

Section 1 Incorporation.

The residents of and individuals owning property in Dewey Beach and individuals otherwise-qualified to vote in the Town of Dewey Beach in Sussex County, are hereby constituted a municipal corporation and body politic by and under the name of "Commissioners of Dewey Beach," (hereinafter referred to as the "Town Council" or "Council", "Corporation" or "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.

Comment [DSK1]: Elsewhere as "individuals qualified to vote"

Comment [DSK2]: We have tried to use Town Council to distinguish between the authority of the Town Council and Town Commissioners.

Section 2 Territory and Limits.

(a)

The limits and bounds of the Town of Dewey Beach are hereby established and declared to be as follows:

(b)

Starting at a point at the low water mark of the Atlantic Ocean shoreline, said point being the northerly boundary of Rehoboth-by-the-Sea; thence easterly into the Atlantic Ocean 500 feet; thence southerly and parallel to the shoreline to a point which is on an easterly extension of the southern boundary of Collins Street; thence in a westerly direction along the southern boundary of Collins Street to Route No. 1; thence in a southerly direction along the easterly right-of-way of Highway One, to a point approximately 65 feet south of Anchor Way; thence in a westerly direction to the eastern shore of the Rehoboth Bay; thence in a northerly direction and with the meanderings of the Rehoboth Bay shoreline to a point on the Rehoboth Bay westerly of Bayard Avenue, said point being the boundaries of Rehoboth-by-the-Sea; thence with the boundaries of Rehoboth-by-the-Sea Bayard Avenue, northerly across Route 1; thence with the westerly boundaries of Comegys to its easterly side; thence across Route 1 to the southerly edge of Silver Lake; thence with Silver Lake and the boundaries of Rehoboth-by the-Sea to a point; thence easterly with the boundaries of Rehoboth-by-the-Sea, said boundary being the southerly line, and extensions thereof, of Block 51 as shown on the plot plan of Rehoboth-by-the-Sea, to the low water mark of the Atlantic Ocean, the point and place of beginning.

The area designated by this description includes all of Rehoboth-by-the-Sea (as shown on a plot plan on file in Georgetown, Delaware) and all the area south of Rehoboth-by-the-Sea which is bounded on the east by the Atlantic Ocean, on the west by the Rehoboth Bay and which extends southward to the south side of Collins Street on the ocean block and 65 feet southerly of Anchor Way on the bay side and also includes 500 feet of the Atlantic Ocean adjacent to the shoreline.

(c)

The Town Council may, at any time hereafter cause a survey and plot to be made of said Town, and the said plot or any supplement thereto, when so made and approved by said Town Council, signed by the Mayor, who shall affix thereto the municipal corporate seal of the Town, attested by the Town Manager, and upon being recorded in the Offices of the Recorder of Deeds of the State of Delaware, in and for Sussex County, shall be, or the record thereof, or a duly certified copy of said record, shall be evidence in all Courts of Law and Equity of this State.

(d)

The Town Council shall have the power to annex additional territory adjoining the corporate limits of the Town of Dewey Beach as hereinbefore set forth or as hereafter extended pursuant to the procedure hereinafter set forth and to apply to all such additional territory all laws, ordinances, resolutions and policies in force with the Town so far as they may be locally applicable. The Town Council shall adopt a Resolution proposing to the property owners and the residents of both the Town and of the Territory proposed to be annexed that the Town of Dewey Beach proposes to annex certain territory which adjoins its then limits and territory. The Resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation. The Resolution setting forth the information shall be printed in a newspaper having a general circulation both in the Town of Dewey Beach and in the territory proposed to be annexed at least thirty (30) days prior to the date set for the public hearing, as well as being posted in the Town of Dewey Beach at Town Hall, the Life Saving Station and on the Town’s website. In addition, a reasonable effort will be made to send a personal letter to all registered voters and individuals who are property owners of record in the Town of Dewey Beach and all individuals who are property owners of record in the territory proposed to be annexed at least thirty (30) days prior to the date set for the public hearing. (78 Del. Laws, c. 346, 7/18/2012)

Comment [DSK3]: Change to better align with other notice requirements.

Comment [DSK4]: This represents a compromise between what is ideal and what is practical (e.g., it is not possible for the Town to know a priori all residents nor those who qualify to vote due to holding a 5 year lease on a property in Town)

Following the public hearing, but in no event later than thirty (30) days thereafter, a Resolution shall then be passed by majority vote of the Commissioners of Dewey Beach present in a properly-noticed Town Council Meeting ordering a Special Election for Annexation to be held not less than thirty (30) days nor more than sixty (60) days after said Town Council Meeting on the subject of the proposed annexation. 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.

Comment [DSK5]: Clarification of “majority vote”, for use in most instances except wherein a true majority vote of the Council (3) or a supermajority vote is deemed necessary

Comment [DSK6]: The numbers don’t work if counting from the public hearing

The notice of the time and place of holding the said Special Election for Annexation shall be printed within thirty (30) days immediately preceding the date of the Special Election in two (2) issues of a newspaper having a general circulation in The Town and in the territory proposed to be annexed, as well as posted at Town Hall, the Life Saving Station, and on the Town’s website at least thirty (30) days prior to the date of the Special Election for Annexation. In addition, a reasonable effort will be made to send a personal letter to all individuals deemed under Section 10 (b) of this Charter to be qualified to vote in the Town of Dewey Beach and all individuals meeting the same qualifications in the territory proposed to be annexed at least thirty (30) days prior to the date set for the Special Election. (78 Del. Laws, c. 346, 7/18/2012)

Comment [DSK7]: A more stringent requirement than that highlighted in Comment 4 as might be fitting for an actual election rather than notification of a public hearing. Perhaps the groups in Comment 4 and here should be the same; as herein enumerated.

At the Special Election for Annexation, every individual qualified under the criteria listed in Section 10 (b) of this Charter to vote in Dewey Beach Annual Municipal Elections shall be entitled to cast one vote. At the said Special Election for Annexation, every individual meeting the same qualifications in the territory proposed to be annexed shall be entitled to cast one vote. Property owners or leaseholders, as defined in this Charter, whose property or whose improvement located on leased land is exempt from taxation or is not assessed shall not be entitled to vote. The books and records of the Town of Dewey Beach in the case of Town property owners, or leaseholders as defined in this Charter or residents and the books and records of Sussex County in the case of property owners, leaseholders as defined in this Charter, or residents of the territory proposed to be annexed shall be conclusive evidence of the right of such persons, firms or corporations to vote at the Special Election for Annexation.

Comment [DSK8]: Alternatively, voting could be restricted to registered DB voters. CCRC did not consider this alternative.

Comment [DSK9]: CCRC recommends redefining voter eligibility for Special Elections for Annexation, both for Dewey voters and those from the target territory, to establish the same criteria for voter qualification as in the Dewey Municipal Elections and to establish the same qualifications both in Dewey and in the target territory (this removes corporations from eligibility since they are otherwise not eligible to vote in town elections).

In the event that an individual holds a power of attorney duly executed and acknowledged and specifically authorizing the said individual to vote at the said Special Election for Annexation on

behalf of an otherwise-qualified voter, a duly authenticated copy of the power of attorney shall be filed in the office of the Town Manager of the Town of Dewey Beach. Said power of attorney as so filed shall constitute conclusive evidence of the right of said person to vote in the Special Election.

Voting machines shall be used in any annexation election and the form of the ballot to be inserted in the machine shall be as follows:

_____ For the proposed annexation

_____ Against the proposed annexation

(CHECK THE ONE BLOCK FOR WHICH YOU CAST YOUR VOTE)

The Mayor of Dewey Beach shall appoint three (3) persons to act as Election Officials, at least one (1) of whom shall reside and own property in the Town, and at least one (1) of whom shall reside and own property in the territory proposed to be annexed. One (1) of the said persons so appointed shall be designated the Presiding Officer. Voting shall be conducted in a designated municipal location in Dewey Beach and the Election Officials shall have available, clearly marked, two (2) ballot boxes. All ballots cast by those persons, authorized to vote as residents, property owners or leaseholders in the territory proposed to be annexed shall be deposited in one (1) such ballot box, and all ballots cast by those persons who are authorized to vote as residents, property owners or leaseholders of the Town shall be deposited in the other such ballot box. The polling places shall be opened from 1:00 p.m., prevailing time, until 6:00 p.m., prevailing time, on the date set for the Special Election.

(77 Del. Laws, c. 42, 6/16/2009)

Immediately upon the closing of the polling places, the Election Officials shall count the ballots for and against the proposed annexation and shall announce the result thereof; the Election Officials shall make a certificate under their hands of the number of votes cast for and against the proposed annexation, and the number of void votes, and shall deliver the same to the Dewey Beach Town Council. The said certificate shall be filed with the papers of the Town Council of Dewey Beach.

(77 Del. Laws, c. 42, 6/16/2009)

In order for the territory proposed to be annexed to be considered annexed, both a majority of the votes cast by Dewey Beach voters and a majority of the votes cast by voters of the territory proposed to be annexed must have been cast in favor of the proposed annexation. In the event that the Referendum results in an unfavorable vote for annexation, a subsequent election may be held at any time. If a favorable vote for annexation shall have been cast, the Town Council of Dewey Beach shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds for Sussex County in Georgetown, Delaware, within ninety (90) days following the favorable referendum. The territory considered for annexation shall be considered to be a part of the Town of Dewey Beach from the time of recordation. The failure of the Town Council of Dewey Beach to record the description and plot within the time hereinbefore specified shall not make the annexation invalid but in such case annexation shall be deemed to be effective at the expiration of the ninety (90) day period from the date of favorable election. **(65 Del. Laws, c. 255, 4/8/1986)**

[Section 3 Structure of Government.](#)

Comment [DSK10]: To align with current practice and provide flexibility.

The Governance of the Town of Dewey Beach shall be organized under a Council-Manager form wherein an elected governing body, the Town Council, is responsible for legislative functions such as establishing policy, passing local ordinances, voting appropriations, and developing an overall vision. The Town Council shall appoint a professional manager, the Town Manager, to oversee administrative operations, implement its policies, and advise it. The Town Manager shall be politically impartial and provide professional management to the Town Council. The position of “mayor” in this type of legislative body is a largely ceremonial title. The mayor shall be selected by the council from among its members.

