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Appendix:

- * Outline of Board of Assessment, Board of Adjustment, and Planning Commission Terms
- * Sample Form - One Page Overview for First Readings of Ordinances

Introduction and Overview

As a member of Town Council, you not only establish important and sometimes critical policies for the community, you are also a board member of a public corporation having a multimillion-dollar annual budget. The scope of services and issues addressed by the Council go well beyond those often reported in the news media. The Council shall have the power in the name of the Town, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its residents and property owners which are not specifically forbidden by the Constitution and the Laws of the State of Delaware.

It is important to note that the Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Mayor, Vice-Mayor and Secretary/Treasurer have some additional ceremonial and administrative responsibilities, in the establishment of policies, voting, and in other significant areas, all members are equal. Policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Council to a course of action. It is the Town Staff's responsibility to ensure the policy of the Council is upheld.

The Town of Bethany Beach has prepared its own procedures manual to assist the Council by documenting accepted practices and clarifying expectations. Through agreement of the Council and Town Staff to follow and uphold these practices and guidelines, the administration of Council activities is greatly enhanced.

Procedures are established so that expectations and practices can be clearly articulated to guide Council members in their actions, while at the same time attempting not to be overly restrictive.

This manual of procedures provides a summary of important aspects of Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of a Council. Many other laws, plans, and documents exist which bind the Council to certain courses of action and practices. Summaries of some of the most notable documents, which establish Council direction are the following:

- a. **Code of the Town of Bethany Beach:** The Town Code contains local laws and regulations by ordinances. The Charter section of the Town Code addresses the role of the Council, Mayor, Vice Mayor and Secretary/Treasurer. It also describes the organization of the Council meetings and responsibilities and appointment of certain Town Staff positions and advisory commissions.

Charter

- * The Town Charter is issued and approved by the Delaware State Legislature. Any changes require a request from the majority of Council to the State Senator and State Representative for Bethany Beach. They may then sponsor a bill. A majority of both houses must approve the bill that must be signed by the governor. The request should be made to coincide with when the legislature is in session.

Town Code

- * The Town Code may be changed by majority vote of the Council.
- b. **Delaware Government Code:** The Delaware State Code contains many requirements for the operation of the Town government and administration of meetings of the Council. Many of these requirements, such as open meeting laws (FOIA Title 29 Part X Chapter 100) are also replicated within the municipal code to ensure

there is broad awareness of such requirements. Also described within the state government code is the Town Council-Town Manager form of government, which is, practiced in Bethany Beach. This form of government prescribes that a Council's role is to establish policies and priorities, while the role of the Town Manager is to administer the affairs of the town government.

Annual Budget: The document contains a broad overview of the budget as well as specific costs of programs offered from each of the Town's departments. In addition, the annual budget provides an itemized list of town services, fees, fines and the resources used to provide services,

- c. **The Bethany Beach Comprehensive Development Plan:** Is a State mandated 10-year plan that has the force of law which addresses current and proposed development plans and policies of the Town of Bethany Beach.

- d. **The Delaware Freedom of Information Act:** "It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy: and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic." The link to the FOIA act is <http://www.delcode.state.de.us/title29/c100/index.htm> The link to additional information including the 2001 and 2004 supplements that give interpretations of the act by the attorney general is: <http://www.state.de.us/attgen/civil/foia.htm>

Orientation of New Council Members:

It is important that members of the Council gain an understanding of the full range of services and programs provided by the Town of Bethany Beach. The Town Manager may arrange an orientation with the Chief of Police, the Alderman Court and Department Managers at the request of the Town Council.

Overview of Key Roles and Responsibilities:

Appointed Official

Town Manager

The Town Manager is a full-time professional administrator who is responsible for the executive and administrative functions of the municipal government.

- Appointed by and serves at the pleasure of the Town Council
- Manages the day-to-day business of the local government
- Serves as the professional CEO of the municipal organization.
- Carries out the executive and administrative functions of the local government
- Possesses professional, executive and administrative qualifications (Charter Section 7.1)
- Collects and levies taxes as authorized by Town Council (Charter Section 10.1)
- Institutes suit and initiates other legal actions for the recovery of unpaid tax and debt to the Town (Charter Section 11.2)
- Implements Town Council policy through staffing and budgetary control
- Establishes with Town Council oversight, administrative procedures and policies
- Executes ordinances and laws enacted by the Town Council
- Provides administrative direction and control of appointed staff
- Prepares, administers and manages the budget and other financial plans of the municipality

- Determines "how"- the manner, the way or best means-to accomplish Town Council policy and legislation
- Hires employees, evaluates their performance, and determines compensation

Town Council - Town Manager Form of Government

The Town of Bethany Beach has a Town Council -Town Manager form of government. Policymaking is entirely vested with the Town Council while the administration and the day-to-day management of the Town's Staff is the sole responsibility of the Town Manager as outlined in the Town's Charter and in various Town Ordinances. The administrative function of the Town Council is strictly limited to the selection as well as the dismissal of the Town Manager. All departments of Town Government report directly to the Town Manager, with the Town Manager reporting directly to the Town Council.

REQUESTS FOR INFORMATION

- Dialog between Town Staff and members of the Town Council whenever it is practical should always be open and forthcoming and is encouraged, but it is not the proper venue for making specific requests for information from individual members of the Town Staff by members of the Town Council.
- Information needed to answer a constituent concern or complaint, background information or additional information on an issue of Council interest, information on a Council Agenda item, and other information needed by Council members in the performance of their duties and responsibilities, should be directed to the Town Manager's Office for response.
- Exceptions to this guideline occur during budget preparation. During Budget preparation the Fiscal Director maintains an open door to answer questions regarding items presented in the Budget. Questions regarding spending decisions, or broader questions regarding policy decisions guiding the Budget should be directed to the Town Manager, who's statutory responsibility is to prepare and present the Budget to the Town Council.
- **DIRECTION OF STAFF**
With the exception of the Town Manager, Town Council members do not have the authority to direct and/or issue a command to any Town Employee. Town Council requests that involve employee action shall be made to the Town Manager's office for possible assignment.

- Town employees will respond to any Council member's request where exigent circumstances dictate some immediate response or action is needed.
- COMMITTEES
Department Heads that work with Town Committees will perform tasks and assignments as directed by Committee Chairs that support the goals and mission of the Committee as established by the Town Council or by the State of Delaware in the case of the Planning and Zoning Commission and the Board of Adjustment.

Elected Officials

As the governing body of the Town of Bethany Beach, Town Council provides the legislative function of the municipality. All members of Town Council, including those serving as Mayor, Vice Mayor and Secretary-Treasurer, have equal votes. No Council Member has more power than any other Council Member and all should be treated with equal respect.

Town Council

- The Town Council will determine the format for any formal meeting/reporting process (if any) between the Council and the Town Manager by a majority vote of the Council.
- Serves as the legislative body/policy makers.
- Enacts laws, provides policymaking authority and demonstrates political leadership.
- Defines public purpose through Town Council action and budget approval.
- Borrows money for "proper municipal purposes" (Charter Section 12)
- Appropriates money for the improvement, benefit, protection and best interests of the Town (Charter Section 13)
- Authorizes an annual audit (Charter Section 14)
- Appoints Town Manager, Alderman, Assistant Alderman and other positions as prescribed by ordinance (Charter Section 15)

- Regulates subdivision and land development regulations as prescribed by ordinance. (Charter Section 17)
- Authorizes the construction, improvement and maintenance of the Town's infrastructure. (Charter Sections 18-21)
- Enacts and compiles ordinances, regulations, resolutions and orders/rules of the Town.
- Fully participates in Town Council meetings and initiates other public forums such as workshops/special meetings while demonstrating respect, professionalism, consideration and courtesy to others.
- Prepares in advance of Town Council meetings and are familiar with all agenda items.
- Represents the Town at ceremonial functions.
- Inspires public confidence in municipal government.
- Demonstrates honesty and integrity in every action and statement
- Participates in scheduled activities and reviews Town Council procedures to increase team effectiveness.
- Determines the Town's goals, objectives, agendas in its relationships with federal, state and local governments and civic groups. Provides guidance on the ways or approaches to achieve these goals.
- Reviews, modifies as needed, and approves this procedure and protocol manual at the November Town Council meeting.
- Manager recommends and Council approves termination of full-time employees.
- Provides overall oversight to the Town Manager, including major goal assignment and evaluation of performance.

