

Odessa

1. Incorporation.

The inhabitants and property owners of the Town of Odessa, within the corporate limits as hereinafter defined in this Charter or as extended as hereinafter provided, are hereby constituted and declared to be a body politic incorporated in law and equity, by the corporate name of the "Town of Odessa, (hereinafter "Town") with power to govern themselves by such ordinances, rules, resolutions, and regulations for municipal purposes as they, through their duly elected officers and agents may deem proper, not in conflict with the provisions of this Charter of government, nor with the Constitution and Laws of the State of Delaware, nor of the United States; and as such shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts.

The Town shall have perpetual succession and shall succeed to own or possess all property, whether real, personal, or mixed, tangible or intangible, of whatever kind and nature, and all the powers, rights, privileges or immunities now or heretofore belonging to, possessed or enjoyed by the Town of Odessa previously incorporated at Chapter 273, Volume 46, Laws of Delaware, as amended.

2. Territorial Limits.

The present territorial limits of the Town are hereby established and declared to be as follows:

ALL that certain tract or parcel of land laid out as the Town of Odessa in St. Georges Hundred, New Castle County, State of Delaware, according to a plat of said Town and the description thereof recorded in the Recorder's Office, in and for New Castle County aforesaid, in Private Acts Record B, Page 505, as follows, to-wit:

BEGINNING at a stone set in marsh land of Daniel Corbit at the southwestern corner of said Town, and running from there through marsh and up or cleared land of Daniel Corbit, cleared land of Mrs. Margaret B. Polk, crossing a ravine and cleared lands of John C. Corbit, cleared lands of Daniel Corbit, Charles E. A. Maily and Samuel M. Enos, passing over a stone set on the southeastern side of the public road leading from Odessa to Middletown, crossing said public road north forty-eight degrees, west two hundred eighty perches to a stone set in cleared land of Mrs. Margaret B. Polk, the northwestern corner of said Town; thence, through cleared land of the said Mrs. Margaret B. Polk passing over a stone set on the southwestern side of the public road leading from Odessa to Drawyer's Creek and Armstrong's Corner through cleared lands of William Polk and the heirs or devisees of James Rodgers, deceased, north forty-two degrees east one hundred sixty perches to a stone in cleared lands of the heirs or devisees of James Rodgers, deceased, the northeastern corner of said Town; thence through cleared land of the heirs or devisees of the said James Rodgers, deceased, passing over a stone on the northwestern side of the public road leading from Odessa to McDonough, crossing said public road and through cleared land and swamp or marsh of the heirs or devisees of the said James Rodgers, deceased, south forty-eight degrees east two hundred seventy-three perches to a stake in a ditch; thence with said ditch north seventy degrees east seven perches to the Appoquinimink Creek, the southeastern corner of said Town; thence up said Creek and binding therewith the several courses and distances thereof to a stone set at high water mark on the north side of said Creek, and from thence by a line drawn south forty-two degrees west crossing the Appoquinimink Creek through marsh lands of Daniel Corbit, passing over a stone set on the northeastern side of the County Causeway, crossing said Causeway through marsh land of James V. Moore, recrossing the Appoquinimink Creek through marsh land of Daniel Corbit to the stone at the southwestern corner of said Town and place of Beginning. Containing within these metes and bounds two hundred eighty acres of land, be the same more or less.

PROVIDED, HOWEVER, that the jurisdiction of said Town shall extend over all wharves, docks, piers and other constructions in the Appoquinimink Creek adjoining the limits of said Town.

The Town Council may, at any time hereafter, cause a survey and plot to be made of said Town, and the said plot or any supplement thereto, when made and approved by said Town Council, signed by the Mayor, and attested to by the Secretary, with the Town Seal affixed, upon being recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, or the record thereof, or a duly certified copy of said record, shall be in evidence in all courts of law and equity in this State.

3. Annexation of Territory

The Town shall have power to annex any additional contiguous territory adjoining the corporate limits of the Town as hereinbefore set forth or as hereafter extended pursuant to the procedure set forth in this section, and to apply to all such additional territory all laws, ordinances, resolutions, and policies in force in the Town so far as they may be locally applicable.

- 3.1 By Petition of the Property Owners. Any property owner(s) holding record fee title to real property in territory contiguous (subject to Sec. 3.2.9b) to the then existing corporate limits of the Town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein and state the reasons for the requested annexation. The Town Council may, within ninety (90) days following the filing of such petition in the Town Office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. A petition not so accepted within said ninety (90) days shall be null and void. For purposes of this Sec. 3.1.1 and Sec. 3.1.2, "territory contiguous to the then existing corporate limits of the Town" shall include both real property which is proposed to be included in the annexation and real property which would be contiguous under Sec. 3.2.9(b).
- 3.1.2 By Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory contiguous to the Town. Such resolution shall describe, with reasonable certainty, the territory proposed to be annexed and state the reasons for the proposed annexation. Upon adoption of such resolution, the Town Council shall proceed as hereafter provided.
- 3.2 Annexation Procedure. Whether annexation is proposed by petition of the property owners or by resolution of the Town Council, the following procedure shall be complied with:
 - 3.2.1 By Resolution of The Town Council shall adopt a resolution notifying the property owners and the residents of both the Town and the territory proposed to be annexed, that the Town proposes to annex certain territory which adjoins its then corporate limits. The resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation. The resolution setting forth the information shall be published at least once in at least two (2) newspapers which shall be of general circulation in the Town and in the territory proposed to be annexed. Such publication shall appear not less than thirty (30) days nor more than sixty (60) days before the date set for the hearing. In the event that such publications do not appear on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to publication as herein provided, the Town Council shall, not less than thirty (30) days nor more than sixty (60) days before the date of such hearing: (1) cause a public notice, containing the full text of the resolution to be posted in at least three (3) public places in the Town and in at least one (1) place, viewable to the public, in the territory proposed to be annexed; and (2) send a copy of such notice, certified mail, to the owners of record of the lands proposed to be included in the annexation at their addresses as shown on the public tax records. Written notice to one co-owner shall be notice to all.
 - 3.2.2 Public Hearing. At the time, date, and place specified in the resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in Sec. 3.2.1) the Town Council shall sit to hear comments and opinion from any concerned party regarding the proposed annexation. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding.
 - 3.2.3 Resolution Ordering Special Election. Following the public hearing, but in no event later than sixty (60) days thereafter, the Town Council may pass a resolution ordering a special election to be held not less than thirty (30) days, nor more than sixty (60) days after the date of such resolution proposing the special election. The passage of this resolution shall be considered the determination of the Town Council to proceed with the matter of the proposed annexation, provided, however, that if the annual municipal election is to be held within 120 days of the date of the resolution adopted by the Town Council pursuant to this section, the election on the proposed annexation may be held in conjunction with the

annual municipal election and all provisions hereof shall be construed and applied accordingly.

3.2.4 Notice of Special Election. Notice of the time and place of said special election shall be published not less than thirty (30) days nor more than sixty (60) days before the date set for said special election. Notice shall be published at least once in two (2) newspapers which shall be of general circulation in the Town and in the territory proposed to be annexed. In the event that such publications do not appear on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to such publication as herein provided, the Town Council shall, not less than thirty (30) days nor more than sixty (60) days before the date of such special election, cause a public notice containing the full text of the resolution proposing such special election to be posted in at least three (3) public places in the Town and in at least one (1) place, viewable to the public.

3.2.5 Those Entitled to Vote.

(a) At such special election, any person who is lawfully entitled to vote at the annual Municipal election, if it were being held on that day, and any person who would be so entitled if the area proposed to be annexed were already included in the Town, shall be entitled to one (1) vote. For purposes of this section, "lawfully entitled to vote" shall include "registered to vote" if registration is required; but all persons in the area to be annexed shall be deemed to be registered if they would otherwise be entitled to vote. In addition, each legal entity, other than a natural person, owning property in its own name, either in the Town or in the territory proposed to be annexed, shall be entitled to one (1) vote.

(b) These provisions shall be construed so as to permit "one person, one vote". Should a voter be entitled to vote by virtue of both residence and ownership of property, that voter shall be entitled to only one (1) vote. Should a voter be entitled to vote by ownership of two (2) or more properties, that voter shall be entitled to only one (1) vote.

(c) Any legal entity (other than a natural person) entitled to vote must cast its vote by a duly executed and acknowledged power of attorney. Such power of attorney shall be surrendered to the Board of Special Election which shall file the same in the Town Office. Such power of attorney so filed shall constitute conclusive evidence of the right of said person to vote in the special election on behalf of the legal entity granting the power.

3.2.6 Conduct of the Special Election. The Town Council may cause voting machines or electronic voting systems to be used in the special election, as required by law, the form of ballot to be printed as follows:

For the proposed annexation Against the proposed annexation.

The Mayor shall appoint three (3) persons to act as a Board of Special Election. One (1) of the said persons so appointed shall be designated the Presiding Officer. The Board of Special Elections shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons and other legal entities voting. Voting shall be conducted in a public place as designated by the resolution calling the special election. The polling place shall be open for a minimum of six (6) consecutive hours as set by the Town Council, on the date set for the special election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls. All ballots cast by those persons or other legal entities authorized to vote in the territory proposed to be annexed shall be cast in designated voting machine(s), and all ballots cast by those persons or other legal entities who are authorized to vote in the Town shall be cast in other designated voting machine(s).

3.2.7 Results of Special Election

- (a) In order for the territory proposed to be annexed to be considered annexed, a majority of the votes cast from both the Town and from the territory proposed to be annexed must have been cast in favor of the proposed annexation.
- (b) In the event that the special election results in an unfavorable vote for the annexation in either or both the Town and the territory proposed to be annexed, no part of the territory proposed to be annexed shall again be considered for annexation for a period of at least one (1) year from the date of the special election.
- (c) If the vote in both the Town and in the territory proposed to be annexed is favorable to the proposed annexation, the Town Council shall at its first meeting following the special election adopt a resolution annexing the said territory and including it within the limits of the Town. Upon the adoption of the resolution of annexation, a copy thereof, signed by the Mayor and certified by the Secretary, with the Town Seal affixed, together with a plot of the area annexed, shall forthwith be filed for recording in the Office of the Recorder of Deeds in and for New Castle County, Delaware. The territory so annexed shall be considered to be a part of the Town from the moment the resolution of annexation is adopted by the Town Council. Failure to record the resolution, or the plot accompanying same, shall not invalidate the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction.

3.2.8 Annexation Agreements. Notwithstanding any provision herein to the contrary, where, pursuant to Sec. 3.1.1 of this Charter, annexation proceedings are initiated by a property owner(s) holding record title to real property in territory contiguous to the then existing corporate limits of the Town, such petition may be made contingent upon an annexation agreement with the Town which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision approval, tax relief, public utilities, and public improvements. In the event the Town Council approves such an agreement and votes to accept a petition under Sec. 3.11 of this Charter, such annexation agreement shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure: (1) the resolutions and notices adopted by the Town Council pursuant to Sec. 3.2.1, Sec. 3.2.3, Sec. 3.2.4 and Sec. 3.2.10 shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms, and shall state that copies of the agreement are available upon request at the Town Office; (2) if the results of the election are favorable to the proposed annexation as provided by Sec. 3.2.7(a) of this Charter, the resolution annexing the territory as provided by Sec. 3.2.7(c) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and all affected parties shall be bound to honor the provision of such agreement. No agreement made at the time of annexation under this Sec. 3.2.8 shall extend beyond seven (7) years from the date the property is annexed into the Town; and such agreements shall be null, void, and unenforceable after the expiration of said seven (7) years.

An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special election pursuant to Sec. 3.2.3 of this Charter, but any material modification or amendment shall be deemed to be:

- (1) the withdrawal of the original petition, and
- (2) the filing of a new petition under Sec. 3.1.1.

3.2.9 Property Owned by the State of Delaware, Highways, Streets, Roads, Alleys and Waterways

- (a) Real property owned by the State of Delaware may be annexed by the Town without the State casting a vote in the special election, provided the State agency having control and supervision thereof does not notify the Town, in writing, of its

objection to such annexation within thirty (30) days after receiving written notice of the resolution proposing the annexation, as provided in Sec. 3.2.3.

