
Smyrna

1. Incorporation.

The inhabitants of the Town of Smyrna 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 Smyrna " (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, or 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 Smyrna previously incorporated at Chapter 339, Volume 62 Laws of Delaware, as amended.

2. Territorial Limits.

The boundaries of the Town of Smyrna are hereby established and declared as depicted on the most recent map entitled 'Town of Smyrna Municipal Limits' certified and dated by the Mayor and Secretary of the Town Council and of public record in the Office of the Recorder of Deeds for Kent and New Castle Counties. Such map or plot shall, from time to time, be updated and revised to reflect intervening changes in the Town's municipal boundaries and duly recorded, but failure to record such map shall not void an annexation. Such map or plot, or any supplement thereto, or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of law and equity in this State. 78 Del. Laws, c. 339, §1;

3. Annexation of Territory.

Subject to state laws of general application to municipalities pertaining to 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. For purposes of this section, "contiguous" means that a part of the boundary of the territory sought to be annexed is coterminous with a part of the boundary of the municipal corporation.

3.1 Initiation of Annexation Proceedings.

3.1.1 By Petition of the Property Owners. Any property owner(s) holding record fee title to real property in territory contiguous 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, state the reasons for the requested annexation, and identify the proposed zoning district classification(s) for such territory (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan). The Town Council may, within 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. Any petition not so accepted within said 90 days shall be null and void. For purposes of this subsection 3.1.1 and subsection 3.1.2, "territory contiguous to the then existing corporate limits of the Town" shall include both real property which, though itself not contiguous to the Town's then existing corporate limits, is contiguous to other real property which is proposed to be included in the annexation and real property which would be contiguous under subsection 3.2.10(b); provided, however, that where the contiguity of any parcel for annexation is dependent upon the annexation of another abutting parcel or parcels and such "connecting" parcel(s) is/are not annexed prior to or simultaneously with the dependent parcel, the annexation of such dependent parcel shall fail and be void for lack of contiguity.

3.1.2 Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory(s) contiguous to the Town. Such resolution shall describe, with reasonable certainty, the territory(s) proposed to be annexed, state the reasons for the proposed annexation, and identify the proposed zoning district classification(s) for such territory(s) (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan). Upon adoption of such resolution,

the Town Council shall proceed as hereafter provided. This resolution may be adopted at the same Town Council meeting at which the resolution required in subsection 3.2.1(a) is also adopted.

- 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 Resolution and Notice; Referral To Planning Commission.

- (a) 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, shall identify the zoning district classification(s) proposed for such territory if annexed (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan), shall describe the right of a qualified resident to object to the annexation, and shall fix a time and place for a public hearing on the subject of the proposed annexation and zoning. For purposes of this section, a "qualified resident" shall be any individual residing in the territory proposed for annexation who is not a property owner but who would be qualified under subsection 3.2.5(a) to vote for the annexation. A qualified resident may file a written objection to the annexation with the Town at any time prior to the close of the public hearing held pursuant to subsection 3.2.2. Such resolution may also provide that if the annexation is finally approved, the Town shall not be obligated to provide any municipal services or extend any municipal facilities or improvements unless and until the Town Council, in the sole exercise of its reasonable discretion, determines that it is appropriate for the Town to do so or the owner or developer of any property so annexed (or any portion thereof) binds itself, with reasonable surety acceptable to the Town, to pay in full all costs and expenses to provide such municipal services and/or to extend or construct such municipal facilities and improvements to serve such lands (in strict accordance with all governing federal, state, and Town regulations and standards), subject to an appropriate "recapture agreement" (acceptable to the Town) pursuant to which the owner(s) or developer(s) of other lands benefited by the services, extensions, or improvements paid for by the initial owner/developer under the recapture agreement would pay to the Town their equitably-determined proportionate share of such costs and expenses (as a condition precedent to obtaining such services, extensions, and/or improvements) which amounts the Town would, upon receipt, rebate to the owner or developer which had originally paid for those services, extensions, and/or improvements. The resolution setting forth the information shall be published at least once in a newspaper of general circulation in the Town and in the territory proposed to be annexed. Such publication shall appear no fewer than 14 days nor more than 60 days before the date set for the hearing. 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, no fewer than 14 days nor more than 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 5 public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed; (2) shall comply with the applicable provisions of 29 Del. C. Chapters 92 and 93 as those provisions may from time to time hereafter be amended (or with any future corresponding provision of law), and (3) 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 address as shown on the public tax records. Written notice to one co-owner shall be notice to all.

- (b) The Town Council shall forward a copy of the aforesaid resolution to the Planning Commission for its advisory review and comment. The Planning Commission's recommendations and comments shall be submitted to the Town Council at or before the public hearing held pursuant to subsection 3.2.2, provided that if such recommendations or comments are not received from the Planning Commission at or prior to such public hearing, the Town Council may proceed without the benefit thereof.

- 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 subsection 3.2.1) the Town Council shall sit to hear comments and opinion from any concerned party (and to receive the recommendations and comments of the Planning Commission, if any) regarding the proposed annexation and proposed zoning district classification. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding and the Town Council shall not be bound, in any way, to act in response to any information or comments offered at such hearing.

3.2.3 Annexations Not Requiring Special Election; Resolution Ordering Special Election.

- (a) Where the territory proposed for annexation is either initiated at the written petition of all of the owners of record of all lands proposed for such annexation or consented to in a notarized writing signed by all such owners and submitted to the Town Council no later than the conclusion of the public hearing held pursuant to subsection 3.2.2, and where the Town has received no written objection from a qualified resident of the territory proposed for annexation as defined herein, the Town Council may, at any duly noticed regular or special meeting held within six (6) months of the public hearing, vote to accept or reject such proposed annexation and if accepted, the Town Council shall proceed at that meeting, or at the next duly noticed regular or special Town Council meeting, to adopt a final resolution annexing the territory in accordance with subsection 3.2.7(c). In such cases, no special election shall be required.
- (b) Where fewer than all of the owners of record of all parcels of land within a territory proposed for annexation have requested annexation or consented to annexation by the close of the public hearing or where a qualified voter has filed with the Town a written objection to the annexation, at any time following the public hearing, the Town Council may (but is not required to) pass a resolution ordering a special election and setting the date, time, and place of the special election, which shall not be fewer than 14 days nor more than 60 days after the date of such resolution proposing the special election. Such resolution shall include a description of the territory proposed for annexation and shall identify the zoning district classification(s), consistent with the Comprehensive Plan, which shall be assigned to the parcel(s) if annexed. The passage of this resolution shall ipso facto be considered the determination of the Town Council to proceed with the matter of the proposed annexation and zoning district classification if the election results are in favor of the annexation.

3.2.4 Notice of Special Election. Notice of the date, time, and place of said special election shall be published no fewer than 14 days before the date set for said Special Election. Notice shall be published at least once in a newspaper of general circulation in the Town and in the territory proposed to be annexed, and shall be posted in at least five public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto, and shall include a description of the territory proposed for annexation and proposed zoning district classifications.**3.2.5 Those Entitled to Vote.**

- (a) At such special election, any person residing in the territory proposed for annexation who would be entitled to vote at the annual Town election if the territory proposed for annexation was already included in the Town, shall be entitled to one vote. (For purposes of this section "lawfully entitled to vote" shall not include "registered to vote" if registration is required for Town elections). In addition, each legal entity or natural person holding record title in its own name in any parcel proposed for annexation shall be entitled to one vote.
- (b) These provisions shall be construed so as to permit only "one-man, one vote". Where a voter is entitled to vote by virtue of both residence and ownership of property or is entitled to vote by ownership of two or more parcels, that voter shall be entitled to only one 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. Any natural person may cast his/her vote by a duly executed and acknowledged power of attorney. Such power of attorney shall be surrendered to the Board of Special Elections, which shall file same in the Office of the Town Manager. 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 or natural person granting the power.

3.2.6 Conduct of the Special Election. The Town Council may cause voting machines, electronic voting systems, or paper ballots 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 Town Board of Elections appointed pursuant to subsection 5.5.5(f) of this Charter shall act as a Board of Special Elections for the annexation. If there is not already a board chairperson, one (1) of the said Board of Special Elections members shall be designated the presiding officer by majority vote of the Board of Special Elections. The Board of Special Elections shall be the sole and final judges of the legality of the

votes offered at such special election. It shall keep a true and accurate list of all natural 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 such period of time as the Town Council determines to be reasonable and appropriate under the circumstances, provided the poll is open for at least one hour, 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 as property owners in the territory proposed to be annexed shall be deposited in designated ballot box(es) or cast in designated voting machine(s).

3.2.7 Results of special election; final resolution.

- (a) In order for the territory proposed to be annexed to be considered annexed, a majority of the votes must have been cast in favor of the proposed annexation.
- (b) If the vote is favorable to the proposed annexation, the Town Council shall, at its first meeting following the special election, proceed in accordance with subsection 3.2.7(c) to adopt a resolution annexing the said territory and including it within the limits of the Town ("final resolution"), as well as an ordinance designating the zoning district classification(s) of the territory(s) so annexed.
- (c) Whether acting pursuant to subsection 3.2.3 (all record owners request or consent to annexation) or 3.2.7 (majority of votes at special annexation election cast in favor of annexation), the Town Council shall adopt a resolution annexing the said territory and including it within the limits of the Town ("final resolution"). Contemporaneous therewith, the Town Council shall also adopt an ordinance designating the zoning district classification(s) of the territory(s) so annexed, which shall be consistent with the Town's Comprehensive Plan. If the initial resolution proposing annexation provided that the Town was not obligated to provide municipal services or to extend municipal facilities or improvements to the annexed lands as provided in subsection 3.2.1, the resolution annexing such lands shall contain the same or substantially similar provisions. Upon the adoption of said resolution of annexation, copies thereof, signed by the Mayor, and certified by the secretary, with municipal seal affixed, together with a plot of the area annexed, shall forthwith be filed for record in the Office of the Recorder of Deeds in and for Kent and/or New Castle counties and sent to the Office of State Planning or its successor agency. The territory so annexed shall be considered to be a part of the Town from the moment the last mentioned resolution is adopted by the Town Council. Failure to record said resolution, or the plot accompanying same, shall not invalidate the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction. 78 Del. Laws, c. 339, §2;

3.2.8 Simultaneous Annexation Proceedings. Provided that such parcels otherwise meet the requirements of this charter for contiguity, nothing herein shall be deemed to require the Town Council to include all contiguous parcels proposed for annexation as one "territory" in one annexation election, but the Town Council may, in its sole discretion, simultaneously conduct an annexation election on each such parcel, or on such combinations of contiguous such parcels, as it deems appropriate; nor shall anything herein prevent the Town Council, in its sole discretion, from combining two or more contiguous parcels proposed for annexation in one "territory" for purposes of conducting an annexation election.

3.2.9 Annexation Agreements. Notwithstanding any provision herein to the contrary, where, pursuant to § 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, site plan approval, tax relief, public utilities, and public improvements. No provision of any annexation agreement shall violate the Town's Comprehensive Plan. The Town Planning Commission shall review any Annexation Agreement submitted and make a report or recommendation thereon to the Town Council which shall make the final decision. The Town Council may, with the concurrence of the entity petitioning for annexation, make revisions to the Annexation Agreement in response to the comments and recommendations of the Planning Commission without reconsideration by the Planning Commission. In the event the Town Council approves such an agreement and votes to accept a petition under § 3.1.1 of this Charter, such Annexation Agreement, as reviewed and finally approved, shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure; that is: (1) the resolutions and notices adopted by the

Town Council pursuant to § 3.2.1., § 3.2.3, § 3.2.4, and § 3.2.11 shall recite that the proposed annexation includes and is subject to an Annexation Agreement, shall briefly summarize its terms, and shall state that copies of the Agreement are available upon request at the Town Hall; (2) if the results of the election are favorable to the proposed annexation as provided by § 3.2.7(a) of this Charter, the resolution annexing the territory (as provided by § 3.2.7(b)) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and the Town shall be bound to honor the provisions of such agreement unless released therefrom by the petitioner(s).

Provided Further, that no Annexation Agreement made at the time of annexation under this § 3.2.9 shall extend beyond seven 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 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 § 3.2.3 of this Charter, but any substantial modification or amendment shall be deemed to be the withdrawal of the original petition and the filing of a new petition under § 3.1.1.

3.2.10 Property Owned by the State of Delaware; Highways, Streets, Roads and Alleys; Ponds, Canals, Streams and Other Waters.

- (a) Real property owned by the State of Delaware may be annexed into the Town without the State's 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 30 days after notice of the resolution proposing the annexation as provided in § 3.2.1.
- (b) Highways, Streets, Roads, and Alleys; Ponds, Canals, Streams, and Other Waters. Contiguity with the Town's existing corporate limits, or with other territory which is itself contiguous with the Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, pond, canal, stream, or other body of water running parallel with and between the parcel sought to be annexed, but nothing herein shall be construed to allow rights of way, utility easements, waterways, or like entities to be annexed in "corridor" fashion or to be utilized as a corridor route for annexation to create contiguity.
- (c) Whenever the Town Council authorizes an annexation, all streets, roads, and alleys immediately adjacent to the annexed parcel, up to the centerline of the street, road, or alley, shall be deemed annexed into the Town. 83 Del. Laws, c. 131;

3.2.11 Limitations. No action contesting the annexation of any territory under this section shall be brought after the expiration of 60 days from the publication of a notice in a newspaper 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 60 days from the date of publication of such notice or forever be barred from doing so.
- (c) Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.
- (d) In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (a) and (b) above (using date of "posting" for date of "publication"), to be posted in at least five (5) public places in the Town, viewable to the public, one of which places shall be in the territory annexed.
- (e) In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.

3.2.12 Re-submission of Proposed Annexation. Nothing in this section shall prohibit the Council from resubmitting a proposal for annexation to the voters of said territory, or any portion thereof, under the authority of this section and in accordance with the provisions hereof.

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 pleasure.
- 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 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, squares, lanes, alleys, and sidewalks;
 - (d) sewer systems, including but not limited to sewage lines, conduits, lift stations, sewage disposal or treatment plants, and all appurtenances thereto;
 - (e) water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;
 - (f) electric systems, including but not limited to, electric plants, substations, distribution systems, lines, conduits and all appurtenances thereto;
 - (g) gas systems, including but not limited to storage tanks, distribution systems, conduits and all appurtenances thereto;
 - (h) recreational facilities, including but not limited to public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;
 - (i) for slum clearance and redevelopment, urban renewal, revitalization, or rehabilitation of blighted areas or removal of dangerous buildings;
 - (j) for the protection of the health of the citizens of the town;
 - (k) for the proper furnishing of adequate municipal services to the citizens of the Town and those persons residing in such proximity to, but beyond, the corporate limits of the Town who can be furnished with such municipal services, in the discretion of the Town Council to the mutual benefit and advantage of the Town and such non-residents thereto, upon such terms, charges, and conditions as the Town Council may determine and approve.
- 4.2.3 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 of the State of Delaware or as restricted by this Charter.
- 4.2.4 May pay for the acquisition, construction, improvement, repair, extension, alteration, or demolition of any municipal or public 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, trash bill, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances and the like, laying out and repairing sidewalks, or other charge due the Town, and to sell the same.
- 4.2.7 May ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair and replace any new or present street, highway, lane, alley, water course, park, lake, crosswalk, wharf, dock, sewer, drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town and the beach or beach strand in or contiguous to the Town; to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; to enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the Town.

