

**Fenwick Island****Section 1. Creation**

The territory hereinafter defined in Section II of this Act and the inhabitants thereof within said territory are created a municipal corporation of the State of Delaware under the style and name of the TOWN OF FENWICK ISLAND, DELAWARE.

**Section 2. Territorial limits**

The corporate limits and boundaries of the TOWN OF FENWICK ISLAND, DELAWARE are established and declared to include all of the pieces and parcels of land, marsh and beach described as follows:

No. 1. All that certain piece and parcel of land situate at Fenwick Island, Baltimore Hundred, Sussex County, State of Delaware, more particularly described as follows, to wit: Commencing at a point at the high water mark of the Atlantic Ocean; thence on a line North 82 degrees 51 minutes West a distance of 230 feet plus or minus to a hub; thence on the same course 52.08 feet to a hub; thence on the same course 281.50 feet to a stone; thence on the same course to and across the State Highway leading from Bethany Beach to the Maryland State line whatever the distance may be to the Westerly edge of the right-of-way line of said Highway; thence by and with the Westerly edge of said right-of-way line of said State Highway in a Southerly direction to the South side of Atlantic Street Extended; thence on a line South 83 degrees 39 minutes East across the aforementioned Highway to a stone; thence on the same course a distance of 380.5 feet to a stone; thence on the same course 230 feet to the high water mark of the Atlantic Ocean; thence with the high water mark of the Atlantic Ocean in a Northerly direction to the place of beginning, be the contents what it may, as by reference to a plot of said lands filed in the Office of the Recorder of Deeds in and for Sussex County in Plot Book No. 2, page 18 will more fully and at large appear.

No. 2. All that certain piece and parcel of land situate at Fenwick Island, Baltimore Hundred, Sussex County, State of Delaware, and adjoining in part Parcel No. 1 above described more particularly described as follows, to wit: All of Blocks Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 as laid out on the plot of the lands of N. Walter Suplee, said plot being dated December 18, 1945 and now of record in the Office of the Recorder of Deeds' in and for Sussex County in Plot Book No. 2, page 25, and all lands not specified on the said plot by particular lot numbers but being left on said plot between each of the blocks numbered one through eighteen inclusive for possible use as streets as well as that land left without a lot number on the said plot between Lot. No. 91 in Block No. 18 and Lot No. 92 which has no block number.

No. 3. All that certain piece and parcel of land situate at Fenwick Island, Baltimore Hundred, Sussex County, State of Delaware, more particularly described as follows, to wit: All of the land lying to the rear and West of Blocks. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 as laid out on the plot of the lands of N. Walter Suplee, as the same remains of record in the Office of the Recorder of Deeds in and for Sussex County at Georgetown in Plot Book No. 2, page 25, and which were conveyed to George J. Schulz by deed of N. Walter Suplee and Mary J. Suplee, his wife, said deed being dated June 2, 1950 and now of record in the Office of the Recorder of Deeds' at Georgetown in Deed Book No. 393, page 583, and all islands or marsh belonging to the said George J. Schulz or to the State of Delaware either at the shores of Little Assawoman Bay located to the rear and West of the aforementioned Blocks or the nearest shore of which is within one-quarter of a mile of the lands of the said George J. Schulz herein mentioned.

**Section 3. Recorded plot evidence in court**

The Town Council may at any time hereafter cause a survey and plot to be made of the TOWN OF FENWICK ISLAND, DELAWARE and said plot when so made and approved by the Town Council, signed by the President and attested by the Secretary with the municipal corporate seal attached thereto may be recorded in the Office of the Recorder of Deeds' of the State of Delaware, in and for Sussex County and when so recorded the plot, or a duly certified copy thereof, shall be evidence in all Courts of law and equity of this State.

**Section 4. 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 TOWN COUNCIL consisting of seven members, one of whom shall be designated as President; provided, however, that until the first municipal election to be held on the first Saturday in August 1953, and until the seven members of the Council elected at that time shall qualify, the Town Council shall consist of the ten persons hereinafter named in Section V of this Charter, who are the officers and directors of an unincorporated association, known as the Fenwick Island Beach Association. The President of the Town Council shall also be known as the 'Mayor' and wherever the title 'President' occurs in this Charter, it shall be understood to include the title "Mayor".

74 Del. Laws, c. 251

**Section 5. Designation Of Persons To Serve On Town Council Until The First Regular Municipal Election**

Until the first regular municipal election and until their successors are duly elected and qualified the following persons shall serve as members of the Town Council: Vollie M. Lynch, George J. Schulz, Vance A. McCabe, Charles D. Thompson, John R. Furman, Cecil Fisher, William W. Clark, Helen West, Adah McCabe and Virgil Wiley, Virgil B. Wiley is hereby designated President of the Council, Adah McCabe Secretary of the Council and Helen West Treasurer.

**Section 6. Elections**

On the first Saturday in August each year, a municipal election shall be held between the hours of 1:00 o'clock P.M. and 5:00 o'clock P.M., at such place within the limits of the Town as shall be designated by the Town Council. Each member of the Town Council shall be elected to serve for a term of two years or until his or her successor is elected and qualified. Four members of the Town Council shall reside within fifty miles of the Town of Fenwick Island. No employee of the Town of Fenwick Island, either part-time or full-time, shall serve as a member of Town Council. A member of the Town Council shall only be qualified to hold office so long as he or she holds the requirements to be a candidate in the Town of Fenwick Island; he or she shall no longer be eligible to serve as a member of the Town Council from the date of the act or event causing the member to be ineligible. 63 Del. Laws, c. 371; 65 Del. Laws, c. 85; 65 Del. Laws, c. 321; 76 Del. Laws, c. 363;

**Section 7. Nominations To Elective Offices**

At least 45 days before the day of the election, nominations for the Council shall be filed with the Secretary of the Council. The nominations shall be in writing signed by the nominees or by five citizens of the Town, which nominations shall be presented to the Council by the Secretary at a meeting of the Council to be held at the usual meeting place which shall be held not later than 9:00 o'clock in the evening of the last day for filing nominations. Voting machines shall be utilized during Annual Municipal Elections in compliance with the applicable provisions of 15 Del. C. § 7501, et seq.

The Town may, by ordinance, provide for any qualified voter to cast an absentee ballot if such person is unable to appear and cast his, her, or its ballot.

The Town Council shall make fair and adequate provision for casting of such ballot and notice thereof shall be included in the posted and printed notice calling for such election.

The procedures enacted by the General Assembly as Subchapter IV, Municipal Elections except for the City of Wilmington and Subchapter V, Absentee Voting in Municipal Elections except for the City of Wilmington, Chapter 75, Title 15, Del. C., are included and incorporated herein by reference. 59 Del. Laws, c. 65; 65 Del. Laws, c. 321; 76 Del. Laws, c. 363;

**Section 8. Election card**

Every election shall be held under the supervision of an Election Board, consisting of three qualified voters of the Town, to be appointed for that purpose by the Council, but if at the time of the opening of the election the three qualified voters appointed by the voters as the Election Board are not present, a quorum or greater number of the Town Council shall appoint a qualified voter or voters to act in place of the absentee members of the Election Board. Compensation of the members of the Election Board shall be fixed by the Town Council. 62 Del. Laws, c. 410

**Section 9. Qualification of Voters**

A. Voter qualifications.

(1) Resident:

- (a) Every natural person, who is a citizen of the State of Delaware and the United States, age 18 on or before the date of the election, a bona fide resident of the Town prior to the annual municipal election, and registered to vote 30 or more days prior to the annual municipal election, if provided by ordinance, shall have 1 vote.
- (b) For purposes of this Section 9, "bona fide resident" means a permanent, full-time resident of the Town. The following documentation may be considered by a registrar in determining whether a person is a bona fide resident of the Town under this section. The registrar does not need to be presented with all of the following documentation in order to conclude that a person qualifies to vote in the annual municipal election as a bona fide resident of the Town:

- (i) A current State of Delaware driver's license or identification card showing a Town address that is not a post office box.
  - (ii) An official government uniformed service ID card showing a Town address that is not a post office box.
  - (iii) A voter registration card issued by the State of Delaware showing a Town address that is not a post office box.
  - (iv) Other current photo identification issued by the State of Delaware; U.S. Government; or the voter's employer, high school, or higher education institution showing a Town address that is not a post office box.
  - (v) Any motor vehicle operator's license, whether or not it is a conventional driver's license, showing a Town address that is not a post office box.
  - (vi) Any motor vehicle registration, if the registration shows that the motor vehicle is owned by the person in question and the registration shows a Town address that is not a post office box.
  - (vii) Any other documentation that a person can reasonably and commonly accept as proof of address.
- (2) Non-residents. Every property owner as of March 1 prior to the annual municipal election, whether a natural person or artificial entity, including but not limited to corporations, partnerships, trusts, and limited liability companies, and who is registered to vote, if provided by ordinance, shall have one (1) vote. A natural person shall be a citizen of the United States and age 18 on or before the date of the election. An artificial entity shall be a domestic entity in the State of Delaware.
- (3) These provisions shall be construed in accordance with the principle of 'one-person/entity, one vote'. Where a voter is entitled to vote by virtue of being both a resident and as an owner of real property, that voter shall be entitled to only one (1) vote; where a voter is entitled to vote by ownership of two (2) or more parcels of real property, that voter shall be entitled to only one (1) vote.
- (4) Any legal entity, other than a natural person entitled to vote, must cast its vote by a duly executed and notarized power of attorney from the legal entity granting the authority to cast its vote to its designated attorney-in-fact. Such power of attorney shall be surrendered to the election officials who shall file the same in the office of the Town. Such power of attorney so filed shall constitute conclusive evidence of the right of said person to vote in the election on behalf of the legal entity granting the power. The person casting the ballot for such entity shall be age 18 on or before the date of the election and a citizen of the United States.
- B. Candidate qualifications.
- (1) A natural person who is a citizen of the United States, age 21 on or before the date of the election, and a qualified voter for at least one (1) year prior to the election for which nominated; and
  - (2) Either:
    - [a] A bona fide resident of the Town; or
    - [b] A property owner in the Town.
  - (3) A candidate shall not have been convicted of a felony.
- C. Registration.

The Town Council may, by ordinance, provide for a registration procedure. 62 Del. Laws, c. 3; 64 Del. Laws, c. 53; 65 Del. Laws, c. 321; 76 Del. Laws, c. 363; 81 Del. Laws, c. 258;

### **Section 10. Duties of election board**

Upon the close of the election the vote shall be read and counted publicly, and the person having the highest number of votes for each office shall be declared duly elected and continue in office for the term stated, or until his or her successors shall be duly elected and qualified. In case a tie vote is declared by the Election Board a runoff election between the candidates so tied shall be held. 62 Del. Laws, c. 410

The Election Board shall enter in a book to be provided for that purpose a minute of the election, containing the names of the persons chosen, shall subscribe to the same and shall give to the persons elected certificates of election, which book, containing such minutes, shall be preserved by the Council and shall be evidence in any Court of Law or Equity. All ballots cast and the records of the election shall be preserved in the custody of the Election Board for a period of ten days.

### **Section 11. Organization**

The Members of the Council at their first meeting after said election, or as soon thereafter as may be, shall choose from their own number, a President and a Secretary and Treasurer to serve until the first annual organization meeting after the next preceding election. They may also choose an Assistant Secretary, to serve at the pleasure of the Town Council who may or may not be from among their own number.

**Section 12. Meeting of the town council**

The Town Council shall hold at least ten regular meetings per year within the town at such times and places as may be designated by the Council. Special meetings may be called by the President and shall be called by him upon written request of three members of the Council. Special meetings shall be called in such manner and at such time as shall be prescribed by ordinance or resolution of the Council and the call may be either, written, telegram or oral as designated by ordinance or resolution. 52 Del. Laws, c. 177; 59 Del. Laws, c. 65;

**Section 13. Quorum**

A majority of the members elected to the Council shall constitute a quorum, but a less 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.

**Section 14. Rules and minutes of town council**

The Council shall determine its own rules and order of business, and shall keep a journal of its proceedings, and the ayes and nays shall be taken upon the passage of every ordinance and resolution and shall be entered in the journal with the text of the ordinance or resolution.

**Section 15. Vacancies and Forfeitures**

A. Vacancies. The office of a Town Council member shall become vacant upon death, incapacity, resignation or forfeiture of such office. In case of vacancy created in the Town Council, by death, resignation or otherwise, the remaining members of the Council may fill such vacancy by appointment. The person so appointed shall serve for the unexpired term or until his or her successor shall be elected and duly qualified.

B. Forfeiture proceedings. A forfeiture of such office shall occur when any Town Council member:

- (1) Is no longer qualified to hold such office;
- (2) Willfully violates any provision of this Charter;
- (3) Is convicted of any felony or crime involving any felony; or
- (4) Fails to attend three (3) regular Town Council meetings per fiscal year without being excused by Town Council

vote.

C. Determination concerning Forfeiture. Where the conditions set forth in Section 15(B), items (3) or (4) occur, forfeiture shall be automatic. Where the conditions set forth in 15(B), items (1) or (2) are alleged, forfeiture shall be approved by the remaining Town Council members. Such decision shall be made in executive session, and if the Town Council determines by majority vote that a forfeiture has occurred, it shall, within forty eight (48) hours thereafter, provide written notice thereof to the affected Town Council member, by certified mail, return receipt requested, sufficiently posted. Written notice shall be deemed provided when deposited in first-class mail with sufficient postage. The affected member shall be entitled to a hearing and then shall have thirty (30) days in which to make a written request for a public hearing before the Town Council, which hearing is to be held within forty five (45) days of the written request and at which hearing such member may appear with the assistance of counsel and present evidence to relevant issues. The Town Council shall also hear any other relevant evidence and vote again on the question of forfeiture. A determination of forfeiture shall be made only by unanimous vote of the Town Council members present and entitled to vote on the question.

D. Failure to Request Hearing as a Bar. Failure of the affected member to make written request for a public hearing as hereinabove stated shall be an absolute bar to his or her right to challenge the town Council's decision. If a public hearing is held, the Town 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 on behalf of the affected person if requested, in writing, by him/her. 77 Del. Laws, c. 250

**Section 16. Duties of President**

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The President shall preside at the meetings of the Town Council. He shall have general supervision of the affairs of the Town, and shall perform such other duties as may be prescribed by ordinance or by-laws adopted by the Council. 67 Del. Laws, c. 308

**Section 17. Additional duties of the president**

The President shall have jurisdiction and cognizance of all breaches of the peace and other offenses committed within the limits of the Town so far as to arrest and hold to bail or fine and imprison offenders, of all fines, penalties and forfeitures prescribed by this Charter or ordinance enacted hereunder; of all neglect, omissions or defaults of any member of the police force or Town officer, agent or employee; provided that he shall impose no fine or penalty in excess of that fixed by the ordinance, and shall not commit to prison for any longer term than thirty days. The Sussex County Jail may be used for imprisonment under the provisions of this Charter. The President shall also have jurisdiction in suits of civil nature for the collection of Town Taxes, recovery of amounts due and payable for the construction of sidewalks, curbs or pavements, expenses or abatement of nuisances and all other matters which may arise in the proper government and control of the Town under the provisions of this Charter, and within his jurisdiction he shall have all powers and authority and shall be subject to all the limitations of a Justice of the Peace of Sussex County, except as may be herein otherwise provided; and his fee shall be the same as those of the Justices of the Peace for the service. For any service for which no fee is provided such fee may be established by ordinance.

In the event the President of the Town Council does not wish to or is unable to perform the duties and exercise the powers imposed upon him under this section, the Town Council may elect some suitable person to be Alderman to perform said duties, who may or may not be a Justice of the Peace, and who may or may not reside in the Town, to serve at the pleasure of the Council.