- (b) Contiguity with the Town's existing corporate limits or with other territory which is itself contiguous with the Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, or waterway (included but not limited to ponds, creeks, canals, lagoons, wetlands and ditches) which passes through, or lies within the territory to be annexed.

3.2.10 Limitations No action contesting the annexation of any territory under this section shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two (2) newspapers, both of general circulation in the Town and in the territory annexed, which notice shall contain the following information:

- (a) notice that the Town has annexed such territory and a description thereof;
- (b) notice that any person or other legal entity desiring to challenge such annexation must bring his/her/its action within sixty (60) days from the date of publication of such notice or forever be barred from doing so. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subparagraph (a) and (b) above (using date of posting for date of "publication") to be posted in at least three (3) public places in the Town and in at least one (1) place, viewable to the public in the territory to be annexed. In the event the publication and/or the posting dates do not appear on the same date, the date of the last publication or posting shall control.

4. Powers of the Town.

4.1 General. The Town shall have and enjoy all the powers possible for a municipal corporation to have under the Constitution and Laws of the State of Delaware, as fully and completely as though they were specifically enumerated in this Charter.

4.2 Enumeration of Powers. Not by way of limitation upon the scope of the powers vested in the Town Council to exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary), but rather by way of enumeration and for purposes of clarity, the Town Council is vested by this Charter with the following powers, that is to say, the Town Council:

4.2.1 may have and use a corporate seal which may be altered, changed, or renewed at any time.

4.2.2 may hold and acquire by gift, negotiation and purchase, devise, lease, or condemnation property both real (improved or unimproved) and personal, or mixed, within or without the boundaries of the Town, in fee simple or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to providing sites for constructing, improving, extending, altering or demolishing:

- (a) public buildings;
- (b) parks;
- (c) streets, sidewalks, curbs, gutters, storm sewers, drains, squares, lanes, alleys, and
- (d) sewer systems, including but not limited to sewage lines, conduits, sewage disposal or treatment plants, and all appurtenances thereto;
- (e) public water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;
- (f) recreational facilities, including but not limited to gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;
- (g) adequate municipal services for persons and other legal entities residing either within or beyond the corporate limits of the Town, to their mutual benefit and

- advantage, upon such terms, charges, and conditions as the Town Council may determine and approve;
- (h) slum clearance and redevelopment, urban renewal, revitalization or rehabilitation of blighted areas or removal of dangerous buildings;
 - (i) protection services for the citizens of the Town to include, but not limited to, police, fire, rescue and paramedic support. (72 **Del. Laws**, c. 339, 6/23/00)
- 4.2.3 (a) may sell, grant, alienate, lease, mortgage, manage, hold and control such property as the interests of the Town may require except as prohibited by the Constitution or Laws of the State of Delaware or as restricted by this Charter;
- (b) the power to sell or transfer in subsection 4.2.3 (a) shall be specifically limited as follows:
- The Old Academy Building located at 315 Main Street shall not be sold or otherwise transferred unless the following conditions are met:
- (i) if the town of Odessa in dire necessity offers for sale or transfer the property at 315 Main Street, the offer to sell or transfer the property shall first be approved by ordinance by Mayor and Council;
 - (ii) On approval by ordinance to sell or transfer the property, Mayor and Council shall provide a vote by referendum for the town's qualified registered voters. Approval by ninety per cent (90%) of the qualified registered voters, voting in the town of Odessa referendum, shall be required to sell or transfer the property at 315 Main Street. The Mayor and Council sponsored referendum shall follow the procedure outlined in Section 21.6(b), 21.6 (c), 21.6(d) and 21.6(e). (72 **Del. Laws**, c. 339, 6/23/00)
- (c) The Memorial (including flags, lights and Monument) known as the Veteran's Memorial, located on the Old Academy property at 315 Main Street, Odessa, shall not be removed from its current location or relocated unless the following conditions are met:
1. If the Town of Odessa, in dire necessity attempts to remove or relocate the Veteran's Monument, it must first be approved by ordinance by Mayor and Council.
 2. On approval of such ordinance, Mayor and Council shall provide a vote by referendum for the Town's qualified, registered voters. Approval by ninety percent (90%) of the qualified, registered, voters, voting in this Town of Odessa referendum, shall be required to remove or relocate the Veteran's Monument. The Mayor and Council sponsored referendum shall follow the procedure outlined in Section 21.6(b), 21.6(c), 21.6(d) and 21.6(e). (73 **Del. Laws**, c. 152, 7/10/01)
- 4.2.4 may pay for the acquisition, construction, improvement, repair, extension, alteration or demolition of any Town property (real, personal or mixed) from the general fund of the Town, from the proceeds of any bond issue which may be authorized and sold for any of the purposes for which lands and premises are authorized by this Charter to be acquired, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this Charter to be acquired;
- 4.2.5 may acquire, build, erect, and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town;
- 4.2.6 may purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances, or other charge due the Town and sell the same;
- 4.2.7 may;
- (a) ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag,

- dress, macadamize, pave, improve, dredge, erect, remove, repair and replace any new or present street, highway, road, alley, sidewalk, square, lane, storm sewer, waterway, park, crosswalk, wharf, dock, sewer, drain, gutter, aqueduct or pipeline or portion thereof, or any new or present curb, or gutter or portion thereof in the Town and the strand in or contiguous to the Town;
- (b) specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done;
 - (c) enter into contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, highway, road, alley, sidewalk, curbs, gutter, or other public thoroughfare within the Town; (72 Del. Laws, c. 339, 6/23/00)
- 4.2.8 may provide, construct, extend, maintain, manage and control bulkheads, embankments, rip rap, piers or fills for the preservation of any waterway, strand or high land within the corporate limits of the Town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof;
- 4.2.9 may regulate and control the planting, growing, treatment and preserving of ornamental shade trees in the streets, sidewalks, alleys, lanes, avenues, highways, parks and lands of the Town and may authorize or prohibit the removal or destruction of said trees; (72 Del. Laws, c. 339, 6/23/00)
- 4.2.10 may fully control the drainage of all surface water within the Town, and to that end, may provide, construct, extend, maintain, manage and control a surface water drainage system for the health, sanitation, and convenience of the inhabitants of the Town;
- 4.2.11 may provide an adequate supply of potable water for the Town and its inhabitants and, to this end, may:
- (a) acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of public wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property, or rights used in or about the collection, storage, purification, conveyance or distribution or sale of water;
 - (b) regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town;
 - (c) furnish or refuse to furnish water from the Town system to places and properties outside the Town corporate limits; and
 - (d) contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the Town itself; (72 Del. Laws, c. 339, 6/23/00)
- 4.2.12 may:
- (a) provide, construct, extend, maintain, manage and control : a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town:
 - (b) regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties or both, for any willful or negligent injury or damage to, or interference with the said system, plant or facilities;
 - (c) furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits;
 - (d) compel any and all properties in the Town to be connected to the sewer system of the Town; and

- (e) contract for and purchase sewer disposal service and resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself;
- 4.2.13 may provide for and control the lighting of the streets, highways, roads, alleys, sidewalks, lanes, waterways, parks, strands, crosswalks, wharfs, docks, public buildings or other public places in the Town; (72 **Del. Laws**, c. 339, 6/23/00)
- 4.2.14 may regulate, control or prevent the use or storage of gasoline, naphtha, gunpowder, fireworks, tar, pitch, resin and all other combustible or dangerous materials and the use of candles, lamps and other lights in stores, shops, and other places; and may regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler or other apparatus which may pose a danger of causing fires; (72 **Del. Laws**, c. 339, 6/23/00)
- 4.2.15 may:
- (a) provide for the organization of a fire department and the control and government thereof;
 - (b) establish fire limits and do all things necessary for the prevention or extinguishment of fires; and
 - (c) contribute or donate funds to any volunteer fire company or companies incorporated under the Laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution or donation may be made subject to such conditions as to the use thereof as the Town Council may deem advisable;
- 4.2.16 may provide for the organization of ambulance, rescue or paramedic services and the control and government thereof, may establish territories within the Town for such services; and may, at the discretion of the Town Council, contribute or donate funds to any such service formed or incorporated under the Laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the Town, provided that any such contribution or donation may be made subject to such conditions to the use thereof as the Town Council may deem advisable;
- 4.2.17 may prohibit drunkenness, use or distribution of controlled substance, gaming and fraudulent devices and riots, disturbances and disorderly assemblies;
- 4.2.18 may adopt and enforce such ordinances regulating traffic on all streets, sidewalks, highways, roads, alleys and public ways within the Town as are consistent with the motor vehicle laws of the State of Delaware;
- 4.2.19 may adopt and enforce such ordinances regulating traffic on all waterways within the Town as are consistent with United States Coast Guard and Delaware Marine Police regulations;
- 4.2.20 may regulate or prohibit the use of streets, sidewalk, highways, roads, alleys, parks, rights-of-way, other public places and Town-owned lands for commercial use, or activities not otherwise protected from such regulation or prohibition by the Constitution or Laws of either the United States or the State of Delaware;
- 4.2.21 may regulate or prohibit the use of guns, spear guns, paint ball guns, air guns, spring guns, pistols, sling shots, bean shooters, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and may regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds within the Town;
- 4.2.22 may provide for and preserve the health, peace, safety, cleanliness, beauty, good order and public welfare of the Town;
- 4.2.23 may prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games;
- 4.2.24 may direct the excavation, draining, filling, cleaning, curbing or fencing of privately owned lots, tracts, pieces or parcels of land in the Town which are deemed dangerous or

- unwholesome, or necessary to carry out any improvements authorized by this Charter and may assess the cost thereof against the owner thereof;
- 4.2.25 may define, prevent, abate or remove nuisances, obstructions or any other conditions detrimental to the public safety, health or welfare; and may cause the cost of such abatement or removal to be paid by the person or other legal entity causing or permitting same to exist;
- 4.2.26 may adopt ordinances providing for the condemnation of any building or structure in the Town which is determined, on the basis of standards set forth in such ordinances to be a fire hazard or otherwise unsafe, and may cause the same to be torn down or removed;
- 4.2.27 may adopt ordinances to establish and regulate animal pounds and restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large within the corporate limits of the Town; authorize the destruction of the same; and may regulate the keeping of dogs within the Town, and provide for registration and fees thereof;
- 4.2.28 may provide for the punishment of a violation of any ordinance of the town by appropriate fine, penalty, or forfeiture;
- 4.2.29 may regulate and control the construction, alteration, or removal of dwellings or other structures and provide for granting permits for same;
- 4.2.30 may regulate and control construction activities by private individuals or companies at such times and seasons of the year and at such hour of the day as the Town Council may determine necessary and appropriate for the public health, welfare and convenience.
- 4.2.31 may provide for and regulate the naming of the streets and the numbering of houses and commercial establishments within the Town corporate limits;
- 4.2.32 may:
- (a) establish setback lines for buildings and other structures to be erected;
 - (b) zone or district the Town and make provision for particular zones or districts with regard to construction or building materials;
 - (c) prohibit any construction except that for which a building permit has been issued as prescribed by the Town Council; and
 - (d) exercise all powers and author authorities pursuant to 22 De I. Chapter 3, or any future corresponding provisions of law;
- 4.2.33 may regulate the conduct of any business, profession or occupation within the corporate limits of the Town;
- 4.2.34 may license, tax, and collect fees annually for any and all municipal purposes of such various amounts as the Town Council, from time to time, shall fix from any individual, firm, association or corporation carrying on, or practicing any business, profession or occupation within the limits of the Town;
- 4.2.35 may grant licenses, issue permits, and regulate any activity within the corporate limits of the Town, whether previously dedicated to or owned by the State of Delaware;
- 4.2.36 may impose upon new development or construction or upon first-time occupancy of new construction such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving or expanding public or municipal improvements which have a rational nexus to such new construction;
- 4.2.37 may appropriate money to pay the debts and liabilities of the Town, or any portion thereof, from any funds available therefor; and may, in case of emergency, temporarily transfer money from one fiscal account to another fiscal account of the Town;
- 4.2.38 may raise revenue for the Town by the levying and collecting of taxes on real property, taxes on business activities, special assessments, licensing fees and other charges for services;
- 4.2.39 may investigate the conduct of any officer, employee or representative of the Town, in the conduct of official duties, and for such purpose may compel the attendance of witnesses and the production of books, records, or other evidence by subpoena, and may administer oaths or affirmations;

