by 30 **Del. Laws**, c. 54 as it may from time to time hereafter be amended, or in accordance with any future corresponding provision of law, but at all times in conformity with the provisions of any controlling general statute of the State governing municipal realty transfer taxes.
- 4.2.47 May determine what purposes are deemed to be public purposes or municipal purposes.
- 4.2.48 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-half (½) mile from said limits.
- 4.3 Liberal Construction; Manner of Exercise. The powers of the Town under this Charter shall be liberally construed in favor of the Town, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise thereof, the Town shall have and may exercise any and all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate.
- 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 Government**

- 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 six 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, have been a bonafide domiciliary of the Town for a period of at least one year immediately prior to the date of the election, and otherwise qualified to vote at the annual Town election as provided in § 5.4.2. No person having been convicted of a felony or a crime of moral turpitude shall be qualified to be a candidate for office on the Town Council.
- 5.2.2 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.
- 5.3.2 Staggered Terms. The present Council members and Mayor of the Town of Cheswold, and other officers appointed to serve, in the office under Chapter 171, Volume 58, Laws of Delaware, as amended, shall continue to serve as Council members, Mayor, 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 1999 three persons shall be elected to the Town Council to fill the vacancies created by the expiration of the terms of office of the three then-outgoing Council members and at the annual Town Election in 2000, two persons shall be elected to fill the vacancies created by the expiration of the terms of office of the two then-outgoing Council members and Mayor. Thereafter, three members of the Town Council shall be elected in odd years, and three 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 Council Secretary at least thirty (30) days prior to the date set for the election. If the Town Council Secretary determines that any candidate may not meet the qualifications for office, he/she shall notify the mayor who shall call a special meeting of the Town Council to be held not less than twenty (20) 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 (if required) under the Town's Voter Registration ordinances (if any), and has been domiciled and residing within the Town for at least three (3) months prior to the date of the election in which he or she seeks to vote.

- 5.4.3 Voter Registration. The Town Council may enact such ordinances concerning the registration of qualified voters for municipal elections in the Town as it deems reasonably necessary to provide for the orderly and efficient conduct of municipal elections; provided that no such ordinances shall alter the qualifications of voters as hereinabove set forth, nor shall any such ordinances unduly impair the right to vote in a municipal election.
- 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 Date, Time, and Place and Manner of Conducting.
- (a) Date, Time, and Place. Annual elections for Town Council shall be held on the last Tuesday in March at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for a period of time, not less than two hours, as determined by the Town Council.
  - (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 fifteen (15) days before the day of such election and by publishing notice in a newspaper of general circulation in the Town at least fifteen (15) 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. Such notices shall be in bold print or bordered in black in such manner as to call attention thereto. In the event that the publication and/ or postings do not appear on the same date, the date of the last publication or posting shall control. Failure to post and/or publish notice as herein-required shall not make any such election void, but any qualified voter of the Town may, not more than 60 days following the date of the election, file a petition with any court of competent jurisdiction, seeking to have such election set aside and ordering a new election to be held.
  - (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 a general statute expressly applicable to municipal elections.
  - (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 shall be unable to appear in person to cast his or her ballot at any municipal election by absentee ballot.
  - (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 governing state or federal law, regarding the conduct of Town 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 fifteen (15) 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 ten (10) days, unless an appeal is filed in a court of appropriate jurisdiction.
- (j) Election Record Book. The Election Board shall enter in a book, to be provided for that purpose, the results of the election, containing the names of the persons elected. The members of the Election Board shall subscribe the same. The book, containing such matters, shall be preserved by the Town Council.

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

6.1 Organizational Meeting. An organizational meeting of the Town Council shall be held as soon as practicable, not exceeding seventy-two (72) hours, following the determination of the election results by the Election Board. 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, or by one of the holdover Council members.

