

Millsboro**Incorporation****Section 1.**

The inhabitants of The Town of Millsboro within the corporate limits as hereinafter defined in this Charter or as extended as hereinafter provided are hereby declared to be a body politic incorporated in law and equity and shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts of judicature whatsoever by the corporate name of "The Town of Millsboro".

Territorial Limits**Section 2.**

The present boundaries and limits of The Town of Millsboro are hereby established and declared to be, as follows:

BEGINNING at a point on the Northerly edge of Millsboro Mill Pond, on a line of The American Legion West property line projected across the Pond; thence S 23-1/2 ° W 606 ft. to a point in the South right of way of State Street; thence South 55° 18' W 1232 ft. to a point which is 150 feet distant from the North right of way of Monroe Street; thence parallel to Monroe Street and 150 feet from North right of way N 61° 5' W 277 ft. and N 51° 10' W 1220 ft., crossing highway R 82 to a point 500 ft. West of the West right of way measured at a right angle therefrom; thence, parallel to the West right of way of R 82 and 500 ft. therefrom S 4° W 580 ft. to center of R 82A; S 2° 45' W 800 ft. and S 0° 55' W 2130 ft. to the center of R 24; thence, continuing with R 82, now a 30 ft. county road and 515 ft. W of right of way line S 0° 15' W 500 ft. and S 2° E 875 ft. to a point in the center line of Route 339 projected to this point; thence, S 50° E to the run of Iron Branch; thence, with the run of Iron Branch crossing R 113 to the center of highway R 334-A (Mitchell Street extended); thence with center line of Street N 22° 45' E 2160 ft. to the Tiger Valley Ditch; thence Southeasterly and Northeasterly with the Tiger Valley Ditch around the Cemetery to the Southerly edge of highway R 331 (State St. extended); thence, with Southerly edge of State St. Northeasterly 1219 ft.; thence N 29° 15' E 462 ft. to a monument at Southwest corner of Houston St.; thence with Southerly line of Houston St. S 62° 30' E. 310 ft. to the edge of Indian River; thence at a right angle N 27° 30' E across Indian River to the North edge of the river; thence with the North edge of Indian River and of the Millsboro Mill Pond to the place of beginning.

Section 3. Annexation of Territory.

In the event it becomes feasible and necessary in the future for the Town to enlarge its then existing limits and territory, such annexation accomplished pursuant to the following procedures shall be lawful:

- 3.1 Initiation of annexation proceedings when all owners petition.
 - 3.1.1 The written Petition, by all of the property owners of a territory contiguous to the then existing corporate limits and territory of the Town, with the signature of each such Petitioner duly acknowledged, presented to the Council shall include a description of the territory requested to be annexed, the reasons for the requested annexation, and the zoning designation to be applied.
 - 3.1.2 The Mayor shall, by Resolution, appoint a Committee composed of not less than three (3) of the members of the Council to investigate the possibility of annexation and the appropriateness of the zoning designation.
 - 3.1.3 Not later than ninety (90) days following its appointment by the Mayor, as aforesaid, the Committee shall submit a written report containing its findings and conclusions to the Town Council. The report so submitted shall include the advantages and disadvantages of the proposed annexation both to the Town and to the territory proposed to be annexed, shall contain the recommendation of the Committee whether or not to proceed with the proposed annexation, and the reasons therefor, as well as its recommendation for zoning.
 - 3.1.4 In the event that the Committee appointed by the Mayor concludes that the proposed annexation is advantageous both to the Town and to the territory proposed to be annexed, the Town Council may then pass a second Resolution fixing a time and place for a public hearing on the subject of the proposed zoning to be applied to the property proposed for annexation.

- 3.1.5. Following the public hearing, the Town Council may then pass a third Resolution annexing such territory to the Town and designating the zoning district of said territory. Such Resolution shall be passed by the affirmative vote of a majority of all the members of Town Council.
- 3.1.6 In the event that the Committee appointed by the Mayor concludes that the proposed annexation is disadvantageous either to the Town or to the territory proposed to be annexed, the procedure to be followed shall be the same as hereinafter provided as if the annexation were proposed by five (5) or more property owners but less than all the property owners of a territory contiguous to the then limits and territory of the Town.
- 3.2 Fewer than all property owners petition. If five (5) or more property owners but less than all of the property owners of a territory contiguous to the then limits and territory of the Town by written Petition with the signature of each such Petitioner duly acknowledged shall request the Town Council to annex that certain territory in which they own property, the Petition presented to the Town Council shall include a description of the territory requested to be annexed, the reasons for the requested annexation, and the zoning designation or designations to be applied.
 - 3.2.1 The Mayor shall, by Resolution, appoint a Committee composed of not less than three (3) of the members of the Council to investigate the possibility of annexation.
 - 3.2.2 In the alternative, the Town Council, by a majority vote of the elected members thereof, may, by resolution, propose that a committee composed of not less than three (3) of the members of the Town Council be appointed to investigate the possibility of annexing any certain territory contiguous to the then limits and territory of the Town of Millsboro.
 - 3.2.3 Not later than ninety (90) days following its appointment by the Mayor or Town Council, as aforesaid, the Committee shall submit a written Report containing its findings and conclusions to the Mayor and the Council. The Report so submitted shall include the advantages and disadvantages of the proposed annexation both to the Town and to the territory proposed to be annexed, shall contain the recommendation of the Committee whether or not to proceed with the proposed annexation, and the reasons therefor, as well as its recommendation for zoning.
 - 3.2.4 In the event that the Committee appointed by the Mayor or Town Council concludes that the proposed annexation is advantageous both to the Town and to the territory proposed to be annexed, within sixty (60) days after receiving a report, a second Resolution shall propose to the property owners and residents of both the Town and the territory proposed to be annexed that the Town proposes to annex certain territory contiguous to its then limits and territory. The second Resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation and zoning.
 - 3.2.5 In the event that the Committee appointed by the Mayor or Town Council concludes that the proposed annexation is disadvantageous either to the Town or to the territory proposed to be annexed, the Resolution proposing annexation to the property owners and residents shall require the affirmative vote of three-fourths (3/4) of all the members of the Mayor and Council. If the Resolution shall fail to receive the affirmative vote of three-fourths (3/4) of the members of the Town Council, the territory proposed to be annexed shall not again be considered for annexation for a period of at least one (1) year from the date that the Resolution failed to receive the required affirmative vote.
 - 3.2.6 The said second Resolution adopted by the Town Council setting forth the above information shall be printed in a newspaper having a general circulation in the Town at least fifteen (15) days prior to the date set for the public hearing, or, at the discretion of the Town Council, the said Resolution shall be posted in four (4) public places both in the Town and in the territory proposed to be annexed.
 - 3.2.7 Following the public hearing, but in no event later than forty-five (45) days thereafter, a third Resolution, adopted by a majority of the members of the Town Council, shall order a Special Election to be held not less than thirty (30) nor more than ninety (90) days after the said public hearing on the subject of the proposed annexation. Passage of this Resolution shall *ipso facto* be considered the determination of the Council to proceed with the matter of the proposed annexation.
 - 3.2.8 The notice of the time and place of said Special Election shall be printed within thirty (30) days immediately preceding the date of this Special Election in at least two (2) issues of one (1) newspaper having a general circulation in the Town, or, in the discretion of the Town Council, the said notice may be posted in four (4) public places, both in the Town and in the territory proposed to be annexed at least fifteen (15) days prior to the date set for the said Special Election.

3.2.9 At the Special Election, every property owner, whether an individual, partnership, corporation or other entity, both in the Town and in the territory proposed to be annexed shall have one (1) vote. Every resident of either the Town or of the territory proposed to be annexed over the age of eighteen (18) years who is not a property owner shall have one (1) vote. In the case of property owned by more than one (1) person, firm, corporation, other entity or any combination thereof whether as tenants in common, joint tenants or as tenants by the entireties, each such joint owner shall have one (1) vote.

In the event that a person owns property or has an ownership interest in property both in the Town and in the territory proposed to be annexed and resides in either place, he or she may vote only where he or she resides. In the event that a person owns property both in the Town and in the territory proposed to be annexed but does not reside in either place, he or she may vote only in the Town and not in the territory proposed to be annexed. Property owners whose property is exempt from taxation or is not assessed for taxation shall not be entitled to vote. The books and records of the Town, in the case of property owners and residents of the Town, and the books and records of the Board of Assessment of Sussex County, in the case of property owners and residents of the territory proposed to be annexed, shall be conclusive evidence of the right of such property owners and residents to vote at the Special Election.

3.2.10 In the event that an individual on behalf of a partnership, corporation, or other entity holds an unrevoked Power of Attorney duly executed and acknowledged specifically authorizing the said individual to vote at the said Special Election, a duly authenticated copy of the Power of Attorney shall be filed in the Office of the Town. Said Power of Attorney so filed shall constitute conclusive evidence of the right of said person to vote in the Special Election.

3.2.11 The Town Council shall cause voting machines to be used in the Special Election, the form of ballot to be printed as follows:

For the proposed annexation

Against the proposed annexation

3.2.12 The Mayor shall appoint three (3) persons to act as a Board of Special Election, at least one (1) of whom shall own property in the Town and at least one (1) of whom shall own property in the property proposed to be annexed. One (1) of the said persons so appointed shall be designated the Presiding Officer. Voting shall be conducted in a public place as designated by the Resolution calling the Special Election. The Board of Special Election shall have available, clearly marked, two (2) voting machines. All votes cast by those persons, partnerships, corporations or other entities authorized to vote as residents or property owners in the territory proposed to be annexed shall be accomplished on one such voting machine and all ballots cast by those persons, partnerships, or corporations who are authorized to vote as residents or property owners of the Town shall be accomplished on the other such voting machine. The polling place shall be open from 1:00 p.m., prevailing time until 7:00 p.m., prevailing time, on the date set for the Special Election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls.

3.2.13 Immediately upon the closing of the polling place, the Board of Special Election shall count the ballots for and against the proposed annexation and shall announce the result thereof; the Board of Special Election shall make a Certificate under their hands of the votes cast for and against the proposed annexation and the number of void votes and shall deliver the same to the Town Council. Said Certificate shall be filed with the papers of the Council.

3.2.14 In order for the territory proposed to be annexed to be considered annexed, a majority of the votes cast both from the Town and from the territory proposed to be annexed must have been cast in favor of the proposed annexation. In the event that the Special Election results in an unfavorable vote for annexation, no part of the territory considered at the Special Election for annexation shall again be considered for annexation for a period of at least one (1) year from the date of said Special Election. If a favorable vote for annexation shall have been cast, the Town Council shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds, in and for Sussex County, but in no event shall said recordation be completed more than ninety (90) days following the date of the said Special Election. The territory considered for annexation shall be considered to be a part of the Town from the time of recordation. The failure to record the description or the plot within the specified time shall not make the annexation invalid, but such annexation shall be deemed to be effective at the expiration of the ninety (90) day period from the date of the favorable Special Election.

3.3 Annexation Agreement.

- 3.3.1 Notwithstanding any provision herein to the contrary, where, pursuant to this §3 of this Charter, annexation proceedings are initiated by a property owner(s) holding record title to real property in territory contiguous to the then existing corporate limits of the Town, such petition may be made contingent upon an annexation agreement with the Town which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision approval, tax relief, public utilities, and public improvements. In the event the Town Council approves such an agreement and votes to accept a petition under this §3 of this Charter, such Annexation Agreement shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure; that is, (1) the resolutions and notices adopted by the Town Council shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms, and shall state that copies of the Agreement are available upon request at the Town Hall; (2) if the results of the election are favorable to the proposed annexation as provided by §3.2.14 of this Charter, the resolution annexing the territory shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and the parties shall be bound to honor the provisions of such agreement unless released therefrom by the other party.
 - 3.3.2 Provided, further, that no agreement made at the time of annexation under this §3.3 shall extend beyond seven (7) years from the date the property is annexed into the Town; and such agreements shall be null and void, and unenforceable after the expiration of seven (7) years.
 - 3.3.3 An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special election pursuant to §3.2.7 of this Charter, but any material modification or amendment shall be deemed to be the withdrawal of the original petition and the filing of a new petition under §3.1. or §3.2.
- 3.4 Additional Annexation Procedures.
- 3.4.1 If the territory proposed to be annexed includes only territory which is exempt from taxation, which is owned by the State of Delaware, or which is not assessed on the books of the Board of Assessment of Sussex County, no election shall be necessary and the Town Council may proceed to annex such territory by (1) receiving a certified copy of a Resolution requesting such annexation if such property is owned by a corporation; (2) by a written Petition with the signature of each such Petitioner duly acknowledged if such property is owned by an individual, requesting the Town Council to annex that certain territory in which they own property; or (3) by resolution of the Town Council.
 - 3.4.2 The certified copy of the Resolution or the Petition shall include a description of the territory requested to be annexed, the zoning designation to be applied, and the reasons for the requested annexation.
 - 3.4.3 Upon receipt of the certified copy of the Resolution or the Petition, the Mayor shall, by resolution, appoint a committee composed of not less than three (3) of the members of the Council to investigate the possibility of annexation.
 - 3.4.4 Not later than ninety (90) days following its appointment by the Mayor, as aforesaid, the Committee shall submit a written report containing its findings and conclusions to the Town Council. The report so submitted shall include the advantages and disadvantages of the proposed annexation both to the Town and to the territory proposed to be annexed and shall contain the recommendation of the Committee whether or not to proceed with the proposed annexation and the reasons therefor as well as its recommendation for zoning.
 - 3.4.5 In the event that the Committee appointed by the Mayor concludes that the proposed annexation is advantageous both to the Town and to the territory proposed to be annexed, the Town Council may then pass a second Resolution fixing a time and place for a public hearing on the subject of the proposed zoning to be applied to the property proposed for annexation. Such Resolution, to be effective, shall be passed by the affirmative vote of a majority of all the members of the Town Council.
 - 3.4.6 Following the public hearing, the Town Council may then pass a third Resolution annexing such territory to the Town and designating the zoning district of said territory. Such Resolution shall be passed by the affirmative vote of a majority of all the members of Town Council.
 - 3.4.7 If the Resolution fails to receive the required number of votes, no part of the territory proposed for annexation shall again be proposed for annexation for a period of at least one (1) year from the date that the Resolution failed to receive the required votes.
 - 3.4.8 If the Resolution receives the required number of votes, the Town Council shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds, in and for Sussex

County, and in no event shall such recordation be completed more than ninety (90) days following the passage of the Resolution. The territory considered for annexation shall be considered to be a part of the Town from the time of recordation. The failure of the Town Council to record the description and plot within the time hereinbefore specified shall not make the annexation invalid, but such annexation shall be deemed to be effective at the expiration of the ninety (90) day period from the date of the passage of the Resolution.

