

**Clayton****Article I: Incorporation****Section 1.1 - Body Corporate**

The inhabitants of the "Town of Clayton" within the corporation limits as defined in Section 1.2 as the same may from time-to-time hereafter be revised, shall be known as the "Town of Clayton" and are hereby continued as a municipal corporation and body politic in law and in equity and under that name shall have perpetual succession. 84 Del. Laws, c. 238;

**Section 1.2 - Boundaries**

The limits and boundaries of the Town of Clayton in Kent and New Castle County, Delaware, shall be as previously fixed and established or hereafter altered according to law and shall be marked and defined according to maps and plots now of record or hereafter recorded in the Offices of the Recorder of Deeds in and for Kent and New Castle Counties pursuant to lawful annexation proceedings. Such maps and plots, when so made and approved by Town Council, and when recorded in the Offices of the Recorder of Deed in and for Kent and New Castle Counties, shall be deemed to be the true and correct maps and plots of the Town and of all the streets, boundaries, lanes, and alleys thereof, and the same, or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of law and equity in the State of Delaware. 84 Del. Laws, c. 238;

**Section 1.3 - Annexation**

Consistent with 22 Del. C. Chapter 1 of the Delaware Code, the Mayor and Council shall have the power to annex any contiguous territory upon the petition of two-thirds of the property owners of such contiguous territory, and to extend and apply thereto all laws, ordinances, resolutions, rules and regulations in force within the State of Delaware and said Town, so far as the same may be legally applicable. 84 Del. Laws, c. 238;

**Article II: Powers Of Town****2.1 - General**

The Town shall have and enjoy all the powers possible for a municipal corporation to have under the Constitution and laws of the State of Delaware, as fully and completely as though they were specifically enumerated in this Charter. 84 Del. Laws, c. 238;

**2.2 - Enumeration of Powers**

The Town Council may exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary) by way of enumeration, and not by way of limitation, the Town Council is vested by this Charter with the following powers:

- 2.2.1 May have and use a corporate seal which may be altered, changed, or renewed at pleasure.
- 2.2.2 May hold and acquire by gift, negotiation and purchase, devise, lease, or condemnation, property both real (improved or unimproved) and personal, or mixed, within or without the boundaries of the Town, in fee or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to, providing sites for constructing, improving, extending, altering, or demolishing:
  - (a) public buildings;
  - (b) parks;
  - (c) streets, squares, lanes, alleys, and sidewalks;
  - (d) sewer systems, including but not limited to sewage lines, conduits, sewage disposal, or treatment plants, and all appurtenances thereto;
  - (e) electric systems, including but not limited to electric plants, substations, distribution systems, lines, conduits and all appurtenances thereto;
  - (f) gas systems, including but not limited to storage tanks, distribution systems, conduits and all appurtenances thereto;

- (g) recreational facilities, including but not limited to public swimming pools, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;
- (h) for slum clearance and redevelopment, urban renewal, revitalization, or rehabilitation of blighted areas or removal of dangerous buildings;
- (i) for the protection of the health of the citizens of the town;
- (j) for the proper furnishing of adequate municipal services to the citizens of the Town and those persons residing in such proximity to, but beyond, the corporate limits of the Town who can be furnished with such municipal services, in the discretion of the Town Council, to the mutual benefit and advantage of the Town and such non residents thereto, upon such terms, charges, and conditions as the Town Council may determine and approve.

- 2.2.3 May sell, grant, alienate, lease, mortgage, manage, hold, and control such property as the interests of the Town may require except as prohibited by the Delaware Constitution or as restricted by this Charter.
- 2.2.4 May pay for the acquisition, construction, improvement, repair, extension, alteration, or demolition of any municipal or public property, real, personal, or mixed, from the general fund of the Town, from any special fund of the Town, established for that purpose, from the proceeds of any borrowing or bond issue which may be authorized and/or sold for any of the purposes for which Town funds are authorized by this Charter to be expended, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which Town funds are authorized by this Charter to be expended.
- 2.2.5 May acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town.
- 2.2.6 May purchase, take, and hold real and personal property when sold for the collection of any delinquent tax, assessment, sewer bill, electric bill, trash collection fee, license fee, tapping fee, charge growing out of abatement of nuisances, and the like, laying out, and repairing sidewalks, or other charges due the Town, and to sell the same.
- 2.2.7 May ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair and replace any new or present street, highway, lane, alley, watercourse, park, lake, crosswalk, sewer, drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town; may specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; may enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway, or other public thoroughfares within the Town.
- 2.2.8 May enforce the removal of ice, snow, dirt, or other foreign substance from sidewalks by owners or abutting owners.
- 2.2.9 May prohibit, remove, or regulate the erection of any stoop, step, platform, bay window, cellar door, gate, area, descent, sign, post, or any other erection or projection in, over, upon, or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, sewer, drain, aqueduct, or pipeline of the Town.
- 2.2.10 May provide, construct, extend, maintain, manage, and control bulkheads, embankments, flood gates, or fills for the preservation of any strand or high land within the limits of the Town or contiguous thereto to the end that the same may be preserved and properly protected that the public might enjoy the use thereof.
- 2.2.11 May direct, regulate, and control the planting, rearing, treatment, and preserving of ornamental shade trees in the streets, avenues, highways, parks, and grounds of the Town and may authorize or prohibit the removal or destruction of said trees.
- 2.2.12 May fully control within the Town the drainage of all water and to that end may alter or change the course and direction of any natural watercourse, runs, or rivulet within the Town, may regulate, maintain, clean, and keep the same open, clean, and unobstructed, and may provide, construct, extend and maintain, manage, and control a surface water drainage system and facilities for the health, sanitation, and convenience of the inhabitants of the Town.
- 2.2.13 May provide, construct, extend, maintain, manage, and control a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation, and convenience of the inhabitants of the Town; may regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected, and the fines or penalties or both, for any willful or negligent injury or damage to, or interference with the said system,

plant or facilities; may furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits. In the interest of the public's health, may compel any and all properties in the Town to be connected to the sewer system of the Town; and may contract for and purchase sewer disposal service and to resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself.

- 2.2.14 May provide, construct, extend, maintain, manage, and control the plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the Town and for lighting the streets, highways, lanes, alleys, water courses, parks, lakes, sidewalks, public buildings or other public places in the Town, and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the Town, and may furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; may regulate and prescribe for what private or public purpose the current or gas furnished by the Town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; may furnish or refuse to furnish electric current or gas from the Town's system or systems, to places and properties outside the Town limits; and may contract for and purchase electric current or gas and distribute the same to users within or without the Town with the same full powers as though such current or gas had been initially generated or reduced to usefulness by the Town itself.
- 2.2.15 May regulate, control, or prevent the use or storage of gasoline, naphtha, tar, pitch, resin, and all other combustible or dangerous materials.
- 2.2.16 Subject to the authority of the State Fire Commission, or some successor state agency having authority thereover, may do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, may contribute, donate or give an amount or amounts to any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable.
- 2.2.17 Subject to the authority of the State Fire Commission or such similar or successor state agency having authority thereover, may, at the discretion of the Town Council, contribute, donate, or give an amount or amounts to any ambulance, rescue, or paramedic services(s) formed or incorporated under the laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations to the use thereof as the Town Council may deem advisable.
- 2.2.18 May prohibit gaming and fraudulent devices.
- 2.2.19 May prevent and quell riots, disturbances, and disorderly assemblages.
- 2.2.20 May adopt and enforce such ordinances regulating traffic on all streets, alleys, avenues, and public ways within the Town as are not inconsistent with the motor vehicle laws of the State of Delaware.
- 2.2.21 May regulate or prohibit the use of public streets, alleys, sidewalks, parks, right of ways, public places, and Town owned lands for commercial uses or activities not otherwise protected from such regulation or prohibition by the Constitutions of either the United States or the State of Delaware, or by any controlling federal statute.
- 2.2.22 May regulate or prevent the use of bonfires, fireworks, bombs, and detonating works of all kinds.
- 2.2.23 May provide for and preserve the health, peace, safety, cleanliness, ornament, good order, and public welfare of the Town and its inhabitants.
- 2.2.24 May prohibit, restrain, license, or regulate all public sports, exhibitions, shows, parades, productions, circuses, or other public performances, amusements, and games.
- 2.2.25 May direct the digging down, draining, filling up, cleaning, cutting, or fencing of lots, tracts, pieces, or parcels of ground in the Town which may be deemed dangerous or necessary to carry out any improvements authorized by this Charter and to assess the cost thereof against the owner thereof.
- 2.2.26 May define, prevent, abate, or remove nuisances, obstructions, or any other condition detrimental to the public safety, health, or welfare; and may cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist.

