

# CHARTER OF THE TOWN OF FELTON

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# CHARTER OF THE TOWN OF FELTON

## Section 1. Town Limits.

The inhabitants of the Town of Felton within the corporate limits hereinafter defined in this Charter or extended as hereinafter provided, shall be and constitute a body politic and corporate, and shall be known and identified as the 'TOWN OF FELTON'. The boundaries of the Town of Felton are hereby established and declared as recorded on the official map of record in the Recorder of Deeds Office for Kent County and State of Delaware as presently existing and as hereinafter amended.

## Section 2. Annexation of Territory.

Subject to state laws of general application to municipalities pertaining to annexation of territory, the town shall have power to annex any additional contiguous territory adjoining the corporate limits of the town as hereinbefore set forth or as hereafter extended pursuant to the procedure set forth in this Section, and to apply to all such additional territory all laws, ordinances, resolutions, and policies in force in the town so far as they may be locally applicable. For purposes of this Section, 'contiguous' means that a part of the boundary of the territory sought to be annexed is coterminous with a part of the boundary of the municipal corporation.

### 2.1 Initiation of annexation proceedings.

2.1.1 By petition of the property owners. Any property owner(s) holding record fee title to real property in territory contiguous to the then existing corporate limits of the town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein, state the reasons for the requested annexation, and identify the proposed zoning district classification(s) for such territory (which proposed zoning classifications shall be consistent with the town's comprehensive plan). The Town Council may, within 90 days following the filing of such petition in the town office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. Any petition not so accepted within said 90 days shall be null and void. For purposes of Sections 2.1.1 and 2.1.2, 'territory contiguous to the then existing corporate limits of the town' shall include both real property which, though itself not contiguous to the town's then existing corporate limits, is contiguous to other real property which is proposed to be included in the annexation and real property which would be contiguous under Section 2.2.11(b).

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

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

### 2.2.1 Resolution and notice.

(a) The Town Council shall adopt a resolution notifying the property owners and the residents of both the town and the territory proposed to be annexed, that the town proposes to annex certain territory which adjoins its then corporate limits. The resolution shall contain a description of the territory proposed to be annexed, shall identify the zoning district classification(s) proposed for such territory if annexed (which proposed zoning classifications shall be consistent with the town's comprehensive plan), and shall fix a time and place for a public hearing on the subject of the proposed annexation and zoning. Such resolution may also provide that if the annexation is finally approved, the town shall not be obligated to extend any municipal facilities or improvements unless and until the Town Council, in the sole exercise of its reasonable discretion, determines that it is appropriate for the town to do so or the owner or developer of any property so annexed (or any portion thereof) binds itself, with reasonable surety acceptable to the town, to pay in full all costs and expenses to extend or construct such municipal facilities and improvements to serve such lands (in strict accordance with all governing federal, state, and town regulations and standards), subject to an appropriate 'recapture agreement' (acceptable to the town) pursuant to which the owner(s) or developer(s) of other lands benefited by extensions or improvements paid for by the initial owner/developer under the recapture agreement would pay to the town their equitably-determined proportionate share of such costs and expenses (as a condition precedent to obtaining such services, extensions, and/or improvements) which amounts the town would, upon receipt, rebate to the owner or developer which had originally paid for those extensions and/or improvements. The resolution setting forth the information shall be published at least once in a newspaper of general circulation in the town. Such publication shall appear not less than 30 days nor more than 60 days before the date set for the hearing. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to publication as herein provided, the Town Council shall, not less than thirty (30) days nor more than sixty (60) days before the date of such hearing: (1) cause a public notice, containing the full text of the resolution, to be posted in at least five public places in the town; (2) shall comply with the applicable provisions of 29 Del. C. Chapters 92 and 93, as those provisions may from time to time hereafter be amended (or with any future corresponding provision of law), and (3) send a copy of such notice, certified mail, to the owners of record of the lands proposed to be included in the annexation at their address as shown on the public tax records. Written notice to one co-owner shall be notice to all.

2.2.2 Public hearing. At the time, date, and place specified in the resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in Section 2.2.1) the Town Council shall sit to hear comments and opinion from any concerned party regarding the proposed annexation and proposed zoning district classification. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding and the Town Council shall remain free to exercise its legislative discretion in making its determination with regard to any proposed annexation.

2.2.3 Where Annexation Requested or Consented To By Record Owners Of A Single Parcel of Land. Where an annexation proposal is either initiated at the written petition of all of the owners of record of a single parcel of land proposed for annexation, or consented to in a notarized writing signed by all such owners and submitted to the Town Council no later than the conclusion of the public hearing held pursuant to Section 2.2.2, the Town Council may, at any duly noticed regular or special meeting held within six months of the public hearing, vote to accept or reject such proposed annexation and, if to accept, then to proceed in accordance with Section 2.2.8(b).

In such cases, no election shall be required. A 'single parcel of land' for purposes of this Section 2.2.3 shall mean one or more contiguous tax map parcels of land (or portions thereof) all owned of record by the same person(s) or legal entity(s).

2.2.4 Resolution ordering special election for multiple property annexations. At any time following the public hearing, the Town Council may pass a resolution ordering a special election to be held not less than fourteen (14) days, nor more than thirty (30) days after the date of such resolution proposing the special election. Such resolution shall identify the zoning district classification(s), consistent with the comprehensive plan, which shall be assigned to the territory(s) if annexed. The passage of this resolution shall ipso facto be considered the determination of the Town Council to proceed with the matter of the proposed annexation and zoning district classification if the election results are in favor of the annexation.

2.2.5 Notice of special election. Notice of the time and place of said special election shall be published not less than 14 days nor more than 60 days before the date set for said special election. Notice shall be published at least once in a newspaper of general circulation in the town. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to such publication as herein provided, the Town Council shall, not less than 14 days nor more than 30 days before the date of such special election: (1) cause a public notice containing the full text of the resolution proposing such special election to be posted in at least five public places in the town, and (2) mail a copy of such notice to the record owners of the subject parcels and to the residents thereof as known to the Town.

2.2.6 Those entitled to vote.

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

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

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

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

\_\_\_\_\_ For the proposed annexation.

\_\_\_\_\_ Against the proposed annexation.

The mayor shall appoint three (3) persons to act as a board of special election. One of the said persons so appointed shall be designated the presiding officer. The Board of Special Elections shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all natural persons and other legal entities voting. Voting shall be conducted in a public place as designated by the resolution calling the special election. The polling place shall be open for such period of time as the Town Council determines to be reasonable and appropriate under the circumstances, not less than one hour, as set by the Town Council, on the date set for the special election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls.

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

#### 2.2.8 Results of special election.

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

(b) If the vote is favorable to the proposed annexation, the Town Council shall at its first meeting following the special election adopt a resolution annexing the said territory and including it within the limits of the town. If the initial resolution proposing annexation provided that the town was not obligated to extend municipal facilities or improvements to the annexed lands as provided in Section 2.2.1, the resolution annexing such lands shall contain the same or substantially similar provisions. Upon the adoption of said resolution of annexation, copies thereof, signed by the Mayor and Council, and certified by the Town Manager, with municipal seal affixed, together with a plot of the area annexed, shall forthwith be filed for record in the office of the Recorder of Deeds in and for Kent County, and sent to the Office of State Planning. The territory so annexed shall be considered to be a part of the town from the moment the last mentioned resolution is adopted by the Town Council. Failure to record said resolution, or the plot accompanying same shall not invalidate the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction.

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

2.2.10 Annexation agreements. Notwithstanding any provision herein to the contrary, annexation proceedings may be made contingent upon an annexation agreement with the town which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision

approval, site plan approval, tax relief, public utilities, and public improvements. No provision of any annexation agreement shall violate the town's comprehensive plan. In the event the Town Council approves such an agreement and votes to accept a petition under Section 2.1.1 of this Charter, such annexation agreement, as reviewed and finally approved, shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure; that is: (1) the resolutions and notices adopted by the Town Council pursuant to Section 2.2.1., Section 2.2.3, Section 2.2.4, and Section 2.2.8 shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms, and shall state that copies of the agreement are available upon request at the town hall; (2) if the results of the election are favorable to the proposed annexation as provided by Section 2.2.8(a) of this Charter, the resolution annexing the territory (as provided by Section 2.2.8(b)) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and the parties shall be bound to honor the provisions of such agreement unless released there from by the other party.

Provided further, that no annexation agreement made at the time of annexation under this Section 2.2.10 shall extend beyond seven years from the date the property is annexed into the town; and such agreements shall be null, void, and unenforceable after the expiration of said seven (7) years.

An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special election pursuant to Section 2.2.4 of this Charter, but any substantial modification or amendment shall be deemed to be the withdrawal of the original petition and the filing of a new petition under Section 2.1.1.

2.2.11 Property owned by the State of Delaware; highways, streets, roads and alleys, ponds, canals, streams and other waters.

(a) Real property owned by the State of Delaware may be annexed into the town without the State's casting a vote in the special election, provided the state agency having control and supervision thereof does not notify the town, in writing, of its objection to such annexation within 30 days after notice of the resolution proposing the annexation as provided in Section 2.2.1.

(b) Highways, streets, roads, and alleys; ponds, canals, streams, and other waters. Contiguity with the town's existing corporate limits, or with other territory which is itself contiguous with the town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, pond, canal, stream, or other body of water running parallel with and between the parcel sought to be annexed, but nothing herein shall be construed to allow highways, roads, alleys, rights of way, utility easements, waterways, or like entities to be annexed in 'corridor' fashion or to be utilized as a corridor route for annexation to create contiguity.

2.2.12 Re-submission of proposed annexation. Nothing in this Section shall prohibit the council from resubmitting a proposal for annexation to the voters of said territory, or any portion thereof, under the authority of this Section and in accordance with the provisions hereof.

### **Section 3. Powers of the Town.**

3.1 Generally. 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.

3.2 Enumeration of powers. Not by way of limitation upon the scope of the powers vested in the Town Council to exercise all powers delegated by this Charter to the town (except as may expressly appear herein to the contrary), but rather by way of enumeration and for purposes of clarity, the Town Council is vested by this Charter with the following powers, that is to say, the Town Council:

3.2.1 May have and use a corporate seal that may be altered, changed, or renewed at pleasure.

3.2.2 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) Water systems, including but not limited to sewage lines, conduits, lift stations, sewage disposal or treatment plants, and all appurtenances thereto;

(e) Water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;

(f) Electric systems, including but not limited to, electric plans, substations, distribution systems, lines, conduits and all appurtenances thereto;

(g) Gas systems, including but not limited to storage tanks, distribution systems, conduits and all appurtenances thereto;

(h) Recreational facilities, including but not limited to public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;

(i) For slum clearance and redevelopment, urban renewal, revitalization, or rehabilitation of blighted areas or removal of dangerous buildings;

(j) For the protection of the health of the citizens of the town; and

(k) For the proper furnishing of adequate municipal services to the citizens of the town and those persons residing in such proximity to, but beyond, the corporate limits of the town who can be furnished with such municipal services, in the discretion of the Town Council to the mutual benefit and advantage of the town and such non-residents thereto, upon such terms, charges, and conditions as the Town Council may determine and approve.

3.2.3 May sell, grant, alienate, lease, mortgage, manage, hold and control such property as the

interests of the town may require except as prohibited by the Constitution of the State of Delaware or as restricted by this Charter.

