

Newport**Section 1-01 Incorporation**

The inhabitants of the Town of Newport within the corporate limits as hereinafter defined in this Charter, Section 1-02, or as subsequently altered by annexation procedure as provided by law, are hereby declared to be a body politic incorporated in law and equity to be known as the "Town of Newport" and shall continue to be a municipal corporation and body politic in perpetuity.

Section 1-02 Geographic Boundaries

The geographic boundaries of the Town of Newport are hereby established and declared to be as follows:

BEGINNING at a point at the low water mark of the Christiana River and the westerly side of Mary Street and thence northerly to the north side of the Philadelphia, Wilmington and Baltimore Railroad's right-of-way and thence westerly with the north side of the said right-of-way five hundred seventy-six feet to a point in the easterly side of a twenty five foot wide lane, known as Krebs Lane and thence along said easterly side of said lane, about 550 feet to the southerly line of land of Elizabeth L. Ball, thence North 85 degrees 31 minutes East 122 feet to a point thence along another line of land of said Elizabeth L. Ball, North 3 degrees and 58 minutes West 122 feet to the southerly side of Market Street, also known as Newport- Christiana Turnpike, thence along southerly side of said Market Street approximately three hundred thirteen feet to a point, thence northerly seventy feet to the northerly side of Market Street at its intersection with the easterly line of land now owned by Clara Weingarten, thence North six degrees West five hundred ninety-five and nine-tenths feet to a stone, thence North twenty-four degrees and eighteen minutes West seven hundred fifty and fifty-one hundredths feet to a stone in southeasterly side of a sixty foot wide roadway belonging to Claud Banta and extending from the Newport Gap Turnpike to the plot of land known as Tuxedo Park and thence along said southeasterly side of said sixty-foot wide roadway easterly to the Newport Gap Turnpike approximately eight hundred ninety nine feet and thence South along the said Newport Gap Turnpike two hundred ninety-three feet to the present boundaries of said Town of Newport and thence Easterly on a line parallel to and 760 feet Northerly from the Northerly side of Christian Street to the land formerly owned by Robert Lynam thence Southerly along the line of said Robert Lynam's land and the present boundary line of the Town of Newport to the northern side of St. James' Cemetery, thence Easterly along the Northerly side of said Cemetery to the intersection of the present limit of Town of Newport with the Westerly line of land of Frank A. Herpel, thence Southerly along the line of said land of Frank A. Herpel 382 feet to a corner to the land of St. James' Cemetery, the Industrial Trust Company and Frank A. Herpel, thence Easterly along the line of land of Frank A. Herpel to a point in said line one hundred twenty-five feet Westerly from the Westerly side of Larch Avenue as laid out on the Plot of Newport Heights and thence Southerly on a line parallel to and one hundred twenty-five feet distant from the Westerly side of said Larch Avenue, approximately five hundred fifty-six feet to the southerly side of Ayre Street as laid out on the Plot of Newport Heights and thence westerly along the southerly side of said Ayre Street approximately fifty feet to the westerly side of Lot 87 as shown on the Plot of Newport Heights and thence southerly along said westerly side of said lot eighty-seven feet to the northerly side of the right-of-way of the Philadelphia, Wilmington and Baltimore Railroad and thence westerly with the north side of said right-of-way approximately five hundred sixteen feet to the present boundaries of the Town of Newport and thence along said boundary and limits of the said Town of Newport to the Christiana River, low water mark, thence with low water of said river to the place of Beginning.

FURTHER, the Town of Newport shall include the following parcels that have been annexed:

ALL that piece or parcel of land which adjoins a portion of the easterly boundary of the Town of Newport, State of Delaware, BEGINNING at a point in the corner of Water Street (Fifty Feet Wide) where it meets the easterly boundary of the Town of Newport, thence a strip of land Fifty Feet Wide extending in an easterly direction Sixteen Hundred Thirty Two (1632') feet from the point of beginning. Being a Sixteen Hundred Thirty Two Feet Easterly Extension of Water Street. (Ordinance No. 332 adopted March 6, 1975)

ALL the pieces or parcels of Land which adjoin and are contiguous to a portion of the easterly boundary of the Town of Newport in Christiana Hundred, State of Delaware, described herein, BEGINNING at the easterly boundary of the Town of Newport and extending easterly to the easterly boundary of Marsh Lane as described in a survey of property for Harvey, Knotts, and Schmusser, by Marvin S. Smith, Civil Engineer, dated November 30, 1967, of the Newport Industrial Park, Inc. and including all the parcels of land contained between the southern limits of the Penn Central Railroad and the low water mark of the Northern Banks of the Christiana River. (Ordinance No. 335 adopted November 20, 1975)

ALL that piece or parcel of land which adjoins the boundary of the Town of Newport and owned by the Conrad Area School District and presently the site of the Henrick J. Krebs Junior School. (Ordinance No. 339 adopted June 3, 1977)

ALL that piece parcel of land which adjoins and is contiguous to a portion of the easterly boundary of the Town of Newport in Christiana Hundred, State of Delaware, being a piece or parcel of real estate consisting of 8.9649 acres more or less bounded on the east side by Marsh Lane and on the south side by the Christiana River as more fully described as parcel No. 2 in a survey of the Newport Industrial Park, Inc., dated November 30, 1967, by Marvin S. Smith, Civil Engineer. (Ordinance No. 374 adopted May 7, 1981)

ALL the pieces and parcels of land, now described as one parcel, with improvements thereon which adjoin and are contiguous to a portion of the northeasterly boundary of the Town of Newport in Christiana Hundred, State of Delaware, BEGINNING at a point on the Southerly side of Ayre Street, at varying widths, a common Corner of the property herein being described, being the prolongation of the easterly division line of Lot No. 86 of the William Brown estate in Newport Heights, and Lot No.1 of Cropper & Thomas, Inc., and further located along the southerly side of Ayre Street from the southwesterly end of a junction curve, having a radius of 20.00', joining the southerly side of Ayre Street by the following course and distance: South 75° 28' - 00" West, 63.95'; thence from the point and place of the beginning, leaving the southerly side of Ayre Street, along a division line of Lot No. 1 of Cropper & Thomas, Inc., and along the lands, now or formerly, of the Philadelphia, Baltimore and Washington Railroad Company, South 00- 12' - 00" East, 151.73" to a corner of the lands, now or formerly, of the Philadelphia, Baltimore and Washington Railroad Company and Lot No. 86 of the William Brown Estate in Newport Heights; thence along the northerly right-of-way line, now or formerly of the Philadelphia, Baltimore & Washington Railroad Company, by a curve to the right, having a radius of 5,301.56' an arc distance of 100.55', (chord bearing and distance: South 81-49'19" West 100.55') to a common corner of Lot No. 87 of the William Brown Estate in Newport Heights and Lot No. 35 of the Industrial Trust Company Subdivision; thence leaving the northerly right-of-way line, now or formerly, of the Philadelphia, Baltimore & Washington Railroad Company, along a division line of Lot No. 35 of the Industrial Trust Company Subdivision, North 00 - 12' - 00" West, 146.21' to a corner of the said Lot , a 1" iron pipe, on the previously mentioned Southerly side of Ayre Street; thence along the southerly side of Ayre Street, by the following two courses and distance: (1) North 84 13'00" East, 40.60' to an angle point, a 1" iron pipe; and (2) North 75 06' - 00" East, 61.17' to the first mentioned point and place of beginning,, Containing within the said described metes and bounds 0.3364 Acres of Land, be the same, more or less. (Ordinance No. 379 adopted March 3, 1983).

The jurisdiction of the Town shall extend over all wharves, docks, piers, other construction in the Christina River adjoining the limits of Newport and for thirty yards in the Christina River beyond such wharves, docks, piers, and other construction.

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

All that certain parcel of land being located in Christiana Hundred, New Castle County, State of Delaware, beginning with the intersection of the centerline of Water Street and the centerline of Copper Drive, thence; running North 50 degrees, 00 minutes 00 seconds, West 40 feet more or less to the said point of beginning, being North 18 degrees-29 minutes -17 seconds West 30.00 feet more or less, thence running South 76 degrees 43 minutes 35 seconds West, with a radius of 5,411.56 feet and a chord of 933.64 feet, curving to the left; thence running South 5 degrees 30 minutes 00 seconds East 30.03 feet more or less, thence running North 76 degrees 44minutes 00 seconds East with a radius of 5,441.56 feet and a chord of 990.42 feet curving to the right to the said point of beginning, containing 29,620 +/- square feet of land or 0.68 +/- acres. (Ordinance No. 422, July 12, 1990)

ALL that piece or parcel of land which joins and is contiguous to a portion of the southerly boundary of the Town of Newport in Christiana Hundred, State of Delaware BEGINNING at the intersection of the easterly terminal of Water Street, at 50 feet wide, with a line drawn parallel with and 60 feet southwardly at right angles from the southerly rail of the southerly tract of the four main line tracks of railroad of the Philadelphia, Baltimore and Washington Railroad Company.

Thence from the point and place of Beginning, along the southerly boundary line of said Railroad Company property, and parallel to said southerly rail of southerly track and distant 60.00 feet southerly therefrom when measured at right angles thereto, North 64 degrees 11 minutes30 seconds 2,136.64 feet to the point of tangency of a curve having a radius of 2,994.57 feet;

Thence along the southerly boundary line of said Railroad Company property and parallel to said southerly rail of the southerly track of a Branch of Railroad known as the Shellpot Branch, and 60.00 feet southerly therefrom and at right angles and radially thereto, the following seven (7) courses and distances: (1) by said curve to the right in an easterly direction, an arc distance of 130.66 feet to the point of tangency of said curve; (2) North 66 degrees 41 minutes 30 seconds East, 200.10' to the point of curvature of a curve having a radius of 807.05'; (3) by said curve to the left in a northeasterly direction, an arc distance of 35.21' to the point of tangency of said curve; (4) North 64 degrees-11 minutes-30 seconds East, 1,367.18' to the point of tangency of a curve having a radius of 6,449.69' (5) by said curve to the left in a northeasterly direction, an arc distance of 262.63' to the point of tangency of said curve: (6) North 61 degrees 51 minutes-31 seconds

East 272.33' to the point of curvature of a curve having a radius of 9,999.39' and (7) by said curve to the right in an easterly direction, an arc distance of 464.71' to a point. Thence North 25 degrees-28 minutes 43 seconds West 5.00' to a point 55.00' southerly from said southerly rail of southerly track of said Shellpot Branch of Railroad. Thence parallel to the said southerly rail and 55.00' southerly therefrom when measured at right angles thereto, the two (2) following courses and distances (1) North 64 degrees 11 minutes 01 second East, 254.38' to the point of curvature of a curve having a radius of 11,322.70'; and (2) by said curve to the right in an easterly direction an arc distance of 428.55' to a point in the northerly side of interstate highway I-95 at 400 feet wide. Thence thereby South 40 degrees 13 minutes 40 seconds West 587.43' to a point in the mean high water line on the north side of the Christina River. Thence along the said mean high water line on the north side of the Christina River, its various meandering courses thereof, in a southwesterly direction, 5840 feet, more or less, to a corner for lands of Matthew K. Kelter, Thence along said lands of Matthew K. Kelter the three (3) following described courses and distances: (1) North 44 degrees-04 minutes 22 seconds West, 262.60' to a point; (2) South 78 degrees-47 minutes 38 seconds West 84.30' to a point; and (3) South 59 degrees 43 minutes 51 seconds West, 451.97' to a point in the northeasterly side of Marsh Lane at 50 feet wide; Thence along said northeasterly side of Marsh Lane the three (3) following described courses and distances: (1) North 36 degrees-53 minutes 22 seconds West 11.41' to a point (2) North 74 degrees-29 minutes 22 seconds West, 470.73' to a point; and (3) North 70 degrees 00 minutes 22 seconds West, 254.83' to the point of intersection of the said northeasterly side of Marsh Lane with the southerly side of Water Street extended; Thence along the terminal end of Water Street, North 25 degrees 48 minutes 30 seconds West, 35.93' to a point in the southerly property line of The Philadelphia, Baltimore and Washington Railroad Company property to the first mentioned point and place of Beginning. Containing within the said described metes and bounds, 23.5 +/- acres of land, be the same more or less. (Ordinance No. 426, adopted February 14, 1991)