The Alderman shall report in writing all fines imposed by him and all fines and penalties and other moneys received by him, when requested so to do by the Treasurer. He shall pay all such moneys to the Treasurer. He shall pay all such moneys to the Treasurer within ten (10) days after making report thereof to the Treasurer, and for failure to make report to the Treasurer or for failure to make payment to the Treasurer for the space of ten (10) days, he shall be deemed guilty of a misdemeanor and shall be punished, upon conviction, as herein provided.

Upon the termination of his authority the Alderman shall forthwith deliver to his successor all books, papers, documents and other things belonging or appertaining to his office and shall pay over to the Treasurer all moneys in his hands belonging to the Town. Upon neglect or failure to make such delivery or payments for the space of ten (10) days, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned at the discretion of the Court.

**Section 18. Duties of the Secretary**

The Secretary shall record all the proceedings of the Council, and shall keep a correct journal of the same in a book to be provided for that purpose; he shall file and keep in a safe place the seal of the Town and all papers and documents relative to the affairs of the Town; and shall deliver the same to his successor in office. He shall also attest the seal of the Town when authorized by the Council and shall perform such other duties and have such other powers as may be prescribed by ordinance. All records, books, papers and documents in the custody of the Secretary shall always be open for the inspection of the Council and public, under such regulations as the Council may prescribe.

**Section 19. Duties of the Treasurer**

The Treasurer shall be the custodian of all the Town Funds and shall deposit them or cause them to be deposited in such banking institutions as may be designated by the Council; he shall pay out no money except upon check or warrant bearing signatures as set forth by ordinance and authorized by the Council; he shall keep a true, accurate and detailed account of all moneys received and of all monies paid by him; he shall preserve all vouchers for monies paid by him and his books and accounts shall at all times be open to the inspection of the Council; he shall make such reports with respect thereto as the Council may request and at such times as the Council may direct. If the Council by ordinance so provides he shall file a bond with corporate surety for the faithful performance of his duties, in such form and for such amount as the Council shall direct. He shall perform such other duties and have such other powers as prescribed by this Charter and any ordinances. 67 Del. Laws, c. 308

**Section 20. Audit**

There shall be an annual audit of the books and accounts of the Town. The audit shall be by an auditing committee appointed by the Town Council consisting of not less than two persons who may or may not be members of the Council and who may or may not be residents of the Town.

#### **Section 21. Board of Health**

The Town Council may at their discretion appoint a Board of Health who may or may not be residents of the Town. If and when appointed said Board of Health shall be composed of three members. The Board shall serve for two years; shall have cognizance of all matters pertaining to the life and health of the residents of the Town, shall report to the Town Council in writing whatever is deemed by the Board to be injurious to the health of the people of the Town, and shall make such recommendations to the Council as may, in their judgment, be beneficial or in any way contribute to the sanitation or public health. The Board shall also have all powers enumerated by the laws of the State of Delaware for local Boards of Health.

The power to adopt ordinances relating to the health of the population of the Town, or to prevent the introduction or spread of infectious or contagious disease or nuisances effecting the same shall extend to an area within one mile outside of the limits of the Town.

In the event the Town Council does not deem it necessary to appoint a Board of Health as herein provided said Council shall have all of the duties and powers herein conferred upon the Board of Health.

#### **Section 22. Police**

It shall be the duty of the Town Council to appoint a Police force, consisting of a Chief and such number of subordinates as the Town Council may deem advisable; and the Council shall from time to time make rules and regulations necessary for the organization, government and control of the police. The police shall be subject to the direction of the Council and may be removed by the Council at any time. They shall preserve peace and order and shall compel obedience within the limits of the Town to the ordinances of the Town and the laws of the State, and they shall have such other duties as the Council shall from time to time prescribe.

Each member of the police shall be vested, within the Town limits and within one mile outside of said Town limits, with all the powers and authority of a Constable of Sussex County, and in the case of the pursuit of an offender, their power and authority shall extend to any part of the State of Delaware.

Every person sentenced to imprisonment by the President of the Council, Alderman or Justice of the Peace shall be delivered by a member of the police force to the County Jail of Sussex County, to be therein imprisoned for the term of the sentence. In the case of an arrest at a time when the President of the Council, the Alderman or the Justice of the Peace, if there be one, shall not be available to hear and determine the charge, the person arrested may be delivered to the County Jail for imprisonment until such reasonable time thereafter as shall enable the President of the Council, the Alderman, or Justices of the Peace to hear and determine the charge against such person.

#### **Section 23. Budget**

Annually each year, and not later than the first day of August, the Town Council shall prepare a budget containing the financial plan for conducting the affairs of the Town for the ensuing fiscal year. The budget shall contain the following information:

1. A detailed statement showing the expenses of conducting each department and office of the Town for the ensuing fiscal year.
2. The value of supplies and materials on hand, together with the nature and kind of any machinery or other implements and the condition thereof.
3. The amount of the debt of the Town, together with a schedule of maturities of bond issues, if any.
4. 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.

The Town Council shall, so far as possible, adhere to the budget so adopted in the making of appropriations, but may revise the same whenever, in the opinion of the Town Council, such revision shall become necessary or advisable.

#### **Section 24. Assessments and collection of taxes**

- A. Town taxes, generally.

The Town Council shall annually appoint an Assessor to assess the value of real estate within the limits of the Town. The Assessor prior to the first Monday in May of each year shall make a just, true and impartial annual valuation or assessment of all real estate and shall on or before the first Monday in June cause a full and

complete transcript of said assessment, containing the amount assessed to each person, partnership or corporation, to be hung in a public place in said Town. Notice of the hanging of the list shall be posted in at least three (3) public places in the Town. The Finance Administrator and Property Appraiser shall hold a meeting to be set by them during the month of July to hear appeals from said assessment, and shall increase, decrease, or abate such assessment if they deem such action just. The decision of a majority of the Council upon any appeal shall be final and conclusive. 71 Del. Laws, c. 266; 72 Del. Laws, c. 186;

The Town Council, after determining 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 anticipated expenses and emergencies, should then proceed to determine, in its sole discretion, from which sources the authorized revenues of the Town announced or 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:

- (1) The rate of tax on real estate including improvements thereon per One Hundred Dollars (\$100.00) of the assessed value, and/or
- (2) The amount of personal or per capita tax upon each citizen of the Town over the age of eighteen (18) years; and/or
- (3) The rate of tax upon all poles, construction, erections, wires and appliances more particularly mentioned, or intended so to be in this Charter as amended; and/or
- (4) The several license fees to be charged for carrying on or conduction of the several businesses, professions or occupations more particularly mentioned or intended so to be in this Charter, as amended; and/or
- (5) The several rates to be charged for furnishing water service, sewer service, electric service, gas service, front footage assessment, other services authorized by Town Council; and/or
- (6) The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (4) and (5) aforementioned may be determined, fixed, assessed, levied and/or altered or change upon other than a fiscal year basis and at any regular or special meeting of the Town Council as the Town Council, in its proper discretion, shall determine.
- (7) The amount to be raised from this source shall not exceed in any one year the sum of five percent (5%) of the total appraised valuation of all taxable real estate and improvements thereon in the Town; and provided also that there shall be no limitation upon the amount which may be raised from the taxation of real estate for the payment of interest on and principal of any bonded indebtedness whether hereinbefore or hereinafter incurred. 68 Del. Laws, c. 352

Whenever the Town Council shall levy a tax, they shall cause to be made out an alphabetical list of the persons charged therein, and shall cause to be affixed thereto the respective sums to be collected from such persons, and a warrant to the Treasurer of the Town to collect the same.