Mayor

In addition to assuming all roles and responsibilities as a Town Council member, the Mayor:

- Presides at all meetings of the Town Council. (Charter Section 6.2.1)
- Serves as the head of the Town Government for ceremonial or military law purposes. (Charter Section 6.2.1)

- Performs duties as prescribed by ordinance or resolution adopted by Town Council. (Charter Section 6.2.1)
- Casts votes equal to that of other Town Council members on matters of Town Law or Regulation. (Charter Section 6.2.1)
- Acts on behalf of the Town, without prior Town Council approval, in "sudden emergencies". (Charter Section 6.2.1)
- Appoints committees, committee members and committee chairpersons with Town Council confirmation. (Charter Section 6.2.1)
- Key contact person with federal, state and local governments and civic groups.
- May call a special meeting of the Town Council. (Charter Section 6.7.2)
- Approves Council member attendance at any meeting requiring overnight stay, subject to appeal to full Council. (page 50)
- Ensures that the Council, staff and members of the public adhere to the Council's adopted protocols. (page 51)
- The Mayor shall be the primary contact for the Council with the Town Manager (Ordinance 40-11)
- All expenses between \$10,000 and \$25,000 must be approved by the Mayor or the Secretary-Treasurer (Ordinance 40-12-1)

Vice Mayor

In addition to assuming all roles and responsibilities as a Town Council member, the Vice Mayor:

- Performs the duties of the Mayor if the Mayor is absent or disabled. (Charter Section 6.2.2)
- Performs other duties as assigned by the Mayor or by ordinance or resolution adopted by the Town Council. (Charter Section 6.2.2)

Secretary-Treasurer

In addition to assuming all roles and responsibilities as a Town Council member, the Secretary-Treasurer:

- Provides general supervision of the Town's records, documents, funds and resources. (Charter Section 6.2.3)
- Ensures that Town Council proceedings are recorded. (Charter Section 6.2.3)
- Ensures that an annual report is prepared by skilled professionals and made available for resident/freeholder review once accepted by the Town Council. (Charter Section 6.2.3)
- Oversees the issuance of bonds as determined and approved by the Town Council. (Charter Section 6.2.3)
- Performs other duties as directed by ordinance or resolution adopted by the Town Council. (Charter Section 6.2.3)
- All expenses between \$10,000 and \$25,000 must be approved by the Mayor or the Secretary-Treasurer. (Ordinance 40-1)
- Oversees and controls the Town's non-pension post-employment health benefit liability fund and ensures that adequate money is set aside for this purpose.

I. Council Meetings

Communication to Council Members

The Town Council is regularly informed of all meetings of the Town Council, Town Committees and other pertinent information by e-mail. Unless otherwise requested, this will be the usual means of communication. On occasion, when a Special or Emergency meeting is called, the Town Manager's office will attempt to assure that all Council members have been contacted, either by e-mail or telephone.

Town Council members have the responsibility of availing themselves of this information on a regular basis. It is also recommended that Council members

inform the Town Manager's office when they will not be in Town or when their contact information changes, even for a short period of time.

A. Regular Meetings

1. Date, Time, and Place. Consistent with Charter section 6.7, regular meetings of the Council shall be held the third Friday of each month commencing at 2:00 p.m. in the Town Council Chambers, Bethany Beach, DE 214 Garfield Parkway.

2. Other Locations. The Council may, on occasion, elect to meet at other locations within the Town and upon such election shall *give* public notice of the change in accordance with provisions of the Town Charter.

3. Location During Emergency. If, by reason of fire, flood, or any other emergency, the meetings may be held for the duration of the emergency at such other place as may be designated by the Mayor, the Vice Mayor, or the Secretary/Treasurer or other parties as outlined in the Charter (section 6.9).

4. Cancelled Meetings. When the day for any monthly meeting falls on a federal, state and county holiday, the monthly scheduled meeting shall be deemed cancelled unless otherwise provided by the Council.

5. Adjourned Meetings. The Council may adjourn its meetings from time to time, stating the date, place, and time to which such meetings shall be adjourned. (Charter section 6.7.3)

B. Special Meeting and Emergency Meetings.

Special meetings and emergency meetings of the Council may be called and held from time to time consistent with Charter section 6.7.2.

C. Workshop/Special Meetings

The Town Council also meets in a Workshop format. Workshops are less formal than Regular Council meetings and are a place where the Council may discuss and brainstorm issues of importance to the community in a face-to-face setting. As a general rule the Council does not vote on issues presented at Workshops, but may do so with proper notice of the possibility of a vote.

Briefing Materials used are different than those used at a Regular Council meeting. They may not be available if the topic is a brainstorming discussion of multiple options or broad ideas. They may be in a draft format that is changed as a result of discussion. In addition, materials may be developed within the week before the Workshop meeting.

When appropriate and available, Council members or the Town Manager may provide briefing material for agenda items they are sponsoring at a Town Council Workshop format meeting. These materials, when possible, should be included with briefing materials prepared in advance of the upcoming meeting.

These materials are distributed to Council members and are available to the public in Town Hall and on the Town website approximately one week in advance of the meeting or as soon thereafter as possible. Council members or the Town Manager may place their names alongside of Workshop agenda items if they so choose as the prime contact on an issue or the one most or most knowledgeable.

Workshops are advertised as Workshop/Special Meetings in order to allow the Council to vote on issues when special situations arise requiring a Council vote not scheduled at a regular Council meeting.

D. Notice of Meetings

1. Town Charter Requirements

(a) Regular Meetings. Section 6.7.1 of the Town Charter provides that the Town Council "shall meet regularly during the year... [at such] time and place... set by the Council each year at their organization meeting,

but Council shall not be prohibited from rescheduling such meetings from time to time... as need arises."

(b) Special Meetings. Section 6.7.2 of the Town Charter provides that notice of a special meeting (called by the Town Clerk at the written request of the Mayor or any four members of the Council stating the day, hour, place, and subjects of the special meeting) must be deposited in the U.S. mail at the Bethany Beach Post Office at least 96 hours before the time set for the meeting. However, any member of Council may waive such notice by written, electronic or recorded-telephonic message prior to or at the convening of the meeting. At such special meeting, the Council may only transact such business as identified in the written notice (or waiver) of meeting.

(c) Workshops. Workshops are publicly noticed just like regular meetings of the Town and require a minimum of seven days' notice.

2. FOIA Requirements

(a) Notice & Agenda. 29 Del. C. Chapter 100 (The Delaware "Freedom of Information Act") mandates that certain specific (but relatively simple) steps be taken to provide the public with notice of all meetings of a public body. (Note that the statute defines a "public body" in extremely broad and all-inclusive terms, so that not only is the Town Council included, but also any board, commission, committee, sub-committee, temporary, or even ad hoc committee appointed by the Council or the Mayor is subject to "FOIA"). Although the notice requirements are relatively simple to comply with, many a public body has had some action taken by it invalidated because of some inadvertent omission or failure to comply with those requirements.

(i) Regular Meeting. 29 Del. C. 10004(e)(2) provides that: "All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting".

Section 10004 (e)(4)-(5) provide: "Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, and making a reasonable number of such notices available..... When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting, *and the reasons for the delay in posting shall be briefly set forth on the agenda.*" In practice, public bodies are under an obligation to update their agenda on a continuing basis.

(ii) Special Meeting. 29 Del. C. Section 10004(e)(3) provides: "All public bodies shall give public notice of the type set forth in paragraph 10004 (e)(2).....of any special or rescheduled meeting as soon as reasonably possible, but in any event no later than 24 hours before such special meeting or rescheduled meeting shall be defined as one to be held less than 7 days after the scheduling decision is made. *The public notice of a special meeting or rescheduled meeting shall include an explanation as to why the notice required by paragraph 10004(e)(2) (i.e., 7 days' notice) of this subsection could not be given.*

E. Open Meeting Requirements Under FOIA

1. Every Meeting Required to Be Open to The Public Unless Specifically Exempted by Statute. 29 Del. C. Section 10004(a) of

FOIA provides that: *"Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.* Subsection (b) sets out the 9 specific grounds that upon which a public body may call an "executive session" closed to the public. Subsection (c) sets out the procedures which a public body must comply with in order to call an executive session (see (3)(c) below). Subsection (d) allows the removal of any person from a public meeting who is "willfully and seriously disruptive" of the meeting. Subsection (g) allows a public body to meet in an "emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to a meeting ... outside of its jurisdiction which is necessary for the immediate preservation of the public financial welfare." Unless a meeting of a public body falls into one of these specific statutory exceptions, the meeting *must* be open to the public.

2. What is a "meeting"? FOIA defines a "meeting" as: "the formal *or informal* gathering of a *quorum* of the members of any public body for the purpose of *discussing or taking action* on public business." Many public bodies have been found to have violated the open meeting requirement for one of two related reasons related to the definition of a "quorum" which are sometimes not readily apparent to the public body: (1) the first is where a committee or sub-committee meets. Oftentimes, public bodies such as the Town Council (or the committees appointed by the Council or the sub-committees appointed by the committee) forget that the statutory definition of a "public body" includes not only the Town Council, but every committee, sub-committee, temporary, ad-hoc, or informal committee which ultimately traces its existence back to the

Town Council. (2) the second is where the public body either inadvertently or deliberately attempts to circumvent the "quorum" requirement by having members of that public body meet in groups consisting of less than a quorum to discuss public business. Depending on the specific circumstances of such meeting(s), the Courts and Attorney General's Office have not been hesitant to determine that such meetings resulted in a "constructive quorum" or that such "sub-quorum" meeting of the public body was itself an "ad hoc" committee, and in either event, such gathering(s) was in violation of FOIA because it was not properly noticed and/or was not open to the public.