3.2.4 May pay for the acquisition, construction, improvement, repair, extension, alteration, or demolition of any municipal or public property, real, personal, or mixed, from the general fund of the town, from the proceeds of any bond issue which may be authorized and sold for any of the purposes for which lands and premises are authorized by this Charter to be acquired, and/or from the proceeds of any grant or loan made to the town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this Charter to be acquired.

3.2.5 May acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping the offices of the town.

3.2.6 May purchase, take and hold real and personal property when sold for any delinquent tax, assessment, trash bill, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances and the like, laying-out and repairing sidewalks, or other charge due the town, and to sell the same.

3.2.7 May ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair and replace any new or present street, highway, lane, alley, water course, park, lake, pond, crosswalk, wharf, dock, sewer, drain, gutter, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the town to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; to enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the town.

3.2.8 May enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners.

3.2.9 May prohibit, remove or regulate the erection of any stoop, step, platform, bay window, cellar door, gate, area, descent, sign, post or any other erection or projection in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, wharf, dock, sewer, drain, aqueduct or pipeline of the town.

3.2.10 May provide, construct, extend, maintain, manage and control dams, jetties, bulkheads, embankments, flood gates, piers, or fills for the preservation of any strand or high land within the limits of the town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof.

3.2.11 May direct, regulate and control the planting, rearing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and grounds of the town and to authorize or prohibit the removal or destruction of said trees.

3.2.12 May fully control within the town the drainage of all water and to that end to alter or change the course and direction of any natural water course, runs or rivulet within the town, to regulate, maintain, clean and keep the same open, clean and unobstructed, and to provide, construct, extend and maintain, manage and control a surface water drainage system and

facilities for the health, sanitation and convenience of the inhabitants of the town.

3.2.13 May provide an ample supply of potable water for the town and its inhabitants and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants, and all other equipment, property, or rights used in or about the collection, storage, purification, conveyance, or distribution or sale of water; to regulate and prescribe for what public or private purposes the water furnished by the town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the town; in the interest of the public's health, may compel any and all properties in the town to be connected to the water system of the town; may furnish or refuse to furnish water from the town system to places and properties outside the town limits; and may contract for and purchase water and distribute the same to users within or without the town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself.

3.2.14 May provide, construct, extend, maintain, manage and control a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the town; may regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties or both, for any 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 sewer collection, treatment and/or disposal service and to resell the same to users within or without the town with the same full powers as though such service had been initially provided by the facilities therefore of the town itself.

3.2.15 May provide, construct, extend, maintain, manage and control the plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the town and for lighting the streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, crosswalks, wharfs, docks, public buildings or other public places in the town, and to this end may acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessarily proper to light the town, and to furnish proper connections for electric current and gas to the properties of the inhabitants of the town who may desire the same; to regulate and prescribe for what private or public purpose the current or gas furnished by the town may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts are to be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the town; to furnish or refuse to furnish electric current or gas from the town's system or systems, to places and properties outside the town limits; and to contract for and purchase electric current or gas and distribute the same to users within or without the town with the same full powers as though such current or gas had been initially reduced to usefulness by the town itself.

3.2.16 May regulate, control or prevent the use or storage of gasoline, naphtha, gun powder, fireworks, tar, pitch, resin, and all other combustible or dangerous materials and the use of candles, lamps, and other lights in stores, shops, and other places; may regulate, suppress,

remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may pose a danger of causing fires.

3.2.17 May provide for the organization of a fire department and the control and government thereof; may establish fire limits and do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, may contribute, donate or give an amount or amounts to any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Town Council shall deem advisable.

3.2.18 May provide for the organization of ambulance, rescue or paramedic service(s) and the control and government thereof; may, at the discretion of the Town Council, contribute, donate or give an amount or amounts to any such service formed or incorporated under the laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations to the use thereof as the Town Council may deem advisable.

3.2.19 May prevent vice, drunkenness, and immorality.

3.2.20 May prohibit gaming and fraudulent devices.

3.2.21 May prevent and quell riots, disturbances, and disorderly assemblages.

3.2.22 May adopt and enforce such ordinances regulating traffic, on all streets, alleys, avenues, and public ways within the town as are not inconsistent with the motor vehicle laws of the State of Delaware.

3.2.23 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.

3.2.24 May regulate or prevent the use of guns, air guns, spring guns, pistols, sling shots, bow and arrows, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and to regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds.

3.2.25 May provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the town and its inhabitants.

3.2.26 May prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games.

3.2.27 May direct the digging down, draining, filling up, cleaning, cutting or fencing of lots, tracts, pieces or parcels of ground in the town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter and to assess the cost thereof against the owner thereof.

3.2.28 May define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare; and to cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist.

3.2.29 May adopt ordinances providing for the condemnation, upon inspection, of any building or structure in the town which is determined, on the basis of standards set forth in such ordinance(s) to be a fire hazard or otherwise unsafe, and cause the same to be torn down or removed; and to cause the cost of such demolition and removal to be paid by the legal entity causing or permitting same to exist.

3.2.30 May establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and to authorize the destruction of the same; and to regulate the keeping of dogs within the town, and to provide for registration and fees thereof.

3.2.31 May provide for the punishment of a violation of any ordinance of the town by fine or imprisonment or both, not exceeding \$1,000.00 and/or 30 days imprisonment for each offense.

3.2.32 May adopt by reference and enforce the provisions of the Delaware motor vehicle statutes, including all fines and penalties set out therein, and including all amendments thereto enacted from time to time by the Delaware General Assembly.

3.2.33 May, in addition to or in lieu of imposing fines or criminal penalties, impose civil penalties for violations of any local town ordinance

3.2.34 May enact ordinances providing for a 'voluntary assessment procedure' pursuant to which citizens charged with violations of local Town ordinances may admit to the violation and mail in or deliver to the Town Hall the appropriate fine or civil penalty without the necessity of appearing before any judicial officer. Any such ordinances shall provide: (a) that if the citizen does not opt to use the voluntary assessment procedure, the charge shall proceed through normal judicial proceedings; (b) that any citizen who opts to use the voluntary assessment procedure may, in a timely manner, revoke such option and allow the charge to proceed through normal judicial proceedings; (c) shall disclose the minimum and maximum penalties established for violation of the ordinance and provide that only the minimum penalty is due if the citizen opts for the voluntary assessment option; provided further, that the Town may not utilize such voluntary assessment procedure for violation of any ordinance which regulates conduct which is also regulated by a state statute which state statute involves a scheme of state record keeping (as, for example, the 'points' system utilized by the State with regard to moving motor vehicle violations).

3.2.35 May acquire, build, erect and maintain a suitable place as a lock-up or jail for the town which shall be used as a place for detention of persons accused of violations of law or ordinances, for a reasonable time in cases of necessity prior to hearing and trial; provided that any correctional institution located in Kent County may be used for any such purpose.

3.2.36 May provide for payment of any tax, license, assessment, fee, charge, or other amount due the town by the performance of labor or service for the town by any person owing the same.

3.2.37 May regulate and control the manner of building, moving, or removal of dwellings or other structures and to provide for granting permits for same.

3.2.38 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.

3.2.39 May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues.

3.2.40 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 the use of land or buildings; and may prohibit any building or construction except those for which a building permit has been issued as prescribed by the Town Council; and generally may exercise all powers and authorities vested by virtue of 22 Del. C. Chapter 3, as it may hereafter from time to time be amended, or any future corresponding provision of law.

3.2.41 May license, tax and collect fees of such various amounts as the Town Council from time to time shall fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation, or renting out any real or personal property, within the limits of the town.

3.2.42 May impose, upon new development or construction or upon first time occupancy of new construction, such 'impact fees' as are reasonably and proportionally calculated to recover the cost of installing, enlarging, improving, or expanding public or municipal improvements and services which have a rational nexus to such new construction; and/or to contribute to the costs of operations of those volunteer fire companies, and/or ambulance/paramedic companies providing services within the town or to residents of the Town.

3.2.43 May grant licenses and impose fees for licenses, issue permits, and regulate any activity within the corporate limits of the town.

3.2.44 May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restrictions, stipulations and conditions and for such consideration as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, boardwalks, crosswalks, and other public places of the town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, internet services, railroad (excepting railroads or railways engaged in interstate commerce), bus, taxi or other transportation, carrier or public service to the town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the town to points outside the limits thereof; provided, however, that whenever any state or federal law grants jurisdiction over any such activity to a state or federal agency, the town shall have no authority inconsistent therewith.

3.2.45 May regulate and control the exercise of any license or franchise mentioned in Section 3.2.41 of this Charter, or intended so to be.

3.2.46 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.

3.2.47 May inquire into and investigate the conduct of any officer, agent or employee of the town or any municipal affair and for such purpose or purposes may subpoena witnesses, administer

oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena.

3.2.48 May establish a pension, health, dental, or other insurance plan, (including participation in any pension, health, dental, or insurance plan offered by or through the State of Delaware) for the employees of the town under such terms and conditions as the Town Council, in its discretion, may deem most appropriate. The method of funding, if deemed desirable by the Town Council, may be accomplished through an insurance company or brokerage firm licensed by the State of Delaware or authorized to do business in this State.

3.2.49 May determine what purposes are deemed to be public purposes or municipal purposes.

3.2.50 May make, adopt, and establish, alter and amend all such ordinances, regulations, rules, and by-laws not contrary to the laws of this state and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the state relating generally to municipal corporations or which they may deem proper and necessary for the order, protection and good government of the town, the protection and preservation of persons and property, and of the public health and welfare of the town and its inhabitants; provided, however that any ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the town but as well to all areas and persons outside the town within one (1) mile from said limits.

3.3 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.

3.4 Manner of exercising powers. All powers of the town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in the manner provided by ordinance or resolution of the Town Council. The council may, by resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters in this Charter duly authorized.

3.5 Intergovernmental cooperation. The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of Delaware or with any agency or political subdivision thereof, or the United States or any agency thereof, except as prohibited or restricted by the Constitution or laws of the State of Delaware or by this Charter.

## **Section 4. Town Council.**

4.1. Governing Body. The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in and exercised by the Town Council composed of five (5) members to be chosen as hereinafter provided.

4.2. Qualifications. Candidates for the office of Town Council must be at least 21 years of age, and, for a period of at least one year prior to the date of the election, been a bona fide resident of the Town qualified to vote at the annual Town election as provided in Section 6.1. No person having

been convicted of a felony or any crime of moral turpitude shall be qualified to be a candidate for the office of Town Council. The Town Council, by a majority vote of its disinterested members, shall be the sole and final judge of the qualifications of its members and shall interpret and apply the standards set forth in this charter.

4.3. Term of Office. The term of office for each member of the Town Council shall be two years. The present Commissioners of the Town of Felton (hereafter to be known as 'Town Council members'), and other officers appointed to serve under 63 Laws of Delaware, Chapter 349, as amended, shall continue to serve as Town Commissioners/Council members and officers of the Town from and after the effective date of this charter, until their successors are duly elected or appointed. At the annual Town election in 2007, three (3) persons shall be elected to the Town Council to fill vacancies created by the expiration of the terms of office of the three then- outgoing council members, and at the annual Town election in 2008, two (2) persons shall be elected to fill the vacancies created by the expiration of the terms of office of the three then out-going council members. Thereafter, two members of the Town Council shall be elected in even years, and three council members shall be elected in odd years.