- 4.2.40 May establish a pension plan or a health and welfare plan or both, for the employees of the Town under such terms and conditions as the Town Council may deem appropriate, with the funding accomplished through an insurance company licensed by and authorized to do business in the State of Delaware, approved by the Town Council;
- 4.2.41 may, by condemnation proceedings, take private property or the right to use private property within the corporate limits of the Town for any of the purposes specified in this Charter, such proceedings to be in conformity with 10 Del. C. Chapter 61, or any future corresponding provision of law;
- 4.2.42 may adopt, alter, and amend all such ordinances, resolutions, regulations, and rules not contrary to the Laws of the United States and of this State as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any Law of the State relating generally to municipal corporations or which may be deemed proper and necessary for the order, protection, and good government of the Town; the protection of persons and preservation of property; and the protection of the public health and welfare of the Town and its inhabitants. Any ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same, shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one (1) mile from its corporate limits.
- 4.3 Liberal Construction; Manner of Exercise. The powers of the Town under this Charter shall be liberally construed in favor of the Town, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein implied hereby, or appropriate to the exercise thereof, the Town shall have and may exercise any and all powers which, under the Constitution or Laws of the State of Delaware, it would be competent for this Charter to specifically enumerate.
- All powers of the Town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in the manner provided by ordinance or resolution of the Town Council. The Council, may, by ordinance or resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters duly authorized in this Charter.
- 4.4 Intergovernmental Cooperation. The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with any one (1) or more states or civil divisions or agencies thereof, or the United States or any agency thereof, except as prohibited or restricted by the Constitution or Laws of the State of Delaware or by this Charter.
- 5. Town Officers-**
- 5.1 Form of Government. The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided therein, shall be vested in and exercised by a five (5) member Town Council composed of a Mayor and four (4) other members and a Treasurer, each of whom shall be elected by popular vote as hereinafter provided.
- 5.2 Qualifications.
- 5.2.1 General. A candidate for the Town Council or Treasurer shall be a person at least twenty one (21) years of age, a citizen of the United States, a resident of Odessa for at least one consecutive year, and otherwise qualified to vote at the annual municipal election as provided in Sec. 6.1.
- 5.2.2 Residency Requirement for Council and Treasurer Candidates. All members of the Town Council and Treasurer shall be residents of the State of Delaware, as defined by the laws of the State of Delaware.
- 5.2.3 Residency Requirement for Mayoral Candidates. The Mayor shall be a resident in the Town of Odessa, Delaware for at least one consecutive year, and twenty-one years of age and otherwise qualified as provided in Sec. 5.2.1 and 5.2.2.

5.2.4 Council to Act as Final Judge. The Town Council, by majority vote of its disinterested members, shall be the sole and final judge of the qualifications of its members, and shall interpret and apply the standards set forth in this Charter.

5.3 Term of Office, Staggered Terms.

5.3.1 Term of Office. The term of office for each member of the Town Council and Treasurer shall be two (2) years.

5.3.2 Staggered Terms. The present Mayor, Council, and Treasurer of the Town of Odessa, and other officers appointed to serve in the office under Chapter 273, Volume 46, Laws of Delaware, as amended, shall continue to serve as Council members and Officers of the Town from and after the effective date of this Charter, until the successors are duly elected or appointed. At the annual Town election in 1992, two (2) Council members shall be elected to fill the vacancies created by the expiration of the terms of Office of the two (2) then-outgoing Council members. At the annual Town election in 1993, two (2) Council members, a Mayor and a Treasurer shall be elected to fill the vacancies created by the expiration of the terms of Office of the three (3) then-outgoing Council members, Treasurer and Mayor. Thereafter, the Mayor, Treasurer, and two (2) members of the Town Council shall be elected in odd years and two members shall be elected in even years.

6. Municipal Elections

6.1 Voter Qualifications. Any natural Person shall be qualified vote in any annual municipal election, special election or referendum who, on voting day shall:

- (a) have attained eighteen (18) years of age;
- (b) be a citizen of the United States and the State of Delaware;
- (c) shall be registered under the Town's Voter Registration ordinance (if one be in effect); and
- (d) shall be a resident of the Town of Odessa:

6.1.1 Determination of Voter Eligibility. The Board of Elections is responsible to determine voter qualifications as prescribed in this Charter, as provided in Sec. 6.1.

6.2 Voter Registration The Town Council shall by ordinance provide for the registration of voters and may prescribe registration and voting places. Such ordinance shall not alter the qualifications of voters as defined in this Charter nor unduly impair the right to vote in any election.

6.3 Uncontested Election. Where there is only one official candidate for any office on the day of the annual municipal election, the official candidate shall be deemed elected thereto without the holding of such an election.

6.4 Procedures.

(a) Notice of Candidacy. In order to be listed on the ballot for election of Mayor and Town Council members and Treasurer, each candidate shall file a written notice of intention to seek such office with the Council Secretary at least thirty (30) days prior to the date set for the election. If the Election Board (Sec. 6.4(g) determines that any candidate may not meet the qualifications for office, it shall notify the Mayor who shall call a special meeting of the Town Council to be held not less than twenty (20) days prior to the date set for the election, at which the Town Council shall decide the matter. The candidate whose qualifications are at issue shall be notified, by registered mail, of the date, time and place of the meeting, at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications of office, it shall reject the notice of intention to seek office and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the question.

(b) Date, Time and Place. Annual municipal elections for the Town Council shall be held on the first Monday in April at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for at least a six (6) hour period to be determined by the Town Council.

- (c) Notice of Elections. Public notice of any election to elect members to the Town Council shall be given by posting notice thereof in at least three (3) public places in the Town not less than forty-five (45) days before the date of such election and by publishing notice at least once in two (2) newspapers of general circulation in the Town at least forty-five (45) days before the date of the election. Such notices shall state the date, time, and place of the election as well as a description of the offices to be filled. Such notices shall be in bold print or bordered in black in such manner as to call attention thereto. In the event that the publications and/or posting do not appear on the same date, the date of the last publication or posting shall control.
- (d) Voting Machines. Elections shall be by voting machine or electronic voting system as the Town Council shall determine; provided, however, that voting machines or electronic voting systems shall be used if required by State law.
- (e) Absentee Voting. Any qualified voter may vote by absentee ballot at any election.
- (f) Rules Governing Conduct of Elections. The Town Council shall adopt rules, consistent with the provisions of this Charter, and with applicable state or federal law governing the conduct of elections, including absentee voting.
- (g) Election Board. Every election shall be held under the supervision of an Election Board. The Election Board shall consist of three (3) Judges of Election. Such Judges shall be qualified voters of the Town and shall be appointed for that purpose by the Town Council at least forty five (45) days before such election. If, at the opening of the polls, there shall not be present any member of the Election Board, then in such case, the ranking Town officer available at the opening of the polls shall appoint a qualified voter or voters to act as a member or members of the Election Board to fill vacancies caused by such absence. Members of the Election Board shall be the sole and final judges of the conduct of the election, the legality of the votes offered, and the election results. The Election Board shall have the power to subpoena persons and records relative to the determination of the qualifications of voters and the legality of any vote or votes offered.
- (h) Election Results. Upon the close of such election, the votes shall be counted by the Election Board. The persons having the highest number of votes shall be declared by the Election Board to be duly elected to such vacant offices as then exist. Persons holding office shall continue in office until their successors are duly elected and installed.
- (i) Tie Vote. In the event of a tie vote for any office, the election to such office shall be determined by lot.
- (j) Preservation of Records and Ballots. The custody of election records and all ballots cast shall be maintained by the Town Secretary for minimum period of six (6) months.
- (k) Election Record Book. The Election Board shall enter in an Election Record Book the complete results of the election, to be subscribed by all Election Board members. Such Book shall be preserved by the Town Council.

7. Organization of Town Council.

- 7.1 Oath of Office. A meeting of the Town Council shall be held on the day of and immediately following the election. Such meeting shall be held at the usual place and time for regular Town Council meetings and shall be open to the public. The newly elected Mayor, Treasurer, and other Town Council members shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity. Such oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, the Town Alderman, or by one of the holdover Town Council members.
- 7.2 Duties of Mayor. The Mayor shall preside at all meetings of the Town Council and shall have a vote on all issues. The Mayor shall execute, on behalf of the Town, when authorized by Town Council majority vote, all agreements, contracts, bonds, deeds, leases, and other legal documents. The Mayor shall appoint such standing and other committees as the Town Council shall require. It shall be the duty of the Mayor to see that the ordinances, resolutions, regulations, and rules of the Town are duly executed; he or she shall perform all additional

duties as are imposed by this Charter. The Mayor shall be empowered to delegate specific duties and responsibilities and to administer oaths and affirmations.

- 7.2.1 **Emergency Powers.** The Mayor shall be empowered to act on behalf of the Town, without prior Town Council approval, in the event of a sudden emergency requiring prompt action, in order to protect the public health, safety, and welfare of the Town, its inhabitants and property owners. A "sudden emergency", for purposes of this section shall include, by way of example and not in limitation, a major fire or conflagration, significant flooding, or serious storm threatening significant damage, a civic disturbance, or a toxic spill. A "sudden emergency" shall also include any emergency situation as declared by any County, State or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town of Odessa.
- 7.3 **Appointment of Secretary.-** At the first regular meeting in May the Council shall choose a secretary who may be removed at any time for any cause deemed sufficient by a majority of said Council. It shall be the duty of said Secretary to record all the proceedings of Council and keep a correct journal of the same in a book or books, to be provided for that purpose and also the papers relative and belonging to said Town, all of which are to be carefully preserved and delivered to his/her successor in office. His/Her compensation shall be fixed by the Council.
- 7.3.1 **Duties of Secretary.** The Secretary shall be responsible for recording the proceedings of the Town Council and for maintaining safe custody of other Town records and the Town and shall perform such other duties as directed by ordinance or the Town Council.
- 7.4 **Duties of Treasurer.** It shall be the duty of the Treasurer to attend all Town Council meetings. The Treasurer shall be responsible for maintaining custody of all Town funds in a banking institution selected by the Town Council; for deposit of all Town receipts and disbursement of Town funds in payment of bills presented for payment; for presenting an annual financial report to the Town Council at the end of the fiscal year; and for performing such other duties as directed by ordinance of the Town Council. The Treasurer, before assuming the duties of such office, shall be required to give bond with sufficient surety to the Town Council in an amount at least equal to the funds likely to be handled in the discharge of such duties. The Treasurer shall at the end of such term of office deliver to his/her successor in office all fiscal records relating to such office and all Town funds then held in the Treasurer's custody as part of the settlement of final account. The cost of said bond shall be paid out of Town funds. In case of resignation or at the expiration of the term of office an audit shall be performed.
- 7.5 **Filling Vacancies of Appointed Officers.** If a vacancy shall occur in the office of any officer appointed pursuant to Sec. 7.1 of this Charter, the successor shall be selected for the unexpired term pursuant to the procedures of Sec. 7.1.
- 7.6 **Code of Ethics.**
- 7.6.1 **Conflict of Interest.**
No Town Council member, officer, employee, or representative shall represent the Town of Odessa in any business transaction involving any corporation or other private party in which he or she has a direct or indirect financial interest.
- 7.6.2 **Abuse of Office.**
No Town Council member, officer, employee, or representative shall use his or her official position to obtain an undue, unwarranted, or unfair advantage, privilege or exception.
- 7.6.3 **Disclosure of Information.**
No Town Council member, officer, employee, or representative shall disclose to any unauthorized person, confidential information gained by reason of official position, nor shall such information be used for personal gain or benefit.
- 7.6.4 **Contracts for Materials and Services.**
(a) No Town Council member, officer, employee or representative may contract with the Town to provide personal services or materials for the benefit of the Town, nor may any corporation or other private party in which such official holds a pecuniary interest contract with the Town to provide such services or materials, except with the unanimous consent of all other Town Council members.