- 2.2.27 May adopt ordinances providing for the condemnation and/or razing, upon inspection, of any building or structure in the Town, which is determined, on the basis of standards set forth in such ordinance(s), to be a fire hazard or otherwise unsafe and cause the same to be torn down or removed.
- 2.2.28 May establish and regulate pounds and may restrain, prohibit, and impound any domestic or wild animal, beast, bird, or fowl running at large; may regulate the keeping of dogs within the Town and may provide for registration and fees thereof.
- 2.2.29 May provide for the punishment of a violation of any ordinance of the Town by fine, as prescribed by the pertaining ordinance.
- 2.2.30 May acquire, build, erect, and maintain a suitable place as a lock up or jail for the Town which may be used as a place for temporary detention of persons convicted of violations of law or for detention of persons accused of violations of law, for a reasonable time in cases of necessity prior to hearing and trial; provided that any correctional institution located in Kent County may be used for any such purpose,
- 2.2.31 May provide for payment of any tax, fine, penalty, license, forfeiture, assessment, fee, charge, or other amounts due the Town by the performance of labor or service for the Town by any person owing the same.
- 2.2.32 May regulate and control the manner of building, moving, or removal of dwellings or other structures and may provide for granting permits for same.
- 2.2.33 May prohibit and prevent the carrying on of construction by private persons or companies at such times and seasons of the year and at such hours of the day as the Town Council may determine necessary and appropriate for the public health and welfare.
- 2.2.34 May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues.
- 2.2.35 May, for the prevention of fire and the preservation of the beauty of the Town, establish a building line for buildings to be erected; may zone or district the Town and make particular provision for particular zones or districts with regard to building or building materials; and may prohibit any building or construction except those for which a building permit has been issued as prescribed by the Town Council; and generally to exercise all powers and authorities vested by virtue of 22 Del.C. Chapter 3, as it may hereafter from time to time be amended, or any future corresponding provision of law.
- 2.2.36 May license, tax, and collect fees annually for any and all municipal purposes of such various amounts as the Town Council from time to time shall fix from any individual, firm, association, or corporation carrying on or practicing any business, profession, or occupation within the limits of the Town.
- 2.2.37 May impose, upon new development or construction or upon first-time occupancy of new construction, such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements which have a rational nexus to such new construction.
- 2.2.38 May grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits of the Town.
- 2.2.39 May grant franchises or licenses to any responsible person, firm, association, or corporation for such period of time, upon such terms, restrictions, stipulations, and conditions and for such consideration as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, parks, sidewalks, and other public places of the Town for the purpose of furnishing heat, Light, power, gas, sewer, drainage, electric current, telephone, telegraph, television, railroad (excepting railroads or railways engaged in Interstate Commerce), bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof; provided, however, that whenever any state or federal law grants exclusive jurisdiction over any such activity to a state or federal agency, the Town shall have no authority inconsistent therewith.
- 2.2.40 May regulate and control the exercise of any license or franchise mentioned in Section 2.2.39 of this Charter.
- 2.2.41 May appropriate money to pay the debts, liabilities, and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency as allowed by state law and Town ordinances.
- 2.2.42 May inquire into and investigate the conduct of any officer, agent, or employee of the Town or authorized municipal activities and for such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena.

- 2.2.43 May establish a Pension, Health, Retirement, and/or Welfare Plan for the employees of the Town under such terms and conditions as the Town Council, at its discretion, may deem most appropriate. The method of funding may, if deemed desirable by the Town Council, be accomplished through an insurance company licensed by the State of Delaware or authorized to do business in this State and approved by a majority of the elected members of the Town Council.
- 2.2.44 May by ordinance provide for and establish a tax on the transfer of real estate within the Town similar in nature and effect as the "Delaware Realty Transfer Tax" established in accordance with 30 Del. C. Chapter 54 as it may from time to time hereafter be amended, or in accordance with any future corresponding provision of law, but at all times in conformity with the provisions of any controlling general statute of the State governing municipal realty transfer taxes.
- 2.2.45 May determine what purposes are deemed to be public purposes or municipal purposes.
- 2.2.46 May have the power to lay and collect fines on the owners of any animal which may be found at large in any of the streets, squares, lanes, or alleys aforesaid, and in general shall have the power to do all those matters and things for the well-being of the said Town, which shall not be in contravention of any existing laws of this State or the Delaware Constitution thereof.
- 2.2.47 May regulate by ordinance or otherwise the sale of goods, wares, and merchandise on the streets and sidewalks within the Town of Clayton and fix the license fee thereof and the penalty for not paying the said fee or the breach of any other provisions of such ordinance or regulation and in all other respects regulate commerce within the Town of Clayton.
- 2.2.48 May fix and declare and regulate the width of party walls, to provide for the safety of the citizens and for that purpose may prescribe the heights, thickness of walls and materials of buildings and the mode of erecting the same within said Town; and for providing for and securing the safety of the occupants thereof and make provisions for the enforcement of such regulations.
- 2.2.49 May provide for the lighting of streets at the expense of the Town, and generally to prescribe and regulate the use of the streets, lanes, and alleys of the Town and to have and exercise control over the same.
- 2.2.50 May make, adopt, establish, alter and amend all such Ordinances, Regulations, Rules, and By Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the order, protection, and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants; provided, however that any Ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town. 84 Del. Laws, c. 238;

### **2.3 - Liberal Construction; Manner of Exercise.**

The powers of the Town under this Charter shall be liberally construed in favor of the Town, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise thereof, the Town shall have and may exercise any and all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate.

- 2.3.1 All powers of the Town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in the manner provided by ordinance or resolution of the Town Council. The Council may, by resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters duly authorized by this Charter. 84 Del. Laws, c. 238;

### **2.4 - Intergovernmental Relations**

The Town of Clayton may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation. by contract or otherwise, with any one or more states or civil divisions or agencies thereof, of the United States or any agency thereof, except as prohibited or restricted by the Delaware Constitution or laws of the State of Delaware or by this Charter. 84 Del. Laws, c. 238;

## **Article III: Structure Of Government**

### **3.1 - Organization**

The government of the Town of Clayton and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in five (5) Councilmen (two of whom shall be by them chosen as President and Vice-President). 68 Del. Laws, c. 282

### **3.2 - Qualifications of Council**

Any person at least twenty-one (21) years of age, who, for a period of at least fifteen (15) years immediately preceding their election, has not been convicted of a felony, as that crime is designated by the State of Delaware, and who is a bona fide domiciliary of the Town as provided in Section 12.2.2 of this Charter shall be eligible to hold the office of Council member. 84 Del. Laws, c. 238;

### **3.3 - Term of Office**

Council members shall be elected to serve a term of 2 years, all effective with the organizational meeting following their election. 84 Del. Laws, c. 238;

### **3.4 - Council Prohibitions**

Except where authorized by law, no Council member shall hold any other town office or town employment during the term for which they were elected to the Council, and no former Council member shall hold any compensated appointive town office or employment until one (1) year after the expiration of the term for which they were elected to Council.

### **3.5 - Vacancies and Forfeiture of Office**

#### **3.5.1 Vacancies:**

The office of Mayor or Council member shall become vacant upon their death, resignation, lawful removal from, or forfeiture of their office.

#### **3.5.2 Forfeiture proceedings:**

A forfeiture of office shall occur when the Mayor or any Council member:

- (a) Lacks, at any time during their term of office, any qualification for their office prescribed by this Charter or by law.
- (b) Willfully violates any express prohibition of this Charter.
- (c) Is convicted of a felony.
- (d) Fails to attend three consecutive regular council meetings without being excused by council.
- (e) Is physically, mentally, or emotionally incapable of performing the functions of their office.
- (f) Ceases to be a bona fide resident of the Town.

#### **3.5.3 Determination concerning forfeiture:**

Forfeiture shall be automatic where the conditions set forth in 3.5.2(c), (d), or (f) occur. Where the conditions set forth in 3.5.2(a), (b), or (e) are alleged to have occurred, a determination concerning such alleged forfeiture shall be made by the Council, but the affected party shall not have a vote in any such decision. Such deliberations may be had in executive session, and if the Council preliminarily determines by a unanimous vote of the Council members entitled to vote on the question, that forfeiture has occurred it shall, within 48 hours of that determination, provide written notice thereof to the affected Council member, stating specific reasons. The affected party shall then have ten days in which to make a written demand for a public hearing before the Council, to be held within twenty days of the written demand, at which hearing he or she may appear with the assistance of counsel and present evidence to the relevant issues. Thereafter, the council shall hear any other relevant evidence and vote again on the question of forfeiture; and if a determination of forfeiture is again made by a unanimous vote of the disinterested Council members entitled to vote on the question, the decision shall be final.

#### **3.5.4 Failure to request hearing as a bar:**

Failure of the affected person to make written demand for a public hearing as hereinabove stated shall be an absolute bar to the right to challenge the Council's decision. During, or in connection with, any such proceedings, the Council shall have the authority to subpoena witnesses, administer oaths, take testimony, and require the production of documentary or physical evidence, all of which shall be done if requested in writing by the affected person.