## **Section 5. Notice of Solicitation of Candidates; Notice of Candidacy.**

5.1 Notice of Solicitation of Candidates. Not less than twenty (20) days prior to the filing deadline for Notices of Candidacy, the Town shall post a 'Notice of Solicitation of Candidates' in at least five public places in the Town, one of which shall be at the Town Hall. If the Town has a website, such notice shall also be posted on the website. The Town shall provide a copy of such notice to the Department of Elections. Such notice shall include the term or terms of each office up for election, the deadline and procedure for declaring candidacy for an office up for election, and the qualifications for holding each office. If the Town permits absentee ballots, the notice shall also include information concerning how to obtain an absentee ballot.

5.2 Notice of Candidacy. In order to be listed on the ballot at any regular or special election of Town Council members, each candidate shall file a written, signed, and notarized notice of intention (in the form of a letter) to seek office with the Town Manager, at least forty-five (45) days prior to the date set for the election. Such letter shall contain an affidavit that the candidate meets all of the qualifications for holding office. The Town Manager shall present all timely received letters of candidacy to the Town Council at its first meeting held after the filing deadline.

5.3 Determinations Concerning Qualifications. If the Town Manager determines that any candidate may not meet the qualifications for office, he/she shall notify the Mayor who shall call a special meeting of the Town Council to be held not less than thirty (30) days prior to the date set for the election, at which meeting the Town Council shall decide the matter. The candidate whose qualifications are at issue shall be notified, by registered mail, of the date, time and place of the hearing, at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications for office, it shall reject his/her notice of intention to seek office and his/her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the question.

5.4 Compliance with Municipal Election statute. Every candidate for Town office, and every effected Town Official, shall comply the provisions of 15 Del. C. § 7555 (d) through (h) (as the same may be amended from time to time, or in accordance with any corresponding provision of law) as regards the filing of 'Certificates of Intention' or 'Statements of Organization'. The Town shall, in accordance with § 7555(l) of the Municipal Election Statute, submit the names of candidates for each office up

for election to the Department of Elections no later than one (1) business day following the deadline for filing a Notice of Candidacy under Section 5.2 above.

## **Section 6. Elections.**

6.1 Voter qualifications. Any person shall be qualified to vote who, on the date of the election, is:

- (a) A United States citizen;
- (b) Has attained eighteen (18) years of age;
- (c) Has been a bona fide resident of the Town for at least 60 days preceding the date of the election in which he/she seeks to vote;
- (d) Has not been adjudged a mentally incompetent person by a court of competent jurisdiction;
- (e) Has not been disenfranchised pursuant to Sections 3 or 7 of Article V of the Constitution of the State of Delaware.

For purposes hereof, a person is a 'bona fide resident' of the town when he/she physically resides within the corporate limits of the town with the actual intent to make that residence his/her fixed and permanent home; however, any person who is enlisted or engaged in any government service of the United States or any military organization of this state of the United States, which service requires him/her to reside outside the limits of the town, shall be considered to be a bona fide resident of the town during the period of his/her service so long as it remains his/her actual intention to retain Felton as his/her fixed and permanent home.

6.2 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. If the Town Council does provide for voter registration and maintains its own voter registration system, it shall post a schedule of when eligible citizens may register to vote and provide them a reasonable opportunity to do so.

6.3 Uncontested elections; write-in candidates.

- (a) Where there is only one official candidate for each office up for election, the Board of Elections shall declare those candidates elected without the holding of a formal election.
- (b) No person or candidate whose name does not appear on the ballot shall be eligible for election, and votes for 'write-in' candidates shall not be counted.

6.4 Date, time, and place and manner of conducting.

- (a) Date, time, and place. The annual town election shall be held on the first Monday in March 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 not less than six hours, the times to be determined by the Town Council.

(b) Notice of elections. Notice of town elections, including the date, time, and place thereof, the names of the candidates for each office to be filled, and the qualifications to vote in the election shall be given by posting notice thereof in at least five public places in the town, one of which shall be at the Town Hall, not less than twenty days before the day of such election and by publishing notice thereof in a newspaper of general circulation in the town at least seven days prior to the date of the election. The published notice shall be in bold print or bordered in black in such manner as to call attention thereto.

(c) Voting machines, paper ballots, electronic voting system. Elections shall be by voting machine, electronic voting system, or by paper ballot as the Town Council shall determine; provided however that voting machines or electronic voting systems shall be used if required by general statute.

(d) Absentee voting. The Town Council may (but shall not be required to), by ordinance, provide for a qualified voter (duly registered if required by ordinance) who shall be unable to appear in person, to cast his or her ballot at any municipal election by absentee ballot. In such event, the Town shall comply with § 7556 of the Municipal Election statute regarding absentee voting as such statute may from time to time hereafter be amended, or in accordance with any future corresponding provision of law.

(e) Rules governing conduct of elections. All elections for Town Offices shall be conducted in accordance with the provisions of § 7558 of Title 15 of the Delaware Code regarding, among other things, training of Election Officers, persons who may be admitted into the voting room, electioneering, challengers and challenges, oath of office for Election Officers, bribery, polling places and the preparation thereof, voting procedures, closing of the polls, and unofficial results; *provided however* that the Election Board shall fulfill the role of 'Inspector' of the election. The Town Council may, by ordinance or resolution, adopt such other additional rules, not inconsistent with the provisions of this Charter or with controlling state or federal law, governing the conduct of elections.

(f) Election Board. Every election shall be held under the supervision of an election board. The Election Board shall consist of three (3) or five (5) persons (as determined by the Town Council) who shall be qualified voters of the town and who shall not themselves be an elected official or candidate or an immediate family member of an elected official or candidate (mother, father, son, daughter, brother, sister, including half-brothers and half-sisters, stepfamily members, and in-laws). An Election Board shall be appointed for each Town Council election by the Town Council at least twenty (20) days before such election. Members of the Election Board shall be issued a Certificate of Appointment and shall take the oath or affirmation set out in § 7551(d) of Title 15 of the Delaware Code. Members of the Election Board shall not engage in 'electioneering' as defined in § 7551 (e) of the Municipal Election statute. After installation of the Board, the Town shall notify the Commissioner of Elections and the Department of Elections of the Board's members, and post the names and contact information for the Board in the Town Hall and, on the Town's website (if it has one). The Town Council may, at the same time it appoints the Election Board, appoint up to three 'alternate' members (designated as 'first', 'second', and 'third' alternate) to assume office in the event that one or more of the original Board resigns, is disqualified, or is otherwise unable to serve. Each alternate member shall meet all the qualifications for serving on the Election Board and shall conduct himself/herself in the manner required for members of the Election Board. In the event that it becomes necessary for one or more of the alternates to serve, they shall be provided a Certificate of Appointment, administered the oath or affirmation, and notice of their appointment provided as in the case of the original members of the Board. Members of the election board shall be the sole and final judges of the

conduct of the election and of the legality of the votes offered. The Board of Election shall determine all challenges and other issues involving the conduct of the election at the polling place. The election board shall keep a list of all voters voting at said election. The election board shall have the power to administer oaths, 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.

(g) Election Officers. Pursuant to § 7557 of Title 15 of the Delaware Code, the Board of Elections shall appoint a sufficient number of Election Officers to assist in conducting the Town Election in a fair and equal manner. Any Election Officer who violates the provisions of the Municipal Election statute shall be forthwith removed by the Board of Elections.

(h) Election results. The Board of Elections shall tabulate the votes and announce the results of the election as soon as possible following the closing of the polls. Following the resolution of any contest and the certification of the election results, the Board of Elections shall audit the election records in order to reconcile the number of voters who cast ballots as compared to the number of voters who returned absentee ballots and voted on voting machines. The results shall be reported to the Mayor and made available for public review.

(i) Recounts. The Board of Elections shall recount the absentee ballots (if any) if the difference between the top two candidates is one half ( $\frac{1}{2}$ ) of one percent (1%) or less than the total votes cast for that office. Where citizens vote for more than one candidate for an office, the Board of Elections shall recount absentee ballots if the difference between the last candidate elected and the next closest candidate is one-half ( $\frac{1}{2}$ ) of one percent (1%) or less than the total votes cast for the office.

(j) Ties. In the event of a tie vote for any office, the Election Board shall determine such tie by a majority vote of the entire election board.

(k) Preservation of ballots and records. All ballots cast and all records of the election kept by the Election Board shall be preserved in the custody of the election board for a period of thirty (30) days following the Election Board's announcement of the election results, unless an appeal is filed in a court of appropriate jurisdiction, in which case such ballots and records shall be preserved until further direction of the court having jurisdiction.

6.5 Time Limit to Challenge Election. No action to challenge the election of any member of the Town Council may be filed after the expiration of thirty (30) days from the date the Election Board announces the results of the election.

## **Section 7. Town Council.**

7.1 Organizational meeting. An organizational meeting of the Town Council shall be held not less than seven days nor more than fourteen (14) days following the determination of the election results by the election board. Such meeting shall be held at the usual place for holding regular meetings. The newly elected council-members shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity, which oath or affirmation shall be taken before a notary public, a justice of the peace, the mayor, or by one of the holdover council-members. Until such newly elected council-members have been duly installed in office, the outgoing members of the Town Council shall remain in office as 'hold-over' members of the Town Council. The oath of office shall be in the form substantially as follows:

I (FULL NAME) do hereby solemnly swear (or affirm) that I will support the Constitution of the United States, the Constitution of the State of Delaware, the Charter and Ordinances of the Town of Felton, and that I will faithfully discharge the duties of the office of \_\_\_\_\_ of the Town of Felton according to the best of my ability.

At such meeting, the newly-constituted Council shall elect a Mayor and Vice-Mayor from among themselves, each of whom shall serve for a term of one (1) year and until his/her successor has been duly elected and qualified. Such vote may be by secret ballot if requested by one or more members of the newly-constituted Council.

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

7.2.1 Mayor. 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 he/she desires to make a motion, move the adoption of a resolution, second either, or debate any question from the floor, and may thereafter immediately resume his/her duties as presiding officer. For purposes of establishing a majority vote or quorum, the mayor shall be counted as a member of council.

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

Any action taken by the Mayor under the powers vested in him/her under this Section shall be as good as the act of the entire council, provided that the council may at a regular or special meeting held within 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.

7.2.2 Vice-Mayor. The vice-mayor shall act as mayor during the absence or disability of the mayor, and while so acting, shall be vested with all the powers, duties, and authority of the mayor. The vice-mayor shall perform such other duties as may be assigned to him by the mayor or by ordinance or resolution adopted by the Town Council.

Succession of authority. In the event that the mayor is unavailable or incapable of assuming his/her responsibilities in a sudden emergency (as defined in Section 7.2.1) the emergency powers therein vested in the mayor shall devolve upon the following officers and officials of the town in the following order of sequence: (1) Vice-Mayor, (2) each of the three remaining council-members in

order of their total number of years served on Council, (3) Town Manager, and (4). Chief of Police, Committees. The Town Council shall, by majority vote of the entire Council, establish all committees and appoint all persons to serve on those committees. Any member of council may nominate one or more persons to serve on any committee established by the Town Council.