All that certain piece, parcel or tract of land which adjoins and is contiguous to the westerly and southerly boundary of the Town of Newport, in Christiana Hundred, New Castle County, State of Delaware, more particularly described as follows, to wit: Beginning at a point on the southerly side of the Philadelphia, Baltimore and Washington Railroad, said point being 40 feet off the centerline of tracks 2 and 3, a common corner for that portion of lands of Ciba-Geigy which is presently within the Town of Newport and lands herein being described and located the following five courses and distances along the southerly side of the Philadelphia, Baltimore and Washington Railroad from the point formed by the intersection of the southerly side of the Philadelphia, Baltimore and Washington Railroad (49 feet off the centerline of tracks 2 and 3) with the westerly side of James Street (55 feet wide); 1) 49 feet off and parallel to the centerline of tracks 2 and 3, South 88 degrees, 00 minutes, 08 seconds West, 100.00 feet to a point, thence; 2) North 01 degrees, 59 minutes, 52 seconds West, 16.00 feet to a point, thence; 3) 33 feet off and parallel to the centerline of tracks 2 and 3, South 88 degrees, 00 minutes, 08 seconds West, 225.00 feet to a point, thence; 4) South 01 degrees, 59 minutes, 52 seconds East, 7.00 feet to a point, thence; 5) 40 feet off and parallel to the centerline of tracks 2 and 3, South 88 degrees, 00 minutes, 08 seconds West, 324.69 feet to the Point of Beginning. Thence, from said Point of Beginning the following twenty courses and distances: (1) through lands now or formerly of Ciba-Geigy and with the Town of Newport limits, South 00 degrees, 03 minutes, 37 seconds East, 734 feet more or less to a point on the northerly low water line of the Christina River, thence, with same; (2) 554 feet, more or less to a corner for lands now or formerly of E. I. DuPont de Nemours and Company, thence with same the following fourteen courses and distances; (3) North, 224.20 feet to a point, thence; (4) West, 71.25 feet to a point, thence; (5) South 64 degrees, 32 minutes, 45 seconds West, 153.05 feet to a point, thence (6) West, 267.70 feet to a point, thence; (7) crossing Christina Street, parallel to a 20 foot wide paved roadway and 2.5 feet more or less easterly and parallel to an existing 8" sewer, North, 300.76 feet to a point, thence; (8) 0.5 feet more or less southerly and parallel to the southerly foundation wall of Building A-216, East, 103.20 feet to a point, thence; (9) parallel to Building A-216 and 11.0 feet more or less parallel to Building A-202, North, 192.50 feet to a point, thence; (10) West, 16.20 feet to a point, thence; (11) North 45.30 feet to a point, thence; (12) radially crossing a spur track, North 64 degrees, 54 minutes, 52 seconds East, 20.00 feet (crossing the centerline of the spur track at 10.00 feet), to a point, thence; (13) North, 121.82 feet to a point in the southerly side of an existing walkway for Water Street, thence, with same; (14) East, 116.10 feet to a point, thence; (15) North, 99.35 feet to a non-tangent point of curvature, thence; (16) by an arc curving to the left having a radius of 390.78 feet, an arc distance of 143.91 feet (chord = North 67 degrees, 04 minutes, 05 seconds West, 143.10 feet) to a non-radial point of reverse curvature on the southerly side of the Philadelphia, Baltimore and Washington Railroad, thence; (17) 60 feet off and parallel to the centerline of tracks 2 and 3, by an arc curving to the right having a radius of 9,762.13 feet, an arc distance of 261.66 feet to a point, thence (18) radially, North 04 degrees, 12 minutes, 22 seconds West, 20.00 feet to a point, thence; (19) 40 feet off and parallel to the centerline of tracks 2 and 3 this and the next course and distance by an arc curving to the right having a radius of 9,782.13 feet, an arc distance of 377.03 feet to a point of tangency, thence (20) North 88 degrees, 00 minutes, 08 seconds East, 192.02 feet to the Point of Beginning. Containing within said metes and bounds 24.854 acres of land, be they the same, more or less. (Ordinance No. 437, November 11, 1993) **70 Del. Laws, c. 4**

Section 1-03 Annexation

The Town of Newport shall have the power to annex any additional contiguous territory upon the petition of a majority of the real property owners and qualified voters (as defined in this Charter) within said territory; each such real property owner being entitled to one vote irrespective of the number of parcels owned or the acreage contained therein; and the Town may extend and apply to such additional territory all laws, ordinances, resolutions, rules and regulations in force within said Town, so far as they may be locally applicable. Before any additional territory shall be annexed to said Town, the Mayor and Commissioners shall pass a resolution describing and defining accurately the territory proposed to be annexed, shall provide for the zoning of the annexed territory, and shall give notice that the petition for such annexation has been presented by causing copies of said resolution to be posted in at least five public places in the Town; and within thirty days thereafter, if sufficient cause to the contrary be not shown to the Mayor and Commissioners, it may by ordinance, three-fifths of all the members concurring therein, annex to said Town the territory described and defined in said resolution, and such territory shall thereupon become a part of said Town. The Town may annex additional contiguous territory by such other procedures as may be set forth under the laws of the State of Delaware.

Article II - Powers Of The Town**Section 2-01 Powers of the Town**

The Town of Newport shall have all the powers granted to municipal corporations and to cities and towns by the Constitution and general laws of the State of Delaware, together with all the implied powers necessary to carry into execution all the powers granted. The Town of Newport shall continue to enjoy all powers which have been granted to it by special acts of the General Assembly of the State of Delaware, except insofar as they may be repealed by the enactment of this Charter. The Town of Newport, as a body politic and corporate, shall succeed to, own or possess all property whether real, personal, or mixed, and all the rights, privileges, franchises, powers and immunities now or heretofore belonging to, possessed by, or enjoyed by the Commissioners of Newport.

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

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, it is intended that the Town of Newport shall have, and may exercise all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter specifically to enumerate. All powers of the Town, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, or, if not prescribed herein, then in a manner provided by ordinances or resolution of the Mayor and Commissioners.

All laws, ordinances, resolutions, rules and regulations for municipal purposes now in force within the Town, not inconsistent with, nor modified or repealed by the provision of the Charter, shall continue in force until repealed, rescinded or changed by proper authority. This Charter shall be construed liberally in favor of the Town, and nothing in this Charter shall be construed as exempting any individual or agency from the operation of this Section.

Section 2-02 Intergovernmental Relations

The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof.

Article III - The Mayor And Commissioners**Section 3-01 Form of Government**

The form of government established by this Charter shall be known as the Mayor and Commissioners form. The administrative duties of the Mayor and Commissioners may be delegated, as provided in Article IX and other provisions of this Charter, to a Town Manager in which case the form of government established shall be known as Council-Town Manager form. **70 Del. Laws, c. 4**

Section 3-02 The Commissioners

The Commissioner shall consist of five (5) Commissioners at large, one of whom shall be the Mayor. It shall be the duty of each Commissioner to propose necessary and appropriate legislation and resolutions for Commission consideration; serve on committees designated by the Mayor and Commissioners. It is the duty of the Commissioners to attend regular and special meetings and public hearings on proposed legislation; be available and responsive to constituents; and perform all other duties as provided in this Charter and by law.

Section 3-03 The Mayor

It shall be the duty of the Mayor to preside at all meetings of the commissioners and to see that the laws, ordinances, rules and regulations of the Town are fully executed. He/she shall have custody of the seal of the Corporation and shall have the right of affixing the seal. The Mayor may vote on all ordinances, acts, resolutions or motions which a Commissioner may vote on, pursuant to this Charter. He/she shall approve the monthly list of drafts of the Town Clerk, unless such power is delegated to the Town Manager by ordinance. The Mayor shall also have the power to administer oaths and affirmations. The Mayor shall appoint all committees, subject to confirmation by Commissioners and shall be recognized as the head of the Town Government. The Mayor may appoint, subject to confirmation by the Commissioners, a Town Manager to oversee and manage the administrative affairs of the Town.

Section 3-04 The Vice- Mayor

At the organizational meeting (see Sec. 3-12) of the Mayor and Commissioners, the Commissioners shall elect, by a majority vote, among its members a Vice-Mayor who shall act as Mayor during the absence or disability of the Mayor and, if a vacancy occurs, shall become Mayor for remainder of the unexpired term. The Mayor may also vote for a Vice- Mayor.

Section 3-05 Qualifications for Mayor and Commissioners

Any qualified voter of the Town of Newport who is at least twenty-one (21) years of age, who is a United States citizen, who has not been convicted of a felony as that crime is designated by the State of Delaware, who has resided in the Town for at least two (2) years next preceding his/her election, shall be eligible to hold the office of Mayor or Commissioner; provided that the "qualified voter" as used herein shall mean a person who is a registered voter at the time his/her nominating petition is filed. **78 Del. Laws, c. 244, § 1**

Section 3-06 Election and Terms of Office

The general municipal election shall be held on the First Monday in April each and every year from 12 o'clock noon until 8 o'clock in the evening, local time. The Mayor and Commissioners of said Town shall continue to hold office during the respective terms for which they were elected or until their successors have been duly chosen and qualified.

Section 3-07 General Powers and Duties

All powers of the Town shall be vested in the Mayor and Commissioners, except as otherwise provided by law or this Charter, and the Mayor and Commissioners shall provide for the exercise thereof and for performance of all duties and obligations imposed on the Town by law.

Section 3-08 Commissioners Prohibitions

- A. Holding Other Office Except where authorized by law, no Mayor or Commissioner shall hold any other Town office, or Town employment during the term for which elected to Commissioner, and no Mayor or Commissioner shall hold any compensated appointive Town office or employment until one (1) year after the expiration of the term for which elected to office.
- B. Appointment and removals. Neither the Mayor nor the Commissioners shall in any manner dictate the appointment or removal of the Town administrative officers or employees whom the Town manager or any of his/her subordinates are empowered to appoint, but the Mayor and Commissioners may express its views and fully and freely discuss with the Town Manager anything pertaining to appointment of such officers and employees. (70 Del. Laws, c. 4)
- C. Interference with Administration. Except for the purpose of inquiries and investigations, the Mayor and Commissioners shall deal with Town officers and employees who are subject to the direction and supervision of the Town Manager solely through the Town Manager, and neither the Mayor nor the Commissioners, nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 3-09 Vacancies and Forfeiture of Office

- A. Vacancies. The office of Mayor or Commissioner shall become vacant upon death, removal from the Town, resignation, removal from office in any manner authorized by law, or forfeiture of office.
- B. Forfeiture of Office. The Mayor or Commissioners shall forfeit office if:
 - (1) he/she lacks, at any time during his/her term of office, any qualification for the office prescribed by this Charter or by law; (2) violates any express prohibition of this Charter; (3) is convicted of a felony as that term is defined by the State of Delaware; (4) failure to attend three (3) successive monthly meetings at any time or failure to attend four (4) regular meetings in a twelve (12) months period.
- C. Filling of Vacancies. In case of vacancy for any cause in the office of Mayor, the Vice- Mayor, shall fill such vacancy. In the case of a vacancy for any cause in the office of Commissioner, the Commission, including the Mayor, upon majority vote shall make a temporary appointment to fill such vacancy at the next regular meeting. Such appointment shall continue until the next general municipal election, Thereafter, such office shall be filled by election and the person so elected shall serve for the remainder of the term of the Commissioner whose office became vacant.

Section 3-10 Judge of Qualifications of Members

The Mayor and Commissioners shall be the judge of the election and the qualifications of the Mayor and Commissioners and of the grounds for forfeiture of their office, and for such purposes, shall have power to subpoena witnesses, take testimony, and require the production of records. A Mayor or Commissioner charged with conduct constituting grounds for forfeiture of his/her office, except for forfeiture by virtue of violation of Sec. 3-09 B(4), shall be entitled to a public hearing on demand; and notice of such hearing shall be posted in five (5) prominent locations in the Town, one of which shall include the Town Hall, at least ten (10) days in advance of the hearing.