Comment [DSK11]: Define Council-Manager form of government and align remainder of Charter accordingly

The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in the Town Council . The Town Council shall consist of five Town Commissioners, to be chosen as hereinafter provided. One of the said Town Commissioners shall have the title of "Mayor of the Town of Dewey Beach" (hereinafter referred to as “Mayor”) with duties hereinafter to be prescribed, and who shall also be the presiding officer of the Town Council.

Section 4 General Powers.

(a)

The individuals qualified to vote in the Town of Dewey Beach within the limits and boundaries referred to in Section 2 of this Act, or within the limits and boundaries hereinafter established shall be, and are hereby, constituted a municipal corporation and body politic by and under the name of “Commissioners of Dewey Beach” (hereinafter referred to as the “Town Council” or “Council”, "Corporation" or "Town"), and under that name shall have perpetual succession, and may have and use a corporate seal which may be altered, changed or renewed at pleasure; may sue and be sued; plead and be impleaded in all Courts of law and equity in the State of Delaware, and elsewhere, by said corporate name; may hold and acquire real property and personal property obtained by purchase, gift, devise or lease within or without its boundaries for any municipal purposes, in fee simple or for lesser estate or interest; and may sell, lease, hold, manage and control such property as its interest may require; and may do all other things which a body politic and municipal corporation may lawfully do to carry out and effectuate the objects and purposes of this Act; subject, however, to other sections of this Act.

Except as hereinafter provided in this Charter relative to the power to issue bonds, the Town shall have all other powers and functions requisite to or appropriate for the governance of the Town; the maintenance of its peace and order; the provision for its sanitation and the maintenance of its infrastructure; the protection of its beauty and surrounding natural environment; the provision for the health, safety, convenience, comfort and well-being of its population and visitors; the protection and preservation of property, public and private, and the preservation of the character of the Town; the ensurance of financial sustainability; and the provision of resilience in the face of global climate change (hereinafter referred to as the “goals of Town governance” or “Town Goals”). All actions, suits or proceedings shall be brought in the name of the "Town of Dewey Beach."

Comment [DSK12]: Updating of goals of governance.

(b)

The enumeration of particular powers by this Charter shall not be held to be exclusive, or to restrict in any manner the general powers conferred herein, but in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise thereof, it is intended that the

Town of Dewey Beach shall have, and may exercise all powers which, under the Constitution of the State of Delaware, would be competent for this Charter to specifically enumerate. All powers of the Town of Dewey Beach, whether expressed or implied, shall be exercised as prescribed by this Charter; or, if not prescribed herein, as described by ordinance or resolution of the Town Council.

Section 5 Qualifications of Mayor and Town Commissioners.

Delete the existing Section 5 in its entirety and replace with:

(a)

Each candidate for the Office of Town Commissioner and each holder of said Office shall be a registered Dewey Beach voter of at least 21 years of age.

(b)

At all times not fewer than two (2) sitting Commissioners shall qualify as Resident Town Commissioners. A Resident Town Commissioner shall be a bona fide resident and domiciliary of the Town.

(c)

Non-resident Town Commissioners shall satisfy one or more of the voter qualifications listed under Section 10 (b) of this Charter, i.e., an individual who is an owner of real property within the Town, or who holds a valid lease with a term of five (5) years or more on property within the Town, or who is both a settlor/creator and trustee of a valid trust to which real property which is located within the Town has been conveyed and which conveyance is recorded in the Office of the Recorder of Deeds in and for Sussex County.

(d)

Any candidate seeking qualification as a leaseholder as described above shall be required to file a copy of said valid lease at the time of filing for candidacy. Similarly, any candidate seeking qualification as a settlor/creator and trustee as described above shall be required to file said valid trust document identifying the trustee(s) and the settlor(s)/creator(s) at the time of filing.

(e)

The Town Commissioner with the title of "Mayor of the Town of Dewey Beach" shall qualify for the Office of Town Commissioner as a Resident Town Commissioner.

(f)

If a Resident Town Commissioner no longer satisfies the residency requirement described above at a time when there are only two (2) sitting Resident Town Commissioners said Resident Town Commissioner shall be removed from the Office of Town Commissioner by a majority vote of the remaining Town Commissioners present in a properly-noticed Town Council Meeting. If at such a time a Resident Town Commissioner fails to continue to satisfy the residency requirement described above there are at least two (2) additional sitting Resident Town Commissioners and said Resident Town Commissioner satisfies one or more of the qualifications for Non-resident Town Commissioner said Resident Town Commissioner shall continue to qualify for the Office of Town Commissioner as a Non-resident Town Commissioner. If a Non-resident Town Commissioner no longer satisfies any of the non-residency requirements described above and has not established residency in the Town of Dewey Beach said Non-resident Town Commissioner shall be removed from the Office of Town Commissioner by a majority vote of the remaining Town Commissioners present in a properly-noticed Town Council Meeting. If such a Non-resident Town Commission who no longer satisfies any of the non-residency requirements

described above has established bona fide residency within the Town said Non-resident Town Commissioner shall continue in the Office of Town Commissioner as a Resident Town Commissioner. The Town Council shall be the final judge of the qualifications of its number.

Section 6 Board of Elections.

(77 Del. Laws, c. 42, 6/16/2009)

(a)

The Town Council shall appoint the Board of Elections members for a term of one (1) year. The Board of Elections shall consist of three (3) members. All members of the Board of Elections shall meet the appointment qualifications as specified in 15 Del. Laws, c75.

(b)

Board of Elections appointees shall be confirmed by swearing or affirming, both orally and in writing, the oath specified in 15 Del Laws, c75. Board of Elections appointees shall be sworn or affirmed by the Alderman of the Town of Dewey Beach or the Mayor of the Town of Dewey Beach.

(c)

It shall be the duty of members of the Board of Elections, as empowered by 15 Del. Laws, c75 and the ordinances of the Town, to perform prescribed duties with fidelity and without favor or electioneering to accomplish the proper conduct of municipal candidate elections within the Town of Dewey Beach.

(d)

Any member of the Board of Elections may be removed from office for cause by a majority vote of the Commissioners present at a properly-noticed Town Council Meeting.

(e)

Activities of the Board of Elections shall be consistent with the Delaware Freedom of Information Act, 29 Del. Laws, c100.

Section 7 Elective and Appointive Offices.

(a)

Each Town Commissioner shall be elected for a two-year term such term of office running from the organizational meeting immediately following said Town Commissioner's election to the one two years thereafter. All other offices shall be appointive and the person or persons filling such appointive offices shall be appointed by the Dewey Beach Town Council. **(77 Del. Laws, c. 42, 6/16/2009)**

(b)

In the case of a vacancy created in the Office of Town Commissioner having the title of Mayor of the Town of Dewey Beach either by death, resignation, loss of eligibility for the Office of the Mayor, , or other disqualifying event, or otherwise, the remaining Town Commissioners shall fill such vacancy for the remainder of the one-year term of the vacating Mayor by the election of a sitting Resident Town Commissioner to the Office of Mayor by a majority vote of the remaining Town Commissioners present in a properly-noticed Town Council Meeting.

Comment [DSK13]: Shifts venue – should probably be treated as a personnel issue and not aired in a public hearing

Comment [DSK14]: Remedy in case of a vacancy of the Mayor's office.

Thereafter the Town Council shall fill the still-remaining vacancy amongst their number by the election of an appropriately-qualified candidate to the vacant office of Town Commissioner by a majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting for the vacant office of Town Commissioner as follows.

In the case of a vacancy created in any office of Town Commissioner of Dewey Beach other than the office of Town Commissioner of Dewey Beach having the title of Mayor of the Town of Dewey Beach either by death, resignation, loss of eligibility for Town Commissioner, or other disqualifying event, or otherwise, the remaining Town Commissioners shall fill such vacancy for the residue of the vacating Town Commissioner's term with an appropriately-qualified candidate by majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting provided such election results in a minimum of two (2) of the Town Council's number qualifying as Resident Town Commissioners. Any and all members of the Town Council shall be eligible to nominate qualified candidates for such a vacancy.

Comment [DSK15]: Remedy for vacancy of a town commissioner.

(c)

If any elective or appointive officer be found guilty of any felony anywhere in the United States, such officer shall forthwith be disqualified to act as such officer and shall be removed from such office by a majority vote of Town Commissioners present in a properly-noticed Town Council Meeting. Subsequently such office shall be filled by the Town Council as in the case of other vacancies.

Section 8 Organization.

(a)

The Town Council shall hold an annual Organizational Meeting of the Town Council no sooner than seven (7) days following the Annual Municipal Election for the purpose of organization at the usual place for holding meetings of the Town Council **(77 Del. Laws, c. 42, 6/16/2009)**

Comment [DSK16]: Moved to provide better logical flow, i.e., swear new Commissioners into office prior to election of the Mayor.

(b)

During the Organizational Meeting, the newly elected Town Commissioners shall assume the duties of the Office of Town Commissioner, being first duly sworn or affirmed to perform their duties with fidelity, which oath or affirmation shall be taken before a Notary Public, the Alderman of the Town of Dewey Beach, or by a holding-over member of the Town Council. Subsequently, the Town Council, by majority vote of the Town Commissioners present, shall elect one (1) of its number to serve as the presiding officer of the Town Council for a term of approximately one (1) year such term running through the subsequent Organizational Meeting. If the Town Council is unable to elect one (1) of its number as the presiding officer then such officer shall be chosen by lot. The presiding officer shall hold the Office of the Mayor of Dewey Beach (herein referred to as "Mayor"). The Town Council shall then likewise select a Secretary of the Town Council (hereinafter referred to as "Secretary") from its own number to serve until the subsequent Organizational Meeting. Said Secretary shall be responsible for taking and keeping minutes of Executive Sessions of the Town Council, coordination with the Town Clerk on the development and keeping of minutes of all Town Council Meetings, presiding over Town Council Meetings when the Mayor is unavailable, and all other responsibilities of the Mayor when the Mayor is unavailable. The Town Council may also likewise elect or appoint

Comment [DSK17]: Presumably the mayor-designee can not vote here. Does this need to be explicitly stated?

