Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

CHAPTER 339
FORMERLY
HOUSE BILL NO. 318

AN ACT TO AMEND CHAPTER 176, VOLUME 74 LAWS OF DELAWARE, AS AMENDED, RELATING TO THE CHARTER OF THE TOWN OF SMYRNA.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Section 2, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

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

Section 2. Amend Section 3, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

3.1 Initiation of Annexation Proceedings.

3.1.1 By Petition of the Property Owners. Any property owner(s) holding record fee title to real property in territory contiguous to the then existing corporate limits of the Town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein, state the reasons for the requested annexation, and identify the proposed zoning district classification(s) for such territory (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan). The Town Council may, within 90 days following the filing of such petition in the Town Office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. Any petition not so accepted within said 90 days shall be null and void. For purposes of this subsection 3.1.1 and subsection 3.1.2, "territory contiguous to the then existing corporate limits of the Town" shall include both real property which, though itself not contiguous to the Town's then existing corporate limits, is contiguous to other real property which is proposed to be included in the annexation and real property which would be contiguous under subsection 3.2.10(b); provided, however, that where the contiguity of any parcel for annexation is dependent upon the annexation of another abutting parcel or parcels and such "connecting" parcel(s) is/are not annexed prior to or simultaneously with the dependent parcel, the annexation of such dependent parcel shall fail and be void for lack of contiguity.

3.1.2 Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory(s) contiguous to the Town. Such resolution shall describe, with reasonable certainty, the territory(s) proposed to be annexed, state the reasons for the proposed annexation, and identify the proposed zoning district classification(s) for such territory(s) (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan). Upon adoption of such resolution, the Town Council shall proceed as hereafter provided. This resolution may be adopted at the same Town Council meeting at which the resolution required in subsection 3.2.1(a) is also adopted.

3.2 Annexation Procedure. Whether annexation is proposed by petition of the property owners or by resolution of the Town Council, the following procedure shall be complied with:

3.2.1 Resolution and Notice; Referral To Planning Commission.

(a) The Town Council shall adopt a resolution notifying the property owners and the residents of both the Town and the territory proposed to be annexed, that the Town proposes to annex certain territory which adjoins its then corporate limits. The resolution shall contain a description of the territory proposed to be annexed, shall identify the zoning district classification(s) proposed for such territory if annexed (which proposed zoning classifications shall be consistent with the Town's Comprehensive Plan), shall describe the right of a qualified resident to object to the annexation, and shall fix a time and place for a public hearing on the subject of the proposed

annexation and zoning. For purposes of this section, a “qualified resident” shall be any individual residing in the territory proposed for annexation who is not a property owner but who would be qualified under subsection 3.2.5(a) to vote for the annexation. A qualified resident may file a written objection to the annexation with the Town at any time prior to the close of the public hearing held pursuant to subsection 3.2.2. Such resolution may also provide that if the annexation is finally approved, the Town shall not be obligated to provide any municipal services or extend any municipal facilities or improvements unless and until the Town Council, in the sole exercise of its reasonable discretion, determines that it is appropriate for the Town to do so or the owner or developer of any property so annexed (or any portion thereof) binds itself, with reasonable surety acceptable to the Town, to pay in full all costs and expenses to provide such municipal services and/or to extend or construct such municipal facilities and improvements to serve such lands (in strict accordance with all governing federal, state, and Town regulations and standards), subject to an appropriate "recapture agreement" (acceptable to the Town) pursuant to which the owner(s) or developer(s) of other lands benefited by the services, extensions, or improvements paid for by the initial owner/developer under the recapture agreement would pay to the Town their equitably-determined proportionate share of such costs and expenses (as a condition precedent to obtaining such services, extensions, and/or improvements) which amounts the Town would, upon receipt, rebate to the owner or developer which had originally paid for those services, extensions, and/or improvements. The resolution setting forth the information shall be published at least once in a newspaper of general circulation in the Town and in the territory proposed to be annexed. Such publication shall appear no fewer than 14 days nor more than 60 days before the date set for the hearing. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to publication as herein provided, the Town Council shall, no fewer than 14 days nor more than 60 days before the date of such hearing: (1) cause a public notice containing the full text of the resolution, to be posted in at least 5 public places in the Town and in at least one place, viewable to the public, in the territory proposed to be annexed; (2) shall comply with the applicable provisions of 29 Del. C. Chapters 92 and 93 as those provisions may from time to time hereafter be amended (or with any future corresponding provision of law), and (3) send a copy of such notice, certified mail, to the owners of record of the lands proposed to be included in the annexation at their address as shown on the public tax records. Written notice to one co-owner shall be notice to all.