**3.5.5 Filling vacancies on the Town Council:**

In the case of any vacancy occurring on the Town Council, the remaining Council members shall appoint a qualified person to serve for the remainder of that vacant seat's term. If the vacancy on Council was of the person serving as Mayor or Vice-Mayor, immediately following the appointment of a qualified person to serve the remainder of that vacant seat's term, the Town Council shall hold a re-organization meeting to elect a new Mayor and/or Vice-Mayor as the case may be. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

**3.6 - Judge of Qualifications of Members**

The Council shall be the judge of the election, the qualifications of its members, and the grounds for forfeiture of their office, and for such purposes, shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the Council under this section shall be subject to review by the courts. 84 Del. Laws, c. 238;

**3.7 - Compensation**

The Council shall determine the annual salary of the Council members by ordinance. but no ordinance increasing such salary shall become effective until the date of commencement of the terms of members of the Council elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. Members of the Council may receive reimbursement for actual necessary expenses incurred in traveling when on official business.

**3.8 - Meetings of Council**

- (a) The members of the Town Council shall meet for the purpose of organization on the second Monday evening in May following their election appointment pursuant to section 3.5.5 of this Charter and shall organize by the election of a President, a Vice-President, a Secretary, and a Treasurer and such other officers as shall be found necessary. All officers of the Town of Clayton shall be members of the Council. The Council shall meet regularly at least once a month thereafter. No member of Council shall hold more than one (1) elective office during any term of office. 69 Del. Laws, c. 282; 84 Del. Laws, c. 238;
- (b) Such regular meeting shall be held on the second Monday evening of each month; additional meetings may be held as provided by the Town ordinance, upon the written request of 2 Councilmembers, or whenever the President may deem it expedient. All meetings shall be open to attendance by the public, provided, however, the Council may recess for the purpose of executive session subject to any applicable law. 84 Del. Laws, c. 238;

**3.9 - Terms of Office**

The term of office of all officers shall be one (1) year after their respective election and until their respective successor shall be duly elected and qualified.

**3.10 - Council President**

- 3.10.1 The President shall be the chief executive of the Town of Clayton. The President shall also be known as the Mayor of the Town of Clayton. The Mayor shall have all and every power conferred and perform all duties imposed upon him/her by this Charter and the ordinances of the Town of Clayton. It shall be the duty of the Mayor to preside at all meetings of the Town Council, to serve as the head of the town government for all ceremonial purposes or 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 they desire to make a motion, move the adoption of a resolution, or second either, and may thereafter, immediately resume their duties as presiding officer. They shall preside at meetings of the Council and shall have a vote therein. They shall execute on behalf of the Town - when authorized by the Council, all agreements, contracts, bonds, deeds, leases, and other documents necessary to be executed. However, they shall not, at a later date, after signing such contracts, bonds, deeds, leases, or other documents, amend them without the advice and consent of the Council by majority vote. They shall appoint non-elected officers, a town solicitor, and such other persons as he may deem expedient and necessary. They shall sign all warrants and payments authorized by the Council. They shall issue and sign all licenses for every exhibition with the Town of Clayton for which a license thereof is or may be required. For purposes of establishing a majority vote or quorum, the Mayor shall be counted as a member of the Council.

- 3.10.2 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 Clayton. If reasonably possible, the Mayor shall notify each Councilmember, in writing, 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 their last known address, by personal delivery, or by sending an e-mail transmission. Any action taken by the Mayor under the powers vested in them 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 fifteen (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.
- 3.10.3 The Mayor shall be authorized to appoint committees and a chairperson for each, provided that the appointees are either a member of the Council or a qualified voter in the Town – with the exception of the Appeals Board and Public Safety Committees. The Mayor, if necessary, may also appoint a Vice Chairperson. The Mayor shall submit a list of all their appointments in writing to the Council and shall indicate the individual they have designated to be the Chairperson and Vice Chairperson – if applicable. The Mayor, with the advice and consent of the Council by majority vote, may remove committee members and/or a Chairperson or Vice Chairperson with sufficient cause. 68 Del. Laws, c. 282; 84 Del. Laws, c. 238;

### **3.11 - Council Vice-President**

- 3.11.1 The Vice-President shall also be known as the Vice Mayor of the Town of Clayton. The Vice Mayor shall act as Mayor during the absence or disability of the Mayor, and while so acting, shall be vested with all the powers, duties, and authority of the Mayor. The Vice Mayor shall perform such other duties as may be assigned to him by the Mayor, ordinance, or resolution adopted by the Town Council.
- 3.11.2 The Vice President shall have the same right as other officers and Council members to vote and make motions on all matters. 68 Del. Laws, c. 282; 84 Del. Laws, c. 238;

### **3.12 - Council Secretary**

The Secretary shall have general supervision of the Town's records and documents. The Secretary shall ensure a true and faithful record of the proceedings of the Town Council is kept. During the temporary absence or disability of the Mayor and Vice-Mayor, the Secretary shall act as Mayor and while so acting, shall be vested with all the powers, duties, and authority of the Mayor. The Secretary shall also have such other duties as directed by ordinance or resolution of the Town Council. 84 Del. Laws, c. 238;

### **3.13 - Council Treasurer**

- 3.13.1 - Before entering upon the duties of their office, they shall be sworn or affirmed, by the President of the Town Council or the person performing the duties of President of Council, for the time being, to perform the duties of their office honestly, faithfully, and diligently. They shall have general supervision of all funds of the Town of Clayton, and they shall oversee deposits and expenditures of them in banking institutions as designated by the Council. The Treasurer shall be responsible for insuring that all funds of the Town of Clayton are in insured accounts.
- 3.13.2 - They shall not pay out any money except as authorized by the President and Council; shall ensure a true, accurate and detailed account of all monies received and of all monies paid out by them is kept; shall oversee records for monies paid by the Town; and and make sure the Town's accounts shall at all times be open to inspection by the President or the members of the Town Council; they shall, at each regular meeting of Council submit a report, in writing, of all receipts and disbursements, which shall be entered in the minutes of said meeting. The Treasurer shall be bonded by the Town with sufficient surety to be approved by Council in a penal sum equal to one hundred fifty (150%) percent of the amount most likely to come within their hands conditioned for the faithful discharge of the duties of their office. The bond shall further provide for the payment to their successor in office of all sums of money remaining in their hands upon settlement of them; accounts, to which said bond and warrant thereto shall be annexed a warrant of attorney for the confession of judgment for said penalty. 74 Del. Laws, c. 232; 84 Del. Laws, c. 238;

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**3.14 - Rules of Procedure**

The Council shall determine its own rules of procedures and order of business and shall provide for keeping a journal of its proceedings, which journal shall be a public record and open to public inspection. Voting, except on procedural motions, may be by roll call, but in any event the ayes and nays shall be recorded in the journal. 84 Del. Laws, c. 238;

**3.15 - Quorum and Majority Requirements**

3.15.1 A majority of the members elected to the Council shall constitute a quorum to do business, but a smaller number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. No ordinance shall be valid unless it shall have the affirmative vote of a majority of the members elected to the Council. Resolutions, orders, and motions shall be valid upon the affirmative vote of a majority of the members of the Council present. No member shall be excused from voting on ordinances, resolutions, orders, or motions, except where a member of Council has a conflict of interest, in which event, said member shall disqualify himself from voting. The member involved shall be the sole judge of whether or not there is such a conflict of interest.

3.15.2 Participation and Voting by Remote Access:

The Town Council is hereby authorized, by duly enacted ordinance, to provide that whenever unavoidable circumstances prevent the Mayor or any member of the Town Council from being physically present at any meeting of the Town Council, such person(s) may participate in the meeting, including the making or seconding of any motion and the casting of a vote on any motion, by remote electronic access (e.g. speaker telephone, videoconferencing equipment), provided that all persons participating in the meeting can hear and speak to the other person(s) through remote access and provided that the person participating by remote access can hear and speak to all persons participating at the meeting. 84 Del. Laws, c. 238;

**3.16 - Election**

An annual election shall occur each year to be held on the last Tuesday in April in the Town of Clayton for the election of Council members. The hours for balloting shall be set by the Council in conformance with Delaware law as it currently stands or is hereafter amended to be held in such place(s) as the Council of the Town of Clayton deem appropriate. 71 Del. Laws, c. 124; 84 Del. Laws, c. 238;

**3.17 – Succession of Authority**

In the event that the Mayor is incapable of assuming their responsibilities, the powers therein vested in the Mayor shall transfer to the following officers and officials of the Town in the following order of sequence: (1) Vice-Mayor, (2) Secretary, (3) each of the two remaining Council-members in order of their total number of years served on Council, (4) the Town Manager, (5) the Chief of Police. 84 Del. Laws, c. 238;