6.2 Officers. The six 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. If, during their term of office, any of these officers shall cease to be a domiciliary and resident of the Town, they shall ipso facto be deemed to have vacated their position as an officer of the 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 organizational 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 not have the same right as other Council members to vote on any matter to be decided by Council, except in the event of a tie vote in which case the Mayor shall be entitled to cast the deciding vote. For purposes of establishing a quorum, the Mayor shall not 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 civil disturbance, or a toxic spill. A "sudden emergency" shall also include any emergency situation as declared by any County, State, or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town of Cheswold. 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. When acting as Mayor in the Mayor's absence or disability, the Vice-Mayor shall be treated as the Mayor for purposes of establishing a quorum and establishing the votes necessary to carry any action.
- 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 specifically authorized by law, or by this Charter, no member of the Town Council, shall hold any other Town Office or Town employment. (75 Del. Laws, c. 7, 2/9/05)
  - 6.3.2 Contracts with the Town. It shall be unlawful for the Council or the Town's 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, agents, 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 \$100.00. No transaction exceeding said \$100.00 may be fragmented into two or more smaller transactions so as to avoid the \$100.00 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) willfully violates any express prohibition of this Charter.
    - (c) is convicted of a felony or any crime involving moral turpitude.
    - (d) fails to attend three 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 Council members entitled to vote on the question, the decision shall be final. At any such hearing, strict rules of evidence shall not apply, but the members of council entitled to vote on the question may consider any probative evidence which a reasonable person could consider reliable in making important decisions concerning their own personal affairs.
- 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/her 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 reasonably and timely 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 until the next Town election at which time the voters shall elect a candidate to serve the remainder of the term if any; provided that if the vacancy occurs within 30 days of the annual Town election, the remaining council members shall select a person to fill the remainder of the 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 for more than one (1) day 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 Secretary/Treasurer upon the written request of the Mayor, or upon the written request of any three 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 shall be given in writing to each Council member as follows: (a) by regular mail if deposited in the U.S. mail at least 96 hours prior to the time set for such meeting, (b) by express mail, courier service, or personal delivery if delivered personally to the council member or to an adult person residing at such council member's residence at least 24 hours prior to the time set for such meeting. Provided, however, that a waiver of such notice, (written, faxed, telegraphic, e-mailed, or recorded telephonic message) by all members of Council prior to or immediately upon the convening of such special meeting shall make the prior 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. Unless compelling reasons necessitate otherwise, 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 Cheswold.
- 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 may be imposed;
  - (c) Grant, renew or extend a franchise;
  - (d) Amend or repeal any ordinances previously adopted.
- Actions other than those referred to in the preceding subparagraphs may be done either by ordinance or by resolution. Every ordinance shall be introduced in writing. Vote on any ordinance may be by voice vote or written vote and the vote of each Council member on any ordinance shall be entered on the record. No ordinance shall be passed unless it shall have the affirmative vote of a majority of the Council members.
- 6.8.3 Quorum. Three members of the Town Council entitled to vote 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 its duties, three affirmative votes shall be necessary to carry any action.
- 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 two remaining Council members in order of their total number of years served on Council, (4) the Town Tax Collector, (5) the Chief of Police, (6) the Town Code Enforcement Constable.

## **Section 7. Appointed Officers.**

- 7.1 Town Manager.
- 7.1.1 Appointment, Term. The Council may, in its sole discretion, appoint a Town Manager who, if appointed, shall be the chief administrative officer of the Town. He/she shall be appointed solely on the basis of his professional, executive and administrative qualifications. He/she need not, when appointed, be a resident of the Town or of the State of Delaware, but shall, within six months of his/her appointment, as a condition of employment, become domiciled within such radius of the center of the Town as determined by Council at the time of his appointment. (75 Del. Laws, c. 7, 2/14/05)

If appointed, 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.