- (b) Notice of all bids for street, sewer, or water system, installations, improvements, extensions, or repairs shall be published at least once in at least two (2) newspapers having general circulation in the Town of Odessa

7.6.5 Competitive Bidding.

All contracts for purchase or lease of materials or services authorized by this Charter shall be consummated by competitive bidding, and each such contract shall be awarded to the lowest responsible bidder who submits a responsive bid, provided, however, that competitive bidding shall not be required where:

- (a) the aggregate amount involved is not in excess of that established by ordinance;
- (b) the contract is for any service to be rendered by the State of Delaware, or by any political subdivision thereof;
- (c) the contract is for any service to be rendered by a university, college, or other educational institution;
- (d) the contract is for property for which it is impractical to obtain competitive bids;
- (e) the Town Council determines that due to an emergency or special exigency, the time required for competitive bidding is inadequate; or
- (f) the Town Council determines that the bids received were:
 - (1) unreasonable as to all or part of the requirement; or
 - (2) were not independently reached in open competition.

7.7 Vacancies, Forfeiture of Office.

7.7.1 Vacancies. The position of any elected Town official shall become vacant upon death, incapacitation, resignation, movement from the Town or forfeiture of such office.

7.7.2 Forfeiture Proceedings. A forfeiture of such office shall occur when any Town Council member:

- (a) is no longer qualified to hold such office;
- (b) willfully violates any provision of this Charter;
- (c) is convicted of any felony or crime involving moral turpitude; or
- (d) fails to attend three (3) consecutive regular Town Council meetings without being excused by Town Council vote,

7.7.3 Determination Concerning Forfeiture. Where the conditions set forth in Sec. 7.7.2 (c) or (d) occur, forfeiture shall be automatic. Where the conditions set forth in Sec. 7.7.2 (a) or (b) are alleged, determination of forfeiture shall be made by the remaining Town Council members. Such decision may be made in executive session and if the Town Council determines by a majority vote that a forfeiture has occurred, it shall, within forty-eight (48) hours thereafter, provide written notice thereof to the affected Town Council member, by certified mail, return receipt requested, sufficiently posted. "Written notice" shall be deemed provided when deposited in First-Class mail with sufficient postage. The affected member shall then have ten (10) days in which to make a written demand for a public hearing before the Town Council, to be held within twenty (20) days of the written demand, at which hearing such member may appear with the assistance of counsel and present evidence to the relevant issues. The Town Council shall also hear any other relevant evidence and vote again on the question of forfeiture. A determination of forfeiture shall be made only by unanimous vote the Town Council members entitled to vote on the question.

7.7.4 Failure to Request Hearing as a Bar. Failure of the affected member to make written demand for a public hearing as hereinabove stated shall be an absolute bar to his or her other right to challenge the Town Council's decision. If a public hearing is held, the Town Council shall have authority to subpoena witnesses, administer oaths, take testimony, and require the production of documentary or physical evidence, all of which shall be done if requested in writing by the affected person.

7.8 Filling Vacancies. A vacancy in the office of the Mayor, Treasurer, or any other elected official shall be filled for the unexpired term by a person qualified to fill the position.

- 7.8.1 Procedure: Office of the Mayor. Upon the occurrence of a vacancy in the office of the Mayor, the Council shall appoint an acting Mayor who shall assume the duties and responsibilities of Mayor until such time as a new Mayor is elected and installed in office. A vacancy in the office of Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election is to occur more than 120 days from the occurrence of the vacancy, the Town Council shall, within twenty-four (24) hours of notice of the vacancy, announce the existence of the vacancy and the date and time for a special election to be held for the remainder of the term of office. Said election shall be held within sixty (60) days of the announcement of said vacancy. Said special election shall be held pursuant to the provisions as provided in Sec. 6.4 of this Charter. (72 Del. Laws, c. 339, 6/23/00)
- 7.8.2 Other Council Members. A vacancy in the office of any council member other than Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election occurs more than ninety (90) days after the occurrence of the vacancy, the Town Council, by a majority vote of the remaining members in an open meeting, shall appoint a qualified person to fill such vacancy until the next annual municipal election. If the vacancy occurs within ninety (90) days of the term of office, such vacancy shall not be filled. (72 Del. Laws, c. 339, 6/23/00)
- 7.9 Meetings.
- 7.9.1 Regular Meetings. The Town Council shall hold at least eleven (11) meetings during the year. The time and place of each regular meeting shall be set by the Town Council but such meetings may be rescheduled by the Mayor as need arises, subject to the requirement of adequate public notice. All such meetings shall be open to the public. (72 Del. Laws, c. 339, 6/23/00)
- 7.9.2 Special Meetings. Special meetings of the Town Council shall be called by the Town Secretary upon the written request of the Mayor or any four (4) members of the Council stating the day, hour, and place of such meeting and the subject or subjects to be considered thereat. The Secretary shall thereon give notice at least seven (7) days prior to said meeting date to the Mayor and each member of the Council of the day, hour, and place of such special meeting and the subject or subjects to be considered thereat. Provided, however, that a written waiver of such notice, (written, electronic mail, telegraphic, telefacsimile or recorded telephonic message), by all members of the Council prior to or immediately at the beginning of the convening of such special meeting shall make the forty-eight (48) hour written notice unnecessary and shall authorize and make valid the holding of a special meeting at any time and for any purpose named in such waiver, or the transaction of any other business at the meeting, if the waiver so states. Subject to the scope of the notice, the Town Council of the Town shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any such special meeting, called as aforesaid, as Council has at a regular meeting. The aforesaid procedure shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety.
- 7.9.3 Suspended Meetings. The Town Council may suspend its meetings from time to time, provided that adequate public notice shall be given of the date, place, and time for the resumption of such meetings.
- 7.9.4 Open Meetings. All meetings of all Town governmental bodies shall be in compliance with the Freedom of Information Act, (Title 29, Chapter 100, Delaware Code), or any future corresponding provision of law.
- 7.9.5 Place of Meetings. All regular, special, and adjourned meetings of the Town Council shall be held within the corporate limits of the Town, except that emergency meetings may be held elsewhere. (See also, Sec. 7.10.2).
- 7.10 Town Council Actions.
- 7.10.1 Council Actions. No Town Council actions may be taken except at a duly convened meeting.

- 7.10.2 Rules of Procedure, Record of Proceedings. The Town Council shall determine its own rules of procedure and order of business. It shall keep a record of its proceedings which shall be open to public inspection.
- 7.10.3 Ordinances, Regulations, Resolutions, and Rules. The Town Council is hereby vested with the authority to adopt ordinances, resolutions, regulations, and rules relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, sanitation, beauty, health, safety, convenience and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances, resolutions, regulations, or rules. No provision of this Charter on any particular subject shall be held to be restrictive of the power to enact ordinances, resolutions, regulations, and rules on any subject not specifically enumerated, provided that they do not violate State or Federal law. In addition to other acts required by law or this Charter to be done, by ordinance, the Town Council may by ordinance:
- (a) adopt or amend administrative rules, or establish or reorganize any Town department, office or agency;
 - (b) provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
 - (c) grant, renew, extend, or terminate a franchise; and
 - (d) amend or repeal any ordinances previously adopted
- Every ordinance shall be introduced in writing. Voting on any ordinance shall be by voice vote and the vote of each Town Council member on any ordinance shall be entered on the record. No ordinance shall be adopted unless it shall have the affirmative vote of a majority of the entire Town Council.
- The Town Council shall not have the power to exempt any individual from the application of any ordinance, regulation, resolution, or rule of the Town, except as set out in this Charter or as provided by the United States Constitution or the laws of the State of Delaware. No ordinance, except in cases of emergency, shall be passed by the Council except at regular meetings and unless such ordinance has been introduced at some previous regular meeting and copies of the proposed ordinance posted in three (3) public places in said Town at least ten (10) days before final action of the Council thereon..
- 7.10.4 Emergency Ordinances. To meet a public emergency affecting life, health, property or the public peace, the Town Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its service, or authorize the borrowing of money except as provided in Sec. 13 of this Charter. An emergency ordinance shall be introduced in the form and manner 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. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it was introduced, but the majority vote of all Town Council members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed as of the 120th day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this Subsection if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for the adoption of emergency ordinances.
- 7.10.5 Quorum. Three (3) members of the Town Council shall be present in order to constitute a quorum to conduct business. Council decisions shall require voting approval of a majority of the entire Council.
- 7.10.6 Vote Necessary to Carry Action. All powers of the Town Council, whether expressed or implied, shall be exercised in the manner provided herein, or if not prescribed herein, then by ordinance or resolution. In the general performance of their duties, the acts, doings

and determinations of a majority of the entire Council shall be as good as the acts, and determinations of all the members of the Council.

7.10.7 Compensation of Council Members. Each Town Council member may receive compensation for services to the Town as may be prescribed by ordinance.

7.11 Succession of Authority. In the event that the Mayor is absent or incapable of assuming responsibilities, such responsibility shall be carried out by the following Town officials in the following order: 1) Each of the remaining Council members in order of seniority in years of Council service, 2) Treasurer. 3) Secretary.

8. Appointed Officers.

8.1 Town Manager.

8.1.1 Appointment and Removal. Pursuant to ordinance the Town Council, by a majority vote of all members, may appoint a Town manager who shall be the chief managerial administrative officer of the Town. The terms and conditions of such employment shall be included in a written agreement between the Town Council and the Town Manager. The Town Manager shall be appointed solely on the basis of professional, executive, and administrative qualifications and experience. Such person need not, when appointed, be a resident of the State of Delaware, but shall, within six (6) months thereafter, as a condition of employment, become domiciled within the State of Delaware no farther than thirty (30) miles from the Town of Odessa. No member of the Town Council shall, during the term for which elected, be eligible to serve as Town Manager. The Town Manager shall be removable from such office as provided by ordinance or the terms of a written agreement between the Town Manager and the Town of Odessa. In case of the temporary absence, disability, or other interruption of service of the Town Manager, the Town Council may designate some other competent person to perform the duties of the office during such period.

8.1.2 Functions and Duties of Town Manager. By ordinance.

8.2 Town Solicitor. The Town council shall appoint a Town Solicitor who shall be removable at the pleasure of the Town Council. The Solicitor shall be a member in good standing of the Bar of the State of Delaware. It shall be the Solicitor's duty to give legal advice to the Town Council, the Town Manager, and other officers of the Town, and to perform such other legal services as may be required by the Town Council.

8.3 Other Officers and Employees.

8.3.1 Appointment and Employment. The Town Council may appoint or employ such other officers and employees deemed necessary for the proper management of the Town.

8.3.2 Termination of Appointment or Employment. The Town Council may at any time terminate the service of any Town officer or employee unless otherwise proscribed by the terms of a written contract, a written personnel policy, a written personnel or merit system, a written grievance of disciplinary procedure adopted by the Town Council.

Where an officer or employee appeals a notice of termination, the Town Council shall hold a special meeting to hear the appeal.

8.4 Compensation. The Town Council shall by ordinance or resolution fix the amount of any compensation of the officers, employees and representatives of the Town, as well as reimbursement for actual and necessary expenses incurred by them in the performance of their duties.

8.5 Personnel Records. The Town Council shall maintain a full and complete record of all officers, employees and representatives hired by the Town, containing the names of such persons, the date of their employment, job descriptions, compensation paid and the date of termination of their services.

9. Assessment of Taxes.

9.1 Adoption of New Castle County Assessment. The Town Council shall use the assessment by the New Castle County Board of Assessment for all property located within the corporate limits

of the Town in lieu of making its own independent valuation and assessment of such property. The assessed values established by New Castle County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals regarding same.

9.1.1 Addition to Tax Bills. The Town Council shall annually, prior to the posting of the assessment list, by resolution, provide for the Mayor/Town Manager, a list of any and all charges, costs or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: Water assessments, weed and grass cutting bills, trash collection bills and past due water rents.

9.2 Assessment Appeals.

9.2.1 Authorization-of-Appeal. Any aggrieved property owner may appeal his property assessment to New Castle County.

9.2.2 Posting of Assessment List: Notice. By May 1 of each year, the Town Council shall cause a complete list indicating the amount assessed to each property, to be made available for public inspection at three (3) public places and at the Town Office for a period of at least thirty (30) days.