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

3.2.2 Public Hearing. At the time, date, and place specified in the Resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in subsection 3.2.1) the Town Council shall sit to hear comments and opinion from any concerned party (and to receive the recommendations and comments of the Planning Commission, if any) regarding the proposed annexation and proposed zoning district classification. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding and the Town Council shall not be bound, in any way, to act in response to any information or comments offered at such hearing.

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

(a) Where the territory proposed for annexation is either initiated at the written petition of all of the owners of record of all lands proposed for such annexation or consented to in a notarized writing signed by all such owners and submitted to the Town Council no later than the conclusion of the public hearing held pursuant to subsection 3.2.2, and where the Town has received no written objection from a qualified resident of the territory proposed for annexation as defined herein, the Town Council may, at any duly noticed regular or special meeting held within six (6) months of the public hearing, vote to accept or reject such proposed annexation and if accepted, the Town Council shall proceed at that meeting, or at the next duly noticed regular or special Town Council meeting, to adopt a final resolution annexing the territory in accordance with subsection 3.2.7(c). In such cases, no special election shall be required.

(b) Where fewer than all of the owners of record of all parcels of land within a territory proposed for annexation have requested annexation or consented to annexation by the close of the public hearing or where a qualified voter has filed with the Town a written objection to the annexation, at any time following the public hearing, the Town Council may (but is not required to) pass a resolution ordering a special election and setting the date, time, and place of the special election, which shall not be fewer than 14 days nor more than 60 days after the date of such resolution proposing the special election. Such resolution shall include a description of the territory proposed for annexation and shall identify the zoning district classification(s), consistent with the Comprehensive Plan, which shall be assigned to the parcel(s) if annexed. The passage of this resolution shall ipso facto be considered the determination of the Town Council to proceed with the matter of the proposed annexation and zoning district classification if the election results are in favor of the annexation.

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

3.2.5 Those Entitled to Vote.

(a) At such special election, any person residing in the territory proposed for annexation who would be entitled to vote at the annual Town election if the territory proposed for annexation was already included in the Town, shall be entitled to one vote. (For purposes of this section "lawfully entitled to vote" shall not include "registered to vote" if registration is required for Town elections). In addition, each legal entity or natural person holding record title in its own name in any parcel proposed for annexation shall be entitled to one vote.

(b) These provisions shall be construed so as to permit only "one-man, one vote". Where a voter is entitled to vote by virtue of both residence and ownership of property or is entitled to vote by ownership of two or more parcels, that voter shall be entitled to only one vote.

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

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

____ For the proposed annexation.

____ Against the proposed annexation.

The Town Board of Elections appointed pursuant to subsection 5.5.5(f) of this Charter shall act as a Board of Special Elections for the annexation. If there is not already a board chairperson, one (1) of the said Board of Special Elections members shall be designated the presiding officer by majority vote of the Board of Special Elections. The Board of Special Elections shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all natural persons and other legal entities voting. Voting shall be conducted in a public place as designated by the resolution calling the special election. The polling place shall be open for such period of time as the Town Council determines to be reasonable and appropriate under the circumstances, provided the poll is open for at least one hour, as set by the Town Council, on the date set for the special election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls.

All ballots cast by those persons or other legal entities authorized to vote as property owners in the territory proposed to be annexed shall be deposited in designated ballot box(es) or cast in designated voting machine(s).

3.2.7 Results of special election; final resolution.

(a) In order for the territory proposed to be annexed to be considered annexed, a majority of the votes must have been cast in favor of the proposed annexation.