Section 3-11 Mayor and Commissioners Compensation and Expenses

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

Section 3-12 Meetings of Commissioners

The Mayor and Commissioners shall hold an organizational meeting in the evening of the third Thursday in April the regular municipal election and shall meet regularly at least once a month thereafter. Additional meetings may be held on a regular, adjourned or special basis, provided notice is given in accordance with the law of the State of Delaware and the rules of the Mayor and Commissioners. Special meetings may be called by the Mayor, or by written request of any two members of the Commission and, whenever practical, upon no less than eight hours notice to each member. All meetings shall be open to attendance by the public, provided however, the Commissioners may recess for the purpose of discussing, in an executive session pursuant to the Sunshine Law of the State of Delaware, or any other matter appropriate for executive session, provided that the general subject matter for consideration is expressed in the motion calling for such session.

The Mayor and Commissioners shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any adjourned or special meeting, called as aforesaid as the Mayor and Commissioners has at a regular meeting. **78 Del. Laws, c. 244, § 2**

Section 3-13 Rules of Procedure

The Mayor shall determine the rules of procedure and order of business at the meetings. The Mayor and Commissioners shall provide for keeping a minute book of its proceedings, which shall be a public record and open to public inspection. Voting, except on procedural motions, may be by roll call but in any event the ayes and nays and abstentions shall be recorded in the minutes.

Section 3-14 Quorum and Majority Requirement

A majority of the members of the Commission shall constitute a quorum to do business. No ordinance shall be valid unless it shall have the affirmative vote of a majority of the members of the Commissioners. Resolutions, orders and motions shall be valid upon the affirmative vote of a majority of the members of the Commissioners present. No member shall be excused from voting on ordinances, resolutions, orders or motions except where a member of Commissioners has a conflict of interest, in which event, said member shall disqualify himself/herself from voting.

Section 3-15 Organizational Meeting

An organizational meeting of the Commissioners of Newport shall be held on the third Thursday in April, immediately prior to the regularly scheduled meeting. At the Organizational meeting, the Commissioners, including those elected that day, shall select from amongst themselves one Commissioner, who shall be the presiding officer of the Commissioners and shall be called "Mayor". The Mayor shall have a term of one year. Any Commissioner may vote for himself/herself in the selecting of the Mayor. If the Commissioners are unable to select one of their number as Mayor, then the Mayor shall be chosen by drawing lots from a box. **78 Del. Laws, c. 244, § 3**

Article IV - Assessment Of Property; Taxes**Section 4-01 Property Assessment Procedure**

- A. Generally. There annually shall be made a true, just and impartial valuation and assessment of all real estate within the Town except such real estate as is exempt from municipal assessment and taxation by virtue of any State law, and also of such personal property as is subject to County assessment and taxation; provided, however, that in no event shall household furnishings, bank accounts, stocks, bonds or automobiles be assessed or taxed.
- B. Use of County Assessments. It shall be lawful for the Town to enter into an agreement with the Board of Assessment for New Castle County to inspect and copy, or to obtain copies, of the assessments made for County purposes. Annually, the Commissioners shall make a judgment regarding whether the Town will utilize such County assessments and whether said County assessments are a true, just and impartial evaluation. The Commissioners then shall order the adoption of such County assessment for municipal purposes or the adoption of assessments as determined by the Town assessment authority; provided, however, that adoption of the County assessment for municipal purposes shall not preclude the Town from modifying the County assessment list to take into account new construction, tax exemption status, or use not reflected in the County assessment list, or clear cases of inequitable assessment. **70 Del. Laws, c. 4**
The determination to use the County assessments shall be made by ordinance before February 1st of any year and shall continue in effect from year to year until revoked by ordinance. Notice of a determination to use the County assessments shall be given to the Assessor or Board of Assessment prior to March 1st in the year that the determination is made and shall be published at least once a week for two (2) weeks prior to March 1st of each year in at least two (2) newspapers in the municipality, or to the extent no such newspaper exists, then in a newspaper of general circulation in New Castle County.
- C. Approval and Posting of Assessment Roll. Each year, there shall be prepared and submitted to the Commissioners at least 60 days before the beginning of the tax year, two or more copies of the assessment rule, which shall show the location of each parcel of taxable real and personal property by street and number or other suitable description. When the Commissioners approve the roll as prepared, or as modified by the Commissioners, then a full and complete transcript thereof shall be posted in a place in the Town designated by the Commissioners. Such posting shall take place at least 45 days before the beginning of the tax year and shall remain posted up to, but not including, the appeal day as herein set out. Notice of the time and place where the assessment list may be viewed shall be given by posting such announcement in at least five (5) public places throughout the Town.
- D. Assessment Board of Appeals. Each year, at least 30 days before the beginning of the tax year, the Commissioners shall, upon receipt of a application for an assessment appeal, hold a Board of Appeals, during which time the Commissioners shall hear and determine appeals from assessments and shall make such corrections and additions as may be deemed necessary and proper. The decision of a majority of the Commissioners sitting on appeals shall be final and conclusive in respect to all appeals.

No Commissioner shall sit on his/her own appeal, but the same shall be heard and determined by the other Commissioners. After the said valuation and assessment shall be examined and adjusted by the Commissioners, all property taxes shall be examined and adjusted by the Commissioners, all property taxes shall be levied on real and personal property thus assessed in just and equal proportions.

Section 4-02 Levy of Taxes

The Commissioners shall, after having ascertained the revenue necessary to balance the budget and having apportioned said sum on the assessment and valuation as provided for in this Charter, shall, on the first day for the fiscal year, furnish the Town Treasurer with a copy of the final assessment roll containing the names of the taxables, as well as the owners of real estate and the tax on the entire valuation and assessment at a rate per one hundred dollars. The Assessment roll shall be certified true and correct by a majority of all the Commissioners.

Section 4-03 Payment of Taxes

All taxes shall be paid to the Town by the close of business on June 30th, or the next banking day if June 30th falls during a weekend or a holiday, of each year; provided however, the Mayor and Commissioners may provide by Ordinance with a 4/5ths vote, for an earlier due date for payment of taxes so long as such date is not less than ninety (90) days following commencement of the fiscal year. On all taxes paid after June 30th, or such earlier date, so long as such date is not less than ninety (90) days following the commencement of the fiscal year, as established by Ordinance with 4/5ths approval there shall be paid a penalty at the rate of two percent (2%) per month or fraction thereof for each month unpaid after date due. All tax bills shall be sent out on or before May 15th of each year. Appropriate legal action shall be taken against all delinquent taxpayers whose taxes have become delinquent for a period of two (2) years or more. **70 Del. Laws, c. 4; 78 Del. Laws, c. 244, § 4**

Section 4-04 Collection of Delinquent Taxes - Generally

- A. Tax Liens. The provisions of Title 25, Delaware Code Annotated, Chapter 29, as amended, with reference to tax liens shall be deemed and held to apply to all taxes imposed under the provisions of this Charter.
- B. Debt Action. The Town may recover the amount of the tax due in an action of debt against the delinquent taxpayer in any court of competent jurisdiction; and it shall be sufficient to set forth that the action is to recover a specified sum of money, being a tax or taxes assessed against property owned by the defendant, in whole or in part, together with such description of the property as will be sufficient to identify the same and the year for which the taxed were levied. The right of appeal shall be the same as in other civil actions.

If a judgment be rendered in favor of the Town, there shall be an allowance for the additional expense in attending to the suit, including counsel fees. The amount of accrued interest, which shall be taxed by the court in the costs, thereupon execution shall issue against the real estate of defendant. No execution against the real estate shall issue except out of the Superior Court. Where such judgment is recovery from a lower court of competent jurisdiction and it is the desire of the Town to proceed against the real estate of the defendant, the Town shall take a transcript of the judgment from such lower court and cause the same to be entered in the Superior Court in and for New Castle County. When such transcripts are entered, the subsequent proceedings shall be the same as upon other judgments. The lien of the judgment, as aforesaid, shall be deemed to relate back and take effect from the date of the Certified Town assessment roll.

- C. Remedies Cumulative. The remedies herein provided are cumulative and, if two or more proceedings are pending to recover the amount due for taxes upon the same property for any year, neither proceedings shall be pleaded in bar or in suspension of other proceedings. However, when the full amount due for taxes upon the property for the year shall have been paid to the plaintiff in any proceeding, together with all costs in all proceedings then pending, the plaintiff shall enter upon the records thereof discontinuances thereof.

Section 4 -05 Collection of Delinquent Taxes - Monition

- A. Monition Method Established. In addition to all existing methods and authority for the collection of taxes or special assessments due the Town of Newport, the monition method and authority is established.
- B. Praecipe; Judgment; Monition. The Town may file, or cause to be filed, a praecipe in the office of the Prothonotary of the Superior Court in and for New Castle County, which praecipe shall contain the name of the person against whom the taxes or assessments sought to be collected were assessed, and a copy of the bills showing the amount of taxes or assessments due and the property against which the tax or assessment was laid, and a statement of the lot number or numbers of the particular section in which said property is located.

For the purpose of this and the next section, the street number or numbers also shall be sufficient identification and description of said property.

The Prothonotary shall make a record of the same on the judgment records of said Superior Court against the property mentioned or described in said praecipe. Thereafter, upon a praecipe for monition filed in the office of said Prothonotary by the Town, a monition shall be issued by the Prothonotary aforesaid to the Sheriff of New Castle County, which monition shall briefly state the amount of the judgment for the taxes or assessments due and the years thereof, together with a brief description of the property upon which said taxes or assessments are a lien.

C. Form of Monition. The monition shall be in substantially the following form:

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

Names of Person in Whose Name Property Is Assessed	Description of Property	Year or Years	Amount of Judgment
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D. Posting of Monition; Sheriff's Return; Alias and Pluries Monition. Said monition, or copy thereof, shall be posted by the Sheriff upon some prominent place or part of the property against which said judgment for the taxes or assessments is a lien. The Sheriff shall make due and proper return of his/her proceedings under said Monition to said Prothonotary within ten (10) days after the posting of said copy of monition as aforesaid. Alias or Pluries Monition may issue upon like praecipe. The posting of said Monition shall constitute notice to the owner or owners and all persons having any interest in said property.

E. Issuance and Form of Writ of Venditioni Exponas. At any time after the expiration of twenty days following the return of the Sheriff upon such Monition, unless before the expiration of said twenty days, the said judgment and costs on said judgment shall be paid or evidence of the payment of such taxes evidenced by a receipted bill or a duplicate thereof, bearing date therefor prior to the filing of said lien for record in the office of the Prothonotary as aforesaid, upon praecipe filed by the Town of Newport through its attorney or any other person authorized on its behalf to collect taxes or assessments due to the Town of Newport, a writ of Venditioni Exponas shall issue out of the office of the said Prothonotary directed to the Sheriff, commanding the Sheriff to sell the property mentioned or described in said writ and make due return of his/her proceedings thereunder in the same manner as is not applicable with respect to similar writs of Venditioni Exponas issued out of the said Superior Court.

Said writ shall be substantially in the following form:

COUNTY OF NEW CASTLE:

SS.

STATE OF DELAWARE:

TO THE SHERIFF OF NEW CASTLE COUNTY

GREETINGS:

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

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

CHARTER OF NEWPORT

And that you should cause to be made as well a certain debt of _____ Dollars (\$ _____) lawful money of the United States, which to the said Town of Newport, a municipal corporation of the State of Delaware, is due and owing, as also the sum of _____ Dollars (\$ _____) lawful money as aforesaid, for its costs, which it has sustained by the detaining of that debt, whereof the said _____ was convicted as it appears of record and against which said property it is a lien;

And have you that money before the Judges of our Superior Court at Wilmington, on Monday, the _____ day of _____, next, to render to the said Town of Newport, a municipal corporation as aforesaid, for its debt and costs as aforesaid, and this writ;

WITNESSETH, The Honorable _____ at Wilmington, the ____ day of ____ A.D. 19 _____.