10. Levy of Taxes, Fees and Other Charges.

10.1 Establishment of Balanced Budget. After the assessment process has been completed, the Town Council shall establish an annual balanced operating budget for the ensuing fiscal year, including sufficient revenue to meet the fixed and anticipated expenses and obligations of the Town, reasonable and appropriate reserves and a reasonable amount to cover emergencies.

10.2 Determination of Revenue Sources. The Town Council shall determine the appropriate revenue sources within the limits prescribed by this Charter, with respect to the amount to be raised from each such source. They shall then determine, assess, fix and/or levy as follows:

10.2.1 Real Estate and Improvements. The rate of tax on real estate including improvements thereon per one hundred dollars (\$100.00) of the assessed value; and/or

10.2.2 Real Estate Transfer Tax.. Appropriate transfer taxes to be charged upon the transfer of real property, or any interest in real property, situate within the corporate limits of the Town, provided, however, that no tax levied under this section shall exceed one percent (1%) of the sales price (including the value of any assumed mortgage or mortgages) or fair market value of the real property so transferred; and provided further that no tax shall be levied upon an organization exempted from advalorem real estate taxes; and/or

10.2.3 License Fees.- Appropriate license fees to be charged for carrying on or conducting of the several businesses, professions or occupations as authorized by Section 4.2.35 of this Charter; and/or

10.2.4 Municipal Services. Appropriate charges for services authorized by the Town Council; and/or

10.2.5 Other Services. The fees or rates to be charged in respect to any other authorized source of revenue; and/or

10.2.6 Business Taxes. Appropriate taxes on the gross receipts of any business activity, as defined by the Town Council, conducted within the corporate limits of the Town.

10.3 Levy of Real Property Tax. The setting of the tax rate by Town Council resolution shall constitute the levy of such taxes and charges in accordance with the assessment list (subject to any pending assessment appeals to the Superior Court).

10.4 Special Assessment. The Town Council is empowered to levy a special assessment against any or all real property situated within the corporate limits of the Town, when determined by the Council to provide a necessary public work improvement or municipal service. Such assessments shall be duly collected, the proceeds of which shall be applied for the payment of the cost of such work, improvement, or service, provided, however, that if such assessment shall apply to all properties within the Town, it shall first be approved by majority vote of the Town voters in a special election (Sec. 10.4.1).

10.4.1 Procedure: Notice: Hearing: Special Election for Special Assessment. In order to proceed under the powers granted in this Section, the Town Council shall authorize such borrowing in the following manner:

- (a) the Town Council, by resolution, shall give notice to the voters of the Town that the Town Council proposes to levy a special assessment against any or all real property situated within the corporate limits of the Town. The resolution shall state the amount of money desired, the purpose for which it is desired, and all other pertinent facts relating to the assessments which are deemed pertinent by the Council in its possession at the time of the passage of the resolution and shall fix a time and place for a public hearing on the said resolution;
- (b) notice of the time and place of the public hearing on the resolution authorizing the special assessment shall be published at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days prior to the public hearing. In addition to such publication, the Town Council shall cause notices to be posted in at least three (3) public places in the Town of Odessa, not less than thirty (30) days, and not more than forty-five (45) days prior to the day set for the public hearing. Notices concerning such public hearings shall be in bold print or bordered in black, in such manner as to call attention thereto;
- (c) If, following the public hearing, the Town Council determines to proceed with the proposed special assessment, it shall pass a second resolution ordering a special election, to be held not less than thirty (30) days, nor more than sixty (60) days after the said public hearing relating to the special assessment. The passage of the second resolution calling a special election shall ipso facto be considered the determination of the Town Council to proceed with the matter in issue; provided, however, that if the annual municipal election is to be held within 120 days of the date of the resolution adopted by the Town Council pursuant to this section, the election on the proposed special assessment may be held in conjunction with the annual municipal election and all provisions hereof shall be construed and applied accordingly;
- (d) the notice of the time and place of holding such special election shall be printed in one issue of two (2) newspapers having general circulation in the Town of Odessa, not less than thirty (30) days, nor more than forty-five (45) days prior to the special election, in addition to such publication, the Town shall cause to be posted in at least three (3) public places in the Town of Odessa, not less than thirty (30) days and not more than forty-five (45) days prior to the special election, public notices concerning the special election, in addition to the time and place of the special election, such notices shall contain the same information as required under this Sec. 10.4.1(a), and shall be in bold print or bordered in black, in such manner as to call attention thereto;
- (e) at such special election, any person who is entitled to vote in the annual municipal election, if it were held on that day, shall be entitled to one (1) vote. (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual election); any special election held pursuant to the provisions of this section shall be conducted by voting machines or electronic voting systems as permitted by law which shall have the following designation:

For the proposed Special Assessment

Against the proposed Special Assessment

The Mayor of the Town of Odessa, by and with the advice and consent of the majority of the Town Council, shall appoint three (3) persons to act as a Board of Special Election. The polling place shall be opened for a minimum of six (6) hours, as specified by resolutions of the Town Council. Persons in the polling place at the time scheduled for closing of the polls shall be entitled to vote;

- (f) The Board of Special Election shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes "for" and "against" the proposed special assessment and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number votes cast "for" and "against" the proposed Special Assessment and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number of votes cast "for" and "against" the proposed Special Assessment and the number of void votes, and shall deliver the same to the Town Secretary; said certificates shall be retained by the Secretary, with the other records of the Town;
 - (g) If a majority of the votes cast at such special election shall be in favor of such special assessment, the Town Council shall proceed with the special assessment.
 - 10.5 Limitation on Taxes. The total amount of money to be raised by real property taxes and special taxes levied or imposed in connection with any municipal bond (Sec. 13.2.7), shall in no year exceed two percent (2%) of the total appraised valuation of all taxable real estate (and improvements thereon) in the Town.
 - 10.6 Savings Clause. Nothing contained in this Charter shall be construed to affect or impair, in any way, the validity of any tax, fee, assessment or other charge lawfully levied, assessed or due the Town of Odessa under existing laws in reference to said Town.
- 11. Collection of Taxes, Fees, Special Assessments and Other Charges.**
- 11.1 Collection by Treasurer.
 - (a) After the Town Council shall have set the real estate tax rate pursuant to Sec. 10.2.1; the Treasurer or duly appointed Tax Collector, shall proceed to collect the taxes so levied.
 - (b) The Treasurer shall collect the additional taxes, fees, special assessments, and charges fixed pursuant to Sec. 10.2.
 - 11.2 Posting of Charges, The Town Council prior to posting the assessment list, shall provide annually by resolution for the Treasurer, a list of any and all charges, costs or other assessments owed to the Town, which list of charges shall include but not be limited to, the following: weed and grass cutting bills, trash collection bills.
 - 11.3 Lien. All taxes, fees, and other charges Imposed by the Town shall be and constitute a lien, for a period of ten (10) years from the date so levied, upon the real estate against which such charges are imposed. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any charges so levied. Such lien shall have preference and priority over all other prior liens on such real estate, although such lien or liens be of a time and date prior to the time of attaching of such lien for taxes, fees, and other charges.
 - 11.4 Due Date. All taxes and other charges, when and as collected by the Treasurer, shall be paid to or deposited to the credit of the Town of Odessa in federally insured banking institutions approved by the Town Council. All taxes shall be due and payable at and from the time the tax rate is set pursuant to Sec. 10.2.1.
 - 11.5 Payment. All taxes and other charges shall be payable to the Treasurer of the Town of Odessa.
 - 11.6 Penalty for Late Payment Collection Fee. All taxes and other charges, unpaid on such date as specified by ordinance, shall be considered delinquent. On such delinquencies, an appropriate penalty shall be imposed by the Town Council except that the Town Council may make just allowances. In addition, a collection charge, reasonably calculated to recover the cost of such collection, may be imposed.
- 12. Remedies. Power and Methods Charges Due to the Town,**
- 12.1 Prior Notice, Before exercising any of the powers hereinafter given for the collection of taxes and other charges, written notice of the amount due shall be sent to the delinquent taxpayer at his/her last known address.

- 12.2 Debt Action. When any tax or other charge has become delinquent, the Treasurer may, in the name of the Town of Odessa, institute suit before any court of competent jurisdiction for the recovery of the unpaid amount in an action of debt. Upon judgment obtained, the Treasurer may sue out writs of execution as in the case of other judgments recovered before any court of competent jurisdiction provided, however, that as to any personal property of the delinquent taxpayer located in New castle County and levied upon by the Sheriff within sixty (60) days after the writ of execution was delivered into his or her hands, the lien of judgment shall have priority over all other prior liens against such personal property created or suffered by the delinquent taxpayer (excepting only the liens of the Federal, State or New Castle County governments).
- 12.3 Sale of Lands, Should the Treasurer so elect, and without the necessity of employing any or all of the other remedies provided herein, the Treasurer is authorized and empowered to sell the lands and tenements of a delinquent taxpayer or the lands and tenements alienated by a delinquent taxpayer subsequent to the levy of the tax by the following procedure:
- 12.3.1 The Treasurer shall present in the name of the Town Odessa to the Superior Court of the State of Delaware, in and for N of Castle County, a petition in which shall be stated:
- (a) the name of the person owing payment;
 - (b) the year for which tax or other charge was levied, assessed or charged;
 - (c) the rate of tax, assessment. or other charge;
 - (d) the total amount due;
 - (e) the date from which the penalty of nonpayment, if any, shall commence and the rate of such penalty and any collection charge permitted;
 - (f) a short description of the lands and tenements proposed to be sold, sufficient to reasonably identify same;
 - (g) a statement that the bill of said tax, assessment or other charge has been mailed to the delinquent taxpayer at his or her last known post office address with return receipt requested by certified mail and postage prepaid, together with a notice that the Treasurer will proceed to sell the lands and tenements of the delinquent taxpayer for payment of the tax, assessment, or other charge due the Town; and the date of such mailing; and
 - (h) the petition shall be signed by the Treasurer and shall be verified before a Notary Public.
- 12.3.2 At least ten (10) days prior to the filing of any such petition as described herein, the Treasurer shall deposit in the mail in a sealed and stamped envelope and addressed to the delinquent taxpayer at his or her last known address requiring a return receipt, an itemized statement of the tax, or other charge due, together with all penalties, collection charges, and costs then due thereon, together with a notice to the delinquent taxpayer that he or she shall proceed to sell the lands and tenements of such taxpayer for the payment of the tax or other charge. The Treasurer shall exhibit the return registry receipt to the Court by filing the same with the petition; provided, however, that if the taxpayer cannot be found, or if delivery is refused, it shall be sufficient for the Treasurer to file with said petition evidence that such statement has been mailed in accordance with this subsection and has been returned.
- 12.3.3 Upon the filing of the petition, the Prothonotary shall record the same in a properly indexed record of the Superior Court, in and for New Castle County, and shall endorse upon the said record of said petition the following:
This petition, filed the day of A.D. (giving year and date) and the Treasurer of the Town of Odessa is hereby authorized to proceed to sell the lands and tenements herein mentioned or a sufficient part thereof as may be necessary for the payment of the delinquent amount. This endorsement shall be signed by the Prothonotary.
- 12.3.4 Any sale of lands and tenements of a delinquent taxpayer shall be advertised in three (3) public places in the Town of Odessa, one (1) of which shall be on the premises to be sold and by printing the notice of said sale at least one (1) time in a newspaper of general circulation in the Town. The notice shall contain the day, hour, place of sale and a short

description of the premises sufficient to identify the same. The handbills shall be posted at least fifteen (15) days before the day of the sale.

- 12.3.5 Each sale of lands and tenements shall be returned to the Superior Court of the State of Delaware, in and for New Castle County at the next Motion Day thereof following the sale, and the Court shall inquire into the circumstances and either approve or set aside the sale. If the sale be set aside, the Superior Court may order another sale and so on until the tax be collected. No sale shall be approved by the Superior Court if the owner be ready at court to pay the taxes, penalty, collection fees and costs. If the sale be approved, the Town Manager making the sale shall execute a deed to the purchaser which shall convey the right, title and interest of the delinquent taxpayer or his alienee; provided however, that no deed shall be delivered to the purchaser until the expiration of one (1) year from the date of the sale within which time the taxpayer or his alienee, heirs, executors, administrators or assigns, shall have the power to redeem the lands on payment to the purchaser, his personal representatives or assigns of the costs, the amount of the purchase price, plus twenty percent (20%), and the expense of having the deed prepared. All taxes assessed after the sale and before the delivery of the deed shall be paid by the purchaser at said sale who shall be reimbursed by the delinquent taxpayer in the event of redemption to which shall be added twenty percent (20%) thereon.