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other officers and employees as may be determined to be necessary to facilitate Town Council operations. (77 Del. Laws, c. 42, 6/16/2009)

(c)

The Town Council shall by ordinance fix the total amounts of any salaries or compensation paid to employees and officers on a department by department basis as a part of the annual budget approval process. Salaries or compensation of individual employees or officers shall be set by the appropriate Department Head with the approval of the Town Manager. No employee or officer of the Town shall in any form have, take, or receive from the Town or otherwise any compensation, in any form, in addition to the salary or compensation so fixed by the Town Council.

(d)

The Town Manager shall keep a full and complete record of all officers appointed, and employees and agents hired by the Town, containing the names of such officers, employees and agents, the dates of their employment, any salary or compensation to be by them received and the date of the termination of their services.

Comment [DSK18]: Indefinite terms removed in prior amendment

Section 9 Method of Filing for Office of Town Commissioners.

No person shall be voted upon as a candidate for the Office of Town Commissioner in any Annual Municipal Election unless at least thirty (30) days before the date set for said election they shall have filed with the Town Manager a letter or other certificate setting forth that said person will be a candidate for Resident Town Commissioner or for Non-resident Town Commissioner. The Town Manager shall not permit the name of any such candidate to be accepted and included on the election ballot except as shall meet the requirements of Section 5 of this Charter. The Town Manager shall promptly notify the members of the Town Council of the names and qualifications of such qualified candidates who have filed for candidacy for the Office of Town Commissioner.

Section 10 Manner of Holding Elections, Voter Registration and Voter Qualifications.

(a)

Annual Municipal Elections shall be held on the third Saturday of the month of September, except that, in any year when the third Saturday of the month of September conflicts with either day of Rosh Hashanah (Jewish New Year) or Yom Kippur (Jewish Day of Atonement), Annual Municipal Elections shall be held on the fourth Saturday of the month of September. Annual Municipal Elections shall be held from 10:00 a.m. to 6:00 p.m. prevailing time at such place or places as shall be determined by the Town Council, due notice of which shall be given by posting notices thereof in two (2) conspicuous places within the corporate limits of the Town of Dewey Beach and by publication in a newspaper of general circulation in the community not less than fifteen (15) days before the day of such annual election. Elections for openings to the Office of Town Commissioner, both for Resident Town Commissioners and for Non-resident Town Commissioners as needed, shall be conducted at the Annual Municipal Election. In the event that there is no contest for all of the offices up for election in any year such that the result of electing all of the candidates on file will result in a five (5) membered Town Council with a minimum of two (2) Resident Town Commissioners said candidates shall be declared by the Election Officials to be duly elected; under such conditions the polls shall not be required to open nor shall

such notices be required to be given except in the case of there being other items on the election ballot beside the Offices of Town Commissioner in such case the polls shall be open from 10:00 a.m. to 6:00 p.m and the above described notices shall be given.

Comment [DSK19]: Clarification of process

The Town Council shall have the power and authority to enact by ordinance certain voter registration procedures as are deemed reasonably necessary to provide for the orderly and efficient conduct of municipal elections including provisions for the casting of provisional ballots, provided that no such ordinance shall alter the qualifications of voters as herein below set forth, nor shall such ordinance unduly impair the right to vote in any municipal or special election. No person shall be eligible to vote unless properly registered. No person shall cast more than one ballot. (74 Del. Laws, c. 370, 7/19/2004; 77 Del. Laws, c. 42, 6/16/2009; 77 Del. Laws c. 354, 7/12/2010)

Comment [DSK20]: Input request from the Elections Committee.

(b)
Each person eighteen years of age or older, who is a bona fide resident and domiciliary of the Town of Dewey Beach, or who is an owner of real property within the Town, or who holds a valid lease with a term of five years or more on property within the Town, or who is both a settlor/creator and trustee of a valid trust to which real property which is located within the Town has been conveyed and which conveyance is recorded in the Office of the Recorder of Deeds in and for Sussex County shall be qualified to vote in the Annual Municipal Election of Dewey Beach as herein provided and in all other Special Elections undertaken by the Town of Dewey Beach as may be described elsewhere (such persons hereinafter referred to as “qualified voters”). A leaseholder as described above seeking qualification as a leaseholder to vote shall be required to file a copy of said valid lease at the time of voter registration and at any and all times when said valid lease is modified or renewed. Similarly, a settlor/creator and trustee as described above seeking qualification as a settlor/creator and trustee to vote shall be required to file said valid Trust document identifying the trustee(s) and the settlor(s)/creator(s) at the time of registration and at any and all times such valid trust documents are modified or canceled. (74 Del. Laws, c. 369, 7/19/2004; 78 Del Laws, c. 346, 7/18/2012)

Comment [DSK21]: CCRC had a question for legal review: should the Charter explicitly prohibit voter qualification to convicted felons?

Comment [DSK22]: The Charter conceives of a variety of elections, but doesn't discuss voter eligibility requirements for all types (it does for annexation elections but such qualifications are different). This unifies all voter qualifications

Comment [DSK23]: Clarifications and attempt to deal with individuals who qualify to vote based on multiple criteria

(c)
Every municipal election including the Annual Municipal Election and all Special Elections except for any Special Election for the annexation of territory as described in Section 2 of this Chapter shall be held under the supervision of the Election Officials. The Election Officials shall consist of one (1) Inspector of the Election and such Officers of the Election as shall be appointed by the Dewey Beach Town Council. The Inspector and such Officers constituting the Election Officials shall be registered voters of the Town of Dewey Beach and shall be appointed for that purpose by the Town Council at least thirty (30) days before such Annual Municipal Election. If, at the opening of the polls, the Election Officials (or any one of them) are not present, then in such case the persons registered to vote at such election and present at the opening of the polls shall, by viva voce, select a registered voter or voters to act as the Election Officials to fill such vacancies caused by the absence of the Election Officials. Election Officials shall be Judges of the Election, and shall decide upon the legality of the votes offered. The Election Officials shall keep a true and accurate list of all voters voting at the Annual Municipal Election. The Board of Elections shall have the power to subpoena persons and officers of the Town, and to subpoena books, records and papers relative to the determination of the validity of any vote or votes offered. (77 Del. Laws, c. 42, 6/16/2009)

Comment [DSK24]: Broadens to all elections except ones for annexation which have their own officials

(d)

Upon the close of any election, the votes shall be computed and announced publicly. Upon the close of the Annual Municipal Election wherein candidates for Offices of Town Commissioner of Dewey Beach are up for election, the votes for such candidates shall be computed and announced publicly. The candidates having the highest number of votes shall be declared, by the Election Officials, to be duly elected provided such declaration results in a Town Council that will be comprised of a minimum of two (2) Resident Town Commissioners; if not, the highest one or two vote-getting Resident-Town Commissioner candidate(s) as required for a Town Council having a minimum of two (2) Resident Town Commissioners plus the otherwise highest-vote getting candidate(s) for the remaining opening(s) on the Town Council shall be declared to be duly elected; such persons shall take office immediately following their swearing in at the Organization Meeting and continue in office until their successors have been duly elected and sworn in or until vacating or being removed from office. **(77 Del. Laws, c. 42, 6/16/2009)**

Comment [DSK25]: Clarifications of process

There is a need to address what to do when there are insufficient candidates to fill all openings on the Town Council at an Annual Municipal Election – to result in a Town Council with at least two Resident Town Commissioners and a total of five Town Commissioners. The CCRC was split whether 1) to treat the election results as creating a vacancy on the Town Council and filling the vacancy as described in Section 7 (b), i.e., “a vacancy is a vacancy”, 2) to schedule another election in 3 to 6 months to fill such a vacancy, i.e., don’t want Town Commissioners who didn’t put in the time and effort to walk the Town and talk with everyone, or 3) if the number of Resident Town Commissioners is the problem, temporarily suspend the requirement for at least two Resident Town Commissioners, i.e., there is a “thinning gene pool”.

Comment [DSK26]: CCRC split on how to deal with situation wherein there are insufficient candidates for Town Commissioner or for Resident Town Commissioner. This is flagged for Town Council to resolve.

(e)
In the event of a tie vote for any office, the Election Officials shall determine the tie by lot. **(77 Del. Laws, c. 42, 6/16/2009)**

(f)
The Election Officials, as soon as possible after the polls have closed and the results announced, shall deliver all election documents, envelopes, and absentee ballots to the Board of Elections. The Board of Elections shall secure the documents, envelopes, and absentee ballots until such time that they need to canvass the election. **(77 Del. Laws, c. 42, 6/16/2009)**

(g)
The Election Officials shall enter in a book, to be provided for that purpose, a minute of the election, containing the names of the persons chosen. The book, containing such matters, shall be preserved by the Town Manager on behalf of the Town Council and shall be evidence in any Court of Law and Equity. **(77 Del. Laws, c. 42, 6/16/2009)**

(h)
Ballots may be cast in person or by absentee ballot in all elections. Absentee voting shall be in compliance with the applicable provisions of 15 Del. Laws, c.75. **(77 Del. Laws, c. 42, 6/16/2009)**

Section 11 Meetings.

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(a)

The Town Council shall hold meetings at the call of the Mayor or by majority vote of Town Commissioners present at a Town Council Meeting as a result of Town Council discussions regarding noticed agenda items or in response to Public Comments or Town Commissioner Comments.

Comment [DSK27]: Clarification of process

(b)

The Town Council 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 such Town Council Meeting, called as aforesaid. There shall be not less than one Town Council Meeting held per month except that with a majority vote of Town Commissioners present in a properly-noticed Town Council Meeting one month a year may be designated to be passed over with no such meeting.

(c)

All Town Council Meetings shall be subject to the provisions of 29 Del. Laws, c.100.

Section 12 Quorum.

A majority of the Town Commissioners appointed or elected to the Town Council shall constitute a quorum.

Section 13 Rules of Procedures and Minutes of the Town Commissioners.