**Article IV: Powers Of Council****4.1 - General Powers**

(a) 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 five (5) 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. 84 Del. Laws, c. 238;

(b) The Council shall have the power to adopt ordinances relating to the health of the population of the Town or to prevent the introduction or spread of infectious or contagious diseases or nuisances affecting the Town, which power shall extend to the area inside the Town limits and within one (1) mile from said limits. The Council may also pass ordinances to ascertain and fix boundaries of streets, squares, lanes, and alleys, or repair and amend the same, and provide for the paving thereof, or to close, alter, extend, or widen any street, square, lane, or alley, or open and lay out new ones subject to the provisions in that behalf hereinafter contained; to regulate the ascent and descent of all streets, lanes, and alleys; to fix the building lines upon the same; to direct the paving of footways and to prescribe the width thereof; to direct the laying out of gutters and to prescribe the depth thereof; to prescribe the extent of steps, porches, cellar doors, and other inlets to yards and buildings. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

- (c) The said Council shall have power, also by ordinance, to appoint a Town surveyor to make a plot or map, showing the ascent and descent of all streets, lanes, and alleys, the building lines upon the same, and generally to do and perform all such matters and things as they may deem necessary for carrying into effect the provisions in this Section contained. 84 Del. Laws, c. 238;
- (d) The Council shall have the power to invest in funds of the Town, not required for immediate use by the Town, in securities of the United States and/or in insured savings accounts. 84 Del. Laws, c. 238;
- (e) The Council shall have all other powers requisite to and appropriate for the government of the Town of Clayton; its peace and order, its sanitation and beauty, and for the health, safety, convenience, comfort and well-being of its population, and for the protection and preservation of public and private property. Nothing in this Charter shall be construed as exempting any individual or agency from the operation of this section. 84 Del. Laws, c. 238;

#### **4.2 - Ordinance Procedure**

In addition to such acts of Council as are required by this Charter or by other State law to be by ordinance, every act of the Council establishing a fine or other penalties shall be by ordinance. The enacting clause of all ordinances shall be "The Town of Clayton hereby ordains".

##### **4.2.1 - Procedure for Enacting Ordinances**

Every ordinance shall be introduced in writing. No ordinance shall be passed unless it shall have the concurrence of a majority of the members elected to the Council. All ordinances passed after the effective date of this Charter shall be copied into the records of the Council, and an index of such ordinances shall be kept by the Town Manager.

##### **4.2.2 - Codes of Technical Regulations**

The Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally. 64 Del. Laws, c. 238;

#### **4.3 - Power to Raise Revenue**

- (a) The Council shall have the power to levy and collect taxes on real property within the limits of the Town, except that which is not assessable and taxable by virtue of any law of the State of Delaware. The Council shall have the right to grant or refuse, and to charge fees for licenses, or permits for businesses of any description carried on within the limits of the Town as well as for transient businesses and shows except as otherwise provided herein. The Council shall also have the power to levy and collect franchise taxes and to impose sewer rentals. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;
- (b) The Council shall have the power, by ordinance, to impose reasonable penalties and forfeitures for tax delinquencies and to review and determine proper and appropriate properties to be exempt from taxation, provided, however, that no such exemption shall be in favor of a free enterprise profit making organization unless it shall come within the terms of the exemption for any established firms as hereinbefore provided. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;
- (c) The Council shall have the power to fix the rates for general utility services operated by the Town and to collect and utilize revenues from such utility services for the benefit of the Town.
- (d) Notwithstanding any statute to the contrary, the Town of Clayton shall have the power by ordinance to impose and collect a tax, to be paid by the transferor or transferee as determined by Council, upon the transfer of real property within the Town not to exceed 1.5% of the value of the real property as represented by the document transferring the property. The provisions of Section 5401 and Section 5403 of Chapter 54, Title 30 of the Delaware Code shall apply with respect to any realty transfer tax imposed by the Town of Clayton pursuant to the authority granted herein. The Council of the Town of Clayton may adopt an ordinance or ordinances to provide for the effective administration and regulation of any tax adopted pursuant to the authority conferred herein. If the taxing power and authority granted herein shall be exercised by way of a stamp affixed to a document, the Recorder of Deeds in and for Kent County shall not receive for record documents subject to said tax unless stamps provided by the Town of Clayton are affixed thereto showing payment of the tax. 67 Del. Laws, c. 80; 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

#### **4.4 - The Town May Engage in Business**

- (a) The Town of Clayton shall have the right to engage in any business or enterprise in which a person, firm, or corporation might engage by virtue of a franchise and shall have the right and power to acquire, own, and maintain within the corporate limits of such Town, all real estate for municipal purposes for site and rights-of-way for public utility and general welfare purposes and for the location, erection, and maintenance thereon of municipal plants and public facilities. 84 Del. Laws, c. 238;
- (b) The Town of Clayton shall have the exclusive right to grant franchises within the Town boundaries.
- (c) In any case where the Council may deem it to be in the best interests of the people of the Town of Clayton to acquire the properties of any privately owned utility, the Town of Clayton shall respect the franchise rights of the owners and shall, in all respects, adhere to the general laws of the State of Delaware insofar as they relate to the purpose of utility properties by municipalities. 84 Del. Laws, c. 238;

#### **4.5 - Borrowing for Current Expenses**

- 4.5.1 Whenever the needs of the Town shall require more money than is, at the time, in the Town treasury from current receipts, the Council shall be authorized and empowered to anticipate current revenue by borrowing such amounts as are needed. Provided, however, the amount of such indebtedness shall not at any time exceed 20% of the assessed valuation of the assessable and taxable real property within the limits of the Town.
- 4.5.2 To exercise the power aforesaid, the Council shall adopt a resolution to that effect, which resolution shall be by roll call and require the affirmative vote of at least three (3) of the members of the Council. The indebtedness created under this provision shall be evidenced by notes of the Town, and the full faith and credit of the Town shall be deemed to be pledged thereby. Such short-term debt shall not be considered as part of the bonded debt of the Town when limitations under indebtedness, as set forth elsewhere in this Charter, are computed. No officer nor Councilmember shall be personally liable for the payment of such notes because it is signed by them as officers of The Town of Clayton, and is authorized by a resolution of the Town Council. 74 Del. Laws, c. 232; 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

#### **4.6 - Power to Incur Bonded Indebtedness**

##### **4.6.1 - Power to Borrow Money**

The Town shall have the power to borrow upon the full faith and credit of said Town, for municipal purposes of any character whatsoever, by issuing either general obligation bonds or certificates of indebtedness secured by the full faith and credit of the Town or by issuing revenue bonds, either in whole or in part of the total amount necessary to the proper execution of any function or power of the Town.

If general obligation bonds are issued, the total outstanding debt secured by such bonds shall not exceed 20% of the assessed value of all the real estate subject to taxation located within the Town.

If revenue bonds are issued, each such bond shall recite in substance that said bond, including interest thereon, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the Town of Clayton within the meaning of the bonded indebtedness limitation; provided however, that in the event of some emergency, the Town of Clayton may temporarily borrow, advance or loan such amount as is necessary to meet current interest on outstanding bonds, such advance or loan to be repaid to the Town of Clayton out of revenue subsequently received from the undertaking. If revenue bonds are issued the Council shall prescribe and collect reasonable rates, fees or charges for service, facilities and accommodations of said undertaking and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will procure revenue at least sufficient to (a) pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor. (b) provide for all expenses of operation and maintenance of such undertaking, including reserves therefor. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

##### **4.6.2 - Method of Borrowing Money**

Before the Town of Clayton may incur indebtedness by the issuance of general obligation bonds as aforesaid, the borrowing of money shall have been authorized by the Council and shall have been approved in the following manner:

1. The Council shall, by resolution, propose to the qualified voters of the Town of Clayton the purpose or purposes for which the stated amount of money shall be borrowed. The resolution shall

state the amount of money desired to be borrowed, the purpose of which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan, including data on total related debt and the debt limitations established by this Charter, shall fix a time and place for hearing on the resolution; and shall provide for the publication of an announcement of the hearing in a newspaper of general circulation in Kent County at least one week prior to the hearing date.