(B) Collection of Annual Taxes

- (1) The Treasurer, within ten (10) days after the receipt of said tax list and warrant, shall render to each person named therein an account or tax bill showing the amount due, either by delivering the same in person, or mailing to the last known post office address of the taxable. Not less than sixty (60) days or more than ninety (90) days after mailing or delivery of said accounts or tax bills to the taxables, as herein provided, the Treasurer shall cause a list of unpaid taxes to be posted in some convenient and public place within the Town. Unless said taxes are paid within thirty (30) days after the posting of said notices, the Treasurer of the Town and in the name of the Town shall proceed at once to collect the taxes on said tax list and warrant with all costs.
- (2) All taxes so laid or imposed by The Town of Fenwick Island in such Annual Tax List shall be and constitute a lien upon all the real estate of the taxable for a period of ten (10) years against or upon whom such taxes are laid or imposed of which such taxable was seized or possessed at any time after such taxes shall have been levied and imposed that is situate within The Town of Fenwick Island. Such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes.
- (3) All taxes, when and as collected by the Treasurer, shall be paid to the Town of Fenwick Island, and all taxes shall be due and payable at and from the time of the delivery of the Annual Tax List to the Treasurer.

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- (4) All taxes shall be payable at the Office of the Treasurer during the regular business hours of that Office.
  - (5) On all taxes unpaid after thirty (30) days following the delivery of the duplicate Annual Tax List to the Treasurer there shall be added a penalty of Five Percent (5%) for each month or fraction thereof such taxes shall remain unpaid and said penalty shall be collected in the same manner as the original amount of the tax. All taxes unpaid on such date as specified by appropriate resolution or ordinance shall be considered delinquent. The Town Council shall have the power by appropriate resolution to make just allowances for delinquencies in the collection of taxes. The Treasurer shall cause a list of such unpaid taxes to be posted in a public place in the Town. In effecting a collection of delinquent tax, the Town Council may impose a collection charge not to exceed eighteen percent (18%) of the amount of the tax and any penalty imposed thereon.
  - (6) At the August meeting of the Town Council of each year, the Treasurer shall account to the Town Council for all taxes and charges collected by him during the year and shall be liable on his bond for failure to account for any uncollected taxes or charges unless he can show to the satisfaction of the Town Council that all remedies permitted for the collection of said taxes were pursued without result or, if not pursued, the remedies would have been without avail.
  - (7) The Treasurer or the President, when any tax has become delinquent, may, in the name of The Town of Fenwick Island, institute suit before any Justice of the Peace or in the Court of Common Pleas of the State of Delaware, in and for Sussex County, in the Superior Court of the State of Delaware, in and for Sussex County, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs of execution as in case of other judgments recovered before a Justice of the Peace or in the Court of Common Pleas, or in the Superior Court, as the case may be.
  - (8) However, should the Treasurer or President so elect, he is empowered to sell the lands and tenements of the delinquent taxpayer or the lands and tenements of a delinquent taxpayer alienated subsequent to the levy of the tax by the direction of the Town Council using any of those procedures specified for the sale of land for the collection of taxes on the part of the individuals charged with the responsibility for the collection of taxes for Sussex County, and all such procedures and methods available for the sale of land, as aforesaid, as they are presently enacted and hereafter amended, are included herein and made a part hereof by reference thereto, including the method of sale by monition, as the same is set forth in the statutes made and provided, substituting the Town of Fenwick Island for Sussex County therein. 68 Del. Laws, c. 316
- C. Realty Transfer Tax.
- (a) Amount of tax.
    - (1) Each person who makes, executes, delivers, accepts or presents for recording any deed or lease, except as excluded by paragraph (h), or in whose behalf any deed or lease is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect of the transaction or any part thereof, a realty transfer tax at the rate of one percent (1%) of the value of the property represented by such deed or lease. Such tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document at closing.
    - (2) The transfer tax shall be apportioned equally between the parties to the transaction in the absence of an agreement to the contrary.
    - (3) No tax shall be imposed on any conveyance when the actual value of the property being transferred is less than One Hundred Dollars (\$100.00).
  - (b) Judicial Sales.

The tax imposed by this Ordinance shall be paid from the proceeds of any judicial sale of real estate as part of the costs of such judgement or estate and of the writ upon which the sale is made.
  - (c) Affixing of Notation of Payment.

The payment of the tax imposed by this Ordinance shall be evidenced by a notation of payment on the document. The collector shall note on the document the payment of the tax, the amount of payment, the date of payment and the initials of the person receiving payment and his or her office. Such notation shall be conclusive evidence of payment as to any subsequent purchaser relying thereon.
  - (d) Responsibility for Collection and Remitting.

It shall be the responsibility of any settlement attorney, bank, trust company or other agent handling the settlement of each transaction covered hereby to collect the tax from the appropriate party(ies) and to remit such amount to the Town within fifteen (15) days of such settlement.



(e) Prohibited Act.

No person shall make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document without the full amount of tax thereon being duly paid.

(f) Additional Tax; Refunds

In the event the State of Delaware determines that additional taxes are due under Title 30 Del. C. Chapter 54, then additional taxes shall be due to the Town in accordance with the valuation of the transfer as determined by the State, together with interest thereon at the legal rate. Refunds shall likewise be determined and paid.

(g) Definitions.

- (1) 'Deed' shall mean and include any instrument or writing pursuant to which title or possession of any real estate situate within the corporate limits of the Town which shall be quitclaimed, granted, bargained, sold, conveyed or transferred by a seller, vendor, grantor, assignor or transferor to any purchaser, buyer, vendee, grantee, assignee or transferee, except as provided in paragraph (a) of this subsection.
- (2) 'Lease' shall mean and include any document or instrument in writing transferring or purporting to transfer a little or possessory interest by a seller, vendor, lessor, assignor or transferor to any purchaser, buyer, vendee, lessee, assignee or transferee in or to any of the following:
  - (i) A condominium unit or any property or properties subject to the Unit Property Act (25 Del. C. §2201, et seq.) for a determinable term of five (5) years or more.
  - (ii) An interest in land owned by another and/or improvements owned by another located on land owned by another for a determinable term of five (5) years or more;
  - (iii) The exercise of any right or option to renew or extend the title possessory interest in an existing document or instrument in writing when such renewal or extension is for a period of five (5) years or more.
- (3) 'Transaction' shall mean and include the making, executing, delivering, accepting or presenting for recording of a deed or lease as defined herein.
- (4) "Value" shall mean and include in the case of a deed the amount of the actual consideration thereof, including liens or other encumbrances thereon and ground rents or a commensurate part of the liens or other encumbrances thereon where such liens and encumbrances and ground rents also encumber or are charged against other lands, tenements or hereditaments; provided that where such documents shall set forth a small or nominal consideration, values shall be determined from the price set forth in, or actual consideration for, the contract of sale or lease, or, in the case of a gift or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold or otherwise conveyed, which, in either event, shall not be less than the amount of the assessment of such lands, tenements or hereditaments as shown on the books of Sussex County.

(h) Deeds and Leases.

'Deed' and 'lease' shall not include any of the following:

- (1) Any conveyance by will;
- (2) Any mortgage;
- (3) Any lease other than those described or defined in Section 7 (b);
- (4) Any conveyance between persons who were previously husband and wife but who have since been divorced, provided such conveyance is made after the granting of the Final Decree in Divorce.
- (5) Any conveyance between husband and wife;
- (6) Any conveyance between parent and child or a spouse of such child;
- (7) Any conveyance to a trustee, nominee or straw party for the grantor as beneficial owner;
- (8) Any conveyance for the beneficial ownership of a person other than a grantor where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this Ordinance;
- (9) Any conveyance from a trustee, nominee or straw party to the beneficial owner;

- (10) Any conveyance between a parent corporation and a wholly owned subsidiary corporation, provided such conveyance is without actual consideration;
  - (11) Correctional deed without actual consideration;
  - (12) Any conveyance to or from the United States, the State of Delaware, or any instrumentality, agency or political subdivision of the State;
  - (13) Any conveyance to or from a corporation or a partnership where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as his interest in or ownership of, the real estate, or interest therein being conveyed;
  - (14) Any conveyance by the owner of a previously occupied residential premises, to a builder of new residential premises when such previously occupied residential premises were taken in trade by such builder as a part of the consideration from the purchaser of new, previously unoccupied premises;
  - (15) Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure;
  - (16) Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee or by any privy of the grantee for any commercial purpose;
  - (17) Any conveyance made pursuant to a contract executed prior to July 1, 1989;
  - (18) Any conveyance made by or to an individual, a corporation or partnership when there is no change in beneficial interest.
  - (19) Any conveyance made by or to any organization exempt from ad valorem real estate taxes.
- (i) Special Account.