### 7.3 Prohibitions.

7.3.1 Holding other office; employment restrictions. Except where authorized by law, no member of the Town Council or the Mayor shall hold any other town office or town employment while serving in office, and any former mayor or council-member shall not hold any compensated appointed town office or employment until one (1) year after he/she leaves such office.

7.3.2 Contracts with the town. It shall be unlawful for the mayor or any member of Town Council or the town's officers, agents, or employees, to make or enter into any contract or purchase order for materials, supplies, work or labor for the use and benefit of the town with the mayor or with any council-member or with any partnership in which the mayor or any council-member is a partner, with any corporation in which the mayor or any council-member is a director or has a substantial financial interest, or with any other entity in which the Mayor or any council-member has a substantial financial interest, except with the unanimous consent of the disinterested members of the Town Council, and such contract shall be absolutely null and void without such unanimous consent. For purposes hereof, the phrase 'mayor or any council-member' shall include any member of that official's immediate family, to wit: spouse, child, step-child, parent, step-parent, or sibling, by the whole or half-blood, provided however, that nothing herein shall prohibit the Town Council, or the town's officers, agents, or employees, from entering into any such contract without such unanimous approval where the amount involved in the transaction does not exceed the sum of \$1,000.00. No transaction exceeding said \$1,000.00 may be deliberately fragmented into two or more smaller transactions so as to avoid the \$1,000.00 limitation. The disinterested members of the council shall be the final arbiters in determining whether any transaction or series of transactions were so fragmented, and in making such determination shall consider the totality of the circumstances surrounding such transactions.

### 7.4 Vacancies, forfeiture of office.

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

7.4.2 Forfeiture proceedings. A forfeiture of office shall occur when the mayor or any council-member:

- (a) Lacks, at any time during his/her term of office, any qualification for his/her office prescribed by this Charter or by law.
- (b) Willfully violates any express prohibition of this Charter.
- (c) Is convicted of a felony or any crime involving moral turpitude.
- (d) Fails to attend three consecutive regular council meetings without being excused by council.
- (e) Is physically, mentally, or emotionally incapable of performing the functions of his/her

office.

(f) Ceases to be a bona fide resident of the Town.

7.4.3 Determination concerning forfeiture. Forfeiture shall be automatic where the conditions set forth in 7.4.2(c) or (d) occur. Where the conditions set forth in 7.4.2(a), (b), (e) or (f) 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.

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

7.5 Filling vacancies on the Town Council. In the case of any vacancy occurring on the Town Council, the remaining Council members shall appoint another 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 or Vice-Mayor as the case may be.

7.6 Compensation; reimbursement of expenses.

7.6.1 Compensation. The Mayor and each member of the Council shall receive a specified sum for each regular or special meeting attended by such person. The amount paid for attendance at each meeting shall be established by the Town Council at the time of the annual budget review.

7.6.2 Reimbursement of expenses. The Mayor and members of council shall be reimbursed for their documented actual and necessary expenses incurred on town business. If the total amount of reimbursements requested by any member of council during any month is \$25 or less, the Town Manager may approve such reimbursement; otherwise such amounts shall be approved by the Town Council in open meeting and recorded in the minutes. No member of the Town Council shall be entitled to vote upon their own request for reimbursement unless similar expenses were incurred by four or more members of the Town Council in connection with the same event or activity.

7.7 Meetings.

7.7.1 Regular meetings. The Town Council shall meet regularly the second Monday of each

month, provided that when any meeting date falls on a town holiday, that meeting shall be held on the next business day. The time and place of each regular meeting shall be set by council each year at their organizational meeting, but council shall not hereby be prohibited from rescheduling such meetings from time to time during the year as need arises.

7.7.2 Special meeting; waiver of notice. Special meetings shall be called by the town manager upon the written request of the mayor, or upon the written request of any three council-members, stating the day, hour, and place of the special meeting requested and the subject or subjects proposed to be considered thereat. The Town Manager shall provide notice of such special meeting in accordance with the Delaware Freedom of Information Act and shall provide notice to all members of the Town Council at least 48 hours prior to the time set for such special meeting. Such notice to the members of Council shall be effective if received by the person to whom sent, or by an adult person residing in the household of the person to whom sent, if sent by personal delivery, overnight courier or special delivery service. Receipt of such notice may be established by reasonable proofs of same according to the means of delivery utilized. Anything herein to the contrary notwithstanding, any member of the Town Council entitled to notice of a special meeting under this Section may at any time, before, at, or after the holding of such special meeting, submit a written waiver of notice which written waiver shall make valid the holding of such special meeting at any time and for any purpose named in such waiver, or the transaction of any other business at the meeting, if the waiver so states. Additionally, attendance at any such meeting, except for the express and limited purpose of objecting to the holding of such meeting, shall constitute a waiver of notice for such meeting. Subject to the scope of the notice, the Town Council of the town shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any such special meeting, called as aforesaid, as council has at a regular meeting.

7.7.3 Recessed meetings. The Town Council may recess its meetings from time to time, stating the date, place, and time at which such meeting shall be resumed.

## 7.8 Manner of acting.

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

7.8.2 Ordinances. The Council is hereby vested with the authority to enact ordinances or resolutions relating to any subject within the powers and functions of the town, or relating to the government of the town, its peace and order, its sanitation, beauty, health, safety, convenience and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances or resolutions, and no provision of this Charter as to ordinances on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated.

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

- (a) Adopts or amends an administrative code; provided that no ordinance shall be required to amend the personnel policy, or any component thereof, unless so required by a duly adopted ordinance.
- (b) Provides for a fine or other penalty or establishes a rule or regulation for violation of

- which a fine or other penalty is imposed;
- (c) Grants, renews or extends a franchise;
- (d) Amends or repeals any ordinances previously adopted;
- (e) Revises the town's fiscal year;
- (f) Levies a real estate transfer tax;
- (g) Levies impact fees or connection fees.

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

7.8.3 Quorum. Three (3) members of the Town Council shall be physically present in order to constitute a quorum to conduct business, but if a lesser number be present at any regular or properly called special meeting, they may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance adopted by the majority of the entire council.

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

7.8.5 Vote necessary to carry action. All powers of the Town Council, whether express or implied, shall be exercised in the manner provided herein, or if not prescribed herein, then by ordinance or resolution. In the general performance of their duties, the acts, doings, and determinations of a majority of the entire Town Council shall be as good as the acts and determinations of all the members of the council. No ordinance, resolution, motion, order, or other act of the Town Council, except as herein specifically authorized, shall be valid unless it receives the affirmative vote of a majority of all members of the Town Council. Votes, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the minutes.

## **Section 8. Appointed Officers.**

### **8.1. Town Manager.**

8.1.1 Appointment, term. The Town Council shall appoint a town manager who shall be the chief administrative officer for all departments and functions of the town. He/she shall be appointed solely on the basis of his/her professional, executive and administrative qualifications. He/she

need not, when appointed, be a resident of the town or of the State of Delaware, but shall, within six (6) months of his/her appointment, as a condition of his/her employment, become domiciled within such radius of the town hall as determined by council at the time of his/her appointment. No member of council shall while in office, or within one (1) year after leaving office, be appointed as town manager.

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; and (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. For purposes of this Section, 'just cause' shall mean one or more specific, articulable reasons related to the town manager's unsatisfactory performance involving misfeasance, malfeasance, nonfeasance, or incompetence, which rationally support termination of employment.

In case of the 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.

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

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

## 8.2 Chief of Police.

8.2.1 Appointment; term. The Town Council, upon the recommendation of the town manager, shall appoint a duly-qualified chief of police who shall be the chief law enforcement officer of the town. He/she need not, when appointed, be a resident of the town or of the State of Delaware, but shall, as a condition of his/her employment, become domiciled within a radius of the town hall as determined by council, within six months of his/her appointment. No member of the Town Council shall, while in office, or within one year of leaving office, be appointed as police chief. The chief of police shall be removable in accordance with the provisions of any resolution, ordinance, and/or written agreement authorized by the Town Council and specifically applicable

to that chief of police, subject to any governing state statutory provisions.

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

8.2.3 Vacancy from office. In case of the absence, disability, or suspension of the police chief, the town manager may designate some other competent person to perform the duties of the office during such absence, disability or suspension.

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

8.4 Other officers, agents, and boards.

8.4.1 Appointment, hiring. The Town Council may provide for the appointment or hiring of such other officers, agents, and boards of the town, which it may deem proper and necessary, for the proper conduct and management of the town, including by way of example and not in limitation, a consulting engineer, appraisal firms, financial auditor, board of assessment, Board of Adjustment, Planning Commission, and Election Board. Except as otherwise provided by written agreement approved by the Town Council, or as provided elsewhere in this Charter or in any governing statute or ordinance, such officers, agents, and board members shall serve at the pleasure of the Town Council.

8.4.2 Compensation.

(a) Officers and agents. The Town Council shall by approval of the annual budget, by ordinance, resolution, or written contract, fix the amount of any salaries or compensation of the officers and agents employed by the town.

(b) Members of boards and commissions. The amount (if any) to be paid to the members of any board or commission appointed or confirmed by the Town Council for attendance at each meeting of such board or commission shall be established during the annual budget process.

8.5 Personnel records. The Town Council shall cause to be kept appropriate personnel records for all town employees, as necessary to comply with all applicable federal and state laws and regulations and in accordance with commonly-accepted personnel practices for municipal employees. Such records shall not be 'public records' and shall not be subject to public inspection.

8.6 Surety bonds. The Town Council may, at the town's expense, require any town employee to be bonded by a commercial bonding company in such amount and according to such terms as deemed necessary and appropriate by the Town Council.

## **Section 9. Indemnification of Town Council Members and Officials.**

9.1 Right to Indemnification. The Town of Felton shall indemnify, from the general funds of the Town's treasury, to the extent not otherwise covered by appropriate insurance, any person who is a party to or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Town of Felton itself), by reason of the fact that he/she is or was a Town Council member, or other duly elected or appointed Town official of the Town of Felton, or arising out of actions taken by each or any of them in connection with the performance of their official duties, against expenses (including attorneys fees, judgments, fines, and amounts paid in settlement), actually and reasonably incurred by him/her in connection with such action, suit or proceeding, if and only if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Town; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or nolle prosequi or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she believed to be in, or not opposed to, the best interests of the Town of Felton, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful.

Indemnification, as provided in this charter, shall be made by the Town only as authorized in the specific case upon a determination that indemnification of the Town Council, of any individual Town Council member(s), and/or any Town officers is proper in the circumstances because he, she, or they met the applicable standards of conduct set forth above, and, in the case of a monetary settlement, that the amount and terms of the settlement are reasonable under the circumstances. Such determination shall be made:

- (a) If there are at least three disinterested Town Council members who are not parties to or the subject of such action, suit, or proceeding, by a majority vote of such disinterested Council members, or
- (b) By written opinion of independent legal counsel if: (1) a majority of the disinterested Council members so elect or; (2) if there are less than three disinterested Council members.

9.2 Insurance. In applying Section 9 regarding indemnification, any applicable or potentially applicable contract of insurance shall be construed and applied as if there were no right of indemnification hereunder, and the right of indemnification hereunder shall be secondary to any such insurance and shall attach only to the extent that there is no applicable insurance, there is a deductible, or to the extent there remains any unreimbursed amounts after any such applicable insurance has been exhausted.