2. A public hearing shall be held, at which time all interested persons wishing to be heard shall be given an opportunity to express their views. Their testimony shall be considered in evidence by the Council.
3. If the Council desires to continue with the bond proceedings, it shall then, by resolution, direct that the question be submitted to a referendum. An election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of such resolution.
4. The notice of the time and place for holding the said special election shall be printed in a newspaper of general circulation in Kent County once a week for three (3) successive weeks prior to the election. The special election shall be conducted by the election officers as herein provided for annual elections.
5. The Council shall cause the election officers to prepare, print and have available for distribution a sufficient number of ballots not less than five (5) days prior to the date of the special election. At said referendum, all qualified voters of the Town of Clayton shall be entitled to one vote.
6. The election officers shall count the votes for and against the proposed loan and shall announce the result thereof; shall make a certificate under their hands of the number of votes cast for and against the proposed loan; and shall deliver the same to the Council, which certificates shall be entered on the minutes of the Council and the original shall be filed with the papers of the Council. Provided, however, no bond issues shall be deemed approved unless a majority of those voting at such referendum shall vote for such bond issue.
7. The form of the bonds and certificates of indebtedness, the date of payment of interest, the classes, the dates of maturity, and the provisions pertaining to the registration shall be determined by the Council. The bonds shall be sold to the highest bidder after at least one month's notice and published at least twice in a newspaper of general circulation in Kent County and at least once in a publication carrying municipal bond notices and devoted primarily to financial news. The Council shall provide, in its budget, for revenues sufficient to pay the interest and principal on the said bonds or certificates of indebtedness at the maturity or maturities therefor. The full faith and credit of the Town of Clayton shall be deemed pledged for the due payment of the principal and interest of general obligation bonds issued within the prescribed debt limitation when the same have been properly executed and delivered for value. 84 Del. Laws, c. 238;

#### **4.7 - Power of Council Over Streets**

- (a) Upon the majority vote of its members, the Council shall have the power to locate, lay out, and open any new street, lane, or alley or widen any street, lane, or alley heretofore laid out in said Town or reopen any old street, lane, or alley now closed.
- (b) The persons respectively, through and over whose lands such street, lane, or alley may pass, shall receive compensation as Council shall deem just and reasonable under all circumstances. Said compensation, if any be allowed, shall be paid by the Treasurer of the Town out of the monies of said Town upon warrants drawn upon him/her by order of Council.
- (c) Whenever the Town Council shall have determined to locate and lay out or widen any street, lane, or alley and shall have fixed the compensation therefor, it shall be its duty immediately after the survey and location of the said street, lane, or alley, to notify in writing, the owner or owners of the real estate through or over which said street, lane, or alley may run, of its determination to open or widen the same, and to furnish a general description of the location thereof, and also the amount of the damages or compensation allowed to each.
- (d) Any owner who may be dissatisfied with the amount of compensation or damages allowed by the Town Council, as aforesaid, may, within ten (10) days after such notice, appeal by serving a written notice to that effect on the President of the Council or to the person performing the duties of President of Council for the time being. In order to prosecute said appeal, such appellants shall, within fifteen (15) days after the expiration of the ten (10) days allowed for appeals, make a written application to the Associate Judge to the Superior Court of this State, resident of Kent County, for the appointment of a commission to hear and determine the matter of damages or compensation.

- (e) Thereupon the said Associate Judge shall issue a commission under their hand directed to five (5) qualified voters of the said county, three (3) of whom shall be residents of said Town of Clayton and two (2) of whom shall be non-residents of said Town. The individuals named in such commission, being first sworn or affirmed on the day and at the hour and place stated in the notice shall view the premises and hear the witnesses, and shall, without delay, determine and fix the damages, if any, which said appellant will sustain by reason of being deprived of any property as aforesaid. Thereupon the said members of the commission shall make return in writing of their proceedings to the said Resident Judge, who shall cause a copy of said return to be delivered to the President, and such return shall be final and conclusive. The said Judge shall have the power to fill any vacancies among the members named in such commission. On application within twenty (20) days after the award, the said Judge may set aside a grossly improper award and appoint a new commission. The amount of damages being ascertained, the Town may pay or tender the same to the person entitled thereto within one (1) month after the same shall be finally ascertained or may deposit the same in any bank in the Town to the credit of the person entitled thereto, within the said period of one (1) month, and thereupon the Town may carry into effect the plan contemplated in the resolution aforesaid.
- (f) After the damages shall be fixed and ascertained by the members of the commission as aforesaid, the Town Council shall have the option to pay damages assessed within the time aforesaid and proceed with the said improvements, or, upon the payment of the costs only, may abandon the proposed improvements.
- (g) In the ascertainment and assessment of damages by the members of the commission, if the damages shall be increased, the costs of the appeal shall be paid by the Treasurer of the Town of Clayton, but if said damages shall not be increased, the said costs shall be paid by the appellant. The fees to the members of the commission shall be set by ordinance and shall be taxed as a part of the costs. 84 Del. Laws, c. 238;

#### **4.8 - Sidewalks and Gutters**

- 4.8.1 - Whenever the Town of Clayton shall have determined that any paving, guttering, or graveling of the sidewalks or any or either or all of them, shall be done, it shall notify the owner or owners of land in front of whose premises the same is to be done, particularly designating the nature and character thereof, and thereupon it shall be the duty of said owner or owners, to cause such paving, graveling or guttering to be done in conformity with said notice.
- 4.8.2 - In the event of any owner neglecting to comply with said notice for the space of thirty (30) days, the Council may proceed to have the same done, and when done, the Town Manager of the Town of Clayton may as soon as convenient thereafter present to the said owner or owners of such lands, a bill showing the expense of paving, graveling or guttering. If such owner or owners be not resident in the Town of Clayton, such bill may be presented to the occupier or tenant of said land or if there be no occupier or tenant resident in the Town of Clayton, such bill may be sent by mail to such owner or owners, directed to them at the post office nearest them or their residence. If such bill be not paid by the owner or owners of such lands within thirty (30) days after the presentation, then it shall be the duty of the Council to issue an order in the name of "The Town of Clayton", under the hand of the President, and the seal of the said corporation, directed to the Treasurer of the Town of Clayton, commanding him/her to proceed to collect said delinquent assessment.
- 4.8.3 - The claim for paving, graveling, or guttering shall be a lien on the premises in front of which the said work was done and shall have the same priority and be collectible in the same manner as municipal property taxes.
- 4.8.4 - Any notice required by this section to one co-owner shall be notice to all; and in case no co-owner shall reside in the Town, notice may be served upon the occupier or tenant of said premises resident in the Town, and if there be no such occupier or tenant, it shall be sufficient to send said notice by mail to any owner of said premises, directed to him/her or them at the post office nearest them or their residence.
- 4.8.5 - The provisions hereinbefore contained in this section shall apply to any order made by the Council, in respect to any such paving, graveling, or guttering heretofore done, which the Council may deem insufficient or to need repairing. The Council, in addition to the provisions of this section, hereinbefore shall have power and authority to enforce by ordinance all the requirements of this section by imposing such fines and penalties as shall be in the judgment of the Council necessary and proper.
- 4.8.6 - The paving and guttering outside of said curbing shall be done by the Council at the expense of the Town, except in case of property exempt from taxation, in which case the owner and owners of said exempt property shall pay for the paving and guttering outside of said curbing, and in the case said owners refuse so to pave and gutter, the Council may proceed to have the same done and collect the expense thereof in the same manner and by the same proceedings as are hereinbefore provided, in case of paving, graveling and guttering sidewalks, footways, etc., where the owners of property refuse to pave, gravel and gutter sidewalks and footways in front of their property. 84 Del. Laws, c. 238;

**4.9 - Sewer and Stormwater Improvements**

- (a) The Town shall have exclusive jurisdiction and control within the Town of Clayton of the drainage thereof and the right to alter and change the course and direction of any of the natural watercourses, runs, or rivulets within the Town and may pass ordinances for the construction of storm drains and sanitary sewers within the Town. The Town also shall have the power and authority to regulate, maintain, cleanse, and operate such storm drains and sanitary sewers and the natural watercourses, runs, and rivulets within the Town open, clear, and obstructed, and for that purpose, may authorize the entry upon private lands and take, condemn and occupy the same and by regulation prescribe the mode in which they shall be altered, changed, opened, maintained, cleansed, closed and kept open and unobstructed, and shall bear the expenses thereof and may, in its discretion, assess the costs of sanitary sewers and storm drains upon the property particularly benefited thereby, except such real estate as is exempt from municipal assessment taxation by virtue of any law of the State of Delaware, and prescribe the mode of collection thereof; provided, however, that nothing herein contained shall be construed to authorize the taking of private property for public use without just compensation.
- (b) The Council may, by condemnation proceedings, take private land or the right to use private land, under, over, or on the surface thereof, for the proper operation or extension of the sewer systems. The method of procedure by condemnation under this section shall be the same as provided for in Section 4.7 of this Act for the opening and laying out of new streets.
- (c) The Town likewise is authorized to make agreements with Kent County or other municipalities to permit interconnection of the Town and County sewer systems. The Council shall have the right to compel the owner of any building or structure requiring sewage disposal facilities to connect to any sewer main that is available.
- (d) Whenever the Council shall determine that construction, improvement, alteration, or repair of sanitary sewers is required, it shall be empowered and authorized to direct any necessary survey and other work be undertaken and any costs be determined. Necessary construction, improvement, alteration or repair work may be done by contract or by Town forces. 84 Del. Laws, c. 238;

