Legislative Council,
General Assembly
State of Delaware

Title 22

Municipalities

NOTICE: The Delaware Code appearing on this site is prepared by the Delaware Code Revisors and the editorial staff of LexisNexis in cooperation with the Division of Legislative Services of the General Assembly, and is considered an official version of the State of Delaware statutory code. This version includes all acts enacted as of October 01, 2026, up to and including 85 Del. Laws, c. 550.

DISCLAIMER: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Please seek legal counsel for help on interpretation of individual statutes.

Chapter 1
GENERAL PROVISIONS

§ 101 Annexation by city or town.

Any city or town proposing to extend its boundaries, irrespective of any municipal charter provisions, whether such extension is proposed by action of the General Assembly or pursuant to the provisions of a home rule charter, except any proposed annexation that has been submitted to the Office of State Planning Coordination prior to July 13, 2001, for review, shall conform to the following provisions:

(1) All annexations must be consistent with the most recently adopted municipal comprehensive plan meeting the requirements of Chapter 7 of this title. The area or areas being considered must be depicted as area or areas for future annexation on the adopted plan. If a municipality does not have an adopted comprehensive plan, or if its adopted comprehensive plan does not depict areas for future annexation, it shall prepare and adopt a plan or plan amendment within 12 months of July 13, 2001. The municipality shall not approve any annexations until such plan or plan amendment is adopted, notwithstanding any other charter provisions; except that during the 12-month period a municipality may consider an annexation of already developed parcels where the proposed use or uses will not change from that currently authorized in the adjacent jurisdiction and where the primary purpose of the annexation is to address existing public health or safety issues such as, but not limited to, failing on-site wastewater disposal systems or contaminated or inadequate drinking water. In such cases, paragraphs (2) through (5) of this section shall not apply.

(2) Anything in this chapter or in any municipal charter notwithstanding, a municipal corporation shall have the ability to annex a parcel only if and to the extent that such parcel is contiguous with existing municipal boundaries. “Contiguous” means that a part of the boundary of the parcel sought to be annexed by a municipal corporation is conterminous with a part of the boundary of the municipal corporation. The separation of the parcel sought to be annexed from the annexing municipal corporation by (i) a right of way for a highway, road railroad, canal or utility, or (ii) a body of water or watercourse, running parallel with and between the parcel sought to be annexed and the annexing municipality shall not prevent annexation pursuant to this section; provided, however, that nothing herein shall be construed to allow rights of way, utility easements, waterways or like entities to be annexed in corridor fashion or to be utilized as a corridor route for annexation to gain contiguity.

(3) A city or town shall prepare a plan of services indicating those services it expects to provide to the newly annexed area, how such services will be provided, and the fiscal and operating capabilities of the municipality to provide such services. Should any services be provided by another jurisdiction or a public utility regulated by the Delaware Public Service Commission, the written comments of such provider on the provider’s ability to provide the necessary services for the proposed annexation shall be obtained and included in the plan of services. The study shall be conducted in accordance with standards or criteria established by the Cabinet Committee on State Planning Issues as administered by the Office of State Planning Coordination.

(4) At the time of annexation the jurisdiction shall by ordinance rezone the area being annexed to a zoning classification consistent with the adopted comprehensive plan or development strategy.

(5) A municipality proposing annexation must fully comply with the provisions of Chapter 92 of Title 29 as to state notice, and must demonstrate that it has notified all other affected jurisdictions, conducted a public hearing, and provided a comment period of at least 30 days before formal annexation. The city or town proposing annexation shall file with the State Office of Planning Coordination any written comments received concerning such proposed annexation together with any response or responses thereto.

(6) The Office of State Planning Coordination. shall establish a mechanism for resolving disputes between jurisdictions regarding annexations. The mechanism developed by the Office of State Planning Coordination shall address:

a. Determination of how the costs for the dispute resolution process are born among the parties;

b. Timeline for the dispute resolution process; and

c. Extent to which the dispute resolution process will be enforceable.

(42 Del. Laws, c. 120, § 1; 22 Del. C. 1953, § 101; 55 Del. Laws, c. 265; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 186, § 10; 73 Del. Laws, c. 213, § 1; 78 Del. Laws, c. 92, § 25.)

