

**Elsmere****Article I: Incorporation****Section 101. Incorporation**

The municipal corporation of the State of Delaware now known as the 'The Town of Elsmere' and the inhabitants thereof within the corporate limits as defined in Article I, Section 102 of this Charter or subsequently altered by annexation procedures shall, under the name of 'The Town of Elsmere', continue to be a municipal body politic in perpetuity.

**Section 102. Boundaries**

The boundaries of the Town of Elsmere shall continue as heretofore existing under the Charter of 'The Town of Elsmere' immediately prior to the enactment of this Charter.

The Council of the Town of Elsmere may at any time hereafter cause a survey and plot to be made of said Town and said plot, when made and approved by the Council, shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, and the same or the record thereof, or a duly certified copy of the said record shall be in evidence in all courts of law and equity in this State.

**Section 103. Annexation**

If and when a majority of the property owners in territory contiguous to the Town of Elsmere shall sign a petition seeking to have the areas in which said property owners reside annexed to the Town of Elsmere and submit the petition together with a survey of the areas proposed for annexation to the Council of the Town of Elsmere, said Council shall submit the question of annexation to the voters of the Town of Elsmere. If a majority of said voters, at a special election held for that purpose, shall vote in favor of the proposed annexation, then said area as shown on said survey, shall become and be a part of the Town of Elsmere. The annexed area shall become and be a part of the district to which said area is contiguous. If the annexed area is contiguous to more than one district, the annexed area shall become part of the district with which it has the longest common boundary.

**Section 104. Districts**

The Town of Elsmere shall be divided into six districts as follows:

- (1) BEGINNING at a point of Intersection of the center line of New Road with the center line of DuPont Road; thence easterly along the center line of DuPont Road to its intersection with Little Mill Creek and the southerly boundary line of the Town of Elsmere; thence along the southerly, easterly and northerly boundary lines of the Town of Elsmere to its intersection with the center line of Gray Avenue to its intersection with the center line of Pardee Avenue; thence northwesterly along the center line of Pardee Avenue to its intersection with the center line of Cleveland Avenue; thence southwesterly along the center line of Cleveland Avenue to its intersection with the center line of DuPont Road; thence southwesterly along the center line of DuPont Road to its intersection with New Road and the point and place of BEGINNING.
- (2) BEGINNING at the point of intersection of the center line of New Road with the center line of DuPont Road; thence southeasterly along the center line of DuPont Road to its intersection with Little Mill Creek; thence southwesterly along Little Mill Creek and the southerly boundary line of the Town of Elsmere to its intersection with the extension of the center line of Belmont Avenue; thence northerly along the center line of Belmont Avenue to its Intersection with the center line of Maple Avenue West; thence northeasterly along the center line of Maple Avenue West to its intersection with the extension of Birch Avenue; thence northwesterly along the center line of Birch Avenue and its extensions to its intersection with the center of New Road; thence northeasterly along the center line of New Road to its intersection with the center line of DuPont Road and the point and place of BEGINNING.
- (3) BEGINNING at the point of intersection of the center line of New Road with the extension of the center line of Birch Avenue; thence southeasterly along the center line of Birch Avenue and its extensions to its intersection with the center line of Maple Avenue West; thence southwesterly along the center line of Maple Avenue West to its intersection with the center line of Belmont Avenue; thence southerly along the center line of Belmont and its extension to its intersection with Little Mill Creek; thence northwesterly along Little Mill Creek; thence southwesterly and northwesterly along Little Mill Creek; thence southwesterly and northwesterly along Little Mill Creek and the southwesterly boundary line of the Town of Elsmere to its intersection with the center line of Chestnut Run (West Branch) to its intersection with the center line of Maple Avenue to its intersection with the

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## CHARTER OF ELSMERE

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center line of Sycamore Avenue, approximately 320 feet to its intersection with the center feet the Right of Way of the Baltimore and Ohio Railroad; thence northeasterly along the center line of the Right of Way of the Baltimore and Ohio Railroad to its intersection with the extension of the center line of Bungalow Avenue; thence northeasterly along the center line of Bungalow Avenue and extension to the intersection with the center line of Sycamore Avenue; thence northeasterly along the center line of Sycamore Avenue to its intersection with Tamarack Avenue thence northwesterly along the center line of Robert Kirkwood Highway; thence northeasterly along the center line of Robert Kirkwood Highway and the center line of New Road to its intersection with the extension of the center line of Birch Avenue and the point and place of BEGINNING.

- (4) BEGINNING at the point of intersection of the center line of Robert Kirkwood Highway and the center line of Tamarack Avenue extended; thence southeasterly along the center line of Tamarack Avenue to its intersection with the center line of Sycamore Avenue; thence southwesterly along the center line of Sycamore Avenue to its intersection with the center line of Bungalow Avenue; thence southeasterly along the center line of Bungalow Avenue and its extension to its intersection with the center line of the Right of Way of the Baltimore and Ohio Railroad; thence southwesterly along the center line of the Right of Way of the Baltimore and Ohio Railroad to its intersection with Little Mill Creek; thence northwesterly along Little Mill Creek and the southwesterly boundary line of the Town of Elsmere to its intersection with the center line of Chestnut Run (West Branch); thence northeasterly along the center line of Chestnut Run (West Branch) to its intersection with the center line of Maple Avenue to its intersection with the center line of Sycamore Avenue, approximately 320 feet to its intersection with the center line of an alley; thence northeasterly along the said alley to its intersection with the center line of Cypress Avenue; thence northeasterly along the center line of Cypress Avenue; thence northeasterly along the center line of Cypress Avenue approximately 40 feet to its intersection with the extension of the center line of Beech Avenue and its extension to its intersection with the center line of Robert Kirkwood Highway to its intersection with the extension of the extension of the center line of Tamarack Avenue and the point and place of BEGINNING.
- (5) BEGINNING at the point of intersection of the center line of Robert Kirkwood Highway with the center line of Beech Avenue Extended; thence southwesterly along the center line of Beech Avenue and its extension to its intersection with the center line of Cypress Avenue; thence southwesterly along the center line of Cypress Avenue approximately 40 feet to its intersection with the center line of an alley; thence southwesterly along the center line of the alley to its intersection with the center line of Sycamore Avenue; thence southwesterly along the center line of Sycamore Avenue to its intersection with Maple Avenue; thence northwesterly along the center line of Chestnut Run (West Branch) and the northwesterly boundary line of the Town of Elsmere; thence northeasterly along the northerly to boundary line of the Town of Elsmere by its various courses to a point opposite the point of intersection of Olga Road and Sanders Road; thence leaving said boundary line southeasterly to the point of intersection of Olga Road and Sanders Road; thence southerly along the center line of Sanders Road to its intersection with the center line of Robert Kirkwood Highway; thence southwesterly along the center line of Kirkwood Highway; to a point of intersection with the center line of Beech Avenue Extended and the point and place of BEGINNING.
- (6) BEGINNING at the point of intersection of the center line of New Road and the center line of DuPont Road; thence southwesterly along the center line of New Road to its intersection with the center line of Sanders Road; thence northerly along the center line of Sanders Road to its intersection with Olga Road; thence northwesterly to a corner in the northerly boundary line of the Town of Elsmere; thence northeasterly along the northerly boundary line of the Town of Elsmere by its various courses and crossing the Philadelphia and Reading Railroad and DuPont Road to its intersection with the center line of Gray Avenue; thence southwesterly along the center line of Gray Avenue to its intersection with the center line of Pardee Avenue; thence northwesterly along the center line of Pardee Avenue to its intersection with the center line of Cleveland Avenue; thence southwesterly along the center line of Cleveland Avenue to its intersection with the center line of DuPont Road; thence southerly along the center line of DuPont Road to its intersection with the center of New Road and the point and place of BEGINNING.

### Article II. Powers Of The Town

#### Section 201. Powers of the Town

The Town of Elsmere shall have all the powers granted to municipal corporations by the Constitution and general laws of the State of Delaware, together with all the implied powers expressly granted. The Town of Elsmere shall continue to enjoy all powers which have been granted to it by special Acts of the General Assembly of the State of Delaware, except

insofar as they may be repealed by the enactment of this Charter. The Town of Elsmere as a body politic and corporate shall succeed to, own or possess all property, whether real, personal or mixed, and all rights, privileges, franchises, powers and immunities now belonging to, possessed by or enjoyed by the former corporation, known as 'The Commissioners of Elsmere', without the necessity of any deeds or instruments of conveyance or transfer.