- 3.5 Highways, Streets, Roads and Alleys; Ponds, Canals, Streams, and Other Waters. Contiguity with the Town's existing corporate limits, or with other territory which is itself contiguous with the Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, pond, canal, stream, or other body of water which passes through, or lies within the territory to be annexed.
- 3.6 Limitations. No action contesting the annexation of any territory under this section shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two (2) newspapers, both of general circulation in the Town and in the territory annexed, which notice shall contain the following information:
- 3.6.1 Notice that the Town has annexed such territory and a description thereof.
- 3.6.2 Notice that any person or other legal entity desiring to challenge such annexation must bring his or her or its action within sixty (60) days from the date of publication of such notice or forever be barred from doing so.
- 3.6.3 Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.
- 3.6.4 In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections §3.4.3.1. and §3.4.3.2. above (using date of 'posting' for date of 'publication'), to be posted in at least five public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed.
- 3.6.5 In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control. 74 Del. Laws, c. 245

Structure Of Government

Section 4.

The government of The Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in the Town Council. The Town Council shall be composed of seven (7) members, each of whose terms shall be for a period of three (3) years, commencing at the Annual Meeting of the Town Council following his election and continuing until his successor is duly elected and qualified. Six (6) members of the Town Council shall be nominated and elected from the several Districts in which they reside and one (1) member shall be nominated and elected from the Town at large. One of the members of the Town Council shall be elected President of the Town Council and upon his election shall have the title of Mayor of The Town of Millsboro and shall perform all duties prescribed herein to be performed by the Mayor of The Town of Millsboro.

District Limits

Section 5.

There are hereby created and established three (3) Representative Districts for The Town of Millsboro, as follows:

- (a) District One: The area located North of United States Route 113 and East of Main Street to the Town limits;
- (b) District Two: The area located North of United States Route 113 and West of Main Street to the Town limits;
- (c) District Three: The area located South of United States Route 113 to the Town limits.

Qualifications For Town Councilman

Section 6.

The qualifications for Town Councilman at the time of his election shall be as follows:

- (a) A bona fide resident of the United States and of the State of Delaware and a resident of The Town of Millsboro for at least ninety (90) days next preceding the Annual Municipal Election; and
- (b) At least eighteen (18) years of age;

- (c) Each of the qualifications for Town Councilman shall be continuing qualifications to hold office and the failure of any of the Town Councilmen to have any of the qualifications required by this Section during his term of office shall create a vacancy in that Office. 62 Del. Laws, c. 358

Method Of Making Nominations For Town Councilman

Section 7.

Each candidate for Town Councilman shall be nominated as follows:

- (a) Each candidate shall notify the Town Manager in writing of his candidacy for the office of Town Councilman.
- (b) All such notifications of candidacy must be filed in the Town Office during the regular business hours of the Town on or before the close of business on the last Friday in the month of May; and thereupon it shall be the duty of the Town Manager to have a list of all candidates so filed with him printed in a newspaper of general circulation in the Town of Millsboro at least five (5) days prior to the date of the said Annual Municipal Election next ensuing; or, in the discretion of the Town Council, the Secretary may post a list of names of all candidates designating the office sought by each candidate in at least five (5) public places in the Town, such public places to be designated by the Town Council. One of the said public places shall be in the Town Hall of The Town of Millsboro.
- (c) In the event that the Town Manager is unable to act because of illness, absence, or for any other reason whatsoever, the names of all candidates shall be filed with the Vice-President of the Town Council who shall thereupon perform the duties required of the Town Clerk in Subsection (b) of this Section.
- (d) The Town Council shall make arrangements for voting machines to be placed in the polling place prior to the time set forth in this Charter for the beginning of the Annual Municipal Election. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443;

Manner Of Holding Annual Municipal Election

Section 8.

The procedure for holding the Annual Municipal Election shall be as follows:

- (a) The Annual Municipal Election shall be held at a place designated by the Town Council within the corporate limits of The Town of Millsboro on the Second Saturday in June of each and every year from one o'clock in the afternoon, prevailing time, until seven o'clock in the evening, prevailing time, the first said Annual Municipal Election to be held pursuant to this Charter to be held on the Second Saturday in June, A.D. 1977.
- (b) At the Annual Municipal Election to be held on the Second Saturday in June, A.D. 1977, one (1) Councilman from the First District and one (1) Councilman from the Second District shall be elected. Each of the Councilmen who are elected shall serve for a term of three (3) years, or until his successor has been duly elected and qualified.
- (c) At the Annual Municipal Election to be held on the Second Saturday in June, A.D. 1978, one (1) Councilman shall be elected from the Second District, one (1) Councilman from the Third District, and one (1) Councilman at large who may reside in any District. Each of the Councilmen so elected shall serve for a period of three (3) years or until his successor has been duly elected and qualified.
- (d) At the Annual Municipal Election to be held on the Second Saturday in June, A.D. 1979, there shall be elected from the First District one (1) Councilman and from the Third District one (1) Councilman, each of whom shall hold office for a period of three (3) years or until his successor is duly elected and qualified.
- (e) Thereafter, at each Annual Municipal Election, there shall be elected two (2) Councilmen who shall serve for a term of three (3) years, or until their successors have been duly elected and qualified, except at the Annual Municipal Election in the year when the Councilman at large is to be elected, at which time there will be three (3) Councilmen elected.
- (f) The members of the Commissioners of Millsboro who hold office at the time of passage of this Act shall continue to hold office as members of the Town Council of the Town of Millsboro until their respective successors have been duly elected and qualified.
- (g) The Annual Municipal Election shall be conducted by a Board of Election consisting of an Inspector and two (2) Judges appointed by the Mayor of the Town of Millsboro with the concurrence of a majority of the members of the Town Council not later than the last regular meeting of the Town Council prior to the date of the Annual

Municipal Election. The Board of Election shall determine who is and who is not lawfully entitled to vote thereat, take reasonable steps to see that the law pertaining to the Annual Municipal Election receives compliance and for the purpose of counting the votes and certifying the result to the Town Council. If any of the officers so chosen and designated to conduct the Annual Municipal Election shall not be present at the polling place at the time designated for the holding of the Annual Municipal Election, it shall be lawful for the qualified voters present at the polling place at the time of holding said Annual Municipal Election to elect from among their own number a person to fill each vacancy and such Board of Election caused by the absence of any member of the Board of Election. The Board of Election shall keep a list of all persons who voted at such Annual Municipal Election.

- (h) At such Annual Municipal Election, every person, male or female, who shall have attained the age of eighteen (18) years on the date of the said Annual Municipal Election and who shall be a bona fide resident of the Town of Millsboro shall have one (1) vote.
- (i) The Town Council may, by ordinance, provide for any qualified voter to cast an absentee ballot if such person is unable to appear and cast his or her ballot.
- (j) In the event that no person files or is nominated for office for which an election is to be held within the time set forth in Section 7 of this Charter, the incumbent shall be deemed to be reelected for a full term and it shall not be necessary to have an election.
- (k) In the event that only one person files or who is nominated for office for which an election is to be held within the time set forth in Section 7 of this Charter, the person who files or is nominated shall be deemed to be elected for a full term and it shall not be necessary to have an election.

62 Del. Laws, c. 358; 69 Del. Laws, c. 208; 70 Del. Laws, c. 443;

Organization And Annual Meeting Of Council

Section 9.

- (a) Before entering upon the duties of their respective offices, the Councilman Elect shall be sworn by a Notary Public to perform faithfully and impartially the duties of their respective offices with fidelity. At the first regular meeting following the Annual Municipal Election, the Town Council shall meet at the Council Chamber and the newly elected officers shall assume the duties of office, being first duly sworn or affirmed to perform their duties with fidelity, as aforesaid.
- (b) At the annual meeting held on the first regular meeting following the Annual Municipal Election, the Town Council shall organize and elect a President and a Vice-President who shall hold office for the term of one (1) year or until their respective successors shall be duly qualified and elected. The person elected as President of the Town Council shall have the title of Mayor of The Town of Millsboro. The Town Council shall likewise select a Secretary and a Treasurer from their own number to serve until the first regular meeting after the next Annual Municipal Election. 62 Del. Laws, c. 358; 71 Del. Laws, c. 41; 73 Del. Laws, c. 281;

Regular And Special Meetings

Section 10.

The Town Council of The Town of Millsboro shall hold one (1) meeting in each month on the first Monday of the month. If the first Monday of the month shall be a legal holiday, the monthly meeting of the Town Council of The Town of Millsboro shall be held on the next succeeding regular business day. 71 Del. Laws, c. 41

Quorum

Section 11.

A majority of the members elected to The Town Council shall constitute a quorum at any regular or special meeting; but a lesser 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.

Rules And Minutes Of Council

Section 12.

The Council shall determine its own rules and order of business and shall keep a journal of its proceedings and the yeas 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.

VACANCIES**Section 13.**

If any vacancy shall occur in the office of Councilman by death, resignation, loss of residence in the District which the Councilman represents, loss of residence in the Town of Millsboro, refusal to serve, or otherwise, the same may be filled by a majority vote of the remaining members of the Town Council, the person or persons so chosen to fill such vacancy shall be qualified as in the case of newly elected members and shall hold office for the remainder of the unexpired term.

Disqualifications**Section 14.**

If any Councilman, during his term of office, shall be found guilty of any crime or misdemeanor and sentenced to imprisonment for any term whatever, or shall for any reason cease to be a resident of the District which he represents in the case of those members of Council elected from a particular District or shall for any reason cease to be a resident of the Town, he shall forthwith be disqualified to act as a member of Council and his office shall be deemed vacant and shall be filled by the Town Council, as aforesaid.

Contracts**Section 15.**

- (a) It shall be unlawful for the Town Council to make or enter into any contract in excess of Five Hundred Dollars (\$500.00) for materials, supplies, services, work or labor, for the benefit and use of the Town of Millsboro with any member of the Town Council or with any partnership in which any member of the Town Council is a General Partner, or with any corporation in which any member of the Town Council is a Director or controlling stockholder or any firm or company which any member of the Town Council is pecuniarily interested, provided that if all the elected members of the Town Council shall vote to enter into such contract, then the Town may enter into such a contract. Any such contract executed without such unanimous vote shall be absolutely null and void.
- (b) All contracts for the purchase of materials or for the furnishing of services authorized or permitted by this Charter shall be accomplished by competitive bidding and the awarding of contracts to the lowest responsible and responsive bidder. 82 Del. Laws, c. 147, §1;
- (c) Notwithstanding subsection (b) of this section, a contract may be awarded to a bidder other than the lowest responsible and responsive bidder if, in the opinion of the Town Council, the interests of the Town are better served by awarding the contract to another bidder. The Town Council may make an award under this subsection only if the Council makes a written determination of the award, describing the reasons why the award better serves the interest of the Town. Reasons for making an award under this section include unsatisfactory performance on any previous awarded contract by the rejected bidder. 82 Del. Laws, c. 147, §1;
- (d) Determination of a Responsive and Responsible Bidder.
 - (1) The Town Council shall determine that a bidder is responsive before awarding a contract to the bidder. A responsive bid must conform in all material aspects to the requirements and criteria set forth in the contract plans and specifications.
 - (2) The Town Council shall determine that each bidder on any contract is responsible before awarding the contract. The following factors are to be considered in determining if a bidder is responsible:
 - a. The bidder's financial, physical, personnel, or other resources, including subcontracts and the availability of the bidder's representative to call on and consult with the Town.
 - b. The bidder's record of performance and integrity.
 - c. Whether the bidder is qualified legally to contract with the Town.
 - d. Whether the bidder supplied all necessary information concerning its responsiveness.