§ 101A Annexation by large municipalities; special elections.

(a) Any municipality in the State having a population in excess of 50,000, as enumerated in the most recent federal census, may extend the boundary limits of the municipality so as to include any portion of adjoining or adjacent territory, under the following terms and conditions:

(1) The annexation process under this section shall only be initiated by a written petition to annex adjacent or adjoining territory submitted by the municipality’s chief executive officer, or by member or members of the municipality’s legislative body, or by at least 25% of the qualified voters in the territory. The petition to annex, containing a general description of the territory, must be filed with the clerk of the municipality or equivalent municipal officer who is the keeper of official municipal legislative records and with the equivalent clerk or officer of the county in which the territory is situated.

(2) Upon the filing of a petition under paragraph (a)(1) of this section, the annexation must be approved in the following order:

a. The legislative body of the municipality must enact an ordinance approving the proposed annexation. The ordinance must provide a legal description of the territory, adopt the corresponding changes to the boundaries of the municipality and contain such

other provisions as may be required by law.

b. The chief executive officer of the municipality must approve the proposed annexation, as evidenced by the chief executive officer's actual signature approving the ordinance enacted by the municipality's legislative body pursuant to paragraph (a)(2)a. of this section.

c. The legislative body of the county in which the territory is situated must enact an ordinance approving the proposed annexation. The ordinance may incorporate by reference all or a portion of the ordinance enacted by the municipality's legislative body pursuant to paragraph (a)(2)a. of this section.

d. The chief executive officer of the county in which the territory is situated must approve the proposed annexation, as evidenced by the chief executive officer's actual signature approving the ordinance enacted by the county's legislative body pursuant to paragraph (a)(2)c. of this section.

e. A majority of the qualified voters in each parcel of the territory, voting in a special election held by the proper election official, must approve of the annexation. Such special election shall be held not less than 30 days nor later than 60 days following the date of approval of the county ordinance by the chief executive officer of the county pursuant to paragraph (a)(2)d. of this section.

f. If the proper election official certifies that the results of the special election indicate that a majority of the qualified voters in each parcel of the territory who voted in such election approved of the proposed annexation, the annexation shall become effective on the first day of the month immediately following such certification.

(b) If either legislative body shall fail to enact the respective ordinances required under paragraphs (a)(2)a. and c. of this section, or if either chief executive officer shall fail to approve such respective ordinances as required by paragraphs (a)(2)b. and d. of this section, or if the certification of the votes cast in the special election shall indicate that a majority of the qualified voters in each parcel of the territory who voted in such election was against the annexation of the territory, the proposed annexation of the territory shall be declared to have failed. Nothing in this section shall prohibit any interested party from resubmitting a petition for annexation of the territory, or any portion thereof, under the authority of and in accordance with this section.

(c) The following definitions shall apply to this section:

(1) "Adjacent" means to lie upon or touch the boundary of the municipality.

(2) "Adjoining," in addition to its general meaning, shall also mean to lie upon or touch a highway, railroad right-of-way, or watercourse which lies upon the boundary line of the municipality and separates the municipality and the territory by only the width of such highway, railroad right-of-way or watercourse. If more than 1 highway and/or railroad right-of-way and/or watercourse, or any combination of the same, separates the municipality and the territory, and such highways and/or railroad rights-of-way and/or watercourses lie upon or touch each other, then the municipality and the territory shall be deemed adjoining.

(3) "Election official" shall mean the person designated as the judge of the election under any special election law concerning annexations which applies to the particular municipality under Title 15 or otherwise.

(4) "Parcel" shall mean the property in the territory to which is assigned a separate tax parcel number on the books and records of the county board of assessment.

(5) "Qualified voter":

a. With respect to any petition filed by voters in the territory pursuant to paragraph (a)(1) of this section, the term "qualified voter" shall mean each voter qualified to vote under any special election law concerning annexations which applies to the particular municipality under Title 15 or otherwise, as of the date of filing of the petition; and

b. With respect to any such special election, the term "qualified voter" shall have the meaning set forth under any special election law concerning annexations which applies to the particular municipality under Title 15 or otherwise.