In the event the purchaser refuses to accept the same, or in the event he or she, or his or her heirs or assigns, cannot be located within the State of Delaware, it shall be lawful for the owner, his or her heirs, executors, administrators, and assigns, to pay the redemption money to the Treasurer and upon obtaining from him or her a receipt therefor, such receipt shall be considered for all intents and purposes a valid and lawful exercise of the power to redeem the said lands.

In the event the lands have not been redeemed within the redemption year, the Treasurer shall deliver to the purchaser, his or her heirs, executors, administrator, or assigns, a deed which shall convey the title of the delinquent taxpayers.

The petition, return and deed shall be presumptive evidence of the regularity of the proceeding.

- 12.3.6 After satisfying the tax or other charge due and the costs and expenses of sale from the proceeds of sale, the amount remaining shall be paid to the owner of the land. If he or she shall refuse to accept said remainder, or if the owner be unknown or cannot be found, the amount remaining shall be deposited in a bank either to the credit of the owner or in a manner in which the fund may be identified.

- 12.3.7 In the sale of the lands and tenements for the payment of delinquent taxes or other charges, the following cost shall be allowed to be deducted from the proceeds of the sale or chargeable against the owner, as the case may be, in the amount customarily charged:

- (a) to the Prothonotary for filing and recording the petition;
- (b) for filing and recording the return of sale; and
- (c) to the Treasurer for: (1) preparing the certificate, (2) making the sale of lands and tenements, (3) preparing and filing a return, and (4) posting sale bills; and
- (d) attorneys' fees.

In addition, the costs of printing handbills, the publication of the advertisement of sale in a newspaper, and the auctioneer's fee, if any, shall be chargeable as costs. The costs of the deed shall not be chargeable as costs, but shall be paid by the purchaser of the property of the delinquent taxpayer. The total of any Delaware transfer tax shall be paid by the purchaser of said lands and tenements at the tax sale.

- 12.3.8 If the owner of any lands and tenements against which a tax or other charge shall be levied and assessed shall be unknown, this fact shall be stated in the advertisement of sale and in the petition to the Court.
- 12.3.9 If any person be assessed for several parcels of land and tenements in the same assessment in the Town of Odessa, the total of sewers along the same and the

condemning or purchasing of lands, easements or rights-of-way which may be required therefor;

- (d) constructing, laying out, widening, extending, repairing and maintaining piers, bulkheads, cross walks, embankments, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;
- (e) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and
- (f) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses of bond counsel.

12.3.10 In the event of death, resignation, or removal from office of the Treasurer of the Town of Odessa before the proceedings for the sale of lands shall have been completed, the successor in office shall succeed to all powers, rights, and duties in respect to said sale. In the event of the death of the purchaser at said sale prior to receiving a deed for the property purchased thereat, the person having right by consent, devise, assignment or otherwise, may file with to the Superior Court of the State of Delaware, in and for New Castle County, a petition representing the facts and praying for an order authorizing and requiring the Treasurer to execute and acknowledge a deed conveying to the petitioner the premises so sold, and thereupon the Court may make such order adjudging the conveyance of the premises as shall be according to justice and equity.

12.3.11 The Treasurer shall have the same right to require the aid or assistance of any person or persons in the performance of the Treasurer's duty of sale which the Sheriff of New Castle County now has by law or may hereafter have.

13. Borrowing Powers.

13.1 Short-Term Borrowing, Voter Approval not Required. The Town Council shall have the power to borrow money on the full faith and credit of the Town, without approval of the voters and without regard to the provisions of Section 13.2 of this Charter, such principal sum or sums not exceeding in the aggregate fifty thousand dollars (\$50,000.00), for general purposes only when, in the opinion of the majority of the Town Council, the needs of the Town require it; provided, however, that any new borrowing under this Section made after the effective date of this act shall, by their terms, be repayable in full within five (5) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by resolution of the Town Council and signed by the Mayor and attested by the Secretary of the Town with the Town Seal affixed. No Town Council member shall be liable for the payment of any such note or any other evidence of indebtedness because it is signed by such Town Council member, provided that such signature be authorized by resolution of the Town Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. Any sum(s) of money borrowed on the full faith and credit of the Town shall be repaid from the general funds of the Town. At no time shall the amount of outstanding principal from any such borrowing or borrowings under this Section exceed the sum of fifty thousand dollars (\$50,000.00).

13.2 Long-Term Borrowing, Voter Approval Required. In addition to other borrowing powers granted to the Town under this Charter or by State law, the Town Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or other evidence of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Town Council shall elect, for the payment of principal thereof and interest due thereon.

13.2.1 Proper Municipal Purpose. By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to:

- (a) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein;

- (b) erecting, extending, enlarging, maintaining or repairing any plant, building machinery or equipment for the manufacture, supplying or distribution of water, sewerage or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefor;
 - (c) constructing, paving, laying out, widening, extending repairing and maintaining of curbing and gutters. including storm sewers along the same and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;
 - (d) constructing, laying out, widening, extending, repairing and maintaining piers, bulkheads, cross walks, embankments, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;
 - (e) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and
 - (f) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses or bond counsel.
- 13.2.2 Exempt from Taxation. All bonds or other kinds or forms of evidence or evidences of indebtedness issued by the Town pursuant to the provisions of this Section, and the interest thereon, shall be exempt from all State, County, or Municipal taxes.
- 13.2.3 Limit of Aggregate Long-Term Indebtedness. In no event shall the indebtedness of the Town of Odessa, authorized by this Section, at any one time exceed, in the aggregate, five percent (5%) of the appraised value of all real property within the corporate limits of the Town and subject to assessment for the purpose of levying the annual taxes as provided in this Charter.
- 13.2.4 Procedure; Notice, Hearing, Special Election. In order to proceed under the power granted in this Section, the Town Council shall authorize such borrowing in the following manner:
- (a) the Town Council, by resolution, shall give notice to the voters of the Town that the Town Council proposes to borrow a certain sum of money for a stated municipal purpose. The resolution shall state the amount of money desired to be borrowed, which may be stated as a "not to exceed" amount, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan which are deemed pertinent by the Council and in its possession at the time of the passage of the resolution and shall fix a time and place for a public hearing on the said resolution.
 - (b) notice of the time and place of the public hearing on the resolution authorizing said loan shall be published at least once in at least two (2) newspapers having general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days period to the day set for the public hearing. In addition to such publication, the Town Council shall cause to be posted, in at least three (3) public places in the Town of Odessa, not less than thirty (30) days and not more than forty-five (45) days prior to the date set for the public hearing and notices concerning such public hearings; such public notice shall be in bold print, in such manner as to call desired attention thereto, and shall contain the purpose for which the loan is desired and the manner of securing the same, plus all other pertinent facts relating to the loan. The last date of publication or posting shall control.
 - (c) if at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing it shall pass a second resolution ordering a special election, to be held not less than thirty(30) nor more than sixty (60) days after the said public hearing, to borrow the said money. The said special election shall be for the purpose of voting for or against the proposed loan. The passage of the second resolution calling a special election shall ipso facto be considered the determination of the Town Council to proceed with the matter in issue;

- (d) the notice of the time and place of holding such special election shall be printed in two (2) consecutive issues of two (2) newspapers having general circulation in the Town of Odessa not less than thirty (30) days nor more than forty-five (45) days prior to the special election; such public notice shall be in bold print, in such manner as to call attention thereto and the last date of publication or posting shall control; in addition to such publication, the Town Council shall cause to be posted in at least three (3) public places in the Town of Odessa, not less than thirty (30) days and not more than forty-five (45) days prior to the special election, public notices concerning the special election; in addition to the time and place of the special election, such notices shall contain the same information as required under Sec. 13.2.4(a) above;
- (e) at such special election, any person who is entitled to vote in the annual municipal election, if it were held on that day, shall be entitled to one (1) vote. (For purposes of this section "entitled to vote" shall include "registered to vote" if voter registration is required for the annual municipal election); any special election held pursuant to the provisions of this Section shall be conducted by voting machines or electronic voting systems as permitted by law which shall have the following designation:

For the proposed borrowing	Against the proposed borrowing
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The Mayor of the Town of Odessa, by and with the advice and consent of the majority of the Town Council, shall appoint three (3) persons to act as a Board of Special Election. The polling place shall be opened for a minimum of six (6) hours, as specified by resolution of the Town Council. Persons in the polling place at the time scheduled for closing of the polls shall be entitled to vote;
- (f) the Board of Special Elections shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number of votes cast for and against the proposed borrowing and the number of void votes and shall deliver the same to the Secretary; said certificate shall be retained by the Secretary, with the other records of the Town;
- (g) if a majority of the votes cast at such special election shall be in favor of such borrowing, the Town Council shall proceed with the issuance of the said bonds or evidences of indebtedness.

13.2.5 Forms of Bonds. The form of the bonds or evidences of indebtedness, attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity date, the registration and any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after said special election.

13.2.6 Public or Private Sale. Bonds may be sold at either public or private sale. If the bonds shall be offered for public sale, they shall be sold to the best and most responsible bidder(s) therefor after advertisement in a manner to be prescribed by the Town Council for at least one (1) month before offering the same for sale.

13.2.7 Provision for Payment: Special Tax, Sinking Fund.

The Town Council shall provide for the payment of interest and principal on the said bonds or evidences of indebtedness at the maturity thereof. The Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town, or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing, to pay interest and/or principal; and at its discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or evidences of indebtedness which may be issued under the provisions of this Section; provided, that the amount to be raised under any special tax for this purpose shall not, in any one (1) year, exceed a sum equal to five (5) percent of the total of such indebtedness.

The special tax provided for in this Section shall be collected from the owners of real estate in the same manner as other taxes levied by the Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund as much of the general funds of said Town as it may from time to time think advisable. The sinking fund provided for by this Section shall be deposited in federally insured accounts in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

13.2.8 Full Faith and Credit Unless Otherwise Stated.

Unless any such bond(s) or evidences of indebtedness shall provide otherwise, the full faith and credit of the Town of Odessa shall be deemed to be pledged for the due payment thereof and the interest thereon issued under the provisions of this Section when the same shall have been properly executed and delivered for value, notwithstanding any other provisions of this Charter.

13.2.9 Statute of Limitations.

No action contesting any proceeding conducted or action taken by the Town Council hereunder regarding the authorization of any bond(s) or evidences of indebtedness issued under this Section shall be brought after the expiration of sixty (60) days from the date of a notice published at least once in at least two (2) newspapers, one (1) of which shall be of general circulation in the Town of Odessa and one (1) of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

- (a) that the Town Council has determined to borrow a certain sum of money and to issue bonds or evidences of indebtedness therefor;
- (b) that the proposal has been approved by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing;
- (c) the amount of money to be borrowed;
- (d) the purpose for which it is to be borrowed; and
- (e) that any person desiring to challenge the authorization of such bond(s) or evidences of indebtedness must bring his or her action within sixty (60) days from the date of publication of such notice or forever be barred from doing so.

In the event that two (2) newspapers do not publish the notice on the same date, the date of the last publication shall control. Such notice shall be in bold print in such manner as to call attention thereto.

14. Use of Town Monies.

The Town Council shall have full power and authority to use the money in the Treasury of the Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation, and best interest of the Town, as the Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of Delaware, this Charter and all ordinances and resolutions enacted by Town Council.

14.1 Proposed Capital Expenditure. Any proposed capital expenditure of Town funds in an amount exceeding \$25,000.00 shall first be submitted for approval by the qualified voters of the Town in a special election. Funds derived from long-term loans (Sec. 13.2) are not subject to this requirement.