- e. Any other specific criteria for a particular procurement, which the Town may establish. The criteria must be set forth in the invitation to bid and be otherwise in conformity with state or federal law. 82 Del. Laws, c. 147, §1;
- (e) The Town Council may reject all bids on any contract before the award of the contract for any reason it believes to be in the best interest of the Town. 82 Del. Laws, c. 147, §1;
- (f) Competitive bidding shall not be required in any of the following circumstances: 82 Del. Laws, c. 147, §1;
- (1) The aggregate amount involved is not more than Twenty Thousand Dollars (\$50,000.00); 82 Del. Laws, c. 147, §1;
 - (2) The purchase or contract is for personal or professional services;
 - (3) The purchase or contract is for any service rendered by a University, college or other educational institution;
 - (4) The purchase or contract is for any service to be rendered by the State of Delaware or any political subdivision;
 - (5) The purchase or contract is for property or services for which it is impracticable to obtain competition;
 - (6) The public exigency, as determined by the Town Council, will not permit the delay incident to advertising;
 - (7) The materials to be purchased are to be used to complete a project under the supervision of the Town Manager;
 - (8) The purchase or contract is for property or services for which the Town Council determines the prices received after competitive bidding are unreasonable as to all or part of the requirement or not independently reached in open competition;
 - (9) A public emergency as determined by the Town Council exists. 68 Del. Laws, c. 243
- (g) Notwithstanding the foregoing provisions of this Section 15 and without complying with the competitive bidding procedures described above, the Town Council of the Town of Millsboro may enter into any contract necessary or desired in connection with a special development district or tax increment financing district created or designated by the Town Council of the Town of Millsboro pursuant to Section 34B hereof except a contract in which the Town Council of the Town of Millsboro is directly contracting for the procurement of the labor or material for public improvements for the benefit of such district, provided that the foregoing exception shall not apply to development or similar type contracts between the Town Council of the Town of Millsboro and an owner of real property in such district when the contract is generally for the transfer by the owner to the Town Council of the Town of Millsboro of the work performed and the cost of labor or material provided by such owner for the benefit of such district. 75 Del. Laws, c. 87; 82 Del. Laws, c. 147, §1;

Duties Of The Mayor And President Of Council

Section 16.

- (a) The President of the Town Council shall preside at all meetings thereat, and shall vote on all matters brought before the Town Council for a vote. He shall appoint all committees, receive complaints or nuisances, and other complaints of citizens concerning violations of law and ordinances. He shall present a report of complaints and nuisances and violations of law and ordinances to the Town Council at the first regular meeting after receiving such complaints. He may require the Alderman or the Assistant Alderman, as hereinafter provided for in this Act, to proceed upon such infractions or violations of law and ordinances immediately in the event that he deems such action to be required. The President of the Town Council shall perform such other duties and have such other powers as the Town Council shall determine not in conflict with the provisions of this Charter. The Mayor shall be empowered to act on behalf of the Town, without prior Town Council approval, in the event of a sudden emergency requiring prompt action, in order to protect the public health, safety and welfare of the town, its inhabitants and property owners. A "sudden emergency", for purposes of this section, shall include, by way of example and not limitation, a major fire or conflagration, significant flooding or serious storm threatening significant damage, a civic disturbance or a toxic spill. A sudden emergency shall also include any emergency situation as declared by any county, state or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town.
- (b) The President of the Town Council, within thirty (30) days following his election, may appoint, by and with the advice and consent of a majority of the elected members of the Town Council, two (2) suitable persons who shall be qualified voters of The Town of Millsboro to act as Alderman and Assistant Alderman. Both the

Alderman and the Assistant Alderman shall hold office until each successor shall be duly appointed and chosen.

- (c) The President of the Town Council may, for any reasonable cause, by and with the consent and upon the address of a majority of all the members of the Town Council, remove from office any person appointed by him or any or his predecessors. The person against whom the Council may be about to proceed shall receive five (5) days written notice thereof, accompanied by a statement of the cause alleged for the removal and shall be accorded a full and fair hearing, if such a request is received by the President of the Town Council by certified mail with return receipt requested within ten (10) days following the date that notice of removal is received by such person.
- (d) The President of the Town Council may appoint such other committees as he deems necessary for the proper administration of The Town of Millsboro or the Council may, by resolution, authorize the President of the Town Council to appoint certain committees which are deemed necessary to carry out the provisions of this Act.
- (e) It shall be the duty of the Vice-President of the Town Council, in the absence of the President, to preside at all meetings of the Town Council in the event of absence of the President and perform such other duties and to have such other powers of the President as are prescribed by the Charter of The Town of Millsboro or by any Ordinance of the Town Council. 70 Del. Laws, c. 443

Secretary

Section 17.

- (a) The Secretary shall have charge and custody of books, journals, records, papers and other effects of the Town and shall keep the same in a safe and secure place. He shall keep a full and complete record of all the transactions in The Town of Millsboro. He shall be a voting member of all committees and shall keep a record of the transactions and proceedings of the same, together with such other duties as may be prescribed by this Charter or by Ordinance or rule of the Town Council of The Town of Millsboro. He shall file and keep in a safe place the seal of The Town of Millsboro and all papers and documents arising out of the proceedings of the Town Council of The Town of Millsboro relative to the affairs of the town. He shall deliver the same to his successor in office. He shall attest the seal of The Town of Millsboro when authorized by the Town Council and shall perform such other duties and have such other powers as may be prescribed by Ordinance.
- (b) All books, records and journals of The Town of Millsboro in the custody of the Secretary may, in the presence of the Mayor, Secretary, Assistant Secretary or any member of the Town Council of The Town of Millsboro, be inspected by any voter of the Town desiring legitimate information at any time, or times, as may be convenient and will not interfere with the regular routine of the business of the Town.
- (c) All books, records, papers and documents in the custody of the Secretary shall be open for inspection by members of the Town Council of The Town of Millsboro.
- (d) Compensation, if any, of the Secretary for his duties, shall be determined by the Town Council. 62 Del. Laws, c. 358

Treasurer

Section 18.

- (a) The Treasurer shall be the custodian of all the funds of the Town. He shall deposit, or cause to be deposited, such funds in such banking institutions as may be prescribed by the Town Council. The Treasurer, together with such other members of the Town Council, as shall be authorized by Resolution of the Town Council, shall be authorized to execute checks, but no funds shall be paid out except as authorized by the Town Council.
- (b) The Treasurer shall keep a true, accurate and detailed account of all funds received and of all funds paid out by the Treasurer. The Treasurer shall preserve all vouchers for moneys paid out and the books and records shall, at all times, be open to inspection by any member of the Town Council. The Treasurer shall make a report at each regular meeting of the Town Council and at such other times as may be required by the Town Council. All such report shall be a part of the minutes of the Town Council.
- (c) The Treasurer shall file with The Town of Millsboro a bond with corporate surety approved by the Town Council in a sum not less than Twenty-five Thousand Dollars (\$25,000.00), the premium for said bond to be paid by the Town Council. The bond shall be conditioned upon the faithful performance by the Treasurer of his duties of office and the restoration to the Town in the case of his death, resignation, or removal from office of all books,

papers, vouchers, funds and other property of whatever kind in his possession belonging to The Town of Millsboro.

- (d) Annually each year and not later than sixty (60) days prior to the beginning of the next fiscal year, the Treasurer shall prepare a rough draft of a Town Budget. From this rough draft, the Town Council shall prepare the Town Budget.
- (e) The Treasurer shall perform such other duties relative to the finances of The Town of Millsboro as the Town Council may from time to time prescribe or require. 62 Del. Laws, c. 358

Alderman And Assistant Alderman

Section 19.

- (a) The Mayor may appoint some suitable person to act as Alderman and may appoint some suitable person to act as Assistant Alderman; such persons shall be members in good standing of the Bar of the State of Delaware and shall meet the standards established for magistrates and Justices of the Peace for the State of Delaware. Any person appointed by the Mayor to serve as Alderman or Assistant Alderman shall be at least twenty-one (21) years of age, shall be of good character and reputation and shall be a resident of the Town of Millsboro and shall not be a member of the Town Council of the Town of Millsboro. Any person appointed by the Mayor to serve as Alderman or Assistant Alderman shall be appointed for an indefinite term and any such appointment shall be confirmed by a majority of all members of the Town Council of the Town of Millsboro. Either the Alderman or Assistant Alderman may be removed from office at any time, with or without cause, by the affirmative vote of two-thirds (2/3) of all the elected members of the Town Council of the Town of Millsboro.
- (b) Before entering upon the duties of his office, the person appointed by the Mayor to serve as Alderman and the person appointed by the Mayor to serve as Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of his office honestly, faithfully and diligently and to uphold and enforce the Charter of the Town of Millsboro and Ordinances duly enacted by the Town Council of the Town of Millsboro and to carry into effect all orders of the Town Council of the Town of Millsboro made pursuant to any law of this state. The Assistant Alderman shall perform the functions of the Alderman if the Alderman is unavailable and at such other times as may be designated by the Mayor. During such periods the Assistant Alderman shall have all the powers and duties of the Alderman.
- (c) The Town Council shall procure suitable records for the use of the Alderman and the Assistant Alderman. Such records shall be known as the "Alderman's Docket." The Alderman and the Assistant Alderman shall each record all official acts and proceedings in the Alderman's Docket.
- (d) The Alderman and the Assistant Alderman shall have jurisdiction and cognizance of all breaches of the peace and other offenses committed within the corporate limits of The Town of Millsboro so far as to arrest and hold for bail or fine and imprison offenders for any offense, penalty or forfeiture prescribed by the Charter of The Town of Millsboro and any Ordinance enacted thereunder; of all neglects, omissions or defaults of any officer, agent or employee of the Town; provided, however, that neither the Alderman nor the Assistant Alderman shall impose any fine in excess of Five Hundred Dollars (\$500.00) nor imprison any offender for more than sixty (60) days, or both, except as otherwise provided in the Charter of The Town of Millsboro. The Alderman and the Assistant Alderman may, in addition to any other fine or term of imprisonment permitted to be assessed or imposed, impose and collect such costs as are set by Ordinance or Resolution of the Town Council of The Town of Millsboro; provided, however, that no costs shall be imposed which is in excess of that which may be imposed by a Justice of the Peace for like service.
- (e) The Alderman and the Assistant Alderman shall prepare and submit a monthly report to the Town Council reporting all fines and penalties imposed during the preceding calendar month and shall pay to the Treasurer of the Town all such fines and penalties.
- (f) The Alderman and the Assistant Alderman shall receive such salary as may be fixed from time to time by Resolution of the Town Council.
- (g) If any Alderman or Assistant Alderman shall be removed from office as hereinbefore provided, he shall deliver to the Town Manager, within two days after his removal from office, all the books and papers belonging to his office, and to pay over to the Town Manager all moneys in his hands within five (5) days after receiving the notice of his removal from office. Immediately after the receipt of the books and papers belonging to the office of either the Alderman or the Assistant Alderman, the Town Manager shall require the auditor of the Town, appointed as hereinafter provided, to make an audit of the books and papers of the official so removed from the office. Upon the neglect or failure to deliver all the books and papers to the Town Manager within the time

specified by this Charter, or to pay over all of the moneys to the Town Manager within the time specified, the Alderman or Assistant Alderman, so removed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each day that he fails to deliver the books and papers to the Town Manager or to pay over all moneys to the Town Manager. 71 Del. Laws, c. 41

Town Manager

Section 20.