(6) "Territory" shall mean the property or properties proposed to be annexed to the municipality.

(66 Del. Laws, c. 135, § 1; 70 Del. Laws, c. 186, § 1.)

§ 102 Commissioners for unincorporated towns; election and powers.

Every unincorporated town having more than 300 inhabitants may annually on the second Saturday in July, by a majority of the voters qualified to vote, or a majority of the voters present at the annual meeting, elect 3 commissioners. For purposes of this section "qualified voters" shall mean the following: Inhabitants qualified to vote for representatives in the General Assembly, property owners and leaseholders of record who shall have attained the legal age of majority. The commissioners may regulate the streets, lanes and alleys of the town, on complaint of any citizen, examine any chimney, stovepipe, fixtures or other matter dangerous to the town, and, if adjudged dangerous, require it to be repaired or remedied to prevent or remove nuisances therein, prohibit firing of guns or pistols, the making of bonfires or setting off of fireworks or any dangerous sport or practice, and prevent or suppress any noisy and turbulent assemblages within the town after night or on the Sabbath Day. For these purposes the commissioners may make and publish ordinances imposing penalties not exceeding $100 in any case.

Any unincorporated town may provide for a voter registration which registration may not be concluded any sooner than 2 weeks prior to the actual election date.

The penalties shall be for the use of the town and may be collected as other penalties of like amount imposed by law.

Any justices of the peace residing in such town shall, with the aid of 2 citizens called by them, hold the election for commissioners and ascertain and make a record of the result.

(Code 1852, §§ 893-895; 11 Del. Laws, c. 581; Code 1915, § 3442; Code 1935, § 3901; 22 Del. C. 1953, § 102; 62 Del. Laws, c. 289, §§ 1-3.)

§ 103 Street openings.

No person shall open or excavate the bed of any street or highway of any city, town or village in this State for the purpose of laying or placing pipes, wires or other conductors therein without first obtaining the consent of the duly constituted authorities of such city, town or village. Nothing in this section shall require such consent before opening or excavating the bed of any such street or highway for the purpose of repairing any pipes, wires or other conductors theretofore lawfully laid or placed in such street or highway.

(19 Del. Laws, c. 224, § 1; Code 1915, § 3444; Code 1935, § 3903; 22 Del. C. 1953, § 103.)

§ 104 Selling farm products in Wilmington street markets.

The City Council of the City of Wilmington shall not ordain any ordinance restricting or prohibiting farmers exposing and selling fresh meats or any other products raised and produced by the farmers and offered for sale in the City, in any street which may at any time be appointed or used as a curbstone market for the sale of farm products.

(16 Del. Laws, c. 122; Code 1915, § 3445; Code 1935, § 3904; 22 Del. C. 1953, § 104.)

§ 105 Withdrawal or removal of property from city or town; special election; voting rights.

The General Assembly shall not enact any law which removes real property from within the limits of any city or incorporated town in this State until after the question of such removal shall have first been submitted to the governing body of the city or incorporated town at a special election of qualified voters and real estate owners of the city or incorporated town. The governing body of the city or incorporated town must first grant its approval by affirmative vote of a majority of the members of the body. When a special election is held, a majority of the qualified voters and real estate owners in the city or incorporated town must approve the removal from within the limits of the city or incorporated town and only then shall the real property be removed from the assessment rolls of the city or incorporated town. Any special election shall be held by the proper election officers of the city or incorporated town. The voting requirements shall be the same as those that exist for all other municipal elections in the municipality involved.

(22 Del. C. 1953, § 105; 57 Del. Laws, c. 274.)

§ 106 Debt limit of cities with population in excess of 50,000.