Prothonotary

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

- F. Title of Property Sold. Any real estate or interest therein sold under the provisions hereof shall vest in the purchaser all the right, title and interest of the person in whose name said property was assessed, and/or all right, title and interest of the person or persons who are the owner or owners thereof, and likewise freed and discharged from any dower or courtesy or statutory right, in the nature of a dower or courtesy, whether absolute or inchoate, in or to said real estate, and form all equity of redemption and liens and encumbrances held by persons and corporations against said property.
- G. Redemption by Owner. The owner of any such real estate sold under the provisions of this Charter or his/her legal representatives may redeem the same at any time within three months from the day the sale thereof is approved by the Court, by paying to the purchaser of his/her legal representative, successors or assigns, the amount of the purchase price and fifteen percent in addition thereto, together with all costs incurred in the cause; or if the purchaser or his/her legal representatives, successors or assigns shall refuse to receive the same, or do not reside or cannot be found within the Town of Newport, by paying said amount into said Court for the use of said purchaser his/her legal representative or assigns.
- H. Petition by Purchasers for Deed of Conveyance. In the event that the owner of said property or his/her legal representatives shall fail to redeem said property as herein provided, the Purchaser of said property or his/her legal representatives, successors or assigns may present a petition to the Superior Court setting forth the appropriate facts in conformity with this Charter and pray that the said Superior Court make an order directing the Sheriff, then in office, to execute, acknowledge and deliver a deed conveying the title to said property to the petitioner; and thereupon the said Superior Court shall have power, after a hearing upon said petition, to issue an order directing the Sheriff to execute, acknowledge and deliver a deed as prayed for in said petition, and a description of said property by street number or by lot number or numbers of the particular section in which said property is located, together with a description of said property by metes and bounds.
- I. Petition by Owner After Redemption for Entry on Judgment Record. If the owner of any real estate sold under an order of sale, or his/her legal representative, shall redeem said real estate, he/she may prefer to said Superior Court a petition setting forth that fact and thereupon the said Superior Court, after hearing and determining the facts set forth in said petition, shall have power to cause to be entered upon the record of the judgment under which said real estate was sold, a memorandum that the real estate described in the proceeding upon which said judgment was entered has been redeemed, and thereafter, the said owner shall hold such redeemed real estate subject to the same liens and the same order of priority as they existed at the time of the sale thereof, excepting so far as the said liens have been discharged or reduced by the application of the proceeds by the said Sheriff from the said sale.
- J. No Proceedings Unless Tax is a Lien Upon Property. No motion proceedings shall be brought under this Charter unless the tax or assessment sought to be collected hereunder shall, at the time of the filing of said petition in the office of the Prothonotary, be and constitute a lien upon the property against which the tax or assessment was assessed or laid. All taxes for Town purposes which may hereafter be lawfully assessed on real estate shall constitute a prior lien thereon for a period of ten years from the first day of the Town tax year succeeding the assessment of said taxes. but if the said real estate remains the property of the person to whom it is assessed, then the lien shall continue until the tax is collected and may, with all incidental costs and expenses, be levied by sale thereof as hereinbefore provided.

- K. **Counsel Fees; Purchase by Town.** The said tax lien and costs and reasonable counsel fees for the collection thereof shall be full paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility which the real estate may be charged with or liable to. The Town of Newport shall have the authority to authorize any person or persons to make a bid or bids at the sale of any real estate under the provisions of this Charter, and in the event that such person or persons is the highest and best bidder or bidders therefor, the title thereto shall be taken in the name of the Town of Newport. The Commissioners, by resolution duly adopted, are authorized and empowered to sell and convey any real estate purchased under the provisions herein.
- L. **Definition Of Superior Court.** Whenever the Superior Court is mentioned in this or the preceding Section of this Charter, the same shall be held to embrace the Judges or any Judge thereof, and any act required or authorized to be done under this or the preceding Section, may be done by the said Superior Court or any Judge thereof in vacation thereof, as well as in term time.
- M. **Fees and Costs.** The fees and costs to be fixed in all motion proceedings under this and the preceding Sections where not otherwise provided for, shall be set by the Commissioners by ordinance. All other charges not covered by this and the preceding Sections shall be the same as are provided by law.

Article V - Ordinance Procedure

Section 5-01 Ordinances Generally

In addition to such acts of the Commissioners as are required by this Charter or by law to be by ordinance, every act of the Commissioners establishing a fine or penalty shall be by ordinance. Except as otherwise provided, every legislative act of Commissioners which shall have the force of law shall be by ordinance and shall include an enacting clause which reads: "The Commissioners of the Town of Newport hereby ordain:" 70 **Del. Laws**, c. 4

Section 5-02 Commissioners Action on Ordinance

- A. Every proposed ordinance shall be introduced in writing. Any ordinance which amends an existing ordinance shall set out in full that part of the ordinance, section or subsection to be repealed or amended, and shall indicate the matter to be omitted. Every ordinance, except general modifications and revisions of Town ordinances, shall contain not more than one subject, which shall be clearly expressed in its title.
- B. An ordinance may be introduced by any Commissioner. Upon introduction of any ordinance, copies thereof shall be distributed to each Commissioner and the Town Solicitor, and a reasonable number of copies shall be filed in the Town Hall and such other places as the Commissioners may designate. No ordinance shall be passed unless it shall have read in full or abstract at a previous meeting. After first reading, the proposed ordinance shall be posted in five (5) prominent locations in the Town, one of which shall include the Town Hall at least seven (7) days prior to the established hearing date, stating the time and place where said ordinance will be given a public hearing and be considered for final passage.
- C. At the time of the stated meeting and public hearing, which can be a regular, adjourned or special meeting, the proposed ordinance shall be read in full or abstract and considered for passage. After the public hearing and consideration, the Commissioners may pass the proposed ordinance, or a substitute version thereof, which is substantially similar thereto.
- D. All ordinances must be passed by at least three (3) Commissioners.

Section 5-03 Effective Date

Except as otherwise provided in this Charter, every adopted ordinance shall become effective immediately upon adoption or at a later date as specified in the Ordinance.

Section 5-04 Adoption of Codes of Technical Regulations

The Commissioners may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that a copy of each adopted code of technical regulations as well as of the adopting ordinance shall be made available by the Town Clerk or for purchase at a reasonable price.

Section 5-05 Authentication and Recordation

The Town Secretary shall authenticate by his/her signature and record in full, in a properly indexed book for that purpose, all ordinances, resolutions and regulations adopted by the Commissioners.

Section 5-06 Emergency Ordinances

- A. To meet a public emergency affecting life, health, property or the public peace, the Commissioners may adopt emergency ordinances; but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by the Town for any of its utilities, or authorize the borrowing of not more than three-tenths of one percent (0.3%) of the assessed valuation of the assessable and taxable real property within the limits of the Town of Newport for emergency purposes.
- B. An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.
- C. An emergency ordinance may be adopted without a first reading, but copies of the ordinance shall be made available to the public prior to the meeting considering approval thereof, and time shall be set aside, prior to Commissioners' vote, for public comment.
- D. An emergency ordinance may be adopted only by an affirmative vote of at least three (3) Commissioners. After its adoption, the ordinance shall become effective upon its adoption or at such later time as it may specify; but, every emergency ordinance, including any amendment made therein after its adoption, shall automatically stand repealed as of the ninety first (91st) day following the date on which it was adopted, unless extended by regular ordinance enacted by the Commissioners, and it shall be the duty of the Town Secretary to so notify the Commissioners.

Article VI - Finances And Indebtedness**Section 6-01 Fiscal Year**

The Town's fiscal year, which shall constitute the budget and accounting year, but need not constitute the tax year, shall commence on January 1st of each year and conclude upon December 31st of the following year, but the Commissioners may, by ordinance, adopt a different fiscal year.

Section 6-02 Payment of Moneys Out of the Town Treasury

All payments out of the Town bank accounts shall be by check. Two signatures must be affixed to all checks. The Mayor, Commissioners and the Town Manager shall be authorized to sign checks. 70 **Del. Laws**, c. 4

Section 6-03 Annual Revenue and Operating Budget

- A. Budget Message. The town manager's message shall explain the budget both in terms of work programs and in fiscal terms. It shall describe the important features of the budget; indicate any major changes from the current year in financial policies, expenditures, and revenues, together with the reasons for such changes; summarize the town's debt position; and include such other material as the town manager deems desirable.
- B. Budget. The budget shall present the financial plan for conducting the affairs of the town for the ensuing fiscal year and shall comprehend all departments, offices and agencies, and all funds and monies anticipated to be realized by and expended by the town during said fiscal year. In organizing the budget, the town manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, activity and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures for the current year. It shall include in separate section:
 - (1) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs; and
 - (2) Proposed capital expenditures during the ensuing fiscal year.

Section 6-04 Commissioners Action on the Budget

The Commissioners shall cause to be posted in at least five (5) prominent places located in the town, a general summary of the proposed budget, a notice of the times and places where copies of the budget are available for inspection and the time and place for a public hearing on said budget. Such notice shall be posted at least seven (7) days prior to each such hearing.

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

The budget for the ensuing fiscal year shall be adopted by the Commissioners not later than the last day of the fiscal year currently ending. The tax rate for the ensuing fiscal year shall be adopted at the time the budget is adopted. If it fails to so adopt, the budget submitted by the town manager for operations for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis with all items in it prorated accordingly, until such time as the council adopts a budget for the ensuing fiscal year. Also, during such period, the Commissioners may appropriate amounts requested by the town manager for specific capital improvement projects, provided that the town manager certify that the necessary funds are available therefore.

Section 6-05 Budget Amendments after Adoption

If at any time during the fiscal year it appears probable to the town manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the council without delay, indicated the estimated amounts of the deficit, any remedial action taken by him, and his recommendations as to any other steps to be taken. The Commissioners shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose, it may reduce one or more appropriations.

The town manager may at any time during the fiscal year transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency; and at any time during the fiscal year, upon written request of the town manager, the Commissioners may transfer part or all of any unencumbered appropriation balance from one department, agency to another.

All actions taken under the provisions of this section shall be at regular council meetings and shall be recorded in the council minutes.

Section 6-06 Capital Program

- A. Submission to the Commissioners. The town manager shall prepare and submit to the Commissioners a five-year capital program at least four (4) months prior to the final date for the submission of the budget. The capital program shall include the following elements and information:
 - (1) A clear general summary of its contents;
 - (2) A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing with appropriate supporting information as to the necessity for such improvement.
 - (3) Cost estimated, method of financing, and recommended time schedules for such improvements; and
 - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.
- B. The Commissioner Action on Capital Program. The Commissioners shall hold such deliberations and hearings as it deems desirable concerning the proposed capital program. It shall adopt the final program, with or without amendments, deletions or additions, no later than sixty days prior to the end of the current fiscal year. The town manager shall incorporate the approved capital program and projects for the current year into the budget.
- C. Definition of "Capital". For the purpose of this section, "capital" shall be defined as any project or equipment, including any extension or addition thereto or thereof, having a life expectancy in excess of, or to be financed over a period greater than six (6) years, or a value exceeding twenty-five thousand dollars (\$25,000.00).
- D. Perpetuation of Program. The capital program shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition. New projects will be added as their need becomes apparent. **78 Del. Laws, c. 244, § 5**

Section 6-07 Power to Raise Revenue

- A. The Commissioners shall have the power to levy and collect taxes on real property within the Town. except that which is not assessable and taxable by virtue of any law of the State of Delaware, which shall not be more than

2% of the assessed valuation of the assessable and taxable real estate within the Town in any year clear of all delinquencies and expenses of collection; provided, however, in addition thereto, the Commissioners shall have the power to levy the taxes necessary to service the bonded indebtedness of the Town.

- B. The Commissioners shall have the right to grant or refuse, and to charge fees for licenses or permits for all trades or businesses, of any description, within the Town and to control their use of any property within the Town. The Commissioners shall have the power to levy and collect franchise fees.
- C. The Commissioners shall have the power to impose reasonable penalties and forfeitures for tax delinquencies, and to review and determine proper and appropriate properties to be exempt from taxation.
- D. The Commissioners shall have the power to fix the rates for utilities operated by the Town and to collect and utilize revenues from such utilities for the benefit of the Town.
- E. The Commissioners shall have the right to levy and collect taxes upon all gas mains, water lines and telephone, telegraph power poles or other erections of like character erected within the limits of the Town of Newport, together with the wires, cables and appliances thereto or thereon attached, as well as such wires, cables and appliances which may be installed underground, and to this end may, at any time, direct the same to be included in or added to the Town assessment. In cases the owner or lessee of such poles or erections and such wires, cables and appliances shall refuse or neglect to pay the taxes that may be levied thereon, the said taxes may be collected as in the case of other taxes.