(b) If the vote is favorable to the proposed annexation, the Town Council shall, at its first meeting following the special election, proceed in accordance with subsection 3.2.7(c) to adopt a resolution annexing the said territory and including it within the limits of the Town ("final resolution"), as well as an ordinance designating the zoning district classification(s) of the territory(s) so annexed.

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

Section 3. Amend Section 4, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

4.2.31 May provide civil penalties or criminal penalties for the violation of any ordinance of the Town by fine or imprisonment or both, not exceeding $1,000.00 and/or thirty days imprisonment for each offense.

Section 4. Amend Section 4, Chapter 176, Volume 74, Laws of Delaware, as amended, by making insertions as shown by underlining as follows:

4.2.49 Where the title to real property is held by an association of property owners (e.g. homeowner association, condo association, maintenance association), the Town may assess each member of the association individually, on a pro-rata basis, for any expenses incurred by the Town to bring the real property held by the association into compliance with the Town laws and ordinances, where the association has failed to make payment in full within 60 days after written demand from the Town. When the Town has a good faith belief that the association is defunct or no longer has a functioning board (or other similar representative body), the Town shall provide notices directly to, and make demand of, individual association members. Notwithstanding the provisions of 25 Del. C. § 81-317, assessments pursuant to this section may be collected in the same manner as other amounts owed to the Town.

Section 5. Amend Section 5, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

5. Town Council

5.1 Governing Body; Election Districts.

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

5.1.2 Election Districts. In order that the members of the Town Council shall be distributed throughout the Town, before March 1, 2004, the Town Council shall, by ordinance, divide the Town into no fewer than three (3) representative districts, such districts to be drawn so that the same shall be reasonably equal in

population. The Town Council may thereafter provide, by amendatory ordinance, for the creation of up to three (3) additional districts and/or re-arrangement of the boundaries of existing districts in the event of annexation or significant increases in the total population of the Town, but such revisions shall continue to result in districts of reasonably equal population.

(a) District and "At-Large" Representation. The Town Council shall be comprised of one Council member from each representative district (identified as such); the Mayor and the remaining Council members may be domiciles of any representative district, and shall be elected “at large.” At any Town election, each qualified voter of the Town shall be entitled to vote for one candidate for each “at large” office to be filled, but only those qualified voters who, for at least 30 days prior to the date of the election, have been continuously domiciled in the representative district for which a seat is up for election shall be entitled to vote for a district representative candidate.

(b) Re-Districting; Public Hearing; Notice. In a timely manner upon the release of the decennial census data (commencing with the release of the 2010 census), the Town Council shall review the population of the then-current election districts to determine if they are reasonably equal in population. In the event that any action is subsequently taken to create a new election district or to revise the boundaries of the then-existing election districts, the Town Council shall hold at least one public hearing, on not fewer than 30 days public notice, stating the date, time, place, and purpose of the hearing which public notice shall be: (i) published in a newspaper of general circulation in the Town and (ii) posted in at least five public places in the Town. The Town Council shall conduct its review and any proceedings or actions resulting therefrom, so that the boundaries of the new or revised representative districts are finalized and set forth in an appropriate ordinance no later than the second regular Council meeting in February of the year following the year in which the review was commenced. Notice of such new or revised representative districts shall be promptly published in a newspaper of general circulation in the Town and posted in at least five public places in the Town.

(c) "Phase-In" of District Representation; Creation of Additional Districts. The present Mayor and Council members of the Town, and other officers appointed to serve, in office under Chapter 339, Volume 62, Laws of Delaware, as amended, shall continue to serve from and after the effective date of this Charter, until their successors are duly elected or appointed. In 2004, two persons shall be elected to the Town Council to fill the vacancies created by the expiration of the terms of office of the two then-outgoing Council members. One of those two vacancies shall be designated as the representative for the 1st representative district and candidates for such seat shall be domiciled in that district. In 2005, three (3) persons shall be elected to fill the vacancies created by the expiration of the terms of office of the then out-going Mayor and two Council members. One of the two Council member vacancies shall be designated as the representative for the 2nd representative district and candidates for such seat shall be domiciled in that district. In 2006, two persons shall be elected to fill the vacancies created by the expiration of the terms of the two then out-going Council members, and one of those two vacancies shall be designated as the representative for the 3rd representative district, and such candidate shall be domiciled in that representative district.