The Town of Elsmere may have and use a corporate seal, may sue and be sued, may acquire property within or without its corporate limits by purchase, gift, devise or lease for the purpose of providing sites for public buildings, parks, sewer systems, sewage treatment plants, gas, telephone or electric systems, water systems, water plants or other municipal purposes; and may sell, lease, mortgage, hold, manage and control such property or utility as its interests may require; and, except as prohibited by the Constitution or laws of the State of Delaware or restricted by this Charter, the Town of Elsmere shall and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

In the event it is necessary to mortgage any property now acquired or hereinafter acquired by the Town of Elsmere, the Town is given the power to give a bond and warrant secured by a mortgage to any proposed mortgagee in an amount not exceeding Two Million Five Hundred Thousand Dollars (\$2,500,000) and for a term not exceeding twenty (20) years, without regard to the provisions of Article IV, Section 406 of this Charter. 75 Del. Laws, c. 187

The enumeration of particular powers in this Charter shall not be held or deemed to be exclusive; rather, in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, it is intended that the Town of Elsmere shall have and may exercise all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate. All the 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 a manner provided by ordinance or resolution of the Council.

### **Article III. Structure Of Government**

#### **Section 301. Composition of Government**

The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in a Mayor and a Town Council. The Mayor shall be elected at large by the qualified voters of the Town. One member of the Town Council shall be elected by the qualified voters of each district.

The next regular municipal election of Mayor and Council after 1997 shall be held on the last Saturday in April of 1999, and regular municipal elections of Mayor and Council shall be held on the last Saturday in April every two years thereafter. 71 Del. Laws, c. 126

#### **Section 301.1 The Mayor**

The Mayor shall have been a resident of the Town for three years, and not less than 30 years of age at the time of his election. He or she shall be elected at large for a term of two years or until his or her successor shall be duly elected and qualified, but the present Mayor shall serve until the qualification of his or her successor after the election of April, 1999. Before entering the duties of his office, the Mayor shall be sworn or affirmed by a Justice of the Peace, or by a notary public, to perform the duties thereof honestly, faithfully, and diligently. 71 Del. Laws, c. 126

The conviction of the Mayor of any felony or of any misdemeanor relating to the conduct of his office shall result in an automatic forfeiture of his office, which shall thereupon be vacant.

#### **Section 301.2 The Treasurer**

The Treasurer shall be appointed by the Mayor and confirmed by the Town Council. The Treasurer shall have been a resident of the Town for at least one year prior to his or her appointment.

The Treasurer may be removed from office any time five members of the sitting Council vote in favor of removal. 71 Del. Laws, c. 328; 75 Del. Laws, c. 187;

The Treasurer shall not pay out any money except upon check or warrant countersigned by the Mayor and authorized by the Council. In case of the temporary absence or inability to act of the Treasurer, the President Pro Tempore shall be empowered to countersign checks. The Treasurer shall attend all meetings of the Council.

In the event that the office of Treasurer becomes vacant for any cause, the vacancy shall be filled for the unexpired term by appointment by the Mayor subject to confirmation by a majority of Council.

#### **Section 302. Qualifications of Mayor and Council**

- A. Any qualified voter of the Town of Elsmere who has attained the age of twenty-one years, in the case of Councilperson, and thirty years, in the case of Mayor, and who has not been convicted of a felony shall be eligible for the office of Mayor or Councilperson; provided that any person elected to Council must at the time of his or her election reside in the district from which elected.
- B. Loss of residence in the Town or in the district from which elected, or a conviction of a felony or failure to attend three consecutive regular meetings of Council without being excused by the Council, during the tenure of office shall create a vacancy.
- C. In case of a vacancy for any cause, a special election, conducted in the same manner as a regular election, except that the nominating petitions shall not be filed later than 20 days before the date of the special election, shall be held within 60 days after the occurrence of the vacancy, as may be proclaimed by the Council; provided, however, that if the vacancy occurs within 365 days of a regular election, the vacancy shall be filled by appointment by the Mayor subject to confirmation by a majority of the Council. 75 Del. Laws, c. 187

### **Section 303. Compensation**

The Council shall determine the annual salary of the Mayor, Councilman and Treasurer by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of members of the Council elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. Members of the Council shall receive reimbursement for actual and necessary expenses incurred in traveling when on official business. The salary of the Mayor may exceed that of Councilmen.

### **Section 304. Meetings of Council**

The Council of the Town of Elsmere shall take office on the Monday following the regular municipal election, shall hold an organizational meeting in the evening of the next Thursday at which the President Pro Tempore shall be elected by the Council from among the members of the Council, and shall meet regularly at least once a month thereafter. Special meetings may be called by the Mayor and shall be called upon the written request of any three members of the Council. At least two days' written notice of special meetings shall be given to each Councilman, provided that if all the Councilmen shall sign a waiver of notice of a particular special meeting, then the notice aforesaid shall not be a prerequisite to the validity of such special meeting. All meetings of the Council shall be open to the public.

### **Section 305. Mayor's Relationship to Council**

The Mayor shall be the executive of the Town. He shall preside at meetings of the Council, and shall have a vote on all issues before the Council. He shall execute on behalf of the Town, when authorized by Council, all agreements, contracts, bonds, deeds, leases, and other documents necessary to be executed. Unless otherwise provided by ordinance or resolution, the Mayor shall appoint all committees. He shall countersign all orders, checks or warrants authorized by Council and drawn on the Treasurer for payment of money, and shall have all and every power conferred and perform all duties imposed upon him by this Charter and the ordinances of the Town.

In case of the temporary absence or inability to act of the Mayor, the President Pro Tempore, when lawfully acting as Mayor shall have all the powers conferred upon the Mayor by this Charter.

In the event that the Mayor becomes disqualified from holding office by reason of resignation, death, removal from the Town, conviction of a felony, or malfeasance in office, the President Pro Tempore shall succeed to the office of the Mayor for the balance of the unexpired term. The succession of the President Pro Tempore to the office of Mayor shall create a vacancy in the Council. 71 Del. Laws, c. 328

### **Section 306. Judge of the Qualifications of Members**

The Council shall be the judge of the election and qualification of its members and for such purpose shall have power to subpoena witnesses and require the production of records, and, in the event that special proceedings may be necessary to determine or establish such qualifications, shall keep a record of such proceedings, which record shall be subject to review by the Superior Court of the State of Delaware in and for New Castle County.

### **Section 307. Rules of the Procedure; Record**

The Council shall determine its own rules of procedure and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection. Elections for officers shall be by a majority vote of the members elected to the Council and the results shall be entered on the record of Council.

**Section 308. Quorum and Majority Requirement**

A majority of the members elected to the Council shall constitute a quorum to do business but a smaller number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. No ordinance shall be valid unless it shall have the affirmative vote of the majority of the members elected to the Council. Resolutions, orders and motions shall be valid upon the affirmative vote of a majority of members of the Council present. No member shall be excused from voting on ordinances, resolutions, orders or motions, except when such a vote will constitute a conflict of interest.

**Section 309. Organization Changes by Council; Vacancies**

The enumeration of certain officials in the Charter to be appointed by the Council is not to be construed as a limitation on the power of the Council to create such new positions or offices as may be deemed essential to accomplish the objectives of the Town's government or to provide for the selection of suitable persons to fill any positions or offices.

All vacancies in appointive offices shall be filled by the Mayor, with confirmation by the consent of the majority of the whole Council, for the unexpired term.