The Town Council or its appropriate authorized representative shall open and maintain a special bank account to be designated as 'Town of Fenwick Island - Beach Renourishment' account into which all proceeds of this tax shall be deposited and accumulated. Such funds shall be earmarked for beach renourishment costs but in the discretion of the Town Council may be used for general budgetary requirements if needed. 67 Del. Laws, c. 82

### **Section 25. General powers**

THE TOWN OF FENWICK ISLAND, DELAWARE shall have all powers granted to municipal corporations and to cities and towns by the Constitution and general laws of the State of Delaware together with all the implied powers necessary to carry into execution all powers granted. It shall have perpetual succession, and may have and use a corporate seal, which may be altered, changed or renewed at pleasure; may sue and be sued, plead and be empled in any and all courts of Law or Equity in the State of Delaware and elsewhere by its corporate name, and, for the purpose of this Charter, to take, hold, receive and enjoy, any lands, tenements and hereditaments, in fee simple or for a lesser estate or interest, and also goods, chattels, rights and credits, and may sell, lease, hold, manage and control any such property or properties in such manner as the Council may deem expedient and proper for the purposes expressed herein; may appoint such officers and agents and employ such persons as shall be deemed necessary or convenient for the management of the affairs of the Town and may fix and determine the compensation of such officers, agents or employees.

It shall have all other powers and functions requisite to or appropriate for the Government of the Town, or necessary to the public health, safety, comfort or welfare or the protection and preservation of public and private property; and all actions, suits and proceedings shall be brought in the name of "TOWN OF FENWICK ISLAND, DELAWARE."

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 thereby, or appropriate to the exercise thereof, it is intended that the TOWN OF FENWICK ISLAND, DELAWARE, shall have and may exercise all powers which under the Constitution of the State of Delaware, it would be competent by this Charter specifically to enumerate. All powers of the Town, whether expressed 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.

### **Section 26. Enumerated powers**

By ordinance, rules, regulations, resolutions, and by-laws or amendments to the same, THE TOWN OF FENWICK ISLAND, DELAWARE, for the good government and welfare of the Town, shall have the following powers (which shall not be deemed to be exclusive): to prohibit and prevent vice, drunkenness and immorality; to preserve peace and good order; to prohibit adult book stores or other commercial establishments, including but not limited to motels and hotels, offering for

sale or viewing pornographic films, literature, material, or devices; to prohibit massage parlors or like establishments; to prohibit, restrain and suppress disorderly houses, gambling houses, houses of ill-fame; to prohibit, restrain and suppress all instruments and devices for gaming; to prohibit all gaming and fraudulent devices; to prohibit, restrain and regulate all sports, exhibitions of natural or artificial curiosities, caravans of animals, theatrical exhibitions, circuses or other public performances and exhibitions for money and to license the same; to prohibit and prevent any racing in any street, highway, alley or strand; to authorize the stopping and detention of any person who shall be guilty of any immoderate riding or driving of any motor vehicle or other vehicle upon any street, alley, highway, or beach strand; to regulate, control or prohibit the parking of vehicles upon the street of the Town; to regulate or prohibit the riding or driving of any horse or other animal, motor vehicle or other vehicle upon any beach strand; to establish and regulate one or more pounds, and to prohibit, regulate or restrict all animals, birds, and fowl within the Town limits including the beach strand, other than wild animals, birds, or fowl natural to the environment and except that no person or persons shall hold in captivity, keep or maintain such wild animals, birds or fowl, and to authorize the impounding and sale of the same for the penalty incurred, and the cost of keeping, impounding and sale; to authorize the destruction of dogs running at large and to impose taxes on the owner of dogs; to prohibit, regulate and remove slaughter houses, swine pens, privies and water closets; and to prohibit and restrain drunkards, vagrants, mendicants, street beggars and solicitors. 62 Del. Laws, c. 410

THE TOWN OF FENWICK ISLAND, DELAWARE shall, in a like manner, have the power to ascertain and establish the boundaries of all streets, avenues, highways, lanes and alleys in said Town; to prevent and remove all encroachments on said streets, avenues, highways, lanes, alleys, beach or beach strands, to regulate, clean and keep in repair, the streets, highways, lanes, alleys, beach, beach strands, boardwalks, wharves, docks, sidewalks, crosswalks, sewer drains, aqueducts and water courses, and to prevent and remove obstructions in and upon the same in any manner whatsoever; to level, grade, flag or re-flag, curb or re-curb, gutter or re-gutter, pave or re-pave, macadamize, gravel or shell the streets, highway and alleys of said Town, and the sidewalks, crosswalks and gutters thereof, or any of them, or any parts or sections of the same, to prescribe the manner in which such work shall be performed; to enforce the removal of snow, ice and dirt from sidewalks and gutters by the occupant or owner thereof, to prevent or regulate the erections of any stoop, step, platform, bay window, cellar door, gate, area, descent into a cellar or basement, sign or post, or the erection of any projection or otherwise, in, over, under or upon any street, sidewalk or avenue, and to remove the same where already erected, at the expense of the owner or occupant of the premises, to abate or remove nuisances of all kinds at the expense of those maintaining them, and to compel the owner or occupant of any lot, house, building, shed, cellar or place wherein may be carried on any business or calling, or in or upon which there may exist any matter or thing, which is or may be detrimental, in the opinion of the Town Council, or Board of Health, to the health of the inhabitants of the Town, to cleanse, remove or abate the same, under the direction of the Council as often as the said Council or Board of Health may deem necessary for the health and wellbeing of the inhabitants of the Town; or in a summary manner to cause the same to be done at the expense and proper cost of such owner or occupant; and such owner or occupant is hereby expressly made liable for said costs and expenses, to be collected, as hereinafter directed, from such owner or occupants in addition to any fine or penalty which he, she, they or it may be liable for maintaining such nuisance.

THE TOWN OF FENWICK ISLAND, DELAWARE shall, in a like manner, have the power to prescribe the manner in which all contracts for performing work or furnishing materials for the Town shall be made and executed, to prescribe the manner in which corporations or persons shall exercise any privileges granted to them in the use of any street, avenue, highway, alley, beach or strand in said Town, or in digging up any street, avenue, highway, or alley, beach or strand for the purpose of laying down pipes, or for any purpose whatsoever, and to prohibit and prevent any such use or work at such times and seasons of the year as they may designate, to enter into contract or contracts with, or to grant franchises, concessions, or rights to any person, firm, partnership or corporation who may apply for the use of any street, highway, avenue, lane, alley, beach or strand for the purpose of furnishing communication services, electric lights, power, gas, heat or water to said Town and its inhabitants, or for the constructions and operation of railways, steam, motor, electrical or other powers, or to regulate, route, grant franchises to and enter into contract or contracts with any other public carrier or for the construction and operation of sewer or other sanitary systems of drainage or for the erection of wharves or piers; to regulate, protect and improve the public grounds of said Town to provide lamps to light the streets in public places of every description in said Town; to erect and regulate wells, pumps, aqueducts and cisterns in the public streets; to prescribe and regulate the places of vending or exposing for sale of any and all articles of merchandise from wagons or other vehicles; provided, that the Town shall have no power to construct a boardwalk along the beach either on private or public property.