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

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

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

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

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

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

5.3.2 Determinations Concerning Qualifications. If the Town Manager determines that any candidate may not meet the qualifications for office, he/she shall notify the Mayor who shall call a special meeting of the Town Council to be held no fewer than twenty-one days prior to the date set for the election, at which the Town Council shall decide the matter. The candidate whose qualifications are at issue shall be notified, by registered mail, of the date, time and place of the hearing, at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications for office, it shall reject his/her notice of intention to seek office and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not competing for that seat shall be entitled to vote on the question.

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

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

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

5.5 Elections.

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

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

(a) is a United States citizen;

(b) has attained eighteen (18) years of age;

(c) has been continuously domiciled in the Town for at least thirty (30) days;

(d) has not been adjudged a mentally incompetent person by a court of competent jurisdiction; and

(e) has not been disenfranchised pursuant to Sections 3 or 7 of Article V of the Constitution of the State of Delaware.

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

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

5.5.4 Uncontested Elections; Write-In Candidates.

(a) Where there is only one official candidate for each office up for election, if none of the official candidates has a formal opponent on the day of election, the official candidates may assume office without the holding of a formal election.

(b) No person or candidate whose name does not appear on the ballot shall be eligible for election, and votes for "write-in" candidates shall not be counted.

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

(a) Date, Time, and Place. The annual Town Election shall be held on the last Tuesday in April of each year at such time and place, within the Town, as shall be determined by the Town Council. The polls shall remain open for no fewer than six (6) hours, the times to be determined by the Town Council.

(b) Notice of Elections. Notice of Town elections shall be posted in a conspicuous public place no later than twenty (20) days prior to the election date. Additionally, notice of elections shall be published at least once per week for two successive weeks immediately prior to the date of the election in a newspaper of general circulation in the Town. Such notices shall be in bold print or bordered in black in such manner as to call attention thereto. In the event that the publications and/or postings do not appear on the same date, the date of the first publication shall control. The notice of elections shall include the date, time, and place of the election, the names of the candidates for each office, and the qualifications to vote. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the notice of elections.

(c) Voting machines. Elections shall be by voting machine provided by the Department of Elections in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. Separate voting machines or electronic voting system controls shall be utilized to insure that only those persons entitled to vote for candidates running for representative districts seats are allowed to vote for such candidates.

(d) Absentee Voting. The Town Council may (but shall not be required to), by ordinance, provide for a qualified voter (duly registered if required by ordinance) who shall be unable to appear in person, to cast his or her ballot at any municipal election by absentee ballot. All absentee voting authorized by the Town shall be conducted in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provision of law.

(e) Rules Governing Conduct of Elections. The Town Council shall follow the rules governing the conduct of elections and voting procedures found in 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. The Town Council may, by ordinance or resolution, adopt such rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the conduct of elections.