**Article IV. Powers Of The Council****Section 401. General Powers**

The Council shall constitute the legislative body of the Town of Elsmere. It shall have power to adopt ordinances relating to the health of the population of the Town, or to prevent the introduction or spread of communicable diseases or nuisances affecting the Town. The Council may also pass ordinances, to ascertain and fix boundaries of streets, squares, lanes and alleys, or repair and amend the same and provide for the paving thereof, to alter, extend or widen any street, square, lane or alley, and to open and lay out new ones subject to provisions in that behalf hereinafter contained; to regulate the ascent and descent of all streets, lanes and alleys, and to fix the building lines on the same; to direct the paving of footways and to prescribe the width thereof; to direct the laying out of gutters and prescribe the depth thereof; to prescribe the extent of porches, cellar doors and other inlets to yards and buildings; to provide police and lighting of streets at the expense of the Town, and generally to prescribe and regulate the streets, lanes and alleys of the Town and to have and exercise control of the same, subject to the provisions in that behalf hereinafter contained; to provide for the regulation of auctions and auctioneers and public amusements; to provide for the safety of the citizens and for that purpose to prescribe the heights and thickness of walls of buildings and the mode of erecting same in said Town, and to prescribe rules and regulations directed toward the prevention of fires and explosions, and make provisions for the enforcement of said regulations; to adopt municipal zoning regulations; to adopt traffic regulations, to regulate itinerant peddlers and canvassers within the Town; to regulate the sale of goods, wares and merchandise on the streets and sidewalks within the Town and fix the license fee thereof and to license the conduct license fee which shall be reasonable in amount; to regulate signs and bill boards and to provide for permits for the erection and maintenance thereof; and to provide for the measuring or weighing of coal, lime, grain or other matter sold in said Town. They shall have the power to lay and collect fines on the owners of any horse, cow, dog or animal which may be found at large in any of the streets, squares, lanes, alleys, aforesaid, and in general to have power to do all those matters and things for the well-being of the Town and the inhabitants thereof, which shall not be in the contravention of any existing laws of this State or the Constitution thereof. Except as hereinafter provided, the Council shall not have the power to exempt any individual from the operation of any general ordinance or municipal regulation.

The Council shall have all other powers requisite to and appropriate for the government of the Town of Elsmere, its peace and order, its sanitation and beauty, and for the health, safety, convenience, comfort and well-being of its population, and for the protection and preservation of public and private property.

**Section 401.1. Authorization to Act on Behalf of the Town.**

Whenever the Council determines it to be in the best interest of the town, the Council may in the form of a resolution, authorize any elected or appointed official or any employee, to execute on behalf of the town, any or all, agreements, contracts, bonds, deeds, checks, leases and other documents necessary to be executed. 75 Del. Laws, c. 187

**Section 402. Ordinance Procedure**

**Section 402.1 When Required.**

In addition to such acts of the Council as are required by this Charter or by other State Law to be by ordinance, every act of the Council establishing a fine or other penalty shall be by ordinance. No ordinance shall be introduced until it has attached a 'Fiscal Impact Statement' which shall be prepared by the Town Manager in consultation with the Finance Department. Additionally, the Mayor and Council shall determine on a case by case basis the need for the Town Solicitor to review and comment on an ordinance prior to its introduction. Additionally, the enacting clause shall be "BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS": 75 Del. Laws, c. 187

**Section 402.2 Enacting Procedures.**

Every ordinance shall be introduced in writing. No ordinance shall be passed unless it shall have the affirmative vote of a majority of the members elected to the Council and shall have been considered at two regular stated meetings. Vote on any ordinance shall be by voice vote and shall be entered on the record of the Council. Should, however, a vacancy exist on the Council the majority vote required for passage shall be a majority of the members of Council seated and not the majority of members elected to the Council. 75 Del. Laws, c. 187

**Section 403. Power to Raise Revenue**

The Council shall have the power to levy and collect taxes on real property within the limits of the Town, except that which is not assessable and taxable by virtue of any law of the State of Delaware;. The Council shall have the right to grant and refuse, and to charge fees for, licenses or permits for traveling shows and other businesses of any description within the limits of the Town. The Council shall also have the power to collect franchise fees and to impose sewer rental on sanitary sewers. (The Council must have at least five votes to increase existing taxes, or to impose new taxes).

The Council may, in its discretion, exempt from Town taxation any manufacturing plant hereafter established within the Town of Elsmere or brought within the boundaries of the Town by virtue of any annexation for a period of ten years from the time said plant is established or brought within the boundaries of the Town of Elsmere.

The Council may, by ordinance, exempt from Town taxation any and all persons over the age of sixty-five (65) years or who are disabled subject to limitations on income as by such ordinance will be provided.

The Council shall have the power by ordinance to allow for discounts for early payment of taxes, to impose reasonable penalties, interest and forfeitures for tax delinquencies, and to review and determine proper and appropriate properties to be exempt from taxation.

The Council shall have the power to fix the rates for general utility services operated by the Town and to collect and utilize revenues from such utility services for the benefit of the Town. 75 Del. Laws, c. 187

**Section 404. The Town May Engage in Business**

Except as prohibited by the Constitution of the State of Delaware or by this Charter, the Town of Elsmere shall have the right to engage in any business or enterprise in which a person, firm or corporation may engage, and shall have the right to purchase, own and maintain, within or without the corporate limits of such Town, all real estate for municipal purposes for sites and rights-of-way for public buildings, parks, sewer systems, sewerage treatment plants, water systems, water plants, gas, electric or telephone systems, or other municipal purposes, for the location, erection and maintenance thereon of public facilities for the uses aforesaid.

In any case where the Council may deem it to be in the best interests of the people of the Town of Elsmere to acquire properties of any privately owned sewer system, sewerage treatment plant, water system, water plants, gas, electric or telephone systems used for municipal purposes within the present or future boundaries of the Town, the question shall be submitted to a vote of the residents of the Town of Elsmere. Council may at that time, call a special election for such purposes upon thirty (30) days notice. In acquiring said utility property, the Town of Elsmere shall in all respects adhere to the general laws of the State of Delaware insofar as they relate to the purchase of utility properties heretofore described by municipalities. The Town Council shall be authorized to negotiate the aforementioned purchase only upon the approval of a two-thirds majority of the voters of the Town of Elsmere.

**Section 405. Borrowing For Current Expenses**

Whenever the needs of the Town shall require more money than is, at the time, in the Town Treasury from current receipts, the Council shall be authorized and empowered to anticipate current revenue by borrowing such amounts as are needed to cover short term cash needs and in an amount not to exceed the anticipated revenue for the current fiscal year.

To exercise the power aforesaid, the Council shall adopt a resolution to that effect. The indebtedness created under this provision shall be evidenced by notes of the Town, and the faith and credit of the Town shall be deemed to be pledged thereof. 80 Del. Laws, c. 430, § 1; 81 Del. Laws, c. 7

#### **Section 406. Power to Incur Bonded Indebtedness**

##### **Section 406.1 Power to Borrow Money.**

The Town of Elsmere may incur indebtedness by issuing either general obligation bonds, notes or certificates of indebtedness secured by the full faith and credit of the Town of Elsmere, or revenue bonds, either in whole or in part of the total amount not to exceed Twenty Million Dollars in order to provide funds for the erection, extension, enlargement or repair of any plant, machinery, appliances or equipment; for the furnishing of water to the public, for the construction, repair, or improvement of highways, streets or lanes, or the paving, curbing or erection of gutters along the same; for the construction or repair of sewers or sewage disposal equipment; or to defray the cost of the share of the Town of Elsmere in the cost of any permanent municipal improvement. 75 Del. Laws, c. 187; 80 Del. Laws, c. 430, § 2

##### **Section 406.2 Method of Borrowing Money.**

Before the Town of Elsmere may incur indebtedness by the issuance of bonds, notes or other certificates of indebtedness as aforesaid, the borrowing of money shall have been authorized by Council and shall have been approved in the following manner:

- (1) The Council shall by resolution propose to the residents of the Town of Elsmere the purpose or purposes for which the stated amount of money shall be borrowed. The resolution shall state the amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan, including data on total related debt; shall fix a time and place for hearing on the resolution; and shall provide for publication of an announcement of the hearing in a newspaper of general circulation in New Castle County at least one week prior to the hearing date.
- (2) A public hearing shall be held at which time all interested persons wishing to be heard shall be given an opportunity to express their views. Their testimony shall be considered in evidence by the Council.
- (3) The form of the bonds, notes and certificates of indebtedness, the date of payment of interest, the classes, the dates of maturity, and the provisions pertaining to the registration shall be determined by the Council. The Council shall provide in its budget for revenues sufficient to pay the interest and principal on said bonds, notes or certificates of indebtedness at the maturity or maturities therefor. The faith and credit of the Town of Elsmere shall be deemed pledged for the due payment of the principal and interest of general obligation bonds, notes or certificates of indebtedness. 80 Del. Laws, c. 430, § 3

#### **Section 407. Acquisition of Property**

The Town of Elsmere is hereby authorized and empowered whenever it shall deem necessary and expedient for any municipal purpose to obtain and acquire property either within the boundaries of said Town or outside said boundaries and to obtain legal title to said property by appropriate conveyances.