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- 4.2.8 May enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners.
 - 4.2.9 May prohibit, remove or regulate the erection of any stoop, step, platform, bay window, cellar door, gate, area, descent, sign, post or any other erection or projection in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, wharf, dock, sewer, drain, aqueduct or pipeline of the Town.
 - 4.2.10 May provide, construct, extend, maintain, manage and control dams, jetties, bulkheads, embankments, flood gates, piers, or fills for the preservation of any strand or high land within the limits of the Town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof.
 - 4.2.11 May direct, regulate and control the planting, rearing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and grounds of the Town and to authorize or prohibit the removal or destruction of said trees.
 - 4.2.12 May fully control within the Town the drainage of all water and to that end to alter or change the course and direction of any natural water course, runs or rivulet within the Town, to regulate, maintain, clean and keep the same open, clean and unobstructed, and to provide, construct, extend and maintain, manage and control a surface water drainage system and facilities for the health, sanitation and convenience of the inhabitants of the Town.
 - 4.2.13 May provide an ample supply of potable water for the Town and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, 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; to 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 wilful or negligent injury, or damage to or interference with the water system or the equipment of the Town; in the interest of the public's health, may compel any and all properties in the Town to be connected to the water system of the Town; may furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and may contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself.
 - 4.2.14 May 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; may 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 wilful or negligent injury or damage to, or interference with the said system, plant or facilities; may furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits; in the interest of the public's health, may compel any and all properties in the Town to be connected to the sewer system of the Town; and may contract for sewer collection, treatment and/or disposal service and to resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself.
 - 4.2.15 May provide, construct, extend, maintain, manage and control the plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the Town and for lighting the streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, crosswalks, wharfs, docks, public buildings or other public places in the Town, and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the Town, and to furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; to regulate and prescribe for what private or public purpose the current or gas furnished by the Town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any wilful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; to furnish or refuse to furnish electric current or gas from the Town's system or systems, to places and properties outside the Town limits; and to contract for and purchase electric current or gas and distribute the same to users within or without the

Town with the same full powers as though such current or gas had been initially reduced to usefulness by the Town itself.

- 4.2.16 May regulate, control or prevent the use or storage of gasoline, naphtha, gun powder, 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; may regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may pose a danger of causing fires.
- 4.2.17 May provide for the organization of a fire department and the control and government thereof; may establish fire limits and do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, may contribute, donate or give an amount or amounts 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, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable.
- 4.2.18 May provide for the organization of ambulance, rescue or paramedic services(s) and the control and government thereof; may, at the discretion of the Town Council, contribute, donate or give an amount or amounts 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, donation or gift may be made subject to such conditions and stipulations to the use thereof as the Town Council may deem advisable.
- 4.2.19 May prevent vice, drunkenness, and immorality.
- 4.2.20 May prohibit gaming and fraudulent devices.
- 4.2.21 May prevent and quell riots, disturbances, and disorderly assemblages.
- 4.2.22 May adopt and enforce such ordinances regulating traffic, on all streets, alleys, avenues, and public ways within the Town as are not inconsistent with the motor vehicle laws of the State of Delaware.
- 4.2.23 May regulate or prohibit the use of public streets, alleys, sidewalks, boardwalks, beaches, parks, right-of-ways, public places and Town-owned lands for commercial uses or activities not otherwise protected from such regulation or prohibition by the Constitutions of either the United States or the State of Delaware, or by any controlling federal statute.
- 4.2.24 May regulate or prevent the use of guns, air guns, spring guns, pistols, sling shots, bow and arrows, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and to regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds.
- 4.2.25 May provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants.
- 4.2.26 May prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games.
- 4.2.27 May direct the digging down, draining, filling up, cleaning, cutting or fencing of lots, tracts, pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter and to assess the cost thereof against the owner thereof.
- 4.2.28 May define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare; and to cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist.
- 4.2.29 May adopt ordinances providing for the condemnation, upon inspection, of any building or structure in the Town which is determined, on the basis of standards set forth in such ordinance(s) to be a fire hazard or otherwise unsafe, and cause the same to be torn down or removed; and to cause the cost of such demolition and removal to be paid by the legal entity causing or permitting same to exist.
- 4.2.30 May establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and to authorize the destruction of the same; and to regulate the keeping of dogs within the Town, and to provide for registration and fees thereof.
- 4.2.31 May provide civil penalties or criminal penalties for the violation of any ordinance of the Town by fine or imprisonment or both, not exceeding \$1,000.00 and/or thirty days imprisonment for each offense. 78 Del. Laws, c. 339, §3;
- 4.2.32 May acquire, build, erect and maintain a suitable place as a lock-up or jail for the Town which shall be used as a place for detention of persons accused of violations of law or ordinances, for a reasonable time in

cases of necessity prior to hearing and trial; provided that any correctional institution located in Kent or New Castle County may be used for any such purpose, in which event the Town shall pay for the board of persons committed thereto for violations of ordinances which are not violations of any general law of the State.

- 4.2.33 May provide for payment of any tax, license, assessment, fee, charge, or other amount due the Town by the performance of labor or service for the town by any person owing the same.
- 4.2.34 May regulate and control the manner of building, moving, or removal of dwellings or other structures and to provide for granting permits for same.
- 4.2.35 May prohibit and prevent the carrying on of construction by private persons or companies at such times and seasons of the year and at such hours of the day as the Town Council may determine necessary and appropriate for the public health and welfare.
- 4.2.36 May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues.
- 4.2.37 May, for the prevention of fire and the preservation of the beauty of the Town, establish a building line for buildings to be erected; may zone or district the town and make particular provision for particular zones or districts with regard to building or building materials; and may prohibit any building or construction except those for which a building permit has been issued as prescribed by the Town Council; and generally may exercise all powers and authorities vested by virtue of 22 Del. C. Chapter 3, as it may hereafter from time to time be amended, or any future corresponding provision of law.
- 4.2.38 May license, tax and collect fees 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, or renting out any real or personal property, within the limits of the Town.
- 4.2.39 May impose, upon new development or construction or upon first time occupancy of new construction, such "impact fees" as are reasonably and proportionally calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements which have a rational nexus to such new construction; and/or to contribute to the costs of operations of those volunteer fire companies and/or ambulance/paramedic companies providing services within the Town.
- 4.2.40 May grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits of the Town.
- 4.2.41 May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restrictions, stipulations and conditions and for such consideration as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, boardwalks, crosswalks, wharfs, docks, beaches and other public places of the Town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, internet services, railroad (excepting railroads or railways engaged in Interstate Commerce), bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof; provided, however, that whenever any state or federal law grants jurisdiction over any such activity to a state or federal agency, the Town shall have no authority inconsistent therewith.
- 4.2.42 May regulate and control the exercise of any license or franchise mentioned in Section 4.2.41 of this Charter, or intended so to be.
- 4.2.43 May appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency.
- 4.2.44 May inquire into and investigate the conduct of any officer, agent or employee of the Town or any municipal affair and for such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena.
- 4.2.45 May establish a Pension, Health, Dental, or other insurance plan, (including participation in any pension, health, dental, or insurance plan offered by or through the State of Delaware) for the employees of the Town under such terms and conditions as the Town Council, in its discretion, may deem most appropriate. The method of funding may, if deemed desirable by the Town Council, be accomplished through an insurance company or brokerage firm licensed by the State of Delaware or authorized to do business in this State.

- 4.2.46 May determine what purposes are deemed to be public purposes or municipal purposes.
- 4.2.47 May make, adopt, and establish, alter and amend all such Ordinances, Regulations, Rules, and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the order, protection and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants; provided, however that any Ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one (1) mile from said limits.
- 4.2.48 In addition to all other powers the Town Council of the Town of Smyrna may have, and notwithstanding any limitation of law, the Town Council of the Town of Smyrna shall have all powers and may undertake all actions for the purposes set forth in, and in accordance with chapter 17, Title 22 of the Delaware Code relating to the Municipal Tax Increment Financing Act, and with Chapter 18 relating to Special Development Districts. Notwithstanding anything to the contrary contained in Section 1801(2)(a) and (b) of Title 22 of the Delaware Code, the machinery and equipment financed pursuant to the Municipal Tax Increment Financing section or the Special Development Districts of 4.2.48 of Chapter 176, Volume 24, Laws of Delaware may include the machinery and equipment needed to expand or enhance services provided by the Town of Smyrna, or the State of Delaware or any agency or instrumentality thereof, or any County, local political subdivision, instrumentality, agency, body politic, utility district or similar entity within the State of Delaware, to a TIF District or a Special Development District. All provisions of Sections 10 and 13 and any other section of this Charter limiting the amounts of indebtedness to be incurred or taxes to be levied by the Town Council of the Town of Smyrna shall not apply to any indebtedness incurred or any special ad valorem taxes, special taxes, or ad valorem taxes levied pursuant to or in connection with the exercise of such powers. Bonds are non-recourse to the Town and shall only be paid from Tax Increment Financing (TIF) or Special Development Districts (SDD) assessments permitted by 22 Del. C. Chapters 17 and 18, and from (i) voluntary contributions by entities exempt from taxation and assessment for public purposes under 9 Del. C. §8105, (ii) bond proceeds on deposit in debt service reserve funds and other funds established under an indenture for such bonds, (iii) proceeds of any tax or monition sales (including accrued interest and penalties) properly allocable to unpaid TIF or SDD assessments, and (iv) any interest earnings on any of the foregoing. These bonds are non-recourse to property owners who purchase subject to a TIF or SDD. Property owners who purchase subject to a TIF or SDD shall only be responsible for TIF or SDD obligations determined by the individual assessment of their property. 76 Del. Laws, c. 405;
- 4.2.49 Where the title to real property is held by an association of property owners (e.g. homeowner association, condo association, maintenance association), the Town may assess each member of the association individually, on a pro-rata basis, for any expenses incurred by the Town to bring the real property held by the association into compliance with the Town laws and ordinances, where the association has failed to make payment in full within 60 days after written demand from the Town. When the Town has a good faith belief that the association is defunct or no longer has a functioning board (or other similar representative body), the Town shall provide notices directly to, and make demand of, individual association members. Notwithstanding the provisions of 25 Del.C. §81-317, assessments pursuant to this section may be collected in the same manner as other amounts owed to the Town. 78 Del. Laws, c. 339, §4;
- 4.2.50 The Council may impose and collect a lodging tax of no more than 3% of the rent, in addition to the amount imposed by the State or any other government agency, for the occupancy of any room or rooms in a hotel, motel, or tourist home, as defined under § 6101 of Title 30 of the Delaware Code, which is located within the boundaries of the Town of Smyrna. 83 Del. Laws, c. 131;
- 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 of the State of Delaware, it would be competent for this Charter to specifically enumerate.
- 4.4 Manner of Exercising Powers. 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 resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters in this Charter duly authorized.

- 4.5 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 the State of Delaware or with any agency or political subdivision 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 Council

5.1 Governing Body; Election Districts.

5.1.1 Governing Body. The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in and exercised by a Town Council composed of a Mayor and six (6) Council members to be chosen as hereinafter provided. Unless the context is clearly to the contrary, the term "Council" or "Town Council" herein shall mean the Mayor and Council members.

5.1.2 Election Districts. In order that the members of the Town Council shall be distributed throughout the Town, before March 1, 2004, the Town Council shall, by ordinance, divide the Town into no fewer than three (3) representative districts, such districts to be drawn so that the same shall be reasonably equal in population. The Town Council may thereafter provide, by amendatory ordinance, for the creation of up to three (3) additional districts and/or re-arrangement of the boundaries of existing districts in the event of annexation or significant increases in the total population of the Town, but such revisions shall continue to result in districts of reasonably equal population.

- (a) District and "At-Large" Representation. The Town Council shall be comprised of one Council member from each representative district (identified as such); the Mayor and the remaining Council members may be domiciles of any representative district, and shall be elected "at large." At any Town election, each qualified voter of the Town shall be entitled to vote for one candidate for each "at large" office to be filled, but only those qualified voters who, for at least 30 days prior to the date of the election, have been continuously domiciled in the representative district for which a seat is up for election shall be entitled to vote for a district representative candidate.
- (b) Re-Districting; Public Hearing; Notice. In a timely manner upon the release of the decennial census data (commencing with the release of the 2010 census), the Town Council shall review the population of the then-current election districts to determine if they are reasonably equal in population. In the event that any action is subsequently taken to create a new election district or to revise the boundaries of the then-existing election districts, the Town Council shall hold at least one public hearing, on not fewer than 30 days public notice, stating the date, time, place, and purpose of the hearing which public notice shall be: (i) published in a newspaper of general circulation in the Town and (ii) posted in at least five public places in the Town. The Town Council shall conduct its review and any proceedings or actions resulting therefrom, so that the boundaries of the new or revised representative districts are finalized and set forth in an appropriate ordinance no later than the second regular Council meeting in February of the year following the year in which the review was commenced. Notice of such new or revised representative districts shall be promptly published in a newspaper of general circulation in the Town and posted in at least five public places in the Town.
- (c) "Phase-In" of District Representation; Creation of Additional Districts. The present Mayor and Council members of the Town, and other officers appointed to serve, in office under Chapter 339, Volume 62, Laws of Delaware, as amended, shall continue to serve from and after the effective date of this Charter, until their successors are duly elected or appointed. In 2004, two persons shall be elected to the Town Council to fill the vacancies created by the expiration of the terms of office of the two then-outgoing Council members. One of those two vacancies shall be designated as the representative for the 1st representative district and candidates for such seat shall be domiciled in that district. In 2005, three (3) persons shall be elected to fill the vacancies created by the expiration of the terms of office of the then out-going Mayor and two Council members. One of the two Council member vacancies shall be designated as the representative for the 2nd representative district and candidates for such seat shall be domiciled in that district. In 2006, two persons shall be elected to fill the vacancies created by the expiration of the terms of the two then out-going Council members, and one of those two vacancies shall be designated as the representative for the 3rd representative district, and such candidate shall be domiciled in that representative district.

In the event that the Town Council subsequently acts to create new, additional election districts as provided in subsection 5.1.2 above, the vacancy created by the expiration of the term of the then out-going at large Council member shall be designated as the representative for the 4th (or, if necessary, the 5th and 6th) representative district, and candidates for that seat shall be domiciled in the representative district for which they are seeking election. Any Council member who ceases to reside in his or her representative district as a result of the changing of district boundaries or the creation of a new district shall be entitled to complete his or her current term of office.

- (d) Where No Qualified Candidate Files To Run. In the event that no qualified candidate files a timely "Notice of Candidacy" under subsection 5.3 to run for a district seat or an "at-large" seat, (i) such district seat shall be filled for that term of office by the "at-large" candidate receiving the second-highest number of votes for the at-large seat or (ii) such "at-large" seat shall be filled for that term of office by the candidate for the district seat receiving the second-highest number of votes for the district seat.

- 5.2 Qualifications. Candidates for the office of Mayor or Council member shall be at least 21 years of age, shall not have been convicted of a felony, shall have been a bona-fide domiciliary of the Town for at least one year prior to the date of the election, and shall be otherwise qualified to vote at the annual Town election as provided in subsection 5.5.2. Additionally, any candidate for a representative district Council seat shall have been a bona-fide domiciliary of his/her representative district for at least one year. Any person elected to the office of Mayor or Council member must continue, throughout his/her term of office, to meet these qualifications or forfeit his/her office; provided however, that if a Council member with less than one year remaining in his/her term of office shall change that domicile to another representative district in the Town, such Council member shall not, for that reason, be disqualified from or forfeit his/her office.