(f) Board of Elections. Every election shall be held under the supervision of a Board of Elections. The Board of Elections shall consist of five (5) persons (as determined by the Town Council) who shall be qualified voters of the Town and shall not be an elected official or candidate for Town office or an immediate family member of such (mother, father, son, daughter, brother, sister, including half-brothers and sisters, step-family members and in-laws) and who shall be appointed for that purpose by the Town Council at least twenty (20) days before such election. The Board of Elections shall serve for a term of one year commencing the second Council meeting in February, provided that the term of the Board of Elections shall in no instance expire until a successor Board of Elections has been appointed. Members of the Board of Elections may serve for more than one term. Each board member shall be confirmed and have his/her name and contact information publicly posted in accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), as it may be hereby amended from time to time, and any other existing or future corresponding provisions of law. The Town shall notify the State Election Commissioner and Department of Elections of the members appointed to the Board of Elections. The Board of Elections shall oversee the absentee ballots and either appoints an odd number of absentee ballot judges or, at the discretion of the Town Council act itself as the absentee ballot election judges. If, at the opening of the polls, there shall not be present all the members of the Board of Elections, then in such case the ranking Town officer available at the opening of the polls shall appoint a qualified voter or voters to act as a member or members of the Board of Elections to fill such vacancies caused by the absence of the previously-appointed members of the Board of Elections through the conclusion of the election. Members of the Board of Elections shall be the sole and final judges of the conduct of the election and of the legality of the votes offered. The Board of Elections shall keep a list of all voters voting at said election. The Board of Elections shall have the power to subpoena persons, and officers of the Town, and books, records and papers relative to the determination of the qualifications of voters and the legality of any vote or votes offered. The Board of Elections may appoint election officers (including an inspector) when needed to administer elections. In the absence of the appointment of election officers, members of the Board of Elections shall act as election officers, and the Board of Elections shall designate one of the board members as the inspector.

(g) Election Results. Upon the close of the election, the Board of Elections shall count the votes, and the candidate having the highest number of votes for each office shall be declared, by the Board of Elections, to be duly elected to such office.

(h) Ties. In the event of a tie vote for any office, the Board of Elections shall determine such tie by the casting of lots.

(i) Preservation of Ballots and Records. All ballots cast and all records of the election kept by the Board of Elections shall be preserved in the custody of the Board of Elections for a period of thirty (30) days, unless the election is contested or an appeal is filed in a court of appropriate jurisdiction, in which case such ballots and records shall be preserved until further direction of the reviewing body or court having jurisdiction.

(j) Election Record Book. The Board of Elections shall enter in a book, to be provided for that purpose, the results of the election, containing the names of the persons elected. The members of the Board of Elections shall subscribe the same. The book, containing such matters, shall be preserved by the Town Council.

Section 6. Amend Section 6, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

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

At the organizational meeting, the Mayor shall appoint, from among the other members of the Town Council, a Vice-Mayor and Secretary, subject to confirmation by the Town Council. Each of these officers (i.e. the Vice-Mayor and Secretary) shall serve in that position for a term of one year or until the organizational meeting after the next succeeding election, unless sooner removed from such office by action of the Town Council.

Section 7. Amend Section 6, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

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

The Mayor shall be authorized to act on behalf of the Town, without prior Council approval, in the event of some sudden emergency requiring prompt action in order to protect the public health, safety, and welfare of the Town, its residents and property owners. A "sudden emergency" for purposes of this section shall include, by way of example and not in limitation, a major fire or conflagration, significant flooding, or serious storm threatening significant damage, a civil disturbance, or a toxic spill. A "sudden emergency" shall also include any emergency situation as declared by any County, State, or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town of Smyrna. If reasonably possible, the Mayor shall notify each Council member, in writing, by personal delivery, fax, e-mail, overnight courier service, or U.S. mail, of the action so taken within 48 hours. Notice shall be complete upon depositing such notice in the U.S. Mail, proper postage affixed, to each Council member at his/her last known address, upon personal delivery to the Council member or an adult residing with the Council member, or by confirmation of receipt of such overnight delivery, fax, or e-mail transmission.

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

Section 8. Amend Section 6, Chapter 176, Volume 74, Laws of Delaware, as amended, by deleting section 6.3.2 in its entirety.

Section 9. Amend Section 6, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

6.6.2 Reimbursement of Expenses. Members of the Town Council are encouraged to participate in training and educational activities offered by the Delaware League of Local Governments, the National League of Cities, the University of Delaware, and other organizations to the extent possible under budgetary limitations. The Mayor and members of Council shall be reimbursed for their documented actual and necessary expenses incurred on Town business if approved by the Town Council. Council may enact an ordinance outlining approved Town business expenses and reimbursement procedures. No member of the Town Council shall be entitled to vote upon their own

request for reimbursement unless similar expenses were incurred by four or more members of the Town Council in connection with the same event or activity.