This is not to say that members of Council cannot speak individually with other members of Council about public business on their own initiative (as opposed to some official or "unofficial" direction or request to do so); but all members of Council should be sensitive to the fact that such discussions, depending upon the specific facts of the discussion (e.g. timing, sequence, number involved) might be determined to be a violation of FOIA resulting in the invalidation of some later action taken by Council as a result of those discussions.

Members of Council also need to recognize that a "meeting" does not require the physical presence of those participating. A telephone conference call, the circulation of a letter or memorandum or e-mails seeking to obtain a consensus (as opposed to the unilateral, "one-way" distribution of information to other members of Council) may easily, under the particular circumstances, be deemed a "constructive gathering of a quorum" in violation of FOIA.

3. Executive Sessions

Grounds for holding an executive session under 29 Del. C. Section 10004 (b):

(1) Discussion of an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open. This provision shall not apply to the discussion by a licensing board or commission which is subject to the provisions of § 8735 of this title, of an individual citizen's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing; (Does not apply to Bethany Beach Town Council Meetings.)

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open.

(a) Grounds to Hold. As noted, Section 10004(b) of FOIA sets out nine specific grounds for holding an executive session, closed to the public. One of those ("Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents") indicates another 17 potential grounds, depending upon whether or not the contents of certain specified documents will be discussed. There is an entire body of Delaware law (consisting of court decisions and Attorney General Opinions) construing these nine exceptions to the open meeting requirement and the 17 exceptions to the definition of "public record". However, the important thing for all members of Council to recognize is that if the topic to be discussed is not clearly within one of the nine listed exceptions set out at Section 10004(b), at the very least, the Council should seek a legal opinion from the Town Solicitor as to whether the topic is a proper matter for an executive session under the case law of Delaware. FOIA places the burden of justifying the holding of a closed meeting on the public body, and since, under Section 10001, FOIA is to be "liberally construed" in favor of allowing public access, the Town must be able to overcome a presumption that the meeting should not have been closed to the public.

(b) Notice Requirements. As noted above, Section 10004 (e)(2) requires that, in order to hold an executive session (unless the need to hold an executive session legitimately arises at the time of the meeting),

the posted agenda must contain notice of the public body's "intent to hold an executive session closed to the public." Additionally, Section 10004(c) provides that "The purpose of such executive session shall be set forth in the agenda and shall be limited to the purposes listed in subsection (b)". Consequently, a condition precedent to the ability of the Council to hold an executive session is that the timely-posted agenda for the meeting have included not only the intent to hold an executive session but the express purpose(s) of the executive session which must be expressed as one or more of the nine permissible reasons to hold an executive session.

(c) Procedure to Go into Executive Session. Section 10004(c) of FOIA provides that: "A public body may hold an executive session closed to the public upon affirmative *vote* of a majority of members present at a meeting of the public body. *The vote on the question of holding an executive session shall take place at a meeting of the public body which shall be open to the public, and the results of the vote shall be made public and shall be recorded in the minutes. The purpose of such executive session shall be set forth in the agenda and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must take place at a public meeting and the results of the vote made public.* Thus: (1) a public body must *convene* in open session before it can go into an executive session; (2) a member of the Council must make a motion to go into executive session, which motion must state the reason(s) for such executive session, and that motion must be seconded and passed by at least four members of the Town Council; (3) an executive session is only for the members of the public body calling the executive session, and those individuals (e.g. Town Manager, Town Solicitor, Town Clerk, outside consultant) whose presence is deemed necessary to the discussions being held in the

executive session (4) Only *discussion* may take place during the executive session - there may be no voting, straw polls, or other consensus gathering activities in the executive session; (5) when all members of the Council have had an opportunity to speak during the executive session, the Mayor declares the executive session closed and the Council returns to open session; (6) if, based upon (or in spite of) the discussion that took place in executive session, any member of Council desires to make a motion to take some action, that motion must be handled as any other motion (although, in order to maintain confidentiality of the executive session topic, such motions may be couched in "coded" or vague language, as "I *move* to terminate the services of the employee whose conduct was discussed in executive session" or "I *move* that the Town Solicitor make the offer that was discussed in executive session"; (7) the Council cannot adjourn its meeting while in executive session - the Council must return to open session at which time a motion to adjourn may be made.

Due to the confidential nature of matters discussed in executive sessions, those in attendance should not disclose the substance of those discussions under any circumstances except as required by law or court order. Any such disclosure could seriously impact upon the Council's ability to implement a desired course of action or result in serious financial liability for the Town. Additionally, "leaks" from executive sessions seriously undermine the confidence of the Council members in each other with the result that the effectiveness of future executive sessions can be seriously jeopardized. Should a breach of the confidentiality accorded to matters discussed in executive session result in liability against the Town, it is possible that the person leaking that confidential information might have liability to the Town for breach of their fiduciary duties to the Town.

F. Nature of Meetings. The Town Council consists of seven citizens elected by the residents and property owners of the Town to represent the voters in making all decisions for the business and good government of the Town within the scope of authority delegated to the Town by the Delaware General Assembly through the Town Charter and applicable general statutes. Thus, the meetings of the Town Council are (except when the Council is acting in a quasi-judicial or administrative capacity) legislative in nature, and, although: (1) open to public observation and (2) open to such public participation (and in accordance with such limitations as the Town Council determines), Town Council meetings are just that: meetings of the Town Council, not "Town Meetings," and not "public hearings" where citizens and property owners of the Town have a right to speak. Nevertheless, the Town Council has adopted the position or policy that members of the public shall be permitted to speak as set out in later sections of this document.

G. Conduct of Meeting

1. Quorum. Four members of the 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. (Charter section 6.8.3)

2. Presiding Officer. The Mayor shall have the authority to preserve order at all Council meetings, to remove any person from any meeting of the Council for disorderly conduct, to enforce the rules of Council, and to determine the order of business under the rules of the Council. Traditionally, the Mayor consults and coordinates with the Town

Manager for the development of the agenda for Council meetings. The Mayor shall also have the power to administer oaths and affirmations. The Mayor does not possess any power of veto. Pursuant to Section 6.2.1 of the Charter, the Mayor, or in the Mayor's absence, the Vice-Mayor, shall preside over all meetings of the Town Council. If both the Mayor and Vice-Mayor are not present, the Secretary/Treasurer shall preside, and in the absence thereof, each of the four remaining members of Council, in order of their total number of years served on Council, shall act as "Mayor pro tern." While so acting, that person shall assume and have all of the powers of the Mayor.

The Town Council has delegated to the Mayor (or other Council member presiding over the meeting) the responsibility of facilitating the orderly and efficient progress of Council meetings by:

(a) Preventing the misuse of motions, the abuse of any privilege, or the obstruction of Council business by ruling any such matter out of order (subject to appeal to the full Council);

(b) Keeping discussion focused on agenda items, controlling the order of speakers, encouraging speakers to keep their comments reasonably short, and encouraging the termination of debate when the Mayor is satisfied that all members of Council desiring to be heard on an issue have been heard and that further discussion will add nothing new to the debate; provided that nothing herein is intended to authorize the Mayor to limit debate or cut short discussion. The duration of any debate, or of any speaker's comments, may only be terminated by two-thirds vote of the entire Council present.

3. Council Participation.

- **Civility.** All members of Council (including the Mayor) shall be courteous and respectful of all other members of the Council at all times. Civility is expected from all members of Council at all times. In speaking of or addressing members of the public, the Town Staff, or other members of Council, all members of Council will generally refer to such persons as "Mr.", "Mrs.", or "Ms." (or, if appropriate, as "Councilman" or "Councilwoman") followed by their surname.

- **Active Participation Encouraged.** All members of Council are strongly encouraged to participate in the discussion during the Council's deliberative process. Participation by each individual member will assure that all important aspects of a topic are raised and considered by the Council and will provide members of the public with the basis and rationale of the Council's legislative decisions. However, no member of Council is required to speak on any topic.

- **Staying "On-Topic"; Voluntary Restraints on Council members.** All members of Council shall limit their comments to the subject matter, agenda item, or motion under consideration at the time, and shall endeavor to keep their comments focused and of reasonably short duration (but, subject to a motion to terminate discussion, members of Council shall govern themselves as to the length of their comments or duration). All members of Council shall refrain from seeking the floor again on any particular subject until all other members of Council desiring to be heard have had the opportunity to speak.

4. Attendance by Public. At all regular and special meetings, public comment shall be permitted before or during consideration of any agenda item. Public comment is appropriate on any matter within jurisdiction of the Council.