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 Notice of Solicitation of Candidates; Notice of Candidacy; Determinations Concerning Qualifications; Filing Certificate of Intention and Statement of Organization.

- 5.3.1 Notice of Solicitation of Candidates; Notice of Candidacy. Notice of solicitation of candidates shall be posted conspicuously within the municipality twenty (20) days prior to the filing deadline for the offices up for election and shall include the terms of the offices up for election, the qualifications to run for each office, and the filing procedures and deadline to run for office. In order to be listed on the ballot at any regular or special Town election, each candidate shall file a written and signed notice of intention to seek office with the Town Manager, on a form prescribed by the Town, before the second regularly scheduled Town Council meeting in March. Such form shall contain an affidavit that the candidate meets all the qualifications for office. The Town Manager shall present all timely received notices of candidacy to the Town Council at the second regularly scheduled meeting in March. No later than one (1) business day following the second regularly scheduled meeting in March, the Town Manager shall submit the names of candidates for each office up for election to the Department of Elections. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the notice of solicitation of candidates.

- 5.3.2 Determinations Concerning Qualifications. If the Town Manager determines that any candidate may not meet the qualifications for office, he/she shall notify the Mayor who shall call a special meeting of the Town Council to be held no fewer than twenty-one 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 hearing, at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications for office, it shall reject his/her 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 competing for that seat shall be entitled to vote on the question.

- 5.3.3 Elected Officials Running for the Office of Mayor. Any member of the Town Council whose term of office is not expiring at the next upcoming Town election may file to run for the office of Mayor without resigning his or her seat on Council. If such a member of Council is not elected to the office of Mayor, such Council member shall continue to serve in his or her seat on the Town Council; if such a member of Council is elected to the office of Mayor, that member's prior seat on Council shall become vacant upon that member's taking office as Mayor, and a special election shall be held as soon as practicable thereafter to fill the vacancy on Council so created.

5.3.4 Filing Certificate of Intention and Statement of Organization. All candidates shall file a certificate of intention or statement of organization if either is applicable and required under 15 Del.C. Ch. 75 ("Municipal Election") as those provisions may from time to time hereafter be amended or with any future corresponding provision of law.

5.4 Term of Office. The term of office for the Mayor shall be two years from the date of the election, and the term of office for each Council member shall be three (3) years. Newly-elected persons shall hold office from the date they are sworn into office and until their respective successors have been duly elected and qualified.

5.5 Elections.

5.5.1 Compliance with State Regulations. The Town shall act in accordance with the state laws governing municipal voting found in 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law, and the Town shall implement the election provisions found in this Charter in accordance with the same state laws governing municipal voting.

5.5.2 Voter Qualifications. Any person shall be qualified to vote who, on the date of the election:

- (a) is a United States citizen;
- (b) has attained eighteen (18) years of age;
- (c) has been continuously domiciled in the Town for at least thirty (30) days;
- (d) has not been adjudged a mentally incompetent person by a court of competent jurisdiction; and
- (e) has not been disenfranchised pursuant to Sections 3 or 7 of Article V of the Constitution of the State of Delaware.

Persons appearing to vote shall present proof of identity and address pursuant to 15 Del. C. Ch. 75 ("Municipal Elections"). For purposes hereof, a person is "domiciled" in the Town when he/she physically resides within the corporate limits of the Town with the actual intent to make that residence his/her fixed and permanent home; however, any person who is enlisted or engaged in any government service of the United States or any military organization of this State of the United States, which service requires him/her to reside outside the limits of the Town, shall be considered to be a domiciliary of the Town during the period of his/her service so long as it remains his/her actual intention to retain Smyrna as his/her fixed and permanent home. All questions regarding an individual's qualification to vote raised prior to the day of the election shall go before the Board of Elections and an individual shall be given notice and an opportunity to be heard before the Board of Elections makes a determination regarding that individual's qualification to vote. Questions regarding an individual's qualifications to vote that are raised at the time of voting shall be resolved by the Board of Elections or its designated Election Officers.

5.5.3 Voter Registration. The Town Council may enact such ordinances concerning the registration of qualified voters for municipal elections in the Town as it deems reasonably necessary to provide for the orderly and efficient conduct of municipal elections; provided that no such ordinances shall alter the qualifications of voters as hereinabove set forth, nor shall any such ordinances unduly impair the right to vote in a municipal election.

5.5.4 Uncontested Elections; Write-In Candidates.

- (a) Where there is only one official candidate for each office up for election, if none of the official candidates has a formal opponent on the day of election, the official candidates may assume office without the holding of a formal election.
- (b) No person or candidate whose name does not appear on the ballot shall be eligible for election, and votes for "write-in" candidates shall not be counted.

5.5.5 Date, Time, and Place and Manner of Conducting Elections.

- (a) Date, Time, and Place. The annual Town Election shall be held on the last Tuesday in April of each year at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for no fewer than six (6) hours, the times to be determined by the Town Council.
- (b) Notice of Elections. Notice of Town elections shall be posted in a conspicuous public place no later than twenty (20) days prior to the election date. Additionally, notice of elections shall be published at least once per week for two successive weeks immediately prior to the date of the election in a newspaper of general circulation in the Town. 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 postings

do not appear on the same date, the date of the first publication shall control. The notice of elections shall include the date, time, and place of the election, the names of the candidates for each office, and the qualifications to vote. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the notice of elections.

- (c) Voting machines. Elections shall be by voting machine provided by the Department of Elections in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. Separate voting machines or electronic voting system controls shall be utilized to insure that only those persons entitled to vote for candidates running for representative districts seats are allowed to vote for such candidates.
- (d) Absentee Voting. The Town Council may (but shall not be required to), by ordinance, provide for a qualified voter (duly registered if required by ordinance) who shall be unable to appear in person, to cast his or her ballot at any municipal election by absentee ballot. All absentee voting authorized by the Town shall be conducted in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provision of law.
- (e) Rules Governing Conduct of Elections. The Town Council shall follow the rules governing the conduct of elections and voting procedures found in 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the conduct of elections.
- (f) Board of Elections. Every election shall be held under the supervision of a Board of Elections. The Board of Elections shall consist of five (5) persons (as determined by the Town Council) who shall be qualified voters of the Town and shall not be an elected official or candidate for Town office or an immediate family member of such (mother, father, son, daughter, brother, sister, including half-brothers and sisters, step-family members and in-laws) and who shall be appointed for that purpose by the Town Council at least twenty (20) days before such election. The Board of Elections shall serve for a term of one year commencing the second Council meeting in February, provided that the term of the Board of Elections shall in no instance expire until a successor Board of Elections has been appointed. Members of the Board of Elections may serve for more than one term. Each board member shall be confirmed and have his/her name and contact information publicly posted in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. The Town shall notify the State Election Commissioner and Department of Elections of the members appointed to the Board of Elections. The Board of Elections shall oversee the absentee ballots and either appoints an odd number of absentee ballot judges or, at the discretion of the Town Council act itself as the absentee ballot election judges. If, at the opening of the polls, there shall not be present all the members of the Board of Elections, 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 Board of Elections to fill such vacancies caused by the absence of the previously-appointed members of the Board of Elections through the conclusion of the election. Members of the Board of Elections shall be the sole and final judges of the conduct of the election and of the legality of the votes offered. The Board of Elections shall keep a list of all voters voting at said election. The Board of Elections shall have the power to subpoena persons, and officers of the Town, and books, records and papers relative to the determination of the qualifications of voters and the legality of any vote or votes offered. The Board of Elections may appoint election officers (including an inspector) when needed to administer elections. In the absence of the appointment of election officers, members of the Board of Elections shall act as election officers, and the Board of Elections shall designate one of the board members as the inspector.
- (g) Election Results. Upon the close of the election, the Board of Elections shall count the votes, and the candidate having the highest number of votes for each office shall be declared, by the Board of Elections, to be duly elected to such office.
- (h) Ties. In the event of a tie vote for any office, the Board of Elections shall determine such tie by the casting of lots.

- (i) Preservation of Ballots and Records. All ballots cast and all records of the election kept by the Board of Elections shall be preserved in the custody of the Board of Elections for a period of thirty (30) days, unless the election is contested or an appeal is filed in a court of appropriate jurisdiction, in which case such ballots and records shall be preserved until further direction of the reviewing body or court having jurisdiction.
- (j) Election Record Book. The Board of Elections shall enter in a book, to be provided for that purpose, the results of the election, containing the names of the persons elected. The members of the Board of Elections shall subscribe the same. The book, containing such matters, shall be preserved by the Town Council. 78 Del. Laws, c. 339, §5;

6. Town Council.

- 6.1 Organizational Meeting. An organizational meeting of the Town Council shall be held as soon as practicable, but not fewer than seven (7) days, following the determination of the election results by the Election Board. Such meeting shall be held at the usual place for holding regular meetings. The newly elected Councilmembers shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity, which oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, the Mayor, or by one of the holdover Councilmembers. 78 Del. Laws, c. 339, §6;

At the organizational meeting, the Mayor shall appoint, from among the other members of the Town Council, a Vice-Mayor and Secretary, subject to confirmation by the Town Council. Each of these officers (i.e. the Vice-Mayor and Secretary) shall serve in that position for a term not to exceed the remainder of the incumbent Mayor's term, unless sooner removed from such office by action of the Town Council. 83 Del. Laws, c. 131;

- 6.2 Officers. The offices of Mayor and council member shall be elective. All other officers shall be appointed offices, such appointment to be made by the Town Council, as provided in § 7 of this Charter.

- 6.2.1 Mayor. It shall be the duty of the Mayor to preside at all meetings of the Town Council, to serve as the representative of the Town government for all ceremonial purposes and head of the Town government for purposes of military law, and to perform such other duties as may be prescribed by any ordinance or resolution adopted by the Town Council. The Mayor shall have the same right as other Council members to vote on all matters and may at any time appoint another Council member to preside if he/she desires to make a motion, move the adoption of a resolution, second either, or debate any question from the floor, and may thereafter immediately resume his/her duties as presiding officer. For purposes of establishing a majority vote or quorum, the Mayor shall be counted as a member of Council.

The Mayor shall be authorized to act on behalf of the Town, without prior Council approval, in the event of some sudden emergency requiring prompt action in order to protect the public health, safety, and welfare of the Town, its residents 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 civil 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 Smyrna. If reasonably possible, the Mayor shall notify each Council member, in writing, by personal delivery, fax, e-mail, overnight courier service, or U.S. mail, of the action so taken within 48 hours. Notice shall be complete upon depositing such notice in the U.S. Mail, proper postage affixed, to each Council member at his/her last known address, upon personal delivery to the Council member or an adult residing with the Council member, or by confirmation of receipt of such overnight delivery, fax, or e-mail transmission.

Any action taken by the Mayor under the powers vested in him/her under this section shall be as good as the act of the entire Council, provided that the Council may at a regular or special meeting held within 15 days of the Mayor's action, cancel the further implementation of any such action not yet completed and notify any persons or legal entities affected. 78 Del. Laws, c. 339, §7

- 6.2.2 Vice Mayor. The Vice-Mayor shall act as Mayor during the absence or disability of the Mayor, and while so acting, shall be vested with all the powers, duties, and authority of the Mayor. The Vice-Mayor shall perform such other duties as may be assigned to him by the Mayor or by ordinance or resolution adopted by the Town Council.
- 6.2.3 Secretary. The Secretary shall have general supervision of the Town's records and documents. The Secretary shall cause to be kept a true and faithful record of the proceedings of the Town Council. During the temporary absence or disability of the Mayor and Vice-Mayor, the Secretary shall act as Mayor and

while so acting, shall be vested with all the powers, duties, and authority of the Mayor. The Secretary shall also have such other duties as directed by ordinance or resolution of the Town Council.

6.2.4 Filling Vacancies. If a vacancy shall occur in the office of Vice-Mayor or Secretary, the Mayor shall appoint such qualified person to fill such vacancy for the remainder of that term, subject to Council confirmation.

6.2.5 Succession of Authority. In the event that the Mayor is unavailable or incapable of assuming his/her responsibilities in a sudden emergency (as defined in § 6.2.1) the emergency powers therein vested in the Mayor shall devolve upon the following officers and officials of the Town in the following order of sequence: (1) Vice-Mayor, (2) Secretary, (3) each of the four remaining Council-members in order of their total number of years served on Council, (4) the Town Manager, (5) the Assistant Town Manager, (6) the Chief of Police, (7) the Building Inspector.

6.3 Prohibitions.

6.3.1 Holding Other Office; Employment Restrictions. Except where authorized by law, no member of the Town Council, nor the Mayor, shall hold any other Town Office or Town employment while serving in office, and any former Mayor or council-member shall not hold any compensated appointed Town Office or employment until one year after he/she leaves such office. 78 Del. Laws, c. 339, §8

6.4 Vacancies, Forfeiture of Office.

6.4.1 Vacancies. The office of Mayor or council-member shall become vacant upon his/her death, resignation, lawful removal from, or forfeiture of his/her office.

6.4.2 Forfeiture Proceedings. A forfeiture of office shall occur when the Mayor or any Council-member:

(a) lacks, at any time during his/her term of office, any qualification for his/her office prescribed by this Charter or by law.

(b) willfully violates any express prohibition of this Charter.

(c) is convicted of a felony or any crime involving moral turpitude.

(d) fails to attend three (3) consecutive regular council meetings without being excused by Council.

(e) is physically, mentally, or emotionally incapable of performing the functions of his/her office.

6.4.3 Determination Concerning Forfeiture. Where the conditions set forth in 6.4.2 (c) or (d) occur, forfeiture shall be automatic. Where the conditions set forth in 6.4.2 (a), (b), or (e) are alleged to have occurred, a determination concerning such alleged forfeiture shall be made by the Council, but the affected party shall not have a vote in any such decision. Such deliberations may be had in executive session and if the Council preliminarily determines by a unanimous vote of the Council-members entitled to vote on the question, that a forfeiture has occurred, it shall, within forty-eight hours of that determination, provide written notice thereof to the affected Council-member, stating specific reasons. The affected party shall then have ten days in which to make a written demand for a public hearing before the Council, to be held within twenty days of the written demand, at which hearing he or she may appear with the assistance of counsel and present evidence to the relevant issues. Thereafter, the Council shall hear any other relevant evidence and vote again on the question of forfeiture; and if a determination of forfeiture is again made by a unanimous vote of the disinterested Council-members entitled to vote on the question, the decision shall be final.

6.4.4 Failure to Request Hearing as a Bar. Failure of the affected person to make written demand for a public hearing as hereinabove stated shall be an absolute bar to the right to challenge the Council's decision. During, or in connection with, any such proceedings, the 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.

6.5 Filling Vacancies on the Town Council.

6.5.1 Council-members. In case of a vacancy among the council-members, the remaining members of the Town Council may elect another qualified person to fill that vacant seat until the next ensuing regular municipal election. At such election, the qualified voters of the Town shall elect a qualified candidate to fill the seat for the remainder of the original term. Each such vacancy shall be separate and distinct from any other such vacancy and from the full-term seats to be filled at such election; and shall be so designated on the ballot. The written notice of candidacy for election to fill a vacancy under this section shall specify the vacant seat for which the notice of intention to run is made, and no candidate shall file a notice of intention to run for more than one seat. The candidate receiving the highest number of votes for each such vacant seat shall be declared the winner.