The Town Council shall determine its own rules of procedure and order of business. The Town Manager shall keep a record of said rules and procedures and a record of the Town Council's proceedings on its behalf, such record including but not limited to written minutes and audio recordings of said proceedings, and such records shall be open to public inspection both at Town Hall and on the Town web site. Every ordinance shall be introduced in writing. No ordinance shall be passed unless it shall have the affirmative vote of a majority of the Town Commissioners present in a properly-noticed Town Council Meeting. Vote on any ordinance shall be by voice vote, and the vote of each Town Commissioner on any ordinance shall be entered on the record. **Section 14 Duties and Powers of the Mayor.**

(a)

The Mayor of the Town of Dewey Beach shall be sworn or affirmed to perform the duties of the Office of the Mayor with fidelity.

(b)

The Mayor shall serve as the presiding officer of the Town Council. As such, it shall be the Mayor's duty to preside at all meetings of the Town Council and the Mayor shall have a vote therein. The Mayor shall execute on behalf of the Town when authorized by a majority vote of Town Commissioners present in a properly-noticed Town Council Meeting all agreements, contracts, bonds, deeds, leases and other documents necessary to be executed. The Mayor shall be a member, ex-officio, of all committees. It shall be the duty of the Mayor to see that the laws and ordinances of the Town are faithfully executed, to ensure that all affirmative actions taken by the Town Council promote the Town's Goals and adhere to the annual budget, and to perform all duties imposed upon the Office of the Mayor by this Charter. The Mayor shall also have the power to administer oaths and affirmations. The Mayor shall also serve as the liaison between

Comment [DSK28]: Only other title for the Mayor herein is presiding officer

Comment [DSK29]: This function now performed by the Secretary to the Town Council

Comment [DSK30]: There was a lot of discussion regarding the notion of commissioner-liaisons to town departments. The final draft language developed, "The Mayor may appoint an individual Commissioner to act as a liaison to each department or division of the Town government to provide the Town Council a better understanding of departmental operations and needs and not to interfere in any manner with normal departmental operations." was ultimately rejected as being more disruptive to town operations than being helpful

the Town Council and the Town Manager and as the official spokesperson for the Town Council. The Mayor shall also have the power and authority to solemnize marriages within the boundaries of the Town of Dewey Beach. In cases where the Mayor is absent or incapacitated, the Secretary of the Town Council shall serve in the Mayor's lieu. (72 Del. Laws, c. 425, 7/13/2000)

(c)

As a Commissioner of Dewey Beach, the Mayor shall have the same right as all other individual Town Commissioners to vote on all matters, and debate any question from the floor.

(d)

Upon the expiration of the Mayor's term of office or upon resignation or removal from office, the Mayor shall forthwith turn over all records, books, papers, documents and other things belonging to or appertaining to the Office of Mayor of the Town of Dewey Beach and pay over to the Town all monies belonging to the Town.

Section 15 Town Manager.

(a)

The Mayor of the Town of Dewey Beach, with the concurrence of an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting, may appoint a Town Manager who shall be responsible for all administrative affairs of the Town. The Town Manager shall also serve as the liaison between the public and the Town Council.

Comment [DSK31]: As opposed to a "majority vote" which might only include the support of 2 town commissioners

(b)

The Town Council shall impose such qualifications for Town Manager as may be deemed necessary. As a minimum, any candidate for the Town Manager position shall have a demonstrated knowledge of the operation and administration of municipal governments as evidenced by the candidate's academic background and work experience. Candidate experience working with Federal and Delaware Emergency Management Agencies should be considered as an advantage. No person holding the office of Mayor or Town Commissioner shall be eligible to apply for nor be appointed to the position of Town Manager.

Comment [DSK32]: This language is a placeholder. If the Town Council agrees regarding some minimum set of qualifications, final language should be crafted by the Town's HR contractor.

(c)

The Town Manager shall be appointed for a fixed term and shall report to the Mayor acting on behalf of the Town Council. The Town Manager's performance shall be evaluated by the Town Council at least once a year and each annual evaluation report shall be duly signed by each member of the Town Council and archived with the Town's personnel files.

The Town Manager may be removed for just cause by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting. At least thirty (30) days before such removal shall become effective, the Town Council shall, by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting, adopt a preliminary resolution stating the reasons for the Town Manager's removal. The Town Manager may reply in writing and may request a public hearing which shall be properly noticed and held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the Town Council, by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting, may adopt a final resolution of removal. By the preliminary resolution, the Town Council may immediately suspend the Town Manager from duty with pay for not more than three (3) calendar months following the adoption of the preliminary resolution.

Comment [DSK33]: The language in 15(c) regarding termination should be fully reviewed by the Town's HR contractor.

Comment [DSK34]: Is this the intent/practice?

At the end of the Town Manager’s contractual term of employment the Town Council may act so as not to renew or extend the Town Manager’s contract without cause by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting. **(78 Del. Laws, c. 346, 7/18/2012)**

(d)

In case of the absence or disability of the Town Manager, the Town Council may designate some qualified person who shall not be the Mayor or a Town Commissioner to perform the duties normally assigned to the Office of the Town Manager on a temporary basis. The compensation which the Town Manager shall receive shall be established by resolution by the Town Council. **(70 Del. Laws, c. 191, 7/10/1995)**

Section 16 Responsibilities of the Town Manager.

(a)

The Town Manager shall be responsible to the Town Council for the proper administration of the affairs of the Town placed in the Town Manager’s charge and to that end, the Town Manager shall have the authority to make such appointments, to hire such employees at such compensations as appropriate for each position or level or qualification, to promote and to remove from such employment, subject to such rules and regulations as may be adopted by the Town Council, provided in the case of any employee of a department or division with a department head other than the Town Manger that prior to taking any personnel action the Town Manager shall take into consideration the recommendation of the cognizant department head.

All such department or division heads shall be responsible for the expedient and efficient operation of their respective department or division, to ensure that such department or division adheres to its budget, and to see that all Town policy and laws under the purview of their department or division are faithfully executed.

All employees may be removed by the Town Manager at any time for just cause. The Town Manager shall seek input from the Town Council for personnel actions regarding heads of departments but otherwise shall be the ultimate judge of the competence or incompetence of any such person recommended for hiring, promoting or termination. The rights of an employee to appeal any personnel action shall be specified in the Town Employee Manual. **(78 Del. Laws, c. 346, 7/18/2012)**

(b)

It is the intention of this Charter that, in the performance of the duties and exercise of the powers of the Office of the Town Manager, the Town Manager shall not be influenced by any matters whatsoever of a political or fractional nature. It is the intention of this Charter that the Town Manager shall be guided solely by the matters of expediency and efficiency in the administration of the affairs of the Town placed in the Town Manager’s charge and to see that the policy and ordinances of the Town are faithfully executed. Except for purposes of investigations under Section 30 of this Charter, the Town Commissioners shall deal with that portion of the administrative service for which the Town Manager is responsible solely through the Town Manager.

(c)

It shall be the duty of the Town Manager to supervise the administration of the affairs of the Town under the charge of the Office of the Town Manger and to make such reports to the Town Council as are required by it. The Town Manager shall make such recommendations to the Town

Comment [DSK35]: Establishes the Town Manager’s authority in personnel matters

Comment [DSK36]: Pushes various responsibilities down to department heads

Comment [DSK37]: While there was a minority opinion that personnel actions related to “department heads” should be undertaken by the Town Council, the majority of the CCRC felt this should definitely be within the purview of the Town Manger, who is accountable for all Town operations.

Council concerning the affairs of the Town as may seem desirable for the expedient and efficient operations and the achievement of Town policy and goals. The Town Manager shall keep the Town Council advised of the financial condition and future needs of the Town. The Town Manager shall prepare and submit to the Town Council an annual budget estimate. The Town Manager shall be responsible for operating the Town within the constraints of the budget and shall render to the Town Council and the public at the regular Town Council Meetings a true, accurate and detailed account of all the monies collected or received by the Town. At such regular Town Council Meetings the Town Manager shall arrange for all department heads to be present and to provide the Town Council and the public an overview of departmental activities since the last meeting and a description of active departmental concerns and future needs.

[\(d\)](#)

In conjunction with the Mayor, the Town Manager shall sign warrants pursuant to appropriations or resolutions theretofore made for by the Town Council. The Town Manger shall prepare and submit to the Town Council such reports as may be required by the Town Council, and shall perform such other duties as may be prescribed by this Charter or required of the Office of the Town Manager by ordinance or resolution of the Town Council.

[\(e\)](#)

The Town Manager and such other officers of the Town as may be designated by vote of the Town Council shall be entitled to seats in the meetings of the Town Council but shall not have a vote therein.

[\(f\)](#)

The Town Manager shall have charge and supervision of the sewer system, water system, street lighting, streets, gutters, curbs, sidewalks, boardwalks, jetties, piers, parks, and other administrative affairs of the Town and all work relating thereto. The Town Manager shall have charge of and shall collect all taxes, assessments, rentals, franchise fees, license fees, or other charges due the Town. The Town Manager shall have charge of the administration of all provisions of this Charter and ordinances and resolutions of the Town Council relating to the affairs of the Town when not otherwise provided for by this Charter or by any ordinance or resolution of the Town Council.

[\(g\)](#)

The Town Manager shall be responsible for the keeping of a full and strict account of all monies received and all disbursements made by the Town and that such accounts shall, at all times, be open to inspection by the Town Council.

[\(h\)](#)

The Town Manager shall give to the Town of Dewey Beach a bond, if required by the Town Council, in such sum and in form with security satisfactory to the Town Council for the faithful performance of the duties of the Office of Town Manager and the restoration to the Town of Dewey Beach, in case of death, resignation, or removal from office of all books, papers, vouchers, money other property of whatever kind belonging to the Town.

[\(i\)](#)

In the event of a vacancy in the Office of the Town Manager for any reason or reasons whatsoever, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges, and powers theretofore reposed in the predecessor or predecessors in said 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.