THE TOWN OF FENWICK ISLAND, DELAWARE shall, in like manner, have the power to direct and regulate the planting, rearing, treatment and preserving of ornamental shade trees in the streets, highways, avenues, parks and grounds in said Town and to authorize and prohibit the removal or destruction of said trees; to direct the digging down, draining, filling-up or fencing of lots, tracts, pieces or parcels of ground in said Town, which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by the Town or this Charter; to prescribe the manner in which such work shall be performed, and to cause the expenses thereof to be assessed on such lots, tracts, pieces or

parcels of ground, whether improved or unimproved, and to determine the time and manner in which such assessment shall be collected; for the prevention of fire and the preservation of the beauty of the Town; to regulate and control the manner of building or removing of dwelling houses or other buildings, and to establish a code for the same, and for the purpose of promoting health, safety, morals, or the general welfare of the town, the Council may regulate and restrict the height, number of stores, and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, individual residences, or other purposes and is granted the authority and power vested in municipalities by Title 22, Delaware Code of 1953, Chapter 3, entitled "Municipal Zoning Regulations", and any amendments thereto; to regulate the construction of chimneys; to prevent the setting-up or construction of furnaces, boilers, ovens or other things in such manner as to be dangerous; to prohibit the deposit of ashes in unsafe places, and to authorize any Town Officer or Constable or person whom they may designate for the purpose; to enter upon and inspect any place or places for the purpose of ascertaining whether the same is or are in a safe condition, and if not, to direct or cause the same to be made so; to make, adopt and promulgate all rules and regulations relative to the use of any sewer in said Town and the tapping thereof, including the charge and fee therefor, as they shall deem proper, and they may also adopt ordinances prescribing penalties for any injury to the said sewer system or any part thereof, or for any abuse of any privilege granted in connection therewith, to prescribe the material or private drains or sewers which shall enter into any Town sewer, and shall direct the manner in which they shall be laid.

THE TOWN OF FENWICK ISLAND, DELAWARE shall, in like manner, have the power to regulate or prohibit the carrying on of manufacturers dangerous in causing or promoting fires; to regulate or prohibit the manufacture, sale or use of fireworks, and the use of firearms in said Town, to regulate or prohibit the use of candles and lights in barns, stables and other buildings; to regulate and prohibit swimming or bathing in the ocean or within waters within the limits of the Town.

THE TOWN OF FENWICK ISLAND, DELAWARE shall further have the power and authority to compel the owners of property within the limits of the Town to keep the same free from unsanitary or unsightly conditions, clear of tall weeds and rubbish, and to fill in any low lots, provided that the Council in its opinion shall deem the same to be unsanitary or unsightly or in any other manner prejudicial to the welfare of the Town or adjoining lot owners. The Council shall have the power and authority to pass any ordinance prohibiting or regulating the same.

THE TOWN OF FENWICK ISLAND, DELAWARE shall, in like manner, have the power and authority to collect license fees annually of such various amount or amounts as the Council shall, from time to time, fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation within the limits of the Town, provided, however, that nothing herein shall be so construed as to make it mandatory upon any resident of the State of Delaware to apply for a license in order to sell, in the Town, farm produce or any farm products grown on his or her farm.

THE TOWN OF FENWICK ISLAND, DELAWARE shall also have the power and authority to levy and collect license fees upon the property of any person, firm, association or corporation carrying on business in the Town and supplying the inhabitants thereof with any form or manner of services for any valuable consideration.

The Town Council shall have the power to make and establish such other ordinances, regulations, rules and by-laws, not contrary to the laws of this State, or of the United States, as they may deem necessary to carry into effect the powers and duties imposed upon them by this Charter or any other law of this State, and such also, as they may deem necessary and proper for the good government protection or preservation of persons and property, or for the preservation of the public health of the City and its inhabitants.

THE TOWN OF FENWICK ISLAND, DELAWARE, shall, in like manner, have the power and authority to license, tax and collect fees annually or more frequently for any and all Town purposes of such various amount or amounts as the Council may, from time to time, fix from any individual firm, association or corporation carrying on or practicing any activity, business profession or occupation within the limits of the Town provided, however, that nothing herein shall be so construed as to make it mandatory upon any resident of the State of Delaware to apply for a license in order to sell, in the Town, farm produce or any farm products grown on his or her farm. 64 Del. Laws, c. 53

#### **Section 27. Power to remove obstructions, nuisances, unsanitary or unsightly conditions**

In addition to the power to impose fines and penalties for the maintenance of obstructions, nuisances, or unsanitary conditions, as these terms should be defined, by the Town Council, either upon their own inspection or upon information obtained from the Board of Health, Police force, or citizens of the Town, if the Council shall deem that such obstruction, nuisance, or unsanitary condition should be removed or abated, as the case may be, the Town Council shall enact an ordinance or adopt a resolution, or both, to that effect, and thereupon shall direct the Secretary to forward by registered mail of the United States, in a sealed wrapper, addressed to his or her last known post office address or deliver personally to the person or persons continuing or causing such obstruction, nuisance, or unsanitary conditions, or to the person or persons who are responsible for its existence or continuance, a notice to remove or abate the same. If such person or

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persons refuse or neglect, for the space of fifteen (15) days after such notice is mailed or for the space of two (2) days if said notice is delivered in person, to remove or abate the same, the Council shall issue a warrant in the name of the TOWN OF FENWICK ISLAND, DELAWARE, commanding such person or persons forthwith to remove or abate such obstruction, nuisance, or unsanitary condition, and shall forthwith proceed to remove or abate the same and, to that end, shall have full power and authority to enter into and upon any lands and premises within the limits of the Town. The Council, or anyone designated by them, shall likewise have the authority to take with them such assistants, implements, machinery or other things as may be necessary and proper to do and perform all matters and things in connection with the removal or abatement of such obstructions, nuisance, or unsanitary condition. At the next regular or special meeting of the Council, the Council shall specify the costs and expenses of all necessary work, labor and proceedings, incurred in the abatement or removal of the same. The Council shall then issue a warrant, containing an itemized account thereof, together with the name and last known address of the person from whom the Town Council shall have determined the amount due and shall deliver such warrant to the Treasurer of the Town. The warrant shall command the Treasurer forthwith to collect the amount stated to be due thereon from the person or persons designated therein. The Treasurer shall forward to such person or persons in a sealed wrapper a true and correct copy of the warrant by depositing the same in the United States mail and addressed to such person or persons last known post office address or serve personally upon said person if he be within the limits of the Town. If such person or persons shall refuse or neglect to pay the same within thirty (30) days from the date of the mailing of such notice and exact copy of the warrant, or the service of the same personally upon such person or persons, the Treasurer shall then be authorized and required to collect the same in the same manner as herein provided for the collection of delinquent Town taxes.

#### **Section 28. Sidewalks, boardwalks, curbing and gutters**

In respect to leveling, grading, flagging or re-flagging, curbing or re-curbing, guttering or re-guttering, paving or re-paving, building or re-building, the sidewalks, boardwalks, crosswalks and gutters of the Town, the expense thereof shall be borne by the owner of the property abutting upon the same, and the Town Council shall have the authority to specify the manner of performance and the materials to be used therein.

The Council is authorized to notify and direct, in writing, the owner or owners of any house or land in said Town, along, in front of or adjoining which they deem proper that a pavement, sidewalk, or a curb or gutter or both be constructed, to construct said sidewalk, boardwalk or curb or gutter, or both, and the Council shall have the authority to specify the manner of performance and the materials to be used therein. Letters to one joint owner shall be notice to all. In case the owner shall not reside in the Town at the time, notice to the occupant or tenant shall be deemed to be a sufficient notice. If there be no occupant or tenant residing in the Town at the time, such notice may be sent by mail to the owner, directed to him or her at his or her last known post office address. Should such owner neglect or refuse to comply with said notice for the space of thirty (30) days, the Council shall issue a warrant in the name of the Town, directed to the Treasurer or the Chief of Police, demanding such person forthwith to do their work as specified in the above mentioned notice to the owner or owners. Whereupon the person to whom said warrant shall have been directed shall forthwith proceed to lay such pavement, sidewalk, curbs or gutters, or either or both, as directed in the warrant. To that end he shall have full power and authority to enter in any premises or lands of the Town, and to take with him such assistants, materials, implements, machinery or other things as may be necessary or proper to perform the work specified in the warrant. At the next regular or special meeting of the Council, after the delivery of the warrant, upon return thereon accompanied by an itemized statement of all costs incurred in the performance of necessary work and labor incident thereto, the Council shall determine the amount due the Town by reason of the work done, and shall issue a warrant thereon, directed to the Treasurer or Chief of Police, which shall contain the amount to be by him collected, and the person or persons from whom it shall be by him collected and commanding him forthwith to collect the same from the person or persons so specified in the warrant. A true and exact copy of this warrant shall be mailed or served upon the person or persons therein specified. If the amount specified as due the Town shall not have been paid to the Town within thirty (30) days from the date of service of such true and exact copy of the warrant, the Treasurer shall then be authorized and required to collect the same in the same manner as herein provided for the collection of delinquent Town taxes.