6.5.2 Mayor. In case of a vacancy in the office of Mayor, the Vice-Mayor shall assume the office of Mayor until the next regularly-ensuing municipal election, at which time the qualified voters of the Town shall elect a qualified candidate to fill the Mayor's seat for the remainder of the original term, if any. If the vacancy in the office of Mayor occurs more than three (3) months prior to the next regularly-ensuing municipal election, the Town Council shall, within thirty days of such vacancy, appoint some qualified person to fill the temporary council-member vacancy created by the Vice-Mayor's assuming the office of Mayor. Such person shall serve only until the next regularly-ensuing town election at which time, upon the election of a new Mayor (and provided that the Vice-Mayor has not resigned his/her original council-member seat to run for the office of Mayor), the Vice-Mayor shall resume his/her seat on Council for the remainder of his/her original term, if any.

6.6 Compensation; Reimbursement of Expenses.

6.6.1 Compensation. The Mayor and each member of the Council shall receive a specified sum for each regular or special meeting attended by such person. The amount paid for attendance at each meeting shall be established by the Town Council based upon the written recommendations of a "Compensation Committee" which shall be comprised of five (5) members who shall be the citizen-members (i.e. shall not be employees or elected officials of the Town) of not less than three (3) standing committees of the Town, one of which committees shall be that standing committee which has primary oversight for the town budget (i.e. the "Budget Committee" by whatever title known). The Compensation Committee's recommendations, if any, shall be submitted to the Town Council by July 1st of any year, but no action by the Town Council to modify the then-existent amount of compensation shall take effect until after the next town election.

6.6.2 Reimbursement of Expenses. Members of the Town Council are encouraged to participate in training and educational activities offered by the Delaware League of Local Governments, the National League of Cities, the University of Delaware, and other organizations to the extent possible under budgetary limitations. The Mayor and members of Council shall be reimbursed for their documented actual and necessary expenses incurred on Town business if approved by the Town Council. Council may enact an ordinance outlining approved Town business expenses and reimbursement procedures. No member of the Town Council shall be entitled to vote upon their own request for reimbursement unless similar expenses were incurred by four or more members of the Town Council in connection with the same event or activity. 78 Del. Laws, c. 339, §9

6.7 Meetings.

6.7.1 Regular Meetings. The Town Council shall meet regularly the first and third Monday of each month, provided that when any meeting date falls on a Town holiday, that meeting shall be held on the next business day. The time and place of each regular meeting shall be set by Council each year at their organizational meeting, but Council shall not hereby be prohibited from rescheduling such meetings from time to time during the year as need arises.

6.7.2 Special Meeting; Waiver of Notice. Special meetings shall be called by the Town Manager upon the written request of the Mayor, or upon the written request of any three (3) council-members, stating the day, hour, and place of the special meeting requested and the subject or subjects proposed to be considered thereat. Such notice shall be given at least 48 hours prior to the time set for such special meeting, and shall be effective if delivered and received by the person to whom sent, or by an adult person residing in the household of the person to whom sent, if sent by personal delivery, overnight courier or special delivery service, telephonic message, facsimile message ("fax"), telegram, or "e-mail". Receipt of such notice may be established by reasonable proofs of same according to the means of delivery utilized. Anything herein to the contrary notwithstanding, any member of the Town Council entitled to notice of a special meeting under this section may at any time, before, at, or after the holding of such special meeting, submit a written waiver of notice which written waiver shall make valid the holding of such 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. Additionally, attendance at any such meeting, except for the express and limited purpose of objecting to the holding of such meeting, shall constitute a waiver of notice for such meeting. 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.

6.7.3 Adjourned Meetings. The Town Council may adjourn its meetings from time to time, stating the date, place, and time to which such meeting shall be adjourned.

6.8 Manner of Acting.

6.8.1 Rules of Procedure, Record of Proceedings. The Town Council may determine its own rules of procedure and order of business. It shall keep a record of its proceedings.

6.8.2 Ordinances. The Council is hereby vested with the authority to enact ordinances or resolutions relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, its 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 or resolutions, and no provision of this Charter as to ordinances on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated.

In addition to other acts required by law or by specific provisions of this Charter to be done by ordinance, those acts of the Town Council shall be by ordinance which:

- (a) Adopts or amends an administrative code; provided that no ordinance shall be required to amend the personnel policy, or any component thereof, unless so required by a duly adopted ordinance.
- (b) Provides for a fine or other penalty or establishes a rule or regulation for violation of which a fine or other penalty is imposed;
- (c) Grants, renews or extends a franchise;
- (d) Amends or repeals any ordinances previously adopted;
- (e) Revises the Town's fiscal year.

Acts other than those referred to in the preceding may be done either by ordinance or by resolution. Every ordinance shall be introduced in writing. Vote on any ordinance may be by voice vote or written vote and the vote of each Council-member on any ordinance shall be entered on the record. No ordinance shall be passed unless it shall have the affirmative vote of a majority of all members of the Town Council.

6.8.3 Quorum. Four members of the Town Council shall be physically present in order to constitute a quorum to conduct business, but if a lesser number be present at any regular or properly called special meeting, they may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance adopted by the majority of the entire Council.

6.8.4 Participation and Voting by Remote Access. The Town Council is hereby authorized, by duly enacted ordinance, to provide that whenever unavoidable circumstances prevent the Mayor or any member of the Town Council from being physically present at any meeting of the Town Council at which a quorum is physically present, such person(s) may participate in the meeting, including the making or seconding of any motion and the casting of a vote on any motion, by remote electronic access (e.g. speaker telephone, videoconferencing equipment), provided that all persons present at the place of the meeting can hear and speak to the person(s) participating through remote access and provided that the person participating by remote access can hear and speak to all persons participating at the meeting; provided further, however, that the meeting shall not be presided over by any person not physically present at the meeting.

6.8.5 Vote Necessary to Carry Action. All powers of the Town Council, whether express 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 Town Council shall be as good as the acts and determinations of all the members of the Council. No ordinance, resolution, motion, order, or other act of the Town Council, except as herein specifically authorized, shall be valid unless it receives the affirmative vote of a majority of all members of the Town Council.

7. Appointed Officers.

7.1 Town Manager.

7.1.1 Appointment; Term. The Town Council shall appoint a Town Manager who shall be the chief administrative officer for all departments and functions of the Town except the Police Department. He/she shall be appointed solely on the basis of his/her professional, executive and administrative qualifications. He/she need not, when appointed, be a resident of the Town or of the State of Delaware, but shall, within six (6) months of his/her appointment, as a condition of his/her employment, become domiciled within such radius of the Town Hall as determined by Council at the time of his/her appointment.

The Town Manager shall be appointed in accordance with the provisions of any resolution, ordinance, and/or written agreement authorized by the Town Council and specifically applicable to that Town Manager, provided however, that: (1) although there shall be no limit on the number of terms of employment a Town Manager may serve, in no case shall any single term of employment exceed three (3) years, upon the expiration of which the Town Manager's employment with the Town shall be automatically re-newed for an

additional three-year term unless the Town Council votes (no fewer than 6 months prior to the expiration of the then-current term) to renegotiate such employment or not to re-new such employment, or to re-new such employment for a term shorter than three (3) years; (2) the Town Council may at any time terminate the Town Manager's employment for "just cause" without payment of any severance pay or benefits; and (3) the Town Council may at any time terminate the Town Manager's employment without "just cause" upon payment to the Town Manager of such severance pay and benefits as provided in the terms of any resolution, ordinance, and/or written agreement governing the employment of that Town Manager. For purposes of this section, "just cause" shall mean one or more specific, articulable reasons related to the Town Manager's unsatisfactory performance involving misfeasance, malfeasance, nonfeasance, or incompetence, which rationally support termination of employment. In case of the extended absence, disability, or suspension of the Town Manager, the Council may designate some other competent person to perform the duties of the office during such absence, disability or suspension; subject to the Town Council's authority aforesaid, the Town Manager may appoint a Town employee to serve as "Acting Town Manager" during the Town Manager's temporary absences. 78 Del. Laws, c. 339, §10

7.1.2 Duties. The Town Manager shall be responsible to the Town Council for the proper administration of all affairs of the Town placed in his/her charge, and he/she shall have such powers and duties as shall be established by the terms of any ordinance or resolution duly adopted, or from time to time amended, by the Town Council. Subject to and in accordance with applicable ordinances, rules, and policies adopted by the Town Council, the Town Manager shall be responsible for the hiring, supervision, discipline, lay-off, and termination of all employees (other than those within the Police Department) necessary to fill those positions of municipal employment which have been authorized and funded by the Town Council.

7.1.3 Vacancy from Office. In the event of a vacancy in the office of Town Manager, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges and powers theretofore reposed in his/her predecessor or predecessors in office in the same manner as though all acts, deeds and steps theretofore taken by any such predecessor or predecessors with respect to any matter or thing pertaining to said office had been taken or performed by the successor to such office.

7.2 Chief of Police.

7.2.1 Appointment; Term. The Town Council shall appoint a duly-qualified Chief of Police who shall be the chief law enforcement officer of the Town and the Chief Administrative Officer of the Town Police Department. He/she need not, when appointed, be a resident of the Town or of the State of Delaware, but shall, as a condition of his/her employment, become domiciled within a radius of the Town Hall as determined by Council, within six (6) months of his/her appointment. No member of the Town Council shall, while in office, be appointed to act as Police Chief. The Chief of Police shall be removable in accordance with the provisions of any resolution, ordinance, and/or written agreement authorized by the Town Council and specifically applicable to that Chief of Police, subject to any governing state statutory provisions.

7.2.2 Duties. The Chief of Police shall be responsible to the Town Council for the proper administration of all affairs of the Police Department placed in his/her charge by the Town Council. Subject to and in accordance with the provisions of any applicable state statutes, and applicable town ordinances, rules, and policies adopted by the Town Council, the Chief of Police shall be responsible for the hiring, supervision, discipline, lay-off, and termination of all employees within the Police Department which have been authorized and funded by the Town Council.

7.2.3 Vacancy from Office. In case of the absence, disability, or suspension of the Police Chief, the Council may designate some other competent person to perform the duties of the office during such absence, disability or suspension.

7.3 Town Solicitor. The Town Council shall select and appoint a Town Solicitor for an indefinite term who shall be removable at the pleasure of the Town Council. The Solicitor shall be a member in good standing of the Bar of the State of Delaware. It shall be his/her duty, when requested, to give legal advice to the Council, the Town Manager, and the Chief of Police, (provided however, that in the event of any conflict of interest, the Town Solicitor shall advise only the Town Council); and to perform other legal services as may be required of him by the Council.

7.4 Other Officers, Agents, and Boards.

7.4.1 Appointment; Hiring.

(a) Boards and Commissions. Subject to Town Council confirmation, the Mayor shall recommend the appointment of members to all Boards and Commissions in the Town of Smyrna, including, but not limited to, the Board of Adjustment, Board of Elections, and Planning and Zoning Commission.

The Town Council may provide for the appointment or hiring of such other officers and agents of the Town, which it may deem proper and necessary, for the proper conduct and management of the Town, including by way of example and not in limitation, a consulting engineer and financial auditor. Except as otherwise provided by written agreement approved by the Town Council, or as provided elsewhere in this Charter or in any governing statute or ordinance, such officers, agents, and board-members shall serve at the pleasure of the Town Council. 81 Del. Laws, c. 294, §1;

- (b) Committees and Subcommittees. Committees may be formed as deemed necessary by the Town Council to gather and report information needed for the Town Council to make informed decisions. The Mayor shall recommend the appointment of committees, subject to Council confirmation, and committees shall serve at the direction, and under the authority, of the Town Council. Subject always to the authority of the Town Council to direct and control the activities of any committee appointed under this subsection, the chairperson of any such committee may, with the affirmative vote of a majority of the committee, appoint one or more persons to act as a subcommittee of the committee to perform specified designated tasks and report back to the committee (or to such other authority as designated by the appointing committee). Any subcommittee so appointed shall consist of at least one member of the appointing committee. 78 Del. Laws, c. 339, §11

7.4.2 Compensation.

- (a) Officers and Agents. The Town Council shall by ordinance, resolution, or written contract, fix the amount of any salaries or compensation of the officers and agents employed by the Town.
- (b) Members of Boards and Commissions. The amount (if any) to be paid to the members of any board or commission appointed or confirmed by the Town Council for attendance at each meeting of such board or commission shall be established by the Town Council based upon the written recommendations of a "Compensation Committee" which shall be comprised of five (5) members who shall be the citizen-members (i.e. shall not be employees or elected officials of the Town) of not less than three (3) standing committees of the Town, one of which committees shall be that standing committee which has primary oversight for the town budget (i.e. the "Budget Committee" by whatever title known). The Compensation Committee's recommendations, if any, shall be submitted to the Town Council by July 1st of any year, but no action by the Town Council to modify the then-existent amount of compensation shall take effect until after the next town election.

- 7.5 Personnel Records. The Town Council shall cause to be kept appropriate personnel records for all town employees, as necessary to comply with all applicable federal and state laws and regulations and in accordance with commonly-accepted personnel practices for municipal employees. Such records shall not be "public records" and shall not be subject to public inspection.
- 7.6 Surety Bonds. The Town Council may, at the Town's expense, require any Town employee to be bonded by a commercial bonding company in such amount and according to such terms as deemed necessary and appropriate by the Town Council.

8. Town Finances

8.1 Use of Town Monies.

The Town Council of said Town shall have full power and authority to use the money in the Treasury of said Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation and best interests of the said Town, as 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 Act, and all lawful ordinances and resolutions of Council.

- 8.2 Fiscal Year. Unless revised by ordinance duly adopted by the Town Council, the fiscal year of the Town shall begin with the first day of January in each year and end with the next-succeeding thirty-first day of December.

- 8.3 Annual Budget. The Town Council shall annually, at or before the first regular Town Council meeting in December of each year, adopt a budget, which shall include the real property tax rate per \$100 of assessed value, for the upcoming fiscal year. 78 Del. Laws, c. 339, §12; 80 Del. Laws, c. 98, §1;

- 8.3.1 Determination of Revenue Needs. The Town Council shall determine, in its best judgment and knowledge, the total amount necessary to be raised by the Town to meet the fixed and anticipated expenses and obligations of the Town, including reasonable and appropriate reserves, for the then upcoming fiscal year plus a reasonable amount to cover unanticipated expenses and emergencies.