#### **Section 408. Power of the Town of Elsmere over Streets**

The Council shall have the power and authority to lay out, locate and open new streets, to widen or to alter existing streets or parts thereof, and to vacate and abandon streets or parts thereof whenever they shall deem it for the best interests of the Town; provided, however, that this power shall not be exercised with respect to property owned by the State of Delaware or any agency thereof without the approval of the State or State agency. In the event that condemnation of private property may be necessary in connection with the aforementioned powers of the Town with respect to streets, the manner and procedure thereof shall be as set forth in Title 10, Chapter 61, of the Delaware Code of 1953, as amended.

#### **Section 409. Sewer and Water Main Improvements**

The Council shall have the entire jurisdiction and control within the limits of said Town of the drainage thereof, and the right to alter and change the course and direction of any of the natural water courses, runs or rivulets within the limits of said Town, and may pass ordinances for the construction of water mains and the opening of gutters, drains and sewers within the limits of said Town, and may pass ordinances for the construction of water mains and the opening of gutters, drains and sewers within the limits thereof, and the regulating and maintaining, cleansing, and keeping the same, and the

natural water courses, runs and rivulets within said limits of open, clean and unobstructed, and for that purpose may authorize the entry upon private lands and take, condemn and occupy the same in the same way and under the same rules and procedure as hereinbefore provided in the case of streets, etc., and by general regulations prescribe the mode in which they shall be altered, changed, opened, maintained, cleansed, and keep open and unobstructed, and shall bear the expenses thereof, and may in its discretion assess the costs of sanitary sewers upon the property particularly benefited thereby, including such real estate as would be otherwise exempt from municipal assessment and taxation by virtue of any law of the State of Delaware, anything to the contrary herein notwithstanding, and prescribe the mode of collection thereof; provided, however, that nothing herein contained shall be construed to authorize the taking of private property for public use without just compensation.

Whenever the Council of the Town of Elsmere shall determine, either on petition by a majority in numbers or in interest of the property holders abutting a proposed sanitary sewer construction, improvement, alteration, or repair, or on its own initiative, that such construction, improvement, alteration, or repair of sanitary sewers is required, it shall order the Town Engineer to proceed in accordance with law to undertake work and surveys necessary to make a report estimating the cost thereof and apportioning assessments therefor. The Council shall then proceed as hereinbefore described for street improvements. The Council may perform such construction, improvement, alteration or repair by contract or municipal agency, provided that assessment for the construction, improvement, alteration, repair and operation of sanitary sewers shall be upon the property abutting upon that portion of the street in which any sanitary sewer may be constructed under the provisions of this Charter, including such real estate as would be otherwise exempt from county and municipal assessment and taxation by virtue of any law of the State of Delaware, anything to the contrary herein notwithstanding, and shall be based upon the lineal foot of such property abutting on such street, each such lineal foot or such assessed alike. In the case of property situated at the corner of two such streets or otherwise so situated as to be assessed for the cost of building a sanitary sewer in one of such streets, only the front of such property shall be liable for such assessments. The Council on individual appeals, according to rules established by them, shall in all cases decide what portion of the corner property shall be considered frontage and what portion side frontage. Provided that in all corner properties the side frontage, shall not exceed one hundred and twenty-five (125) feet, and the side frontage thus determined shall be exempt from payment of any sanitary sewer assessment unless the owner thereof should, after the side frontage is fixed as aforesaid, decide to make such side frontage the front of said property, in which case the owner shall pay such additional assessment as the Council may determine. No property shall be assessed for the cost of constructing the sanitary sewer and connecting the same with the disposal plant, unless such property shall abut and be bounded by that portion of the street in which a sanitary sewer has been built, or unless such property has the right of access to such street, or desires to use such sanitary sewer, and the sanitary sewer is constructed upon the street upon which the property abuts, in either of which cases such property shall be liable for the same assessment as though a sanitary sewer was constructed in the portion of the street on which such property abuts and the property shall not be liable for any further assessment for sanitary sewer purposes. Where any such assessments shall be made upon any land for the cost of constructing a sanitary sewer and connecting it with a disposal plant, the Council shall have the right to compel the owner to connect any building or structure erected as may be prescribed by the Council from time to time. The word streets shall be deemed and held to comprehend and include highways, lanes and alleys.

#### **Section 410. Sidewalks**

Whenever the Town of Elsmere shall have determined that any paving of the sidewalks, or any or either or all of them shall be done, it shall notify the owner or owners of land in front of whose premises that the same is to be done, particularly designating the nature and character thereof, and thereupon it shall be the duty of said owner or owners to cause paving to be done in conformity with said notice, in the event of any owner neglecting to comply with said notice for the space of thirty days, the Council may proceed to have the same done, and when done, the Treasurer of the Town of Elsmere shall, as soon as convenient thereafter, present to the said owner or owners of such lands a bill showing the expense of paving. If such owner or owners be not a resident in the Town of Elsmere, such bill may be presented to the occupier or tenant of said land, or if there be no occupier or tenant resident in the Town of Elsmere, such bill may be sent by mail to such owner or owners directed to him or them at the post office nearest his or their residence. If such bill be not paid by the owner or owners of such lands within thirty days after the presentation, then it shall be the duty of the Council to issue an order in the name of 'Town of Elsmere' under the hand of the Mayor and the seal of said corporation directed to the Treasurer of the Town of Elsmere commanding him to proceed to collect said delinquent assessment as levied in accordance with the authority granted under Article V. Section 501.2, 'Collection of Taxes' of this Act. The claim for paving shall be a lien on the premises in front of which said work was done except such real estate as is exempt from county and municipal assessment and taxation by virtue of any law of the State of Delaware, and shall have the same priority and be collectable in the same manner as municipal property taxes. If any new paving is ordered by the Council as aforesaid in front of lot or lots held or owned by a widow or widows as and for her or their dower, such expense incurred as aforesaid shall be paid by the owner



or owners of the reversion in fee simple. All subsequent repairs named in this Act are to be kept up at the expense of such tenant in dower. Any notice required by this section to one co-owner shall be notice to all; and, in case no owner shall reside in the Town, notice may be served upon the occupier or tenant of said premises resident in the Town, and if there be no such occupier or tenant, it shall be sufficient to send said notice by mail to any owner of said premises directed to him or her at the post office nearest his or her residence. The provisions hereinbefore contained in this section shall apply to any order made by the Council in respect to any such paving heretofore done, which the Council may deem insufficient or to need repairing. The Council, in addition to the provisions of this section hereinbefore, shall have power and authority to enforce by ordinance all the requirements of this section by Imposing such fines and penalties as shall be in the judgement of the Council deemed necessary and proper.

#### **Section 411. Paving of Unpaved Streets**

Upon written permission of eighty per cent of the property owners on an unpaved or unopened street the Council may order the paving or opening of that street. One third of the cost shall be paid by the Town, and the remaining two-thirds of the cost shall be paid by the property owners on the street to be opened or paved, except such real estate as is exempt from county and municipal assessment and taxation by virtue of any law of the State of Delaware. When the paving is complete, the Treasurer of the Town of Elsmere shall, as soon as convenient thereafter present to the said owner or owners of such lands a bill showing the expense of paving. If such owner or owners be not a resident in the Town of Elsmere, such bill may be presented to the occupier or tenant of such land, or, if there be no occupier or resident in the Town of Elsmere, such bill may be sent by mail to such owners or owners directed to him or them at the post office nearest his or their residence. If such bill be not paid by the owner or owners of such lands within thirty days after the presentation, then it shall be the duty of the Council to issue an order in the name of 'Town of Elsmere' under the hand of the Mayor and the seal of the said corporation, directed to the Treasurer of the Town of Elsmere commanding him to proceed In accordance with the authority granted under Article V, Section 501.2, 'Collection of Taxes' of this Act. The claim for Paving shall be a lien on the premises in front of which the said work was done, except such real estate as is exempt from county and municipal assessment and taxation by virtue of any law of the State of Delaware, and shall have the same priority and be collectable in the same manner as municipal property taxes. If any new paving is ordered by the Council as aforesaid in front of lot or lots held or owned by a widow or widows as and for her or their dower, such expense incurred as aforesaid shall be paid by the owner or owners of the reversion in fee simple. All subsequent repairs named in this Act are to be kept up at the expense of the Town of Elsmere. Property owners shall not be assessed under this section for the repaving or repair of streets now paved. Any notice required by this section to one co-owner, shall be notice to all. In case no owner shall reside in the Town, notice may be served upon the occupier or tenant of said premises resident in the Town; and, if there be no such occupier or tenant, it shall be sufficient to send said notice by mail to any owner of said premises, directed to him or her at the post office nearest his or her residence. The provisions hereinbefore contained in this section shall apply to any order made by the Council in respect to any such paving heretofore done, which the Council may deem insufficient or to need repairing. The Council, in addition to the provisions of this section hereinbefore shall have power and authority to enforce by ordinance all the requirements of this section by imposing such fines and penalties as shall be in the judgement of the Council deemed necessary and proper.