**Article V: Police****5.1 - Police Force**

- 5.1.1 - Council may appoint a police force consisting of a chief and such number of subordinates as the Council may deem appropriate, and the Council shall, from time to time, make rules and regulations as may be necessary for the organization, government, and control of the police force. The members of the force shall be subject to the general directions of the Mayor and Council and may be removed by the Council. They shall preserve peace and order, and shall compel obedience, within the Town limits and within one mile of the limits of the town, of the ordinances of the Town and the laws of the State. Members of the police force shall have the power to issue summons, to arrest pursuant applicable law, and they shall have such other duties as the Council shall from time to time prescribe.
- 5.1.2 - Each member of the Police Force shall be vested, within the Town limits and within one (1) mile outside of said limits, with all the powers and authority of a state peace officer and may carry firearms, and in case of pursuit of an offender, their power and authority shall extend to any part of the State of Delaware.
- 5.1.3 - Council may delegate its power to direct, hire, or remove police officers to the acting Police Chief by Ordinance or Resolution. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

**Article VI: Subdivision and Land Development****6.1 - General Provision**

- (a) Whenever it is contemplated that a new real estate development shall be undertaken, the Council shall require the developer to submit plans and supporting documents to the Council for approval prior to the actual construction and/or installation of improvements and utilities.
- (b) Whenever the installation of new facilities is contemplated in a partially developed area, the Council shall make a careful determination of the ability of the area to support the cost of the projected improvement before approving it. Also, the developer shall provide evidence to the Council that they have complied with all State and County regulations.

**6.2 - Power to Regulate**

In order to provide for the orderly growth and development of the Town, to promote the health, safety, prosperity, and general welfare of the present and future inhabitants of the Town, to ensure the conservation of property values and natural resources, including the protection of the Town's open lands, water resources, and recreational potential, and to afford adequate provision for public utilities, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town may regulate the subdivision and development of all land in the Town. Such regulation may, through ordinance, include:

- (a) Varying procedures for ensuring the processing of combining, partitioning, or land subdivision and site plans within a reasonable period of time relative to the number of lots or parcels and the extent of improvements required.
- (b) Procedures for ensuring that the arrangement of the lots or parcels of land or improvements thereon shall conform to the existing zoning at the time of recordation and that streets, or rights-of-way, bordering or within subdivided or developed land shall be of such widths and grades and in such locations as may be deemed necessary to accommodate prospective traffic, that adequate easements or rights-of-way shall be provided for drainage and utilities, that reservations of areas designed for their use as public grounds shall be of suitable size and location for their designated uses, that sufficient and suitable monuments and signage shall be required, that land which might constitute a menace to safety, health or general welfare shall be made safe for the purpose for which it is subdivided or developed, and that adequate provision for public utilities (e.g. fire protection, sanitary sewage collection, electric distribution, telephone, and cable) is made.
- (c) Procedures for encouraging and promoting flexibility and ingenuity in the layout and design of subdivisions and land development and for encouraging practices that are in accordance with contemporary and evolving principles of site planning and development.
- (d) Procedures for ensuring that any improvements to be constructed on such lands are in compliance with all appropriate Town ordinances and that the placement and location of such improvements will not have a significant negative impact on adjoining properties.
- (e) Procedures for securing financial guarantees from the developers of such lands to ensure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years) beyond the actual completion of such improvements by the developer or acceptance of such improvements by the Town. 84 Del. Laws, c. 238;

**6.3 - Recording Unapproved Plans.**

In the event an ordinance of the Town so provides, no plat, plot, or plan of land shall be received for filing or recording by the Recorder of Deeds in and for Kent County unless and until such plat, plot, or plan shall have been approved by the Town body so authorized to grant such approvals, and the fact of such approvals shall have been endorsed in writing on such plan. Any plat, plot, or plan recorded in violation of such ordinance shall be void and of no legal force or effect. 84 Del. Laws, c. 238;

**Article VII: Property And Special Assessments****7.1 - Property Assessment Procedure**

- (a) It shall be the duty of the assessor of said Town, annually, to make a true, just, and impartial valuation and assessment of all real estate within the Town except such real estate as it exempts from municipal assessment and taxation by virtue of any state law or provisions of this Charter, and also of such personal property as is subject to county assessment and taxation.
- (b) It shall be lawful for the Town to enter into an agreement with the Board of Assessments for Kent County to inspect and copy or obtain copies of the assessments made for county purposes. Annually, the Council shall make a judgment regarding whether the Town will utilize such county assessments and whether said county assessments are a true, just, and impartial evaluation. The Council then shall order the adoption of such county assessment for municipal purposes or the adoption of assessments as determined by the assessor; provided, however, that adoption of the county assessment for municipal purposes shall not preclude the Town from modifying the county assessment list to take into account new construction or changes in ownership or use not reflected in the county assessment list, or clear cases of inequitable assessment.

- (c) Each year, there shall be prepared and submitted to Council, at least sixty (60) days before the beginning of the tax year, two (2) or more copies of the assessment roll, which shall show the location of each parcel of taxable real and personal property by street and number or other suitable description. When the Council approves the roll as prepared or as modified by the Council, then a full and complete transcript thereof shall be posted in a place in the Town designated by the Council. Such posting shall take place at least forty-five (45) days before the beginning of the tax year and shall remain posted up to, but not including, the appeal day as herein set out. Notice of the time and place where the assessment listed may be viewed, and the time and place of hearing appeals shall be advertised in a newspaper of general circulation in the Town, and notice shall be given by posting such announcement in at least five (5) public places throughout the Town. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

## **7.2 Alternative Method for Property Tax Assessment**

The Council may adopt the assessment of Kent County for any or all property located within the corporate limits of The Town of Clayton in lieu of making its own independent assessment and valuation, anything herein notwithstanding. In such event, the assessed values established by Kent County shall be conclusive for the purposes of levying town taxes, and the Town Council shall have no authority to hear appeals regarding the same. If the Town Council elects to adopt the Kent County Assessments, only this Section shall have effect; but the Town Council will have the authority to consider appeals concerning any additions to tax bills under the provisions of this charter at any regular meeting. 84 Del. Laws, c. 238;

## **7.3 - Collection of Taxes**

### **7.3.1 Town Manager to Serve as Town Tax Collector:**

The Town Manager is and shall be the Town Tax Collector.

### **7.3.2 - Town Manager to have all powers conferred upon Receiver of Taxes of Kent County:**

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), the Town Manager shall have all of the same powers, remedies, and authority as conferred upon the Receiver of Taxes of Kent County under 9 Del. C. Chapter 87, as the same may from time to time hereafter be amended, or in accordance with any future corresponding provision of law.

### **7.3.3 All taxes laid or imposed by the Town of Clayton shall be and constitute a lien upon all the real estate of the taxable against or upon whom such taxes are laid or imposed of which such taxable was seized at any time after such taxes shall have been levied and imposed, situate in the Town of Clayton, and such lien shall have preference and priority over all other liens of record on such real estate created or suffered by the said taxable, although such other lien or liens be of a date prior to the time of the attaching of the Town lien for taxes; provided, however, that the lien for Town taxes shall remain a lien for the period of ten years from the date such taxes were levied and imposed.**

### **7.3.4 Notice Prior to Exercise:**

Before instituting any legal action for the collection of taxes, written notice of the amount due shall be sent to the owner of the property at their last known address, informing them the town will begin taking legal action. 84 Del. Laws, c. 238;

## **7.4 - Levying of Special Assessments**

### **7.4.1 The Town of Clayton is hereby authorized and empowered to levy and collect special assessments upon property in a limited and determinable area for special benefits accruing to such property as a consequence of any municipal public work or improvement; and to provide for the payment of all or any part of the cost of the work, service, or improvement out of the proceeds of such special assessments.**

### **7.4.2 Assessments Payable in Installment**

The Council may provide for the payment of special assessments, for whatever purpose levied, by installments, but assessments for permanent improvements shall be within ten (10) years in annual or more frequent installments, and assessments for current services shall be payable within one (1) year.