8.3.2 Determination of Revenue Sources. The Town Council shall determine, in its sole discretion, from which sources of the authorized revenues of the Town the amount so determined by them shall be raised and, within the limits prescribed by this Charter with respect to any such source, the amount to be raised from each such source:

- (a) Real Estate and Improvements. The proposed rate of tax on real estate including improvements thereon per One Hundred Dollars (\$100) of the assessed value; and /or
- (b) Utility Fixtures. The proposed rate of tax upon all poles, construction, erections, wires, and appliances more particularly mentioned, or intended so to be in Section 4.2.41 of this Charter; and/or
- (c) License Fees. The several license fees to be charged for carrying on or conducting of the several businesses, professions or occupations more particularly mentioned or intended so to be in Sections 4.2.38 and 4.2.40 of this Charter: and/or
- (d) Municipal Services. The several rates to be charged for furnishing water and sanitary sewer service and front footage assessment; electric supply and distribution service; trash collection; and/or
- (e) Other Services. The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (c), (d), and (e) aforementioned may be determined, fixed, assessed, levied and/or altered or changed upon other than a fiscal year basis at any regular or special meeting of the Town Council as the Town Council, in its own proper discretion, shall determine; and provided further that the rate of tax upon taxable real property (a) and upon utility fixtures (b) may be revised at such time the Town Council finally approves and accepts the annual assessment list for Town property taxes pursuant to section 9.7.2. 78 Del. Laws, c. 339, §13

8.4 Annual Audit.

The Town Council shall retain a certified public accountant to be the auditor of accounts of the Town of Smyrna. It shall be the duty of the auditor to audit the accounts of the Town and all its officers whose duty involves the collection, custody and payment of moneys to or by the Town. The auditor shall on or before June 30 of each year make and deliver a detailed report of any and all accounts, records, and books from the previous fiscal year by him or her examined and audited which report under his/her hand and seal shall be available for public inspection; provided however, anything herein to the contrary notwithstanding, the date for submission of the auditor's report may be extended by the Town Council beyond June 30 at the written request of the auditor for reasonable cause shown. 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 Smyrna within ten (10) days of its receipt by the Town Council. The auditor, in the performance of his/her duties, shall have access to all records and accounts of the offices of the Town. 78 Del. Laws, c. 339, §14

8.5 Recovery of Legal Expenses Incurred in Enforcement of Town Ordinances and/or Collection of Amounts Due To the Town.

Whenever it becomes necessary or expedient for the Town to file any legal action or proceeding to enforce compliance with a Town ordinance and/or to collect an amount due to the Town before any court or administrative agency having jurisdiction thereof, if the Town is the prevailing party in such action, the court or administrative agency having jurisdiction shall be authorized, in the exercise of its reasonable discretion, to award judgement to the Town in an amount deemed appropriate by it to reimburse the Town for its costs of prosecution, including court costs, expert witness fees, reasonable attorney's fees, and other documented out-of-pocket expenses incurred in connection with such prosecution; provided however, that in order to recover such amounts under this section, the Town shall, prior to the filing of such legal action or proceeding, make written demand upon the responsible party for compliance with the ordinance and/or payment of the amount due (as the case may be), which written demand shall include notice of this provision of the Town Charter.

9. Assessment for Taxes

9.1 Alternate Methods for Establishing Annual Property Assessment.

In any year, the Town may establish the assessed value of all taxable real estate and improvements, and of all taxable public utility fixtures, by one of the following two methods: (a) Local Tax Assessor, or (b) adoption of the appraised values implicit in the assessments as shown on the assessment lists prepared by Kent and New Castle County. 81 Del. Laws, c. 294, §2;

9.2 Local Tax Assessor.

9.2.1 Appointment; Annual Term. The Mayor may, with the advice and consent of a majority of the entire Council, appoint a qualified individual or entity to serve as a Tax Assessor for a one-year term. 78 Del. Laws, c. 339, §15; 81 Del. Laws, c. 294, §2;

9.2.2 Duties, Compensation. It shall be the duty of the Tax Assessor to make a fair and impartial valuation and assessment of real property and improvements subject to taxation situate within the limits of the Town of Smyrna at the true market value thereof, and to perform such other duties with reference thereto as shall be prescribed from time to time by the Town Council. The compensation to be by them received for the performance of their duties, and the hiring of consultants or employees to assist them in the performance of their duties, shall be fixed by and subject to the approval of the Town Council. 81 Del. Laws, c. 294, §2;

9.2.3 Professional Appraisers to Assist. In addition to the appointed Tax Assessor, it shall be within the discretion of the Council to appoint any professionals needed to assist the Tax Assessor in performing the duties of the office to which they were appointed, but the Tax Assessor shall in all instances be responsible for making the final determination. 81 Del. Laws, c. 294, §2;

9.3 Adoption of Appraised Values Implicit In Kent and New Castle County Assessments. The Town Council may adopt the appraised values implicit in the assessments established by Kent and New Castle County for all property located within the corporate limits of the Town of Smyrna, in lieu of making its own independent assessment and valuation, anything herein to the contrary notwithstanding. In such event, the appraised values implicit in the appraisals established by Kent and New Castle County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals (under § 9.7) regarding same. If the Town Council elects to adopt the appraised values implicit in the Kent and New Castle County Assessments, only this section, § 9.4.3 ("Delivery of Assessment List"), section 9.5 ("Additions to Tax Bills") and section 9.7.1 ("Posting of Assessment List") shall have effect; but the Town Council will also have authority (under section 9.7.2) to consider appeals concerning any additions to tax bills made under section 9.5, at any regular or special meeting.

9.4 Assessment Procedure By Town's Tax Assessor

9.4.1 Making the Assessment.

(a) Annual Assessment. If appointed, the Tax Assessor shall, prior to the first day of March of each year, make a just, true and impartial annual valuation or assessment of all real estate and improvements located within the Town of Smyrna. All real estate shall be described with sufficient particularity to be identified. Real estate shall be assessed to the owner or owners if he, she, or they be known. If the owner or owners of real estate cannot be found or ascertained, it may be assessed to 'Owner Unknown'. A mistake in the name of the owner or owners or a wrong name or an assessment to 'Owner Unknown' shall not affect the validity of the assessment of any municipal tax or assessment based thereon; provided, however, the assessment shall specify the last record owner or owners thereof as the same shall appear from the records in the Office of the Recorder of Deeds, in and for Kent or New Castle County. 81 Del. Laws, c. 294, §3;

(b) Supplemental Assessment. In addition to the annual assessment provided herein, the Tax Assessor may, at the option of the Town Council, prepare quarterly supplemental assessments for the purposes of: (1) adding property not already valued and included in the last assessment and (2) revising the valuation and assessment of all real property which has undergone some significant change of condition as to materially change the true market value thereof since the last assessment. 81 Del. Laws, c. 294, §3;

9.4.2 Assessment of Tax Assessor. The real property of the Tax Assessor shall be assessed by the Town Council of the Town of Smyrna and approved by the affirmative vote of at least five (5) members of the Town Council. 78 Del. Laws, c. 339, §16; 81 Del. Laws, c. 294, §3;

9.4.3 Delivery of Assessment List. Prior to the first regular Town Council meeting in March, the Tax Assessor, after making such annual assessment, shall deliver to the Town Council of the Town of Smyrna a list containing the names of owners of all properties assessed and the amount of assessment against each. 81 Del. Laws, c. 294, §3;

9.5 Additions to Tax Bills. Whether utilizing the appraisals implicit in the Kent and New Castle County Assessments or those prepared by the Town's own Tax Assessor, the Town Manager shall annually, prior to the posting of the assessment list, provide the Town Council 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: sidewalk assessments, waterline assessments, water service charges, weed and grass cutting bills, sanitary

sewer service charges, trash collection bills, past due electric charges, costs for demolition or repair of any building or structure in accordance with governing town ordinances, any charges incurred by the Town in bringing the property into compliance with the Town Code and the amount of any unpaid penalty imposed by any court of competent jurisdiction for violation of any municipal ordinance. Said amounts, when adopted and set forth by resolution of the Mayor and Council, shall be shown on the copies of the assessments posted pursuant to the provisions of Section 9.7.1 of this Charter. 78 Del. Laws, c. 339, §17; 81 Del. Laws, c. 294, §3;

9.6 Exemption From Taxation.

9.6.1 Mandatory Exemptions. Property belonging to the State of Delaware, or to the United States, or to Kent or New Castle County, or to any municipality of the state, and held for public use, or any church or religious society, and not held by way of investment, or to any college or school and used for educational purposes, or to any corporation created for charitable purposes and not held by way of investment, shall be exempt from Town real property taxes, as provided in 9 Del.C. section 8103, as it may from time to time hereafter be amended, or in accordance with any future corresponding provision of law.

9.6.2 Town's Authority To Exempt Property. The Town Council shall have the power and authority to exempt from taxation, or to reduce the rate of taxation, such real property and improvements from the Town's property tax as, in the opinion of Council, will best promote the public welfare, including by way of example and not in limitation: (a) newly-annexed un-developed lands (until the issuance of a building permit and/or transfer of ownership of any parcel(s) from the owner(s) at the time of annexation), (b) lands improved or to be improved by commercial, industrial, or similar facilities which will create significant employment opportunities in the community, or (c) lands, fixtures, or betterments used in the provision of such public utilities and communications services, and/or emergency response services (e.g. fire, ambulance) which the Town Council deems desirable or necessary for the residents and property owners of the Town.

9.7 Assessment Appeals.

9.7.1 Posting of Annual Assessment List; Notice. Immediately upon receiving the annual assessment list from the Tax Assessor, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each taxable, to be made available for public inspection at the Town Office, and there it shall remain for a period of at least fourteen (14) days for the information of and examination by all concerned. Public notice of the posting of the assessment list, and the date, place, and time where the Town Council will sit as a Board of Revision and Appeal to hear appeals from the said assessment and to make such corrections and revisions as it deems appropriate, including the procedures for appealing an assessment, shall be posted in at least five (5) public places in the Town and published at least once in a newspaper of general circulation in the Town not less than 14 days prior to the date set for the hearing of such appeals. 78 Del. Laws, c. 339, §18; 81 Del. Laws, c. 294, §4;

9.7.2 Appeals Day Annual Assessment List. The Council may direct that appeals from any annual assessment be heard by a committee of no fewer than two (2) nor more than three (3) Council-members appointed by the Town Council. The committee of Council-members shall sit at the stated place and time to hear the appeals of all taxpayers dissatisfied with the assessment of their properties, shall collect such information as they consider proper and necessary, and, shall report their findings and recommendations, together with such other information as the Council shall permit or require, to the full Council at its next ensuing meeting, at which time the appeal of each dissatisfied taxpayer shall be heard. On the day and time fixed for hearing appeals, the Tax Assessor shall be available to furnish to the Town Council such information and answer such questions as the Town Council may require with respect to any assessment for which an appeal has been taken. No member of the Town Council shall sit on his/her own appeal, but the same shall be heard and determined by the other members of the Town Council. The Town Council shall have full power and authority to alter, revise, add to, and take from the said assessment. The decision of a majority of the Council shall be final and conclusive.

Upon completion of the appeal process under this section, the Town Council shall at that meeting or at the next ensuing regular meeting, adopt a resolution approving the final assessment list (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list under section 9.5). 78 Del. Laws, c. 339, §19; 80 Del. Laws, c. 98, §1; 81 Del. Laws, c. 294, §4;

9.7.3 Supplemental Assessment Appeals. Whenever the Tax Assessor prepares a quarterly supplemental assessment list under §9.4.1(b), it shall deliver such list to the Town Manager. Immediately upon receiving such supplemental assessment list from the Tax Assessor, the Town Manager shall cause a full and complete copy thereof, containing the amount assessed to each taxable on such supplemental assessment list to be mailed, certified mail, return receipt requested, to each taxable on the supplemental

assessment list at their last address as shown on the Town's tax records. Such mailing shall also include a notice that any taxable on said supplemental assessment list may request, in writing, an appeal to the Town Council concerning such supplemental assessment, such written request to be received at the Town Office within 14 days of the date that the notice is mailed. 81 Del. Laws, c. 294, §4;

In the event that any taxable so noticed timely submits a written request for an appeal, the Town Manager shall notify the Town Council, and the Town Council may direct that such appeals may be heard by a committee of not less than two (2) nor more than three council-members appointed by the Town Council. The Town Manager shall provide any taxable requesting such an appeal with written notice of date, place, and time when the committee of council-members shall sit to hear such appeal; provided however, that such notice of the appeal hearing shall be mailed not less than 14 days prior to the date set for the hearing, certified mail return receipt requested. 78 Del. Laws, c. 339, §20

Such appeals and all proceedings and actions taken pursuant to and in consequence of such appeal, shall be subject to and governed by the same provisions set out in §9.7.2 pertaining to appeals from the annual assessments, except that upon completion of the appeal process, the Council shall adopt a resolution approving the final supplemental assessment list. 75 Del. Laws, c. 247; 80 Del. Laws, c. 98, §1;

10. Taxation; Tax Limit.

- 10.1 Taxation. The Town Council is authorized to levy and collect from the taxables of the Town, according to the terms and provisions of this Act, such sum of money as may be deemed by the Town Council as necessary and proper for the general municipal needs of the Town, including sufficient monies to pay interest and principal on any municipal bond issued by the Town pursuant sections 13.1, 13.2, and/or 13.3 of this Charter, or pursuant to any special act of the General Assembly.
- 10.2 Levy of Tax; Supplemental Tax Bill. After the valuations and assessments have been examined, adjudged, and approved by the Town Council as provided in section 9.7.2, the Town Manager shall proceed immediately to collect all taxes and other amounts set forth on the approved assessment list (each and all of which shall hereafter be referred to as "taxes" for sake of convenience) as hereinafter provided. Whenever a change occurs in the assessed value of any taxable property as a result of a supplemental assessment under section 9.4.1 (b), the Town Manager shall issue a supplemental tax bill based upon the revised assessment, pro-rated for the remainder of the then-current tax year. The amount shown on the supplemental tax bill shall be due by the later of September 30th of the year in which the original tax bill was sent or 60 days from the date of the supplemental tax bill; any supplemental tax bill not paid by the due date as provided herein shall be delinquent and subject to the same penalties and collection remedies as any other delinquent tax bill.
- 10.3 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 Smyrna under the existing laws in reference to said Town and the same are hereby declared to be valid, binding and vested in the Town of Smyrna created hereby.
- 10.4 Limitation on Taxes. The total amount of money to be raised by real property taxes and utility fixture taxes shall in no year exceed one percent (1%) of the total assessed valuation of all taxable real estate (and improvements thereon) in the Town; provided however, that this limit on taxes for general Town purposes shall not limit or prohibit the Town from levying and collecting such further and additional taxes or sums of money in any year as may be necessary or expedient to pay the interest on, or to retire the principal of, any bonds or certificates of indebtedness issued by the Town pursuant to sections 13.1, 13.2, and/or 13.3 as the same become due, or before they become due; or to create an adequate sinking fund reserve for the retiring of such indebtedness either before or at the time they become due.

11. Collection of Taxes.

- 11.1 Collection by Town Manager. The Town Manager shall, as soon as the Town Council shall have adopted the resolution approving the final assessment list pursuant to § 9.7.2 or the resolution approving the final supplemental assessment list pursuant to § 9.7.3 (as applicable), proceed at once to collect the taxes so levied. 80 Del. Laws, c. 98, §1
- 11.2 Lien. All taxes so laid or imposed by the Town of Smyrna 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 taxes are laid and imposed; provided that if the real estate remains the property of the person(s) or legal entity(s) who was/were the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Such lien shall have

preference and priority to all other liens on such real estate as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes.