## **Section 10. Town Finances.**

10.1 Use of Town Monies. 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 power to do by virtue of the Laws of Delaware, this Act, and all lawful ordinances and resolutions of the Town Council.

10.2 Town Manager; Expenditure of Town Monies.

The Town Council shall generally oversee the Town Manager and other authorized Town employees in their handling of and dealing with all monies owed or belonging to or in the possession of the Town, in those individuals' handling of all expenditures of Town monies, and in those individuals' incurrence of accounts payable, debts, or other financial obligations by, for, or in the name of the Town.

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') may be incurred and paid with the approval of the Town Manager.

(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 Felton accounts and signed by any two members of the Town Council.

10.3 Fiscal year. Unless revised by ordinance duly adopted by the Town Council, the fiscal year of the town shall begin with the first day of July in each year and end with the next-succeeding thirtieth day of June.

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

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

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

(a) Real estate and improvements. The proposed rate of tax on real estate including improvements thereon per \$100.00 of the assessed value; and/or

(b) Utility fixtures. The proposed rate of tax upon all poles, construction, erections, wires, and appliances more particularly mentioned, or intended so to be in Section 3.2.41 of this Charter; and/or

(c) License fees. The several license fees to be charged for carrying on or conducting of the several businesses, professions or occupations more particularly mentioned or intended so to

be in Sections 3.2.38 and 3.2.40 of this Charter: and/or

(d) Municipal services. The several rates to be charged for furnishing water and sanitary sewer service and front footage assessment; electric supply and distribution service; trash collection; and/or

(e) Other services. The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (c), (d), and (e) aforementioned may be determined, fixed, assessed, levied and/or altered or changed upon other than a fiscal year basis at any regular or special meeting of the Town Council as the Town Council, in its own proper discretion, shall determine; and provided further that the rate of tax upon taxable real property (a) and upon utility fixtures (b) may be revised at such time the Town Council finally approves and accepts the annual assessment list for town property taxes pursuant to Section 11.7.

10.5 Annual audit. The Town Council shall retain a certified public accountant to be the auditor of accounts of the Town of Felton. It shall be the duty of the auditor to audit the accounts of the town and all its officers whose duty involves the collection, custody and payment of moneys to or by the town. The auditor shall on or before December 1<sup>st</sup> of each year make and deliver a detailed report of any and all accounts, records, and books from the previous fiscal year by him/her examined and audited which report under his/her hand and seal shall be available for public inspection; provided however, anything herein to the contrary notwithstanding, the date for submission of the auditor's report may be extended by the Town Council beyond December 1st at the written request of the auditor for reasonable cause shown. The auditor, in the performance of his/her duties, shall have access to all records and accounts of the offices of the town.

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

## **Section 11. Assessment for taxes.**

11.1 Adoption of Kent County Assessment List. Anything herein to the contrary notwithstanding, the Town Council may adopt the Kent County assessment list for all property located within the corporate limits of the Town in lieu of making its own independent valuation and assessment. In such event, the assessments established by Kent County shall be conclusive for the purpose of levying Town taxes, and the Town Council shall have no authority to hear appeals regarding such assessments; provided however, that the Town Council may sit to hear and determine any appeal concerning an addition to a tax bill under §11.3 hereof. The provisions of 22 Del. C. Chapter 11 (as it may from time to time hereafter be amended, or any corresponding future provision of law) shall

govern the Town Council's adoption of the Kent County Assessment list; provided however, that the Town shall not be required to publish notice of such election 'prior to March 1 of each year' that the election remains in effect.

11.2 Assessment Procedure if Kent County Assessment Not Adopted. If the Town Council does not elect to adopt the Kent County Assessment List, the Town Assessor shall, between the months of January and March inclusive, of each year, make a just, true and impartial annual valuation or assessment of all real estate and improvements located within the Town of Felton. The Town Council may retain the services of professional appraisers or assessors to assist the Town Assessor, but the Town Assessor shall be responsible for making the final determination. All real estate shall be described with sufficient particularity to be identified. Real estate shall be assessed to the owner or owners if known. If the owner or owners of real estate cannot be found or ascertained, it may be assessed to 'Owner Unknown'. A mistake in the name of the owner or owners or an assessment to 'Owner Unknown' shall not affect the validity of the assessment or of any municipal tax based thereon; provided, however, the assessment shall specify the last record owner or owners thereof as the same shall appear from the records in the Office of the Recorder of Deeds, in and for Kent County.

11.2.1 Assessment of the Town Assessor. The real property of the Town Assessor shall be assessed by the Town Council.

11.2.3 Delivery of Assessment List. The Town Assessor, after making such annual assessment, shall deliver to the Town Manager a list containing the names of owners of all properties assessed and the amount of assessment against each. Such list shall be delivered to the Town Manager by April 1 of each year.

11.3 Additions to Tax Bills Whether utilizing the Kent County assessments or those prepared by the Town's own Assessor, the Town Manager shall annually, prior to the posting of the assessment list, compile a list of any and all charges, costs or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: Municipal Bond Sinking Fund assessments, sidewalk, curb and gutter assessments, water and sewer assessments, weed and grass cutting bills, trash collection bills, past due utility bills, charges for the Town's abatement of nuisances or the boarding up, repair, or demolition of dangerous structures, damages to Town property, and the amount of any unpaid penalty imposed by any court of competent jurisdiction for violation of any Town ordinance.

11.4 Posting of Assessment List; Notice. Promptly following its first regularly scheduled meeting in April, the Town Council shall cause a full and complete copy of the assessment list, containing the amount assessed to each taxable, to be made available for public inspection at the Town office, and there it shall remain for a period of at least ten (10) days for the information of and examination by all concerned. Appended thereto, and also in three or more public places in the Town, shall be posted notice advertising to all concerned the date and place where the assessment list has been made available, and that, upon a certain day mentioned therein (not earlier than ten (10) days after the availability of the true and correct copy of the assessment list), the Town Council will sit as a Board of Revision and Appeal to hear appeals from the said assessment and to make such corrections and revisions as it deems appropriate and lawful; provided however, that if the Town adopts the Kent County Assessment list, such notices shall state such fact, that those assessments are deemed controlling for purposes of Town taxes, and that the Town Council, sitting as the Board of Revision and Appeal, will sit to hear only appeals concerning additions to tax bills under Section 11.3. Such notice shall also be published at least once in a newspaper of general circulation in the

Town of Felton not less than ten (10) days prior to the date set for such appeals.

11.5 Appeals Day. On the fourth Monday in April, or such other day established by Council not less than ten (10) days following the posting of the assessment list, the Town Council shall sit as a Board of Revision and Appeal to hear appeals from the said assessment and to correct and revise the assessment as they deem appropriate. If the Town shall not have adopted the Kent County assessment list, then the Town Council shall have full power and authority to alter, revise, add to, and take from the said assessment; but if the Town has adopted the Kent County assessment list, the Town Council shall only have authority to revise those amounts owed to the Town which were added to the assessment list pursuant to Section 11.3. The decision of three (3) members of the Council shall be final and conclusive, unless an appeal (by appropriate writ) is taken to the Superior Court of the State of Delaware in and for Kent County within ten (10) days from the date of the Town Council's decision.

No member of the Town Council shall sit on his/her own appeal, but the same shall be heard and determined by the other members.

Unless the Town shall have adopted the Kent County Assessment List, the Town Assessor shall be present on the day fixed for hearing appeals and shall furnish to the Town Council such information and answer such questions as the Town Council may require in respect to any assessment for which an appeal has been taken. The Town Council shall have the authority to enforce the attendance of the Town Assessor by appropriate process.

11.6 Exemption from Taxation. All property which would be exempt from property tax under 9 Del. C. Chapter 81, as amended, or any future corresponding provision of law, shall be exempt from municipal property tax by the Town of Felton. Additionally, anything in this charter to the contrary notwithstanding, the Town Council shall have the power and authority to exempt, in whole or in part, such property from municipal property tax when, in the opinion of the Town Council, it will best promote the public welfare.

11.7 Upon completion of the appeal process under Section 11.5, the Town Council shall at that meeting or at the next ensuing regular meeting, adopt a resolution approving the final assessment list (including any and all charges, costs, or other assessments owed to the Town and added to the assessment list under Section 11.3) and setting the tax rate per \$100 of assessed value.

11.8 Supplemental Assessments. Beginning on the effective date of this Charter and for each quarter of each year thereafter, there shall be a true, just, and impartial valuation and assessment of all newly constructed real property within the Town, locating each parcel of real property by street and number or other description. Property shall be deemed to be newly constructed when the Town or county permits occupancy and use. The said valuation and assessment shall be made by the Town Assessor in accordance with the provisions of this charter; or the Town Council may adopt the quarterly supplemental assessment list from Kent County. The supplemental assessment shall be deemed a general assessment for all property with new construction.

The supplemental assessment as aforesaid shall be during the months of January, April, July, and October of each year beginning on the effective date of this Charter, provided that this Section 11.8 not apply to any construction for which had building permits had been issued prior to the effective date of this Charter.

The supplemental assessment list shall be delivered to the Town Manager as soon as completed or received. The Town Manager shall cause a full and complete copy, containing the amount

assessed to each taxable on such supplemental assessment list to be mailed, certified mail to each taxable on the list at their last address as shown on the Town's tax records. Such mailing shall notify each taxable if the supplemental assessment is based upon the Kent County supplemental assessment list (and that any appeal must be directed to Kent County), or if the assessment is based upon an appraisal performed by the Town Assessor (in which case an appeal may be had to the Town Council sitting as the Board of Revision and Appeals by filing a written request with the Town Hall within 14 days of the date that such notice was mailed by the Town. In the event that any such appeal is timely received, the Town Manager shall notify the taxable, by certified mail, of the date, place, and time where the Town Council will sit to hear and decide the appeal, such date to be not less than 14 days after the date that notice of the hearing date is mailed to the taxable. Such appeal, and all proceedings and actions taken pursuant to and in consequence of such appeal shall be subject to and governed by the same provisions as set out in Section 11.5 pertaining to appeals from the annual assessment, except that upon completion of the appeal process, the Town Council shall adopt a resolution approving the final supplemental assessment list.

The provisions of 9 Del. Laws, Chapter 87 and 25 Del. Laws, c. 2901 through 2905 of the revised Code of Delaware, 1974 as hereafter amended from time to time, or any future corresponding provision of law, shall be deemed and held to apply to all taxes laid and imposed upon the provisions of this charter.

## **Section 12. Taxation: Levy of Property Taxes; Savings Clause; Tax Limit; Due Date; Discount for Early Payment; Penalty for Late Payment.**

12.1 Taxation. The Town Council is authorized to levy and collect from the taxables of the town, according to the terms and provisions of this Act, such sum of money as may be deemed by the Town Council as necessary and proper for the general municipal needs of the town, including sufficient monies to pay interest and principal on any municipal bond issued by the town pursuant Sections 14.1, 14.2, and/or 14.3 of this Charter, or pursuant to any special act of the General Assembly.