5. Order of Business.

- **Generally.** The order of business to be followed for each Council meeting shall ordinarily be as set forth in the agenda for the meeting. However, the Mayor may, at any time during the meeting, revise the order of business on their own volition or at the request of any member of Council if deemed desirable or expedient; provided that the Council may, by majority *vote*, over-ride such decision to revise the order of business.
- **Typical Order of Business.** The following agenda is typical of the general order of business for most meetings of the Town Council:

Call to Order - At the time set for the meeting, or within a few minutes thereafter, the Mayor will call the meeting to order. All members of the public shall become quiet and, to the extent seats are available, be seated.

Roll Call - Determination of Quorum - The Mayor shall state for the record that all members of Council are present with the exception of those members absent whose names shall be stated. If at least four members of Council are physically present at the meeting, a quorum exists. The Mayor shall also identify those of the following who are present: Town Manager, Town Administrative Assistant or Town Clerk, Police Chief (or his designee), Town Building Inspector, Town Solicitor, and other department heads or outside consultants retained by the Town. If a quorum is not present, there can be no meeting.

Pledge of Allegiance - To be led by the Mayor.

Approval of Agenda - The Mayor asks for a motion to approve the agenda. At this time, any member of Council may *move* to remove or table to a later meeting any item on the agenda. Any member may *move* to add to the agenda any important and time-sensitive matter which came to his/her attention less than six hours prior to the meeting and which he/she could not, in good faith,

have anticipated more than six hours before the meeting. Any member of Council making such a motion shall state publicly the reasons why the item could not have been included on the agendas publicly posted prior to the meeting, including that agenda as posted at least six hours before the time of the meeting. Motions to add new items to the agenda at the time of the meeting are disfavored and should be made only in rare and exceptional situations, including, by way of illustration, an important and time-sensitive matter that cannot be dealt with at a subsequent (regular or special) meeting of the Town Council without significant prejudice to the Town or to some other person or entity; or a thoroughly non-controversial matter of a ministerial nature such as issuing a proclamation (e.g. National Cancer Awareness Week") or recognition (e.g. "Certificate of Appreciation to Officer O'Riley"). Additionally, pursuant to 29 Del. C. Section 10004 (e)(1), an item of business necessary for the immediate preservation of the public peace, health or safety may be added to the agenda at any time. After all motions to remove or add items to the agenda have been resolved, the Mayor shall ask for a motion to accept the agenda.

Approval of Minutes of Regular and Special Meetings, Workshops, and Executive Sessions -- Minutes of such meetings should ordinarily have been distributed to all members of Council with their "briefing package" at least the day of the meeting (if not several days before). Members of Council shall be prepared, at the meeting, to request corrections to the minutes. The Mayor shall then ask for a motion to accept the minutes as corrected. Corrections shall be recorded in the minutes of the current meeting as corrections to the minutes of the meeting under consideration, and the Town's recording secretary shall, following the meeting, prepare revised minutes of the earlier meeting to include the corrections approved.

Public Hearings -- Typically, public hearings will be scheduled before the time set for a regular or special meeting of the Town Council. Voting on the public hearing's subject is normally taken at least two weeks after the hearing.

Approval of Financial Report - The Mayor shall request the Secretary-Treasurer to provide a brief summary report of the Town's finances since the last regular meeting. Upon conclusion of the report, the Secretary/Treasurer shall make a motion to accept the report, subject to audit.

Announcements/Recognition of Visitors and Public Comment -

** The Mayor shall make any important announcements of interest to the public (e.g. the deadline to file to run for Town Office) and ask if any other member of Council has any such announcement. Council announcements will be limited to notifications of community events, functions, and other activities. Concerns or matters or current, pending or future Council deliberation are not considered announcements. The Council will have two opportunities to provide Council Communications at each meeting. The first Council Communications will be immediately following Appointments and will be limited to three minutes per Council member. The second opportunity to provide Council Communications at each meeting will be following New Business, prior to Adjournment of the meeting.

** The Mayor shall recognize any visiting dignitaries or officials and offer them an opportunity to address the Council.

** The Mayor, or such other person as approved by the Mayor, shall make such special presentations as approved by the Mayor (or by majority vote of the Town Council). Special presentations shall be coordinated with the Mayor, placed on the agenda as a specific sub-topic of "Announcements, Recognitions of Visitors, Appointments and Public Comment", and shall be limited to 15 minutes in duration unless a longer time is approved by majority vote of the full Council.

** The Mayor shall make such appointments (to appointive municipal offices, boards, commissions, or committees) as he is authorized to do by the Town Charter or general statute. If and as required by the Charter or general statute, such appointments shall be subject to confirmation by the Town Council. Immediately following such appointment, the Mayor may ask those appointed to stand and be recognized.

** The Mayor shall invite members of the public to address the Council concerning any topic not listed on the agenda. Public comments on any topic not on the agenda will be heard at this time, and comments on agenda items will be heard at the point those items are reached and discussed by the Council. No member of the public may speak until recognized by the Mayor. Upon gaining the floor, each person shall identify himself/herself by name and address. No person shall be permitted to speak in excess of three minutes without approval of the Mayor or a majority vote of the full Council. No member of the public shall be allowed to speak again until all other members of the public desiring to speak have been recognized. No person shall be permitted to have the floor more than twice without the approval of the Mayor or a majority vote of the entire Council; *provided however*, that the Mayor may waive the limitation on the number of times a person may have the floor where such person seeks the floor to respond to a question posed by some other member of the public, but such responses shall be kept brief and focused on the question asked. Members of the public shall address their remarks to issues of public interest in the community, shall conduct themselves civilly, and shall not make personal attacks on any citizen or any Town employee or official. Notwithstanding these guidelines, the Mayor (or the Council by majority vote of the full Council) may terminate further public comment on any particular topic where it appears that the comments are repetitive, abusive, or otherwise making no contribution to the purpose of the meeting.

**** Reports of Planning Commission, Standing and Special Committees -**

The Mayor shall ask for reports from the various Town committees and Planning and Zoning Commission. (Where appropriate, reports of Special Committees may be deferred until the agenda item they are *involved* with). These reports may be oral or in writing and distributed to the Council, but if so, the person giving the report shall provide a very brief summary and respond to any questions or comments from the members of Council.

An issue requiring a *vote* of the Council such as appointment of committee members or a request for guidance from Council that requires a *vote*, will normally be placed on the published agenda under the agenda items for that committee. The committee chair will propose those agenda items.

Committee Reports

Committee Chairpersons are responsible for giving reports at the monthly Town Council meetings. In the event, that the Chairperson is not available, he/she will assign someone else from the Council or the Committee to give the report.

****Old Business** - Under "Old Business" shall be listed all open matters which had carried *over* from previous Town Council meetings and which a Council Member chooses to pursue. (There shall be no requirement that *every* unresolved matter which had appeared on a prior Town Council agenda be carried forward from meeting to meeting. Any items which do not appear on a Town Council agenda for three consecutive months shall be deemed resolved or abandoned and shall, if brought forward again, be placed under "New Business".

The Mayor at the conclusion of Council discussion on a topic that appears on a Town Council agenda as either Old or New Business and prior to a Council *vote* on the agenda item, may ask for comments from the public.

****New Business** -- Under "New Business" shall be listed all new matters which the Mayor, any member of the Town Council, or the Town Manager seeks to have discussed or voted upon at the meeting. The briefing package distributed to members of Council in advance of the meeting shall contain all pertinent background information concerning such new business.

When appropriate and available, Council members are encouraged to provide briefing material for agenda items they are sponsoring at a regular or special Town Council meeting. These materials, when possible, should be included with briefing materials prepared in advance of the upcoming meeting.

These materials are distributed to Council members and are available to the public in Town Hall and on the Town website approximately one week in advance of the meeting.

A one-page overview sheet is recommended for the 1st reading of a new ordinance, or any major change to an existing ordinance. A sample overview sheet is included in the Appendix.

The sponsoring Council member will give a short summary of the topic. The Mayor will ask for public input on that topic. Once the public input or comment is done on that new business item, the Council requests no interruptions during the dialog and discussion among Council members prior to the Council voting on the item. The next item will be summarized, public comment will then be welcomed, and the cycle repeats until all new business agenda items are completed. The public therefore has places to comment in the New Business portion of the agenda and the elected representatives have uninterrupted time for discussion on each item.

**** Town Council Announcements** - The Mayor shall announce (or announce again) any important announcements of interest to the public (e.g., the deadline

to file to run for Town Office, date of important Sussex County Council meeting) and ask if any other member of Council has any such announcement.