### **7.4.3 - Assessments Not to Exceed Value of Benefit**

The amount assessed against any property for any work or improvement shall not exceed the value of the benefits accruing to the property therefrom. 84 Del. Laws, c. 238;

## **7.5 Impact Fees.**

- (a) In connection with development plans, the President and Council shall have the authority to impose upon new development or construction, upon the first-time occupancy of new construction, or upon annexed property such 'Impact fees' as are reasonably calculated to cover the proportionate cost of installing, enlarging, improving or expanding public or municipal improvements, including by way of example but not limited to sewer, electric, roads, parking, police, and parks; and/or to contribute to the cost of operations of those volunteer fire companies, schools, ambulance/paramedic companies, and other institutions that the Council shall designate providing services to the Town.
- (b) The Council shall, by ordinance, govern the collection and disbursements of impact fees and the purposes for which such fees can be used. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

### **Article VIII: Council Appointments**

#### **8.1 - Assessor**

At the regular meeting of Council on the second Monday in May in each year, there may be appointed an Assessor, who shall be a citizen of the Town of Clayton, but no person then serving as a member of Council shall be eligible to the Office of Assessor during the term of their office as a member of Council. The Assessor shall receive such reasonable compensation for their services as shall be determined by the Town Council. 77 Del. Laws, c. 274; 84 Del. Laws, c. 238;

#### **8.2 - Police Chief**

- 8.2.1 The Town Council shall appoint a duly qualified Chief of Police who shall be the chief law enforcement officer of the Town and the Chief Administrative Officer of the Town Police Department. The Chief of Police shall be removable in accordance with applicable law.
- 8.2.2 The Chief of Police shall be responsible to the Town Council for the proper administration of all affairs of the Police Department placed in their charge by the Town Council, including managing the Town Council-approved budget for their department.
- 8.2.3 Vacancy from Office. In case of the absence, disability, or suspension of the Police Chief, the Council may designate some other competent person to perform the duties of the office during such absence, disability, or suspension.
- 8.2.4 The Police Chief shall make recommendations on all personnel matters, including by way of example and not limitation, the hiring, termination, promotion, or discipline of any and all employees of the Police Department to the Mayor and Council, who will be the sole and final judge of said decisions.
- 8.2.5 The Town's Personnel Committee shall act as a Board of Appeal for the protection of Police Officers. An aggrieved employee of the Town shall have the right to petition for a hearing before such Board of Appeal, provided that the petition is received by the Personnel Committee within fifteen (15) days of receipt of written notice of termination or suspension. The recommendation of the Personnel Committee shall be forwarded to the Town Council to decide whether to uphold or overturn the decision of the Police Chief and, in such case, shall be final and conclusive. 84 Del. Laws, c. 238;

#### **8.3 – Town Manager**

- (a) 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.
- (b) 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) The Town Council may, at any time, terminate the Town Manager's employment for "just cause" without payment of any severance pay or benefits. For purposes of this section, "just cause" shall mean conduct amounting to fraud or material or repeated dishonesty against the Town; employee's intentional material misconduct or repeated refusal to follow the reasonable directions of Town Council provided that Town Council notifies the employee in writing, with confirmed receipt by the employee, of the acts deemed to constitute such intentional material misconduct or repeated refusal, and employee fails to correct such acts (or to begin such action as may be necessary to correct such acts and thereafter diligently pursues the completion thereof) within (5) five business days after written notice has been given; unexcused absence from work; intoxication with alcohol or drugs while on Town business during regular business hours; a conviction or plea of guilty or nolo contendere to a felony; or a breach or violation by the employee that is

not cured within five (5) business days after written notice has been given, with confirmed receipt to the employee.

- (2) 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. 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.
- (c) The Town Manager shall be responsible to the Town Council for the proper administration of all affairs of the Town placed in their charge by the Town Council.
- (d) The Town Manager shall make recommendations on all personnel matters, including by way of example and not limitation, the hiring, termination, promotion, or discipline of any and all employees in their charge to the Mayor and Council, who will be the sole and final judge of said decisions.
- (e) The Town Manager shall, as authorized by Council, have administrative charge and supervision of the sewer system, electric utility, street lighting, streets, gutters, curbs, sidewalks, parks, and other administrative affairs of the Town and all work relating thereto and the respective Department Head(s) shall have operational charge and supervision respectively. The Town Manager shall have charge of and shall oversee the collection of all taxes, assessments, rentals, franchise fees, license fees, or other charges due to 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.
- (f) The Town Manager shall ensure a full and strict account of all monies received, and all disbursements made by the town are kept, and such accounts shall, at all times, be open to inspection by the Town Council. 84 Del. Laws, c. 238;

### **Article IX: Creation Of Officers Or Departments**

#### **9.1 – General Provisions**

The Council may establish Town officers and departments in addition to those created by this Charter, and may prescribe the functions. The Council may also recommend the abolition of officers and departments and the transfer of functions. The Council may provide for the selection of suitable persons to fill any position or office. 84 Del. Laws, c. 238;

### **Article X: Administrative Policy**

#### **10.1 - Personnel Provisions**

- (a) All appointments and promotions of Town employees shall be under the direction of the Mayor and Council, including by way of example and not limitation, the hiring, termination, lay-off, promotion, or discipline of any and all employees.
- (b) The Council may provide personnel rules which shall be adopted by the Council as it deems appropriate.
- (c) Personnel Records:  
The Town Council may cause to be kept 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, the date of the termination of their services, and any other relevant personnel employment information.
- (d) The Town Council shall, by ordinance, budget, or resolution, fix the amount of any salaries or compensation for the employees of the Town, provided that the Mayor and Town Council members shall not be included under this subsection. No officer, employee, or agent of the Town shall in any form have, take, or receive from the town any compensation, in addition to the salary or compensation fixed by the Town Council, except for reimbursement for actual and necessary expenses incurred by them in the performance of their duties, if such reimbursement is authorized and approved by motion, resolution, or order of Council. 84 Del. Laws, c. 238;

#### **10.2 - Contracts**

- (a) All contracts of whatever character involving an expenditure above an amount determined by resolution of the Council shall be written and shall be let and made by the Council and shall be based on specifications provided by the appropriate person designated by the Council.
- (b) Pending advertisement for bids, any plans, specifications, and profiles to be used in the proposed work or contract shall remain on file in the office of the Council and shall be subject to the inspection of any interested person. All contracts and purchases above an amount determined by resolution of the Council shall be entered into and made only after advertising not less than two times in a newspaper of general circulation in Kent County inviting competitive bids. Each such bid shall be sealed and filed with the person designated by the Council. All bids shall be opened in the presence of the Council or a duly authorized committee of the Council and shall remain on file.
- (c) The Council shall consider all bids that have been properly filed and may enter into a contract with the party offering the lowest and/or the bid that the Council determines to be best qualified and suited to serve the interests of the Town, even though it may not be the lowest bid. The Council may reject all bids and readvertise for bids, or they may have the work done under the supervision of the proper department of the Town. The awarding of a contract to the successful bidder shall give no right of action or claim against the Town upon such bid or contract until the same shall be reduced to writing and duly signed by the contracting parties. The Council shall have the power to require all bidders to post bonds to secure the performance of the contract and all claims for labor and material used in the work. The Council may reject any supplies as well as any other public work and buy supplies on the open market at a price less than the lowest bid received, or, if no bids are received, the Council may direct the purchase of supplies in the open market. Nothing in this section shall be construed to apply to contracts for the provision of utility service at rates regularly on file with the Public Service Commission of Delaware or any federal regulatory body.
- (d) Any requirement provided for within this Section should not apply to contracts for professional services not within the scope of the Delaware Professional Services Act (29 Delaware Code, Chapter 69, Subchapter II) as it may from time to time be amended. 84 Del. Laws, c. 238;

## **Article XI: Financial Procedure**

### **11.1 - Fiscal Year**

The fiscal year of the Town of Clayton may begin on the first day of January in each year and may end with the next succeeding thirty-first day of December. Such fiscal year shall also constitute the budget and accounting year. 69 Del. Laws, c. 14

### **11.2 - Budget.**

- (a) Annually each year, the Council shall cause to be submitted a budget containing the financial plan for conducting the affairs of the Town for the ensuing fiscal year. The budget for the ensuing fiscal year shall be adopted by the Council not later than the last day of the fiscal year currently ending. The tax rate for the ensuing fiscal year shall be adopted at the time the budget is completed.
- (b) The budget may contain the following information:
  - 1. A detailed estimate of the expense of conducting each department and office of the Town for the ensuing fiscal year.
  - 2. The value of supplies and materials on hand, together with the nature and kind of any machinery or other implements and the condition thereof.
  - 3. The amount of the debt of the Town, together with a schedule of maturities of bond issues.
  - 4. A statement of the amount required for interest on the bonded debt, the amount necessary to pay any bond maturing during the year, the amount required for the sinking fund.
  - 5. An estimate of the amount of money to be received from taxes and all other anticipated income of the Town from any source or sources.
  - 6. The Council shall allow adequate reserve for depreciation.
- (c) The budget shall be used as a guide in determining Town expenditures but shall not be a limitation upon the power of the Council to appropriate funds in excess of the amounts set forth in the budget, if, at its discretion, it seems advisable to do so. 84 Del. Laws, c. 238;

**11.3 -Independent Audit**

The Town Council shall retain a certified public accountant to be the auditor of accounts of the Town of Clayton. 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 monies to or by the Town. The auditor shall, on or before the final month of the following fiscal year, make and deliver a detailed report of any and all accounts, records, and books from the previous fiscal year by them examined and audited, which report under their 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 December 1st, at the written request of the auditor for reasonable cause shown. The auditor, in the performance of their duties, shall have access to all records and accounts of the offices of the town. 84 Del. Laws, c. 238;