Section 6-08 Borrowing for Current Expenses and Capital Expenditures

- A. Whenever the needs of the Town shall require more money than is, at the time, in the Town treasury from current receipts, the Commissioners may, and it is hereby authorized and empowered, to anticipate current fiscal year revenue by borrowing such amounts as are needed; provided, however, the amount of such indebtedness shall not at any time exceed one-half of one percent (0.5%) of the assessed valuation of the assessable and taxable real property within the limits of the Town, except in the case of a Declared Emergency in which case the limit shall not exceed one percent (1%) of the assessed valuation upon the affirmative vote by all five Commissioners.
- B. The Town of Newport shall have the full power and authority to borrow, for the exclusive purpose of financing a capital asset, upon the faith and credit of the Town of Newport, a sum or sums of money not exceeding five percent (5%) of the total assessed property value, exclusive of borrowing against current expenses referred to in subsection A hereof, when in the opinion of the majority of the Commissioners the needs of the Town demand it. The Commissioners may secure such sum or sums of money by promissory note or notes, or certificates of indebtedness of the Town of Newport, duly authorized by resolution of the Commissioners, signed by the Town Secretary, and by the Mayor or Acting Mayor, with or without the corporate seal of the Town affixed in accordance with the request of the person or corporation advancing the money on said notes or certificates, and no Commissioner or officer shall be personally liable for the payment of such note or notes, because of his/her signature as an officer of the Town of Newport or as a Commissioner or his/her approval of the authorizing resolution. Provided however; that any sum of money borrowed by the Town Council on the full faith and credit of the Town as aforesaid, shall be paid in full, together with all interest and charges thereon, within a period not to exceed the useful life of the capital asset, or ten (10) years, whichever is less, except for real estate, in which case real estate should be financed within a period not to exceed twenty-five (25) years.

This provision in no way shall be intended to apply to the right of the Commissioners to submit to the voters for their approval major capital improvement projects to be financed by long term bond issue as provided for in this Charter.

Section 6-09 Power to Incur Bonded Indebtedness

- A. Power to Borrow Money. The Town may incur indebtedness by issuing either general obligation bonds or certificates of indebtedness secured by the full faith and credit of the Town, or by issuing revenue bonds, either in whole or in part of the total amount necessary to provide funds for the erection, extension, enlargement or repair of any plant, machinery, appliances or equipment for the furnishing of water, for the construction, repair or improvement of highways, streets or lanes, or the paving, curbing, or erection of gutters along the same; for the construction or repair of sewers or sewage disposal equipment; or to defray the cost of the share of the Town in the cost of any permanent municipal improvement; or to replace any monies advanced from current funds of the Town to finance any one or more of such projects; or to carry out any capital improvement project deemed by the Commissioners to be necessary to the proper execution of any function or power of the Town.

If general obligation bonds are issued, the total outstanding debt secured by such bonds shall not exceed fifteen (15) percent of the assessed value of all the real estate subject to taxation located within the Town.

If revenue bonds are issued, each such bond shall recite in substance that said bond, including interest therein, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the Town of Newport within the meaning of the bonded indebtedness limitation; provided, however, that in the event of some emergency, the Town may temporarily borrow, advance or loan such amount as is necessary to meet current interest on outstanding bonds, such advance or loan to be repaid to the Town of revenue subsequently received from the undertaking. If revenue bonds are issued, the Commissioners shall prescribe and have collected reasonable rates, fees or charges for the service, facilities and accommodations of said undertaking and shall review such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will procure revenue at least sufficient to pay, when due, all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and to provide for all expenses of operation and maintenance of such undertaking, payments in lieu of taxes, depreciation and other reserves.

No capital improvement bonds, notes or certificates of indebtedness may be authorized, which bonds are payable more than forty (40) years from the date of issuance thereof.

B. Method of Borrowing Money. Before the Town may incur indebtedness by the issuance of bonds as set out in the preceding Section, the borrowing of money shall have been authorized by the Commissioners and shall have been approved in the manner set out in this Section.

- (1) The Commissioners shall, by resolution, propose to the qualified voters according to law in the Town of Newport the purposes for which the stated amount of money shall be borrowed. The resolution shall state the amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan, including data on total related debt and the debt limitations established by this Charter, shall fix a time and place for hearing on the resolution; and shall provide for publication of an announcement of the hearing in a newspaper of general circulation in the Town and posting of the announcement in at least five (5) prominent places in the Town, one of which shall include the Town Hall, at least ten (10) days prior to the hearing date.
- (2) A public hearing shall be held, at which time all interested persons shall be given an opportunity to express their views. Their testimony shall be considered in evidence by the Commissioners.
- (3) If the Commissioners desire to continue with the bond proceeds, they shall then, by resolution, direct that the question be submitted to the public by a referendum. An election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of such resolution.
- (4) The notice of the time and place for holding said special election shall be printed in a newspaper of general circulation in the Town once a week for two consecutive weeks prior to the election and notice of such election shall be placed in five (5) prominent places in the Town, one of which shall include the Town Hall, at least ten (10) days prior to the special election. The special election shall be conducted by the Election Board as herein established and as provided for by regular general elections.
- (5) The Commissioners shall cause the Election Board to prepare the ballots for the voting machines and to hold the referendum. At said referendum, all qualified voters of the Town of Newport shall be entitled to vote.
- (6) The Election Board shall count the votes for and against the proposed bond issue and shall announce the result thereof; shall make a certificate under their hands of the number of votes cast for and against the proposed issue; and shall deliver the same to the Commissioners, which certificate shall be entered on the minutes and the original thereof filed by the Town Secretary. No bond issue shall be deemed approved unless a majority of those voting at such referendum shall vote for such bond issue.
- (7) The form of the bonds or certificates of indebtedness, the date of payment of interest, the classes, the dates of maturity, and the provisions pertaining to any registration thereof, shall be determined by the Commissioners. The bonds shall be sold to the highest bidder after at least one month's notice, published at least twice in a newspaper of general circulation in the Town and at least once in a publication carrying municipal bond notices and devoted primarily to financial news. The Commissioners shall provide, in the budget, for revenues sufficient to pay the interest and principal on said bonds or certificates at the maturity or maturities thereof. The full faith and credit of the Town shall be deemed pledged for the due payment of the principal and interest of general obligation bonds issued within the prescribed debt limitation when the same have been properly executed and delivered for value.

Section 6-10 Independent Audit

Annually, the Commissioners shall designate a firm of certified public accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of fiscal transactions of the Town government and shall submit their report to the Commissioners. Such accountants shall have no direct or indirect personal interest in the fiscal affairs of the Town government or of any of its officers. They shall not maintain any accounts for the Town, but shall, within specifications approved by the Commissioners, audit the books and documents of all appropriate officers and employees of the Town government in all departments, offices and agencies. Designation of the accountants shall be made by the Commissioners not later than thirty days after the beginning of the fiscal year for which the audit is to be conducted. When received, the audit report shall become part of the Town minutes.

Article VII - Town Appointive Offices**Section 7-01 Town Solicitor**

The Mayor with the advice and consent of three Commissioners shall appoint an officer of the Town who shall have the title of Town Solicitor. He/she shall be a member of the Bar of the State of Delaware and shall have practiced law for at least five years prior to appointment. It shall be the duty of the Town Solicitor to give legal advice to the Commissioners, the Town Manager and, as authorized by the Commissioners, to department heads and other officers of the Town, and all Town departments, offices or agencies; he/she shall represent the Town in all legal proceedings and shall perform such other legal services as may be required by the Mayor, Commissioners, Town Manager, this Charter, law or ordinance. The Mayor and Commissioners may procure such additional legal services as it may deem to be required, The Town Solicitor shall serve at the pleasure of the Mayor and three Commissioners.

Section 7-02 Assessor

If and when the Mayor and Commissioners choose not to use the County assessments as specified in Section 4-01, Paragraph B, of this charter, the Mayor, with the advice and consent of three Commissioners shall appoint an officer of the Town who shall have the title of Town Assessor. He/she shall be a certified real estate assessor in his/her state of incorporation, and shall have practiced the determination of real estate assessments for at least five years prior to appointment. **70 Del. Laws, c. 4**

Section 7-03 Town Secretary

The Mayor shall appoint, with the approval of three Commissioners, an officer of the town who shall have the title Town Secretary. The Town Secretary shall be appointed at the organizational meeting for a term of one year. The Town Secretary shall authenticate by his/her signature and record in full, in a properly indexed book for that purpose, all ordinances, resolutions, regulations, and meeting minutes adopted and or approved by the council. The Town Secretary shall file and keep in a safe place the Seal of the Town, attest the same when authorized by the Mayor, the Commissioners or the town manager, and perform other duties as may be designated by the Mayor and Commissioners, town manager, this Charter or ordinance.

Section 7-04 Town Clerk

If and when the Mayor and Commissioners choose not to appoint a Town Manager as set forth in Article IX of this Charter, the Mayor shall, with the advise and consent of three Commissioners, appoint a Town Clerk. The Town Clerk may be a full time employee of the Town, who shall collect taxes, water bills, and perform any and all administrative duties of the Commissioners and/or the Town Manager, as required by them.

The Town Clerk shall keep a true, accurate and detailed account of all monies received and all monies paid out by the Town in all its activities and for all its departments, offices and agencies; shall preserve all financial records, but under a records disposal program and schedule approved by the Mayor and Commissioners, may periodically destroy such records and documents, as authorized by State law. The Town Clerk shall make such reports at such time as the Mayor and Commissioners and Town Manager shall direct and which shall keep the Town government and the public informed of the financial condition of the Town. The Town Clerk shall have such other duties as may be prescribed by this Charter, by law or ordinance. The Town Clerk shall be custodian of all funds of the Town, and shall deposit them on a regular basis in banking institutions as designated by the Mayor and Commissioners. The books, records and accounts of the Town Clerk shall be open at all times to inspection by the Mayor and Commissioners and the public, under such regulations as the Mayor and Commissioners may prescribe. **70 Del. Laws, c. 4**

Section 7-05 Members of Board, Bureaus and Commissions

Except as expressly otherwise provided and subject limitations set forth in this Charter, the Mayor shall appoint, with the advice and consent of three Commissioners, all members of the Boards, Bureaus and Commissions created by this Charter, by law or by ordinance.

Section 7-06 Alderman and Assistant Alderman

A. Appointment. An Alderman or Assistant Alderman shall be recommended by the Town, appointed by the Governor, confirmed by the Delaware State Senate, and thereafter sworn into Office by the Mayor, and evidence of such appointment shall be recorded at the Recorder of Deeds in New Castle County.

B. Appointment and Reappointment Nomination. When a vacancy occurs in the Office of Alderman or Assistant Alderman, the Mayor and Commissioners of the Town of Newport shall, by majority vote, submit a list of at least 1 qualified candidate and an application to the Governor for consideration of appointment. At least 30 days prior to the expiration date of an Alderman's or Assistant Alderman's term, the Mayor and Commissioners of the Town of Newport shall by majority vote, determine whether or not to recommend reappointment of the Alderman or Assistant Alderman for an additional term. The Town shall submit a letter of recommendation to the Governor for consideration of reappointment, or a letter with at least 1 qualified candidate and an application to the Governor for consideration of appointment.

C. Term of Office. The Alderman and Assistant Alderman shall serve a 2 year term and may remain in office until either reappointed or a successor is duly qualified.

D. Removal. An Alderman or Assistant Alderman may be censured or removed subject to the provisions of Article IV, Section 37 of the Delaware Constitution of 1897 and the Rules of the Court on the Judiciary. An Alderman or Assistant Alderman may also be replaced upon expiration of a term, following Senate confirmation of a new Alderman or Assistant Alderman.