(j)

Upon the death, resignation, or removal from the office of the Town Manager, the Mayor, with the approval of a majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting, shall appoint some suitable person who shall not be the Mayor or a Town Commissioner to perform the duties of Town Manager on an interim basis for ninety (90) days with the option of renewal of the appointment for two (2) additional terms of ninety (90) days or until a Town Manager is appointed, whichever period is shorter. **(70 Del. Laws, c. 191, 7/10/1995; 78 Del. Laws, c. 346, 7/18/2012)**

(k)

The Town Manager shall be responsible for ensuring that a staffing plan for all active employees, officers, and agents is maintained and updated annually or as needed as position descriptions and requirements change. Also, the Town Manager shall ensure that annual performance reviews are conducted for all employees and that such performance reviews are signed off on by the cognizant department or division head and filed in the Town's permanent personnel files. In the case of department heads, such annual performance reviews shall be conducted and signed off on by the Town Manager. With regard to the Town Manager such annual performance review shall be conducted by the Town Council and the results signed off on by all members of the Town Council and communicated to the Town Manager by the Mayor.

Section 17 Audit Committee/Auditors.

(78 Del. Laws, c. 346, 7/18/2012)

(a)

The Audit Committee shall be composed of not less than three (3) registered Dewey Beach voters, who have no relationship to the Town that may interfere with the exercise of their independence from the Town's management and the Town. The Chairperson and members of the Committee shall be appointed by the Town Council to serve for a term of one (1) year. Each member of the Committee shall be financially competent and at least one (1) member shall have accounting or related financial management experience. The principal purpose of the Committee is to provide oversight of the annual audit of the Town financial statements, to recommend the hiring of an independent financial audit firm, to assess the qualifications and independence of the firm and to negotiate a price for the audit, to review the performance of the independent audit firm, to review the firm's audit report and assessment of the Town's accounting and reporting practices and internal control systems, and to recommend acceptance or rejection by the Town Council of the audit report.

(b)

It shall be the responsibility of the Independent Auditors to perform an audit of the annual financial statements of the Town of Dewey Beach in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The Auditors, on or before the 15th day of August following the Town's fiscal year end shall deliver their report, including their opinion as to whether the Town's basic financial statements, together with required Supplemental Information, present fairly, in all material respects, the financial position of the governmental activities and each major fund of the Town, and the respective changes in financial position and cash flows, where applicable, in conformity with accounting principles

Comment [DSK38]: As per suggestion by Audit Committee Chair

Comment [DSK39]: To provide flexibility

generally accepted in the United States of America. In addition, other Supplemental Information for the General Revenue and Special Revenue Funds shall be provided with comparative amounts for the preceding fiscal year. A summary of the report shall be printed by the Town in a newspaper which has general circulation in the Town in the issue immediately succeeding acceptance of the Independent Auditors' annual report, with a statement that the full text of the report can be viewed on the Town's website, where a full copy of the report shall be accessible to visitors to the website. The financial statements are the responsibility of the Town Manager. The Independent Auditor's responsibility is to render an opinion on the Town's financial statements based on its audit examination.

Comment [DSK40]: As per Chair's recommendation; this is current process

Section 18 Town Solicitor.

(78 Del. Laws, c. 346, 7/18/2012)

The Town Council may select and appoint a Town Solicitor who shall be removable by a majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting either with or without due cause stated. The Town Solicitor shall be a member in good standing of the Bar of the State of Delaware. It shall be the Town Solicitor's duty to give legal advice to the Town Manager, the Town Council either as a body or through a designated Commissioner liaison, any individual Town Commissioner, any other officer of the Town, and any Committee Chair and to perform other legal services as may be required by the Town Manager or Town Council.

Section 19 Police Force and Beach Patrol.

Comment [DSK41]: Needs full review by HR and legal

(a)

The Town Council has the power to establish a Police Force and make such rules and regulations as may be necessary for the organization, governance and control of such a Police Force. The Police Force shall preserve peace and order, and shall compel obedience within the Town limits to the ordinances of the Town and the Laws of the State of Delaware. The Police Force shall have such other duties as the Town Council shall from time to time prescribe. A qualified Chief of Police shall be hired to head the Police Force. The Chief of Police shall serve as a direct report to the Town Manager. Qualifications for said Chief of Police shall be established by the Town Manager with the approval of the Town Council.

The Chief of Police shall serve the Town under a contract with a fixed term and may be removed from the Office of Chief of Police for cause at any time during said employment contract by the Town Manager provided the Town Council concurs by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting and all requirements of the Town Employee Manual and Police Bill of Rights are followed. The Town Manager may act so as not to renew or extend the employment contract of the Police Chief for any reason provided such action is approved by the Town Council as indicated above and all requirements of the Police Bill of Rights are followed.

Comment [DSK42]: Language regarding removal is meant as a placeholder of what should be covered herein. HR needs to review and approve any final language.

It shall be the duty of the Chief of Police to see that the laws and ordinances of the Town are faithfully executed. The Chief of Police shall be responsible for the proper administration of all of the affairs of the Police Force and for all matters related to the preservation of peace and order

and other duties prescribed by the Town Council and to that end, shall have the authority over all Police Force personnel actions, including removal of any Police Force employee for cause, for establishing appropriate rules and regulations for efficient and effective departmental operations, and for adherence to the departmental budget and in so doing the Chief of Police shall be accountable to the Town Manager. **(70 Del. Laws, c. 191, 7/10/1995)**

The Police Chief shall have the authority to issue temporary orders to authorize Town response(s) and the expenditure of Town funds in the face of a declared State- or National emergency to be in effect until such time as an emergency meeting of the Town Council can be convened provided the Town Manager is able to obtain the consent thereto by at least three (3) individual Town Commissioners by phone or email.

Comment [DSK43]: This language should be checked and aligned, if necessary, with the Town's emergency management document.

(b)

The Town Council has the power to make such rules and regulations as may be necessary for the organization, governance and control of a Beach Patrol. Said Beach Patrol shall enforce regulatory measures ordained by the Commissioners in respect to the cleanliness, uses and enjoyment of the Town Beaches; and, would perform such other duties as the Commissioners may prescribe. In the performance of their duties, members of the Beach Patrol may be vested with all the powers and authorities of a member of the Town Police Force.

A qualified Captain of the Beach Patrol shall be hired to head the Beach Patrol. The Captain of the Beach Patrol shall serve as a direct report to the Town Manager. Qualifications for said Captain of the Beach Patrol shall be established by the Town Manager with the approval of the Town Council. The Captain of the Beach Patrol shall serve the Town under a contract with a fixed term and may be removed from the Office of Captain of the Beach Patrol for cause at any time during said employment contract by the Town Manger provided the Town Council concurs by an affirmative vote of a minimum of three (3) Town Commissioners in a properly-noticed Town Council Meeting and all requirements of the Town Employee Manual are followed. The Town Manager may act so as not to renew or extend the employment contract of the Captain of the Beach Patrol for any reason provided such action is approved by the Town Council as indicated above.

It shall be the duty of the Captain of the Beach Patrol to see that the laws and ordinances of the Town under the control of the Beach Patrol are faithfully executed. The Captain of the Beach Patrol shall be responsible for the proper administration of all of the affairs of the Beach Patrol and for all matters related to the usage of the Town's beaches and other duties prescribed by the Town Council and to that end, shall have the authority over all Beach Patrol personnel actions, including removal of any Beach Patrol employee for cause, for establishing appropriate rules and regulations for efficient and effective departmental operations, and for adherence to the departmental budget and in so doing the Captain of the Beach Patrol shall be accountable to the Town Manager. **(70 Del. Laws, c. 191, 7/10/1995)**

Comment [DSK44]: Again, full review by legal and HR recommended

Section 20.1 Alderman and Assistant Alderman.

(78 Del. Laws, c. 232, 5/1/2012)

The Commissioners are authorized to establish an Alderman's Court in a manner consistent with Constitution and laws of the State of Delaware.

Section 20.2 Appointment.

(78 Del. Laws, c. 232, 5/1/2012)

An Alderman and Assistant Alderman shall be recommended by the Town Council, appointed by the Governor and confirmed by the Delaware State Senate. Once confirmed the Alderman and/or Assistant Alderman shall be sworn into office by the Mayor, and evidence of such appointment shall be recorded at the Recorder of Deeds in Sussex County.

Section 20.3 Appointment and Reappointment Nomination.

(78 Del. Laws, c. 232, 5/1/2012)

When a vacancy occurs the Town Council shall by majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting, submit a list of one or more qualified candidates and the application(s) and supporting documentation to the Governor for consideration of appointment. Not less than thirty (30) days prior to the expiration date of an Alderman's or Assistant Alderman's term, the Town Council shall by majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting, determine whether or not to recommend reappointment of the Alderman or Assistant Alderman for an additional term. The Town Council shall submit a letter of recommendation to the Governor for consideration of reappointment, or alternatively, its written recommendation of one or more qualified candidates along with their applications and supporting documentation to the Governor for consideration of appointment.

Section 20.4 Term of Office.

(78 Del. Laws, c. 232, 5/1/2012)

The Alderman and Assistant Alderman shall serve a two – year term and shall remain in office until either reappointed or a successor is duly qualified.

Section 20.5 Removal.

(78 Del. Laws, c. 232, 5/1/2012)

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

If any Alderman or Assistant Alderman has been removed from office by Senate confirmation of a new nominee or by action of the Court on the Judiciary, said Alderman or Assistant Alderman shall, within five (5) days of the Senate confirmation or Court on the Judiciary action, deliver to the Mayor all the books and papers belonging to the Town, and shall within five (5) days pay over to the Treasurer all Town moneys in said Alderman or Assistant Alderman's hands.

Immediately after the receipt of the books and papers belonging to the office of either the Alderman or Assistant Alderman, the Mayor may require the auditor of the Town to make an audit of the books and papers of the official who has been replaced. Upon the neglect or failure to deliver all the books and papers to the Mayor within the time specified by this Charter, or to pay over all of the moneys to the Treasurer within the time specified, the Alderman or Assistant

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Alderman, so replaced, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$ 100) for each day that said Alderman or Assistant Alderman fails to deliver the books and papers to the Mayor or to pay over all moneys to the Town.

Section 20.6 Vacancy.

(78 Del. Laws, c. 232, 5/1/2012)

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

Section 20.7 Qualifications.

(78 Del. Laws, c. 232, 5/1/2012)

Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-one (21) years of age, a United States citizen, of good character and reputation, shall live within Sussex County, and shall not be a member of the Town Council or otherwise an officer or employee of the Town of Dewey Beach.

Section 20.8 Oath of Office.