- 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 Tax Collector. The Town Council shall appoint a Town Tax Collector who shall serve for a term of one year unless reappointed. The Town Tax Collector shall give a secured bond, the cost of which may be paid by the Town, in such amount as deemed reasonable and appropriate by the Town Council. Nothing in this Charter shall be deemed to prohibit the Town Council from appointing the Secretary/Treasurer or the Town Manager as the Tax Collector.
- 7.3 Town Solicitor. The Town Council may 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 Kent or Sussex County.
- 7.4 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.
- 7.5 Compensation. The Town Council shall by ordinance, resolution, or written agreement fix the amount of any salaries or compensation of the employees, officers and agents of the Town. The Town Council may, in addition to the salary or compensation fixed by the Town Council, authorize reimbursement for actual and necessary expenses incurred by any officer, employee, or agent of the Town in the performance of their official duties.
- 7.6 Personnel Records. The Town Council shall cause to be kept a full and complete record of all officers and employees hired by the Town, containing the names of such officers and employees, the dates of their employment, any salary or compensation to be by them received, and the date of 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 Cheswold, or by a Justice of the Peace 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 Cheswold 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 established by 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 Kent County Assessments. The Town Council may adopt the assessments of Kent County for any or all property located within the corporate limits of the Town of Cheswold, in lieu of making its own independent assessment and valuation, anything herein to the contrary notwithstanding. In such event, the assessed values established by Kent County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals (under § 8.3) regarding same. If the Town Council elects to adopt the Kent 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 May of each year, make a just, true and impartial annual valuation or assessment of all real estate and improvements located within the Town of Cheswold. 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 Kent 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 Cheswold.
- 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 Cheswold 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 Kent 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 a list of any and all charges, costs, fees, or other assessments owed to the Town, which list of charges shall include, but not be limited to, the following: sinking fund assessments, sidewalk, curb and gutter assessments, sewer or water line assessments, past due weed and grass cutting bills, past due water and/or sewer usage bills, past due trash collection bills and demolition charges. 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, 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 Cheswold 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 the Council shall be final and conclusive, unless an appeal is taken to the Superior Court of the State of Delaware in and for Kent County within ten (10) days from the date of the Town Council's decision.

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

At least one member of 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, and in all events, no later than June 10th in each year, the Town Council shall determine, in its best judgment and knowledge, the total amount necessary to be raised by the Town to meet the fixed and anticipated expenses and obligations of the Town, including reasonable and appropriate reserves, for the then current 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 Capitation Tax. A tax upon each person above the age of eighteen (18) years, whether or not owning real estate within the Town, residing within the limits of the Town, but in no event to exceed ten dollars (\$10.00) per person per tax year.
- 9.2.3 Utility Fixtures. The rate of tax upon all poles, wires, cables, towers, transformers, substations, pipes, pumps, wells, water towers, standpipes, lift stations, treatment facilities, and all appurtenances thereto in the Town belonging to any public utility.
- 9.2.4 License Fees and Taxes. The fees for licenses and/or taxes on businesses to be charged or levied for the carrying on or conducting of any business, profession or occupation in the Town.
- 9.2.5 Municipal Services and Special Assessments. The rates and charges, if any, for the Town's furnishing of water service, sewer service, trash collection; and/or any special assessment for installation of water lines, sewer lines, and the like; and/or
- 9.2.6 Other Services. The fees or rates to be charged in respect to any 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 9.2.4, 9.2.5 and 9.2.6 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 Tax Collector to make collection, when due, of such taxes and charges. The Town Council may obtain a bond for the Town Tax Collector in form suitable to the Town Council with sufficient surety, in favor of the Town of Cheswold, in a sum to be determined by the Town Council, conditioned upon the faithful discharge of the trust imposed in him/her and for the collection of all taxes committed to the Tax Collector, and for the payment by the Tax Collector of the amount of all such taxes, excepting only as far as the Town Council shall make allowances for. The Town Tax Collector 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 Cheswold 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 Cheswold 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 one and one-half percent (1 ½%) 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 Tax Collector. The Tax Collector 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. Until paid, all taxes, (including interest, penalties, costs of collection, and charges listed under §8.2.4) so laid or imposed by the Town of Cheswold shall be and constitute a lien, for a period of ten (10) years from the date so levied, upon the real estate against which such taxes are laid and imposed; provided that if the real estate remains the property of the legal entity(s) who was/were, the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Subject to 25 **Del. Laws**, §2906, as it may from time to time hereafter be amended or in accordance with any future corresponding provision of law, 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 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 Cheswold during the regular business hours of that office. All taxes, when and as collected by the Tax Collector, shall be paid to or deposited to the credit of the Town of Cheswold, in federally insured banking institutions approved by the Town Council.
- 10.5 Penalty for Late Payment; Collection Fee. On all taxes paid on or after September 1st of each year, there shall be added a penalty to be determined by Council for each month or fraction thereof such taxes shall remain unpaid, said penalty to be effective 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 and recover a collection charge reasonably calculated to recover all costs of collection, including court costs, attorneys fees, and other documented out-of-pocket expenses incurred by the Town in effecting such 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 Collection Powers. The Town Tax Collector shall have all of the same powers conferred upon or vested in the Receiver of Taxes and/or County Treasurer for Kent County (or their successor public offices by whatever title known) for the collection of all town taxes, assessments, charges, fees and other municipal liens, together with all penalties, interest, and costs of collection in connection therewith, including by way of example and not in limitation those methods of collection established by 9 **Del. Laws**, c. 87 as it may from time to time hereafter be amended, or any future corresponding provision of law.