(a) All cities in the State having a population in excess of 50,000, as enumerated in the most recent federal census, which have the power to borrow money and issue negotiable bonds and notes to evidence such borrowing are hereby authorized to issue such bonds, and notes in anticipation of the issuance of such bonds, in an amount not in excess of 16 percent of the assessed valuation of real estate taxable by such city. In computing the aggregate principal amount of such bonds and notes of such city there shall be excluded:

(1) All bonds and notes issued by such city for the purpose of providing a supply of water for such city;

(2) All bonds and notes issued by such city for sewer purposes as a part of the sewer system of such city for which such city collects rates, rents or fees;

(3) Any bonds and notes issued by such city for school purposes but not in excess of 3 percent of the assessed valuation of the real estate taxable by such city; however, any such city may issue school bonds and notes within its debt limitation in excess of the 3 percent which is excluded from the aggregate principal amount which may be issued;

(4) All bonds and notes issued by such city for any other purpose for which an exclusion is authorized by law including but not limited to exclusions for bonds and notes issued for parking authority purposes and urban renewal purposes;

(5) Any guaranty or other obligation incurred pursuant to any law and which said law provides shall be excluded from the computation of any debt limitations of such city; and

(6) Bonds issued to fund outstanding notes not otherwise excluded, until such notes are retired.

(b) Bonds may be issued within the limits prescribed herein notwithstanding any debt or other limitation prescribed by any other law; provided, however, that such bonds, or notes issued in anticipation of the issuance of such bonds, must be approved and authorized by the governing body of such city in the same manner as all other obligations of such city are authorized.

(c) The debt limit prescribed by this section shall replace the debt limit specified by any other law, special or general.

(22 Del. C. 1953, § 106; 58 Del. Laws, c. 9.)

§ 107 Use of eminent domain powers for federal community development programs.

(a) It is found and declared that there exists in the City of Wilmington areas which, as a whole, are not slum or blighted areas, but which contain parcels that are in a deteriorated condition which is injurious and inimical to the public health, safety, morals and welfare of the residents of such areas; that the existence of such deteriorated parcels impairs or impedes the sound growth of the City of Wilmington; that such parcels require acquisition for clearance and/or rehabilitation to prevent further decline or decay of the parcel and/or its surrounding area; that federally funded community development programs exist for the purpose of eliminating such deteriorated parcels; and that said community development housing rehabilitation program is in addition to and furtherance of the Slum Clearance and Redevelopment Authority Law (Chapter 45 of Title 31).

(b) The City of Wilmington may acquire real property by the exercise of the power of eminent domain whenever (1) such appropriation may be deemed necessary, (2) such property is deemed to be unsafe in violation of the building provisions of the City of Wilmington's

building code and (3) after the appropriate official has declared that acquisition and rehabilitation is a necessary part of an overall community development program, is furtherance of a public purpose, whether or not continued public ownership is contemplated; provided that the City of Wilmington shall rehabilitate or cause to be rehabilitated any property acquired pursuant to this section within 24 months of the date of such acquisition by the City of Wilmington. The City of Wilmington may acquire real property under this section after the adoption by it of an ordinance describing the property containing the appropriate declarations. The City of Wilmington may exercise the power of eminent domain in the manner prescribed by Chapter 61 of Title 10. Property already devoted to a public use may be acquired in the like manner; provided, that no real property belonging to the county or the State may be acquired without its consent. When the City of Wilmington has found and determined by ordinance that certain real property described therein is necessary for a community development housing rehabilitation program, the ordinance shall be conclusive evidence that the acquisition of such real property is necessary for the public purpose described therein.

(62 Del. Laws, c. 145, § 1.)

§ 108 Ambulance, fire and police services.

Where an area of real property owned by a municipality is bounded by a wall, fence or other structure which has gates or other lockable entrances, the municipality shall notify those public agencies within the municipality which provide ambulance, fire and police services of the location of such gates and entrances. A key to each such enclosed area shall be provided by the municipality to the ambulance, fire company and police department which is closest to the enclosed area. For purposes of this section, the words “real property” shall include all unimproved land only and shall not include buildings.

(63 Del. Laws, c. 166, § 5.)

§ 109 Municipal parks; use for veterans’ services; waiver of fee.

No fee shall be imposed on any recognized veterans’ service organization for the use of any municipal park or portion thereof for purposes of patriotic or memorial services; provided that advance written notification of not less than 15 days is given to the municipal agency and does not conflict with other previously scheduled activities within the park.

(66 Del. Laws, c. 142, § 1.)

§ 110 Parking spaces for use by persons with disabilities.