Section 10. Amend Section 7, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

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

The Town Manager shall be appointed in accordance with the provisions of any resolution, ordinance, and/or written agreement authorized by the Town Council and specifically applicable to that Town Manager, provided however, that: (1) although there shall be no limit on the number of terms of employment a Town Manager may serve, in no case shall any single term of employment exceed three (3) years, upon the expiration of which the Town Manager's employment with the Town shall be automatically re-newed for an additional three-year term unless the Town Council votes (no fewer than 6 months prior to the expiration of the then-current term) to renegotiate such employment or not to re-new such employment, or to re-new such employment for a term shorter than three (3) years; (2) the Town Council may at any time terminate the Town Manager's employment for "just cause" without payment of any severance pay or benefits; and (3) the Town Council may at any time terminate the Town Manager's employment without "just cause" upon payment to the Town Manager of such severance pay and benefits as provided in the terms of any resolution, ordinance, and/or written agreement governing the employment of that Town Manager. For purposes of this section, "just cause" shall mean one or more specific, articulable reasons related to the Town Manager's unsatisfactory performance involving misfeasance, malfeasance, nonfeasance, or incompetence, which rationally support termination of employment. In case of the extended absence, disability, or suspension of the Town Manager, the Council may designate some other competent person to perform the duties of the office during such absence, disability or suspension; subject to the Town Council's authority aforesaid, the Town Manager may appoint a Town employee to serve as "Acting Town Manager" during the Town Manager's temporary absences.

Section 11. Amend Section 7, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

7.4.1 Appointment; Hiring.

(a) Boards and Commissions. Subject to Town Council confirmation, the Mayor shall recommend the appointment of members to all Boards and Commissions in the Town of Smyrna, including, but not limited to, the Board of Adjustment, Board of Elections, Board of Assessment and Planning and Zoning Commission. The Town Council may provide for the appointment or hiring of such other officers and agents of the Town, which it may deem proper and necessary, for the proper conduct and management of the Town, including by way of example and not in limitation, a consulting engineer and financial auditor. Except as otherwise provided by written agreement approved by the Town Council, or as provided elsewhere in this Charter or in any governing statute or ordinance, such officers, agents, and board-members shall serve at the pleasure of the Town Council.

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

Section 12. Amend Section 8, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

8.3 Annual Budget. The Town Council shall annually, at or before the first regular Town Council meeting in December of each year, adopt a budget for the upcoming fiscal year.

Section 13. Amend Section 8, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

(e) Other Services. The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (c), (d), and (e) aforementioned may be determined, fixed, assessed, levied and/or altered or changed upon other than a fiscal year basis at any regular or special meeting of the Town Council as the Town Council, in its own proper discretion, shall determine; and provided further that the rate of tax upon taxable real property (a) and upon utility fixtures (b) may be revised at such time the Town Council finally approves and accepts the annual assessment list for Town property taxes pursuant to section 9.7.2.

Section 14. Amend Section 8, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

8.4 Annual Audit.

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

Section 15. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.2.1 Appointment; Annual Term. The Mayor may, with the advice and consent of a majority of the entire Council, appoint a Board of Assessment composed of three (3) members, each of whom shall be domiciled within the corporate limits of the Town, and who shall serve for a one-year term.

Section 16. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.4.2 Assessment of Members of Board of Assessment. The real property of the members of the Board of Assessment shall be assessed by the Town Council of the Town of Smyrna and approved by the affirmative vote of at least five (5) members of the Town Council.

Section 17. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.5 Additions to Tax Bills. Whether utilizing the appraisals implicit in the Kent and New Castle County Assessments or those prepared by the Town's own Board of Assessment, the Town Manager shall annually, prior to the posting of the assessment list, provide the Town Council a list of any and all charges, costs, or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: sidewalk assessments, waterline assessments, water service charges, weed and grass cutting bills, sanitary sewer service charges, trash collection bills, past due electric charges, costs for demolition or repair of any building or structure in accordance with governing town ordinances, any charges incurred by the Town in bringing the property into compliance with the Town Code and the amount of any unpaid penalty imposed by any court of competent jurisdiction for violation of any municipal ordinance. Said amounts, when adopted and set forth by resolution of the Mayor and Council, shall be shown on the copies of the assessments posted pursuant to the provisions of Section 9.7.1 of this Charter.