- 11.3 Due Date; Deposit. All taxes shall be deemed levied, and shall be due and payable at and from the time the resolution approving the final assessment list is adopted under § 9.7.2 or the resolution approving the final supplemental assessment list is adopted under § 9.7.3 (as applicable). All taxes, when and as collected by the Town Manager, shall be paid to or deposited to the credit of the Town of Smyrna, in such financial institutions as directed by the Town Council. 80 Del. Laws, c. 98, §1;
- 11.4 Place of Payment. All taxes shall be payable at the Town Office of the Town of Smyrna during the regular business hours of that office.
- 11.5 Discount for Prompt Payment; Penalty for Late Payment; Collection Fee. To all taxes paid on or before July 1st next following the levy, there may be applied a discount as established, from time to time, by resolution of the Town Council. On all taxes paid on or after September 30th of each year, there shall be added a penalty to be determined by Council for each month or fraction thereof such taxes shall remain unpaid, said penalty to be effective on the thirtieth day of September, and said penalty shall be collected in the same manner as the original amount of the tax. The Town Council shall have the power to make just allowances for delinquencies in the collection of taxes. All taxes unpaid on September 30th of each year shall be considered delinquent. In effecting a collection of any delinquent tax, the Town Council may impose a collection charge reasonably calculated to recover the costs of collection, including all court costs, sale costs, reasonable and necessary out-of-pocket expenses, and reasonable attorneys fees incurred by the Town in such collection proceedings. 78 Del. Laws, c. 339, §21; 80 Del. Laws, c. 98, §1;
- 11.6 The provisions of this section and of Section 12 of this Charter apply to all special ad valorem taxes and special taxes levied by the Town Council of the Town of Smyrna pursuant to Section 4.2.48 of this Charter, provided that all references in this section and in Section 12 to an Annual Tax List or Taxes shall, for all purposes relating to such special ad valorem taxes and special taxes, be deemed to refer to the tax list showing the amounts of special ad valorem taxes or special taxes levied against the real property within a special development district. 76 Del. Laws, c. 405;

12. Remedies, Powers, and Methods for Collection of Delinquent Taxes And Other Charges Due to the Town.

- 12.1 Notice Prior to Exercise. Before instituting any legal action for the collection of taxes, written notice of the amount due shall be sent to the taxable at his/her last known address.
- 12.2 Town Manager to Have Tax Collection Powers. In the collection of delinquent taxes (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list pursuant to subsection 9.5), the Town Manager shall have all of the same powers, remedies, and authority, including the monition method of the collection of taxes, as conferred by Title 9 of the Delaware Code, as the same may from time to time hereafter be amended, or in accordance with any future corresponding provision of law, upon those individuals and/or departments authorized to collect delinquent taxes in Kent County and New Castle County. 78 Del. Laws, c. 339, §22;

13. Borrowing Powers.

- 13.1 Short-Term Borrowings by Town Council Without Voter Approval; Limit on Borrowing; Tax Exempt. 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 Sections 13.2 or 13.3 of this Charter, such sum or sums not exceeding in the aggregate one and one-half percent (1 1/2%) of the total assessed valuation of all taxable property in the Town, for any municipal or public purpose when, in the opinion of the majority of the Town Council elected, the needs of the Town require it; provided, however, that any new borrowings under this Section 13.1 made after the effective date of this act shall, by their terms, be repayable in full within fifteen (15) 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 Council with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under this § 13.1 shall at no time exceed one and one-half percent (1 1/2%) of the total assessed valuation of all taxable property in the Town. Town expenditures that are not general obligations of the Town secured by the full faith and credit of the Town are exempt from the borrowing provisions in section 13. Anything herein to the contrary notwithstanding, the Town Council may, by ordinance, authorize the Town Manager to borrow up

to an aggregate amount one hundred thousand dollars (\$100,000) for any municipal or public purpose without a Resolution of the Town Council authorizing the borrowing, provided that any such sums so borrowed by the Town Manager shall be included in the aggregate amount of short term borrowings for purposes of calculating the short term borrowing limit of one and one-half percent (1 1/2%) as further outlined herein. 81 Del. Laws, c. 294, §5;

13.2 Long-Term Borrowings For Certain Projects Without Voter Approval; Public Hearing And Super-Majority Vote of Town Council Required.

13.2.1 Limit On Borrowing and Aggregate Indebtedness Without Voter Approval; Super-Majority Vote. Subject to the provisions of this section 13.2, the Town Council shall have the power to borrow money on the full faith and credit of the Town for the payment of principal thereof and interest due thereon, without approval of the voters and without regard to the provisions of Section 13.3 of this Charter, such sum or sums not exceeding in the aggregate four and one and one-half percent (4 1/2%) of the total assessed valuation of all taxable property in the Town, for those specific municipal purposes specified in section 13.2.3, when, in the opinion of at least five (5) members of the Town Council, the needs of the Town require it; provided, however, that any new borrowings under this Section 13.2 made after the effective date of this act shall, by their terms, be repayable in full within forty (40) 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 adopted by at least five (5) members of the Town Council and signed by the Mayor and attested by the Secretary of the Town Council with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under sections 13.1 and 13.2 shall at no time exceed four and one-half percent (4 1/2%) of the total assessed valuation of all taxable property in the Town. 77 Del. Laws, c. 63, §1

13.2.2 Procedure: Notice, Hearing. In order to proceed under the power granted in this section 13.2, the Town Council shall authorize such borrowing in the following manner:

- (a) The Town Council by resolution shall give notice to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose authorized under section 13.2.3. 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 same, and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and shall fix a time, date and place for a public hearing on the said resolution.
- (b) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 14 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under Section 13.2.2(a) above.
- (2) In addition to publication as herein provided, the Town Council shall, not less than 14 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first 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, by the affirmative vote of at least five (5) members of the Town Council, to proceed with the proposed borrowing.

13.2.3 Municipal Purposes For Which Town Council May Make Long-Term Borrowings Without Voter Approval.

The power and authority of the Town Council to incur long-term indebtedness on the full faith and credit of the Town without voter approval under section 13.2 shall be limited to the following:

- (A) erecting, enlarging, repairing, or replacing any plant, building, structure, machinery, or equipment for the production, treatment, collection, storage, supply, distribution or disposal of water, electricity, sanitary sewage, or storm-waters, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-ways which may be required therefor.

- (B) laying out, constructing, paving, widening, or extending streets, lanes, alleys and public ways, curbs and gutters, including storm sewers along the same, and the condemning or purchasing of lands, easements or rights-of-ways which may be required therefor.
- (C) erecting, enlarging, repairing, or replacing any municipal building including, by way of example, a Town Hall, a Police Department Building, a municipal warehouse, and the condemning or purchasing of lands, easements or rights-of-ways which may be required therefor.
- (D) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

13.3 Long-Term Borrowings; Voter Approval Required.

In addition to other borrowing powers granted to the Town under this Charter or by special act, the Town Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town for the payment of principal thereof and interest due thereon.

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

- (A) erecting, extending, enlarging, maintaining, repairing, or replacing any plant, building, structure, machinery, or equipment for the production, treatment, collection, storage, supply, distribution or disposal of water, electricity, sanitary sewage, or storm-waters, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-ways which may be required therefor.
- (B) laying out, constructing, paving, widening, or extending streets, lanes, alleys and public ways, curbs and gutters, including storm sewers along the same, and the condemning or purchasing of lands, easements or rights-of-ways which may be required therefor.
- (C) erecting, enlarging, repairing, or replacing any municipal building including, by way of example, a Town Hall, a Police Department Building, a municipal warehouse, and the condemning or purchasing of lands, easements or rights-of-ways which may be required therefor.
- (D) constructing, laying out, widening, extending, repairing, and maintaining boardwalks, piers, jetties, bulkheads, dams, sidewalks, cross walks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights-of-ways 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.
- (F) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

13.3.2 Limit of Aggregate Indebtedness. In no event shall the total outstanding indebtedness of the Town of Smyrna, authorized by Sections 13.1, 13.2, and 13.3 at any one time exceed, in the aggregate, twelve per cent (12%) of the assessed valuation of all real property within the corporate limits of the Town of Smyrna and subject to assessment for the purpose of levying the annual town taxes as provided in this Charter.

13.3.3 Procedure: Notice, Hearing, Election. In order to proceed under the power granted in this section 13.3, the Town Council shall authorize such borrowing in the following manner:

- (A) The Town Council by resolution shall give notice to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount, for 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 same, and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.
- (B) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 14 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under Section 13.3.3(A) above.
- (2) In addition to publication as herein provided, the Town Council shall, not less than 14 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the

information required above to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first 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, upon not less than 14 nor more than 60 days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the Town Council to proceed with the matter in issue; provided however, that the Town Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution to cancel the Special Election and abandon the proposed borrowing.
- (D) (1) The notice of the time and place of holding the said Special Election shall be printed in two newspapers of general circulation in the Town, not less than 14 days nor more than 60 days prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under § 13.3.3(A). Such notice shall be in bold print or bordered in black so as to call attention thereto.
- (2) In addition to such publication as herein provided, the Town Council shall, not less than 14 days nor more than 60 days before the date set for the election, cause public notice, containing the information set out in subsection (D)(1) above (using date of "posting" for date of "publication"), to be posted in at least 5 public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.
- (E) (1) At such special election, any person(s) or artificial entity(s) (e.g. partnership, corporation, limited company) owning record title to real property in the Town shall be entitled to cast one vote for each separate parcel of real property (identified as such on the tax maps of the governing jurisdiction) owned (but not more than one vote shall be cast for any one property, however, the owner of more than one parcel in an unfinished subdivision or unfinished phase of a subdivision where the public improvements have not dedicated to the Town shall not have more than one vote for all the parcels located within the subdivision or subdivision phase); and any resident of the Town who does not own record title to real property in the Town who would be entitled to vote in the annual town election if it were held on that day, shall be entitled to vote. (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual town election.) 78 Del. Laws, c. 339, §26;
- (2) Any natural person entitled to vote may cast his/her vote by a duly executed and acknowledged power of attorney. 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 same in the Office of the Town Manager. 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 person or legal entity granting the power.
- (3) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:
- ☐ For the proposed borrowing.
- ☐ Against the proposed borrowing.
- The voter shall be instructed to mark the box for which he/she casts his/her vote. The Board of Elections established pursuant to subsection 5.5.5(f) of this Charter shall act as a Board of Special Election. The polling places 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 appointed for closing of the polls shall be entitled to vote. 78 Del. Laws, c. 339, §23;
- (F) The Board of Special Election shall be the sole and final judges 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 make a certificate under their hands 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

Town Council which said certificate shall be retained by the Town Council with the other papers 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 certificates of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, abandon the proposed borrowing.

- 13.4 Refunding Bonds or Certificates of Indebtedness. The Town Council may, by Resolution adopted by a simple majority of the entire Town Council, authorize the issuance of bonds or other obligations under sections 13.1, 13.2, and/or 13.3 for the purposes of refinancing any outstanding bonds or obligations of the Town without the necessity of a public hearing or a special election as would otherwise be required under sections 13.2 and/or 13.3, provided that the outstanding principal amount of the refunding bonds or other evidence(s) of indebtedness does not exceed the face amount refunded, plus the cost of refunding (including all bond premiums and transaction fees), and results in a present value savings to the Town. Present value savings shall be determined by using the effective interest rate on the refunding obligations as the discount rate calculated based on the internal rate of return.
- 13.5 Provision for Payment: Special Tax, Sinking Fund. The Town Council shall provide for the payment of interest on and principal of any bonds or certificates of indebtedness issued under section 13.1, 13.2, and/or 13.3 at the maturity thereof. The said Town 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 benefitted by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds and/or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of sections 13.1, 13.2, and/or 13.3; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed the total amount necessary to pay all currently due principal amounts of the bonded indebtedness together with all interest currently due thereon within that year, or such amounts as necessary to enable a sinking fund to accomplish its specified purpose. The special tax provided for in this Section 13.5 shall be collected from the owners of real estate in the same manner as the other taxes levied by the said Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund so much of the general funds of said town as they may from time to time think advisable. The sinking fund provided for by this Section 13.5 shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.
- 13.6 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Town of Smyrna shall be deemed to be pledged for the due payment of any bonds or certificates of indebtedness and the interest thereon issued under the provisions of sections 13.1, 13.2, and/or 13.3 when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.
- 13.7 Revenue Bonds Without Voter Approval; Public Hearing And Super-Majority Vote of Town Council Required.
- 13.7.1 Authority To Issue; Super-majority Vote. In addition to the power of the Town Council to borrow money and issue bonds or certificates of indebtedness under sections 13.1, 13.2, and/or 13.3, the Town Council shall have the power and authority (subject to the provisions of this section 13.7) to borrow money and issue bonds or certificates of indebtedness, and to secure payment thereof, by pledging the revenues derived from the operation of any project for which bonds may be issued pursuant to this section 13.7, without approval of the voters and without regard to the provisions of Section 13.1, 13.2, or 13.3 of this Charter when, in the opinion of at least five (5) members of the Town Council, the best interests of the Town will be served thereby; provided, however, that any borrowing under this section 13.7 shall not obligate the full faith and credit of the Town, but shall be payable solely from the revenues of such project which are pledged, according to the terms of the bonds or certificates of indebtedness issued for the payment thereof. Any bonds or other evidence of indebtedness issued under this section 13.7 shall be duly authorized by Resolution adopted by at least five (5) members of the Town Council and signed by the Mayor and attested by the Secretary of the Town Council with the town seal affixed. Any sum(s) of money borrowed pursuant to this section 13.7 shall be paid solely from the revenues of the project pledged for the payment thereof and not from the general revenues of the Town. The project to be funded with the proceeds of indebtedness issued under this section may be accomplished by a loan of the proceeds from the bond or certificate of indebtedness from the Town to any for-profit or not-for-profit entity.

13.7.2 Purposes. The funds derived from the sale of bonds issued pursuant to this section may be used for any or all of the following purposes, including incidental expenses incurred in connection therewith:

- (A) the erection, extension, enlargement, purchase, repair, or replacement of any plant, machinery, appliances, or equipment for the supply or manufacture and distribution of electricity or gas for light, heat, or power purposes; for the furnishing of water to the public; or for the furnishing of sanitary sewer collection and treatment services to the public;
- (B) the acquisition, construction, reconstruction, repair, alteration, improvement, extension, financing, or refinancing of any commercial, industrial, agricultural, educational, or healthcare facility, and equipment therefore, to be operated by any for-profit or not-for-profit entity;
- (C) the purchase of land in the planning and development, including construction, erection, or installation of buildings for an industrial complex or office park when the land or buildings or both, at the discretion of the Town Council, may be sold or leased by the Town to private enterprise where such buildings are all- purpose buildings suitable for sale or rental for general manufacturing use or office use or general retail use or any combination thereof;
- (D) all transaction costs, redemption premium, interest during construction, and working capital for any project described in sub-sections (a) through (c) above.
- (E) the refunding, from time to time, of any bonds issued pursuant to the provisions of this section 13.7 by the issuance of new bonds, whether the bonds to be refunded have or have not matured, or be subject to redemption, and the Town Council may issue new bonds (pursuant to this section 13.7) in sufficient amounts to provide:
 - (i) the principal amount of the obligations being refunded;
 - (ii) any applicable redemption premiums thereon;
 - (iii) unpaid interest on such obligations to the date of delivery of the refunding bonds and interest to accrue on such obligations being refunded from the date of delivery of the refunding bonds to the first of any subsequently available redemption date or dates selected by the Town Council; and
 - (d) any expenses, including bond discount, deemed by the Town Council to be necessary for the issuance of the refunding bonds.

13.7.3 Procedure: Notice, Hearing. In order to proceed under the power granted in this section 13.7, the Town Council shall authorize such borrowing in the following manner:

- (A) The Town Council by resolution shall give notice to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount, for a stated project pursuant to this section. 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 same, the fact that the full faith and credit of the Town is not pledged as security, and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.
- (B) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 14 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under Section 13.7.3(A) above.
- (2) In addition to publication as herein provided, the Town Council shall, not less than 14 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first 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, by the affirmative vote of at least five (5) members of the Town Council, to proceed with the proposed borrowing.