(a) The county government of each of the 3 Delaware counties and the municipal government of each incorporated municipality within this State shall adopt regulations or ordinances regarding the duty of individuals and artificial entities to construct and maintain accessible parking spaces consistent with § 4183A of Title 21.

(b) The county government of each of the 3 Delaware counties and the municipal government of each incorporated municipality within this State shall adopt regulations or ordinances requiring that no new accessible parking space be constructed and no existing accessible parking space be installed, restriped, repainted, resurfaced, or otherwise altered until the county government or municipality issues a permit as required by § 4183A of Title 21. Upon completion, the entity issuing the permit shall confirm compliance as set forth in § 4183A(d) of Title 21.

(c) The regulations or ordinances adopted pursuant to subsections (a) and (b) of this section must include an enforcement provision, a penalty provision, and a provision which requires an enforcement officer to first issue a written warning to an individual or artificial entity who is required to obtain a permit and to construct and maintain accessible parking spaces, but has failed to do so, consistent with the obligations of § 4183A of Title 21.

(d) To comply with this section, a municipality may elect to adopt the regulations or ordinances of the county government of the county in which the municipality is located. A municipality which elects to do so may also adopt additional regulations or ordinances as required by its own particular conditions. Whether a municipality adopts its own signage regulations or ordinances, or adopts the regulations or ordinances of the county along with additional regulations or ordinances to meet particular conditions, the municipality’s adopted regulations or ordinances may not be less restrictive than those of the county.

(74 Del. Laws, c. 114, § 2; 85 Del. Laws, c. 225, § 3.)

§ 111 Limitation on firearm regulations.

(a) The municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate municipal ordinances existing before July 4, 1985, and any ordinance enacted after July 4, 1985, is hereby repealed. Notwithstanding the provisions of this section to the contrary, the City of Wilmington may, in addition to the nature and extent of regulation permitted by this section, enact any law or ordinance governing the possession or concealment of a paintball gun within its corporate limits as it deems necessary to protect the public safety.

(b) Subsection (a) of this section notwithstanding, municipal governments may adopt ordinances regulating the possession of firearms, ammunition, components of firearms, or explosives in police stations and municipal buildings which contain all of the provisions contained in this subsection. Any ordinance adopted by a municipal government regulating possession of firearms, ammunition, components of firearms, or explosives in police stations or municipal buildings shall require that all areas where possession is restricted are clearly

identified by a conspicuous sign posted at each entrance to the restricted areas. The sign may also specify that persons in violation may be denied entrance to the building or be ordered to leave the building. Any ordinance adopted by municipal governments relating to possession in police stations or municipal buildings shall also state that any person who immediately foregoes entry or immediately exits such building due to the possession of a firearm, ammunition, components of firearms, or explosives shall not be guilty of violating the ordinance. Municipal governments may establish penalties for any intentional violation of such ordinance as deemed necessary to protect public safety. An ordinance adopted by the municipal government shall not prevent the following in municipal buildings or police stations:

(1) Possession of firearms, components of firearms, and ammunition or explosives by law-enforcement officers;

(2) Law-enforcement agencies receiving shipments or delivery of firearms, components of firearms, ammunition or explosives;

(3) Law-enforcement agencies conducting firearms safety and training programs;

(4) Law-enforcement agencies from conducting firearm or ammunition public safety programs, donation, amnesty, or any other similar programs in police stations or municipal buildings;

(5) Compliance by persons subject to protection from abuse court orders;

(6) Carrying firearms and ammunition by persons who hold a valid license pursuant to either § 1441 or § 1441A of Title 11 so long as the firearm remains concealed except for inadvertent display or for self-defense or defense of others;

(7) Officers or employees of the United States duly authorized to carry a concealed firearm; or

(8) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property and are engaged in the lawful execution of such duties.

(c) For the purposes of this subsection, "municipal building" means a building where a municipal government entity meets in its official capacity or containing the offices of elected officials and of public employees actively engaged in performing governmental business but excluding any parking facility; provided, however, that if such building is not a municipally-owned or -leased building, such building shall be considered a municipal building for the purposes of this section only during the time such government entity is meeting in or occupying such a building.