12.2 Levy of Tax; Supplemental Tax Bill. The adoption of the resolution under Section 11.7 (or the adoption of the final resolution for supplemental assessments under Section 11.8) shall constitute the levy of such taxes, and the Town Manager shall proceed immediately to collect all taxes and other amounts owed to the Town as set forth on the approved assessment list (each and all of which shall, for convenience, shall hereafter be referred to as 'taxes') as hereinafter provided. Whenever a change occurs in the assessed value of any taxable property as a result of a supplemental assessment under Section 11.8, the Town Manager shall issue a supplemental tax bill based upon the revised assessment, pro-rated for the remainder of the then-current tax year. The amount shown on the supplemental tax bill shall be due by the later of July 1<sup>st</sup> of the year in which the original tax bill was sent, or sixty (60) days from the date of the supplemental tax bill. Any supplemental tax bill not paid by the due date as provided herein shall be delinquent and subject to the same penalties and collection remedies as any other tax bill.

12.3 Savings clause. Nothing contained in this Charter shall be construed to affect or impair in any way the validity of any tax, fee, assessment or other charge lawfully levied, assessed or due the Town of Felton under the existing laws in reference to said town and the same are hereby declared to be valid, binding and vested in the Town of Felton created hereby.

12.4 Limitation on taxes. The total amount of money to be raised by real property taxes and utility fixture taxes shall in no year exceed two percent of the total assessed valuation of all taxable real estate (and improvements thereon) in the town; provided however, that this limit on taxes for

general town purposes shall not limit or prohibit the town from levying and collecting such further and additional taxes or sums of money in any year as may be necessary or expedient to pay the interest on, or to retire the principal of, any bonds or certificates of indebtedness issued by the town pursuant to Sections 14.1, 14.2, and/or 14.3 as the same become due, or before they become due; or to create an adequate sinking fund reserve for the retiring of such indebtedness either before or at the time they become due.

#### 12.5 Due Date; Discount for Early Payment; Penalty for Late Payment.

12.5.1 Due Date. On or before July 1 of each year, the Town Manager shall cause the annual property tax bills to be mailed to the taxables of the Town. Such mailing shall be by regular mail, proper postage affixed, to the taxable at the address shown on the Town's tax records. However, the failure of any taxable to receive a tax bill because of incorrect postage, incorrect address, or other cause shall not excuse late payment or nonpayment. All Town property taxes shall be considered due and payable as of July 1st of each year.

12.5.2 Discount For Early Payment, Penalty For Late Payment The Town Council may provide, by resolution adopted prior to the mailing out of the tax bills, that taxables paying their annual property tax bills on or before August 1 of each year shall be entitled to a discount, the amount of such discount to be set forth in such resolution. After August 31st of each year, there shall be added a penalty in the amount of 2% per month for each month or fraction thereof such taxes shall remain unpaid, said penalty to be effective on the first day of September, and said penalty shall be collected in the same manner as the original amount of the tax. The Town Council shall have the power to make just allowances for delinquencies in the collection of taxes.

### **Section 13. Collection of Town Taxes.**

13.1 Town Manager to Serve as Town Tax Collector. The Town Manager is and shall be the Town Tax Collector.

13.2 Lien. All taxes laid or imposed by the Town of Felton 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 Felton, 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.

13.3 Notice Prior to Exercise. Before instituting any legal action for the collection of taxes, written notice of the amount due shall be sent to the taxable at his/her last known address.

13.4 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 pursuant to Section 11.3), 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.

### **Section 14. Borrowing Powers**

14.1 Short term borrowings without voter approval. The Town Council shall have the power to borrow money on the full faith and credit of the Town, without approval of the voters, such sum or sums not exceeding in the aggregate \$300,000.00 for general purposes when, in the opinion of the Town Council the needs of the Town require it; provided, however, that any new borrowing(s) under this Section 14.1 made after the effective date of this act shall, by their terms, be repayable in full within five (5) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by Resolution of the Town Council and signed Mayor and attested by the Town Manager with the Town seal affixed. No Council member shall be liable for the payment of any such note or any other evidence of indebtedness because he or she signs it as a Council member, provided that he or she is so authorized by Resolution of Town Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing(s) under this Section 14.1 shall at no time exceed \$300,000.00.

14.2 Long Term Borrowings; Voter Approval Required. In addition to other borrowing powers granted to the Town under this Charter or by special act, the Town Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Town Council shall elect, for the payment of principal thereof and interest due thereon.

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

(a) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any pre-payment or callable feature or provision contained therein;

(b) erecting, extending, enlarging, maintaining, or repairing any plant, building, machinery, or equipment for the manufacture, supply, or distribution of gas, water, electricity, sewerage, or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and right-of-ways which may be required therefore;

(c) constructing, paving, laying out, widening, extending, repairing and maintaining streets, lanes, alleys and ways, and the paving, constructing, laying-out, widening, extending, repairing, and maintaining of curbing and gutters, including storm sewers, along the same, and the condemning or purchasing of lands, easements or rights of ways which may be required therefore;

(d) constructing, laying out, widening, extending, repairing and maintaining boardwalks, bulkheads, sidewalks, crosswalks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights of way which may be required therefore;

(e) defraying the costs to the Town of any other municipal improvement provided for or implied by the provisions of this Charter authorized; or

(f) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or certificates of indebtedness, including bond discount, bond insurance and legal expenses of

bond counsel.

14.2.2 Limit of Aggregate Long-Term Indebtedness. In no event shall the indebtedness of the Town authorized by this Section 14.2.3, at any one time exceed, in the aggregate, ten percent (10%) of the assessed valuation of all taxable real property within the corporate limits of the Town of Felton.

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

(a) The Town Council by resolution shall give notice to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose or purposes. The resolution shall state the amount of money desired to be borrowed (which may be stated as a 'not to exceed' amount as to each purpose), the purpose(s) for which the amount(s) is/are desired, the manner of securing same, and such other facts relating to the borrowing which are deemed pertinent by the Town Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.

(b) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 10 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under Section 14.2.4(a) above. In addition to publication as herein provided, the Town Council shall, not less than 10 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five public places in the Town, and on the Town's website (if it has one). In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

(c) If, at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing, it shall pass a second resolution ordering a special election to be held, upon not less than 10 nor more than 60 days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the Town Council to proceed with the matter in issue; provided however, that the Town Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution to cancel the Special Election and abandon the proposed borrowing.

(d) The notice of the time and place of holding the said Special Election shall be printed in two newspapers of general circulation in the Town, not less than 10 days nor more than 60 days prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under Section 14.2.4(a). Such notice shall be information in bold print or bordered in black so as to call attention thereto. In addition to such publication as herein provided, the Town Council shall, not less than ten (10) days nor more than sixty (60) days before the date set for the election, cause public notice, containing the information set out in Section 14.2.4(a) above (using date of 'posting' for date of 'publication'), posted in at least five (5) public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the last

publication or posting shall control.

(e) At such special election, any person who is entitled to vote in the annual Town election if it were held on that day, shall be entitled to one vote. (For purposes of this Section, 'entitled to vote' shall include 'registered to vote' if voter registration is required for the annual Town election.) Any Special Election held pursuant to the provisions of this Section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

For the proposed borrowing

Against the proposed borrowing

The voter shall be instructed to mark the box for which he/she casts his/her vote.

The Mayor, by and with the advice and consent of the majority of the Town Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be open for a minimum of six (6) hours as specified by resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

(f) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall make a certificate under their hands of the number of votes cast for and against the proposed borrowing(s) and the number of void votes and shall deliver the same to the Town Council which certificate shall be retained by the Town Council with the other papers of the Town.

14.2.4 Issuance of Bonds or Certificate(s) of Indebtedness. If a majority of the votes cast at such election shall be in favor of such borrowing(s), the Town Council shall proceed with the issuance of the said bonds or certificates of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, abandon the proposed borrowing(s).

(a) Form of Bonds. The form of the bonds or certificates of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after said Special Election.

(b) Public or Private Sale. The bonds may be sold at either public or private sale. If the bonds shall be offered for public sale they shall be sold to the best and most responsible bidder(s) therefore after advertisement in a manner to be prescribed by the Town Council.

14.3 Refunding Bonds or Certificates of Indebtedness. Anything in this Section 14 to the contrary notwithstanding, the Town Council may, by resolution adopted by majority vote of the entire Council, authorize the issuance of bonds or other obligations for the purpose of refinancing any outstanding bonds or obligations of the Town without the necessity of a public hearing or a special election as would otherwise be required, provided that the principal amount of the refunding bonds or other evidence(s) of indebtedness does not exceed the outstanding principal balance of the obligation refunded, plus the cost of refunding (including all bond premiums and transaction fees),

and results in a present value savings to the Town. Present value savings shall be determined by discounting the total remaining cost of the outstanding obligation (if paid to maturity) to present day value and comparing that to the total cost of the refunding obligation (if paid to maturity) discounted to present day value. The 'total cost' shall include all loan origination fees, interest, bond counsel fees, bond insurance, prepayment premiums, satisfaction fees, or other transaction fees that would be incurred by the Town prospectively under both the outstanding obligation(s) and the refunding obligation(s).

14.4 Provision for Payment: Special Tax, Sinking Fund. The Town Council shall provide for the payment of interest on and principal of the said bonds or certificates of indebtedness at the maturity or maturities thereof. The said Town Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds and/or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of this Section; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed a sum equal to five per centum of the total bonded indebtedness. The special tax provided for in this Section 14.4 shall be collected from the owners of real estate in the same manner as the other taxes levied by the said Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund so much of the general funds of said Town as they may from time to time think advisable. The sinking fund provided for by this Section 14.4 shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

14.5 Exempt From Taxation. All bonds or other kinds or forms of certificate or certificates of indebtedness issued by the Town pursuant to any of the provisions of this Section 14, and the interest thereon, shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions.

14.6 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Town of Felton shall be deemed to be pledged for the due payment of the bonds (and the interest thereon) issued under any of the provisions of this Section 14 when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

14.7 Statute of Limitations, 60 days. No action contesting any proceedings conducted, or action taken by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section 14 shall be brought after the expiration of sixty days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Felton and one of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

- (a) That the Town Council has determined to borrow a certain sum or sums of money and to issue bonds or certificates of indebtedness therefore.
- (b) That the proposal(s) has/have been approved by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing(s).
- (c) The amount(s) of money to be borrowed.

(d) The purpose(s) for which it is to be borrowed.

(e) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his or her action within 60 days from the date of publication of such notice or forever be barred from doing so.

(f) Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (a) through (e) above (using date of 'posting' for date of 'publication') to be posted in least 5 public places in the Town and on the Town's website if it has one. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

## **Section 15. Police Officer**

15.1 Establishment of police force. The Town Council shall have the authority to establish and fund a municipal police force, and to employ such personnel as necessary to fill those positions within the police force as authorized and funded by the Town Council. All police officers with the authority to carry firearms and/or to make arrests with or without an arrest warrant shall meet such standards and hold such certifications as required by and in accordance with state law.

15.2 Supervision of Police Force. As the chief administrative officer for all departments and functions of the town, the Town Manager shall have overall administrative supervision of the police force and the Chief of Police shall be subordinate and answerable to the Town Manager with regard to all such administrative matters pertaining to the police force (including staffing, equipment, scheduling, and personnel matters). Notwithstanding the Town Manager's responsibility over the administration of the police force, the Chief of Police shall be in charge of and responsible for directing the execution of all law enforcement activities of the police force.