Section 18. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.7.1 Posting of Annual Assessment List; Notice. Immediately upon receiving the annual assessment list from the Board of Assessment, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each taxable, to be made available for public inspection at the Town Office, and there it shall remain for a period of at least fourteen (14) days for the information of and examination by all concerned. Public notice of the posting of the assessment list, and the date, place, and time where the Town Council will sit as a Board

of Revision and Appeal to hear appeals from the said assessment and to make such corrections and revisions as it deems appropriate, including the procedures for appealing an assessment, shall be posted in at least five (5) public places in the Town and published at least once in a newspaper of general circulation in the Town not less than 14 days prior to the date set for the hearing of such appeals.

Section 19. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.7.2 Appeals Day Annual Assessment List. The Council may direct that appeals from any annual assessment be heard by a committee of not less than two (2) nor more than three (3) Council-members appointed by the Town Council. The committee of Council-members shall sit at the stated place and time to hear the appeals of all taxpayers dissatisfied with the assessment of their properties, shall collect such information as they consider proper and necessary, and, shall report their findings and recommendations, together with such other information as the Council shall permit or require, to the full Council at its next ensuing meeting, at which time the appeal of each dissatisfied taxpayer shall be heard. At least one member of the Board of Assessment shall be present on the day and time fixed for hearing appeals and shall furnish to the Town Council such information and answer such questions as the Town Council may require in respect to any assessment for which an appeal has been taken. The Town Council shall have the authority to enforce the attendance of at least one member of the Board of Assessment by appropriate process. No member of the Town Council shall sit on his/her own appeal, but the same shall be heard and determined by the other members of the Town Council. The Town Council shall have full power and authority to alter, revise, add to, and take from the said assessment. The decision of a majority of the Council shall be final and conclusive.

Upon completion of the appeal process under this section, the Town Council shall at that meeting or at the next ensuing regular meeting, adopt a resolution approving the final assessment list (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list under section 9.5), and setting the tax rate per $100 of assessed value.

Section 20. Amend Section 9, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

9.7.3 Supplemental Assessment Appeals. Whenever the Board of Assessment prepares a quarterly supplemental assessment list under §9.4.1(b), it shall deliver such list to the Town Manager. Immediately upon receiving such supplemental assessment list from the Board of Assessment, the Town Manager shall cause a full and complete copy thereof, containing the amount assessed to each taxable on such supplemental assessment list to be mailed, certified mail, return receipt requested, to each taxable on the supplemental assessment list at their last address as shown on the Town's tax records. Such mailing shall also include a notice that any taxable on said supplemental assessment list may request, in writing, an appeal to the Town Council concerning such supplemental assessment, such written request to be received at the Town Office within 14 days of the date that the notice is mailed.

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

Such appeals and all proceedings and actions taken pursuant to and in consequence of such appeal, shall be subject to and governed by the same provisions set out in §9.7.2 pertaining to appeals from the annual assessments, except that upon completion of the appeal process, the Council shall adopt a resolution approving the final supplemental assessment list, and the tax rate as previously set by the Town Council at the conclusion of the annual assessment appeal process shall remain in effect.

Such appeals and all proceedings and actions taken pursuant to and in consequence of such appeal, shall be subject to and governed by the same provisions set out in §9.7.2 pertaining to appeals from the annual assessments, except that upon completion of the appeal process, the Council shall adopt a resolution approving the final

supplemental assessment list, and the tax rate as previously set by the Town Council at the conclusion of the annual assessment appeal process shall remain in effect.