**11.4 - Use of Town Monies:**

- 11.4.1 The Town Council shall have full power and authority to use the money of the Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation, and best interests of the Town as Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has the power to do by virtue of the laws of Delaware, this Charter, and all lawful ordinances and resolutions of the Town Council.
- 11.4.2 The Town Council shall oversee the Town Manager, Police Chief, and other authorized Town employees in their handling of and dealing with all monies owed or belonging to or in possession of the Town, in those individuals' handling of all expenditures of Town monies, and those individuals' incurrence of accounts payable, debts, or other financial obligations by, for, or in the name of the Town.
- 11.4.3 All accounts payable, debts, or other financial obligations incurred by, for, or in the name of the Town shall be presented to the Town Council in the following formats:
  - (a) Any normal, routine, and recurring debt, bill, account payable, or financial obligation (hereinafter "routine bill") under \$2,000 may be incurred and paid with the approval of the Town Manager or Police Chief contingent upon which appointee's jurisdiction the charge originated.
  - (b) All non-routine accounts payable, bills, debts, or financial obligations incurred by, for, or in the name of the Town shall be presented for prior approval by a majority vote of the entire Council before such obligation shall become binding upon the Town; and any such account payable, debt, bill, or other financial obligation incurred without the Town Council's prior approval shall be deemed to be incurred conditionally and contingent upon the Town Council's approval, as hereinabove provided.
  - (c) No payment, either routine or non-routine, shall be made by the Town except by check or draft drawn upon duly authorized Town of Clayton accounts and signed by the Mayor and Town Manager or any three members of the Town Council. 84 Del. Laws, c. 238;

**Article XII: Elections****12.1 - Council Election**

- (a) Members of Council shall be elected as follows: Council members shall be elected by the qualified voters of the Town at large; in odd-numbered years, election for three (3) Council members shall be held, and in even-numbered years, election for two (2) Council members shall be held.
- (b) All candidates must file a Town of Clayton Candidate Registration Form for Town Council and a Kent County Certificate of Intention with the Town Clerk at the Town office during normal business hours no later than 4:30 p.m. on the third Tuesday prior to Election Day. Filing dates shall begin the sixth Tuesday prior to Election Day and shall end the third Tuesday prior to Election Day. 81 Del. Laws, c. 135; 84 Del. Laws, c. 238;

**12.2 - Election Procedure****12.2.1 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.

**12.2.2 Voter Qualifications.**

12.2.2.1 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 domiciled in the Town for at least thirty (30) days;
- (d) has not been disenfranchised according to Section 3.5.2 of this Charter or Section 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 they physically reside within the corporate limits of the Town with the actual intent to make that residence their 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 or 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 their service so long as it remains their actual intention to retain Clayton as their fixed and permanent home. This section shall not be construed to preclude those who rent their residence from voting or running for Council. All questions regarding an individual's qualification to vote raised before 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 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.

12.2.2.3 Trusts, Corporations, Partnerships, and Limited Liability Companies (LLCs, both general and limited) are artificial entities and are not considered natural persons; therefore, they cannot vote in Town elections.

12.2.3 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.

12.2.4 Uncontested Elections; Write-In Candidates:

- (a) If there is only one official candidate for each office up for election, and if none of the official candidates have a formal opponent on the day of the election, they are deemed to be re-elected for a full term, and an election is not necessary - that is if the incumbent agrees to serve. If the incumbent does not agree to serve, the Council shall fill the vacancy according to Section 3.5.5 of this Charter.
- (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.

12.2.5 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 polling times shall be determined by the Town Council.

(b) Notice of Elections:

Notice of Town elections shall be posted in writing in a public place and on the Town's website no later than twenty (20) days prior to the election date. Additionally, notice of elections shall be published at least once 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. If 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.

(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 their 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 a family member of such (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 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 their 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 appoint an odd number of absentee ballot judges or, at the discretion of the Town Council, act 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 Mayor or the highest ranking Council-member 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 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. In accordance with 15 Del. C. Ch. 75 ("Municipal Elections"), the Town shall issue a Certificate of Appointment to the member, and the member shall swear or affirm the following oath orally and in writing:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties as a member of the Board of Elections for the Town of Clayton by ensuring that elections within the town are conducted fairly, impartially and in accordance with the Delaware Code and Town charter and ordinances to the best of my ability."

In accordance with 15 Del. C. Ch. 75, members of the Board of Elections are prohibited from participating in any and all electioneering activities.

(g) Election Results:

Upon the close of the election, the Board of Elections or a representative from the Department 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 State Election Commissioner shall order a new election in which only the candidates or positions tied will be on the ballot,

(i) Preservation of Ballots and Records:

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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 the 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 to the same. The book containing such matters shall be preserved by the Town Council. 84 Del. Laws, c. 238;

### **Article XIII: General Provisions**

#### **13.1 - Performance Bonds**

The Town Clerk/Tax Collector, Treasurer and such other officers and employees of the Town as the Council may require, shall give bonds for the faithful performance of their duties in such amounts and with such surety as may be approved by the Council. The premiums on such bonds shall be paid by the Town.

#### **13.2 - Oath of Office**

Every member of the Council, the Council President, the Council Vice-President, the Town Treasurer, the Town Secretary, and such other officers or employees as Council may by ordinance require, shall, before entering upon the duties of their office, take and subscribe to the following oath or affirmation, to be filed and kept in the Office of the Town Secretary:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States; the Constitution of the State of Delaware; and the Charter of the Town of Clayton, Delaware; and that I will well and faithfully discharge the duties of the Office of \_\_\_\_\_ according to the best of my ability."

The President of Council, a Justice of the Peace, the Town Solicitor, and other members of Council shall have the power to administer oaths required by this Charter. 68 Del. Laws, c. 282; 84 Del. Laws, c. 238;

#### **13.3 - Charter Amendments**

The Council may, by ordinance, provide a procedure by which it may propose to the voters an amendment to this Charter, but said procedure shall, in all respects, comply with applicable State law. A referendum on such amendments proposed may be held at a regular or special election, as determined by the Council by resolution. Amendments to this Charter to be voted on at referendum shall be presented for voting by ballot title. The ballot title may differ from its legal title and shall be a clear, concise statement describing the substance of the proposed amendment without argument or prejudice. If a majority of the qualified voters of the Town of Clayton voting upon the proposed Charter amendment, vote in favor of it, the amendment shall become effective at a time fixed in the amendment or, upon approval of both chambers of the General Assembly. 84 Del. Laws, c. 238;

#### **13.4 - Severability of Charter Provisions**

If any provision of this Charter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Charter which can be given effect without the invalid provisions or applications, and to this end, the provisions of this Charter are declared to be severable. 84 Del. Laws, c. 238;

#### **13.5 - Prohibitions**

Contracts with the Town. It shall be unlawful for the Council or the Town's officers, agents, or employees to make or enter into any contract for materials, supplies, work, or labor for the use and benefit of the Town of Clayton with any member of the Council or with any partnership in which any member of the Council is a partner, or with any corporation in which any member of the Council is a director or stockholder or with any firm or company in which any member of the Council is pecuniarily interested, except with the unanimous consent of the entire Council, and such contract be absolutely null and void without such unanimous consent, provided, however, that nothing herein shall prohibit the Council, the Town's

officers, agents or employees, from entering into any such contract without such approval where the amount involved in the transaction and other related transactions does not exceed the sum of \$1000. 84 Del. Laws, c. 238;

#### **Article XIV: Transitional Provisions**

##### **14.1 - Former Government in Force**

All ordinances, resolutions, orders, rules, or regulations in force in the Town of Clayton at the time this Charter takes effect, regardless of the authority under which originally enacted, shall continue in full force and effect until the Council otherwise provide by ordinance, notwithstanding any change in organization effected by this Charter. 84 Del. Laws, c. 238;

##### **14.2 - Continuance in Office**

- (a) All persons holding any non-elective office or employment under the Town of Clayton at the time this Charter goes into effect shall continue in such office or employment and shall draw the same rate of compensation as during the month preceding the adoption of this Charter until removed or until the compensation is changed.
- (b) The President of the Council of Clayton shall continue as the President of the Town Council as well as other officers of the Town of Clayton, and the Council members shall also continue in office until their successors are elected and qualify as previously provided for in this Charter. 84 Del. Laws, c. 238;

##### **14.3 - Effective Date**

This Charter shall become effective thirty (30) days after adoption by the General Assembly of the State of Delaware in accordance with the Constitution and the laws of the State of Delaware.

66 Del. Laws, c. 291; 67 Del. Laws, c. 80; 68 Del. Laws, c. 282; 69 Del. Laws, c. 14; 71 Del. Laws, c. 124; 74 Del. Laws, c. 232; 77 Del. Laws, c. 157, § 1; 77 Del. Laws, c. 274; 81 Del. Laws, c. 135; 84 Del. Laws, c. 238;