14.2 Procedure: Notice, Hearing, Special Election.

In order to proceed under the power granted in this Section, the Town Council shall propose the expenditure of an amount exceeding \$25,000.00 in the following manner:

- (a) The Town Council, by resolution, shall give notice to the voters of the Town that the Town Council proposes to spend monies in excess of \$25,000.00 for a stated municipal purpose. The resolution shall state the amount of money which may be stated as a 'not to exceed' amount, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the expenditure which are deemed pertinent by the

council and in its possession at the time of the passage of the resolution and shall fix a time and place for a public hearing on the said resolution;

- (b) notice of the time and place of the public hearing on the resolution authorizing the expenditure shall be published at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days prior to the day set for the public hearing. In addition to such publication, the Town Council shall cause to be posted, in at least three (3) public places in the Town of Odessa not less than thirty (30) days and nor more than forty-five (45) days prior to the day set for the public hearing, notices concerning such public hearings; such public notice shall be in bold print in such manner as to call attention thereto, and shall contain the purpose of the expenditure and all pertinent facts relating to the expenditure. The last date of publication or posting shall control.
- (c) If, at any time, following the public hearing, the Town Council determines to proceed with the proposed expenditure, it shall pass a second resolution ordering a special election to be held not less than thirty (30) days nor more than sixty (60) days after the said public hearing, to make the expenditure.

The said special election shall be for the purpose of voting for or against the proposed expenditure. The passage of the second resolution calling for a special election shall ipso facto be considered the determination of the Town Council to proceed with the matter in issue, provided, however, that if the annual municipal election is to be held within 120 days of the date of the resolution adopted by the Town Council pursuant to this section, the election on the proposed expenditure may be held in conjunction with the annual municipal election and all provisions hereof shall be construed and applied accordingly.

- (d) the notice of the time and place of holding such special election shall be printed in one (1) issue of two (2) newspapers having general circulation in the Town of Odessa not less than thirty (30) days nor more than forty-five (45) days prior to the special election; such public notice shall be in bold print as to call attention thereto and the last date of publication or posting shall control; in addition to such publication the Town Council shall cause to be posted in at least three (3) places in the Town of Odessa , not less than thirty (30) days nor more than forty-five (45) days prior to the special election, public notices concerning the special election; in addition to the time and place of the special election, such notices shall contain the same information as required under Sec. 14.1 (a) above;
- (e) at such special election, any person who is entitled to vote in the annual municipal election, if it were held on that day, shall be entitled to one (1) vote. (For purposes of this section, 'entitled to vote' shall include 'registered to vote' if voter registration is required for the annual municipal election); any special election held pursuant to the provision of this Section shall be conducted by voting machines or electronic voting systems as permitted by law which shall have the following designation:

For the proposed expenditure Against the proposed expenditure

The Mayor of the Town of Odessa, by and with the advice of the Town Council, shall appoint three (3) persons to act as a Board of Special Election, the polling place shall be opened for a minimum of six (6) hours, as specified in the resolution of the Town Council. Persons in the polling place at the time scheduled for closing of the polls shall be entitled to vote;

- (f) the Board of Special Election shall be the sole and final judge of the legality of the votes offered at such election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed expenditure and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number of votes cast for and against the proposed expenditure and the number of void votes and shall deliver the same to the Secretary; said certificate shall be retained by the Secretary, with the other records of the Town.

15. Fiscal Year and Annual Audit.

15.1 Fiscal Year. The fiscal year of the Town of Odessa shall be from July 1st to June 30th.

15.2 Annual Audit. The Town Council shall retain, every year, a certified public accountant to be the Auditor of Accounts of the Town of Odessa. It shall be the duty of the Auditor to audit the accounts of the Town and all its officers whose duties involve the collection, custody and disbursement of Town monies. The Auditor shall audit the books of the Alderman and the Assistant Alderman and the records of all fines, penalties, costs imposed or collected by them pursuant to any judgment, order or decree made, the Auditor shall, on or before expiration of 120 days after the end of each fiscal year, make and deliver a detailed report of all accounts, records, and books examined and audited by such Auditor which report shall be available for public inspection. Notice of the filing of the Auditor's report shall be published at least once in a newspaper of general circulation in the Town of Odessa within thirty (30) days of its receipt by the Town Council. The Auditor, in the performance of official duties, shall have access to all records and accounts of the Town. (72 Del. Laws, c. 339, 6/23/00)

16. Alderman's Court.

- 16.1 Appointment. The Town Council may by majority vote appoint a suitable person to serve as Alderman who shall serve for a term of two (2) years, or until a successor is duly appointed, subject, however to being removed from office for just cause at any time by majority vote of the Town Council. The Town Council may, in addition, appoint an Assistant Alderman subject to the conditions.
- 16.2 Qualifications. Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-five (25) years of age, a United States citizen of good character and reputation, and shall reside in Delaware no further than thirty (30) miles from the corporate limits of the Town of Odessa. Such person shall not be a member of the Town Council, an officer, or any employee of the Town of Odessa.
- 16.3 Oath of Office. Before entering upon the duties of such office, the persons appointed to serve as Alderman and Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of such office honestly, faithfully and diligently.
- 16.4 Duties. It shall be the duty of the Alderman and Assistant Alderman to enforce the law in event of breaches of the peace, offenses and violations of the Town Charter, Town ordinances, and the Constitution and Laws of the State of Delaware, by the imposition of appropriate penalties.
- 16.5 Jurisdiction. The Alderman and Assistant Alderman shall have jurisdiction and cognizance of all such breaches of the peace, offenses and violations committed within the corporate limits of, or within (1) one mile of the corporate limits of the Town of Odessa, provided that they shall have no jurisdiction over any dispute between or among private parties. The Alderman and Assistant Alderman shall be authorized and empowered to arrest, hold for bail, set bail, impose fines or imprison offenders for any such breach of the peace, offense or violation in accordance with appropriate penalties, provided, however that the maximum penalty which the Alderman or Assistant Alderman may impose shall not exceed the limits established by the Town Charter, Town ordinances, and the laws of the State of Delaware.
- Neither the Alderman nor the Assistant Alderman shall be authorized to impose any fine in excess of \$500.00, exclusive of costs, nor imprisonment for more than thirty (30) days, or both.
- 16.6 Costs. The Alderman and Assistant Alderman may, in addition to any fine or term of imprisonment permitted to be imposed, assess and collect such costs as are set by an ordinance enacted by the Town Council, provided that no such costs may be imposed which are in excess of those which may be imposed by a Justice of the Peace for like services,
- 16.7 Alderman's Docket. Appropriate enforcement records shall be provided 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.
- 16.8 Monthly Report to Town Council. The Alderman and Assistant Alderman shall prepare and submit a monthly report to the Town Council reporting all fines, penalties, and costs imposed during the preceding calendar month and shall pay to the Treasurer of the Town all such fines and costs at such times as the Town Council shall direct. They shall submit periodic reports as required by the State of Delaware.

- 16.9 Compensation. The Alderman and Assistant Alderman shall receive such compensation as may be fixed from the time to time by resolution of the Town Council, which compensation shall not be contingent upon or related to the amount of any fines imposed or collected.
- 16.10 Bonding. The Alderman and Assistant Alderman shall be bonded by a company duly authorized to do business in the State of Delaware in such amount as determined by the Town Council.
- 16.11 Removal from Office. If any Alderman or Assistant Alderman shall be removed from office as hereinbefore provided, he or she shall deliver to the Mayor within five (5) days after removal from office, all the books and papers belonging to the office, and shall pay over to the Treasurer all funds on hand within five (5) days after reviewing the notice of such removal from office. Immediately after the receipt of such books, the Mayor shall require an audit to be made of the books and papers of the official so removed from office. 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 Treasurer within the time specified, the Alderman or Assistant Alderman, so removed, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each day of such delinquent behavior.

17. Subdivision and Land Development.

- 17.1 Power to Regulate. In order to provide for the orderly growth and development of the Town; to promote the health, safety, prosperity and general welfare of the present and future inhabitants and property owners in the Town; to insure the conservation of property values and natural resources, including the protection and beauty of the Town's open lands, water resources, and recreational potential; and to afford adequate provisions for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town Council shall regulate the subdivision of all land in the Town by ordinance.
- 17.2 Recording Plats, Plots or Plans. In the event an ordinance of the Town so provides, no plat, plot or plan of land shall be received for filing or recording by the Recorder of Deeds in and for New Castle County unless and until such plat, plot or plan shall have been approved by the Town body so authorized to grant such approvals and the fact of such approvals shall have been endorsed in writing on such plan documents.

18. Streets.

- 18.1 'Street' Defined. For all purposes of this Section, the word ,street' shall be deemed to include streets, roadways, lanes, guttering, curbing, crosswalks, sidewalks and parking areas but shall not include any State or Federal highways. (72 Del. Laws, c. 339, 6/23/00)
- 18.2 Power to Lay Out, Locate, Construct, Widen, Alter, Open, Close, Vacate or Abandon. The Town Council shall have the power and authority to lay out, locate, construct, widen, alter, open, close, vacate or abandon any street within the Town corporate limits.
- 18.3 Initiation of Proceedings. The procedures for taking the action described in Subsection 18.2 shall be established by ordinance of the Town Council.
- 18.4 Notice of Hearing. Such procedures shall require a notice of hearing that contains a description of the proposed action and fixes a date, time and place when the Town Council shall hold a hearing to hear comments and objections concerning the proposal. At least thirty (30) days before the date set for such hearing, the notice of hearing shall be printed in a newspaper having a general circulation in the Town of Odessa and shall be posted in three (3) public places in the Town.
- 18.5 Notice to Affected Property Owners. The Town Council shall cause to be sent by certified mail, return receipt requested, to the owner(s) of record of the real estate through or over which such street may pass. If the address of the owner be unknown, a copy shall be delivered to any persons occupying the premises, or, if none, posted thereon. Notice to affected property owners under this Subsection shall be provided at least thirty (30) days before the date set for the hearing.

- 18.6 Hearing. At the time and place specified by the resolution, the Town Council shall permit such residents of the Town or owners of properties affected thereby, to present oral or written comments. After hearing all comments, the Town Council shall, at said meeting, or at a subsequent date, as it may deem proper, adopt a resolution to proceed with the proposed laying out, locating, constructing, widening, altering, opening, closing, vacating or abandoning of any street(s) or parts hereof.
- 18.7 Payment of Compensation. In every case where the Town Council shall resolve to proceed with the plan contemplated, or a portion thereof, the Town Council shall award just and reasonable compensation to any person or persons who will thereby be deprived of property by virtue of the execution of the plan so contemplated. Such compensation, if any be awarded, shall be paid by the Treasurer of the Town of Odessa on a warrant drawn upon him by authority of the Town Council upon delivery of a good and sufficient deed conveying a fee simple title unto the 'Town of Odessa'; which title shall be free and clear of all liens and encumbrances. Notice of compensation shall be given to affected property owners as provided In Subsection 18.4.
- 18.8 Property Owner Right of Appeal. If the owner of the affected property is dissatisfied with the amount of compensation or damages allowed by the Town, said property owner may, within thirty (30) days after such notice was mailed, delivered, or posted on the property, appeal from the written notice of award of compensation such written appeal shall be deposited in the United States mail, by certified mail with return receipt requested and postage prepaid, to the Mayor of the Town, to the effect that such owner is dissatisfied with the amount of such compensation, and that is it the owner's intention to require the Town to condemn such property, or any compensable interest therein, in accordance with 10 Del. C. Chapter 61, or any future corresponding provisions of law. In such event, the Town shall proceed in accordance with 10 Del. C. Chapter 61, or any future corresponding provisions of law, to condemn such property, or any interest therein, for the purposes herein stated. (72 Del. Laws, c. 339, 6/23/00)
- 18.9 Disposal of Abandoned and Vacated Streets. Whenever any street or part thereof vacated or abandoned under this Section be owned by the Town, the Town Council may, in its discretion, sell such land at public or private sale and for such consideration as the Town Council shall deem proper. The Town Council shall have the right and power to convey to the purchaser or purchasers thereof, a good and sufficient title thereto for whatever estate the Town may have therein.
- 18.10 Maintaining and Repairing of Streets. The Town Council Shall have full power and authority (1) to regrade, redress and otherwise repair and rebuild all existing streets in the Town; and (2) to reconstruct, rebuild, repave and in any manner improve all existing streets now open or to be hereafter opened for public use in the Town.
- 18.11 Construction Supervision. Standards. The Town Council, in exercising the authority granted by this Section, may use such materials and substances and such methods of construction and may employ such contractors, engineers, inspectors and other persons as the Town Council may deem necessary. To this end, the Town Council shall have full power and authority to enter into contracts or agreements with the State Highway Department of the State of Delaware for the permanent maintenance and repair of any street within the corporate limits of the Town.

