

Town of Viola

Section 1.

That the inhabitants of the Town of Viola, Kent County, Delaware, are hereby constituted a municipal corporation and body politic. The name and style of said corporation shall be "The Commissioners of Viola," by which name the said corporation may sue and be sued, plead and be impleaded, complain, answer and defend in all courts of this State, and the said corporation shall have and use a common seal of its own devising with power to alter and renew the same.

Section 2.

The boundaries of said corporation hereinafter designated as the Town of Viola, shall be as follows, viz: Beginning at a point in the County Road leading from Canterbury to Willow Grove, about 995 feet west of the center of the Delaware Railroad tracks; thence running in a northerly direction a line parallel with said railroad about 974 feet to a point in lands of Purnal F. Friedel; thence running in an easterly direction a line parallel with W. Howard Street in said town across the tracks of the Delaware Railroad about 2,468 feet to a point in lands formerly of Ed. Todd; thence running in a southerly direction a line parallel with said Delaware Railroad about 1,987 feet to a point near the late William Evens house; thence running in a westerly direction a line parallel to said E. Howard Street across the said railroad about 2,468 feet to a point near Virgil Jarrell's house; thence running in a northerly direction about 1,013 feet to the place of beginning.

Section 3.

The said corporation shall be governed by a Board of Commissioners. They shall elect a President from their own number and shall elect a Treasurer and a Clerk from among the citizens of the said corporation.

Section 4.

A town election shall be held on the last Tuesday in March, and on the same date in each and every year thereafter in the said town of Viola at the Viola Community House therein between the hours of six o'clock P.M. and eight o'clock P.M. Such election may be held by the President of the Commissioners or any other voter in his absence, and two citizens chosen by the Viola Board of Elections, who shall be judges of said election, and shall decide the legality of the votes offered. **63 Del. Laws, c. 411; 78 Del. Laws, c. 59**

They shall receive the ballots ascertain the result and certify the same on the books of the Commissioners. At every such election every resident of said town eighteen years of age or older shall be entitled to a vote. At the annual election held on the last Tuesday in March, 1982, there shall be chosen three Commissioners to serve for the term of two years or until their successors shall be duly chosen and qualified. At the annual election held on the last Tuesday in March, 1983, there shall be chosen two Commissioners to serve for terms of two years or until their successors have been chosen and qualified. At every subsequent annual election the successors to the Commissioners whose terms shall have expired shall be chosen to serve for the term of two years, or until their successors have been duly chosen and qualified, and if any vacancy or vacancies shall occur among them by death, resignation, refusal to serve or otherwise, the remaining Commissioners, shall have the power to fill such vacancy or vacancies until the ensuing annual election, at which time such vacancy or vacancies shall be filled by election of Commissioners to fill out the whole of the unexpired term of the Commissioner or Commissioners in whose stead they shall be elected. No one shall be eligible to the office of Commissioner unless he has been a resident of said town for a period of at least one year. In the event of a tie vote for the office of the Commissioner, the Commissioners whose term shall not have expired shall cast the deciding votes. All persons desiring to be candidates at any annual election shall file with the President of the Commissioners. Write-in votes will be allowed. If more candidates file than there are Commissioners to be elected, then a voting machine shall be used; and a person qualified to operate the machine shall be present during the official voting hours. The Commissioners may (but shall not be required to), by ordinance, provide for a qualified voter who shall be unable to appear in person to cast his or her ballot at any municipal election by absentee ballot. **63 Del. Laws, c. 411; 78 Del. Laws, c. 59**

Section 5.