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

E. Vacancy. In the absence of the Alderman, or when a vacancy occurs in the office of Alderman, the Assistant Alderman shall exercise all the powers, duties, and responsibilities of the Alderman as set forth in this Charter. When a vacancy occurs for an Alderman and there is no Assistant Alderman to act as Alderman, and the Delaware State Senate is recessed for more than 6 weeks, the Town may elect to have a retired Magistrate act as Alderman pending the confirmation of a nominee with the Delaware State Senate. Such retired Magistrate must meet the appointment qualifications of 10 Del. C. Section 9211 (a) to serve in such capacity, and shall receive such compensation as may be established by the Mayor and Commissioners of the Town of Newport. A retired Magistrate acting as Alderman shall have all powers, duties, and responsibilities of the Alderman as set forth in this Charter until session resumes and a successor is duly qualified.

F. Qualifications. Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-one (21) years of age, a United States citizen, a Delaware citizen, of good character and reputation, and shall reside within New Castle County, and shall not be a Mayor or Commissioner of the Town of Newport or otherwise an officer or employee of the Town of Newport.

G. Oath of Office. Within 14 days of Senate confirmation the Alderman or Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of office honestly, faithfully, diligently, and to support the Constitution of the United States and the Constitution of the State of Delaware, and to uphold and enforce the Charter of the Town of Newport and ordinances duly enacted by the Mayor and Commissioners of the Town of Newport.

H. Duties. It shall be the duty of the Alderman and Assistant Alderman to adjudicate actions brought under any ordinances legally enacted or established by the government of the Town and to carry into effect all legally binding orders and directions of the Mayor and Commissioners of the Town of Newport made pursuant to any law of this State or its Constitution. In carrying out the duties of the office, an Alderman or Assistant Alderman shall comply with the ethical responsibilities required of Aldermen in this state and shall operate the court in accordance with the Criminal Rules of Procedure for the Alderman and Mayor Courts of the State of Delaware.

I. Compensation. The compensation of the Alderman and Assistant Alderman shall be fixed by the Mayor and Commissioners of the Town of Newport and approved in conjunction with the Mayor and Commissioners' adoption of the Town operating budget. If no change is proposed and approved by the Mayor and Commissioners, the previously established compensation rate shall continue in effect until revised by a majority vote of the Mayor and Commissioners. Such compensation shall not be contingent upon or related to the amount of any civil or penal fines imposed or collected through the Alderman Court and shall not be reduced during the term of office.

J. Alderman's Docket. The Mayor and Commissioners of the Town of Newport shall procure suitable records for the use of the Alderman and the Assistant Alderman. Such records shall be known as the "Alderman's Docket". The Alderman and Assistant Alderman shall record all official acts and proceedings in the Alderman's Docket. All criminal matters, but not civil matters, shall be entered into the Delaware Criminal Justice Information System (DELJIS) as required by law.

K. Jurisdiction. The Alderman and Assistant Alderman shall have jurisdiction and cognizance of all breaches of the peace, offenses and violations of any civil or criminal ordinance of the Town committed within the corporate limits. As to such offenses or violations over which they are given jurisdiction by this Charter or by any other law of the State of Delaware, the Alderman and Assistant Alderman shall be authorized and empowered to hold for bail, set bail, impose fines, or imprison, for each offense or violation in accordance with the penalties provided by this Charter, by any Town Ordinance enacted hereunder, or as provided by any law of the State of Delaware; provided however, that the maximum fine which the Alderman or Assistant Alderman may impose shall never exceed the limits established by this Charter.

L. Civil and Criminal Penalties; Costs. Neither the Alderman nor the Assistant Alderman shall impose any penalty in excess of the State Statutory penalty when enforcing the laws of the State of Delaware, as set forth in the Delaware Code, as amended, exclusive of costs, nor imprison any offender for more than thirty (30) days, or both, except as otherwise specifically provided in this Charter or by state statute; but the Alderman and Assistant Alderman may, in addition to any other fine or term of imprisonment permitted to be assessed or imposed, impose and collect such costs as are set by ordinance or resolution of the Mayor and Commissioners of the Town of Newport, provided that when enforcing the laws of the State of Delaware as set forth in the Delaware Code, as amended, no costs shall be imposed which are in excess of that which may be imposed by the Justice of the Peace Court for like service. When imposing penalties for violation of Town of Newport Ordinances, the Alderman and Assistant Alderman may impose such fines and costs as are validly authorized by Town of Newport Ordinances.

M. Monthly Report to Mayor and Commissioner of the Town of Newport. The Alderman and Assistant Alderman shall prepare and submit a written monthly report to the Mayor and Commissioners reporting all fines and penalties imposed during the preceding calendar month and shall pay to the Town of Newport all such fines and penalties at such times as the Mayor and Commissioners shall direct. Neither the Mayor nor the Commissioners may establish or communicate an expected revenue budget for the Alderman Court, notwithstanding the forgoing, the Mayor and Commissioner's may establish in their own budget a line item based upon an estimate using the prior year's activity for financial budgeting only.

N. Alderman Court Facilities and Staff. The Town of Newport shall provide adequate and appropriate facilities and staff to facilitate the independent judicial operations of the Alderman Court. Facilities shall be separate from conflicting town operations, including, but not limited to, police agency functions. The town may house the Alderman Court in a common municipal building, so long as the Alderman's Court is provided space physically separate from other town functions and is further situated in such a manner to foster public confidence in the independence of the Court. Likewise, staff assigned to the Court shall not be shared with conflicting town government operations. **70 Del. Laws, c. 4; 78 Del. Laws, c. 244, § 6**

Section 7- 07 Town Building Inspector

The Mayor shall appoint, with the advice and consent of three Commissioners, an officer of the Town who shall have the title of Town Building Inspector. The Town Building Inspector shall have the duty to review all building plans, issue building permits and enforce all building codes, except plumbing codes if there is a Town Plumbing Inspector, adopted by ordinance. The Town Building Inspector shall have the authority to inspect all buildings in the corporate limits of the Town of Newport and to issue stop work orders and such other orders as are necessary to obtain conformance to the Building Codes. The Town Building Inspector shall be compensated at a rate to be determined by the Mayor and three Commissioners. The Town Building Inspector shall submit a monthly report to the Mayor and Commissioners. prior to the regular monthly meeting. The Building Inspector shall report to and receive direction from the Town Manager.

The Building Inspector shall report to and received direction from the Town Manager.

Section 7-08 Town Plumbing Inspector

The Mayor may appoint with the advice and consent of three Commissioners an officer of the Town who shall have the title of Town Plumbing Inspector. The Town Plumbing Inspector shall have the duty to review all plumbing plans. issue plumbing permits and enforce all plumbing codes, adopted by ordinance. The Town Plumbing Inspector shall have the

authority to inspect all buildings in the corporate limits of the Town of Newport and to issue stop work orders and such other orders as are necessary to obtain conformance to the Plumbing Codes. The Town Plumbing Inspector shall be compensated at a rate to be determined by the Mayor and three Commissioners. The Town Plumbing Inspector shall submit a monthly report to the Mayor and Commissioners, prior to the regular monthly meeting. 70 Del. Laws, c. 4

Article VIII - Election Rules And Procedure

Section 8-01 The General Municipal Election

The general municipal election shall be held in the Town Hall or some suitable building within the Town limits designated by the Mayor and Commissioners on the First Monday in April, of each and every year. The Town Clerk shall, at least 15 days before any election or referendum, give notice of such election. together with the officers to be elected thereat, the referenda to be considered and any other matter to be voted on, by posting notices in five (5) or more public places in the Town of Newport.

Section 8-02 Filing for the Office of Commissioner

Filing for the Office of Commissioner shall be by letter signed by the candidate and there shall be no party designation on any such letter beside the name of any candidate or on any ballot in any municipal election. All persons desiring to be candidates at any municipal election shall file with the Town Clerk or Town Manager of the Town of Newport a written and signed statement of their candidacy at the Town Hall during normal business hours not later than thirty (30) days before the election. The Town Clerk and Town Manager are authorized to accept a notice of withdrawal signed by the candidate up until twenty (20) days before the election.

Section 8-03 Term of Office of Commissioners and Mayor

Commissioners shall serve a term of two (2) years commencing with the Organizational Meeting following their election. All Commissioners shall serve at large. The election of three (3) Commissioners shall be held in odd numbered years. The election of two (2) Commissioners shall be held in even numbered years. The Mayor shall be selected by and from the Commissioners at the Organizational Meeting and shall serve a term of one (1) year.

Section 8-04 The Election Board of the Town of Newport

All municipal elections shall be held by an Election Board consisting of not less than three (3) nor more than five (5) qualified voters, not commissioners, appointed by the Mayor. with the advice and consent of three Commissioners.

The Election Board shall consist of:

- (1) A chairperson, who shall oversee elections generally;
- (2) At least one inspector, who shall be responsible for compliance with proper procedures; and
- (3) At least one judge who shall be responsible for the determination of the legality of the votes offered; and
- (4) An alternate to fill any vacant position. When the polls have been closed, the Election Board shall publicly count and/or tabulate the ballots, certify the results of the election to each of the persons elected and the Commissioners of Newport by giving them 'Certificates of Election' and enter the results of the election, by name and ballot count, as a minute of such election in a book designated for that purpose. Compensation of members of the Election Board shall be set by the Commissioners.

Section 8-05 Voter Qualifications

Every person domiciled in the Town of Newport who shall have reached the age of eighteen (18) years who is a citizen of the United States and who can prove the foregoing by proper identification, shall be entitled to vote at all regular and special municipal elections and referenda, except as otherwise provided in the Charter. Domicile in any area annexed to the Town by virtue of any action taken under this Charter or the laws of the State of Delaware shall constitute, for the purpose of this Section, domicile in the Town.

The Commissioners, by ordinance duly adopted, may provide for the registration of voters and require that a person, otherwise qualified to vote, must also be properly registered in order to vote in the municipal elections. Any such ordinance providing for registration of voters shall make adequate provision for the preparation and custody of registration books and for the entry therein of the names of registered voters, their qualifications as such, the fact of their voting at each municipal election, and such other matters as may be required by this Charter of the Laws of the State of Delaware. Reasonable opportunity shall be provided for voters to register, and there shall be at least five (5) registration days in each year, the last

one of which shall be not more than 30 days prior to any election or referendum. Hours of registration shall be determined by ordinance. The ordinance may provide for permanent registration lists

Section 8-06 Absentee Voting

The Commissioners may prescribe, by ordinance, for absentee registration and for the casting of absentee ballots by qualified voters unable to be at the polls at any election or referendum.

Section 8-07 Polling Places and Regulations

The Commissioners shall designate the polling places which shall be open from 12 o'clock noon to 8 o'clock p.m. on all municipal election and referendum days. In addition, the Commissioners may, by ordinance, make all necessary regulations not inconsistent with this Charter or with State laws, for the conduct of elections, for the prevention of fraud in elections, and for the recount of ballots in case of doubt or fraud.

Section 8-08 Voting Machines

Voting machines shall be used at all municipal elections, in which a contest exists, and shall be so constructed as to permit the voter to vote for the candidates fully nominated pursuant to the provisions of this Charter. The official ballots provided for municipal elections shall contain the names of all nominees for the office of Commissioners, listed alphabetically under a heading reading "CANDIDATES FOR COMMISSIONER". Thereunder shall be a designation of the number of Commissioner seats open and the terms therefore and an instruction to vote for only that number of nominees for Commissioner. A plurality of all votes cast shall make the choice. A separate designation shall be made for the one-year term on the ballot.

Section 8-09 Failure to Hold Election, Uncontested Election

A failure to hold an election, or the omission to execute any authority conferred by this act, shall not dissolve the corporation, but the authority of each officer shall continue until their successors are chosen. Any qualified voter under this Charter can bring an action in any competent court in the State of Delaware to compel the Commissioners to cause such an election to be held, at which election all of the Commissioners shall be elected. In the event of a tie between candidates then the candidates shall draw lots from a box to determine who received the higher vote.

In the event an election is not contested, it shall and may be lawful to have the candidates assume office without the holding of a formal election, pursuant to State Law. The requirement for a voting machine shall be dispensed within the event the entire election is uncontested.