#### **Section 412. New Developments and Subdivisions**

The Council may, by ordinance, adopt land use and development regulations, including, but not limited to zoning and subdivision regulations.

### **Article V. Property And Special Assessments**

#### **Section 501. Property Assessments**

##### **501.1 Property Assessment Procedure**

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

In addition to the annual assessment provided herein, the Finance Director may, at the option of the Council, provide quarterly supplemental assessment rolls for the purpose of:

- (1) Adding property not included on the last assessment, or

(2) Increasing or decreasing the assessment value of property which was included on the last assessment.

The supplemental assessment roll may be used to correct errors on prior assessment rolls.

It shall be lawful for the Town to enter into an agreement with the Board of Assessment for the New Castle County to inspect and copy, or to obtain copies, of the assessments made for county purposes. Annually, the Council shall make a judgment regarding whether the Town will utilize such county assessments and whether said county assessments are a true, just and impartial evaluation. The Council then shall order the adoptions of such county assessment for municipal purposes or the adoption of assessments as determined by the Town assessment authority; provided, however, that adoption of the county assessment for municipal purposes shall not preclude the Town from modifying the county assessment list to take into account new construction or changes in ownership or use not reflected in the county assessment list, or clear cases of inequitable assessment. 75 Del. Laws, c. 187

501.2 Collection of Taxes

A list containing the names of the taxables and, opposite the name of each, the amount of his real and personal property assessment, and the total amount of the tax, shall be prepared as soon as practicable after the beginning of the tax year. All taxes shall be paid to the Finance Director, subject to such discounts and penalties and rules as the Council may direct.

It shall be the duty of the Finance Director to proceed forthwith to collect all taxes in the calendar year in which assessed. In the collections of said taxes, he shall have all the powers conferred upon or vested in the receiver of taxes and the county treasurer for New Castle County.

The provisions of Sections 2901 through 2905, inclusive, of the Annotated Code of Delaware, as amended, with reference to tax liens, shall be deemed and held to apply to all taxes laid and imposed under the provisions of this Charter, except that any such lien for taxes imposed shall continue for ten (10) years from the date such lien commences.

501.2.1 Additional Collection Methods

In the event that any Town taxes remain unpaid during the last day of December of the year in which said taxes were levied, the Town of Elsmere may file, or cause to be filed, a Praecipe in the office of the Prothonotary of the Superior Court in New Castle County, which Praecipe shall contain the name of the person against whom the taxes of assessments sought to be collected were assessed, a copy of the bills showing the amount of taxes or assessments due, the property against which the assessment was laid. The statement of the lot number or numbers of the particular section in which said property is located or the street number or numbers shall be sufficient identification and description of said property. The Prothonotary shall make a record on the same judgment records of said Superior Court against the property mentioned or described in said Praecipe. Thereafter, upon a Praecipe for Monition filed in the office of said Prothonotary by the Town of Elsmere through any person authorized on its behalf to collect taxes assessments due to the Town of Elsmere, a Monition shall be issued by the Prothonotary aforesaid to the Sheriff of New Castle County, which Monition shall briefly state the amount of the judgment for the taxes or assessments due and the years thereof, together with a brief description of the property upon which said taxes or assessments are a lien. A description of such property by street and number or by lot number of numbers of the particular section in which said property is located shall be a sufficient description. Said Monition shall be in substantially the following form:

To all persons having or claiming to have any title, interest or lien upon within described premises, take warning that unless the judgment for the taxes or assessments stated herein is paid within twenty (20) days after the date hereof, or within such period of twenty (20) days evidence of the payment of taxes herein claimed shall be filed in the office of the Prothonotary, which evidence shall be in the form of a receipted bill, or duplicate thereof, bearing date prior to the filing of the lien in the office of the Prothonotary for New Castle County, the Town of Elsmere may proceed to sell property herein mentioned or described for the purpose of collecting the judgment for the taxes or assessments herein stated:

Name of Person in Whose Name the Property is Assessed	Description of Property	Year or Amount of Years Judgement
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Said Monition, or copy thereof, shall be posted by the Sheriff upon some prominent place or part of the property against which the said judgment for taxes or assessments is a lien. The Sheriff shall make due

and proper return of his proceedings under the said Monition to said Prothonotary within ten (10) days after the posting of said copy of Monition as aforesaid. Alias or Pluries Monition shall constitute notice to the owner or owners and all persons having any interest in said property.

At any time after the expiration of twenty (20) days following the return of the Sheriff upon such Monition, unless before the expiration of said twenty (20) days the said judgment and costs on said judgment shall be paid or evidence of the payment of such taxes evidenced by a receipted bill or a duplicate thereof, bearing date therefor prior to the filing of said lien for the record in the office of the Prothonotary aforesaid, upon Praecipe filed by the Town of Elsmere, a writ of Venditioni Exponas shall issued out of the office of the said Prothonotary directed to the Sheriff commanding the Sheriff to sell the property mentioned or described in said writ and make due return of his proceedings thereunder in the same manner as is applicable with the respect to similar writs of Venditioni Exponas issued out of the said Superior Court.

NEW CASTLE COUNTY

SS:

THE STATE OF DELAWARE

TO THE SHERIFF OF NEW CASTLE COUNTY

GREETINGS

WHEREAS, by a Monition issued out of the Superior Court, dated at Wilmington, the \_\_\_\_ day of A.D. , 19\_\_\_\_ IT WAS COMMANDED, that you should post the said Monition, or copy thereof, upon the real estate therein mentioned and described, and make a return to the said Superior Court within ten days after said posting. That on the \_\_\_\_\_ day of A.D., 19\_\_ you returned a copy of the said Monition was posted on the real estate therein mentioned and described on the \_\_\_\_ day of A.D., 19\_\_\_\_.

We therefore now command you to expose to public sale the real estate mentioned and described in said Monition as follows:

And that you should cause to be made as well as a certain debt of \_\_\_\_\_ Dollars (\$) lawful money of the United States, which to the said Town of Elsmere, a municipal corporation of the State of Delaware, is due and owing, as also the sum of \_\_\_\_\_ Dollars (\$) lawful money as aforesaid, for its costs which it has sustained by the detaining of that debt, whereof, the said was convicted as it appears of record and against which said property it was a lien; And have you that money before the Judges of our Superior Court at Wilmington, on Monday the \_\_\_\_\_ day of \_\_\_\_\_ next, to render to the said Town of Elsmere, a municipal corporation as aforesaid, for its debt and costs as aforesaid, and this writ;

WITNESSETH, the Honorable \_\_\_\_\_ at Wilmington the \_\_\_\_ day of A.D., 19\_\_\_\_

\_\_\_\_\_  
Prothonotary

Upon the return of the proceedings under said writ of Venditioni Exponas, the Superior Court may inquire into the regularity of the Proceedings thereunder, and either affirm the sale or set it aside.

Any real estate or interest therein sold under the provisions hereof shall vest in the purchased all the right, title and interest of the person in whose name said property was assessed, and/or all right, title and interest of the person or persons who are the owner or owners thereof and likewise freed and discharged from any dower or curtesy, whether absolute or inchoate, in or to said real estate, and from all equity of redemption and liens and encumbrance held by persons and corporations against such property.

The owner of any such real estate sold under the provisions of this Act or his legal representatives may redeem the same at any time within sixty (60) days from the day said sale thereof is approved by the Court by paying to the purchaser or his legal representatives, successors or assigns, the amount of the purchase price and fifteen per cent in addition thereto, together with all the costs incurred in the cause; or if the purchaser or his legal representatives, successors or assigns shall refuse to receive the same, or do not reside or cannot be found within the Town of Elsmere, by paying said amount into said Court for the use of said purchaser, his legal representatives or assigns.

In the event that the owner of said property or his legal representatives shall fail to redeem said property as herein provided, the purchaser of said property or his legal representatives, successors or assigns may present a Petition to the Superior Court setting forth the appropriate facts in conformity with this Act and pray that the said Superior Court make an order directing the Sheriff, then in office, to execute, acknowledge and deliver a deed conveying the title to said property to the Petitioner and thereupon the said Superior Court shall have the power, after a hearing upon said Petition, to issue an order directing the Sheriff to execute, acknowledge and deliver a deed as prayed for in said Petition, and a description of said property by street number or by lot number of numbers of the particular section in which said property is located, together with a description of said property by metes and bounds.