- (a) The Town Council of the Town of Millsboro may appoint a Town Manager who shall be the Chief Administrative Officer of the Town.
- (b) The Town Council of the Town of Millsboro shall impose such qualifications for Town Manager as may be deemed necessary; provided, however, that no person holding the office of Town Councilman shall be chosen to be Town Manager during his or her term of office as Councilman.
- (c) The Town Manager shall hold office for an indefinite term and may be removed by a majority vote of the Town Council of the Town of Millsboro. At least thirty (30) days before such removal shall become effective, the Town Council shall, by a majority vote of all the elected members thereof, adopt a preliminary resolution stating the reasons for his or her removal. The Manager may reply in writing and may request a public hearing which shall be held not earlier than twenty (20) days but not later than thirty (30) days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the Town Council, by a majority vote of all the elected members thereof, may adopt a final resolution of removal. By the preliminary resolution, the Town Council may suspend the Town Manager from duty but shall in any case call to be paid him or her forthwith any unpaid balance of his or her salary and his or her salary for the next three calendar months following the adoption of the preliminary resolution.
- (d) In case of the absence or disability of the Town Manager, the Town Council may designate some qualified person who may be an elected or appointed official of the Town of Millsboro to perform the duties of such office during his absence or disability. The compensation which the Town Manager shall receive for the performance of his or her duties shall be fixed by the Town Council of the Town of Millsboro.
- (e) The Town Manager shall be responsible to the Town Council of Millsboro for the proper administration of the affairs of the Town placed in his or her charge and to that end, he or she shall have the power to make such appointment and to hire such employees at such compensations as the Town Council, by Resolution, shall determine, subject to such rules and regulations as may be adopted by the Town Council. All employees shall be hired for an indefinite term and may be removed by the Town Manager at any time unless otherwise provided by resolution of Council. He or she shall exercise his or her sole discretion in the appointment or hiring of any such employees. The Town Manager shall be the sole judge of the competence or incompetence of any such person so appointed or hired by him. The Town Council of the Town of Millsboro shall sit as a Board of Appeal for the protection of Town employees at those times when the majority of all the Commissioners are agreed that a review of the action of the Town Manager would be in the best interests of the Town of Millsboro. The decision of the Town Council in such case shall be final and conclusive.
- (f) It is the intention of this Charter that, in the performance of his or her duties, and in the exercise of his or her powers, the Town Manager shall not be influenced by any matters whatsoever of a political or fractional nature. It is the intention of this Charter that the Town Manager shall be guided solely by matters of expediency and efficiency in the administration of the affairs of the Town placed in his or her charge. Except for purposes of inquiry, the Town Council shall deal with that portion of the administrative service for which the Town Manager is responsible solely through the Town Manager.
- (g) It shall be the duty of the Town Manager to supervise the administration of the affairs of the Town under his or her charge and to make such reports to the Town Council as are required by the Town Council. He or she shall make such recommendations to the Town Council concerning the affairs of the Town as may seem to him or her desirable. He or she shall keep the Town Council advised of the financial condition and future needs of the Town. He or she shall prepare and submit to the Town Council at the regularly monthly meeting of each and every month a true, accurate and detailed account of all the moneys collected or received by him or her in the performance of his or her duties and shall promptly turn the same over to the Town Council.
- (h) In conjunction with the Mayor and the Town Council of Millsboro, he or she shall sign warrants pursuant to appropriations or resolutions theretofore made for the Town Council. He or she shall prepare and submit to the

Town Council such reports as may be required by the Town Council. He or she shall perform such other duties as may be prescribed by this Charter or required of him or her by Ordinance or Resolution of the Town Council.

- (i) The Town Manager and such other officers of the Town as may be designated by vote of the Town Council shall be entitled to seats in the meetings of the Town Council, but shall not vote therein.
- (j) The Town Manager shall have charge and supervision of the streets, gutters, curbs, sidewalks, boardwalks, jetties, piers, parks, and other administrative affairs of the Town and all work relating thereto. He or she shall have charge of and shall collect all taxes, assessments, rentals, license fees, or other charges due the Town. He or she shall have charge of the administration of all provisions of this Charter and Ordinances and Resolutions of the Town Council relating to the affairs of the Town when not otherwise provided for by this Charter or by any Ordinance or Resolution of the Town Council. He or she shall pay over to the Town Treasurer at least monthly, as hereinbefore provided, and oftener is required by the Town Council, all moneys received or collected by him or her and by any employee under his or her supervision.
- (k) He or she shall keep a full and strict account of all moneys received and all disbursements made by him or her and such accounts shall, at all times, be open to inspection to the Town Council.
- (l) He or she shall give to the Town of Millsboro a bond, if required by the Town Council, in such sum and in form with security satisfactory to the Town Council for the faithful performance of the duties of his or her office and the restoration of The Town of Millsboro, in case of his or her death, resignation, or removal from office all books, papers, vouchers, money and other property of whatever kind in his or her possession belonging to the Town.
- (m) In the event of a vacancy in the office of the Town Manager for any reason or reasons whatsoever, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges and powers theretofore reposed in his or her predecessor or predecessors in office in the same manner as though all acts, deeds and steps theretofore taken by any such predecessor or predecessors with respect to any matter or thing pertaining to said office had been taken or performed by the successor to such office.
- (n) Upon the death, resignation, or removal from office of the Town Manager, the Town Council shall appoint some suitable person, who may be an elected or appointed official of the Town of Millsboro, to perform the duties of Town Manager; provided, however, such person shall not serve for a period exceeding ninety (90) days from the date of his or her appointment. 70 Del. Laws, c. 443

Town Solicitor

Section 21.

The Mayor of The Town of Millsboro with the advice and consent of a majority of the elected members of the Town Council, shall select and appoint a Town Solicitor for an indefinite term who shall be removable at the pleasure of the Town Council of The Town of Millsboro either with or without due cause stated. The Town Solicitor shall be a member in good standing of the Bar of the State of Delaware, with offices in Sussex County. It shall be his duty to give legal advice to the Town Council and other officers of the Town and to perform other legal services as may be required of him by the Town Council.

Board Of Health

Section 22.

- (a) If it is established, the Board of Health shall consist of four (4) members, one (1) of whom shall be a practicing physician. The Board shall be appointed by the Mayor of The Town of Millsboro with the advice and consent of a majority of the elected members of the Town Council at the annual meeting hereinbefore provided, and shall serve for one (1) year or until their successors are duly appointed and qualified. The Board of Health shall have cognizance of and interest in the life and health of the people of the Town. The Board 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 recommendations to the Town Council concerning whatever may contribute to the health and sanitation of the citizens of The Town of Millsboro. The Board shall organize by the election of a Chairman and Secretary within ten (10) days after notice of their appointment and shall keep a record of their proceedings and acts. The Secretary shall be the executive officer of the Board.
- (b) The Secretary of the Board may be allowed a reasonable annual compensation for his services, which shall be determined by the Town Council and no other compensation shall be paid to the Secretary for his services as

such. The Secretary may or may not be a member of the Board of Health appointed by the Mayor, but he shall be a resident of The Town of Millsboro.

- (c) The Board of Health shall have the power to recommend the adoption of ordinances relating to the health of the population of the Town or to prevent the introduction or spread of infectious or contagious diseases or nuisances affecting the same and such ordinances, when adopted by the Town Council, shall extend to an area outside the Town limits for a distance of one (1) mile. 71 Del. Laws, c. 41; 72 Del. Laws, c. 49;

Police Force

Section 23.

- (a) The Town Council shall, from time to time, make such rules and regulations as may be necessary for the organization, government and control of the police force. The police force shall preserve peace and order and shall compel obedience within the Town limits to the Ordinances of the Town and the laws of the State of Delaware. The police force shall have such other duties as the Town Council shall, from time to time, prescribe. The Chief of Police and the members of the police force shall be subject to the direction of the Town Manager acting in behalf of the Town Council.
- (b) Each member of the police force shall have police powers similar to those of constables and shall be conservators of the peace throughout the Town of Millsboro, and they shall suppress all acts of violence and enforce all laws relating to the safety of persons and property. They shall compel the enforcement of all laws enacted by the Town Council of The Town of Millsboro. In the case of a pursuit of an offender, the power and authority of the police force shall extend outside the territorial limitations of The Town of Millsboro.
- (c) Every person sentenced to imprisonment by the Alderman or the Assistant Alderman or a Justice of the Peace, as the case may be, shall be delivered by a member of the police force to the correctional institution located in Sussex County to be there imprisoned for the term of his sentence.
- (d) In the case of an arrest at any time when the Alderman or the Assistant Alderman of The Town of Millsboro shall not be available or if no such Alderman or Assistant Alderman has been appointed, the person arrested may be taken before the nearest Justice of the Peace with officers in Sussex County who shall hear and determine the charge, and who, in such case, is vested with all the authority and powers granted by this Charter under the Alderman or the Assistant Alderman. In the case of an arrest at a time when the Alderman or the Assistant Alderman or the Justice of the Peace shall not be available to hear and determine the charge, the person arrested may be delivered to the correctional institution located in Sussex County for imprisonment until such reasonable time thereafter as shall enable the Alderman or Assistant Alderman or the Justice of the Peace to hear and determine the charge against such person.
- (e) It shall be the duty of the police force to suppress riotous, disorderly or turbulent assemblages of persons in the streets of the Town or the noisy conduct of any person in the same, and upon the view of the above or upon view of the violation of any Ordinances of the Town relating to peace and good order thereof, the police force shall have the right and power to arrest without warrant. 62 Del. Laws, c. 358; 71 Del. Laws, c. 41;

Annual Audit

Section 24.

At the annual meeting hereinbefore provided, the Mayor, with the advice and consent of a majority of the elected members of the Town Council, shall appoint an accountant to be the auditor of accounts of The Town of Millsboro. It shall be the duty of the auditor to audit the accounts of the Town and all its officers whose duty involves the collection, custody and payment of moneys to the Town. The auditor shall audit the books of the Alderman and the Assistant Alderman of The Town of Millsboro the records of all fines, penalties, costs imposed or collected by him pursuant to any judgment, order or decree made. The auditor shall, by the date of the January regular Council meeting following the end of the fiscal year, annually make and deliver a detailed report of any and all accounts, records, and books by them examined and audited which report under his hand and seal shall be printed in a newspaper having a general circulation in the Town in the issue immediately preceding the annual report. The auditor, in the performance of his duties, shall have access to all records and accounts of the offices of the Town Council and he is hereby authorized and empowered to employ such clerks as in his judgment may be necessary in the proper performance of his duties. 83 Del. Laws, c. 496, § 1;

Board Of Assessment

Section 25.

- (a) The Board of Assessment shall be appointed by the Mayor of The Town of Millsboro, with the advice and consent of a majority of the elected members of the Town Council for an indefinite term. The Board of Assessment shall consist of three (3) members, all of whom shall be over the age of twenty-one (21) years, bona fide residents of The Town of Millsboro and freeholders of the Town.
- (b) They shall be sworn or affirmed by the Mayor of The Town of Millsboro or by a Notary Public to perform their duties with fidelity and without favor. It shall be their duty to make a fair and impartial assessment of property and persons subject to taxation situate within the corporate limits of the Town and to perform such other duties and reference thereto as shall be prescribed from time to time by the Town Council of The Town of Millsboro. Compensation to be by them received for the performance of their duties in the hiring of employees to assist them in the performance of their duties shall be fixed by and subject to the approval of the Town Council of The Town of Millsboro.
- (c) In making such assessment, the rules and exemptions now applicable by law to the making of the assessment for Sussex County of persons and property shall be applicable insofar as consistent with the provisions of this Charter.

Assessment Of Taxes**Section 26.**

The Board of Assessment shall, within ninety (90) days prior to the beginning of the next fiscal year, make a just, true and impartial annual valuation or assessment of all real estate and improvements located thereon located within The Town of Millsboro. All real estate shall be described with sufficient particularity to be identified. Real estate shall be assessed to the owner or owners if he or they be known. If the owner or owners of real estate cannot be found or ascertained, it may be assessed to "Owner Unknown." A mistake in the name of the owner or owners or a wrong name or an assessment to "Owner Unknown," shall not affect the validity of the assessment of any municipal tax or assessment based thereon; Provided, however, the assessment shall specify the last record owner or owners thereof as the same shall appear from the records in the Office of the Recorder of Deeds, in and for Sussex County. The Board of Assessment shall also make a personal assessment of all male and female citizens of the Town above the age of Eighteen (18) years, whether an owner of real estate or not; said personal assessment shall be determined by the Town Council and certified to the Board of Assessment. Said personal assessment or per capita tax shall be in addition to the assessment levied on real estate owned or assessed by any person or persons whomsoever.

- (a) The Board of Assessment, after making such annual assessment, shall, at least ninety (90) days prior to the end of the fiscal year, deliver to the Town Council of The Town of Millsboro a list containing the names of all persons assessed and the amount of assessment against each. They shall also deliver at such time as many copies of said list as the Town Council shall direct.
- (b) The annual assessment shall distinguish the real and personal assessment of each person and shall also be arranged so that the land, the improvements thereon, and the per capita assessment shall appear in separate columns or spaces. In making this assessment, the Board shall make its valuation accordingly.
- (c) The real property of the several members of the Board of Assessment shall be assessed by the Town Council of The Town of Millsboro.
- (d) Immediately upon receiving the annual assessment list from the Board of Assessment, the Town Council of The Town of Millsboro shall cause a full and complete copy of the same, containing the amount assessed to each taxable to be hung in a public place in The Town of Millsboro and there it shall remain for a period of at least ten (10) days for the information of and examination by all concerned. Appended thereto and also in five (5) or more public places in said Town shall be posted notices advertising to all concerned that, upon a certain day mentioned therein and not earlier than ten (10) days after the date of posting of the true and correct copy of the annual assessment list and notices that, at the next regular meeting of the Town Council, the Town Council will hold a court of appeals at which time and place they shall hear appeals from the said annual assessment. The decision of the Town Council sitting as the Board of Appeals shall be final and conclusive and said Town Council shall revise and complete said assessment at this sitting. No member of the Town Council shall sit upon his own appeal but the same shall be heard and determined by the other councilmen.
- (e) All the members of the Board of Assessment shall be present on the day fixed for hearing appeals and shall furnish to the Town Council such information and answer such questions as the Town Council may require in

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

Supplemental Assessment

Section 26A.