15.3 Power and duties. Each member of the police force shall be vested with all power and authority, within the town limits, and within 1/2 mile of said limits, of a state peace officer. They shall be conservators of the peace and shall suppress all acts of violence and enforce all laws relating to the safety and protection of persons and property. The police force shall preserve peace and order and enforce all ordinances enacted by the Town Council of the Town of Felton within the limits of the town, and shall have the authority to enforce all criminal and motor vehicle laws enacted by the State of Delaware both within the limits of the town and within 1/2 mile of the limits of the town. Members of the police force shall have the power to issue summons, to arrest pursuant to a warrant issued by any court of competent jurisdiction, and to arrest without a warrant upon view of any violation of state law or of any ordinance of the town relating to peace and good order. The police force shall execute all warrants issued by any court of competent jurisdiction directed to such officers. In the case of a pursuit of an offender, the power and authority of the police force shall extend outside the territorial limits of the town to any part of the state.

15.4 Temporary holding facilities. The town shall have full power and authority to construct, acquire, and maintain in the town suitable facilities for the temporary jailing of any person arrested and taken into custody pending further disposition.

## **Section 16. Code Enforcement.**

The Town Manager may, at its discretion, appoint, employ, or designate any qualified person, firm, or agency, for such definite or indefinite term as the Town Council deems appropriate, to act as

Code Enforcement Constable(s) for the enforcement of any Town or state zoning, building, housing, plumbing, electric, health or other code, ordinance, regulation, or statute. Such officials shall be authorized and empowered to act pursuant to 10 Del. C. Chapter 29, as amended, or in accordance with any future corresponding provision of law. No person, firm, or agency shall be appointed, employed, or designated as a Code Enforcement Constable unless properly qualified, in the opinion of the Town Manager, by trade experience, training and education, or appropriate certification, to carry out the duties assigned.

### **Section 17. Condemnation of Dangerous Buildings and Structures.**

The Town shall have the power and authority to adopt ordinances to define, and provide procedures for the condemnation, securing, demolition and removal of dangerous buildings and other structures in the Town which, upon inspection, are determined to be a fire hazard or otherwise unsafe or uninhabitable. Such ordinances shall provide procedures for prior notice and opportunity to be heard (except in cases of imminent danger, to persons or property), and for an opportunity to correct the hazardous condition by the affected property owner(s) and/or lien holder(s) prior to demolition and removal (except in cases where the Council determines, based upon the evidence presented, that it is not economically feasible to restore such building so as to meet applicable safety and building codes). Such ordinances may be adopted pursuant to or in accordance with the Delaware State Housing Code (31 Del. C. Chapter 41 as it may from time to time hereafter be amended or any future corresponding provision of law) and/or pursuant to such reasonable standards for the condemnation, securing, demolition and removal of dangerous buildings as the Town may adopt. The Town may provide for the collection of all costs incurred in the demolition and removal of any such dangerous building or structure, including reasonable attorneys fees, in accordance with 25 Del. C. Chapter. 29, as it may, from time to time hereafter, be amended, or any corresponding provision of law.

### **Section 18. Zoning; Planning Commission.**

18.1 Zoning. The Town of Felton shall have all powers granted to municipalities under 22 Del. C. Chapter. 3, as amended, or any future corresponding provision of law.

#### 18.2 Planning Commission

18.2.1 Composition; Organization. The Planning Commission shall be constituted, appointed, and organized in accordance with the provisions of 22 Del. C. Chapter 7 as the same may be amended from time to time hereafter, or any future corresponding provision of law.

18.2.2 Powers, Duties, Scope of Activities. The powers, duties, and scope of activities of the Planning Commission shall be established by ordinance, and may include, by way of example and not in limitation, any of the following: land subdivision and development approval (including major and minor subdivisions, partitionings, combinings, lot line adjustments, and site plans), creation and maintenance of a comprehensive development plan, flood plain regulations, an official map of the Town; and recommendations to the Town Council concerning amendments to the Town's Zoning Ordinance and/or zoning map.

### **Section 19. Subdivision and land development.**

19.1 Power to Regulate. In order to provide for the orderly growth and development of the Town, to promote the health, safety, prosperity, and general welfare of the present and future inhabitants of the Town, to insure the conservation of property values and natural resources, including the

protection of the Town's open lands, water resources, and recreational potential, and to afford adequate provisions for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town may regulate the subdivision and development of all land in the Town. Such regulation may, through ordinance, include;

19.1.1 Varying procedures for insuring the processing of plans for major and minor subdivisions, combining or partitioning of existing parcel of land, lot line adjustments, or site development plans, within a reasonable period of time, relative to the number of lots or parcels involved and the extent of improvements required;

19.1.2 Procedures for insuring that the arrangement of the lots or parcels of land or improvements thereon shall conform to the existing zoning at the time of recordation and that streets, or rights-of-way, bordering on or within such 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, and that adequate provision for fire protection, public utilities, water supply, sanitary sewage, and surface water drainage is made;

19.1.3 Procedures for encouraging and promoting flexibility and ingenuity in the layout and design of subdivisions and land development, and for encouraging practices which are in accordance with contemporary and evolving principles of site planning and development.

19.1.4 Requiring, through dedication of land, money in lieu of land, 'impact fees,' 'connection fees,' or otherwise, those subject to such regulation to provide, at their own expense, or contribute to the cost of, such municipal or public improvements (including enlargement, expansion, improvement, or enhancement of existing municipal or public improvements) which have a rational nexus to the proposed land subdivision or development, including, by way of example and not in limitation, the laying out and paving of streets, installation of sidewalks, curbs, storm sewers, water lines, sanitary sewer lines, electric distribution lines, street signs, access roads, playgrounds, parks, school sites, and open areas. In imposing such requirements, the Town may consider and take into account future as well as immediate needs, and potential as well as present population factors affecting the neighborhood in question.

19.1.5 Procedures for insuring that any improvements to be constructed on such lands are in compliance with all appropriate state statutes, Town ordinances, and engineering standards and that the placement and location of such improvements will not have a significant negative impact on adjoining properties.

19.1.6 Procedures for securing financial guarantees from the developers of such lands to insure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years) beyond the actual completion of such improvements by the developer and/or acceptance of such improvements by the Town.

19.1.7 Procedures to insure the effective sequencing or phasing of development in order to insure that adequate infrastructure is in place to serve such development and to insure that such development follows a rationale scheme in accordance with the Town's certified comprehensive

land use plan.

19.2 Recording Unapproved Plans. In the event an ordinance of the Town so provides, no plat, plot, or plan of land regarding a proposed major or minor subdivision, combining or partitioning of any parcels of land, lot line adjustment, or major site development 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 Council and the fact of such approval shall have been endorsed in writing on such plan. Any such plat, plot, or plan recorded without compliance with any ordinance adopted pursuant to this subparagraph shall be voidable by action of the Town Council in an action in any court of competent jurisdiction.

## **Section 20. Parks and recreation.**

The Town Council shall have the right to acquire by gift, purchase, dedication, or condemnation, areas suitable for municipal parks or recreation areas, and to develop such areas through the installation of suitable playground and recreational equipment or facilities and/or by the placement of trees, flowers, shrubs, walks, pathways, seeding or other landscaping, and/or all of which shall have been acquired by the Town by gift, purchase, dedication, or grant from any legal entity or from any local, county, state, or federal government or agency thereof.

## **Section 21. Streets, drainage ways.**

21.1 Power to Lay Out, Locate, Open, Widen, Alter, Close, Vacate or Abandon. The Town Council shall have the power and authority to lay out, locate, and open new streets and drainage ways, or to widen or alter existing streets and drainage ways, and/or to close, vacate, or abandon existing or proposed streets and drainage ways, or parts thereof, whenever the Town Council shall deem it in the best interests of the Town.

21.2 Definitions. For all purposes of this Section, the word 'street' shall be deemed to comprehend and include all public streets, avenues, highways, lanes, roadways and alleys; and the word 'drainage way' shall be deemed to comprehend and include all ditches, swales, gulleys, drains, storm sewers, and catch basins.

21.3 Public Utility Purposes. The Town Council is hereby authorized and empowered to use, or permit the use by others, of any dedicated street right-of-way, whether open to the public or not, for public utility purposes, above or below ground, including electric, water, gas, sewage, telephone, cable television, fiber optic cable, or other communications medium.

21.4 Initiation of Proceedings: Notice, Hearing. Any proceeding initiated under this Section of the Town Charter may be by resolution. Any such resolution shall contain a description of the proposed action and shall fix a time, date, and place when the Town Council shall sit to hear comments and objections concerning the proposal. At least ten (10) days before the date set for such hearing, the resolution adopted by the Town Council shall be printed in a newspaper of a general circulation in the Town and shall be posted in five (5) public places in the Town.

21.5 Notice to affected property owners. The Town Council shall also cause to be sent, certified mail, return receipt requested, to the owner(s) of record of the real estate through or over which such street or drainage way may run, a copy of such resolution. If the address of the owner be unknown, a copy shall be delivered to any persons occupying the premises, or if none, posted thereon. Notice to affected property owners under this Section shall be provided at least ten (10)

days before the date set for the hearing.

21.6 Hearing. At the time and place set in the resolution, the Town Council shall hear such residents or taxables of the Town, or owners of the property affected thereby, as shall attend the hearing. After hearing all comments, the Town Council shall, at said meeting, or at a subsequent date, as it may deem proper, adopt a resolution to proceed with, or to abandon, the proposed locating, laying out, widening, altering, closing, vacating, or abandoning of any street(s) or drainage way(s) or parts thereof contemplated in its aforementioned prior resolution.

21.7 Payment of compensation; acquisition of title.

21.7.1 Where lands taken. Whenever the Town Council determines to proceed with the opening of a new street or alley, or the widening of an existing street or alley, the town may acquire title to the lands necessary in accordance with 29 Del. C. Chapter 95 by negotiation and purchase or by condemnation in accordance with the provisions of 10 Del. C. Chapter 61, as hereafter amended or in accordance with any future corresponding provisions of law.

21.7.2 Where street or alley closed, vacated, or abandoned. Whenever the Town Council determines to proceed with the closing, vacating, or abandoning of any existing street or alley, or any part thereof, no compensation shall be paid to any property owner unless such closing, vacating, or abandoning deprives a property of all reasonable vehicular access directly between any public street or public alley and an existing garage, carport or improved off-street parking area located on such property such that the property owner effectively loses the use thereof for off-street parking and/or temporary storage of motor vehicles. Any property owner claiming such deprivation shall notify the town in writing of such claim within 15 days of the resolution adopted pursuant to Section 21.6. Upon receipt of such notice, the Town Council shall, unless the amount of compensation can be reasonably agreed upon with the property owner, schedule and hold a public hearing at which the property owner may appear and present evidence pertaining to the issue of just compensation for the loss of use of such off-street parking area, garage, or carport. Upon the conclusion thereof, the Town Council shall award just compensation based upon the evidence presented at the hearing. Such hearing shall be tape-recorded and a record made of the evidence presented. Strict rules of evidence shall not apply, but the Town Council may accept any relevant evidence of a probative nature which a reasonable person would be willing to accept and rely upon in making important decisions in their own life.