If the owner of any real estate sold under an order or his legal representative shall redeem said real estate, he may prefer to said Superior Court a petition setting forth the facts and thereupon the said Superior Court, after hearing and determining the facts set forth in said petition, shall have power to cause to be entered upon the record of the Judgment, under which said real estate was sold, a memorandum that the real estate was entered has been redeemed, and, thereafter, the said owner shall hold such redeemed real estate subject to the same liens, and in the same order or priority as they existed at the time of the sale thereof, excepting so far as the said liens have been discharged or reduced by the application of the proceeds by the said Sheriff from the said sale.

No Motion proceedings shall be brought under this Act unless the tax or assessment sought to be collected hereunder shall, at the time of the filing of said Petition in the office of the Prothonotary, be and constitute a lien on the property against which the tax or assessment was assessed or laid. All taxes for Town purposes which may hereafter be lawfully assessed on real estate in the Town of Elsmere shall constitute a prior lien thereon for a period of ten years from the first day of July succeeding the assessment of said taxes, but if the said real estate remains the property of the person to whom it is assessed, the lien shall continue until the tax is collected and may, with all the incidental costs and expenses, be collected by sale thereof as hereinbefore provided. The said tax lien and costs and reasonable counsel fees for the collection thereof shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility which real estate may be charged with or liable to. The Town of Elsmere shall have the authority to authorize any person or persons to make a bid or bids at the sale of any real estate under the provisions of this Act, and, in the event that such person or persons is the highest and best bidder of bidders therefor, the title thereto shall be taken in the name of the Town of Elsmere, a municipal corporation of the State of Delaware. The Town of Elsmere, by resolution duly adopted, is authorized and empowered to sell and convey any real estate purchased under the provisions of this Act.

Whenever the Superior Court is mentioned in this Statute the same shall be held to embrace the Judges or any Judge thereof, and any act required or authorized to be done under this Act may be done by the said Superior Court or any Judge thereof in vacation thereof, as well as in term time.

The fees and cost to be fixed in all Motion proceedings under this Act, where not otherwise provided for, shall be set by the Council by ordinance. All other charges not covered by this and the preceding section shall be the same as are provided by law.

The foregoing method for enforcing the collection of Town taxes shall not preclude the enforcement of payment thereof by appropriate civil suit against the person or persons personally liable for their payment by reason of said person or persons having been the owner of said real estate at the time when the said taxes became a lien. 76 Del. Laws, c. 225

### 501.3 Levying of Special Assessment

The Town of Elsmere is hereby authorized and empowered to levy and collect special assessment upon property in a limited and determinable area, including such real estate as would be otherwise exempt from county and municipal assessment and taxation by virtue of any law of the State of Delaware, for special benefits accruing to such property as a consequence of any municipal public work or improvement and to provide for the payment of all or any part of the costs of the work, service or improvement out of the proceeds of said assessments.

### 501.41 Assessments Payable in Installments

The Council may provide for the payment of special assessments, for whatever purpose levied, by installments, but assessments for permanent improvements shall be payable within ten (10) years in annual or more frequent installments, and assessments for current service shall be payable within one (1) year.

### 501.5. Assessments Not to Exceed Value of Benefit

The amount assessed against any property for any work or improvement shall not exceed the value of the benefits accruing to the property therefrom.

### **Article VI. Council Appointments**

#### **601. The Solicitor**

At the quadrennial organization meeting, the Council shall appoint an attorney-at-law who shall be an officer of the Town who shall have the title of Town Solicitor. He shall be a member of the Bar of the State of Delaware. It shall be his duty to give legal advice to Council, other officers of the Town, and to all Town departments, offices and agencies. He shall represent the Town in all legal proceedings and shall perform such other legal services as may be required of him by Council, this Charter, by law or by ordinance. Council may procure such additional legal services as it may deem to be required. 69 Del. Laws, c. 416

#### **602. (Deleted)**

69 Del. Laws, c. 416; 75 Del. Laws, c. 187

#### **603. Board of Health**

At the quadriennial organization meeting of the Council, the Council may appoint a Board of Health consisting of five members, one of whom shall be a practicing physician in the Town of Elsmere, if there be one available; or, if not, a practicing physician in New Castle County. The Board shall serve for four years, shall have the cognizance of the interests of life and health within the Town and that of the people residing within one-quarter mile of the boundaries of said Town, except where such area outside of the Town may lie within the jurisdiction of another municipality. The Mayor's appointments shall be confirmed by a majority of the whole Council. The Board of Health shall report to the Council monthly in writing whatever is deemed by the Board to be injurious to the health of the Town, and shall also make recommendations to the Council of whatever may contribute to useful sanitary information. The Board shall also have all powers and duties enumerated by the laws of the State of Delaware for local boards of health. 69 Del. Laws, c. 416; 75 Del. Laws, c. 187

### **Article VII. Town Administration**

#### **701. Town Manager**

The Council may by ordinance provide for the creation of the office of the Town Manager who shall be qualified by education and or experience in municipal administration, and whose powers and duties shall be as set forth in such ordinance. The Council may in such ordinance give to the Town Manager such powers over the appointment of personnel, which are now vested in the Mayor and Council. The Town Manager must be appointed by an affirmative vote of five members of Council and may be removed from office only by an affirmative vote of five members of Council. 75 Del. Laws, c. 187

#### **702. Police and Department of Public Safety**

(1) Department of Public Safety; Created; Composition.

There is hereby created a department for the Town of Elsmere, to be known as the Department of Public Safety, which shall consist of a full-time Chief of Police and such officers and employees as may be assigned to this Department.

(2) Appointment.

(i) The Chief of Police shall be appointed by an affirmative vote of five members of Council and shall serve with compensation in accordance with the policy wage scale. The Chief of Police shall be entitled to and shall be entitled to and shall receive all of the benefits given to all sworn police personnel including police pension.

(ii) The Chief shall have the same rights to engage in political activity as are afforded to any other person. The right to engage in political activity shall not apply to the Chief while he or she is on duty or while he or she is acting in his or her official capacity or while in uniform.

(iii) The Chief of Police shall not hold any other municipal office while serving as the Chief of Police.

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- (iv) The Chief of Police may be removed from office upon an affirmative vote of five (5) members of the sitting Council voting in favor of removal and in accordance with applicable Town ordinances adopted by an affirmative vote of five (5) members of the sitting Council and the laws of the State of Delaware.
- (v) The Chief of Police shall be a certified police officer and shall be appointed from within the Department, unless by an affirmative vote of five (5) members of the sitting Council, Council determines there is not a qualified person within the Department. To be eligible for appointment to Chief of Police from within the Department, an officer shall have applied for such appointment and shall meet the following criteria:
1. The candidate shall have at least five (5) years of continuous service within the Department.
  2. The candidate shall currently hold the rank of sergeant or above.
  3. The candidate shall have received two consecutive favorable evaluations by his or her superiors.
  4. The candidate shall have experience in police command.
- (vi) Notwithstanding subparagraph (v), above, the Council may appoint a Chief of Police who is not then an officer in the Department if the Council determines by a three-quarters vote of the whole Council that it is in the best interest of the Town to do so. Any person so appointed shall have qualifications at least equal to those set forth for appointment from within the Department, except that his or her years of continuous service need not have been within the Department.
- (3) Investigation, Disciplinary Action, Demotion or Dismissal.
- (a) Whenever the Chief is under investigation or is subject to questioning for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or questioning shall be conducted pursuant to the procedures provided by Town Ordinance adopted by a three-quarters vote of the whole Council and the laws of the State of Delaware.
- (b) If Council, following a hearing on any charges against the Chief of Police, determines to impose any disciplinary action, demotion or dismissal, the Chief of Police shall have the right to appeal to the Superior Court of the State of Delaware within thirty (30) days of any vote by Council on such charges. The appeal shall be taken in accordance with the rules of the Superior Court and shall be based solely on the record made before Council.
- (4) Powers and Duties.
- The Chief of Police shall be responsible for the day to day operation, jurisdiction, management and control of the Department of Public Safety of the Town of Elsmere. He shall be responsible to the Council for the administration of the Public Safety Department.
- (5) Preparation and Approval of Budget.
- The Chief of Police shall each year submit in writing a budget to the Council in the time-frame as ordained by Council. After careful consideration of said proposed budget, the Council shall make an appropriation of monies to the Department which shall serve as the actual annual budget.
- The Chief of Police shall then administer the Department within the monetary restraints or the total amount of funds allocated by the annual budget to the Department of Public Safety. Should additional monies become necessary to properly administer the Department, the Chief of Police shall prepare a presentation to the Council which will explain in detail the reason for the expected shortfall and will discuss possible alternative solutions to the problem(s). The Chief will then request the Council to take action to eliminate the problem. The Council shall act on such request within a reasonable time.
- (6) Payment of Accounts.
- All accounts contracted by the Department of Public Safety in the course of the affairs of the Department shall be paid by the Town Treasurer out of the appropriation provided for in the preceding Section upon proper voucher approved by the Chief of Police and in accordance with the standard operating procedures of the Town.
- (7) Duties of the Town Solicitor.
- The Town Solicitor shall be the legal advisor and attorney for the Department of Public Safety; he shall prosecute all actions against an officer, agent or employee of the Department of Public Safety for official misconduct; he shall be the legal counsel of such Department.
- (8) Department Physician.
- The Department of Public Safety is hereby authorized to appoint and commission annually a physician.
- (9) Personnel of Department.