- (a) In addition to the annual assessment provided for in Section 26 of this Charter, the Board of Assessment may, at its option, prepare a quarterly supplemental assessment list for any of the following purposes:
 1. Adding property which was not included on the first annual assessment;
 2. Increasing the assessed value of property which was included in the last assessment;
 3. Correcting errors on the prior annual assessment;
 4. Revising or modifying any exception from taxation applicable to property within the Town;
- (b) The supplemental assessment list shall be prepared quarterly by the Board of Assessment and such supplemental assessments shall be certified to the Town Council on July 1, October 1, and January 1 of each fiscal year.
- (c) On the date of certification of the supplemental assessment list of the Town Council by the Board of Assessment each property owner shall be liable for the payment of real estate taxes equal to the assessed value of the property multiplied by the tax rate for the then current fiscal year applicable to the property reduced by twenty-five percent (25%) when the property is listed on the second supplemental assessment list, fifty percent (50%) when the property is listed on the third supplemental assessment list and by seventy-five percent (75%) when the property is listed on the fourth supplemental assessment list and the amount of such tax, together with any interest, penalty and collection charge shall be a lien for a period of ten (10) years and such lien shall have preference and priority to all other created liens on real estate or upon improvements located on land under lease as prescribed in the Charter or suffered by said property owner although such lien or liens be of a date prior to the time of the attaching of such lien for taxes.
- (d) Whenever the Board of Assessment places a property on a supplemental assessment list, he shall deposit notice thereof in the regular mail addressed to the owner of the property affected thereby at the address shown on the assessment list, or if the address of such owner does not appear on the assessment list, then to the person occupying the property, or if there is no apparent occupant, such notice shall be posted on the property. Such notice shall be given no later than the date on which the supplemental list on which the property appears is certified to the Town Council by the Board of Assessment. The certification by the Board of Assessment that the notice required by this Subsection was mailed or posted, as the case may be, shall be conclusive evidence that notice to the property owner was received.
- (e) The Board of Assessment shall publish a notice of the place or places where the supplemental assessment list may be inspected together with a notice of the time and place in the Town when the Town Council, not earlier than ten (10) days from the date of the last publication, shall sit, between the hours of one o'clock in the afternoon, prevailing time and five o'clock in the afternoon, prevailing time, to hear appeals. Such notice shall appear at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Town. The decision of the Town Council sitting as a Board of Appeals, shall be final and conclusive and the said Town Council shall revise and complete the said supplemental assessment at this sitting. Neither the Mayor nor any member of the Town Council shall sit upon his appeal but the same shall be held and determined by the other members of the Town Council.
- (f) Pending determination of the appeal, the property owner may either pay the tax imposed by the supplemental assessment and if on appeal the assessment is reduced, the property owner shall be entitled to a refund of the taxes which he has overpaid plus interest thereon at the rate of one percent (1%) per month for each month or fraction thereof from the date of payment or the property owner may decline to pay the tax imposed by the supplemental assessment in which case, interest and penalties shall accrue at the rate of one percent (1%) per month for each month or fraction thereof that the taxes remain unpaid from the expiration of thirty (30) days following the date of mailing or the posting of the notice, as the case may be, required by this Section.
- (g) In the collection of all taxes imposed by the supplemental assessment list, the Town Clerk shall deduct four percent (4%) from the amount of taxes assessed against the real property of any property owner if the property is listed on the second supplemental assessment list, a credit of two and one-half percent (2-1/2%) if property is listed on the third supplemental assessment list, and a credit of two (2%) if the property is listed on the fourth

supplemental assessment list and is paid within thirty (30) days following the date of mailing of the notice by the Board of Assessment to the owner of the property.

- (h) All taxes imposed by the supplemental assessment list paid more than thirty (30) days following the date that notice is mailed by the Board of Assessment to the property owner as provided for in this Section shall be delinquent. 68 Del. Laws, c. 212; 75 Del. Laws, c. 425;

Taxation Of Real Estate Transfers

Section 26B.

- (a) The Town Council of the Town of Millsboro, in addition to all other powers conferred upon it by this Act, shall have the power and authority by ordinance or ordinances to levy, assess and collect or provide for the levying, assessment and collection of such taxes as shall be determined by the Town Council to be paid by the transferor or transferee upon the transfer of real property or any interest in real property situate within the corporate limits of the Town of Millsboro, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfers occur; provided however, that no tax shall be levied upon an organization exempted from ad valorem real estate taxes.
- (b) No ordinance or ordinances providing for a tax on the transfer of real property or any interest in real property authorized under this Section shall become effective unless it receives an affirmative vote of two-thirds (2/3) of all the elected members of the Town Council of the Town of Millsboro. If the taxing power authority granted under this Section shall be exercised by way of a stamp affixed to a document presented for recording, the Recorder of Deeds, in and for Sussex County, shall not receive for record any document subject to such tax unless such stamps are affixed thereto.
- (c) The Town Council of the Town of Millsboro may adopt an ordinance or ordinances to provide for the effective administration and regulation of any tax adopted pursuant to the provisions of this Section.
- (d) No tax levied under this Section shall exceed one percent (1%) of the sale price (including the value of any assumed mortgage or mortgages) or of the fair market value of the real property so transferred; and provided however, that no tax shall be imposed upon an organization which is exempted from ad valorem taxes. The provisions of Section 5401 and Section 5403, Chapter 54, Title 30, Del. C., shall be applicable to any realty transfer tax imposed pursuant to this Act.
- (e) The Town Council may provide by Ordinance for the collection of such tax by the Recorder of Deeds, in and for Sussex County, or such other agent as may be appointed by the Town Council and shall prescribe in such Ordinance the charge that will be paid for such collection of such realty transfer tax authorized by this Section. 68 Del. Laws, c. 243; 70 Del. Laws, c. 73;

Levy Of Annual Taxes

Section 27.

- (a) At the last regular meeting in the fiscal year, after having revised and completed the assessment, the Town Council shall determine, in its best judgment and knowledge, the total amount necessary to be raised by the Town to meet the fixed and anticipated expenses and obligations of the Town, including reasonable and appropriate reserves, for the then current fiscal year as set forth in the Town Budget for such year plus a reasonable amount to cover unanticipated expenses and emergencies.
- (b) The Town Council should then proceed to determine, in its sole discretion, from which sources of the authorized revenues of the Town the amount so determined by them shall be raised and, within the limits prescribed by this Charter with respect to any such source, the amount to be raised from each such source. They shall then proceed to determine, assess, fix and/or levy as follows:
- (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 Section 30 of this Charter as amended; and/or

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- (4) The several license fees to be charged for carrying on or conducting of the several businesses, professions or occupations more particularly mentioned or intended so to be in Section 30 of 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; and/or
 - (6) The fees or rates to be charged in respect to any other authorized source of revenue sufficient to their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as foresaid; PROVIDED, HOWEVER, that sources (4), (5) and (6) aforementioned may be determined, fixed, assessed, levied and/or altered or changed upon other than a fiscal year basis and that any regular or special meeting of the Town Council as the Town Council, in its own proper discretion, shall determine.
- (c) Immediately after the last regular meeting prior to the end of the fiscal year of each and every year, the Town Council shall make, or cause to be made, a full, true and correct Annual Tax List showing the amount of tax levied against each taxable thereon from sources (1), (2) and (3) above mentioned. This list shall be known as the Annual Tax List of The Town of Millsboro. In addition to the information contained in the assessment list, it shall also contain information as to the rate of tax upon real estate for each One Hundred Dollars (\$100.00) of assessed valuation thereof.
 - (d) The Town Council shall cause to be delivered to the Town Manager a duplicate of said Annual Tax List and the Town Manager shall immediately proceed to collect the same as hereinafter provided.
 - (e) Nothing contained in this Charter shall be construed to affect or impair in any way the validity of any tax, fee, assessment or other charge lawfully levied, assessed or due The Town of Millsboro under existing laws in reference to said Town and the same are hereby declared to be valid, binding and vested in The Town of Millsboro created hereby. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443;

Collection Of Annual Taxes**Section 28.**

- (a) The Town Manager, as soon as the Town Council shall have placed in his hands a duplicate Annual Tax List, shall proceed at once to collect the taxes on said duplicate list.
- (b) All taxes so laid or imposed by The Town of Millsboro 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 Millsboro. Such lien shall have preference and priority to all other liens on such real estate, as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien of taxes.
- (c) All taxes, when and as collected by the Town Manager, shall be paid to The Town of Millsboro, and all taxes shall be due and payable at and from the time of the delivery of the Annual Tax List to the Town Manager.
- (d) All taxes shall be payable at the Town Office of The Town of Millsboro during the regular business hours of that office.
- (e) In the collection of said taxes, all taxes paid after the expiration of ninety (90) days from the beginning of the fiscal year shall be delinquent. The Town Council shall have the power to make just allowances for delinquencies in the collection of taxes. On all taxes paid on or after the expiration of ninety (90) days next succeeding the delivery of the duplicate Annual tax List to the Town Manager, there shall be added interest at the rate of 0.5% per month and an additional sum of 1% per month as a penalty for each month or fraction thereof such taxes shall remain unpaid and said penalties shall be collected in the same manner as the original amount of the tax. All taxes unpaid after the expiration of ninety (90) days from the beginning of the fiscal year of The Town of Millsboro shall be considered delinquent. In effecting a collection of any delinquent tax the Town Council may impose a collection charge not to exceed eighteen percent (18%) of the amount of the tax and any interest or penalty imposed thereon.
- (f) At the annual meeting of the Town Council of each year, the Town Manager shall account to the Town Council for all taxes and sewer rentals collected by him during the year and shall be liable on his bond for failure to account for any uncollected taxes or sewer rentals 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.

- (g) The Town Manager, when any tax has become delinquent, may, in the name of The Town of Millsboro, institute suit before any Justice of the Peace or in the Court of Common Pleas of the State of Delaware, in and for Sussex County, or in the Superior Court of the State of Delaware, in and for Sussex County, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs of execution as in 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.
- (h) However, should the Town Manager 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 following procedure:
- (1) The Town Manager shall present in the name of The Town of Millsboro to the Superior Court of the State of Delaware, in and for Sussex County, a petition in which shall be stated:
 - (A) The name of the taxable;
 - (B) The year for which the tax was levied;
 - (C) The rate of tax;
 - (D) The total amount due;
 - (E) The date from which interest and the penalty for nonpayment shall commence and the rate of such interest and penalty and any collection charge permitted;
 - (F) A reasonable, precise description of the lands and tenements proposed to be sold;
 - (G) A statement that the bill of said tax has been mailed to the taxable at his last known post office address with return receipt requested by certified mail and postage prepaid;
 - (H) That it has been found impractical to attempt to collect the said tax by any other remedy hereinbefore provided. The petition shall be signed by the Town Manager and shall be verified before a Notary Public.
 - (2) At least ten (10) days prior to the filing of any such petition as described herein, the Town Manager shall deposit in the mail in a sealed and stamped envelope and addressed to the taxable at his last known address requiring a registered receipt returnable, an itemized statement of the tax due, together with all interest, penalties, collection charges, and costs then due thereon, together with a notice to the delinquent taxpayer that he shall proceed to sell the lands and tenements of the taxpayer for the payment of the tax. The Town Manager shall exhibit the return registry receipt to the Court by filing the same with the petition; provided, however, that if the taxpayer cannot be found, it shall be sufficient for the Town Manager to file with said petition the evidence that such statement has been mailed in accordance with this Subsection and has been returned.
 - (3) Upon the filing of the petition, the Prothonotary shall record the same in a property indexed record of the Superior Court, in and for Sussex County, and shall endorse upon the said record of said petition the following: "This petition, filed the ____ day of ____, A,D, ____, and the Town Manager of The Town of Millsboro is hereby authorized to proceed to sell the lands and tenements herein mentioned or a sufficient part thereof as may be necessary for the payment of the amount due" This endorsement shall be signed by the Prothonotary.
 - (4) Any sales of lands and tenements of a delinquent taxpayer shall be advertised in five (5) public places in The Town of Millsboro, one of said public places shall be the Town Office and by printing the notice of said sale at least one (1) time in a newspaper of general circulation in the Town. The notice shall contain the day, hour, place of sale and a short description of the premises sufficient to identify the same. The handbills shall be posted at least ten (10) days before the day fixed for the sale and the newspaper advertisement shall be published at least one (1) week before the day of the sale.
 - (5) Each sale of lands and tenements shall be returned to the Superior Court of the State of Delaware, in and for Sussex County, at the next term thereof following the sale, and the Court shall inquire into the circumstances and either approve or set aside the sale. If the sale be approved, the Town Manager making the sale shall make a deed to the purchaser which shall convey the right, title and interest of the delinquent taxpayer or his alienee; if the sale be set aside, the Superior Court may order another sale and so on until the tax be collected. The petition, return and deed shall be presumptive evidence of the regularity of the proceedings.
 - (6) No sale shall be approved by the Superior Court if the owner be ready at court to pay the taxes, penalty, collection fees and costs, no deed shall be made until the expiration of one (1) year from the date of the sale within which time the owner, his heirs, executors, or assigns, shall have the power to redeem the