**** Adjournment** - Upon the completion of all business listed on the agenda, or at any time by majority vote of the full Council, the Mayor shall declare the meeting adjourned. The Council hereby establishes 4:00 p.m. as the hour of adjournment and will not continue beyond 4:00 p.m. without a majority vote of the Council. To assist in making the determination to continue an item under consideration, the Council should find that discussion, deliberation and action on the item could be concluded by 5:30 p.m. The Council will not hear any new agenda items past 5:00 p.m. without a majority vote of the Council. A determination should be made by Council that any new item(s) can be discussed, deliberated and action taken before 5:30 p.m. If agenda items remain after 5:00 p.m. adjournment, (1) the Council may recess its meeting to a specified date and time where it will resume where it left off; (2) a special meeting may be scheduled and advertised; (3) the items deferred until the next regularly scheduled Council meeting. Deferred items will appear first under Old Business.

6. Rules of Conduct.

- **Council Not Bound by Rules of Parliamentary Procedure.** It is the policy of the Bethany Beach Town Council not to become involved in entanglements over "parliamentary procedures". The guiding principle for the conduct of Council meetings is that all members shall have a full and fair opportunity to be heard on any matter properly before Council, with due consideration to the rights of other members of Council to be heard and the right of the Council as a whole to conclude its business within a reasonable period of time. Any issue of procedure relating to the conduct of the meeting (not otherwise provided for herein or by any applicable provision of the Town Charter, general statute, or Town ordinance) shall be decided by the Mayor, subject to appeal to the full

Council. Notwithstanding the foregoing, the Mayor may consider "Robert's Rules of Parliamentary Procedure" as a comparative resource in making his decision.

- **Addressing the Meeting.**

(i) Obtaining the Floor. Any member of Council wishing to speak must first obtain the floor by being recognized by the Mayor. The Mayor shall recognize any member of Council who seeks the floor when that member is entitled to have the floor.

(ii) Interruptions. Once recognized, a Council member should not be interrupted while speaking by any other member of Council except where another member of Council raises a "point of order". If any member of Council raises a point of order, the Council member having the floor shall cease speaking until the point of order has been decided.

(iii) Addressing Other Members of Council. Verbal exchanges directly between members of Council should be generally avoided and comments should be directed to the Council as a whole. However, with the Mayor's approval, any member of Council having the floor may address a question to another member of the Council and that member of Council may respond while the privilege of the floor remains in the Council member asking the question. However, no member of Council shall be obliged to answer a question put to him or her while another member of Council has the floor.

(iv) Voting. All Council members present at a meeting when a question comes up for a vote are encouraged to vote for or against the measure unless they abstain because of a disqualification. Voting shall be by voice vote unless a roll call vote is requested by any member of Council.

The Mayor shall announce the result of the vote. Pursuant to 29 Del.C. Section 10004(1), the minutes shall include a record, by individual members, of each vote taken and action agreed upon.

(v) Abstention. Unless a member of Council recuses himself/herself from participating in a meeting, all members physically present shall be counted towards the establishment of a quorum. Members of Council shall vote "aye" or "nay", or shall indicate that he/she is abstaining from voting on any matter presented for a vote. Members who abstain from voting are encouraged to publicly state their reason for not voting.

(vi) Tie Votes. Because Section 6.8.4 of the charter requires a majority vote of the entire Council to adopt a motion, any tie vote (e.g., 2 to 2, 3 to 3) necessarily results in the motion's failure.

(vii) Motions for Reconsideration

- (a) Motions for reconsideration of a matter may be made at the same meeting or at the next succeeding meeting following a Council action.
- (b) A proposed motion for reconsideration at the next succeeding meeting must comply with FOIA noticing requirements.
- (c) Motions for reconsideration may only be made by a Council person that voted in the minority of the Town Council on the action proposed to be reconsidered.
- (d) Any member of the Council may second a motion for reconsideration.

(viii) Non-Observance of Rule. Rules adopted to expedite and facilitate the transaction of the business of the Council in an orderly fashion shall be deemed to be procedural rules only, and the failure to strictly observe any such rules shall not affect the jurisdiction of, or invalidate any action taken by the Council.

(c) Motions.

(i) Generally. Any member of the Council, including the presiding officer, may make a motion; provided that, before the presiding officer makes a motion, he/she shall first offer the opportunity to make a motion to the other members of Council. Any member of the Council, other than the maker of the motion, may second the motion. Although, under most rules of parliamentary procedure, some motions do not require a second, all motions (other than points of order) shall require a second.

(ii) Procedures for a Motion.

(a) No member of the Council may make a motion unless they have the floor.

(b) Upon a motion being made, the Mayor shall ask if there is a second to the motion. Any member of the Council, other than the maker of the motion, may second the motion. A member may second a motion for purposes of debate and still *vote* against the motion. No motion may be considered or debated until it has received a second. Where a motion receives no second, the Mayor shall declare that the motion failed for lack of a second.

(c) Once a motion has been properly made and seconded, the Mayor shall open the matter for discussion, offering the maker of the motion the

first opportunity to speak on the motion. Thereafter, the Mayor shall recognize each other member of Council desiring to be heard on the motion.

(d) While any motion is on the floor, any member of the Council may move to amend such motion, and the motion to amend shall be dealt with in accordance with the same procedures governing a motion. Any motion to amend shall be voted upon prior to voting on the main motion. A main motion may be subject to more than one motion to amend.

(e) Once the matter has been fully discussed and the Mayor calls for a vote, no further discussion shall be in order, but upon the Mayor's calling the question, each member shall cast their vote "for" ("aye" or "yes") or "against" ("nay" or "no"), or state that they are "not voting" in such manner (by voice, hand, or roll call vote) to allow the minutes to reflect the vote of each member thereon. Notwithstanding the foregoing, any member of the Council may request the floor to explain the reasons for their vote (or for not voting), but no member of Council shall be required to explain the reasons for their vote (or for not voting).

(d) Ordinances. A proposed ordinance must be introduced and sponsored by a member of the Council. Except as provided under Chapter 45-5 of the Bethany Beach Town Code (Suspension of Rules), no ordinance shall be adopted by the Council on the same day it is introduced, and all ordinances shall have two separate readings before passage.

(i) The first reading shall consist of the introduction of the ordinance by its sponsor during a regular meeting of the Council at which a quorum is present. The ordinance shall be read by title and synopsis only unless a full reading of the body of the ordinance is requested by the majority vote

of the Town Council. At this time, the Town Council **may** engage in full discussion and debate concerning the merits of the ordinance, but no vote shall be taken thereon except under rules outlined in Chapter 45-5 of the Town Code. Public comment is also welcomed and permitted at a first reading.

(ii) A proposed ordinance is presented for a second and final reading at any regular meeting at which a quorum is present held within three months of the first reading. At such second reading, further discussion by the Council and public comment may be had and any final amendments shall be in order, if they fairly fall within the title and subject of the ordinance as first introduced. The Council shall make a final vote on the proposed ordinance, in its final form, at the meeting during which it was presented for the second and final reading.

(iii) If a proposed ordinance is not presented for a second and final reading within three months of its first reading, it shall expire and cease to have any force or effect as if it had never been introduced.

H. Minutes; Recording of Meetings

1. Minutes. A record of Town Council meetings shall be made in the form of minutes and kept in the Town files. Minutes shall include final motions with votes. The minutes will include the names of public speakers and their business or group affiliation, if appropriate. Town Council discussions and comments shall be included in the minutes. Minutes are to be a factual record of the actions of the Town Council. Town staff shall make changes to minutes based on the recorded records of Town Council meetings but shall not rewrite minutes of a Town Council meeting unless directed to do so by a majority vote of the Town Council.

2. Comments "For the Record". If a Council member desires for a comment to be included in the minutes, it is his or her responsibility to indicate that the statement is "for the record" before making comments.

3. Timing of Council Approval of Minutes. Minutes of Council meetings should be submitted to the Council within approximately three weeks for review. Minutes of Town Council meetings are normally approved at the next regularly scheduled "Town Council Meeting".

4. Audio Recording of Meetings. Digital recordings stored on compact discs (CD) and/or other digital storage devices are made of all proceedings and are maintained by the Town Manager. Meetings are also broadcast live over the internet. Such digital storage devices are permanently maintained and are available for review by any individual. These recordings serve to verify any disputed minutes taken by the Town Staff.

II. Public Hearings

- A. **Nature of Public Hearing.** Public hearings are held by the Town Council for purposes of Council consideration of public viewpoint on an issue. As such, the Council remains free to exercise wide legislative discretion in taking (or not taking) any legislative action as a result of the

comments received at a public hearing. However, where required by law, the Council's decision must have some basis in the record of the hearing (as in re-zoning decisions).

- B. Public Hearings are required for all issues related to the Town Zoning Code. However, Council may choose to conduct a public hearing on any issue that is perceived to be of major public interest.