#### **Section 29. Streets**

THE TOWN OF FENWICK ISLAND, DELAWARE shall have the power and authority to locate, lay out and open new streets and to widen or abandon the same, or parts thereof, whenever the Town Council shall deem it for the best interest of the Town. In such case, the Council shall adopt a suitable resolution, which shall include a general description of the street to be opened, widened or altered or to be vacated or abandoned, as the case may be, stating the day, hour and place where the Council will sit to hear and determine objections, and to award damages by reason thereof. Copies of such resolution shall be posted in at least three public places in the Town at least five days prior to the day fixed by the Council for the hearing referred to in said resolution.

At said hearing, the Council shall hear objections to the proposed resolution and/or any damages which might be sustained by any owners of property affected thereby, and shall award just and reasonable compensation to any person or persons who shall be deprived of property by virtue thereof.

In the event any person refuses to accept the award of damages made by the Council, the Town Council may proceed in the name of the Town to condemn the property of the person refusing to accept said award, under the provisions of Chapter 61, Title 10, Delaware Code of 1953, as now or hereafter amended.

### **Section 30. Jetties, bulkheads, embankments, and piers or structures**

THE TOWN OF FENWICK ISLAND, DELAWARE shall have the power and authority to locate, lay-out, construct, widen, extend, improve, repair, vacate or abandon jetties, bulkheads and embankments, piers or other structures for the preservation of any beach or strand within the limits of the Town or contiguous thereto, to the end that the same may be preserved and property may be protected, and the general public may enjoy the use thereof. In the locating, laying-out, constructing, widening, extending, improving, repairing, vacating or abandoning of any such jetties, bulkheads, embankments, piers or other structures the Council shall have full power and authority to use such materials and substances and such methods of construction and shall employ such contractors, engineers, inspectors and others as the Council shall deem expedient and advisable. For the purpose of this Section the Council shall have full power and authority to expend such part or parts of the money of the Town, in the general fund of the Town not otherwise appropriated.

The Council may, by condemnation proceedings, take private lands or the right to use private lands for any of the purposes mentioned in this Section. The proceedings by condemnation under this Section shall be the same as prescribed in Section 29 of this Charter for the opening and laying out of new streets or the vacating or abandoning of old streets and the resolutions referred to in said Section 29 shall be changed and modified to cover cases contemplated by this present Section.

### **Section 31. Drainage**

THE TOWN OF FENWICK ISLAND, DELAWARE shall have full jurisdiction and control within the limits of the Town, of the drainage of all water thereof, together with the right to alter and change the course and direction of any of the natural water courses, runs and rivulets within the limits of the Town and the Council may pass ordinances for the opening of gutters, surface water and underground drains and sewers within the limits of the Town. The TOWN OF FENWICK ISLAND, DELAWARE shall also have full power to regulate, maintain, clean and keep the natural water courses, runs and rivulets within the Town limits open and clean and unobstructed and for that purpose may authorize the entry upon private lands and take, condemn and occupy the same in the same manner and by the same condemnation proceedings as hereinbefore provided by Section 29 of this Charter, which is concerned with the opening and laying out of any streets. By like proceedings the Town shall also have the power and authority to enter upon private lands and take, condemn and occupy the same for the purpose of laying down gutters, surface water and underground water drains or sewers, or any of them, within the Town limits. Provided, however, that the resolutions referred to in Section 29 of this Charter shall be changed and modified to cover those cases contemplated by this particular Section of the Charter.

### **Section 32. Additional rights of condemnation**

THE TOWN OF FENWICK ISLAND, DELAWARE shall have the power to acquire lands, tenements, property or interest therein, by condemnation for the purpose of providing sites for public buildings, parks, sewers, sewerage disposal and/or for any other municipal purpose, whether within or without the limits of the Town. The procedure shall be in accordance with and under the provisions of Chapter 61, Title 10, Delaware Code of 1953, as now or hereafter amended.

### **Section 33. Authorizing the Borrowing of Money and Issuing of Bonds.**

- (A) The Council of the Town of Fenwick Island, Delaware, may borrow money and issue bonds or certificates of indebtedness to secure the payment thereof on the faith and credit of the Town of Fenwick Island, Delaware, to provide funds for the erection, the extension, the enlargement or the repair of any plant, machinery, appliances or equipment for the supply, or the manufacture and distribution of electricity, or gas for light, heat, or power purposes; for the furnishing of water, to the public, for the construction or 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 costs of the Town of Fenwick Island, Delaware, of any permanent municipal improvements; providing, however, that the borrowing of the money therefor shall be authorized by the Town Council and shall have been approved in the manner following:
- (B) Procedure.

- (1) Town Council, by resolution, shall propose to the electors of the Town of Fenwick Island, Delaware, that a sum of money not to exceed a stated principal amount, shall be borrowed for any or all of the above purposes; the resolution shall state the maximum principal amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing same, and other pertinent facts relating to the loan which are deemed pertinent by the Town Council and in their possession, and shall fix a time and place for a hearing on the said resolution.
- (2) Notice of the time and place of the hearing on the resolution authorizing said loan shall be printed in a newspaper having a general circulation in the Town and/or in the discretion of the Town Council, posted in at least five (5) public places at least one (1) week before the time set for said hearing.
- (3) Following the public hearing, a second resolution shall then be passed by the Town Council ordering a Special Election to be held not less than thirty (30) days and not more than sixty (60) days after said public hearing to borrow said money for the purpose of voting for or against the proposed loan. The passing of the second resolution calling the Special Election shall ipso facto be considered Council's determination to proceed in the matter in issue.
- (4) The notice of the time and place of holding the said Special Election shall be printed in two (2) issues of a newspaper having a general circulation in the Town within the thirty (30) days immediately prior to the special election and/or, in the discretion of the Town Council, posted in five (5) public places at least fifteen (15) days prior to the special election.
- (5) Voting.
  - (a) 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 vote (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual Town election).
  - (b) These provisions shall be construed so as to permit only one-person, 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) The Registration books of the Town shall be conclusive evidence of the right to vote at the Special Election.
  - (d) A qualified voter may cast his, her or its ballot by absentee ballot if such person is unable to appear in person pursuant to the absentee ballot procedures established by the Town.
- (6) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, an electronic voting system or printed ballots as permitted by law which shall, at a minimum, have the following designation:
  - [ ] For the proposed borrowing
  - [ ] Against the proposed borrowing
- (7) Board of Special Election.
  - (a) The Mayor, by and with the advice and consent of a majority of the Town Council, shall appoint three (3) persons, who may or may not be registered and qualified voters in the Town to act as a Board of Special Election. The polling places shall be open for a minimum of six (6) hours as specified by the resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote. The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such Special Election and shall keep a true and accurate list of all persons voting.
  - (b) The Board of Election shall count the votes for and against the proposed loan and shall announce the result thereof, shall make a certificate under their hands of the number of votes cast for and against the proposed loan and shall deliver the same of the Town Council, and the original shall be filed with the papers of the Town Council.
- (8) Bonds; evidence of borrowing.
  - (a) 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 said bonds or other indebtedness; provided, however, that the Town Council may, by resolution, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or other indebtedness, abandon the proposed borrowing. The Town Council shall prepare and cause to be advertised, within thirty (30) days following the date of receipt by the Town Council of the certificate of the Board of Special Election, a Notice of