(78 Del. Laws, c. 232, 5/1/2012)

Within 14 days of Senate confirmation the Alderman or Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of office honestly, faithfully, diligently, and to uphold and enforce the Charter of the Town of Dewey Beach and ordinances duly enacted by the Town Council of the Town of Dewey Beach.

Section 20.9 Duties.

(78 Del. Laws, c. 232, 5/1/2012)

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

Section 20.10 Compensation.

(78 Del. Laws, c. 232, 5/1/2012)

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

Section 20.11 Alderman’s Docket.

(78 Del. Laws, c. 232, 5/1/2012)

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

Section 20.12 Jurisdiction.

(78 Del. Laws, c. 232, 5/1/2012)

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

Section 20.13 Civil and Criminal Penalties; Costs.

(78 Del. Laws, c. 232, 5/1/2012)

Neither the Alderman nor the Assistant Alderman shall impose any penalty in excess of One Thousand (\$1,000) exclusive of costs nor imprison any offender for more than thirty (30) days, or both, except as otherwise specifically provided in this Charter or by state statute; but the Alderman and Assistant Alderman may, in addition to any other fine or term of imprisonment permitted to be assessed or imposed, impose and collect such costs as are set by ordinance or resolution of the Town Council.

Comment [DSK45]: Increase in recognition of inflation

Section 20.14 Monthly Report to Town Council.

(78 Del. Laws, c. 232, 5/1/2012)

The Alderman and Assistant Alderman shall prepare and submit a written monthly report to the Town Manager reporting all fines and penalties imposed during the preceding calendar month and shall pay to the Town all such fines and penalties at such times as the Town Manger shall direct. Neither the Town Manager, Town Council nor the Mayor may establish or communicate an expected revenue budget for the Alderman Court.

Comment [DSK46]: Change in chain of command to place operations in hands of Town Manager (while the Alderman is hired/fired by the Council, this is an administrative issue)

Section 20.15 Alderman Court Facilities and Staff.

(78 Del. Laws, c. 232, 5/1/2012)

The Town of Dewey Beach shall provide adequate and appropriate facilities and staff to facilitate the independent judicial operations of the Alderman Court. Facilities shall be separate from conflicting town operations, including, but not limited to, police agency functions. The town may house the Alderman Court in a common municipal building, so long as the Alderman’s Court is provided space physically separate from other town functions and is further situated in such a manner to foster public confidence in the independence of the Court. Likewise, staff assigned to the Court shall not be shared with conflicting town government operations.

Section 21 Remedies, Powers and Methods for the Collection of Assessments and other Charges Due the Town.

(a)

A remedy by distress as now prescribed by law is hereby preserved to the Town Council for the collection of any assessments, fees, warrants or other charges for which they may be responsible.

(b)

At any time after the delivery of the duplicate annual tax list or warrant or any other list of charges due the Town of Dewey Beach, the Town Manager may in the name of the Town of Dewey Beach institute suit before any Court of the State of Delaware, in any of the Counties of the State, for the recovery of the unpaid tax, assessment, license fee, or other charge, in an action of debt, and upon judgment obtained, may issue Writs of Execution as in case of other judgments recovered. **(70 Del. Laws, c. 191, 7/10/1995)**

Comment [DSK47]: As per 4 (a)

Comment [DSK48]: This provides for due process for unpaid debts owed to the town

(c)

The said execution shall constitute a lien upon any or all personal and/or real property of the responsible party(ies) within the County where the judgment shall have been obtained, which by virtue of such execution shall be levied upon within thirty (30) days after the issuance thereof, and such lien shall have priority over all other liens against said personal property created or suffered by the responsible party(ies), except such liens thereon which may have been created in respect to County Taxes, although such other liens be of date prior to the time of the attachment of the said tax liens.

(d)

No taxes or assessments may be imposed on real or personal property or tax or assessment rates increased unless approved by referendum.

Section 22 Town Budget.

(a)

The fiscal year for the Town of Dewey Beach shall begin April 1, and end March 31. **(76 Del. Laws, c. 273, 6/30/2008)**

(b)

Annually each year and not later than the last week in February, the Town Manager shall prepare a draft of the annual Town Budget and submit the same to the Town Council for approval. From this draft, the Town Council shall, not later than the second Saturday of March of each year, prepare and approve by majority vote of the Town Commissioners present in a properly-noticed Town Council Meeting the Town Budget, containing the financial plan for conducting the affairs of the Town for the ensuing fiscal year. **(78 Del. Laws, c. 346, 7/18/2012)**

Comment [DSK49]: Deletion of "rough" suggested by Audit Committee chair

(c)

The Budget shall contain the following information: **(78 Del. Laws, c. 346, 7/18/2012)**

Comment [DSK50]: Amended to track current practice and reasonableness

1.

A detailed estimate showing the expense of operating each department and office of the Town for the ensuing fiscal year, including in aggregate the total compensation to be paid to all employees within each department and office.

2.

Estimates for the maintenance of Town buildings and infrastructure.

3.

The amount(s) required for payment of interest on bonded debt and repayment of loans.

4.

An itemized statement of any other miscellaneous expense(s) estimated to individually exceed \$5,000.

5.

Detailed estimates of the amounts of money to be received from taxes, assessments, and all other anticipated income of the Town from any source or sources whatsoever.

(d)

The Town Council shall, so far as possible, adhere to the Budget so adopted in the making of appropriations and the revising of schedules for the various fees, fines and penalties, and taxes due to the Town. So too, the Town Manager shall, so far as possible, ensure that the operations of each department and the Town as a whole adhere to the budget so adopted and that all monies due the Town are collected in an effective and efficient manner.

Comment [DSK51]: To add explicit accountability

Section 23 Enumeration of Powers.

(a)

Not by way of limitation upon the power vested in the Town Council to exercise all powers delegated by this Charter to the municipal corporation of the Town of Dewey Beach 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, which may be exercised by said Town Council in the interest of good government and the safety, health, and welfare of the Town, its inhabitants and affairs, that is to say:

1.

To provide for the governance of the Town; the maintenance of its peace and order; the provision for its sanitation and the maintenance of its infrastructure; the protection of its beauty and

surrounding natural environment; the provision for the health, safety, convenience, comfort and well-being of its population and visitors; the protection and preservation of property, public and private, and the preservation of the character of the Town; the insurance of financial sustainability; and the provision of resilience in the face of global climate change.

2.

To prohibit, or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements, and games.

3.

To direct the digging down, draining, filling up, cleaning, cutting, or fencing of lots, tracts pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter.

4.

To provide for or regulate the numbering of houses and lots on the streets, and the naming of streets and avenues.

5.

For the prevention of fire and the preservation of the beauty of the Town, to regulate and control the number of buildings or removal of dwelling houses and other buildings; to establish a code for the same and to provide for the granting of permits for the same; to establish a building line for buildings to be erected; zone or district the Town and make particular provisions for particular zones or districts with regard to building or building materials; and, generally to exercise all the powers and authorities vested in the legislative body of cities and incorporated towns under by the Constitution and Laws of this State.

6.

To acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping offices for providing services for the Town.

7.

To regulate or prevent the use of guns, airguns, spring guns, pistols, sling shots, beanshooters, and any other devices for discharging missiles which might cause bodily harm or injury to property; and to regulate or prevent the use of fireworks, bombs, and detonating works of all kinds.

8.

To purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, 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.

9.

To provide for the collection of and disbursement of all monies to which the Town may become entitled by law, including licenses and fines, where no provision for the collection and disbursement thereof is otherwise provided in the Charter.

10.

To borrow money in the name of the Town for any proper municipal purpose, and in order to secure the payment of the same, to issue bonds or other kinds or forms of certificate or certificates of indebtedness, pledging the full faith and credit of the Town or such other security or securities as the Town Council shall select, for the payment of the principal thereof and the interest due thereon, all of which bonds or other kinds or forms of certificates of indebtedness issued by the Town shall be exempt from all State, County or municipal taxes; provided, that in no event shall the indebtedness of the Town, for any and all purposes, at any one time exceed in

the aggregate **one million five hundred thousand dollars (\$1,500,000)**; **(68 Del. Laws, c. 354, 7/10/1992)**

11.

To appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency.

12.

To inquire into and investigate the conduct of any office, officer, agent, or employee of the Town and to make investigations of all municipal affairs, and, for any such purpose or purposes shall have the power to subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and production of books, papers or other evidence.

13.

To make, adopt and establish all such ordinances, regulations, rules and by-laws, not contrary to the laws of this State and the United States, as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which the Town Council may deem proper and necessary for the effective and faithful execution of Town's Goals of Governance as described above and for the preservation of the health, safety and welfare of the Town and all therein. The fiscal year for the Town of Dewey Beach shall begin April 1, and end March 31. **(76 Del. Laws, c. 273, 6/30/2008)**

a.

Registered voters of the Town of Dewey Beach, as more specifically defined in Section 10(b) of this Charter, shall have the power to petition to require reconsideration by the Town Council of any affirmative vote, or adopted Ordinance or Resolution and to approve or reject or repeal it at a referendum election as provided herein: provided, however, that such power of petition and referendum shall not extend to the budget or capital program or any emergency ordinance or any ordinance relating to the appropriation of money.

b.

A Referendum Petition, signed by persons registered to vote in Dewey Beach equal in number to at least thirty-three and one third percent (33 1/3%) of the total number of voters who voted in the Annual Municipal Election immediately preceding the execution of the Referendum Petition with the local address of the person so signing, or three hundred (300) such persons as aforesaid, whichever is greater, and authenticated in accordance with subsection c, below, shall be presented to the Town Council at the next regular Town Council Meeting following the date of adoption of the affirmative vote, ordinance or referendum sought to be reconsidered, or the Petition shall fail and it shall not be the subject of a referendum. If there are less than twenty-eight (28) days from the date of the adoption of the affirmative vote, ordinance or resolution sought to be reconsidered until the next regular Town Council Meeting, the Petition for Referendum shall be presented at the first regular Town Council Meeting following the expiration of the said twenty-eight (28) day period or the affirmative vote, ordinance or resolution sought to be reconsidered shall not be the subject of a referendum. Each copy of such petition shall contain and have attached thereto throughout its circulation the full text of the affirmative vote, ordinance or resolution sought to be reconsidered.

c.