There shall be four stated meetings in every year of the said Commissioners, viz: one per quarter with the time and date of each meeting duly advertised, at which meetings they may pass ordinances and rules for the good government of said town, the lighting and improvement of the streets, the paving or other improving of the sidewalks, the planting and protection of ornamental trees, the repairs and making of public pumps and removal of trash, and for all matters relating to the general welfare of said town provided the same shall not be repugnant to the constitution and the laws of the State and of the United States. By such ordinances they may impose fines, penalties and forfeitures and provide for their collection. Also, the President shall, at the request of two or more Commissioners, call a special meeting of the Commissioners whenever they may deem such meeting necessary, and at such meeting they shall have the right to transact any business they may have power to transact at regular meetings. The said Commissioners shall, at their first meeting after the election, elect one of their number as President whose duty it shall be to preside at the meetings of the said Commissioners, have the general supervision of all streets in said town, and of the persons who may be employed by the town Commissioners, receive written complaints signed by the citizens making said complaint of nuisances and violations of the laws and ordinances, and present the same to the Commissioners at the first stated meeting for action, and such violation or infraction of the laws or ordinances that shall require immediate attention to cause the same to be proceeded on before the Alderman or the nearest available Justice of the Peace to the place where the offense or infraction is alleged to have been committed. He shall sign all warrants on the treasurer for the payment of money and shall perform such other duties as may be prescribed by the ordinances. **63 Del. Laws, c. 411**

Section 6.

That the Commissioners herein named and their successors in office shall, at their first stated meeting in every year, determine the amount of tax to be raised in said town for that year in an amount necessary to defray the general, special and contingent expenses for the year, including taxes on real property and capitation; and they shall appoint an Assessor, who may or may not be one of their number, to make an assessment of the persons and property in said town; and shall also appoint a Collector and Treasurer, who may or may not be one of their number.

The Collector and Treasurer may be the same person. It shall be the duty of the assessor of said town, within two weeks from his appointment, to make a true, just and impartial valuation and assessment of all the real estate not now exempt from taxation for municipal purposes and assessable personal property within said town, and also an assessment of all the citizens residing in said town above the age of twenty-one years, as well as those owning real estate as those not owning real estate, at least One Dollar per head as tax provided that all vacant lots, pieces and parcels of land within the limits of the town, as the limits may be determined and designated, exceeding five acres in quantity, shall be exempt from taxation for the use and purposes of said town of Viola, but all such lots and pieces and parcels of land exceeding five acres as aforesaid, having a dwelling house thereon shall be assessed and taxed as and for one town lot, and the said assessor shall forthwith, after making such assessment, deliver to the Commissioners for the time being a duplicate containing the names of all persons assessed and the amount of assessment, distinguishing the real and personal assessment of each. When the assessment is returned, the Commissioners shall give five days' public notice of the fact; and notice that they will sit together at a certain place, on a certain evening, to hear appeals from said assessment; and that they shall have power on such evening to add to or decrease any assessment. When the appeal day is passed, they shall without delay cause the assessment list to be transcribed and the transcript to be delivered to the collector, who shall thereupon collect from each taxable his proportion of the tax laid, and pay over the whole amount, deducting commission and delinquencies which shall be allowed by the Commissioners to the treasurer by the first day of June next after the receipt of his duplicate. The collector shall have the same power for the collection of said taxes, as are conferred by law, upon collectors of County taxes; provided, however, that in making said assessment for the town of Viola all machinery in any factory now in said town or that hereafter may be erected shall be exempt from taxation for town purposes, and that only the real estate and buildings, belonging to said factory shall be taxed.

On all taxes paid after the first day of January next succeeding the delivery of the annual assessment list to the Collector of Taxes shall be added an amount equal to the amount of one per centum per month

for each and every month such taxes shall remain unpaid and shall be collected in the same manner as the original amount of the tax. **63 Del. Laws, c. 411**

Section 7.

A remedy by distress as now prescribed by law is hereby preserved to the Collector of Taxes for the collection of any taxes, assessments or other charges for which he may be responsible.

At any time after the delivery of the annual assessment list to the Collector of Taxes the Collector may in the name of the Commissioners of Viola institute suit before any Justice of the Peace of the State of Delaware in any of the counties of the State for the recovery of the unpaid tax assessment or other charge in an action of debt and upon judgment obtained may issue writ of execution as in case of other judgments recovered before a Justice of the Peace.