## 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 \$5,000.00 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/her as a Council member, provided that he/she 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 any special fund established for that purpose, but if not so paid, shall be paid from the general fund of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under this § 12.1 shall at no time exceed Five Thousand (\$5,000.00) dollars.
- 12.2 Long-Term Borrowings; Voter Approval Required. In addition to other borrowing powers granted to the Town under this Charter or by special act, the Town Council shall have authority to borrow money for any proper public or municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, 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 or Public Purpose. By way of illustration and not in limitation, "any proper municipal or public 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;
  - (B) erecting, extending, enlarging, maintaining, or repairing any plant, building, machinery, or equipment for the production, manufacture, supplying, treatment or distribution of gas, water, electricity, sewage, or drainage system, or any collection, treatment, or disposal of them, and the condemning or purchasing of any lands, easements, and rights-of-ways which may be required therefor;
  - (C) constructing, paving, laying out, widening, extending, repairing and maintaining streets, lanes, alleys and ways, and the paving, constructing, laying out, widening, extending, repairing, and maintaining of curbing, 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 sidewalks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights-of-ways which may be required therefor;
  - (E) paying the costs to the Town of any other municipal or public capital improvement or equipment provided for, 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 certificates 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 certificate or certificates 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 Cheswold, authorized by this Section 12.2, at any one time exceed, in the aggregate, ten per cent (10%) of the assessed valuation of all real property within the corporate limits of the Town of Cheswold 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 or public purpose. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.
  - (B) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 21 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under §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 three (3) 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.
  - (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.
  - (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 three (3) 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.

- (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 Cheswold, 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 opened for a minimum of two (2) hours as specified by resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

- (F) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall make a certificate under their hands of the number of votes cast for and against the proposed borrowing and the number of void votes and shall deliver the same to the Town Council which said certificate shall be retained by the Town Council with the other important 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 certificates of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, and based upon a significant change in the relevant circumstances, act by resolution to abandon the proposed borrowing.

12.2.5 Form of Bonds. The form of the bonds or certificates 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 relevant or appurtenant matter pertaining thereto shall all be determined by the Town Council after said Special Election.

12.2.6 Public or Private Sale. The 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 highest and best bidder(s) therefore after advertisement in a manner to be prescribed by the Town Council for at least fifteen (15) days before offering the same for sale.

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 certificates of indebtedness as the same come due. The Town Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing, to



pay interest and/or principal on said bonds; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of this section; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed a sum equal to five per centum of the total bonded indebtedness plus the interest that will become due and payable 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. The Town Council may also appropriate and set aside for such sinking fund so much of the general funds of said town as it 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.

12.2.8 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Town of Cheswold shall be deemed to be pledged for the due payment of the bonds 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, 60 days. No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section 12.2 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 Cheswold and one of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

- (A) That the Town Council has determined to borrow a certain sum of money and to issue bonds or certificates of indebtedness therefore;
- (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 certificate(s) 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 three (3) 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.