Each original Referendum Petition shall have attached to it, when filed, a sworn, validly notarized affidavit executed by the circulator of the petition stating that said circulator personally circulated the petition, the number of signatures thereon, that all signatures were affixed in said

Comment [DSK52]: CCRC did not feel qualified to comment on any increase or decrease to this amount, but wanted to flag it for your consideration; see also Section 26 (a)

Comment [DSK53]: This is the same as Section 30 a). Left here for convenience/out of concern for unintended consequences

Comment [DSK54]: Change to requirement for registration versus eligibility to vote here and elsewhere herein

Comment [DSK55]: Citizen right to referendum strengthened herein by extending to any vote and including resolutions

circulator's presence, that said circulator believes them to be the genuine signatures of the persons whose names they purport to be, that each such person who signed it is qualified to sign the petition and that each signer had an opportunity, before signing, to read the full text of the affirmative vote, ordinance or resolution sought to be reconsidered. In addition, if the circulator of the petition sends the petition to a qualified signer to sign not in the presence of the circulator, the qualified signer signature shall be notarized.

d.

Within twenty (20) days after the petition is filed with the Town Council as described above, the Town Manager shall complete a certificate certifying its sufficiency or specifying any insufficiency, and shall promptly send a copy of the certificate to the circulator of such petition or the acknowledged representative of the Petitioners by certified mail with return receipt requested. A petition certified insufficient for lack of the required number of valid signatures may be amended one (1) time if the circulator files a Notice of Intention to Amend with the Town Manager within two (2) days after receiving a copy of the certificate and files a supplementary petition upon additional papers within five (5) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of this Section concerning form, content, and the affidavit of the circulator. Within five (5) days after a supplemental petition is filed, the Town Manager shall complete a certificate as to the sufficiency of the supplemental petition, as amended, and shall promptly send a copy of such certificate to the circulator by certified mail with return receipt requested, as in the case of the original petition.

e.

If a petition has been certified to be insufficient and the circulator has not filed a Notice of Intention to amend, or if an amended petition has been certified insufficient, the circulator may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the Town Council. The Town Council shall review the certificate at the next regular Town Council Meeting following the filing of such request and approve or disapprove it, and the determination of the Town Council as to the sufficiency of the petition shall be final.

f.

Any person or persons, jointly or severally, aggrieved by the decision of the Town Council may present to the Superior Court of the State of Delaware, a petition duly verified, setting forth that such decision is invalid, in whole or in part, specifying the grounds of such invalidity. Such petition shall be presented to the Court within thirty (30) days following the determination by the Town Council as to the insufficiency of such petition. Upon presentation of the petition, the Court may allow a Writ of Certiorari directed to the Town Council to review such decision of the Town Council and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner or their attorney, which shall not be less than ten (10) days and may be extended by the Court. The allowance of the Writ shall stay proceedings upon the decision or determination appealed from. The Court may reverse or affirm, wholly or partly, or may modify the determination brought up for review.

g.

Upon the filing of the Petition for a Referendum with the Town Manager, the affirmative vote, ordinance or resolution sought to be reconsidered shall not be stayed or suspended from taking effect, and such Petition for a Referendum shall terminate upon the happening of any of the following events:

(1)

There is a final determination of insufficiency of the Petition; or

[\(2\)](#)

The Petition is withdrawn by the circulators thereof or sufficient copies thereof are withdrawn so that there are insufficient numbers of signatures as required by this Section; or

[\(3\)](#)

The Town Council repeals the affirmative vote, ordinance or resolution; or

[\(4\)](#)

Thirty (30) days have elapsed after a vote by the voters on the affirmative vote, ordinance or resolution; or

[\(5\)](#)

There is a final determination by the Superior Court.

[h.](#)

The Town Council shall reconsider the referred affirmative vote, ordinance or resolution at the first regular Town Council Meeting after the Petition for a Referendum has been finally determined to be sufficient. If the Town Council determines not to repeal the referred affirmative vote, ordinance or resolution, the referred affirmative vote, ordinance or resolution shall be submitted to the voters of the Town of Dewey Beach at an election.

[i.](#)

The vote of the eligible voters on a referred affirmative vote, ordinance or resolution shall be held not less than thirty (30) days and no later than sixty (60) days from the date the Town Council determined not to repeal the referred affirmative vote, ordinance or resolution. If the Annual Municipal Election is to be held within the period prescribed in this Section, such referendum shall be considered as part of that election. If the Annual Municipal Election is not to be held within the period prescribed in this Section, the Town Council shall provide for a Special Election. If the Town Council fails to hold a referendum within the time specified in this Section, the affirmative vote, ordinance or resolution for which the petition was filed shall be deemed to be repealed at the expiration of sixty (60) days from the date that the Town Council determined not to repeal the referred affirmative vote, ordinance or resolution and such affirmative vote, ordinance or resolution shall not be passed in the same form for a period of one (1) year from the effective date of repeal.

[j.](#)

The notice of the time and place of holding the said Special Election shall be printed in at least two (2) issues of a newspaper having a general circulation in the Town of Dewey Beach within thirty (30) days immediately preceding the date of the Special Election.

[k.](#)

In all electoral proceedings, the Special Election shall be conducted in the manner of the Annual Municipal Election and the Election Judge and Election Board, as specified in Section 10 of this Charter and in Chapter 48 of the Code of Dewey Beach, shall oversee the proceedings of the election and have the authority and power to conduct the election.

[l.](#)

Immediately after the closing of the polling place or places, the Election Board shall count the ballots for and against the proposition as presented, and shall announce the results thereof. The Election Board shall make a certificate under their hands of the number of votes cast for and against the proposed affirmative vote, ordinance or resolution and the number of void votes, and shall deliver the same to the Town Manager who shall immediately inform the Town

Comment [DSK56]: Not sure what this means or if there is a typo herein

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Commissioner of the results. The said certificate shall be filed with the Office of the Town Manager.

m.

The form of the ballot of the said Special Section shall be as follows: **(78 Del. Laws, c. 346, 7/18/2012)**

() For the Referred Affirmative vote, Ordinance or Resolution

() Against the Referred Affirmative vote, Ordinance or Resolution

n.

If the majority of the voters voting on a referred affirmative vote, ordinance or resolution vote against such affirmative vote, ordinance or resolution, it shall be considered repealed upon the certification of the result of the election by the Election Board. No affirmative vote, ordinance or resolution which has been repealed as the result of a referendum shall be passed again in the same form by the Town Council for a period of one (1) year from the date of the referendum.

o.

The Town Council may, in their sole discretion, elect to adopt an ordinance, except for an ordinance specified not to be the subject of a referendum proceeding in subsection a, hereinabove, subject to a referendum. In such event, the Town Council shall, at the same time such ordinance is adopted, include in the language of said ordinance that such ordinance shall be the subject of a referendum. Upon the passage of the ordinance adopted subject to a referendum, such ordinance shall be suspended from taking effect until thirty (30) days after the results of the referendum, such referendum are returned indicating that the ordinance is approved by referendum. **(78 Del. Laws, c. 346, 7/18/2012)**

Nothing contained herein shall operate so as to require the Town Council to exercise its discretion to submit any affirmative vote, ordinance or resolution to a referendum; and nothing contained herein shall operate to restrict the right of the eligible voters of the Town of Dewey Beach to initiate a referendum pursuant this Section. However, the decision of the Town Council to submit an affirmative vote, ordinance or resolution to a referendum shall, in the case of such affirmative vote, ordinance or resolution, constitute the only referendum to which such affirmative vote, ordinance or resolution shall be subjected; and there shall be no right to subject such affirmative vote, ordinance or resolution to an additional referendum. **(78 Del. Laws, c. 346, 7/18/2012)**

14.

The Town Council shall have the authority to raise funds by charging a fee to owners of vehicles which are parked in the streets and other areas accessible to the public.

15.

The Town Council shall have the authority to grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits specifically including any beach property whether previously dedicated, owned by the State of Delaware, or the Town, except as subsection (b) of this section may apply.

16.

The Town Council shall have the authority to levy and collect tax upon the renting or leasing of residential property located within the municipal boundaries of Dewey Beach, except that no accommodations tax for a residential rental shall be collected upon a valid rental agreement or valid lease agreement with a term of at least one (1) year. The accommodations tax on a residential rental shall be as set from time to time by the Town Council, but not to exceed three

percent (3%) of the rent or lease amount unless approved by referendum. [30 Del. Laws, c. 61](#).
(77 Del. Laws, c. 29, 5/18/2009)

[\(b\)](#)

Notwithstanding any provision in this Section or in this Act to the contrary, the Town Council shall have no power or authority to impose or require any fee, tax, license or permit regarding use of the beaches by persons for individual recreational purposes.

Comment [DSK57]: CCRC recommends protecting the ability to enforce the current residential rental accommodations tax and suggests the Town Council delete this language to protect the status quo in the face of possible state actions.

Section 24 Collection of Charges Due the Town.

Delete existing section in its entirety and replace with proper legal language that addresses the general collection of all types of charges along the following lines:

1) the Town Council has the authority to impose license fees, charges for the abatement of nuisances, and other charges and taxes

2) collection thereof is the responsibility of the Town Manager

3) Define the situation where the fees, etc are levied against the owner(s) of a property in town related to that property, e.g. failure to pay a business use license fee, building permit fee, property tax assessment, or charge related to abatement of a nuisance or obstruction, and a process for recovery. The recourse should provide for due process and might be something like: the property owner(s) shall have XX days following notification by the Town Manger of such delinquency to pay or file an appeal in the appropriate court and if at the end of the XX day period or XX days after a final court ruling in favor of the Town the charges due the Town are not paid the Town Manager is authorized to place a lien on any or all real property of the delinquent property owner(s).

4) Define the situation where the fees, etc are levied against an individual or corporation which doesn't own property in town or the fee, fine, etc is not related to an owner's real property, e.g., a fine for jay walking or a parking violation. The recourse for failure to pay also needs to be defined.

5) replace the current (c) with an appropriate catchall if needed

Comment [DSK58]: CCRC recommends complete rewrite – limit what is in charter to what needs to be there and include the bulk of the process back and forth in the town code

Section 25 Removal of Obstruction, Nuisances, and Unsanitary Conditions.