The said execution shall constitute a lien upon all the personal property of the taxable within the County where the judgment shall have been obtained which by virtue of such execution shall be levied upon within thirty days after the issuance thereof and such lien shall have priority over all other liens against said personal property created or suffered by the taxable except such liens thereon which may be created in regard to County taxes, although such other liens be of a date prior to the time of the attachment of such tax liens.

Any time after the delivery of such annual assessment list to the Collector of Taxes the Collector may notify in writing the person, firm or corporation by whom any taxable is employed that the tax assessment or charge due from said employee is due and unpaid. The notice shall be signed by the Collector of Taxes and shall contain correct name of the taxable as it appears on any such list, the amount of the tax, assessment, or other charge due with penalties and interest added if any.

Thereupon it shall be the duty of the employer to take from the wages salary or other money then due the taxable the amount of the tax, assessment, or other charge together with penalties and interest added if any owing from the employee and charge the same against him and to pay the same to the Collector of Taxes within ten days. The Collector of Taxes shall deliver to the employee a Certificate of Payment which shall be allowed in any accounting between the employer and taxable. If the employer be notified as aforesaid and having in his hands belonging to the taxable shall neglect or refusal to comply with the provisions hereof, such employer shall become personally liable for the amount of the tax, assessment or other charges together with penalties and interest due thereon, if any, of the persons as to whom notice was given and the amount thereof may be recovered from such employer in an action of debt before any Justice of the Peace as aforesaid. This process shall be deemed to be in the nature of a garnishment proceeding.

Section 8.

That the Commissioners, or a majority of them, shall have authority to employ and use the money in the treasury of the town for the general improvement, benefit and ornament of the said town, as they may deem advisable, and all money paid by the treasurer shall be paid upon order of the Commissioners, or a majority of them, provided that said Commissioners shall have no authority to create debts on said town to a greater amount than they are authorized to raise by said taxation and receive from the county.

Section 9.

That any ordinance for the paving or improving the sidewalks shall apply only to those persons owning property fronting upon them, who, and who alone, shall bear the expenses of making pavements or such other improvements when the same shall be ordered. Provided, that no persons shall be required to pave more than seventy-five feet in any year. If such ordinance be not complied with within three months, the Commissioners may procure the materials and have the work done and collect the expense of the same from the owner of said property in an action at law.

Section 10.

That the President and Commissioners shall have the superintendence and oversight of all roads and streets now opened, or hereafter to be opened, within the limits of said town, and no overseer of such road or street shall be appointed by the Levy Court of Kent County but the said Levy Court shall annually

appropriate for the repair of said roads a sum of money not less than two hundred dollars, and shall make an order for the payment thereof to the treasurer of the town of Viola for the use of said town.

Section 11.

That the treasurer and collector shall be severally sworn or affirmed to discharge their respective duties with fidelity; such oath or affirmation may be administered by any person authorized by the laws of this State to administer oaths, or by the President of the Commissioners. They shall also, before entering upon the duties of their office, give bond to the town of Viola, with sufficient surety to be approved by the Commissioners of said town, in the penal sum double the amount of what may be likely to come into their hands, conditioned for the faithful discharge of the duties of their said offices and for the payment to their successors in office of all sums of money belonging to said town which may remain in their hands upon the settlement of their accounts, to which said bonds and conditions there shall be annexed a warrant of attorney for the confession of judgment for said penalty. The said Treasurer shall pay all orders drawn on him by order of said Commissioners and signed by the president thereof, out of any moneys in his hands belonging to said town. He shall settle his accounts with the said Commissioners annually in the month of June and at such other times as the said Commissioners may require. **63 Del. Laws, c. 411**

The treasurer, clerk and assessor of said town shall receive each year a reasonable compensation for their services, to be determined by the Commissioners of said town; provided the compensation of said treasurer, as such, shall not exceed two percent, on all moneys received by him belonging to said town, and of the treasurer acting as collector shall not exceed eight percentum on the taxes collected by him.