19. Public Water Systems.

The Town Council shall have full power and authority to provide an adequate supply of potable water for the Town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace; and control public wells, reservoirs, pumping machines and stations, tanks, standpipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, conveyance and distribution of water, over, on, under or through the lands owned by the Town or belonging to any private individuals. (72 Del. Laws, c. 339, 6/23/00)

The Town Council shall have power to enact ordinances, resolutions, regulations and rules in regard to the use for public or private purposes of water furnished by the Town; the amounts to be paid by the users thereof; the means or methods whereby the same amounts to be paid by the users thereof; the means or methods whereby the same shall be collected; the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with any water system facilities or equipment of the Town.

The Town Council shall have the power to make contracts for the purchase or sale of water and to distribute the same to users within or without the corporate limits of the Town.

The Town Council shall have the power to enter contracts for the sale of water outside the corporate limits of the Town upon such terms and conditions as the Town Council shall deem necessary; and also to enter into mutual aid agreements with other water suppliers conducting operations near the boundaries of the Town upon such terms and conditions as Town Council shall deem appropriate.

The Town Council shall have the power to enhance ordinances granting franchises for an appropriate term of years to use the present or future streets of the Town for the purpose of furnishing water to the Town and the inhabitants thereof.

In the interest of the public's health and welfare, the Town Council shall have the power to compel such properties to be connected to the water system of the Town.

20. Water Structures.

The Town Council shall have the power and authority to lay out, locate, construct, widen, alter, extend, improve, repair, vacate or abandon structures including, but not limited to, bulkheads, revetments and embankments for the preservation of any strand or waterway within the corporate limits of the Town. In the exercise of such power and authority, such materials and substances and such methods of construction shall be used, and such contractors, engineers, inspectors and other persons shall be employed as the Town Council shall deem necessary, subject to any controlling Federal or State statutes or administrative regulations. In addition, the Town Council may require such actions to be taken.

21. Referendum.

21.1 Referendum Power. The qualified voters of the Town shall have the right of referendum, and may exercise such right in order to approve or reject, at an election provided for herein, any ordinance, resolution, regulation or rule promulgated by the Council of the Town of Odessa in accord with the provisions of this Charter; provided, however, that such power of referendum shall not extend to any emergency ordinance, to any ordinance authorizing the borrowing of money under Sec. 13.2 ('Long-Term Borrowing'), to any ordinance annexing lands to the Town, to the adoption of the annual operating budget, to any ordinance relating to the appropriation of money, to any ordinance relating to the levy of taxes or to any ordinance otherwise subject to Special Election procedures provided under this Charter.

21.2 Petition for Referendum. In order to initiate a referendum under this Section, a referendum petition shall be presented to the Town Council, signed by qualified voters, qualified as of the date of such presentation, equal in number to not less than twenty-five percent (25%) of the total number of registered voters. Each copy of such petition shall contain the Odessa address of each of the signers and shall have attached thereto, throughout its circulation, the full text of the ordinance, resolution, regulation, or rule proposed for reconsideration. The Town shall supply up to five (5) copies of the measure for attachment to the petitions, and all additional copies shall be furnished by the petitioners. Each signature on a petition shall be executed in ink or indelible pencil. Each copy of the petition presented to the Town Council shall have attached thereto an affidavit executed by the person circulating such petition, stating that he/she personally circulated the petition and stating further the number of signatures thereon and that such signatures are the genuine signatures of the persons who signed, and that each signer had an opportunity, before signing, to read the full text of the ordinance, resolution, regulation or rule proposed for reconsideration.

21.3 Determination of Sufficiency of Petition. The Town Council shall examine any petition filed under this Section in order to determine whether or not the petition contains the required number of signatures and whether or not each signer is a qualified voter of the Town. If the

- petition is found to have an insufficient number of valid signatures, such insufficiency may be "cured" by the addition of signatures of qualified voters and re-submitted within sixty (60) days from the date of rejection by the Town Council.
- 21.4 Appeal of Council Decision. Any person or persons aggrieved by the rejection by the Town Council may present to the Superior Court of the State of Delaware for New Castle County, an appeal petition duly verified, setting forth that such rejection is invalid, in whole or in part, specifying the grounds of such invalidity. Such petition shall be presented to the Court within thirty (30) days following the determination by the Town Council as to the insufficiency of the referendum petition. Upon presentation of the appeal petition, the Court may direct the Town Council to reconsider its decision and shall prescribe the time within which a response to the Court must be made and also served upon the petitioner or his attorney. Such time shall not be less than ten (10) days and may be extended by the Court. The Court may reverse or affirm, wholly or in part, or may modify the Council's determination brought up for review.
- 21.5 Reconsideration Upon-Receipt of Petition. Upon a determination that the referendum petition is sufficient, either by the Town Council or by the Superior Court on appeal, the Town Council shall reconsider the referred ordinance, resolution, regulation or rule at its next regular meeting following such determination. If the Town Council fails to act on such ordinance, resolution, regulation, or rule it shall be submitted to the qualified voters for a referendum election as hereinafter provided.
- 21.6 Voting Procedure. The election on a referred ordinance, resolution, regulation or rule shall be held not less than sixty (60) days nor more than ninety (90) days from the date on which the Town Council failed to act. If the annual municipal election is to be held within ninety (90) days from such date, the referendum shall be held at that time. If the annual municipal election is not to be held within ninety (90) days from such date, the Town Council shall specify the date for the referendum. If the Town Council fails to hold a referendum within the time specified in this Section, the measure under review shall be deemed to be acted upon in favor of the petitioners at the expiration of the ninety (90) day period. (72 Del. Laws, c. 339, 6/23/00)
- (b) At any referendum conducted under this Section, a qualified voter shall be any person who would be entitled to vote in the annual municipal election if it were held on that day. Each qualified voter shall be entitled to one (1) vote.
- (c) Notice of the time and place of holding the said referendum shall be published at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days immediately preceding the date of the referendum. Such notice shall also be posted in three (3) public places in the Town, not less than thirty (30) days immediately preceding the date of referendum. In the event that such publications and posting do not appear on the same date, the date of the last publication or posting shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. The Mayor of Odessa shall appoint three (3) persons to act as Board of Special Election if the referendum is required. The polling place shall be open for a minimum amount of six (6) consecutive hours, the times shall be set by resolution of the Town Council. Persons in the polling place at the time set for the closing of the polls shall be entitled to vote even though such votes may be cast after the time set for the closing of the polls.
- (d) Immediately after the closing of the polls, the Board of Special Election, or the Board of Election if the referendum is held on the day of the annual municipal election, shall count the ballots for and against the proposition as presented, and shall announce the results thereof. Such Board shall certify the number of votes cast for and against the proposed ordinance and the number of void votes, and shall report the same to the Town Council. Such certification shall be filed with the official records of the Town of Odessa.
- (e) The form of the ballot of the referendum whether held on the day of the annual municipal election or at a special referendum. shall be as follows:
For the Referred Measure Against the Referred Measure
- (f) If the majority of the qualified voters voting on a referred measure vote in favor of such measure, it shall be considered binding on the Town upon the certification of the result of the referendum by the Board of Special Election or by the Board of Election as the case

may be. No ordinance, resolution, regulation or rule which has been acted upon as the result of the procedures of Sec. 21 shall be adopted in the same form by the Town Council for a period of six (6) months from the date of such action.

- 21.7 Non-binding Referendum. The Town Council may, on its own initiative, by resolution, determine to hold a non-binding referendum to obtain the opinion of the qualified voters of the Town on any subject which the Council has under consideration.

Any such referendum shall be conducted in such manner and with such public notice, as the Town Council shall determine by resolution provided, however, that any such resolution, and any public notice regarding such non-binding referendum shall clearly specify that such referendum is non-binding. The results of any non-binding referendum conducted under this Section shall not bind or obligate the Town Council to take any action or refrain from taking any action on the subject referred, but shall be informational in nature regarding the opinion of those qualified voters who voted in such election.

22. Eminent Domain.

The Town Council may, by condemnation proceedings, take private property or may exercise the right to use private property within the corporate limits of the Town for any of the purposes authorized by this Charter. The proceedings for such condemnation shall be as prescribed in 10 Del. C. Chapter 61 or any future corresponding provision of law. The right of condemnation shall not extend to property owned by the United States, the State of Delaware or any agency thereof.

23. Limitation on Liability.

No claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against the Town of Odessa, or any board, commission or agency of the Town, or any Town public officer, employee or member of such Town instrumentalities, whether elected or appointed, and whether now or previously serving as such, in any civil suit, or before any administrative tribunal on any and all tort claims seeking recovery of damages, unless made pursuant to Subchapter II, entitled 'County and Municipal Tort Claims', consisting of Sections 4010-4013. Title 10 of the Delaware Code or its successor.

24. Indemnification.

The Town shall indemnify, from the general funds of the Town's treasury, to the extent not otherwise covered by appropriate insurance, any person who is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Town of Odessa itself) by reason of the fact that he or she is or was a member of the Town Council, Mayor or other duly elected or appointed Town official or employee of the Town of Odessa, or arising out of actions taken by each or any of them in connection with the performance of their official duties, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Town, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Town of Odessa and with respect to any criminal action or proceeding had reasonable cause to believe that his or her conduct was unlawful; provided, however, that in the event of a monetary settlement, the Town Council shall first approve the amount and terms of the settlement before the right to indemnification shall vest.

Indemnification as provided in this section shall be made by the Town only as authorized in the specific case upon a determination that indemnification of the members of the Town Council, Mayor, Town Officer and/or employee is proper in the circumstances because he or she met the applicable standards of the conduct set forth above. Such determination shall be made:

- (a) by a majority vote of a quorum of the Town Council consisting of Council members who are not parties to such action, suit or proceeding, or

(b) if such quorum is not obtained, by independent legal counsel in a written opinion.

25. Compendium.

It shall be the duty of the Town Council to compile and reproduce the minutes of official meetings as well as ordinances, regulations, orders, rules or other decisions adopted by Town governmental bodies. The Town shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. Copies of such documents shall be made available to private persons at a reasonable cost. At least two copies of the Charter which shall have incorporated within it all amendments enacted by the General Assembly shall be kept at the Town office. Such copies may be typed, written, photographic processed or a combination of both. The Mayor shall make such further copies of the Charter, from time to time, as may be necessary. Copies of the Town Charter shall be available at the Town Hall for the perusal of the Town citizens.

26. Survival of Powers and Validating Section.

- 26.1 All powers conferred upon or vested in the Town Council of Odessa by any act or law of the State of Delaware not in conflict with the provisions of this Charter are hereby expressly conferred upon and vested in the Town of Odessa and/or the Town Council of Odessa precisely as if each of said powers was expressly set forth in this Charter.
- 26.2 All ordinances and resolutions adopted by the Town Council and in force on the effective date of this Charter, as amended, are continued in force until repealed, modified or altered by the Town Council under the provisions of this Charter.
- 26.3 All actions of the Town Council or of any Town official taken under the provisions of Delaware law, any Town ordinance or any prior Charter of this Town prior to the effective date of this Charter, as amended, shall continue in effect unless otherwise provided herein.
- 26.4 All taxes, assessments, license fees, penalties, fines, forfeitures and other charges due to the Town, and all debts owed to or by the Town, prior to the effective date of this Charter, as amended shall remain due and unimpaired.
- 26.5 All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town of Odessa.
- 26.6 The bonds given by or on account of any official of the Town of Odessa shall not be impaired or affected by the provisions of this Charter.
- 26.7 Each member of the Town Council who holds office at the time of approval of this Charter, as amended, shall continue to serve until the expiration of such term of office, as prescribed at the time of election.
- 26.8 All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter shall be and are hereby repealed to the extent of any such inconsistency.

27. Separability.

If any section, sub-section, paragraph, sentence, clause or other provision of this Charter shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining provisions, sections, sub-sections, paragraphs, sentences, clauses or other provisions of this Charter.

28. Public Act

This Charter shall be deemed to constitute a Public Act of the State of Delaware.

29. Effective-Date.

This Charter shall take effect as of August 1, 1991.