1. Procedure.

- a. The hearing shall be recorded by an audio and/or visual recording device or a court stenographer and broadcast live on the internet. If deemed appropriate, a record of all documents and exhibits introduced during the hearing shall be maintained in the same manner as in "Appeals to Council".
- b. The Mayor shall open the public hearing and state the purpose thereof.
- c. The Mayor or Town Clerk shall indicate on the record how notice of the hearing was provided.
- d. The Mayor shall announce the "ad hoc ground rules" for conducting the hearing, including by way of example, the order in which speakers shall be heard, that speakers must be recognized by the Mayor, must identify themselves by name and address, that they must speak so as to allow their voices to be recorded, that they have certain time limits, that they may have the floor only a limited number of times, or that they may be gaveled down for repetitive or scurrilous statements.

- e. Where appropriate, the Mayor shall call upon the proper Town Official to provide necessary background or information pertaining to the subject of the hearing.
- f. Written communications and petitions concerning the subject matter of the hearing may be noted, read aloud, or summarized by the Mayor and made part of the record of hearing. Any member of Council may request that such a document be read aloud in whole or in part.
- g. The Mayor may open the floor to all persons desiring to speak. After all persons desiring to speak have been heard, the Mayor may, in his/her discretion, allow persons desiring to offer additional comments to have the floor.
- h. After being recognized by the Mayor, any member of the Council, the Town Attorney, or any member of the Town Staff may ask questions of any speaker, any member of the Town Staff, or any other member of Council pertaining to the comments of any speaker. Interaction with the speaker should be limited to asking questions for clarification rather than an ongoing dialogue. Council members should avoid asking questions of a speaker as a method of extending that speaker's allocated time.
- i. After all persons desiring to be heard have had an opportunity to speak (subject to the foregoing), the Mayor shall declare the public hearing closed.
- j. The Mayor **will** then inquire if Council has any further questions. **If** there are no questions asked of those who have presented, the Mayor will declare that the Council will be addressing and voting on

the issue at a future regular Town Council meeting, usually the following month. It is Council's policy to allow time for Council to give due consideration before discussion and voting on these matters. If, during its deliberations, the Council raises new issues and seeks additional public comment, the public hearing may be re-opened. The Council may also close the public hearing, but "leave the record open" by granting leave to specific persons so requesting the opportunity to submit written information on a specified matter. The Council may also elect to have its preliminary oral discussion and vote formalized in a written decision, and in such case, the oral discussion and decision of the Council subsequent to the public hearing shall be deemed to be "preliminary" in nature and the Council's decision shall not be deemed final until reduced to writing and approved by a majority of the entire Town Council.

- k. Any hearing may, by majority vote of the entire Council, be recessed or continued to a later time and date. Unless the time and date for the continued hearing shall be publicly decided and announced at the public hearing, public notice thereof shall be given in accordance with the same requirements as governed the initial notice of the public hearing.

B. APPEALS TO THE TOWN COUNCIL

1. Nature of Proceeding. An appeal to the Town Council is an administrative or quasi-judicial proceeding established by certain provisions of the Town Charter or Town Code. Such a proceeding typically involves a particular person, entity, or property and a previous decision made or recommended by a member of the Town Staff or a committee or commission appointed by the Town Council. Although such appeal hearings are open to the public and the public is usually permitted to offer comments or opinions at some

point in the hearing, the focus of the proceeding is upon the specific person, entity, or property which is the subject of the hearing and those having a unique interest in the outcome who desire to participate as formal parties (as opposed as to those who merely wish to offer a comment or opinion). Because of the potentially adversary nature of the hearing and the administrative or quasi-judicial role the council plays in making a decision, greater concern must be had for "due process" in such a proceeding.

2. Procedure.

- a. The hearing shall be recorded by an audio recording device. A "record" shall be maintained identifying all documents or other exhibits presented to the Council during the hearing by any participant. Each such document or exhibit shall be marked appropriately (e.g., "Hearing Exhibit No. 1, Hearing Exhibit No. 2"). Unless otherwise directed, all such documents or exhibits shall remain in the custody of the Town Manager as part of the record until final decision has been rendered (including the expiration of time-limits governing an appeal to or review by a court of competent jurisdiction).

- b. The Mayor shall open the public hearing and state the purpose thereof.

- c. The Mayor or Town Clerk shall indicate on the record how notice of the hearing was provided. Copies of the public notice, together with proofs of posting, publication, and/or mailing, shall be introduced into the record by the Mayor, Town Clerk, or appropriate Town Staff Member.

- d. The Mayor shall announce the "ground rules" that will govern the conduct of the hearing, including:
- (1) The order in which parties or speakers will be heard;
 - (2) Whether witnesses offering testimony or evidence shall be sworn. If any witness is to be sworn, all witnesses shall be sworn;
 - (3) That witnesses and speakers must be recognized by the Mayor, must identify themselves by name and address, and must speak so as to allow their *voices* to be recorded;
 - (4) That parties, witnesses, or questioners have certain reasonable time limits (if any);
 - (5) That parties or witnesses may be ruled out of order for repetitive, irrelevant, or scurrilous comments;
 - (6) That strict adherence to technical rules of evidence shall not be required, but that the Council may accept any relevant evidence which responsible persons would accept as trustworthy and reliable in making important decisions in their own personal lives. The Mayor may rule inadmissible any evidence or testimony he deems irrelevant or unworthy of any reasonable reliance, and shall make such rulings in the event of an objection by any formal participant to the proceeding. Any decision by the Mayor may be appealed to the Council for a final ruling.
- e. Where appropriate, the Mayor shall call upon the proper Town Official to provide necessary background or information pertaining to the subject of the hearing. Such testimony, at this point in the proceeding, shall be "neutral" background information such as the nature of the application, the location of the property, the ordinances

involved, and a summary of the administrative decision being appealed from, if any.

- f. Written communication and petitions concerning the subject matter of the hearing and received before or at the time of the hearing shall be noted, read aloud, or summarized by the Mayor and made part of the record of the hearing. Any member of Council may request that such a document be read aloud in whole or in part.

- g. The Mayor shall then allow the party which has the burden of going forward with the evidence to proceed with that party's presentation. (If an appeal to the Council is "de novo", the applicant below shall present first; if the hearing is based on a record made before an administrative official of the Town, the party appealing that decision must present first).

After each witness testifies, that witness shall be subject to questioning ("cross-examination") by any member of the Council, by the Council's attorney, and by any adverse party or his attorney. All questioners shall be first recognized by the Mayor.

The Mayor may permit a witness to present additional testimony or evidence relevant to matters brought up during "cross-examination" ("re-direct testimony") which may be followed by additional questioning ("re-cross").

After the party with the burden of going forward with the evidence has concluded the presentation of his case, the Mayor

shall allow any formal adverse party (including the Town Staff if appropriate) to present their testimony and evidence in opposition. These witnesses shall be subject to the same procedure for "cross-examination", "re-direct", and "re-cross" as witnesses testifying for the initial party.

After all formal adverse parties have been heard, the Mayor may, in his reasonable discretion, allow the initial party to offer "rebuttal" testimony or evidence subject to the same procedures for direct and cross-examination, and may (in unusual circumstances) then allow brief "surrebuttal" testimony or evidence from the formal opposing party(s).

At the conclusion of all testimony and evidence by all formal parties to the proceedings, the Mayor shall allow interested members of the public to speak briefly to offer their comments or opinions. Such speakers need not be sworn and shall not be subject to questioning or cross-examination, except by the members of the Council or the Council's attorney.

At the conclusion of the public comment portion of the hearing, the Mayor shall allow each formal party to offer a brief summation. The party with the burden of going forward with the evidence shall speak first, followed by each formal party in opposition. The Mayor may allow the first party to speak in summation a brief opportunity for rebuttal. The Mayor may, prior to allowing summations, establish a reasonable time limit for each party, and the first party to speak must, if he desires to offer a rebuttal, reserve such time from the total time per rebuttal he is allotted.

- h. After all summations have been concluded, the Mayor shall declare the public hearing closed, subject to the Council's right (e.g. majority vote) to "keep the record open" to allow formal parties to submit written information in the record on a specified matter or matters. (Such procedure should be used sparingly and only in unusual circumstances where the information could not have been reasonably anticipated or provided during the hearing).
- i. The Council may request that the formal parties submit post hearing briefs, to be submitted within a specified time limit. The Mayor shall then inquire of the Council if it desires to discuss the matter at that time or to postpone discussion until a later date. The Council may discuss the matter preliminarily and table further discussion until a later date or it may discuss and decide the matter at that time. If, during its deliberations, the Council raises new issues and seeks additional testimony or evidence, the public hearing may be re-opened, but again, such a procedure should be used sparingly and only in unusual circumstances. The Council may elect to have its preliminary oral discussion and vote formalized in a written decision, and in such case, the discussion and decision of the Council subsequent to the public hearing shall be deemed to be "preliminary" in nature and the Council's decision shall not be deemed final until reduced to writing and approved by a majority of the entire Town Council.
- j. Any hearing may, by majority vote of the entire Council, be recessed or continued to a later time and date. Unless the time and date for the continued hearing shall be publicly decided and announced at the public hearing, public notice thereof shall be given in accordance with the same requirements as governed the initial notice of the public hearing.