Section 12.

That the town Commissioners at their first meeting or as soon thereafter as convenient, may annually proceed, to elect, by ballot some suitable person, resident in said town to be Alderman of the town of Viola who may or may not be a Justice of the Peace resident of said town to serve as such for the term of one year, or until his successor shall be duly elected, subject, however, to be removed from office at any time by vote of two-thirds of all the Commissioners. Before entering upon the duties of his office he shall be sworn or affirmed by the President of the Commissioners, or by any one of the Commissioners, to perform the duties of his office honestly, faithfully, and diligently. In case of temporary disability of the Alderman to perform his duties by reason of sickness or absence, or otherwise, the same Commissioners may at any meeting appoint an acting Alderman for the period of such disability.

Section 13.

That the Commissioners shall appoint a town clerk, who may or may not be one of their number, who shall keep a record of the proceedings of the Commissioners, and the same shall be evidence.

Section 14.

That the Commissioners may appoint one or more persons to serve as police officers for and on behalf of the town of Viola and shall fix his or their compensation. Such police officers shall be under the direction of the President of the Commissioners except as the Commissioners otherwise direct. It shall be the duty of such officers to police the town of Viola and they shall have all the powers of municipal police officers and constables of Kent County within the town limits and within one mile adjacent to the corporate limits of said town. **63 Del. Laws, c. 411**

Section 15.

The Alderman shall have jurisdiction and cognizance of all breaches of the peace and other offenses committed in this town, so far as to arrest and hold for bail or fine and imprison offenders; and, also, all fines, penalties and forfeitures prescribed by this Charter or any law of the state or by an ordinance by the Commissioners and, also, of all neglects, commissions and defaults of any member of the town police force or any other city officer or employee, provided that in the case of the violation of an ordinance he shall impose no fine or penalty in excess of that fixed by the ordinance and shall not commit to prison for a longer term than 30 days in default of the payment of a fine imposed by him. The Kent County Correctional Institution may be used for imprisonment under the provision of this act provided that the

Commissioners shall pay for the board of persons committed for breach of ordinances that do not constitute breaches of the general law. Within his jurisdiction as aforesaid the Alderman shall have all the powers and authority of a Justice of the Peace for Kent County.

Upon the expiration of the term for which he was chosen, or if any Alderman shall be removed from his office by the Commissioners as aforesaid provided, he shall deliver to his successor all the books and papers belonging to this office, and shall pay over at the town treasurer all money in his hands belonging to the town within five days after his removal.

Section 16.

The said corporation shall have power to lay out, improve, control and police, streets, lanes, alleys, and sidewalks in the said town, to regulate, abate, and pass ordinances prohibiting and fixing penalties for, all kinds of nuisances, disorders, and practices, and performances which shall be deemed by the Commissioners obnoxious, unhealthy, unsafe, or detrimental to persons and property within the corporate limits. And to own such property and make such contracts and engage in such business as shall be deemed proper for the improving of the town, for the advantage of its citizens, or for the promotion of the general peace and welfare.

Section 17.