12.2.10 Borrowing in Anticipation of Bond Issue. Whenever the Council shall have authorized the issuance of bonds pursuant to this §12.2, the Council may borrow money in anticipation of the issuance of such bonds so authorized and, for such purpose, may issue, and from time to time renew, negotiable bond anticipation notes of the Town, of an aggregate principal amount not exceeding the principal amount of such bonds authorized by such ordinance. The Council shall authorize such notes by a resolution or resolutions which shall determine the date on which such notes are to be payable, the maximum principal amount thereof and the rate or maximum rate of interest to be borne thereby and the manner of their signing. The Council in such resolution may delegate to the Town Secretary/Treasurer authority to sell the notes thereby authorized, either at public or private sale, and to determine within the limitations prescribed by such resolution the rate of interest to be borne by such notes and the principal amount thereof. Monies raised by the issuance of notes in anticipation of the issuance of bonds shall be used only to finance

the object or purpose for which the proceeds of the bonds may be used and such proceeds shall be applied, to the extent necessary, to pay and retire such notes. Such bonds or notes and the interest thereon shall likewise be secured by the full faith and credit of the Town and shall be exempt from all state, county, or municipal taxes.

**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 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. The Town Council shall have full power and authority to exercise the reasonable judgment of a fiduciary to invest any Town funds not currently required by the Town until such time or times as those monies are required by the Town.

**Section 14. Annual Statement; Annual Audit.**

- 14.1 Annual Statement. The Town Secretary/Treasurer shall, within ninety (90) days after the end of each fiscal year, issue a statement as of the end of that year showing the balance in all funds of the Town, the amounts of the Town's known liabilities, receipts and disbursements for the year, and such other information as is necessary to furnish a true picture of the Town's financial condition. A copy of this statement shall be available to any voter of the Town who requests it.
- 14.2 The Town Council may retain a certified public accountant to be the auditor of accounts of the Town of Cheswold. It shall be the duty of such auditor to audit the accounts of the Town and of all its officers whose duty involves the collection, custody and payment of moneys to or by the Town. 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 Cheswold 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 - Reserved.****Section 16. Police.**

The Town Council may, but shall not be required to, appoint or employ police officers.

- 16.1 Appointment; Removal. The Town Council may, in its sole discretion, appoint a Chief of Police and such subordinate police officers as it deems reasonable and appropriate for the good of the Town. If appointed, the Chief of Police and subordinate members of the police force shall each be appointed by the Town Council for an indefinite term. The Chief of Police may be removed from office at any time in accordance with the provisions of 11 **Del. Laws**, c. 93 ("Police Chief Due Process") and any subordinate police officer may be terminated at any time in accordance with 11 **Del. Laws**, c. 92 ("Law Enforcement Officers Bill of Rights"), as those statutes may from time to time hereafter be amended, or in accordance with any future corresponding provision of law.
- 16.2 No person shall serve as the Chief of Police or as a police officer of the Town unless that person shall have complied with the provisions of 11 **Del. Laws**, c. 84 ("Delaware Police Training Program") as it may from time to time hereafter be amended or any future corresponding provisions of law.
- 16.3 Power and Duties. Each member of the police force shall have all the police powers and authority of a State Peace Officer and shall be conservators of the peace throughout the Town of Cheswold. 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. 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. The police force shall have such other duties as the Town Council shall, from time to time prescribe. 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 Cheswold to any part of the State of Delaware. Operational control of the daily routine of the Police Department shall be the responsibility of the Chief of Police. The authority of the Chief of Police shall be subordinate and answerable to the Town Council.

### **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 and development of all land in the Town. Such regulation may, through ordinance, include:
- (1) Varying procedures for insuring the processing of combining, partitioning, or land subdivision 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, sewage, and other public utilities 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 within or without the lands being subdivided or developed (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, gutters, storm sewers, water lines, sanitary sewer lines, electric distribution lines, street signs, traffic control devices, access roads, playgrounds, parks, and open areas. In imposing such requirements, the Town may consider and take into account future as well as immediate needs, and potential as well as present population factors affecting the neighborhood in question;
  - (5) Procedures for insuring that any improvements to be constructed on such lands are in compliance with all appropriate Town ordinances and that the placement and location of such improvements will not have a significant negative impact on adjoining properties;
  - (6) Procedures for securing financial guarantees from the developers of such lands to insure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years)

beyond the actual completion of such improvements by the developer or acceptance of such improvements by the Town to insure the quality and integrity of such improvements.