In addition to the powers conferred upon the Chief by this Act, the Chief of Police shall appoint such number of officers, agents, members and employees of the Department and fill vacancies therein; provided that any increase in the number of employees currently employed upon the adoption of this Act shall be proposed by the Chief and approved by an affirmative vote of five members of Council. The Chief shall fix and regulate the salary of the employees provided that any amendment of the current police wage compensation scale in effect upon the adoption of this Act shall be proposed by the Chief and approved by an affirmative vote of five members of Council. 68 Del. Laws, c. 235; 75 Del. Laws, c. 187

### **703. Compensation of Officers and Employees**

The Council shall have the power to fix the compensation of all officers elected by ballot at the annual organization meeting, and such other officers, employees and agents of the Town, which by it may be deemed proper and necessary for the proper conduct and management of the Town. Any officer or appointed official may be removed by the Council for sufficient cause.

### **704. Retirement Plan**

The Council may provide, by ordinance, a Retirement Plan for any or all groups of employees in the service of the Town of Elsmere.

### **705. Contracts**

All contracts of whatever character involving an expenditure above an amount determined by resolution of the Council shall be written and shall be let and made by the Council and shall be based on specifications provided by the appropriate person designated by the Council or other person designated by the Council. 75 Del. Laws, c. 187

Pending advertisements for bids, any plans, specifications, and profiles to be used in the proposed work or contract shall remain on file in the office of the Council and shall be subject to the inspection of any interested person. All contracts and purchases above an amount determined by resolution of the Council shall be entered into and made only after advertising not less than two (2) times in a newspaper of general circulation in New Castle County, inviting competitive bids. Each such bid shall be sealed and filed with the person designated by the Council. All bids shall be opened in the presence of the Council or a duly authorized committee of the Council and shall remain on file.

The Council shall consider all bids which have been properly filed and may enter into a contract with the party offering the lowest and/or best bid, or they may reject all bids and readvertise for bids, or they may have the work done under the supervision of the proper department of the Town.

The awarding of a contract to the successful bidder shall give no right of action or claim against the Town upon such bid or contract until the same shall be reduced to writing and duly signed by the contracting parties. The Council shall have the power to require all bidders to post bonds to secure the performance of the contract and the payment of all claims for labor and materials used in the work.

### **706. Fees**

All fees and monies received by any officer or employee shall belong to the Town of Elsmere and shall be paid to the Finance Department unless otherwise provided herein or by ordinance. 75 Del. Laws, c. 187

## **Article VIII. Financial Procedure**

### **801. Fiscal Year**

The fiscal year of the Town of Elsmere shall begin on the first day of July of each year and shall end on the last day of June of the following year. Such fiscal year shall also constitute the budget and accounting year, except as otherwise provided for herein.

### **802. Submission of Budget**

Annually, and not later than forty-five (45) days before the beginning of the fiscal year, the Council shall cause to be submitted a budget containing a financial plan for conducting the affairs of the Town for the ensuing fiscal year.

The budget shall contain the following information:

- (1) Proposed expenditures for current operations during the ensuing fiscal year, detailed by departments in specific line items, and the method of financing such expenditures;
- (2) The amount of debt of the Town, together with a schedule of maturity of bond issues.
- (3) A statement of the amount of interest on the bonded debt, the amount necessary to pay any bond maturing during the year, and the amount required for the sinking fund, if any.
- (4) Proposed capital expenditures during the ensuing fiscal year, detailed by departments when practical, and the proposed method of financing each such capital expenditure; and
- (5) An estimate of the amount of money to be received from taxes and all other anticipated income of the town from any source or sources.
- (6) Proposed allocation to the Contingency Fund, if any.

### **803. Council Action on the Budget**

The Council shall cause to be published in a newspaper of general circulation in the town a notice of the time and place for a public hearing on the budget, and a notice of the times and places where copies of the budget are available for inspection by the public. Such notice shall be published not less than two (2) weeks prior to such hearing.

After the public hearing, the Council may adopt the budget with or without amendment. The Council may insert new items of expenditure or may increase, decrease or strike out items of expenditure, except that no item of appropriation for debt service shall be reduced.

The budget so approved must have a total of proposed operating expenditures that does not exceed the total of estimated revenues. In determining what shall be included in operating expenditures, the purchase of any capital equipment or buildings that is paid for by a capital lease or borrowing shall not be included except to the extent of the amount due to be paid on such lease or borrowing during the budget year.

The budget for the ensuing year shall be adopted by the Council no later than the last day of the fiscal year currently ending. The tax rate for the ensuing fiscal year may be adopted prior to the time the budget is adopted. If it fails to so adopt, the budget submitted by the Town's departments for operations for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis with all items in it prorated accordingly, until such time as the Council adopts a budget for the ensuing fiscal year. Also, during such period, Council may appropriate amounts requested for specific capital improvement projects, provided that the town manager and the finance director certify that the necessary funds are available therefor. 76 Del. Laws, c. 16

### **804. Budget Amendments after Adoption**

When the Mayor and Council determine that an emergency exists, the Council may make emergency appropriations out of the Town's Contingency Fund in order to address said emergency. Such appropriations must be approved by a number of favorable votes which total one vote more than a majority of the sitting Council. At any time during the fiscal year, the Council may transfer part or all of any unencumbered line item balance from one department or office to another. 76 Del. Laws, c. 82

### **805. Contingency Fund.**

- (A) There shall be a fund to be known as a Contingency Fund. The purpose of this fund shall be to allow the Mayor and Council to allocate an amount of funds to be kept in reserve which could be used to guard against possible losses, address emergency situations or plan for future expenses.
- (B) The primary funding source for the Contingency Fund shall be a percentage of funds from the accumulated surplus of any fiscal year. This shall not however prohibit the Mayor and Council from allocating any funds they deem appropriate to the Contingency Fund.
- (C) In accordance with Section 802(6) of this charter, the Town Council shall designate an amount of funds to the Contingency Fund that is equal to fifty percent (50%) of the total amount of any operating surplus which may have resulted in the prior fiscal year.
- (D) While the appropriation of funds into the Contingency Fund shall require an affirmative vote of a majority of the sitting members of Council, any allocation of funds from the Contingency Fund shall require an affirmative vote of one more than a majority of the then sitting members of Council. For the purpose of this section, the term 'sitting members of Council' shall be the number of Council members and the Mayor who have been elected or appointed in accordance with this charter and shall not include any vacant position. 76 Del. Laws, c. 82



**806. Independent Annual Audit**

- (A) At least once in any given year, the Council shall designate a certified public accountant or firm of certified public accountants who shall make an independent audit of accounts and other evidence of fiscal transactions of the Town government and shall submit their report to the Council. The said accountants shall have no personal interest direct or indirect in the fiscal affairs of the Town government or any of its officers. They shall not maintain any accounts of the Town business, but shall within specified limits approved by the Council audit the books and documents of the treasurer or other appropriate officer or any separate or subordinate accounts kept by any other office, department or agency of the Town government. When received, the report of the auditors shall become part of the minutes of the Council, and shall be available for inspection by any citizen of the Town at such reasonable times as may be determined by the Council.
- (B) There is hereby created an 'Audit Committee' which shall be comprised of those persons serving on the Finance Committee of the Town who are not members of the council, the Mayor and two members of the Town Council whom the Mayor shall appoint.
- (C) The duty of the Audit Committee shall be as follows;
  1. To choose an independent auditor to conduct the annual audit.
  2. To meet with and provide the chosen auditor with any requested information.
  3. To receive and discuss the preliminary draft of the annual audit.
  4. To decide how the final audit report will be presented to the entire Council and the public, at a public meeting. 71 Del. Laws, c. 328; 76 Del. Laws, c. 82