The Board of Commissioners shall have power, upon the application of ten or more citizens of the town, by petition for the purpose, to locate, lay out, and open any new street, lane or lanes, or alley or alleys, or widen any street, lane or alley heretofore laid out in said town, or reopen any old street or streets, lane or lanes, or alley or alleys, now closed or which may hereafter be closed, which ten or more persons may desire to be located, laid out and opened, or widened or reopened, allowing to the persons respectively, through and over whose lands such street or streets, lane or lanes, or alley or alleys may pass, such compensation therefor as they shall deem just and reasonable under all circumstances, which compensation, if any be allowed, shall be paid by the treasurer of the town out of the moneys of said town upon warrants drawn upon him by order of the Board aforesaid. Whenever the Board of Commissioners shall have determined to locate and lay out, or widen any street, lane or alley, and shall have fixed the compensation therefore, it shall be their duty immediately after the survey and location of the said street, lane or alley, to notify, in writing, the owner or owners of the real estate through or over which such street, lane or alley may run, of their determination to open or widen the same, and to furnish a general description of the location thereof, and also the amount of the damages or compensation allowed to each, and if such owner be not resident within the said town to notify the holder or tenant of said real estate, but if there be no holder or tenant resident in said town the said notice may be affixed to any part of the premises. If any owner be dissatisfied with the amount of the compensation or damages allowed by the Board of Commissioners, as aforesaid, he or she may, within ten days after such notice, as aforesaid, appeal from the said assessment of compensation or damages by serving a written notice to that effect on the president of said Board of Commissioners, or the person performing the duties of president of said Board for the time being. In order to prosecute said Appeal, such owner or owners shall within fifteen days after the expiration of the president of Board, or the person performing the duties of president of said Board for the time being, make written application to the Associate Judge of the Superior Court of this State, resident in Kent County, for the appointment of a commission to hear and determine the matter of damages or compensation, and thereupon the said associate judge shall issue a commission under his hand directed to five freeholders of the said County, three of whom shall be residents of said town of Viola, and two of whom shall be non-residents of said town, commanding them to assess the damages which the owner of the real estate through or over whose lands said street, lane or alley shall pass, who shall have notified the said Board of their intention to appeal, may incur by reason thereof, and to make return of their proceedings to the said associate judge at a time therein appointed, the freeholders named in such commission being first sworn or affirmed, as in said commission shall be directed, shall view the premises and they, or a majority of them shall assess the damages as aforesaid, and shall make return, in writing, of their proceedings in the premises to the said associate judge, who shall deliver said return to said Board of Commissioners, which shall be final and conclusive. The said associate judge shall have power to fill any vacancy in the commission. The amount of damages being so ascertained, the Board of Commissioners may pay or tender the same to the person or persons entitled thereto, within one month after the same shall be finally ascertained, or if the person or persons so entitled reside out of, or are absent from town,

during said period of one month, or are minors then the same may be deposited to his or her credit in the Farmers Bank of the State of Delaware, at Dover, within said time, and thereupon the said property or land may be taken or occupied for the uses aforesaid.

In the ascertainment and assessment of damages by the freeholders appointed by the associate judge aforesaid, if the damages shall be increased, the costs of the appeal shall be paid by the treasurer of the town out of any money in his hands belonging to the town, but if said damages shall not be increased the costs of the appeal shall be paid by the party appealing. The fees to the freeholder shall be two dollars per day to each, which shall be taxed as part of the costs. After the damages shall be fixed and ascertained by the freeholders as aforesaid, the Board of Commissioners shall have the option to pay damages assessed, within the time aforesaid and proceed with the said improvements, or, upon the payment of the costs only, may abandon the proposed improvements.

Section 18.

For protection against fire the Commissioners may adopt ordinances with regard to the buildings and building material; and may prohibit the use of building materials that may be deemed to create a fire hazard, and this power shall embrace new buildings or additions to or alterations of existing structures of every kind, to condemn buildings or structures, or portions thereof that constitute a fire menace, and to require or cause same to be torn down, removed or so altered as to eliminate the menace of fire; to prescribe the height in thickness of walls of any buildings and the kind and grade of materials used in the construction thereof.

Section 19.

The Commissioners of Viola shall have power to enact ordinances defining nuisances and providing for the removal or abatement thereof and prescribing the fines, penalties and forfeitures for causing or continuing the same.

Section 20.

No person shall leave any partially dismantled, non-operating, wrecked or junked vehicle on any street or highway or private or public property within the limits of the Town of Viola. "The Commissioners of Viola" shall have power to enact ordinances relating to the impounding or removal and disposition of wrecked, junked or non-operating vehicles left on any street, highway or private or public property within the limits of the Town of Viola.

Section 21.