- lands on payment to the purchaser, his personal representatives or assigns, the costs, the amount of the purchase price, and twenty percent (20%) interest thereon and the expense of having the deed prepared.
- (7) After satisfying the tax due and the costs of expense of sale from the proceeds of sale, the amount remaining shall be paid to the owner of the land, upon the refusal of the said owner to accept said residue, or if the owner is unknown or cannot be found, the amount remaining shall be deposited in some bank in The Town of Millsboro, either to the credit of the owner or in a manner in which the fund may be identified.
- (8) In the sale of lands for payment of delinquent taxes, the costs shall be allowed to be deducted from the proceeds of the sale or chargeable against the owner, as the case may be, including but not limited to charges of the Prothonotary, Town of Millsboro, cost of printing and posting hand bills, the publication of the advertisement of sale in one or more newspapers, the auctioneer's fee and attorney's fees incurred by the Town of Millsboro. The costs of the deed will not be chargeable as costs, but shall be aid by the purchaser of the property of the delinquent taxpayer. The total of any Delaware and municipal transfer tax shall be paid by the purchaser of said lands at the tax sale.
- (9) If the owner of any lands and tenements against which a tax shall be levied and assessed shall be unknown, this fact shall be stated in the advertisement of sale.
- (10) If any person is assessed for several parcels of land and tenements in the same assessment in The Town of Millsboro, the total of said taxes may be collected from the sale of any part or portion of said lands and tenements, provided that the land alienated by the delinquent taxpayer shall not be sold until other property of the taxpayer shall have been disposed of and there still remains a delinquency.
- (11) In the event of death, resignation or removal from office of the Town Manager of The Town of Millsboro before the proceedings for the sale of lands shall have been completed, his successor in office shall succeed to all of his powers, rights, and duties in respect to said sale. In the event of the death of the purchaser of said sale prior to his receiving a deed for the property purchased thereat, the person having right under him by consent, devise, assignment, or otherwise, may refer to the Superior Court of the State of Delaware, in and for Sussex County, a petition representing the facts and praying for an order authorizing and requiring the Town Manager to execute and acknowledge a deed conveying to the petitioner the premises so sold or a just portion thereof; and thereupon the court may make such order touching the conveyance of the premises as shall be according to justice and equity.
- (12) The Town Manager shall have the same right to require the aid or assistance of any person or persons in the performance of his duty of sale which the Sheriff of Sussex County now has by law or may hereafter have.
- (i) In addition to all of the remedies, methods and authorities for the collection of taxes, the Tax Collector shall have the same rights in the collection of taxes as the Tax Collector or Receiver of Taxes as Sussex County now has by law or may hereafter have, including the monition method for the collection of such taxes. 62 Del. Laws, c. 358; 66 Del. Laws, c. 226; 66 Del. Laws, c. 257; 70 Del. Laws, c. 443; 71 Del. Laws, c. 41; 72 Del. Laws, c. 86;

Town Budget

Section 29.

- (a) The fiscal year for The Town of Millsboro shall be as determined by Resolution of the Town Council.
- (b) Annually each year and not later than sixty (60) days prior to the beginning of the next fiscal year, the Town Manager shall prepare a rough draft of the Town Budget. From this rough draft, the Town Council shall not later than the regular meeting following the presentation of the rough draft prepared of the Town Budget, containing the financial plan for conducting the affairs of the Town for the ensuing fiscal year.
- (c) The budget shall contain the following information:
- (1) A detailed estimate showing the expense 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 machinery or other implements and the condition thereof;
 - (3) The amount of the debt of the Town, together with the schedule of maturities of Bond issues;
 - (4) An itemized statement of all other estimated expenses to be incurred in the affairs of the Town for the ensuing fiscal year;

- (5) A statement of the amount required for interest on the bonded debt, the amount necessary to pay any bond maturing during the year and the amount required for the "Sinking Fund" or "Sinking Funds";
- (6) An estimate of the amount of money to be received from taxes, water rents, sewer service charges, front foot assessments, license fees and all other anticipated income of the Town from any source or sources whatsoever.
- (d) The Town Council shall, so far as possible, adhere to the budget so adopted in the making of appropriations. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443;

Enumeration Of Powers

Section 30.

- (a) Not by way of limitation upon the power vested in the Town Council of The Town of Millsboro to exercise all powers delegated by this Charter to the municipal corporation or to the Town Council except as may expressly appear herein to the contrary, but, rather by way of enumeration and for purposes of clarity, the Town Council is vested by this Charter with the following powers, to be exercised by the Town Council in the interest of good government and the safety, health, and public welfare of the Town, its inhabitants and affairs, that is to say:
 - (1) To prevent vice, drunkenness and immorality;
 - (2) To provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;
 - (3) To prohibit all gaming and fraudulent devices;
 - (4) To prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games;
 - (5) To ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair or replace any new or present street, highway, lane, alley, water course, park, lake, crosswalk, wharf, dock, sewer, drain, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town; to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; to enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the Town;
 - (6) To regulate or control the observance of the Sabbath Day;
 - (7) To establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large, and to authorize the destruction of the same;
 - (8) To locate, regulate, license, restrain or require the removal of slaughter houses, wash houses, laundries, canning establishments, phosphate, fish, fertilizer and manure plants or establishments, swine pens, privies, water closets in any businesses or buildings or conditions detrimental to the public health or constituting a public nuisance or of an offensive or a noxious nature;
 - (9) To enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners;
 - (10) To prohibit, remove or regulate the erection of any stoop, step, platform, bay window, cellar, gate, area, descent, sign, post or any other erection or projection in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, wharf, dock, sewer, drain, aqueduct or pipeline of the Town;
 - (11) To define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare;
 - (12) To provide an ample supply of pure water for the Town and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property or rights used in or about the collection, storage, purification, conveyance, or distribution or sale of water; to regulate and prescribe for what public or private purposes the water furnished by the Town of Millsboro may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the

Town; to furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and to contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself.

- (13) To provide, construct, extend, maintain, manage and control a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town; to regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties or both, for any willful or negligent injury or damage to, or interference with the said system, plan or facilities. To furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits. In the interest of the public's health, to compel any and all properties in the Town to be connected to the sewer system of the Town; and to contract for and purchase sewer disposal service and to resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself.
- (14) To provide, construct, extend, maintain, manage and control the plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the Town and for lighting the streets, highways, lanes, alleys, water courses, parks, lake, strands, sidewalks, crosswalks, wharves, docks, public buildings or other public places in the Town, and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the Town, and to furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; to regulate and prescribe for what private or public purpose the current or gas furnished by the Town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; to furnish or refuse to furnish electric current or gas from the Town's system or systems, to places and properties outside the Town limits; and to contract for and purchase electric current or gas and distribute the same to users within or without the Town with the same full powers as though such current or gas had been initially reduced to usefulness by the Town itself.
- (15) To fully control within the Town the drainage of all water and to that end to alter or change the course and direction of any natural water course, runs or rivulet within the Town, to regulate, maintain, clean and keep the same open, clean and unobstructed, and to provide, construct, extend and maintain, manage and control a surface water drainage system and facilities for the health, sanitation and convenience of the inhabitants of the Town;
- (16) To provide, construct, extend, maintain, manage and control jetties, bulkheads, embankments, flood gates, piers, or fills for the preservation of any strand or high land within the limits of the Town and contiguous thereto to the end that the same may be preserved, property protected that the general public might enjoy the use thereof.
- (17) To grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restrictions, stipulations and conditions and for such considerations as the Town Council shall deem in the best interests of the municipality, to use the present and future streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, crosswalks, wharves, docks and other public places of the Town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, railroad excepting railroads or railways engaged in Interstate Commerce, bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof, and for the purpose of erecting wharves and piers and for the purpose of vending any article or merchandise or service upon or from any vehicle upon any present and future street, highway, lane, alley, etc.; provided that no exclusive franchise or license shall be granted for any such purpose to any person, firm, association or corporation whomsoever;
- (18) To regulate and control the exercise of any license or franchise mentioned in Section 30 of this Charter, or intended so to be;
- (19) To direct, regulate and control the planning, rearing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and grounds of the Town and to authorize or prohibit the removal or destruction of said trees;

- (20) To direct the digging down, draining, filling up, cleaning, cutting or fencing of lots, tracts, pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter;
- (21) To provide for or regulate the numbering of houses and lots on the streets and the naming of streets and avenues,
- (22) To regulate, control or prevent the use or storage of gun powder, fireworks, tar, pitch, resin, and all other combustible materials and the use of candles, lamps, and other lights in stores, shops, stables and other places; to suppress, remove or secure any fireplace, stove, chimney, oven, broiler, or other apparatus which may be dangerous in causing fires;
- (23) For the prevention of fire and the preservation of the beauty of the Town, to regulate and control the manner of building or removal of dwelling houses and other buildings; to establish a Code for the same and to provide for the granting of permits for the same; to establish a building line for buildings to be erected; to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material; and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22, **Del. C.** of 1974, and all amendments heretofore or hereafter adopted;
- (24) To acquire, build, erect and maintain a suitable place as a lock-up or jail for the Town which shall be used as a place of detention for persons convicted of violation of law or Ordinance, or for detention of persons accused of violation of law or Ordinances, for a reasonable time in cases of necessity prior to hearing and trial; and to provide for the restraint, support and employment of paupers, beggars, and vagrants; provided that any correctional institution located in Sussex County may be used for any such purpose;
- (25) To acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town;
- (26) To regulate or prevent the use of guns, air guns, spring guns, pistols, sling shots, bean shooters, and any other devices for discharging missiles which may cause bodily injury or injury or harm to property; and to regulate or prevent the use of fireworks, bombs and detonating works of all kinds;
- (27) To provide for the punishment of a violation of any Ordinance of the Town by fine or imprisonment, or both, not exceeding One Thousand Dollars (\$1,000.00) or sixty (60) days, or both;
- (28) To provide for the organization of a fire department and the control and government thereof; to establish fire limits and to do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, to contribute, donate or give an amount or amounts not to exceed in the total during any fiscal year three percentum (3%) of the total taxes levied on real estate unto any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town; provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable;
- (29) To purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of the abatement of nuisances and the like, laying out and repairing sidewalks, curbs or gutters, or other charges due the Town and to sell the same;
- (30) To levy and collect taxes for any and all municipal purposes upon all real estate and improvements located thereon; provided, however, 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 or principal of any bonded indebtedness whether hereinbefore or hereinafter incurred; 76 Del. Laws, c. 13
- (31) To levy and collect a personal or per capita tax upon all persons resident within the corporate limits of The Town of Millsboro to be used for any and all municipal purposes;
- (32) To levy and collect taxes upon all telephone, telegraph, power poles, pipelines, rail lines, or other constructions or erections of a like character, erected within the limits of the Town, together with the wire or other appliances thereto or thereon attached; expressly excepting all telephone, telegraph, power lines or poles and rail lines owned or operated by any railroad or railway company engaged in Interstate Commerce for any and all purposes and to this end may at any time direct the same to be included in or added to the Town assessment. In case the owner or lessee of such constructions or erections, wires or other applicants shall refuse or neglect to pay the taxes levied thereon, in addition to the remedies provided for the collection thereof set forth in Section 27 of this Charter, the Town Council shall have the authority to cause the same to be removed;