- 13.7.4 Disclaimer. The issuance of bonds or other certificates of indebtedness pursuant to this section 13.7 shall not constitute a debt of the Town nor a pledge of its credit or taxing power and such bonds or certificates of indebtedness shall contain on the face thereof a statement to the following effect:
- "Neither the faith and credit nor the taxing power of the Town of Smyrna is pledged to the payment of the principal of, premium, if any, or interest on the Bond (Certificate of Indebtedness), nor is the Town of Smyrna in any manner obligated to make any appropriation for payment thereof."
- 13.7.5 Provisions Of Resolution May Be Part of Contract. Any resolution or resolutions authorizing any bonds or certificates of indebtedness under this section 13.7 may contain provisions which shall be part of a contract with the holders of the bonds thereby authorized as to any matter relating to the repayment of the bonds or certificates of indebtedness, the security therefor, the operation of the project, and any other matter or course of conduct that affect the foregoing.
- 13.7.6 No Limit On Amount; Not Counted Towards Town's Maximum Indebtedness. There shall be no limitation on the amount of bonds to be issued pursuant to this section 13.7 and the indebtedness created by any bonds or certificates of indebtedness created by the Town pursuant to this section 13.7 shall not be used in computing the maximum indebtedness which may be created by the Town Council under sections 13.1, 13.2, or 13.3; nor shall the Town be required to levy taxes to pay the principal of or interest on any indebtedness created by this section 13.7.
- 13.7.7 Disposition of Property Acquired Through Revenue Bonds; Application of Proceeds. At its discretion, the Town Council may dispose of any real property and any personal property acquired by the issuance of bonds or certificates of indebtedness issued pursuant to this section 13.7 to a private individual, firm, or corporation at public or private sale, for cash or on credit, and under such other terms and conditions as the Town Council may deem to be in the best interest of the Town without regard to any other provision of this Charter; provided that the revenue received from any such disposition shall be used to retire any outstanding bonds or certificates of indebtedness under this section 13.7, but if none be outstanding, the revenue derived from such disposition may be used for any municipal purpose.
- 13.8 Form of Bonds. The form of the bonds or certificates of indebtedness authorized under sections 13.1, 13.2, 13.3 and/or 13.7 and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after the final action required to authorize the issuance of such bonds or certificates of indebtedness has been completed (i.e. a majority vote of the Town Council under section 13.1; a super-majority vote following the holding of a public hearing under section 13.2 or 13.7; or a favorable vote of those natural persons and legal entities entitled to vote following the public hearing and special election procedures under section 13.3); provided, however, that the Town Council may delegate the authority to make all or any of the determinations described herein to the Town Manager, Mayor, or such special committee as the Town Council may appoint. 78 Del. Laws, c. 339, §24;
- 13.9 Council-members Not Liable. No member of the Town Council, nor any person executing any bonds or other obligations issued pursuant to sections 13.1, 13.2, 13.3, and/or 13.7, shall be personally liable on the bonds or other obligations, or be subject to any personal liability or accountability by reason of the issuance thereof, provided that he/she is authorized to act by Resolution of the Town Council.
- 13.10 Exempt From Taxation. All bonds or other kinds or forms of certificates of indebtedness issued by the Town pursuant to the provisions of sections 13.1, 13.2, 13.3, and/or 13.7, and the interest thereon, shall be exempt from taxation by the State of Delaware or by any political subdivision or agency thereof. Any property acquired and held by the Town from the proceeds of bonds or certificates of indebtedness issued pursuant to sections 13.1, 13.2, 13.3, and/or 13.7 shall be exempt from taxation by the State of Delaware or any political subdivision thereof.
- 13.11 Public or Private Sale. Any bonds or certificates of indebtedness authorized under sections 13.1, 13.2, 13.3 and/or 13.7 may be sold or issued 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) therefore after advertisement in a manner to be prescribed by the Town Council for at least fifteen (15) days before offering the same for sale. All bonds or certificates of indebtedness issued pursuant to section 13.1, 13.2, 13.3, and/or 13.7 shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee, or other fiduciary.
- 13.12 Statute of Limitations, 60 days. No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this

Section 13 shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Smyrna and one 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 certificates of indebtedness therefor;
- (B) That the proposal has been approved (as appropriate) by a majority of the Town Council (if the borrowing has proceeded under section 13.1), by a super-majority of the Town Council (if the borrowing has proceeded under section 13.2 or 13.7), or 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 (if the borrowing has proceeded under section 13.3.)
- (C) The amount of money to be borrowed, which may be stated as a "not-to-exceed" amount.
- (D) The purpose for which it is to be borrowed.
- (E) The security for such borrowing
- (F) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his/her or her action within 60 days from the date of publication of such notice or forever be barred from doing so.
- (G) 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 subsections (A) through (F) above (using date of "posting" for date of "publication") to be posted in at least 5 public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the first publication or posting shall control.

14. Police force.

- 14.1 Establishment of Police Force. The Town Council shall have the authority to establish and fund a municipal police force, and to employ such personnel as necessary to fill those positions within the police force as authorized and funded by the Town Council. All police officers with the authority to carry firearms and/or to make arrests with or without an arrest warrant shall meet such standards and hold such certifications as required by and in accordance with state law.
- 14.2 Power and Duties. Each member of the police force shall be vested with all power and authority, within the Town limits, and within one mile of said limits, of a State Peace Officer. They shall be conservators of the peace and shall suppress all acts of violence and enforce all laws relating to the safety and protection of persons and property. The police force shall preserve peace and order and enforce all ordinances enacted by the Town Council of the Town of Smyrna within the limits of the Town, and shall have the authority to enforce all criminal and motor vehicle laws enacted by the State of Delaware both within the limits of the Town and within one mile of the limits of the Town. Members of the police force shall have the power to issue summons, to arrest pursuant to a warrant issued by any court of competent jurisdiction, and to arrest without a warrant upon view of any violation of state law or of any ordinance of the Town relating to peace and good order. The police force shall execute all warrants issued by any court of competent jurisdiction directed to such officers. In the case of a pursuit of an offender, the power and authority of the police force shall extend outside the territorial limits of the Town to any part of the State.
- 14.3 Temporary Holding Facilities. The Town shall have full power and authority to construct, acquire, and maintain in the Town suitable facilities for the temporary jailing of any person arrested and taken into custody pending further disposition.

15. Subdivision and Land Development.

- 15.1 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 of the Town, to insure the conservation of property values and natural resources, including the protection of the Town's open lands, water resources, and recreational potential, and to afford adequate provision for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town may regulate the subdivision and development of all land in the Town. Such regulation may, through ordinance, include:

- (1) Varying procedures for insuring the processing of combining, partitioning, or land subdivision and site plans, within a reasonable period of time, relative to the number of lots or parcels and the extent of improvements required.
- (2) Procedures for insuring that the arrangement of the lots or parcels of land or improvements thereon shall conform to the existing zoning at the time of recordation and that streets, or rights-of-way, bordering or within subdivided or developed land shall be of such widths and grades and in such locations as may be deemed necessary to accommodate prospective traffic, that adequate easements or rights-of-way shall be provided for drainage and utilities, that reservations of areas designed for their use as public grounds shall be of suitable size and location for their designated uses, that sufficient and suitable monuments and signage shall be required, that land which might constitute a menace to safety, health or general welfare shall be made safe for the purpose for which it is subdivided or developed, and that adequate provision for public utilities (e.g. water supply, fire protection, sanitary sewage collection, electric distribution, telephone, and cable) is made.
- (3) Procedures for encouraging and promoting flexibility and ingenuity in the layout and design of subdivisions and land development, and for encouraging practices which are in accordance with contemporary and evolving principles of site planning and development.
- (4) Requiring, through dedication of land, money in lieu of land, "impact fees," or otherwise, those subject to such regulation to provide, at their own expense, such municipal or public improvements (including enlargement, expansion, improvement, or enhancement of existing municipal or public improvements) which have a rational nexus to the proposed land subdivision, combining, or partitioning, or development, including, by way of example and not in limitation, the paving of streets, installation of sidewalks, curbs, storm sewers, water lines, sanitary sewer lines, electric distribution lines, street signs, access roads, playgrounds, parks, and open areas. In imposing such requirements, the Town may consider and take into account future as well as immediate needs, and potential as well as present population factors affecting the neighborhood in question.
- (5) Procedures for insuring that any improvements to be constructed on such lands are in compliance with all appropriate Town ordinances and that the placement and location of such improvements will not have a significant negative impact on adjoining properties.
- (6) Procedures for securing financial guarantees from the developers of such lands to insure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years) beyond the actual completion of such improvements by the developer or acceptance of such improvements by the Town.

15.2 Recording Unapproved 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 Kent and New Castle Counties 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. Any plat, plot, or plan recorded in violation of such ordinance shall be void and of no legal force or effect.

16. Streets and Alleys.

- 16.1 Power to Lay Out, Locate, Open, Widen, Alter, Close, Vacate or Abandon. The Town Council shall have the power and authority to lay out, locate, and open new streets or alleys, or to widen or alter existing streets or alleys, or parts thereof, and to close, vacate, or abandon existing or proposed streets or alleys or parts thereof, whenever the Town Council shall deem it in the best interest of the Town.
- 16.2 Initiation of Proceedings. The procedures set forth in this Charter to lay out, locate, open, widen, alter, close, vacate, or abandon a street or alley in the Town of Smyrna may be commenced by resolution of the Town Council.
- 16.3 Resolution Proposing Change: Notice; Hearing. Any such resolution shall contain a description of the proposed change and shall fix a time, date, and place when the Town Council shall sit to hear comments and objections concerning the proposal. Any resolution proposing the vacation or abandonment of a street or alley shall state that if the abandonment or vacation of the street or alley is approved, the Town shall convey the street or alley to the adjacent property owners. At least 14 days before the date set for such hearing, the resolution adopted by the Town Council shall be printed in a newspaper having a general circulation in the Town of Smyrna and shall be posted in 5 public places in the Town.
- 16.4 Notice to Affected Property Owners. The Town Council shall cause the resolution adopted pursuant to section 16.3 to be sent, certified mail, return receipt requested, to the owner(s) of record of the real estate through,

over, or abutting which such street or alley may run. Notice to one co-owner shall be effective as to all. 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 § 16.4 shall be provided at least fourteen (14) days before the date set for the hearing.

- 16.5 Hearing. At the time and place in the resolution, the Town Council shall hear such residents or taxables of the Town or owners of the property affected thereby, as shall attend the hearing. 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, or abandon, the proposed locating, laying out, widening, altering, closing, vacating, or abandoning of any street(s) or alley(s) or parts thereof contemplated in its aforementioned prior resolution, including the conveyance of a vacated or abandoned street or alley to the adjacent property owners. The Town Council shall, within 10 days following the adoption of the aforesaid resolution, cause a copy of such resolution to be provided to all affected property owners in the same manner as the notice provided under section 16.4.

16.6 Payment of Compensation; Acquisition of Title.

- 16.6.1 Where lands taken. Whenever the Town Council determines to proceed with the opening of a new street or alley, or the widening of an existing street or alley, the Town may acquire title to the lands necessary in accordance with 29 **Del.C.** Chapter 29 by negotiation and purchase or by condemnation in accordance with the provisions of 10 **Del.C.** Chapter 61, as hereafter amended or in accordance with any future corresponding provisions of law.

- 16.6.2 Where street or alley closed, vacated, or abandoned. Whenever the Town Council determines to proceed with the closing, vacating, or abandoning of any existing street or alley, or any part thereof, no compensation shall be paid to any property owner unless such closing, vacating, or abandoning deprives a property of all reasonable vehicular access directly between any public street or public alley and an existing garage, carport or improved off-street parking area located on such property such that the property owner effectively loses the use thereof for off-street parking and/or temporary storage of motor vehicles. Any property owner claiming such deprivation shall notify the Town in writing of such claim within 15 days of the resolution adopted pursuant to section 16.5. Upon receipt of such notice, the Town Council shall proceed to pay compensation for such damages in the same manner as in section 16.6.1. 83 Del. Laws, c. 131;

- 16.6.3 Disposal of Abandoned and Vacated Street Lands. The Town shall convey any abandoned or vacated street or alley equally to the owners of the adjacent property, with each property owner being conveyed the adjacent portion of the street or alley to the centerline thereof. If 2 or more adjoining property owners agree amongst themselves to a different division of their portions of the street or alley, the Town may effectuate the conveyance of the street or alley in accordance with their request. The Town may reserve an easement across all or a portion of the street or alley being abandoned or vacated.

- 16.6.4 "Street" Defined. For all purposes of this Section 16, the word "street" shall be deemed and held to comprehend the entire right-of-way, whether or not improved, including sidewalks, curbs, lanes, alleys, roadways, streets, or other highways owned by, titled in the name of, or under the jurisdiction and control of the Town. "Street" shall not include any road, street, highway, or other public way under the jurisdiction and control of the Delaware Department of Transportation (or any successor state agency).

83 Del. Laws, c. 131;

17. Constructing, Paving, and Repairing of Streets.

The Town Council shall have full power and authority to re-grade, re-surface, redress and otherwise repair and rebuild all existing streets, lanes, alleys and other public thoroughfares in the Town and, to construct, build, pave, and in any manner improve all new and existing streets, lanes, alleys and other public thoroughfares now open or to be hereafter opened for public use in the Town, and in so doing, may employ such contractors, engineers, inspectors, and others as the Council shall deem expedient. To this end the Town Council shall have full power and authority to enter into contracts or agreements with the Delaware Department of Transportation, or any successor agency, for the construction, or permanent or temporary maintenance, repair and up-keep, of any street, lane, alley, highway, or other public thoroughfare within the Town limits.