Article IX - Town Manager

Section 9-01 Appointment; Qualifications; Compensation

The Mayor may appoint a Town Manager for an indefinite term and fix his/her compensation subject to confirmation and approval of three of the Commissioners. The Town Manager should be appointed on the basis of his/her executive and administrative qualifications. In the performance of his/her duties and the exercise of his/her powers, the Town Manager shall not be influenced by any matters whatsoever of a political or factional nature. He/she need not be a resident of the Town or State at the time of his/her appointment, but may reside outside the Town while in office, only with the approval of the Commissioners.

Section 9-02 Removal

- A. The Town Manager may be removed by the Mayor with the consent of three of the Commissioners or all of the Commissioners without the Mayor's consent. Before such removal shall become effective, the Mayor and/or Commissioners shall, by the Mayor and majority vote of all the Commissioners or by all the Commissioners, without the consent of the Mayor, adopt a preliminary resolution stating the reasons for removal and may suspend the Town Manager from duty without pay and for a period that the Mayor and Commissioners deem appropriate.
- B. Within five (5) days after a copy of the resolution is delivered to the Town Manager, he/she may file with the Commissioners a written request for a public hearing. This hearing shall be held at a Commissioners' meeting not earlier than fifteen (15) days nor later than thirty (30) days after the request is filed. The Town Manager may file with the Commissioners a written reply not later than five (5) days before the hearing.

- C. The Commissioners may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of the Mayor and three of the Commissioners or by all the Commissioners without consent of the Mayor at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Town Manager, if he/she has not requested a public hearing, or at any time after the public hearing if he/she has requested one.

The Town Manager, if suspended without pay, shall receive compensation for the period of suspension if he/she is not ultimately removed. The action of the Mayor and/or Commissioners in suspending or removing the Town Manager shall not be subject to review by any court or agency.

Section 9-03 Absence of Town Manager

In case of the temporary absence or disability of the Town Manager, the Mayor with the advice and consent of three of the Commissioners may designate some qualified person, who may be an elected or appointed official of the Town of Newport, to perform the duties of such office during such absence or disability.

In the case of the permanent absence of a Town Manager, the Mayor with the advice and consent of three of the Commissioners may designate a qualified person to serve until a new Town Manager is hired, unless there is a decision not to have a Town Manager, in which event the Mayor shall designate each Commissioner as a Department Head of the various Town Departments.

Section 9-04 Powers and Duties of the Town Manager

The Town Manager shall be the chief administrative officer of the Town. He/she shall be responsible to the Commissioners of Newport for the proper administration of the affairs of the Town placed in his/her charge by or under this Charter. He/she shall have the following powers and duties:

- A. Personnel. The Town Manager shall have the power to make such appointments and to hire employees at such compensation as the Commissioners, by resolution, shall determine, subject to such rules and regulations as may be adopted by the Commissioners. 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 the Commissioners. The Town Manager shall be the sole judge of the competence or incompetence of any such person so appointed or hired by him/her. However, the Commissioners shall sit as a Board of Appeal for the protection of Town employees at those times when three of the Commissioners are agreed that a review of the action of the Town Manager would be in the best interests of the Town of Newport. An aggrieved employee of the Town shall have the right to petition for a hearing before such Board of Appeal; provided that the petition is received by the Commissioners within ten (10) days of receipt of written notice of termination or suspension, decision of a majority of the Commissioners who hear the appeal shall be final and conclusive.
- B. The Town Manager shall direct and supervise the administration of all departments, offices and agencies of the Town, except as otherwise provided by this Charter, or by ordinance, resolution or other law.
- C. The Town Manager shall attend meetings of the Commissioners as directed by the Commissioners and shall have the right to take part in the discussion, but shall not vote.
- D. The Town Manager shall see that all laws, ordinances, provisions of this Charter and acts of the Mayor and Commissioners, subject to enforcement by him/her or by officers subject to his/her direction and supervision, are faithfully executed.
- E. The Town Manager shall prepare and submit the annual operating budget, capital plan and capital budget to the Commissioners according to the requirements of this Charter.
- F. The Town Manager shall submit to the Commissioners and make available to the public a complete report on the financial and administrative activities of the Town as of the end of each fiscal year.
- G. The Town Manager shall keep the Commissioners fully advised as to the financial condition and true needs of the Town and make such recommendations to the Mayor and Commissioners concerning the affairs of the Town as he/she deems desirable.
- H. The Town Manager shall prepare and submit such reports or special assignments as may be required by the Mayor and Commissioners. He/she shall perform such other duties as may be prescribed by this Charter or required by him/her by Ordinance or Resolution of the Commissioners.
- I. The Town Manager shall have charge and supervision of the streets, gutters, curbs, waterworks, sidewalks, boardwalks, jetties, piers, parks and other administrative affairs of the Town and all work relating thereto; provided however, that nothing contained herein shall create the responsibility for the Town to pay for the sidewalk repairs and maintenance as such matters shall only be governed by a duly adopted Town Ordinance.

- J. The Town Manager shall supervise the receiving of all taxes, assessments, rentals, license fees, and other charges due the Town.
- K. The Town Manager may execute on behalf of the Town, when authorized by the Commissioners, all agreements, contracts, bonds, deeds, leases, and other documents necessary to be executed. **78 Del. Laws, c. 244, § 7**

Article X - Town Administration

Section 10-01 Police Department

- A. There shall be a Police Department which shall be directed and supervised by a police officer of the Town who shall have the title of Chief of Police. The Commissioners shall, from time to time, make such rules and regulations as may be necessary for the organization, government and control of the Police Department. The Police Department 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 Department shall have such other duties as the Commissioners shall, from time to time, prescribe. The Chief of Police and the members of the Police Department shall be subject to the direction of the Town Manager, acting on behalf of the Commissioners.

Section 10-02 Board of Health

- A. The Board of Health shall consist of five (5) members, who must be residents of Newport, one of whom shall be a practicing physician, if available, and one of whom may be a Commissioner, who is assigned to the Board of Health. The Board shall be appointed by the Mayor with the advice and consent of three Commissioners, A majority of the Board shall constitute a quorum. Members shall serve at the pleasure of the Mayor and three Commissioners for a period of one (1) year and shall be appointed at the first regular meeting of the Commissioners in May or until their successors are duly appointed and qualified.
- B. The Board of Health shall have cognizance of and interest in the life and health of the people of Newport and shall report to the Commissioners in writing whatever, in its judgment, is injurious to the health and safety of the citizens and shall make recommendations to the Commissions concerning whatever may contribute to the health and sanitation of the citizens of the Town of Newport. The Board shall have all powers now or hereafter vested by the laws of the State of Delaware in Boards of Health generally, and also such additional powers as may be conferred by ordinance.
- C. The Board of Health shall organize by the election of a Chairperson and Secretary within ten (10) days after notice of their appointment and shall keep a record of their proceedings and acts.
- D. The Board of Health, at a regular or special meeting, may authorize any of its members, agents or employees of the Town with the consent of the Town Manager and under his/her direction to make an inspection of private property, upon presenting official identification, and where there is good cause shown that a violation of the health and sanitation code or related health ordinances exists on such property and provided that the owner is advised at least three (3) days in advance of such inspection, and that the inspection is made at a reasonable hour; except that such requirements shall not apply in the case of an emergency.
- E. The Board of Health shall have the power to recommend the adoption of ordinances relating to the health of the citizens or to prevent the introduction or spread of infectious or contagious diseases or nuisances affecting the same and such ordinances, when adopted by the Commissioners, shall extend to an area outside the Town limits for a distance of one (1) mile.

Section 10-03 Creation of Departments

The Commissioners may establish Town departments, offices or agencies in addition to those created by this Charter, and may prescribe the functions of all departments, offices or agencies; provided however, that the number of departments, offices or agencies shall not be excessive, and each of which shall be headed by or under the direction of the Town Manager or a single person appointed by the Town Manager; provided however, that special offices, commissions, committees and boards appointed or selected by the Mayor, with the advice and consent of the Commissioners may not be included in the above referenced limitations or under the direction of the Town Manager.

Section 10- 04 Purchases and Contracts

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, as required by resolution of the Commissioners,

Section 10- 05 Administrative Policy

- A. The administrative policies of the Town of Newport shall be prepared by the Town Manager and shall be adopted by the Commissioners by ordinance with or without amendment. However, all appointments and promotions of Town employees under the direction of the Town Manager shall be made solely on the basis of merit and fitness for the position concerned.
- B. The Commissioners shall establish, by ordinance, a code of ethics which shall apply to all employees and officials of the Town including, but not limited to, appointed, elected, part-time employees and officials and members of boards, committees and commissions.

Article XI - Planning**Section 11-01 Planning Commission**

The Mayor, with the advice and consent of three Commissioners, shall appoint a Planning Commission consisting of five members at large. Appointments should be made at the first meeting of the Commissioners in May. All appointments shall be for terms of three years. Appointments during the transition period shall be fixed by ordinance, but terms shall not exceed three years. The compensation of the Planning Commission, if any, shall be determined by the Commissioners. They shall receive reimbursement for actual and necessary expenses incurred in traveling on official business approved by the Commissioners.

The powers, duties and scope of activities of the Planning Commission shall be determined by ordinance. The Commission shall advise the Mayor and Commissioners on zoning and land subdivision matters, on the comprehensive development plan, on flood plain regulation, on the official map of the Town, and on such other matters as shall be contained in said ordinance.

The Planning Commission shall elect annually, from among its members, a Chairperson and Secretary. The Commission shall have no authority to employ persons, disburse monies, make contracts, or to exercise administrative authority in any manner whatsoever, but all such employees engaged in planning matters, and all disbursements, contracts and administrative duties shall be under the direct supervision of the Town Manager.

Section 11-02 Comprehensive Development Plan

- A. Development. The Commissioners shall adopt, and may from time to time modify, a comprehensive development plan setting forth, in graphic and textual form, policies to govern the future physical development of the Town. Such plan may cover the entire Town and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas. Such comprehensive development plan shall show, among other things, existing and proposed public ways, streets, bridges, tunnels, viaducts, parks, parkways, playgrounds, sites for public buildings and structures, pierhead and bulkhead lines, waterways, routes of railroads and buses, locations of sewers, water mains, and other public utilities, and other appurtenances of such a plan, including certain private ways. Such plan shall be adopted and have the effect as set out herein.
- B. Adoption of the Development Plan. Upon receipt from the Town Manager of the proposed comprehensive plan, portions thereof, or proposed modifications thereto, the Commissioners shall refer such proposal to the Planning Commission, which shall, within a time specified by the Commissioners, report its recommendations thereon. After receipt of the recommendations of the Planning Commission, the Commissioners shall hold a public hearing on the proposed comprehensive plan or modification thereof, and may thereafter adopt it by ordinance with or without amendment. The comprehensive development plan shall serve as a guide to all future action of the Commissioners concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements.
- C. Implementation of the Development Plan. The Commissioners may, by ordinance, adopt land use and development regulations including, but not limited to zoning and subdivision regulations. The Commissioners may, by ordinance, provide for redevelopment, rehabilitation, conservation and renewal programs for the alleviation or prevention of slums, obsolescence, blight, or other conditions of deterioration, and the achievement of the most appropriate use of land.

Before acting on any proposed ordinance concerning land use and development regulations, urban renewal, or expenditures for capital improvements, where such ordinance refers to a matter covered by the comprehensive development plan or the official map, the Commissioners shall refer the proposal to the Planning Commission, which shall, within a time specified by the Commissioners and prior to the public hearing on the proposed ordinance, report its recommendations thereon. Upon adopting any such ordinance, the Commissioners shall make findings and report on the relationship between the ordinance and the comprehensive plan, and in the event that the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.

Section 11-03 Official Map

- A. Adoption of Official Map. The Commissioners shall have the authority to adopt an official map showing the public ways and parks within the Town as therefore laid out and established by law and the private ways then existing and used in common by more than two owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such an official map, and upon any change therein or addition thereto made, as hereinafter provided, the Town Secretary shall forthwith file with the Recorder of Deeds in and for New Castle County a certificate of such action and a copy of such official map as adopted or as changed or added to.
- B. Changes in Official Map. The Commissioners may, whenever and as often as it may deem it for the public interest, change or add to such official map so as to place thereon lines and notations showing existing or proposed locations not theretofore mapped of new or widened public ways and new or enlarged parks and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the Commissioners, at which parties in interest shall have an opportunity to be heard. At least ten days' notice of such a public hearing shall be given by advertisement in a newspaper of general circulation in the Town.