- 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 Kent County unless and until such plat, plot, or plan shall have been approved by the Town body so authorized to grant such approvals and the fact of such approvals shall have been endorsed in writing on such plan. Any plat, plot, or plan of land accepted for recording in violation of this section shall, at the option of the Town, be voidable, by the Town's recording of a duly adopted resolution declaring such plat, plot, or plan to be void and stating the reason therefore, in the Kent County Recorder of Deeds Office, indexed under the names of the Town of Cheswold, the name of the property owner, and the name of the developer or subdivision.

### 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 Cheswold may be commenced by resolution of the Town Council.
- 18.3 Resolution Proposing Action; Notice; Hearing. Any such resolution shall contain a description of the proposed action and shall fix a time, date, and place when the Town Council shall sit 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 published in a newspaper having a general circulation in the Town of Cheswold and shall be posted in three (3) 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 in front of, 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. Notice to one joint owner of record shall be sufficient notice to all.
- 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 Secretary/Treasurer of the Town of Cheswold, at the direction of the Town Council upon delivery of a good and sufficient deed conveying a fee simple title unto "The Town of Cheswold"; 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 to Contest. In the event that any affected property owner shall be opposed to the Town Council's decision to proceed with the plan contemplated, or with the compensation proposed to be awarded, the property owner may so notify the Town Council, in writing, within 30 days after receiving written notice of the Town Council's decision. In such event, the Town Council may proceed under 10 Del. Laws, c. 61 or 17 Del. Laws, c. 13 (as those statutes may from time to time hereafter be amended, or in accordance with any future

- corresponding provisions of law), as necessary, to condemn, vacate, abandon, or close such streets or alleys and to pay compensation as provided therein.
- 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, but subject to any controlling provision of 17 **Del. Laws**, c. 13, (as it may from time to time hereafter be amended or in accordance with any future corresponding provision of law) 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 Section § 18, the word 'street' shall be deemed and held to comprehend and include sidewalks, lanes, alleys, roadways, streets, or other public rights-of-way.

### **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 temporary or 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 desirable or necessary in the future for the Town to level, grade, pave or repave, curb or recurb, gutter or regutter, repair, replace, or improve any sidewalk, curb, or gutter, 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 repairing or replacing particular sidewalks, curbs or gutter 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 Cheswold 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, 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 or 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 hereunder.
- 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, no 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. Drainage.

Subject to the provisions of 7 Del. Laws, c. 39, 40, and 41 as those statutes may from time to time hereafter be amended, and subject to any future corresponding provisions of law, the Town shall have: (1) 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, (2) authority 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; (3) 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 22. Water Systems.

Subject to Subchapter V of 7 Del. Laws, c. 60 and subject also to such other state statutes and administrative regulations concerning public health and safety (as they may from time to time hereafter be amended, or in accordance with any future corresponding provision of law). The Town shall have full power and authority to provide an ample supply of potable water for the Town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, re-new, replace and control wells, reservoirs, pumping machines and stations, tanks, 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 individual(s).

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 deems 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 public places of the Town for the purpose of furnishing water to the Town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same, or any, or all of them, through, over, across or under said streets, squares, alleys, lanes and public places 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.

### **Section 23. Referendum.**

23.1 Referendum Power. The qualified voters of the Town of Cheswold shall have the power to require reconsideration by the Town Council of any adopted ordinance and to approve or reject it at an election as provided herein; provided however that such power of referendum shall not extend to the budget, to any capital improvement expenditure, to any emergency ordinance, to any ordinance relating to the appropriation of money, to any ordinance relating to the levy of taxes, to any ordinance authorizing the borrowing of money under §12.2 ("Long-term Borrowing"), or to any ordinance annexing lands into the Town.