Delete existing section in its entirety and replace with proper legal language that addresses the Removal or Abatement of Obstructions, etc along the following lines:

Recommended flow:

1. The Town Council has the authority to establish regulations regarding obstructions, nuisances, and unsanitary conditions, as those terms may be defined by the Town and to impose

Comment [DSK59]: CCRC recommends complete rewrite – limit what is in charter to what needs to be there and include the bulk of the process back and forth in the town code

finances and penalties for the removal and/or abatement of such obstructions, nuisances, and unsanitary conditions.

2. The Town Manager is responsible for action taken against identified obstructions, nuisances & unsanitary conditions that are in violation of town ordinances or resolutions or that are contrary to health, welfare & safety of the town and its people/visitors.

3. Define process for notification of property owner(s) in the case of violation of ordinance or resolution.

4. Define process where obstruction, nuisance and/or unsanitary condition is potentially harmful to the public HS&W but not addressed in an existing ordinance or resolution (i.e., Town Manager files a report and requests the Town Council to review the situation and pass an appropriate ordinance or resolution.

5. With an appropriate ordinance/resolution in place, define the process that includes due process considerations for the removal or abatement process of such an obstruction, nuisance and/or unsanitary condition

6. Define the removal/abatement process at the end of an appropriate waiting period if no legal recourse is sought and/or a favorable final court ruling. This should include the authority of the Town Manager or designees (town employees or contractors) to enter the property, move vehicles/implements onto the property, and remove or abate the obstruction, nuisance or unsanitary condition.

7. The Town Manager then needs to have the authority to charge the property owner(s) for said removal/abatement. (the process should already be defined in Section 24)

Comment [DSK60]: CCRC had a lot of discussion regarding the use of an ordinance (a law with a 30 day waiting period before becoming effective) and/or resolution (wish or policy; no waiting period) here. The thought was that use of a resolution here might be akin to a taking, and therefore the language should be limited to ordinances. We wish to bring this concern to the Town Attorney's attention.

Section 26 Borrowing Money and Issuance of Bonds.

(a)

The Town Council may borrow money, which in the aggregate shall not exceed one million five hundred thousand dollars (\$1,500,000), and to secure the payment of the same, and is hereby authorized and empowered to issue bonds or other kinds or forms of certificate or certificates of indebtedness pledging the full faith and credit of the Town of Dewey Beach, or such other security or securities as the Town Council shall elect, for the payment of the principal thereof and the interest due thereon. (69 Del. Laws, c. 45, 6/25/1993)

Comment [DSK61]: CCRC saw no reason to change this limit, but did want to flag to the Town Council's attention that if they are considering specific future Town needs, e.g., in response to climate change, now might be a good time to increase this limit.

(b)

All bonds or other kinds or forms of certificate or certificates of indebtedness issued by the Commissioners of Dewey Beach in pursuance hereof shall be exempt from all State, County or municipal taxes.

Comment [DSK62]: Filling in of missing text

(c)

This power or authority to borrow money may be exercised by the Town Council to provide funds for, or to provide for the payment of, any of the following project or purposes:

1.

Refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein;

2.

Meeting or defraying current annual operating expenses of the Town in an amount equal to but not in excess of currently outstanding, due and unpaid taxes, water rents, license fees, or other

charges due the Town and available, when paid, for meeting or defraying current annual operating expenses of the Town;

3.

Erecting, extending, enlarging, maintaining, and repairing any plant, building, machinery, or equipment or purchasing of any lands, easements and rights-of-way which may be required therefore;

4.

Defraying the cost to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter.

(d)

In those cases where the power or authority hereby vested in the Dewey Beach Town Council is sought to be exercised for the purpose of refunding any or all outstanding bonds or other indebtedness of the Town at a rate of interest equal to or less than the indebtedness thereby sought to be refunded and in all instances provided for in subparagraph 2 above, it shall not be necessary for the Town Council to call a special election of the individuals registered to vote in the Town's Annual Municipal Election to secure their approval of such borrowing.

(e)

In all other instances the power to borrow money and to secure the payment thereof by the issuance of bonds or other kinds or forms of certificate or certificates of indebtedness for any other purpose or purposes above specified shall be only exercised in the following manner.

Comment [DSK63]: Unknown missing text. CCRC wanted to bring to the Town Council's attention for legal review to add an appropriate process or delete this sub-section

Section 27 Contracts.

(a)

All contracts for the purchase of materials or for the furnishing of services authorized or permitted by this Charter shall be awarded to the bidder submitting the lowest and best bid; provided, however, that competitive bidding shall not be required in any of the following circumstances:

1.

The aggregate amount involved is not more than Five Thousand Dollars (\$5,000.00);

Comment [DSK64]: Update due to account for inflation

2.

The purchase or contract is for personal or professional services for which the aggregate amount involved is not more than Ten Thousand Dollars (\$10,000.00);

Comment [DSK65]: Cap on this exemption.

3.

The purchase or contract is for any service rendered by a university, college or other educational institution;

4.

The purchase or contract is for any service to be rendered by the State of Delaware or any political subdivision thereof;

5.

The purchase or contract is for property or services for which it is impracticable to obtain competition;

6.

The public exigency as determined by the Town Council will not permit the delay incident to advertising;

7.

Reserved;

8.

The purchase or contract is for property or services for which the Town Council determines the prices received after competitive bidding are unreasonable as to all or part of the requirement or were not independently reached in open competition;

9.

A public emergency as determined by the Town Council exists.

Comment [DSK66]: Delete this exclusion. (Either reserve this numbered item or delete and renumber those following.)

Section 28 Limitation of Actions.

No action, suit or proceeding shall be brought or maintained against the Town of Dewey Beach for damages, either compensatory or punitive, on account of any physical injury or injuries, death or injury to property by reason of the negligence of the Town Council or any of the departments, officers, agents, or employees of the Town of Dewey Beach, unless the person by or on behalf of whom such claim or demand is asserted within ninety (90) days from the happening of such injury or the suffering of such damage, shall notify the Town Manager in writing of the time, place, cause, character and extent of the injuries sustained so enrolled or damages suffered. Any suit brought against the individual Town Commissioners of Dewey Beach shall be against them only in their capacity as representatives of the Town Government and not as individuals.

Comment [DSK67]: CCRC wanted to flag this inconsistency to the Town Council for legal review and update. State statute is 2 years.

Section 29 Compendium.

It shall be the duty of the Town Manager, at reasonable times, or time, to compile the ordinances, codes, orders, and rules of the Town of Dewey Beach. The Town Manager 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 or resolutions, codes, rules and regulations, or upon the enactment of amendments to the same, the Town Manager shall enroll the same in the minutes of the Town Council and shall keep copies of the same in a book to be provided for that purpose so that the same may be readily examined. The Town Manager shall furnish to the Mayor and Town Commissioners copies of such new ordinances or resolutions, codes, rules and regulations, or amendments thereto as they are enacted; and therefrom may cause supplements to be compiled and printed to any compendium thereof heretofore printed as above provided.

Comment [DSK68]: Moved to Section 30

Comment [DSK69]: To reflect change in content

Section 30 Investigations and Indemnification.

(a)

The Town Council shall have the power to inquire into and investigate the conduct of any office, officer or employee of the Town and to make investigations of all municipal affairs, and, for any such purpose or purposes, shall have the power to subpoena witnesses, administer oaths or affirmations and compel the attendance of witnesses and the production of books, papers or other evidence.

Comment [DSK70]: Changes to align with 23(a)12.

(b)

At those times when by majority vote of those Commissioners present in a properly-noticed Town Council Meeting it is agreed that a review of the actions(s) of any officer or employee of

the Town would be in the best interest of the Town the Town Council may suspend with pay said officer or employee from duty during such investigation provided the procedures of the Town Employee Manual are properly followed.

(c)

The Commissioners may provide for indemnification of elected and appointed official from liability arising out of their acts performance in good faith on behalf of the Town.

Comment [DSK71]: CCRC wanted to provide explicit authority for the temporary suspension of duty (with pay) during an investigation or any town employee. CCRC recommends HR review

Section 31 Survival of Powers and Validating Section.

(a)

All powers conferred upon or vested in the Town of Dewey Beach or the Town Council of Dewey Beach 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 Dewey Beach and/or the Town Council of Dewey Beach precisely as if each of said powers was expressly repeated in this Charter.

(b)

Excepting as may be herein provided expressly to the contrary, every and all Sections or parts of Sections of this Act shall become effective immediately upon its approval.

(c)

The authority vested by Section I of this Act in the Town of Dewey Beach and the individuals qualified to vote in the Town of Dewey Beach shall apply with equal force and effect to all loans which may be required to raise funds necessary to replace and/or repair all such public property or estate as might have been so destroyed or damaged at a time or times preceding the enactment and approval of this Act as well as at a time or times after the date of the enactment and approval hereof.

(d)

All acts or part of acts inconsistent with or in conflict with the provisions of this Act are hereby repealed to the extent of such inconsistency only.

(e)

If any part of this Act shall be held invalid or unconstitutional, such holding shall not, be deemed to invalidate the remaining provisions hereof.

(f)

This Act shall be taken as and deemed to be a public act of the State of Delaware.

Section 32 Effective Date of Act.

This Act shall become effective on being signed into law by the Governor of the State of Delaware.

Section 33 Prohibition on Gambling.

(76 Del. Laws, c. 273, 6/30/2008)

Except for lotteries as conducted by the State and nonprofit charitable gaming as permitted by State Law, gambling shall be prohibited within the Town limits.

Approved June 29, 1981.

(63 Del. Laws, c. 59, 6/29/1981; 65 Del. Laws, c. 255; 68 Del. Laws, c. 354; 69 Del. Laws, c.

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45; 70 Del. Laws, c. 191; 72 Del. Laws, c. 425; 74 Del. Laws, c. 369, 7/19/2004; 74 Del. Laws, c. 370, 7/19/2004; 76 Del. Laws, c. 273, 6/30/2008 77 Del. Laws, c. 29, 5/18/2009; 77 Del. Laws, c. 42, 6/16/2009, 78 Del. Laws, c. 232, 5/1/2012; 78 Del. Laws, c. 346, 7/18/2012)