18. Sidewalks, Gutters, and Curbs.

The Town Council shall have the authority to adopt ordinances governing the installation, construction, improvement, repair, replacement, or removal of any sidewalk, curb, or gutter located in any public street or alley, or on private property abutting any public street or alley, or any portion thereof. Such ordinance may require the owner(s) of any private lands

upon which, or abutting which, such sidewalk, curb, or gutter is located to: (a) permit the Town (or its agents or contractors) to go upon their private lands to perform such work, (b) pay all or such part of the Town's cost to perform such work as reasonably and equitably determined by the Town, or (c) perform such work as required by the Town, in accordance with standards and specifications established by the Town, at their own expense. Such ordinance shall provide for the following:

- 18.1 Resolution. The Town Council shall adopt a resolution describing the work proposed to be done and identifying the streets or alleys, or portions thereof, in, on, along, or abutting which such sidewalks, curbs, or gutters are located. Such resolution shall identify the property address and owner of each property on, adjoining, along, or in front of which said proposed work will take place, and the amount, if any, proposed to be assessed against such property for such work. Such resolution shall establish a date, place, and time for the holding of a public hearing to receive public comment on the proposed work and assessments. At least fourteen (14) days prior to the hearing, such resolution shall be published in a newspaper of general circulation in the Town, posted in five (5) public places in the Town, and mailed or delivered to the owners of all affected property owners at their address as shown on the Town's tax records.
- 18.2 Determination to Proceed. At the conclusion of such public hearing, or at a subsequent regular or special meeting, the Town Council shall decide whether or not to proceed with all or any portion of the improvements referred to in said resolution, and if it shall determine to proceed, the Town Council shall determine whether the whole or some specified portion of the costs thereof shall be assessed to the owners of those properties upon which, adjoining, along, or in front of which said proposed work will take place. The amount to be paid by the owner of each parcel for their property affected shall be determined according to the lineal footage of their parcel(s) upon which, adjoining, along or in front of which the improvement or improvements are made.
- 18.3 Property Owner's Option To Perform Work At Property Owner's Expense. The Town Council may, but shall not be required to, provide the affected property owners the option to have the work done at their own expense, utilizing their own contractor or the Town's contractor in accordance with all Town standards and specifications. In such event, any property owner electing to do so shall have all work completed to the satisfaction of the Town within such period of time (not exceeding one year) as specified by the Town in writing. In the event the property owner declines the option to have the work done at the property owner's expense, or, having elected that option, fails to do so, the Town may immediately proceed to have the work properly completed by the Town's staff and/or agents or contractors and assess the entire cost thereof against the property owner.
- 18.4 Notice; Assessment and Collection of Costs; Lien. The Town Council shall give written notice to the owner(s) of each property subject to assessment under section 18.2 of the work to be done, the amount(s) assessed, the due date for payment, the terms of any payment arrangements offered by the Town, and (if applicable) the property owner's option to have the work performed at his/her expense (specifying the terms that will govern such election). Such notice shall also inform the property owner(s) that if the Town performs the work, the cost thereof shall constitute a lien against the property which may be enforced in the same manner as a tax lien. If such owner or owners shall fail to pay the amount assessed by the date specified in the assessment notice or in accordance with any payment terms offered by the Town, or (if appropriate) shall fail to have such work properly completed by the date specified in the notice and the Town performs the work, such amount(s) together with interest and costs, (including reasonable attorney's fees) may be collected by the same procedures as are set forth in this Charter for the collection of taxes. The amount so assessed shall be and constitute a lien upon all the property upon which, adjoining, along, or in front of which the said work was accomplished for a period of ten years from the date of mailing of the notice of assessment. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Such lien shall have preference and priority to all other liens on such real estate as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes; provided that if the real estate remains the property of the person(s) who was/were the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full.
- 18.5 Notice. Whenever written notice is required to be given to any "owner" by this section 18, notice to one co-owner shall be notice to all. Notice may be given by mailing same, certified mail, return receipt requested, proper postage affixed, to said owner at his or her last known address as shown on the Town's tax records; provided however, that the failure of any owner to actually receive such notice (being returned as, among other reasons, "unclaimed", "refused to accept", "moved, no forwarding address") shall not invalidate any action taken under this section 18. Notice may also be given by personal delivery to the property owner at the last address shown on the Town's tax records by leaving a copy of such notice with an adult person residing within the premises.

- 18.6 Change in Ownership. The word "owner" as used in this section shall be deemed to mean the owner(s) of record of the property at the time of the resolution adopted under §18.1, and any change in ownership thereafter shall not be deemed or held to affect any of the proceedings described in this section.
- 18.7 Construction Supervision, Standards. The Town Council in exercising the authority granted by this section may employ such contractors, engineers, inspectors and others as the Town Council may deem expedient, and may use or require the use of such materials and substances and such methods of construction as the Town Council shall deem appropriate, in accordance with sound design, engineering, and construction methods.

19. Jetties, Bulkheads, Dams, Embankments and Boardwalks.

The Town Council shall have the power and authority to locate, lay-out, construct, widen, extend, improve, repair, replace, vacate or abandon jetties, bulkheads, dams, groins and embankments for the preservation of any lake, pond, stream, canal, beach or strand within the limits of the Town or contiguous thereto to the ends that the same may be preserved and property may be protected, or boardwalks and piers, to the end that the general public might enjoy the use thereof. In the locating, laying-out, constructing, widening, extending, improving, repairing, replacing, vacating or abandoning of any such jetties, bulkheads, dams, groins and embankments, boardwalks and piers, the Town Council shall have full power and authority to use such materials and substances and such methods of construction and shall employ such contractors, engineers, inspectors, and others the Town Council shall deem expedient and advisable; subject, nevertheless, to any controlling federal or state statutes or administrative regulations.

The Town Council may, by condemnation proceedings, take private lands or the right to use private lands for any of the purposes mentioned in this section. The proceedings by condemnation under this section shall be substantially the same as prescribed in Section 16 of this Charter for the opening and laying-out of new streets or the vacating or abandoning of streets, and the resolutions referred to in said Section 16 shall be changed and modified to cover cases contemplated by this present Section.

20. Drainage.

Subject to any governing federal or state statutes, and subject to the regulations of any federal or state agency or political subdivision having exclusive or concurrent jurisdiction thereof, the Town shall have the full jurisdiction and control, within the limits of the Town, of the drainage of all water thereof, together with the right to alter and change the course and direction of any of the natural water courses, runs and rivulets within the limits of the Town; and the Town Council may pass ordinances for the opening of gutters, surface water and underground drains and stormwater sewers within the limits of the Town. The Town shall also have full power to regulate, maintain, clean and keep the natural water courses, runs and rivulets within the Town limits open and clean and unobstructed and for that purpose may authorize the entry upon private lands and take, condemn and occupy the same in the same manner and by substantially the same condemnation proceedings as hereinbefore provided by Section 16 of this Charter which is concerned with the opening and laying out of any streets. By like proceedings the Town shall also have the power and authority to enter upon private lands and take, condemn and occupy the same for the purpose of laying-down gutters, surface water and underground storm-water drains or sewers, or any of them, within the Town limits.

21. Water Systems.

Subject to any governing federal or state statutes, and subject to the regulations of any federal or state agency or political subdivision having exclusive or concurrent jurisdiction thereof:

- 21.1 Power to Operate Water System. The Town shall have full power and authority to provide an ample 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, re-new, replace and control wells, reservoirs, pumping machines and stations, tanks, stand-pipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, treatment, conveyance and distribution of water, over, on, under or through the lands controlled by the Town or belonging to any private individual(s). The Town Council shall have the power to make contracts for the purchase of water and to distribute the same to users within or without the said Town with the same full powers as if such water had been initially reduced to usefulness by the Town itself.
- 21.2 Rules, Regulations. The Town Council shall have power to enact ordinances, rules and regulations in regard to the use for public or private purposes of water furnished by the Town; requiring that all properties within the Town be connected to the Town's water distribution system within such time and under such circumstances as deemed reasonable by the Town Council, the amounts to be paid by the users thereof; the means or methods

whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the Town.

- 21.3 **Furnishing Water Outside Town Limits.** The Town Council may, at its option, furnish water from the Town system to places and properties outside the Town limits upon such special terms, charges and conditions as it shall deem wise. The Town Council shall have the power to enter contracts for the sale of water outside the limits of the Town upon such terms and conditions as the Town Council shall, in the exercise of its sound discretion deem best; and also to enter into mutual aid agreements with other water suppliers conducting operations near the limits of the Town upon such terms and conditions as Town Council shall deem best.
- 21.4 **Franchises.** The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, lanes and beach strand of the Town for the purpose of furnishing water to the Town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, lanes and beach strands to points outside the Town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.
- 21.5 **Eminent Domain.** The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the proper furnishing of an ample supply of potable water or the creation, construction, extension, maintenance of a proper water system, or the distribution thereof as above provided. The proceedings by condemnation under this section shall be substantially the same as prescribed by Section 16 of this Charter, which is concerned with the opening and laying-out of new streets.

22. Sanitary Sewage Systems.

Subject to any governing federal or state statutes, and subject to the regulations of any federal or state agency or political subdivision having exclusive or concurrent jurisdiction thereof:

- 22.1 **Power to Operate Sanitary Sewage System.** The Town shall have full power and authority to operate a system for the collection, transfer, and/or treatment of sanitary sewage for the Town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, or lease, and to erect, construct, maintain, operate, extend, enlarge, re-new, replace and control sanitary sewer lines, lift stations, holding and/or treating tanks and lagoons, spray irrigation disposal facilities, and all other instruments for the collection, storage, treatment, transmission, and disposal of sanitary sewage, over, on, under or through the lands controlled by the Town or belonging to any private individual(s). The Town Council shall have the power to enter into contracts with the Kent County Levy Court (or its successors) or with the Government of New Castle County (or its successors) with regard to any or all of the foregoing.
- 22.2 **Rules, Regulations.** The Town Council shall have power to enact ordinances, rules and regulations governing the collection and treatment of sanitary sewage from the residents and properties in the Town, requiring that all properties within the Town be connected to such system within such time and under such circumstances as deemed reasonable by the Town Council, the amounts to be paid by the users of such services; the means or methods whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the Town.
- 22.3 **Furnishing Sanitary Sewage Collection Services Outside Town Limits.** The Town Council may, at its option and subject to any contract with the Kent County Levy Court (or its successors) or with the Government of New Castle County (or its successors), furnish sanitary sewage collection service to places and properties outside the Town limits upon such special terms, charges and conditions as it shall deem wise.
- 22.4 **Franchises.** The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, lanes and beach strand of the Town for the purpose of providing sanitary sewer service to the Town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, lanes and beach strands to points outside the Town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.
- 22.5 **Eminent Domain.** The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the proper furnishing of sanitary sewer services, or the creation, construction, extension, maintenance of a proper sanitary sewer system, as above provided. The proceedings by condemnation under this section shall be substantially the same as prescribed by Section 16 of this Charter, which is concerned with the opening and laying-out of new streets.

23. Electric Generation and Distribution System.

- 23.1 Power To Operate. The Town Council shall have the full power and authority to erect, construct, equip, maintain, repair, replace, lease, and operate plants, facilities, and systems for the generation and distribution of electric power and energy, including, but not limited to, renewable energy facilities, such as solar power: (a) for the use and benefit of the inhabitants and properties of the Town, (b) for the use and benefit of persons and properties lying outside the Town limits of the Town but within such proximity of the Town as to make provision of such service reasonable in the discretion of the Town Council, subject always to the authority of any governing state agency to regulate the service territories of electric distribution systems, and (c) for sale to other providers of electric capacity and energy through the Delaware Municipal Electric Company ("DEMEC"), its successors or assigns. The Town Council shall have the power to make contracts for the purchase of electric capacity and energy with any responsible persons, firms, or corporations, and to distribute the same to users within or without the said Town with the same full powers as if such electric energy and/or capacity had been initially generated or provided by the Town. 78 Del. Laws, c. 339, §25;
- 23.2 Rules, Regulations. The Town Council shall have power to enact ordinances, rules, regulations and tariffs regarding the connections and use of electric capacity and energy furnished by the Town; the rates and amounts to be paid by the users thereof; the means or methods whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the electric distribution system or equipment of the Town; provided that such ordinances, rules, and regulations shall not be discriminatory nor confiscatory.
- 23.3 Furnishing Electric Distribution And Supply Services Outside Town Limits. Subject always to the regulatory authority of any state agency having jurisdiction over the service territories of electric distribution service suppliers, the Town Council may, at its option, elect to furnish electric distribution and supply service from the Town system to places and properties outside the Town limits in accordance with the same ordinances, rules, regulations, and tariffs governing service to properties within the Town. The Town Council shall have the power to enter into joint operating, back-up, or mutual aid agreements with other electric distribution and/or supply companies conducting operations near the limits of the Town upon such terms and conditions as Town Council shall deem best.
- 23.4 Franchises. The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, lanes and beach strand of the Town for the purpose of furnishing electric distribution services and/or energy to the Town and to the persons and properties within the Town, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, lanes and beach strands to points outside the Town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.
- 23.5 Eminent Domain. The Town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the purpose of erecting, constructing, extending, enlarging, maintaining, replacing, or removing any plant, facilities, or equipment used by the Town in the generation, transmission, and/or distribution of electrical energy and capacity as authorized by section 23.1. The proceedings by condemnation under this section shall be substantially the same as prescribed by Section 16 of this Charter, which is concerned with the opening and laying-out of new streets.

24. Actions or Suits.

No action, suit, or proceeding shall be brought or maintained against the Town of Smyrna, its officers (including the members of any board, commission, or agency), employees, or agents, whether now, hereafter, or previously serving as such, and no judgement, damages, penalties, costs, or other money entitlement shall be awarded or assessed against the Town, its officers, (including the members of any board, commission, or agency) employees or agents, whether now, hereafter or previously serving as such, in any civil suit or proceeding at law or in equity, or before any administrative tribunal, arising out of, connected with, or on account of any physical injury or injuries, death, or any other type of personal injury, (including libel or slander), or injury to property (whether real or personal) unless the person by or on behalf of whom such claim or demand is asserted, within one year from the happening of the incident giving rise to such injury, shall notify the Town of Smyrna in writing of the time, place, cause, character and extent of the injury sustained or damages suffered. Such notice shall be directed to the Mayor of the Town of Smyrna by certified mail with return receipt requested and postage prepaid.

25 Compendium

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

26. Survival of Powers and Validating Section.

- 26.1 All powers conferred upon or vested in the Town Council of Smyrna 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 Smyrna and/or the Town Council of Smyrna precisely as if each of said powers was expressly set forth in this Charter.
- 26.2 All powers and authority of a "home rule" municipality conferred upon, vested in, or delegated to the Town of Smyrna by virtue of having previously qualified for home rule charter status under 22 **Del.C.** Section 836, shall continue to be conferred upon, vested in, or delegated to the Town, and the Town of Smyrna shall continue to be qualified as a home rule municipality under this Act until such status is lawfully terminated pursuant to 22 **Del.C.** Section 825, as it may from time to time hereafter be amended, or by any future corresponding provision of law.
- 26.3 All ordinances adopted by the Town Council of Smyrna and in force at the time of approval, acceptance and going into effect of this Charter are continued in force until the same or any of them shall be repealed, modified or altered by the Town Council of Smyrna under the provisions of this Charter.
- 26.4 All of the acts and doings of the Town Council of Smyrna or of any official, or of the Mayor, or the Town which shall have been lawfully done or performed under the provisions of any law of this State or of any ordinance of the Town of Smyrna under any provision of any prior Charter of the Town of Smyrna, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.
- 26.5 All taxes, assessments, license fees, penalties, fines, liens, forfeitures, and other charges due to the Town of Smyrna shall be and remain due to the Town of Smyrna and all debts due from the Town of Smyrna shall remain unimpaired until paid by the Town of Smyrna.
- 26.6 All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges or amounts owed to the Town shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town of Smyrna.
- 26.7 The bonds given by or on account of any official of the Town of Smyrna shall not be impaired or affected by the provisions of this Charter.
- 26.8 Each member of the Town Council who holds office at the time of approval of this Act shall continue to serve until the expiration of his/her term of office, and until his/her successor is duly elected and qualified.
- 26.9 All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter shall be and the same are hereby repealed to the extent of any such inconsistency.

27. Separability.

If any provision, section, sub-section, paragraph, sentence, or clause of this Charter shall be held to be unconstitutional, unenforceable, or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining provisions, sections, sub-sections, paragraphs, sentences or clauses of this Charter, but the same shall remain in full force and effect.

28. Special Act.

This Charter shall be taken as and deemed to be a special act of the State of Delaware.

29. Effective Date.

This Charter shall take effect as of July 1st, 2003.

74 Del. Laws, c. 176; 75 Del. Laws, c. 247; 76 Del. Laws, c. 405; 77 Del. Laws, c. 63; 78 Del. Laws, c. 339; 80 Del. Laws, c. 98; 81 Del. Laws, c. 294; 83 Del. Laws, c. 131;