Section 21. Amend Section 11, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

11.5 Discount for Prompt Payment; Penalty for Late Payment; Collection Fee. To all taxes paid on or before July 1st next following the levy, there shall be applied a discount as established, from time to time, by resolution of the Town Council. On all taxes paid on or after September 30th of each year, there shall be added a penalty to be determined by Council for each month or fraction thereof such taxes shall remain unpaid, said penalty to be effective on the thirtieth day of September, and said penalty shall be collected in the same manner as the original amount of the tax. The Town Council shall have the power to make just allowances for delinquencies in the collection of taxes. All taxes unpaid on September 30th of each year shall be considered delinquent. In effecting a collection of any delinquent tax, the Town Council may impose a collection charge reasonably calculated to recover the costs of collection, including all court costs, sale costs, reasonable and necessary out-of-pocket expenses, and reasonable attorneys fees incurred by the Town in such collection proceedings.

Section 22. Amend Section 12, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

12.2 Town Manager to Have Tax Collection Powers. In the collection of delinquent taxes (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list pursuant to subsection 9.5), the Town Manager shall have all of the same powers, remedies, and authority, including the monition method of the collection of taxes, as conferred by Title 9 of the Delaware Code, as the same may from time to time hereafter be amended, or in accordance with any future corresponding provision of law, upon those individuals and/or departments authorized to collect delinquent taxes in Kent County and New Castle County.

Section 23. Amend Section 13, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

(3) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

[ ] For the proposed borrowing.

[ ] Against the proposed borrowing.

The voter shall be instructed to mark the box for which he/she casts his/her vote. The Board of Elections established pursuant to subsection 5.5.5(f) of this Charter shall act as a Board of Special Election. The polling places shall be opened for a minimum of six (6) hours as specified by resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

Section 24. Amend Section 13.8, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

13.8 Form of Bonds. The form of the bonds or certificates of indebtedness authorized under sections 13.1, 13.2, 13.3 and/or 13.7 and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after the final action required to authorize the issuance of such bonds or certificates of indebtedness has been completed (i.e. a majority vote of the Town Council under section 13.1; a super-majority vote following the holding of a public hearing under section 13.2 or 13.7; or a favorable vote of those natural persons and legal entities entitled to vote following the public hearing and special election procedures under section 13.3); provided, however, that the Town Council may delegate the authority to make all or any of the determinations described herein to the Town Manager, Mayor, or such special committee as he Town Council may appoint .

Section 25. Amend Section 23, Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

23.1 Power To Operate. The Town Council shall have the full power and authority to erect, construct, equip, maintain, repair, replace, lease, and operate plants, facilities, and systems for the generation and distribution of electric power and energy, including, but not limited to, renewable energy facilities, such as solar power : (a) for the use and benefit of the inhabitants and properties of the Town, (b) for the use and benefit of persons and properties lying outside the Town limits of the Town but within such proximity of the Town as to make provision of such service reasonable in the discretion of the Town Council, subject always to the authority of any governing state

agency to regulate the service territories of electric distribution systems, and (c) for sale to other providers of electric capacity and energy through the Delaware Municipal Electric Company ("DEMEC"), its successors or assigns. The Town Council shall have the power to make contracts for the purchase of electric capacity and energy with any responsible persons, firms, or corporations, and to distribute the same to users within or without the said Town with the same full powers as if such electric energy and/or capacity had been initially generated or provided by the Town.

Section 26. Amend Section 13.3.3(E)(1), Chapter 176, Volume 74, Laws of Delaware, as amended, as follows:

(E)(1) At such special election, any person(s) or artificial entity(s) (e.g. partnership, corporation, limited company) owning record title to real property in the Town shall be entitled to cast one vote for each separate parcel of real property (identified as such on the tax maps of the governing jurisdiction) owned (but not more than one vote shall be cast for any one property, however, the owner of more than one parcel in an unfinished subdivision or unfinished phase of a subdivision where the public improvements have not dedicated to the Town shall not have more than one vote for all the parcels located within the subdivision or subdivision phase); and any resident of the Town who does not own record title to real property in the Town who would be entitled to vote in the annual town election if it were held on that day, shall be entitled to vote. (For purposes of this section, “entitled to vote” shall include “registered to vote” if voter registration is required for the annual town election.)

Section 27. This bill shall become effective immediately upon the date of its enactment.

Approved July 18, 2012