**Article IX. Nominations And Elections**

**§900. Municipal Elections.**

- (a) A regular town of Elsmere election shall be held on the last Saturday in April 2011 and on the last Saturday of April in each two years thereafter. Council shall by ordinances set the hours during which the polls shall be open. The Council shall designate the place or places of election and make all necessary ordinance rules and regulations not inconsistent with this Chapter, or with the general laws of the State of Delaware for the conduct of elections, for the prevention of fraud in elections and for the recount of ballots in case of doubt or fraud. Unless otherwise specified in this Chapter, write-in votes shall not be permitted in any town of Elsmere election.
- (b) At all such elections the voters shall be received at each polling place by three (3) qualified voters of the Town of Elsmere appointed by the Council. One of the said persons for each polling place shall be designated as the Inspector and the other two as Judges of the election, and the three at each polling place shall be known as Election Officers, and no such person shall be a candidate for office at any such election. In addition to the Election Officers, there shall be two clerks at each polling place. The clerks shall be appointed by the Council and shall reside in the district for which they are appointed. The result of the balloting at each polling place for said officers of said Town shall be ascertained by the said Election Officers, who shall certify said results under their hands to the Council. The Council may appoint clerks to assist the officers of election.
- (c) The Inspector shall be the chief Election Officer in the polling place.
- (d) The Inspector shall determine all challenges and all other issues involving the conduct of the election at the polling place. The Board of Elections may provide advice and guidance to the Election Officers.
- (e) Election Officers individually and collectively shall conduct elections in a fair and equal manner.
- (f) Election Officers who violate the provisions of this Chapter shall be removed forthwith by the Board of Elections.
- (g) In case of referenda or special elections, the same procedure shall be followed to the extent applicable as with respect to the regular elections, and the penalty for fraud and misconduct shall be the same. 77 Del. Laws, c. 410, § 1

**§901. Voter/Elector Qualifications.**

- (a) Every person domiciled in the Town of Elsmere who shall have reached the age of eighteen (18) years of age, who is a citizen of the United States who has registered as a voter with the Department of Elections for New Castle County and who can prove the foregoing by proper identification, shall be entitled to vote at all regular and special municipal elections and referenda.

- (b) Since the town uses the State's voter Registration System as the source of its list of registered voters, it must enter into a written agreement with the Department of Elections that specifies the responsibilities of each party registering voters, maintaining voter records, and providing Election Day support.
- (c) Persons appearing to vote shall present proof of identity and address. The identification shall be 1 or more of the following items that individually or together show the identity and address of the person:
- (1) A current State of Delaware driver's license or ID card;
  - (2) A uniformed service ID card;
  - (3) Another current photo ID issued by the State of Delaware, U.S. Government, the voter's employer, high school or higher education institution;
  - (4) A current utility bill, bank statement, credit card statement, a paycheck or pay advice, or another type of bill or statement;
  - (5) A lease or sales agreement; and/or
  - (6) Any other documentation that a person can reasonably and commonly accept as proof of identity and address.
- (d) Personal recognition by a majority of the Election Officers in the polling place can attest to a voter's identity and address. 75 Del. Laws, c. 187; 77 Del. Laws, c. 410, § 1

#### **§902. Persons Eligible to vote by Absentee Ballot.**

Any qualified elector who is duly registered may vote by absentee ballot in any Town of Elsmere election for any of the following reasons:

- (1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or such person's spouse or dependents when residing with or accompanying the person, or is absent from this State because of illness or injury received while serving in the armed forces of the United States.
- (2) Because such person is in the armed forces of the United States or the Merchant Marines of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross, society of Friends, or United Service Organizations; or
- (3) Because of the nature of such person's business or occupation, including the business or occupation of providing care to a parent, spouse or that person's child who is living at home and requires constant care due to illness or injury;
- (4) Because such person is sick or physically disabled;
- (5) Because such person is absent from the Town of Elsmere while on vacation;
- (6) Because such person is unable to vote at a certain time or on a certain day due to the tenets or teachings of that person's religion; or
- (7) Because such person is unavoidably absent from the Town on the day of the election. 75 Del. Laws, c. 187; 77 Del. Laws, c. 410, § 1

### **Article X. General Provisions**

#### **1001. Bonding of City Officials and Employees**

The Council by an affirmative vote of five (5) members of the sitting Council may require any elected or appointed official(s), officer or employee of the Town of Elsmere, to give bond for the faithful performance of his or her duties. If Council determines such bonding to be necessary, they shall also determine the amount and surety of such bond. The premiums associated with any bond required by the Council shall be paid by the Town of Elsmere. Should anyone required by the Council to give bond fail to give such bond in an amount and with such surety as has been determined by the Council, the Council shall determine by an affirmative vote of five (5) members of the sitting Council, if such failure shall be deemed as an automatic forfeiture of office, appointment or employment. Should a vacancy be created because of a failure to give bond, the vacancy shall be filled as herein provided in the case of other vacancies. 75 Del. Laws, c. 187

#### **1002. Oath of Office**

Every member of the Council, the Town Treasurer, the heads of all Town Departments, and other such officials or employees as Council may by ordinance require, shall, before entering upon the duties of their office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the Secretary:

'I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.'

The Mayor, Members of Council, and the Secretary of the Council shall have the power to administer oaths required by this Charter.

### **1003. Severability of Charter Provisions**

If any provisions of this charter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Charter which can be given effect without the invalid provisions or applications, and to this end the provisions of this Charter are declared to be severable.

## **Article XI. Transitional Provisions**

### **1101. Former Government in Force**

All ordinances, resolutions, orders, rules or regulations in force in the Town of Elsmere at the time when this Charter takes effect, regardless of the authority under which originally enacted, shall continue in full force and effect until the Council otherwise provides by ordinance, except to the extent that any such ordinance, resolution, order, rule or regulation may be in contravention of this Charter.

### **1102. Continuance in Office**

All employees of the Town of Elsmere at the time this Charter goes into effect shall continue in such employment and shall draw the same rate of compensation as during the month preceding the adoption of this Charter until removed or until the compensation is changed.

The Mayor and the Council holding office on the effective date of this Charter shall continue as the Mayor and the Council until their successors are elected and qualify.

### **1103. Effective Date**

This Charter of the Town of Elsmere shall take effect upon the qualification of the Town officers elected in accordance with Article IX; but the sections of this Charter governing registration, election districts and elections shall take effect immediately.

This Charter as amended shall become effective pursuant to the provisions of 22 **Del. C.** §801, et seq.

Approved January 30, 1991

68 Del. Laws, c. 3; 68 Del. Laws, c. 235; 69 Del. Laws, c. 416; 71 Del. Laws, c. 126; 71 Del. Laws, c. 328; 73 Del. Laws, c. 155; 75 Del. Laws, c. 187; 76 Del. Laws, c. 16; 76 Del. Laws, c. 82; 76 Del. Laws, c. 225; 77 Del. Laws, c. 410, § 1; 80 Del. Laws, c. 430; 81 Del. Laws, c. 7;

## **THE FOLLOWING TEXT WAS INCLUDED IN THE PROVISIONS OF 68 LAWS OF DELAWARE, CHAPTER 235, BUT DID NOT TECHNICALLY AMEND THE ELSMERE CHARTER**

Section 2. All employees of the Department of Public Safety of the Town of Elsmere at the time this Act goes into effect shall continue in such employment at the same compensation and in the same positions as during the month preceding the adoption of this Act until removed or until the compensation is changed.

Section 3. Mayor and members of the Council not to Interfere with the Department.

The Mayor and no individual member of Council and none of the committees of the Council shall attempt to coerce or influence the Chief of Police in any of the day to day operations of the Department of Public Safety.

Except for the purpose of inquiry, the Mayor and no individual member of Council shall direct any employee of the Department of Public Safety except through the Chief of Police under this Act.

Section 4. Saving Clause.

If any section, subsection, sentence, clause, or phrase of this Act is for any reason held invalid, such decision or decisions shall not affect the validity of the remaining portions of this Act. All rules, regulations, directives, orders and standard operating procedures shall remain in full force and effect except insofar as they conflict with the provisions of this Act in which case the provisions of the Act shall govern.