The said corporation may hold and acquire by purchase, gift, devise, lease or condemnation, real property, within or without its boundaries for any municipal purpose in fee simple and lesser estate or interest and may sell, lease, hold, manage and control such property as its interest may require; it shall have all other powers and functions requisite and appropriate for the government of the town, its people and order, its sanitation, appearance and beauty, the health, safety, convenience, comfort and well-being of its population and protection and preservation of the property, public or private.

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 shall include all powers implied thereby, appropriate to the exercise thereof, and it is intended that "The Commissioners of Viola" shall have and may exercise all powers which, under the Constitution of the State of Delaware, it would be competent for this charter specifically to enumerate. All powers of the Commissioners of Viola held, expressed 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 Commissioners.

Section 22.

- (a) The Town of Viola shall have the power to annex territory, adjacent to or contiguous with adjoining the boundaries of the town. The procedure for such annexation shall be as follows:

- (1) Annexation may be initiated by an Annexation Resolution, adopted by the Board at a regularly-scheduled meeting of the Board, recommending that certain specifically described territory be annexed.
- (2) Annexation may be initiated by an Annexation Petition to the Board, signed by a majority of owners of the territory to be annexed, and requesting that certain specifically described territory be annexed.
- (3) Any Annexation Resolution or Petition shall contain a clear description of the territory proposed for annexation, together with a survey of such territory.
- (4) The words and phrases defined in §101A, Title 22 of the Delaware Code, when used in this Section, shall have the same meaning ascribed to them in said §101A, except where the context clearly indicates a different meaning. The words "adjacent to, or contiguous with or adjoining the boundaries of the town" also include any lot, piece or parcel of property proposed for Annexation which, although not adjoining a boundary of the town, nevertheless adjoins or is contiguous to other real property which is proposed for annexation.
- (5) The Annexation Resolution or Petition shall be discussed and voted upon during at least one regularly-scheduled meeting of the Board; and each Commissioner shall, prior to such meeting, be provided with a copy of a legal description and a formal survey of the territory proposed for annexation. The Board shall not be bound by the terms of any annexation petition, and may amend or modify the boundaries proposed in the petition.
- (6) If the Board adopts an Annexation Resolution, such resolution shall contain a legal description of the territory proposed by the Board for annexation. The annexation of such territory as proposed by the Board shall be subject to an Annexation Referendum. The President of the Board shall, within thirty to sixty days immediately following enactment of the resolution, provide public notice of the adoption of such Resolution to each qualified voter residing in the territory, and to each person with an ownership interest in any part of such territory; and shall include the date and place for the Annexation Referendum. The President may also give notice of the proposed annexation to residents of the Town. Such public notice may be provided by first class mail; by formal notice published in a newspaper having general circulation within the Town and in the territory; or by a posting of said notice at four public places within the territory proposed for annexation. Additional notice to residents of the Town may be by a posting at four public places within the Town. Such newspaper notice shall be published at least twice, once in the week immediately preceding the week of the Referendum.
- (7) Each qualified voter residing in the territory proposed for annexation and each person having an ownership interest in any real property within such territory, shall be entitled to one vote only. The referendum shall be conducted in the same manner as is set forth in the applicable provisions for elections held under Section 4 of this Charter.
- (8) The Board may, in its discretion, also provide for an Annexation Referendum for the residents of the Town, to be held at the same time as the referendum within the territory to be annexed. Where there is also a referendum within the Town, the President shall notify the residents in the same manner as set forth in paragraph (6) above for residents of the territory. If the proposed annexation is not approved by both referenda, the territory shall not be annexed.
- (9) If the annexation is approved in accordance with this Section, a deed or deeds containing an accurate metes-and-bounds description of such territory, and conveying said territory to the Town, shall be recorded in the same manner as other deeds conveying lands; and such territory shall become part of the Town of Viola immediately after the Town Charter is amended to reflect the addition of such territory.

Section 23.

That this act shall be deemed and taken to be a public act. Approved April 30, 1969.

3 Del. Laws, c. 363; 57 Del. Laws, c. 50; 63 Del. Laws, c. 411; 73 Del. Laws, c. 235; 78 Del. Laws, c. 59