- Adoption described in Subsection 11 hereof, in two (2) issues of a newspaper having general circulation in the Town.
- (b) 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 features, the denomination, the name thereof and any other relative or appurtenant matter thereto shall all be determined by the Town Council after said Special Election.
  - (c) The bonds may be sold at either public or private sale as determined by the Town Council. If the bonds shall be offered for public sale, the Town Council, shall first advertise a notice of sale inviting bids thereon, in a manner to be prescribed by the Town Council, at least five (5) days before the date of sale, on which date of sale bids therefor will be accepted. The bonds shall be sold to the winning bidder whose bid offers the lowest true interest cost to the Town out of all bids timely submitted.
  - (d) With respect to its budget, and in fixing the rate of tax, the Town Council shall provide a sinking fund for the payment of interest and principal of said bonds or other indebtedness at the maturity or maturities thereof.
  - (e) The faith and credit of the Town shall be deemed to be pledged for the due payment of the bonds or other indebtedness and interest thereon issued under the provision hereof, when the same have been properly executed and delivered for value and there shall be no limitation upon the amount of taxes which may be raised by taxation for the payment of interest on and principal of any bonded indebtedness of the Town, whether incurred before or after the passage of this Act.
- (9) The bonded indebtedness shall not at any time exceed in the aggregate the total sum of twenty-five per centum (25%) of the value of the real property situate within the limits of the Town as shown by the last assessment preceding the creation of the said indebtedness. There shall be no limitation upon the amount of ad valorem taxes collected to pay the principal of and interest on any bonded indebtedness incurred pursuant to the provisions of this section.
- (10) In anticipation of the issuance of said bonds at any time after a Special Election approving the bond issue, the Town Council may issue and sell bond anticipation notes of the Town at either public or private sale for not less than par plus accrued interest, if any. Said notes may be renewed from time to time by the issuance of and sale of new notes. Said notes shall bear interest at a rate determined by the Town Council to be fair and reasonable. All such notes shall mature and be paid not later than two (2) years from the date of issuance. The aggregate principal amount of all notes outstanding at any one time shall not exceed the aggregate principal amount of the notes authorized by the Special Elections approving such notes. Said notes shall be redeemed at par plus accrued interest, if any, prior to their maturity if the Town Council shall have reserved the right to do so by an express provision in the note or notes. The principal and any interest due on said notes may be paid from the proceeds of the sale of the bonds authorized by this section. Both interest on and principal of any bond anticipation notes shall not be subject to taxation by the state of Delaware or any political subdivision thereof.
- (11) No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or other indebtedness issued under this Section shall be brought after the expiration of twenty (20) days from the publication of a Notice of Adoption in two (2) issues of a newspaper having general circulation in the Town, which Notice of Adoption shall announce the following information:
- (a) That the Town Council has determined to borrow a sum of money not to exceed a stated amount and to issue bonds or other indebtedness therefor;
  - (b) That the proposal has been approved by a majority of those casting votes at a Special Election in the Town, called for the purpose of voting for or against the borrowing;
  - (c) The maximum principal amount of money to be borrowed and any other details of the bonds or such other indebtedness, to the extent such details are known at the time of the advertisement of such notice;
  - (d) The purpose for which such amount of money is to be borrowed; and
  - (e) That any person desiring to challenge the authorization of such bond(s) or other indebtedness must bring his, her or its action within twenty (20) days from the date of publication of such notice or forever be barred from doing so.



(12)The Town Council may refund 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 of such bonds or other indebtedness of the Town shall not require the procedures set out in this Section 33 so long as the outstanding principal amount of the refunding bonds or other indebtedness does not exceed the aggregate principal amount, plus accrued interest and redemption premium, if any, of the outstanding bonds or indebtedness to be refunded, plus the costs of the refunding, and shall be enacted by resolution of the Town Council. 55 Del. Laws, c. 89; 77 Del. Laws, c. 25 §1;

#### **Section 34. Short Term Borrowing.**

Town Council may borrow money in anticipation of revenues on the full faith and credit of the Town of Fenwick Island, Delaware, a sum or sums not exceeding, in the aggregate, a sum equal to 5% of the total assessed value of all non-tax-exempt real property situated within the bounds of the Town of Fenwick Island, as such boundaries from time to time appear, for general purposes when, in the opinion of the majority of the Town Council of the Town of Fenwick Island, Delaware, the needs of the Town require it; provided however, that any new borrowings under this Section 34 made after [the effective date of this act] must, by their terms, be repayable in full within 10 years of the date of such borrowing. Any sum so borrowed shall be secured by promissory notes of the Town of Fenwick Island, Delaware, duly authorized by resolution adopted by the Town Council of the Town of Fenwick Island, Delaware, and signed by the President of the Town Council with the corporate seal affixed, and no officer or member of the Town Council shall be liable for the payments of such notes because it is signed by them as officers of the Town and is authorized by the Resolution of the Town Council. Any sum of money borrowed on the full faith and credit of the Town must be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under this Section 34 must not exceed a sum equal to 5% of the total assessed value of all non-tax-exempt real property situated within the bounds of the Town of Fenwick Island. 67 Del. Laws, c. 352; 81 Del. Laws, c. 258;

Approved July 8, 1953.

THE FOLLOWING SECTION OF 67 Del. Laws, c. 82, APPLIES TO THE EFFECT DATE OF THE MUNICIPAL TRANSFER TAX BUT DID NOT AMEND THE CHARTER ITSELF

#### **Section 35.**

No ordinance providing for a tax on the transfer of real property or any interest in real property authorized under this Act shall become effective until it shall be approved by a majority of the qualified voters of the Town of Fenwick Island at a Special Election to be held pursuant to a Resolution adopted by the Town Council of the Town of Fenwick Island. The Town Council shall give notice of the Special Election by printing a copy of the Resolution calling the Special Election in at least two (2) issues of a newspaper having a general circulation within the corporate limits of the Town of Fenwick Island within thirty (30) days immediately preceding the date of such Special Election. At the said Special Election, every person who is a bona fide resident of the Town of Fenwick Island or who would be entitled at the time of the holding of the said Special Election to register and vote in the Annual Municipal Election, if such Annual Municipal Election were held on the day of the Special Election to be held pursuant to the provisions of this Act, may vote at the said Special Election regardless of whether such person is registered to vote in the Annual Municipal Election. The Special Election shall be held by a Board of Election to be appointed by the Town Council of the Town of Fenwick Island at least two (2) weeks before such Special Election. The Board of Election shall consist of an inspector of the Special Election and such judges as shall be appointed by the Town Council. If a majority of the votes cast at the Special Election shall be in favor of the transfer tax authorized by this Act, the tax may be levied and collected as provided for in this Act. The Board of Election holding the Special Election shall meet immediately after the close of such Special Election to ascertain the result and shall certify the result to the Town Council. The hours of the Special Election shall be established by the Town Council and shall be clearly noted, together with notice of date and place in the Resolution calling said Special Election. Such persons who are in the polling place at the hour appointed for said Special Election to end shall be entitled to vote even though such votes may be cast after the appointed hour. If the majority of the votes cast at any Special Election held under this Act shall be against the levying of the tax authorized by this Act, the proposition shall not again be submitted to the qualified voters until the expiration of ninety (90) days from the date of the said Special Election.

49 Del. Laws, c. 302; 50 Del. Laws, c. 162; 52 Del. Laws, c. 177; 55 Del. Laws, c. 89; 58 Del. Laws, c. 101; 59 Del. Laws, c. 65; 62 Del. Laws, c. 3; 62 Del. Laws, c. 410; 63 Del. Laws, c. 371; 64 Del. Laws, c. 53; 64 Del. Laws, c. 268; 65 Del. Laws, c. 85; 65 Del. Laws, c. 321; 67 Del. Laws, c. 82; 67 Del. Laws, c. 308; 68 Del. Laws, c. 316; 68 Del. Laws, c.

352; 71 Del. Laws, c. 266; 72 Del. Laws, c. 186; 74 Del. Laws, c. 251; 76 Del. Laws, c. 363; 77 Del. Laws, c. 25; 77 Del. Laws, c. 250; 81 Del. Laws, c. 258;