23.2 'Qualified Voters': Persons Entitled to Vote In Referendum. At any referendum election conducted under this section, a 'qualified voter' shall mean any person who would be entitled to vote in the annual town election if it were held on that day. Each qualified voter shall be entitled to one vote.

23.3 Referendum Petition. In order to initiate a referendum under this section, a referendum petition, signed by those persons who are qualified voters (as defined above) at the time such petition is presented to the Town Council (as hereinafter provided) equal in number to 15% of the 'qualified voters' of the Town, with the local address of the person so signing, shall be presented to the Town Council. Each copy of such petition shall contain and have attached thereto throughout its circulation the full text of the ordinance subject to be reconsidered.

Each copy of the petition shall have attached to it, when filed, an affidavit executed by the signer thereof stating that he/she personally circulated the petition, the number of signatures thereon, that all signatures were affixed in his presence, that he/she believes them to be the genuine signatures of the persons whose names they purport to be, that each person who signed it is qualified to sign the petition and that each signer had an opportunity, before signing, to read the full text of the ordinance sought to be reconsidered.

23.4 Determination of Sufficiency of Petition.

23.4.1 Determination by Council. The Town Council may examine, or direct the Secretary/Treasurer 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.

- 23.4.2 Appeal of Council Decision. Any person or person, jointly 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
- 23.4.3 Reconsideration of Ordinance Upon Receipt of Petition. Upon determination that a 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.
- 23.4.4 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 twelve (12) months from the effective date of repeal.
  - (b) (1) Notice of the time, date, and place of holding the said Special Election shall be published in a newspaper of general circulation in the Town, and posted in three (3) public places in the Town, not less than 21 days, nor more than 60 days, prior to the date set for the Special Election. The published notices shall be in bold print or bordered in black so as to call attention thereto. 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.  
(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 two (2) 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.
  - (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 other important papers of the Town of Cheswold.
  - (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 against 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 of Cheswold for a period of twelve (12) months from the date of the referendum.

23.4.5 Non-binding Referendum. Notwithstanding any other provision of this section (§23) 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 'nonbinding'. The results of any 'non-binding' referendum election conducted under this § 23.4.5 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 nonbinding referendum election.

#### **Section 24. Actions or Suits.**

No action, suit, or proceeding shall be brought or maintained against the Town of Cheswold, its officers (including the members of any board, committee, commission, or agency), employees, or agents, whether now, hereafter, or previously serving as such, and no judgement, damages, penalties, costs, or other money entitlement shall be awarded or assessed against the Town, its officers, (including the members of any board, commission, committee or agency) employees or agents, whether now, hereafter or previously serving as such, in any civil suit or proceeding at law or in equity, 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, slander or alleging a violation of "civil rights"), 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 Cheswold 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 Cheswold by certified mail with return receipt requested and postage prepaid.

#### **Section 25. 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 Cheswold. 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 Cheswold 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 26. Survival of Powers and Validating Section.**

- 26.1 All powers conferred upon or vested in the Town Council of Cheswold 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 Cheswold and/or the Town Council of Cheswold precisely as if each of said powers was expressly set forth in this Charter.
- 26.2 All ordinances adopted by the Town Council of Cheswold 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 Cheswold under the provisions of this Charter.
- 26.3 All of the acts and doings of the Town Council of Cheswold 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 Cheswold under any provision of any prior Charter of the Town of Cheswold, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.
- 26.4 All taxes, assessments, license fees, penalties, fines, forfeitures, and other charges due to the Town of Cheswold shall be and remain due to the Town of Cheswold and all debts due from the Town of Cheswold shall remain unimpaired until paid by the Town of Cheswold.
- 26.5 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 Cheswold.
- 26.6 The bonds given by or on account of any official of the Town of Cheswold shall not be impaired or affected by the provisions of this Charter.
- 26.7 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.
- 26.8 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 27. Separability.**

If any provision, section, sub-section, 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 28. Public Act.**

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

**Section 29. Effective Date.**

This Charter shall take effect as of July 1, 1998.”

(71 Del. Laws, c. 432, 7/13/98; 75 Del. Laws, c. 7, 2/9/05)