VI. Addressing the Town Council During Meetings

1. **Staff Presentations-** Staff presentations on any specific topic should be limited to ten minutes. The Council may, at the request of the Staff prior to or during the presentation, may extend the recommended time limit.

2. **Agenda Item Oral Presentations-** Any member of the public wishing to address the Council orally on Town business matters appearing on the Council agenda may do so when that item is taken up by the Council, or as otherwise specified by the Council or its presiding officer.
 - a. **Time Limit-** Oral presentations may not exceed three minutes per person unless otherwise provided. The Mayor, with the concurrence of the Town Council, may alter the time allocations based on the complexity of the item and the number of persons wishing to speak on the item.

3. **Oral Presentations by Members of the Public-** Oral presentations by members of the public at Town Council meetings are as follows:
 - a. When recognized, the person should stand or come to the podium, state his/her name and address for the record, and if speaking for an organization or other group, identify the organization or group.
 - b. **All** remarks should be addressed to the Council as a whole, not to individual members.

- c. Questions, if any, should be directed to the Mayor or presiding officer who will determine whether, or in what manner, an answer will be provided.

4. Presentations Submitted in Writing- Persons who anticipate oral presentations exceeding three minutes are encouraged to submit comments in writing at the earliest possible time for distribution to the Council and other interested parties. Comments should be submitted at least one week in advance of the scheduled meeting date to insure distribution to the Council prior to the meeting.

5. Repetitious or Dilatory Comments Prohibited-

- a. A speaker shall not present the same or substantially same items or arguments to the Council repeatedly or be repetitious or dilatory in presenting their oral comments. If a matter has been presented orally before the Council, whether the Council has taken action, or determined to take no action, the same or substantially the same matter may not be presented orally by the same person any further.
- b. Whenever any group of persons wishes to address the Council on the same subject matter, those persons are encouraged to designate a spokesperson to address the Town Council. With the consent of the Town Council, the Mayor may extend the time allocation for a designated spokesperson.

6. Waiver of Rules- Any of the foregoing rules may be waived by majority vote of the members of Council present when it is deemed that there is good cause to do so based upon the particular facts and circumstances involved.

7. Non-Exclusive Rules- The rules set forth are not exclusive and do not limit the inherent power and general legal authority of the Council, or of its Mayor, to govern the conduct of Town Council meetings as may be considered appropriate from time to time or in particular circumstances for purposes of orderly and effective conduct of the affairs of the Town.

VII. Policy Decision-Making Processes

1. Standing Committees- The Planning and Zoning Commission (Delaware State Code Title 22 Chapter 7.), Board of Assessment (Delaware State Code Title 29 Chapter 82) and the Board of Adjustment (9 Del. C. 1953, § 4913; 56 Del. Laws, c. 103, § 16; 56 Del. Laws, c. 241, § 14; 66 Del. Laws, c. 321, § 1.) are the only standing committees that are mandated by State Law. The Town of Bethany Beach has the following standing committees that annually will be reappointed or deleted by the Mayor with Council approval.

Audit Committee

Budget and Finance Committee

Non-Residential Design Review Committee

Charter and Ordinance Review Committee (CORC)

Cultural and Historical Affairs Committee

4th of July Parade Committee

Bicycle and Pedestrian Safety Committee

Stormwater and Flooding Committee

Telecommunications Committee

2. General Decorum for Town Council and Citizen Advisory Boards, Commissions and Committees

Purpose: The actions of the Town Council, Ad-Hoc Committees, commissions and committees of the Town of Bethany Beach have a

significant impact on its residents. Public participation in the democratic process is strongly supported and actively encouraged.

Ensuring that meetings are conducted in a professional and courteous manner will encourage broad public participation and mutual respect among participants in local government business.

Decorum: Each member of Bethany Beach's Town Council, boards, commissions and committees has the obligation to:

- Respect and adhere to the ideals of government, rules of law, principles of public administration and high ethical conduct in the performance of public duties.
- Provide fair and equal treatment for all persons and matters coming before the public body.
- Learn and study the background and purpose of items of business before voting.
- Faithfully perform all duties of office.
- Refrain from abusive conduct, personal charges, or verbal attacks upon the character, motives, ethics or morals of other elected or appointed Town officials.
- Listen courteously, attentively and tolerantly of all views expressed at public meetings and avoid interrupting other speakers.
- Faithfully attend **all** scheduled sessions/meetings as mandated for Town Council members (Charter Section 6.4.2d).

3. Ethics Guidelines for Town Council Members and Citizen Advisory Boards, Commissions and Committees

Purpose: While the Town Charter provides information on the roles and responsibilities of Council Members, the Mayor, Vice Mayor and Secretary-Treasurer, guidance also needs to be provided on ethical issues and questions of right and wrong for public officials.

Ethics Guidelines: Each member of Bethany Beach's Town Council, boards, commissions and committees has the obligation to adhere to the following ethical standards of conduct and actions that are compatible with the public interest and will:

- Maintain the highest standards of public conduct to maintain the public trust.
- Represent and work for the common good of the Town and not for any private interest.
- Refuse to accept gifts, invitations, favors, or promises of future benefits which compromise or tend to impair independent judgment or action.
- Refrain from disclosing any information received confidentially concerning the business of the Town government: regarding the property, government, or affairs of the Town; or received during any closed session in accordance with FOIA (Freedom of Information Act).
- Decline any employment incompatible with public duty.
- Disclose or recuse from matters involving a possible conflict of interest. 29 Del. C. § 5805(2) provides the following guidance regarding conflicts of interest:

"A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to the matter when:

 - a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise."

- Avoid all conflicts of interests, such as business or financial interests, which include, among others, an interest arising from marriage, close personal relationships, business, or political associations.
- Disclose, on record, any private financial or other interests in matters affecting the Town.
- Disclose, on record, any substantial or controlling financial interest in contracts involving the sale of materials and services to the Town.
- Disclose, on record, any legislation, which may provide a financial benefit to the public official.
- Avoid political activity in exchange for paid rewards or favors in legislation, which may provide a financial benefit to the individual or his/her family.

4. Council Member Appointments and Assignments- The Mayor appoints, and the Town Council confirms Council member assignments to committees, task forces and liaison roles. If the Council does not confirm a nomination, the Mayor will nominate another person for Council confirmation.

5. Council Member Participation in Community Activities- From time to time, Council members may choose to participate in community activities, committees, events and task forces. When a Council member participates in these types of activities, the Council member

is acting as an interested party rather than acting on behalf of the Council.

Policy Decision Making Process (Creation of Town Council Agenda Items)- The Policy Decision-Making Process may be initiated by individual Council members, Boards and Committees, the Town Manager or other staff members. These individuals or groups may request the full Council to consider the review or revision of existing policies or the consideration of new policy. Members of the public may request a member of Council to initiate the **full** Council's consideration.

Agendas

If a Council member or Town Manager wishes to have an item placed on the Town Council agenda or workshop, this information should be given to the Town Manager's Office two weeks prior to a scheduled meeting. Legislation can only be brought forward by Council members. Ideally, agendas should be posted the second Friday of the month. Agendas may be amended up to seven calendar days before the meeting time and **in** case of emergency up to six hour prior to the meeting. Items may be removed from the agenda at the time of the meeting with a majority vote of the Council. This gives two weeks' notice of the topics to be presented at the meeting and gives Council members time to prepare and/or research a topic. Notice includes posting the agenda five places in Town and on the website. The agendas for all meetings are also sent out to those individuals who have signed up to receive the Town's public announcements.

Briefing Packages

When appropriate and available, Council members are encouraged to provide briefing material for agenda items they are sponsoring at a regular or special Town Council meeting. These materials, when

possible, should be included with briefing materials prepared in *advance* of the upcoming meeting. These materials are distributed to Council members and are available to the public in Town Hall and on the Town website approximately one week in *advance* of the meeting.

A one-page overview sheet is recommended for the First reading of a new ordinance, or any major change to an existing ordinance, to include:

- Purpose of the proposed ordinance or change (synopsis)
- Reason for ordinance or change being introduced
- Specific added and deleted wording for changes
- Perceived impact for Town and/or citizens

VII Council Member Administrative Support

1. **Mail-** Each member of Council has a mail slot located on the second floor of Town Hall. All general mail is opened and marked if all members of Council have received or are expected to receive the same mailing. Invitations are opened and marked advising if all members of Council have received or are expected to receive the same invitation.

- a. **Letters Addressed to the Mayor and/or Council-** All letters addressed to the Mayor and/or members of Council requiring a response from the staff are copied to all members of Council with a note as to which staff person will be preparing a response for the Mayor's signature.
- b. A copy of the response mailed, along with the original letters will be provided to each Council member.
- c. **Correspondence Addressed to Individual Members of Council-** All letters addressed to individual members of Council requiring a response from the staff are copied to all members of the Council with

a note as to which staff person will be preparing a response. Copies of the responses along with the original letters are provided to the full Council. Letters addressed to individual Council members that do not require a response from the staff, but provide information on Council matters are copied to the full Council.