- (33) To license, tax and collect fees annually for any and all municipal purposes (including the cost and expense of advertising the Town) of such various amounts as the Town Council from time to time shall fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation within the limits of the Town; provided, however, that nothing contained herein shall be so construed as to make it mandatory upon any resident of the State to apply for a license in order to sell in the Town any farm produce or products grown upon a farm owned by the vendor or any member of his family with whom he resides;
- (34) To determine from which authorized source and in what proportion taxes shall be levied and used each year to raise the revenue or funds required to meet the general expenses of the Town and all funding, amortization and interest requirements on its outstanding bonds or other indebtedness;
- (35) To provide for the collection of and disbursement of all moneys to which the Town may become entitled by law, including licenses and fines where no provision for the collection and disbursement thereof is otherwise provided in this Charter;
- (36) To borrow money in the name of the Town for any proper municipal purpose and in order to secure the payment of the same to issue bonds or other forms or kinds of certificate or certificates of indebtedness, pledging the full faith and credit of the Town or such other security or securities as the Town Council shall select for the payment of the principal thereof and the interest due thereon, all of which bonds or other kinds or forms of certificates of indebtedness issued by the Town shall be exempt from all state, county or municipal taxes; provided, however, that in no event shall the indebtedness of the Town for any and all purposes at any one time exceed in the aggregate twenty-five percent (25%) of the assessed value of all real estate in the Town subject to the assessment for the purpose of levying the annual tax hereinbefore mentioned;
- (37) To acquire, and/or to vacate the use of lands, tenements, personalty, property, easements, rights of way, or any interest in property, either within or without the limits of the Town, by way of condemnation and eminent domain for any proper and lawful municipal purpose or whenever required properly to carry out, exercise or fulfill any power conferred upon or delegated to The Town of Millsboro by this Charter. Proceedings by way of condemnation in any case shall be as prescribed in Chapter 61, Title 10, **Del. C.** of 1974, as heretofore or hereafter amended;
- (38) To appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency;
- (39) To provide for the payment of any tax, fine, penalty, license, forfeiture, assessment, fee, charge, or other amount due the Town by the performance of labor or service for the Town by any person owing the same;
- (40) To inquire into and investigate the conduct of any officer, agent or employee of the Town or any municipal affair and for such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena;
- (41) To establish by Ordinance duly adopted pursuant to this Charter a Pension Plan or a Health and Welfare Plan, or both, for the employees of the Town under such terms and conditions as the Town Council, in its discretion, may deem most appropriate; and provided further, that the method of funding may, if deemed desirable by the Town Council, be accomplished through an insurance company licensed by the State of Delaware or authorized to do business in this State and approved by a majority of the elected members of the Town Council;
- (42) To borrow money in anticipation of revenues on the full faith and credit of The Town of Millsboro sum or sums not exceeding 10% of the assessed valuation of all real estate in the Town in any one year when, in the opinion of a majority of the Town Council of The Town of Millsboro, the needs of the Town require it. Any sum so borrowed shall be secured by promissory notes of The Town of Millsboro, duly authorized by Resolution adopted by the Town Council of The Town of Millsboro, and signed by the Mayor of The Town of Millsboro, and attested by the Secretary 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; provided, however, that the total sum outstanding at any one time shall not exceed 10% of the assessed valuation of all real estate in the Town; and provided further, that any sum of money so borrowed, as aforesaid, in any fiscal year, shall be paid from the general fund of the Town and shall be completely repaid at any time, but must be completely paid at the end of ten (10) fiscal years following the first fiscal year when said sum or sums were borrowed, with interest thereon; and provided that such ad valorem taxes shall be levied as is

necessary to pay the principal or the interest on said bonds as is required without regard to any other limitation concerning the maximum rate of taxation and such notes and the interest thereon shall be exempt from all taxation by the State of Delaware or by any political subdivision, agency or subdivision thereof;

- (43) To make, adopt and establish all such Ordinances, Regulations, Rules, and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants; provided, however, that any Ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well as to all areas and persons outside the Town within one (1) mile from said limits;
- (44) To effect the collection of any delinquent charge the Town Council of the Town of Millsboro may impose a collection charge not exceeding eighteen percent (18%) of the amount of such charge and any interest or penalty imposed thereon;
- (44) Notwithstanding any other provision of this Charter, the Town Council is authorized to exempt from taxation any industry which contemplates locating within said Town and is required to extend water transmission lines or sewer connection or interceptor lines, or any or all of them, to a maximum amount of twenty percent (20%) of the amount actually expended for the extension of the said water or sewer lines, or both;
- (45) To provide for or continue a Public Library and, at the discretion of the Town Council, to contribute, donate or give unto any public library providing service to the Town funds or property; provided that any such contribution, donation or gift may be subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable;
- (46) To provide for the organization of an ambulance service and/or emergency treatment service and the control and government thereof; and at the discretion of the Town Council, to contribute, donate or give an amount or amounts not to exceed in the total during any fiscal year three percentum (3%) of the total taxes levies on real estate unto any volunteer ambulance or emergency treatment service company or companies incorporated under the laws of the State of Delaware, or any volunteer ambulance association or associations maintaining and operating ambulance, emergency treatment equipment and service to the Town; provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the sum thereof as the Town Council shall deem advisable;
- (47) To receive bequests, gifts and donations of all kinds of property, real or personal, within or without the Town, in fee simple or in trust for charitable or other purposes and to do all acts necessary to carry out the purposes of such bequests, gifts and donations with the power to manage, sell, lease or otherwise dispose of the same. 62 Del. Laws, c. 358; 65 Del. Laws, c. 412; 68 Del. Laws, c. 212; 69 Del. Laws, c. 51; 69 Del. Laws, c. 207; 70 Del. Laws, c. 443; 71 Del. Laws, c. 268; 73 Del. Laws, c. 363; 73 Del. Laws, c. 400; 75 Del. Laws, c. 65;
- (48) In the event the Town brings any action at law (including seeking the imposition of a fine or penalty, establishment of a lien or the collection of an amount owed the Town in action for debt) or in equity, to enforce compliance with any Town ordinance, or correct and abate any nuisance, the Town shall, if it is the prevailing party in such action, be entitled to recover, as part of the judgement, in addition to any other amount recovered, the Town's court costs (including all filing fees, court reporting charges and expert witness fees) and its reasonable attorney's fees. 74 Del.Laws, c. 244
- (49) To impose, upon new development, or construction or upon first-time occupancy of new construction, such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements which have a rational nexus to such new construction; and/or calculated to contribute to the costs of operations of those volunteer fire companies and/or ambulance/paramedic companies providing services within the Town. 75 Del.Laws, c. 35

Streets

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- (a) The Town Council shall have the power and authority to lay out, locate and open new streets or to widen and alter existing streets or parts thereof and to vacate or abandon streets or parts thereof, whenever the Town Council shall deem it for the best interest of the Town.
- (b) The procedure to be used for any of those things heretofore listed in this Section shall be as follows:
- (1) Whenever five (5) or more property owners in a portion of the Town directly affected or abutting on the proposed street to be opened, laid out, changed, altered, widened, vacated or closed shall by written petition with each signature duly acknowledged request the Town Council to lay out, locate, or open a new street or to widen or alter any existing street or any part thereof or to vacate or abandon a street or any part thereof, the Mayor of The Town of Millsboro shall appoint a committee composed of not less than three (3) of the elected members of the Town Council to investigate the possibility of changing the structure of said streets in the Town. The petition presented to the Council by the property owners shall include a description of the property through which the proposed street shall be laid out or description of the street on which any of the other actions heretofore described shall take place and the reasons why the change in the structure of the streets of the Town should be undertaken; or the Town Council, by a majority vote of the elected members thereof may, by resolution, propose that a committee composed of not less than three (3) of its elected members be appointed by the Mayor to investigate the possibility of changing the street structure of the Town.
 - (2) Not later than ninety (90) days following its appointment, the committee shall submit a report concerning its findings to the Mayor and to the Town Council. The report shall contain the advantages and disadvantages to the Town caused by the changes of the street structure and shall contain the conclusion of said committee either recommending or disapproving the change of said street structure. If the report of the committee appointed by the Mayor recommends changing the existing street structure of The Town of Millsboro, the Council by resolution, passed by a majority of the elected members of the Town Council concurring therein, shall propose to the property owners and citizens of the Town that the Council proposes to change the street structure by opening a new street or by doing any of those things hereinbefore described to the existing street structure of the Town. If the report of the committee appointed by the Mayor is not in favor of changing the existing street structure of the Town of Millsboro, the resolution proposing the change in the street structure to the property owners and citizens of The Town of Millsboro shall be passed by a majority of three fourths (3/4ths) of the elected members of the Town Council. The resolution shall contain a description of the proposed change and shall affix a time and place for a public hearing on the matter of changing the street structure. The resolution adopted by the Town Council shall be printed in a newspaper having a general circulation in The Town of Millsboro or, in the discretion of the Town Council, the resolution shall be posted in five (5) public places in the Town for at least one (1) week before the time set for the public hearing. The notice shall be published at least one (1) week prior to the date set for the said public hearing. The resolution shall also state the hour and place where and when the Town Council shall sit to hear objections and to award just and reasonable compensation to anyone who will be deprived of property by the proposed change in the existing street structure of the town.
 - (3) Whenever the Town Council shall have determined to locate or lay out or widen any street, lane or alley and shall have affixed compensation therefor, it shall be the duty of the Town Council immediately after the survey and location of said street, lane or alley, to notify by certified mail with return receipt requested and postage prepaid the owner or owners of the real estate through or over whom such street, lane or alley may run of their determination to open or widen the same and to furnish a general description or location thereof; also the amount of compensation or damages allowed to reach such property owner, and if such owner be not a resident of the Town, to notify the holder or tenant of said real estate and the owner of such property if his address be known; that there be no holder or tenant resident in said Town and the address of the owner be unknown or if there is a holder or tenant and the address of the owner is unknown, the said notice may be affixed to any part of the premises. If the owner be dissatisfied with the amount of compensation or damages allowed by the Town, as aforesaid, said property owner may, within ten (10) days after such notice, as aforesaid, was posted or mailed appeal from written notice of assessment or compensation or damages by serving written notice by certified mail with return receipt requested and postage prepaid on the Mayor of the Town to the effect that he or she is dissatisfied with the amount of such compensation or damages, and that it is his or her intention to make written application to one of the Judges of the Superior Court of the State of Delaware, in and for Sussex County, for the appointment of a commission to hear and determine the matter in controversy; and in order to prosecute said appeal, such owner shall, within fifteen (15) days after serving said notice upon the Mayor as aforesaid, make written application to said Judge of the Superior Court of the State of Delaware, in and for Sussex County, for the

appointment of such a commission; and thereupon the said Judge shall issue an appoint a commission directed to five (5) freeholders of said county, three (3) of whom shall be residents of The Town of Millsboro, and two (2) of whom shall be nonresidents of said Town, requiring them to assess the damages which the owner of the real estate through or over which the said street, lane or alley shall pass or who shall have suffered damage because of any other action taken by the Town pursuant to the provisions hereof and who shall have notified the said Town Council of their intention to appeal may incur by reason thereof and to make a return of their proceeding to the said Judge at the time therein appointed.

- (4) The freeholders named in such commission, being first duly sworn or affirmed, shall view the premises and may, or a majority of them, shall assess the damages, as aforesaid, and shall make return in writing of their proceedings to the said Judge who shall deliver and return to the Town Council which shall be final and conclusive. The said Judge shall have the power to fill any vacancy in the commission. The amount of damages being so ascertained, the Town Council may pay or tender the same to the person or persons entitled thereto within thirty (30) days after the same shall be finally ascertained or if the person or persons so entitled reside out of or are absent from the Town during the said period of thirty (30) days, then the same shall be deposited to his or her credit in the banking institution as may be described by the Town Council, which institution shall be licensed in the State of Delaware and insured by the Federal Deposit Insurance Corporation or its successor, with offices in Georgetown, Sussex County, Delaware, within said time and thereupon the said property on lands may be taken or occupied for the use as aforesaid.
- (5) If the ascertainment and assessment of damages by the freeholders appointed by the Judge, as aforesaid, shall be increased, the cost of the appeal shall be paid by the Town out of any money in the hands of the Town Manager belonging to the Town, but if said damages shall not be increased, the cost of the appeal shall be paid by the party appealing. The said freeholder members of the commission shall receive and be entitled for each day's actual service or of any part of a day the sum of Five Dollars (\$5.00). After the damage shall be fixed and ascertained by the freeholders, the Town Council shall have the option to pay the damages assessed within the time aforesaid, and to proceed with the said improvements or, upon the payment of the costs only, may abandon the proposed improvements. In the event that either party feels that the damages assessed are not just as being excessive or inadequate, an appeal may then be prosecuted at the Supreme Court of the State of Delaware. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443; 71 Del. Laws, c. 41;

Curbing And Paving

Section 32.

- (a) Whenever the Town Council shall have determined that any paving, graveling, curbing or any or all of them shall be done, it shall cause a notice to be sent to the owner or owners along or in front of whose premises the same is to be done, particularly designating the nature and character thereof and thereupon it shall be the duty of such owner or owners to cause such paving, graveling and/or curbing, or any of them, to be done in conformity with said notice. In the event any owner or owners neglect to comply with said notice for the space of thirty (30) days, the said Town Council may proceed to have the same done and when done, the Town Manager shall, as soon as convenient thereafter, present to the owner or owners of such lands a bill showing expenses of such paving, graveling and curbing, or any of them. If such owner or owners be not resident in The Town of Millsboro, such bills shall be sent by certified mail with postage prepaid or to such owner or owners directed to him, her or them at the last known address. If such bill be not paid by the owner or owners of such lands within sixty (60) days after the presentation thereof, as aforesaid, the Town Manager shall proceed to collect the same in the same manner and under the same terms and conditions as are provided for the collection of delinquent taxes.
- (b) Any notice sent to one co-owner shall be notice to all owners and in the case no owners shall reside in said Town, notice served as set forth herein or posted upon the premises shall be sufficient.
- (c) The provisions contained herein shall apply to any order made by the Town Council in respect to any pavement, sidewalk or curb heretofore made or done which the said Town Council may deem insufficient or need repairing. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443;

Collection Of Charges Due The Town

Section 33.

- (a) In the collection of any charges due the Town for water rentals, sewer service charges, electric bills, gas bills, license fees, tapping fees, front foot assessments, charges growing out of the abatement of nuisances, laying out and repairing paving, graveling, curbing, or any of them, such charges shall become a first lien against all real estate of the delinquent property owners and/or taxpayers situate within the Town and such charges shall have preference and priority for a period of Ten (10) years from the date the charge became due and owing to all other liens on real estate created or suffered by the taxable and property owner, although such other lien or liens be of a date prior to the time for the attaching of such liens for such charges.
- (b) The remedies available to the Town Manager for the collection of such charges shall be the same as those set forth in this Charter for the collection of delinquent taxes. 62 Del. Laws, c. 358; 70 Del. Laws, c. 443;

Power To Borrow Money And Issue Bonds

Section 34.