After the Commissioners have adopted an official map as herein provided, no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears. After such adoption, no person shall open a way for public use, except as provided under this Charter, unless the location of such way is in accordance with the official map as it then appears, and the grading, surfacing and draining of such way have been approved by the Commissioners or the Town Manager.

Upon final action by the proper authorities in laying out, altering or relocating a proper way, or in the discontinuing the whole or any part thereof, or in establishing or enlarging a public park or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing as so established or affected shall, without further action by the Commissioners, be made a part of the official map.

- C. Enforcement of Official Map. Officers and employees of the Town, may so far as they deem it necessary in carrying out the provisions of the preceding Section, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks.

The Commissioners may petition the Court of Chancery for the State of Delaware to enforce any of the provisions of the preceding two Sections, and any ordinance made thereunder, by restraining by injunction violations thereof.

Section 11-04 Limitations on Planning

The provisions of the preceding three Sections shall not be construed to authorize the taking of land nor the authorization of the Town to lay out or construct any way which may be indicated on any plan or plot until such way has been laid out as a public way in the manner prescribed by law; nor shall any of the provisions of the preceding three Sections be construed to render the Town liable for damages except as may be sustained by reason of changes in the official map.

Article XII- General Provisions

Section 12-01 Personal Financial Interest

Any Commissioner, officer or employee who has a substantial financial interest, or indirect or by reason of ownership of stock in any corporation, in any contract with the Town or in the sale of any land, material, supplies or services to the Town or to a contractor supplying the Town shall make known that interest and shall refrain from voting upon or otherwise

participating in his/her capacity as a Town Commissioner, officer or employee in the making of such sale or in the making or performance of such contract. Any Town Commissioner, officer or employee who willfully conceals such substantial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his/her office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the Town shall render the contract or sale voidable by the Town Manager or the Commissioner.

Section 12-02 Performance Bonds

The Town Manager, Town Clerk and Alderman, and such other officers and employees of the Town as the Commissioners may require, shall give bonds for the faithful performance of their duties in such amounts and with such surety as may be approved by the Commissioners. The premiums on such bonds shall be paid by the Town.

Section 12-03 Actions or Suits; Notice of Claim

No action, suit or proceeding shall be brought or maintained against the Town of Newport for damages, either compensatory or punitive, on account of any physical injury or injuries, death or injury to property by reason of negligence, simple, gross, or willful or wanton of the said Town of Newport, 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 Newport in writing of the time, place, cause, circumstances of the occurrence, character and extent of the injury sustained or damages suffered, name and residence of person or persons on whose behalf the claim is made, names of witnesses to the occurrence, and that the person on whose behalf the claim is made will claim damages therefor from the Town. Such notice shall be directed to the Mayor of the Town of Newport by certified mail with return receipt requested and postage paid.

Section 12-04 Oath of Office

Every member of the Mayor and Commissioners, the Town Manager, and the Town Secretary, the Alderman, the heads of all departments, and such other officers or employees as Commissioners may by ordinance require, shall, before entering upon the duties of their office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the Town Secretary:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Delaware, that I will uphold the Charter and ordinances of the Town of Newport, and that I will faithfully discharge the duties of the office of _____ according to the best of my ability."

The Mayor, Commissioners, Alderman, and Town Secretary shall have the power to administer oaths required by this Charter.

Section 12-05 Charter Amendments

The Mayor and Commissioners may, by ordinance, provide a procedure by which it may propose to the voters an amendment to this Charter, but said procedure shall, in all respects, comply with applicable State law. Referendum on such amendments proposed may be held at a regular or special election, as determined by the Mayor and Commissioners by resolution. Amendments to this Charter to be voted on at referendum shall be presented for voting by ballot title. The ballot title may differ from its legal title and shall be a clear, concise statement describing the substance of the proposed amendment without argument or prejudice. Below the ballot title shall appear the following question: "Shall the Above-described Amendment be Adopted?". Immediately below such question shall appear the following words, "YES" and "NO", and to the left of each, a square in which, by making a mark, the voter may cast his/her vote. Votes shall be counted and results determined in the same manner as for Commissioners' election. Amendments receiving a majority of the votes cast on the question shall be processed and adopted in accordance with State Law. In addition to the forgoing procedure for Charter Amendment by Referendum, as well as procedures established by applicable Delaware law, the Charter of the Town of Newport may be amended by the General Assembly, when properly sponsored and introduced by a member of the General Assembly and which is approved by two-thirds members of each House and signed by the Governor. The Mayor and Commissioners may request such a Charter Amendment from the Delaware General Assembly by Resolution of the Mayor and Commissioners passed by a majority vote after a duly noticed public hearing thereon. **78 Del. Laws, c. 244, § 8**

Section 12-06 General Prohibitions

- A. No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any Town position or appointive Town administrative office because of sex, age, race or political or religious opinions or affiliations.
- B. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this Charter, or the regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions and regulations.
- C. No person who seeks appointment or promotion with respect to any Town position or appointive Town administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for, or in connection with, his/her test, appointment, proposed appointment, promotion or proposed promotion.
- D. No officer or employee of the Town, whether elected or appointed, shall promise an appointment to any Town position as a reward for any political activity.
- E. Any person who, by himself/herself, or with others, willfully violates any of the provisions of this Section shall be guilty of a misdemeanor and may be prosecuted in the Alderman's Court or any Magistrates Court, and, upon conviction thereof, shall be fined not more than three hundred dollars, (\$300.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment, and shall further be ineligible for a period of five years thereafter, to hold any Town office or position, and if an officer or employee of the Town, shall immediately forfeit his/her office or position.

Section 12-07 Indemnification of Officials and Employees

The Town Solicitor and/or other retained counsel shall undertake the representation or defense, without charge to the offender, of any Town official employee, including the Mayor and Commissioners, the Town Manager, committee members, advisory board members and all other employees, with respect to any claim or cause of action arising out of or related to the performance by said official of employee of his/her public duties, provided that such activities:

- (1) were done in good faith; and
- (2) were done in the reasonable belief that such activities were in the best interest of the Town and in the furtherance of the official practices and policies of the Town; and
- (3) were within the scope of authority of the person so acting; and
- (4) were within the course of employment of the person so acting; and
- (5) were not willful, malicious or wanton, as determined by the Town Solicitor, subject to the approval of the Mayor and Commissioners.

Section 12-08 Transfer of Powers

If a Town department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred to the Town department, office or agency designated in this Charter, or if said Charter makes no provision, then as designated by the Commissioners. All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue, except as modified pursuant to the provisions of this Charter, and in each case, shall be maintained, carried on, or dealt with by the Town department, office or agency appropriate under this Charter and Charter amendments.

Section 12-09 Severability

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

Article XIII - Initiative And Referendum**Section 13-01 General Authority**

- A. Initiative. The qualified voters of the Town shall have power to propose ordinances to the Mayor and Commissioners and, if the Mayor and Commissioners fail to adopt an ordinance so proposed without any change in substance, other than those changes recommended by the Town Solicitor for reasons of legality, to

adopt or reject it at a Town election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of Town officers or employees.

- B. Referendum. The qualified voters of the Town shall have power to require reconsideration by the Mayor and Commissioners of any adopted ordinance and, if the Mayor and Commissioners fail to repeal an ordinance so reconsidered, to approve or reject it at a Town election, provided that such power shall not extend to the budget or capital plan or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

Section 13-02 Commencement of Proceedings; Petitioners' Committee; Affidavit

Any five qualified voters may commence initiative or referendum proceedings by filing with the Town Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed the Town Secretary shall issue the appropriate petition blanks to the petitioners' committee.

Section 13-03 Petitions

- A. Number of Signatures. Initiative and referendum petitions must be signed by qualified voters of the Town equal in number to at least 50 percent of the total number of qualified voters registered to vote at the last regular municipal election.
- B. Form and Contents. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- C. Affidavit of Circulator. Each paper of a petition shall have attached to it when filed, an affidavit executed by the circulator thereof stating that he/she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his/her presence, that he/she believes them to be the genuine signatures of the persons whose names they purport to be and that each signor had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- D. Time for Filing Referendum Petitions. Referendum petitions must be filed within 60 days after adoption by the Mayor and Commissioners of the ordinance sought to be reconsidered.

Section 13-04 Procedure After Filing

- A. Certificate of Town Secretary; Amendment. Within twenty days after the petition is filed, the Town Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by certified mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Town Secretary within two days after receiving the copy of his/her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate, Such supplementary petition shall comply with the requirements of subsections B and C of Section 13-03, and within five days after it is filed the Town Secretary shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by certified mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request the Commissioners review under subsection B of this Section within the time required, the Town Secretary shall promptly present his/her certificate to the Mayor and Commissioners and the certificate shall then be a final determination as to the sufficiency of the petition.
- B. Mayor and Commissioners' Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the Mayor and Commissioners. The Mayor and Commissioners shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Commissioners' determination shall then be a final determination as to the sufficiency of the petition.

- C. Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Section 13-05 Referendum Petitions; Suspension of Effect of Ordinance

When a referendum petition is filed with the Town Secretary, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition, or
- (2) The petitioners' committee withdraws the petition, or
- (3) The Mayor and Commissioners repeal the ordinance, or
- (4) Five days have elapsed after a vote of the Town on the ordinance.

Section 13-06 Action by Mayor and Commissioners.

- A. When an initiative or referendum petition has been finally determined sufficient, the Mayor and Commissioners shall promptly consider the proposed initiative ordinance in the manner provided in Article IV or reconsider the referred ordinance by voting its repeal. If the Mayor and Commissioners fail to adopt a proposed initiative ordinance without any change in substance within 60 days or fail to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the Town.
- B. Submission to Voters. The vote of the Town on a proposed or referred ordinance shall be held not less than 60 days and not later than 6 months from the date of the final Mayor and Commissioners' vote thereon. If no regular Town election is to be held within the period prescribed in this subsection, the Mayor and Commissioners shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Mayor and Commissioners may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.
- C. Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the Town by filing with the Town Secretary a request for withdrawal signed by at least three members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 13-07 Results of Election

- A. Initiative. If two-thirds of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the manner as ordinances of the same kind adopted by the Mayor and Commissioners. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- B. Referendum. If two-thirds of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

Article XIV - Transitional Provisions

Section 14-01 Former Government in Force

All ordinances, resolutions, orders, rules or regulations in force in the Town of Newport, made or enacted by the Commissioners of Newport at the time this Charter takes effect, regardless of the authority under which originally enacted, shall continue in full force and effect until the Commissioners otherwise provide by ordinance, resolution, order, rule or regulation, whichever may be appropriate, notwithstanding any change in organization effected by this Charter.

All acts and doings of the Commissioners of Newport or any officer of said Town, lawfully performed under the provisions of any law of this State, or any ordinance of said Town are hereby ratified and confirmed and continue in force. All debts, fines, penalties or forfeiture due said Town, and all debts due from said Town to any person or persons or to any corporation are declared to be unaffected and unimpaired, and all the Laws of this State for the collection and enforcement of taxes in said Town, heretofore assessed and uncollected shall continue in full force until the same shall be lawfully paid.

Section 14- 02 Continuance in Office

All persons holding any elective or non-elective office or employment with the Commissioners of Newport at the time this Charter takes effect shall continue in such office or employment and shall draw the same rate of compensation as during the month preceding the adoption of this Charter until removed or until the compensation is changed.

Section 14-03 Inconsistent Acts

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.

Section 14-04 Effective Date

This Charter shall be taken as and deemed to be a Public Act of the State of Delaware. This Charter shall be effective immediately upon passage and signature of the Governor.

Approved September 6, 1985.

65 **Del. Laws**, c. 214; 70 **Del. Laws**, c. 4; 70 **Del. Laws**, c. 321; 78 **Del. Laws**, c. 244