2. **The Reader File-** All correspondence received by the Town, which includes letters, e-mails, complaints, citations, notices, invitations, etc. are placed in the Reader File. It is the responsibility of each member of Council to stay current with all of the items that are contained in the Reader File. There is a sign-off sheet attached to each Reader File for the convenience of members of Council. The Reader File is located in the same room as the mail slots for Council members.

3. **Council Correspondence-** All Council correspondence written with Town resources (letterhead, typing, staff support, postage, etc.) will reflect the position of the full Council, not individual members of Council's position. All Council member correspondence using Town resources will be copied to the full Council.

4. **Expense Reimbursement-**
 - a. **Local Travel Using A Private Vehicle-** Reimbursed at prevailing IRS guidelines including tolls when accompanied with receipts.

 - b. **Meetings-** All meetings requiring overnight stays, air/train travel, registration fees, etc. need to be approved by the Mayor (subject to notification and appeal by Town Council) prior to making any arrangements. Local meetings/dinners such as Sussex County Association of Towns, The Delaware League of Local Governments, etc. are paid for by the Town. See a Town Administrative Assistant

for registration and prepayment of fees. The Town pays for both the member of Council and their partners/spouse.

- c. **Continuing Education Courses-** Professional Development and Training Courses that members of Council would like to attend are paid for including travel reimbursement. See a Town Administrative Assistant for registration. Check your town mail box on a regular basis since these courses are held throughout the year. Members of Council are highly encouraged to attend courses that will benefit the Town. Council members who make an effort to keep current with developing technologies, as well as new regulations and procedures provide a valuable service to the Town of Bethany Beach.

5. Support Available to Members of Council-

- a. VIP parking permits. The VIP parking permit allows one to park for free at metered parking spots as well as all Town permit areas.
- b. Former Town Council members who have served six (6) or more years on Town Council are eligible to receive each year one VIP Parking Permit with the following conditions:
 - (1) The former Town Council member must submit in writing each year to the Town Manager a request to receive the VIP Parking permit;
 - (2) The use of the VIP Parking Permit is limited to the Town Council member and/or their spouse/partner;
 - (3) The former Town Council member must either live in Bethany Beach or own property in Bethany Beach; and
 - (4) The Town Council member must have left the Town Council as a member in good standing.
- c. Council members and their guests are invited to be part of the 4th of July parade with VIP seats for the fireworks display.

- d. Business cards are provided to each member of Council upon request.
- e. Office supplies can be ordered from the Town. See an Administrative Assistant for assistance in ordering.
- f. The Town of Bethany Beach provides for each member of the Town Council an electronic communication device (tablet, laptop, etc.) capable of receiving, sending and sharing information with the Town Manager, the Town's Administrative Assistants, Department Heads, members of Town Council as well as members of the community. It is a **requirement** that each Town Council member have the capability of using and when asked, to respond to Town provided information and requests, as well as having a working familiarity with the Town's website. Town Council members needing assistance can request training that is provided by a Town Staff member in the form of on-line step-by-step tutorials, by attending group training sessions and/or by requesting one to one individual training sessions.

When a member of Town Council for whatever reason is no longer a member of the Town Council, the Town owned tablet, laptop, etc. must be returned in good working order to the Town Manager's office within five business days. That Town Council member also has the option to purchase the device based on the fair market value of the device at the time of the request with the approval of the Town Manager.

- g. Electronic Keycards to allow access to Town Hall after regular business hours, weekends and holidays.

IX Protocol Administration

1. **Review of Council Protocols-** The Council will review and revise the Town Council Protocols as need.

2. **Adherence to Protocols-** During Council discussions, deliberations and proceedings, the mayor has been delegated the primary responsibility to ensure that the Council, staff and members of the public adhere to the Council's adopted protocols.
3. **Town Solicitor-** The Town Solicitor assists the Town Council and Town Manager as a legal resource to confer with and act as an advisor for providing legal opinion and advice regarding Town Council's protocols/ordinances and legal documents.

X. Filling a Vacancy on Town Council

From time to time it has been necessary to fill a mid-term vacancy on Town Council. Section 6.5 of the Town Charter reads: "In case of a vacancy on the Council, the remaining Council members shall elect another qualified person to serve for the remainder of that vacant seat's term."

1. A notice is posted at least 14 days in advance of a special Town Council meeting for the purpose of filling the vacancy and the duration of the term, advising that interested parties shall contact the Town Managers office at least 48 hours before the meeting.
2. Interested candidates in turn address Council at the time of the meeting.
3. Following the candidate's presentations, Council members vote by ballot
4. The votes of each Council member are read into the public record and the candidate with a majority of votes is elected.
5. In case of a tie another ballot is taken including only the candidates that were tied."

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Appendix

- * Outline of Board of Assessment, Board of Adjustment, Zoning Commission, and Planning Commission Terms
- * Sample Form - One Page Overview for First Readings of Ordinances

Amended: February 2021

Appendix

- Outline of Board of Assessment, Board of Adjustment and Planning and Zoning Commission Terms
- Sample Form - One Page Overview for First Readings of Ordinances

**Outline of Board of Assessment, Board of Adjustment,
and Planning Commission Terms**

Board of Assessment - Charter 8.1.1 Appointment, Indefinite Term.

The Mayor may with the advice and consent of a majority of the entire Council, appoint a Board of Assessment composed of three (3) members, each of whom shall be domiciled within the corporate limits of the Town, and who shall serve for an indefinite term.

Board of Adjustment - Town Code - Chapter 425-100

- (A) The Board of Adjustment of Bethany Beach shall consist of five members appointed by the Mayor and confirmed by a majority vote of the Town Council. All members shall be "residents" of the town (as construed by the Superior Court of the State of Delaware in Miller v. Board of Adjustment of the Town of Dewey Beach. 1995 LEXIS 313 (1995) to include persons who own a residence in a resort community and reside there at least part of the year), who have knowledge of the problems of urban and rural development, and who, at the time of appointment and throughout their term of office, shall not be candidates for, nor members of, the Town Council, nor employees of the town.
- (B) At least three members shall be "permanent residents" of the Town. For purposes hereof, a "permanent resident" shall mean a person: (1) who, for at least six (6) months prior to the date of his/her appointment, has physically resided within the Town, on a continuing basis, with the intention of making that residence his/her permanent legal residence, and (2) who certifies his/her intention to maintain such permanent legal residence indefinitely. Any "permanent resident" who ceases to maintain permanent legal residence in the Town but continues to own a residence and reside there for at least part of the year, shall be deemed to continue as a "permanent resident" member of the Board for the remainder of his/her term of office; otherwise, any member who, during his/her term of office fails to meet the qualifications to serve, shall be deemed to have vacated his/her office.
- (C) All appointments shall be for a period of 3 years, provided that the terms of the original members shall be established in such a manner that the term of at least 1 member shall expire each year and the successor shall be appointed for a term of 3 years. The Board so selected shall elect from among their own number a chairperson and a secretary.

(D) Any member of the Board may be removed from office by the Town Council for cause after a hearing by a majority vote of all members of Council. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

Planning and Zoning Commission - Town Code - Chapter 60

The term of appointment for members of the Planning and Zoning Commission shall be for three years, beginning at the October Planning and Zoning Commission meeting, except that the initial terms shall proceed as follows:

Members	Expiration Date (years)
2	3
2	2
1	1

A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.



I f

Town Council Information Cover Sheet for Proposals That Involve the Creation of New or Updated Versions to Existing Town Ordinances

Is this Proposed Ordinance New or an Update to an Existing Ordinance?

- For ordinance updates, include current ordinance number, the ordinance title as well as a copy of the ordinance or that portion of the ordinance that changes are being proposed.

If this a New Ordinance what is its purpose and why is it needed?

- Are there the same or related ordinances currently in the Delaware Code and/or other Delaware Municipal Codes?

If this is an Update to an Existing Ordinance what is Being Added To and/or Deleted From the Existing Ordinance?

What are the Pros and Cons of the Proposal?

What Committee, Town Staff Member or Town Council Member is the Primary Sponsor of the Proposal?

The Proposed Change(s) Impacts Who and How?

- Does the proposal have an impact on the Town Budget? If yes, how?

If Council has seen or discussed this proposal before, what is different with this proposal?

- If yes please list the date(s) and if available minutes of any previous Town Council discussions on this or similar proposals.

Are there any other important issues that need to be addressed at the same time such as timing related issues? For example, are there existing circumstances that require the need to expedite the implementation date if the proposal is approved or is there a need to make required changes to the Town Code because of regulatory changes that were made at the State or Federal level?

Adopted 8/15/08