21.8 Disposal of abandoned and vacated street lands or drainage ways. Whenever the land comprehended or included in any street, alley or drainage ways or part thereof is vacated or abandoned under this Section be owned by the town, the Town Council may, in its discretion, sell such land at public or private sale and for such consideration as the Town Council shall deem proper; provided that such lands shall first be offered equally to the owners abutting on each side. The Town Council shall have the right and power to convey to the purchaser or purchasers thereof, a good and sufficient title thereto for whatever estate the town may have therein.

## **Section. 22. Constructing, Paving and Repairing of Streets.**

The Town Council shall have full power and authority to re-grade, re-surface, redress and otherwise repair and rebuild all existing streets, lanes, alleys and other public thoroughfares in the town and, to construct, build, pave, and in any manner improve all new and existing streets, lanes, alleys and other public thoroughfares now open or to be hereafter opened for public use in the town, and in so doing, may employ such contractors, engineers, inspectors, and others as the council shall deem expedient. To this end the Town Council shall have full power and authority to

enter into contracts or agreements with the Delaware Department of Transportation, or any successor agency, for the construction, or permanent or temporary maintenance, repair and up-keep, of any street, lane, alley, highway, or other public thoroughfare within the town limits.

### **Section 23. Sidewalks, Gutters and Curbs.**

The Town Council shall have the authority to adopt ordinances governing the installation, construction, improvement, repair, replacement, or removal of any sidewalk, curb, or gutter located in any public street or alley, or on private property abutting any public street or alley, or any portion thereof. Such ordinance may require the owner(s) of any private lands upon which, or abutting which, such sidewalk, curb, or gutter is located to: (a) permit the town (or its agents or contractors) to go upon their private lands to perform such work, (b) pay all or such part of the town's cost to perform such work as reasonably and equitably determined by the town, or (c) perform such work as required by the town, in accordance with standards and specifications established by the town, at their own expense. Such ordinance shall provide for the following:

23.1 Resolution. The Town Council shall adopt a resolution describing the work proposed to be done and identifying the streets or alleys, or portions thereof, in, on, along, or abutting which such sidewalks, curbs, or gutters are located. Such resolution shall identify the property address and owner of each property on, adjoining, along, or in front of which said proposed work will take place, and the amount, if any, proposed to be assessed against such property for such work. Such resolution shall establish a date, place, and time for the holding of a public hearing to receive public comment on the proposed work and assessments. At least 14 days prior to the hearing, such resolution shall be published in a newspaper of general circulation in the town, posted in five public places in the town, and mailed or delivered to the owners of all affected property owners at their address as shown on the town's tax records.

23.2 Determination to proceed. At the conclusion of such public hearing, or at a subsequent regular or special meeting, the Town Council shall decide whether or not to proceed with all or any portion of the improvements referred to in said resolution, and if it shall determine to proceed, the Town Council shall determine whether the whole or some specified portion of the costs thereof shall be assessed to the owners of those properties upon which, adjoining, along, or in front of which said proposed work will take place. The amount to be paid by the owner of each parcel for their property affected shall be determined according to the lineal footage of their parcel(s) upon, adjoining, along or in front of which the improvement or improvements are made.

23.3 Property owner's option to perform work at property owner's expense. The Town Council may, but shall not be required to, provide the affected property owners the option to have the work done at their own expense, utilizing their own contractor or the town's contractor in accordance with all town standards and specifications. In such event, any property owner electing to do so shall have all work completed to the satisfaction of the town within such period of time (not exceeding one year) as specified by the town in writing. In the event the property owner declines the option to have the work done at the property owner's expense, or, having elected that option, fails to do so, the town may immediately proceed to have the work properly completed by the town's staff and/or agents or contractors and assess the entire cost thereof against the property owner.

23.4 Notice; assessment and collection of costs; lien. The Town Council shall give written notice to the owner(s) of each property subject to assessment under Section 23.2 of the work to be done, the amount(s) assessed, the due date for payment, the terms of any payment arrangements offered by the town, and (if applicable) the property owner's option to have the work performed at his/her expense (specifying the terms that will govern such election). Such notice shall also inform

the property owner(s) that if the town performs the work, the cost thereof shall constitute a lien against the property that may be enforced in the same manner as a tax lien. If such owner or owners shall fail to pay the amount assessed by the date specified in the assessment notice or in accordance with any payment terms offered by the town, or (if appropriate) shall fail to have such work properly completed by the date specified in the notice and the town performs the work, such amount(s) together with interest and costs, (including reasonable attorney's fees) may be collected by the same procedures as are set forth in this Charter for the collection of taxes. The amount so assessed shall be and constitute a lien upon all the property upon which, adjoining, along, or in front of which the said work was accomplished for a period of ten years from the date of mailing of the notice of assessment. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so levied. Such lien shall have preference and priority to all other liens on such real estate as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes; provided that if the real estate remains the property of the person(s) who was/were the owner(s) at the time it was so assessed, the lien shall continue until the same is collected in full.

23.5 Notice. Whenever written notice is required to be given to any 'owner' by this Section 23, notice to one co-owner shall be notice to all. Notice may be given by mailing same, certified mail, return receipt requested, proper postage affixed, to said owner at his or her last known address as shown on the town's tax records; provided however, that the failure of any owner to actually receive such notice (being returned as, among other reasons, 'unclaimed', 'refused to accept', 'moved, no forwarding address') shall not invalidate any action taken under this Section 23. Notice may also be given by personal delivery to the property owner at the last address shown on the town's tax records by leaving a copy of such notice with an adult person residing within the premises.

23.6 Change in ownership. The word 'owner' as used in this Section shall be deemed to mean the owner(s) of record of the property at the time of the resolution adopted under Section 23.1, and any change in ownership thereafter shall not be deemed or held to affect any of the proceedings described in this Section.

23.7 Construction supervision, standards. The Town Council in exercising the authority granted by this Section may employ such contractors, engineers, inspectors and others as the Town Council may deem expedient, and may use or require the use of such materials and substances and such methods of construction as the Town Council shall deem appropriate, in accordance with sound design, engineering, and construction methods.

## **Section 24. Water Systems.**

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

24.1 Power to operate water system. The town shall have full power and authority to provide an ample supply of potable water for the town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, re-new, replace and control wells, reservoirs, pumping machines and stations, tanks, stand-pipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, treatment, conveyance and distribution of water, over, on, under or through the lands controlled by the town or belonging to any private individual(s). The Town Council shall have the power to make contracts for the purchase of water and to distribute the same to users within or without the said town with the same full powers as if such water had been initially reduced to

usefulness by the town itself.

24.2 Rules, regulations. The Town Council shall have power to enact ordinances, rules and regulations in regard to the use for public or private purposes of water furnished by the town; requiring that all properties within the town be connected to the town's water distribution system within such time and under such circumstances as deemed reasonable by the Town Council, the amounts to be paid by the users thereof; the means or methods whereby the same shall be collected, and the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the town.

24.3 Furnishing water outside town limits. The Town Council may, at its option, furnish water from the town system to places and properties outside the town limits upon such special terms, charges and conditions as it shall deem wise. The Town Council shall have the power to enter contracts for the sale of water outside the limits of the town upon such terms and conditions as the Town Council shall, in the exercise of its sound discretion deem best; and also to enter into mutual aid agreements with other water suppliers conducting operations near the limits of the town upon such terms and conditions as Town Council shall deem best.

24.4 Franchises. The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, and lanes of the town for the purpose of furnishing water to the town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, and lanes to points outside the town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.

24.5 Eminent domain. The town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the proper furnishing of an ample supply of potable water or the creation, construction, extension, maintenance of a public water system, or the distribution thereof as above provided.

## **Section 25. Sanitary Sewage Systems.**

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

25.1 Power to operate sanitary sewage system. The town shall have full power and authority to operate a system for the collection, transfer, and/or treatment of sanitary sewage for the town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, or lease, and to erect, construct, maintain, operate, extend, enlarge, re-new, replace and control sanitary sewer lines, lift stations, holding and/or treating tanks and lagoons, spray irrigation disposal facilities, and all other instruments for the collection, storage, treatment, transmission, and disposal of sanitary sewage, over, on, under or through the lands controlled by the town or belonging to any private individual(s). The Town Council shall have the power to enter into contracts with the Kent County Levy Court with regard to any or all of the foregoing.

25.2 Rules, regulations. The Town Council shall have power to enact ordinances, rules and regulations governing the collection and treatment of sanitary sewage from the residents and properties in the town, requiring that all properties within the town be connected to such system within such time and under such circumstances as deemed reasonable by the Town Council, the amounts to be paid by the users of such services; the means or methods whereby the same shall

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

25.3 Furnishing sanitary sewage collection services outside town limits. The Town Council may, at its option and subject to any contract with the Kent County Levy Court (or its successors), furnish sanitary sewage collection service to places and properties outside the town limits upon such special terms, charges and conditions, as it shall deem wise.

25.4 Franchises. The Town Council shall have power to enact ordinances granting franchises for such term or terms of years as shall seem wise to the Town Council to allow the use of the present or future streets, squares, alleys, and lanes of the town for the purpose of providing sanitary sewer service to the town and to the persons, firms or corporations residing therein, and for the purpose of transmitting the same through, over, across or under said streets, squares, alleys, and lanes to points outside the town limits, any such franchise or franchises, to contain such restrictions, conditions, and stipulations as shall, to the said Town Council, seem wise.

25.5 Eminent domain. The town may, by condemnation proceedings, take private land and property, or the right to use private land and property, for the proper furnishing of sanitary sewer services, or the creation, construction, extension, maintenance of a proper sanitary sewer system, as above provided.

## **Section 26. Actions or suits.**

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

## **Section 27. Compendium.**

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

## **Section 28. Survival of Powers and Validating.**

28.1 All powers conferred upon or vested in the Commissioners of the Town of Felton by any act or law of the State of Delaware not in conflict with the provisions of this Charter are hereby expressly conferred upon and vested in the Town of Felton and/or the Town Council of Felton precisely as if each of said powers was expressly set forth in this Charter.

28.2 All ordinances adopted by the Commissioners of the Town of Felton and in force at the time of approval, acceptance and going into effect of this Charter are continued in force until the same or any of them shall be repealed, modified or altered by the Town Council of the Town of Felton under the provisions of this charter.

28.3 All of the acts and doings of the Commissioners of the Town of Felton or of any official, or of the President of the Town Council, which shall have been lawfully done or performed under the provisions of any law of this State or of any ordinance of the Town of Felton under any provision of any prior Charter of the Town of Felton, prior to the approval, acceptance and going into effect of this Charter, are hereby ratified and confirmed, unless otherwise provided herein.

28.4 All taxes, assessments, license fees, penalties, fines, forfeitures, and other charges due to the Town of Felton shall be and remain due to the Town of Felton and all debts due from the Town of Felton shall remain unimpaired until paid by the Town of Felton.

28.5 All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town of Felton.

28.6 The bonds given by or on account of any official of the Town of Felton shall not be impaired or affected by the provisions of this Charter.

28.7 Each member of the Commissioners of the Town of Felton who holds office at the time of approval of this Act shall continue to serve until the expiration of his/her term of office.

28.8 All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter shall be and the same are hereby repealed to the extent of any such inconsistency.

(70 **Del. Laws**, c. 91, 6/23/95, 76 **Del. Laws**, c. 131, 7/12/07)

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