- (a) The Town Council may borrow money and issue bonds or certificates of indebtedness to secure the repayment thereof on the faith and credit of The Town of Millsboro to provide funds for the erection, extension, enlargement, purchase 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, repair and improvements of highways, streets or lanes or the paving, curbing or erection of gutters and curbs along the same; for the purchase of real estate for any municipal purpose; for the construction or repair of sewage disposal equipment; or to defray the cost or the share of the Town of the costs of any permanent municipal improvements; provided however that the borrowing of money therefor shall have been authorized for the Town Council in the manner following:
 - (1) The Town Council by resolution shall propose to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount for any of the purposes above stated. 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 which are deemed pertinent by the Town Council and in their possession at the time of the passage of the resolution 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 or distributed in circular form at least one week before the time set for the public 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 nor more than sixty (60) days after the said public hearing to borrow the said money, the said special election to be for the purpose of voting for or against the proposed loan. The passing of the second resolution calling a special election shall ipso facto be considered the determination of the Town Council to proceed with 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 of Millsboro within thirty (30) days prior to the said special election or distributed in circular form at least fifteen (15) days prior to the special election, or both, at the discretion of the Town Council.
 - (5) At the said special election, every citizen of The Town of Millsboro shall have one vote and, in addition, every person who is an owner of real property within the corporate limits of the Town of Millsboro shall also have one vote. No vote shall be cast by a partnership except by a partner presenting notarized certification of said partnership authorizing the partner named therein to cast the vote of the partnership and no vote shall be cast by an association, corporation, limited liability company, trust or other legally constituted entity except by a person presenting notarized certification or certified copy of a resolution of said entity authorizing the person named therein to cast the vote of said entity. The Board of Special Elections shall be the sole and final judge of the legality of the votes offered at such special election.
 - (6) The Town Council shall cause to be prepared, printed and have available for distribution a sufficient number of ballots not less than five (5) days prior to the said special election. The special election may, at the discretion of the Town Council, be conducted by the use of voting machines or by paper ballot. The Mayor of The Town of Millsboro, by and with the advice and consent of the majority of the Town Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be opened from 1:00 in the afternoon prevailing time until 7:00 in the evening prevailing time, on the date set for the special election.

- (7) The Board of Special Elections shall count the votes for and against the proposed loan and shall announce the result thereof. The Board of Special Election shall make a certificate under their Hands of the number of votes cast for and against the proposed loan and the number of void votes and shall deliver the same to the Town Council which said certificate shall be retained by the Town Council with the other papers of the Town Council.
- (8) (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 evidences of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, abandon the proposed borrowing.
- (B) The form of the bond or certificate of indebtedness, the interest rate, the time or times of payment of interest, the classes of the bond, the time or times of maturity, and the provisions as to registration shall be determined by the Town Council after the said special election.
- (C) Bond Anticipatory Notes. In anticipation of the issuance of said bonds at any time after a special election resulting in a vote in favor of the bond issue, the Town Council may issue and sell bond anticipatory notes of the Town at either public or private sale for not less than par and accrued interest. 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 total amount of said notes outstanding at any one time shall not exceed the amount for which a special election resulted in a favorable vote. Said notes shall be redeemed at par and accrued interest 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 anticipatory notes shall not be subject to taxation by the state of Delaware or any political subdivision thereof.
- (9) The bonds may be sold at either public or private sale. If it is determined to sell the bonds at public sale, the bonds shall be offered for sale to the best and most responsible bidder therefor after advertisement in a manner to be prescribed by the Town Council.
- (10)The Town Council shall provide in its budget and in the fixing of the rate of tax for the payment of interest on and principal of the said bonds at the maturity thereof.
- (11)The faith and credit of The Town of Millsboro shall be deemed to be pledged for the due payment of the bonds and interest thereon issued pursuant to the provisions hereof when the same had been properly executed and delivered for value.
- (12)Statute of Limitations, 60 days. No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section shall be brought after the expiration of sixty (60) days from the publication of a notice in two (2) issues of a newspaper having general circulation in the Town of Millsboro, which notice shall announce the following information.
- (A) That the Town Council has determined to borrow a certain sum of money and to issue bonds or certificates of indebtedness therefor;
- (B) That the proposal has been approved by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing;
- (C) The amount of money to be borrowed;
- (D) The purpose for which it is to be borrowed;
- (E) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his or her action within sixty (60) days from the date of publication of such notice or forever be barred from doing so;
- (F) Such notice shall be in bold print or bordered in black in such manner to call attention thereto.
- (b) The bonded indebtedness shall not at any time exceed in the aggregate the total sum of twenty-five (25) percent of the value of real property situate within the limits of The Town of Millsboro shown by the last assessment preceding the creation of the said indebtedness.
- (c) Notwithstanding subsection (a) of this section, on the Town receiving notice of being granted 100% principal loan forgiveness from a federal, state or local government funding source, a vote at a special election is not

required for the municipal project under this section. The Town Manager or designee shall proceed with the resolutions required under this section 34 and public hearing on the project. If the Town is required to expend any funds on the project over the principal forgiveness value, the amount of expenditure and source of payment must be detailed in the resolutions required under this section.

- (d) Notwithstanding subsection (a) of this section, on the Town receiving notice that a portion of an existing federal, state or local government loan is being granted 100% principal loan forgiveness, such principal forgiveness value shall not be included in or count toward the aggregate limit of any borrowing authorization previously approved by a vote at a special election pursuant to this section
- (e) 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 procedure set out in subsection (a) of this section so long as the outstanding principal amount of the refunding bonds or other evidence of indebtedness does not exceed the face amount refunded, plus the cost of refunding, and shall be enacted by resolution of the Town Council. 68 Del. Laws, c. 10; 70 Del. Laws, c. 443; 71 Del. Laws, c. 41; 73 Del. Laws, c. 363; 83 Del. Laws, c. 496, § 2;

Power To Issue Revenue Bonds

Section 34A.

- (a) The Town Council, in addition to the power set forth in Section 34 of this Charter to borrow money and to issue bonds, shall have the authority to borrow money and issue bonds or certificates of indebtedness and to secure the payment thereof by pledging the revenues derived from the operation of any project for which bonds are issued pursuant to this Section.
- (b) The funds derived from the sale of bonds issued pursuant to this Section may be used for the acquisition, construction, reconstruction, repair, alteration, improvement, extension, financing, or refinancing of any commercial, industrial, agricultural, educational or healthcare facility, and equipment therefor, to be operated by any for-profit or not-for-profit entity, including transaction costs, redemption premium, interest during construction and working capital for the project, provided that the issuance of such bonds pursuant to this Section shall not constitute a debt of the Town of Millsboro nor a pledge of its credit or taxing power and the bonds shall contain on the face thereof a statement to the following effect:
'Neither the faith and credit nor the taxing power of the Town of Millsboro is pledged to the payment of the principal of, premium, if any, or interest on this Bond, nor is the Town of Millsboro in any manner obligated to make any appropriation for payment thereof.'
The project to be funded with the proceeds of bonds issued under this Section may be accomplished by a loan of the bond proceeds from the Town to any for-profit or not-for-profit entity.
- (c) All bonds issued pursuant to this Section shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee or any other fiduciary.
- (d) The interest on any bonds issued pursuant to this Section shall be exempt from all taxation by the State of Delaware or by any political subdivision or agency thereof.
- (e) There shall be no limitation on the amount of bonds to be issued pursuant to this Section and the indebtedness created by any bonds issued pursuant to this Section shall not be used in computing the maximum bonded indebtedness which may be created by the Town pursuant to Section 34 of this Charter nor shall the Town Council be required to levy taxes to pay the principal of or interest on any bonds issued pursuant to this Section.
- (f) The bonds to be issued pursuant to this Section shall be authorized by resolution of the Town Council which shall determine that the issuance of such bonds shall be in the best interest of the citizens of the Town of Millsboro. The bond shall bear such date or dates, mature at such time or times not exceeding forty (40) years from their respective dates, bear interest at a rate or rates per annum, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places and be subject to such terms of redemption, as such resolution or resolutions may provide. Bonds of the Town of Millsboro issued by the Town Council pursuant to the provisions of this Section may be sold at either public or private sale at such place and interest rates as may be determined by the Town Council.
- (g) Any resolution or resolutions authorizing any bonds securing any issue of bonds may contain provisions which shall be part of a contract with the holders of the bonds thereby authorized as to any matter relating to the

repayment of the bonds, the security therefor, the operation of the project and any other matter or course of conduct that affect the foregoing.

- (h) Neither the Mayor nor any member of the Town Council of the Town of Millsboro nor any person executing the bonds or other obligations shall be personally liable on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.
- (i) In the discretion of the Town Council, the bonds may be secured by a trust indenture by and between the Town of Millsboro and a corporate trustee which may be any trust company or bank having the powers of a trust company. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the Town Council. 71 Del. Laws, c. 479

§ 34B. Tax Increment Financing and Special Development Districts.

In addition to all other powers the Town Council of the Town of Millsboro may have, and notwithstanding any limitation of law, the Town Council of the Town of Millsboro shall have all powers and may undertake all actions for the purposes set forth in, and in accordance with Title 22 of the Delaware Code, Chapter 17, relating to the Municipal Tax Increment Financing Act and Chapter 18 relating to Special Development Districts. 75 Del. Laws, c. 87

Actions Or Suits

Section 35.

No action, suit or proceeding shall be brought or maintained against The Town of Millsboro for damages, either compensatory or punitive on account of any physical injury or injuries, death or injury to property by reason of the negligence, simple, gross, or willful or wanton of the said Town of Millsboro, or any of its departments, officers, agents, servants or employees unless the person by or on behalf of whom such claim or demand is asserted, within ninety (90) days from the happening of said injury or the suffering of such damages shall notify The Town of Millsboro in writing of the time, place, cause, character and extent of the injury sustained or damages suffered. Such notice shall be directed to the Mayor of The Town of Millsboro by certified mail with return receipt requested and postage prepaid.

COMPENDIUM

Section 36.

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

Revival Of Powers And Validating Section

Section 37.

- (a) All powers conferred upon or vested in the Town Council of The Town of Millsboro by any act or law of the State of Delaware not in conflict with the provisions of this Charter are hereby expressly conferred upon and vested in The Town of Millsboro and/or the Town Council of The Town of Millsboro precisely as of each of said powers was expressly set forth in this Charter.
- (b) All ordinances adopted by The Commissioners of Millsboro and in force at the time of approval, acceptance and going into effect of this Charter are continued in force until the same or any of them shall be repealed, modified or altered by the Town Council of The Town of Millsboro under the provisions of this Charter.
- (c) All of the acts and doings of the Commissioners of Millsboro or of any official of the Commissioners of Millsboro which shall have been lawfully done or performed under the provisions of any law of this State or of any ordinance of the Commissioners of Millsboro or under any provision of any prior Charter of the Town Council of

CHARTER OF MILLSBORO

The Town of Millsboro, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.

- (d) All taxes, assessments, license fees, penalties, fines, and forfeitures due the Commissioners of Millsboro of The Town of Millsboro shall be due The Town of Millsboro and all debts from the Town or the Commissioners of Millsboro shall remain unimpaired until paid by The Town of Millsboro.
- (e) All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Commissioners of Millsboro.
- (f) The bonds given by or on account of any official of the Commissioners of Millsboro shall not be impaired or affected by the provisions of this Charter.
- (g) All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter be and the same are hereby repealed to the extent of any such inconsistency.
- (h) If any part of this Charter shall be held to be unconstitutional or invalid by a Court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining provisions of this Charter.
- (i) This Charter shall be taken as and deemed to be a Public Act of the State of Delaware.

Approved June 11, 1976

60 Del. Laws, c. 457; 62 Del. Laws, c. 358; 65 Del. Laws, c. 412; 66 Del. Laws, c. 226; 66 Del. Laws, c. 257; 68 Del. Laws, c. 10; 68 Del. Laws, c. 212; 68 Del. Laws, c. 243; 69 Del. Laws, c. 51; 69 Del. Laws, c. 207; 69 Del. Laws, c. 208; 70 Del. Laws, c. 73; 70 Del. Laws, c. 443; 71 Del. Laws, c. 41; 71 Del. Laws, c. 268; 71 Del. Laws, c. 479; 72 Del. Laws, c. 49; 72 Del. Laws, c. 86; 73 Del. Laws, c. 281; 73 Del. Laws, c. 363; 73 Del. Laws, c. 400; 74 Del. Laws, c. 244; 74 Del. Laws, c. 245; 75 Del. Laws, c. 35; 75 Del. Laws, c. 65; 75 Del. Laws, c. 87; 75 Del. Laws, c. 425; 76 Del. Laws, c. 13; 76 Del. Laws, c. 13; 82 Del. Laws, c. 147; 83 Del. Laws, c. 496;