(65 Del. Laws, c. 278, § 1; 74 Del. Laws, c. 280, § 1; 80 Del. Laws, c. 164, § 1.)

§ 112 Fees and costs in all proceedings to collect real estate assessment taxes and water and sewer service charges.

(a) The fees and costs to be assessed and collected in all proceedings to collect real estate assessment taxes and water and sewer service charges due and owed to the municipality, where not otherwise provided for, shall be as follows:

(b) In addition to the fees set forth in subsection (a) of this section, city council may provide by ordinance for fees and costs, including without limitation, attorneys' fees, to be assessed and collected in any proceedings to collect real estate assessment taxes and water and sewer system charges due and owed to the municipality.

(74 Del. Laws, c. 300, § 1.)

§ 113 Approval of final bid at sheriff's sale; prequalification of bidders.

(a) The municipality, by and through its director of its department of finance, or the director's designee, may approve or disapprove the final bid at a sale made by the sheriff under the monition method of sale for any public purpose or reason, including the failure of the successful bidder or its affiliates to comply with the requirements of any law or regulation with respect to any other real property owned by such successful bidder or its affiliates, the failure of such successful bidder or its affiliates to timely pay any amounts owed to the State or any county or municipality or the inability of the successful bidder to remedy any unlawful conditions at the property subject to such sheriff sale in a timely manner; provided, that the notice of the public sale includes in its terms that such sale is subject to the approval of the director of the finance department of the municipality. In the event the director of the department of finance, or the director's designee, does not approve the final bid at such sale, the said director of the department of finance, or the director's designee, may expose the property to another and as many succeeding sales as it chooses. The final bid at a sale made by the sheriff shall be presumed to be approved unless notice of disapproval of such final bid shall be received by the sheriff within 20 days from the date of such public sale.

(b) Provided that the notice of the public sale so indicates, the municipality may require that bidders at a sheriff sale, prior to any bid, certify to the municipality that such bidder, either directly or through any affiliated entities, does not own any interest in any other real property in such municipality that:

(1) Has amounts past due identified in § 2901(a) of Title 25, in excess of $1,000; or

(2) Has been vacant for at least 18 consecutive months and such property is not subject to a valid building permit or a pending land use application.

Organizations that are exempt from federal taxation pursuant to § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)] and that have been building, rehabilitating, and providing affordable housing units within the State for at least 5 years, and community development corporations, as defined in 42 U.S.C. § 9802, shall be exempt from these provisions upon certification of such status by the municipality.

(c) The municipality shall generate a certificate that the bidder shall present to the sheriff prior to the sale, and the sheriff shall require

presentation of such certificate prior to registering any bidder. The municipality may establish a fee that reflects the costs of preparing and issuing the certificate that shall be paid by bidder prior to issuance of the certificate.

(d) For purposes of this section, "affiliated entity" means either of the following:

(1) Any other entity that is under common control with the bidder.

(2) Any person or entity who directly or indirectly holds any beneficial or ownership interest in the bidder of 5% or greater.

(e) If a sale is subject to approval of the director of a municipality's department of finance or the director's designee, no assignment of a successful bid shall occur without the approval of the director of its department of finance or the director's designee. If the municipality requires certification of bidders at a sale, no assignment of a successful bid shall occur unless the assignee secures a certification from the municipality consistent with requirements of this section or qualifies as a land bank pursuant to § 4703 of Title 31.

(74 Del. Laws, c. 300, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 161, § 2.)

§ 114 Public advertising and notices.

Notwithstanding any provision to the contrary, public advertising and notices by any municipality in the State of any nature may include use of the State's "electronic procurement advertising system" required by § 6902(12) of Title 29 or other website allowing for the electronic posting of local government bid opportunities, and the website designed pursuant to §§ 10004(e)(5), 10115(b) and 10124(1) of Title 29.

(78 Del. Laws, c. 288, § 10; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 65, § 2; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 513, § 1.)

§ 115 Construction using public financial assistance.

No building or structure shall be constructed using public financial assistance in a manner that violates Chapter 42 of Title 31, and no occupancy or use permit shall be issued unless such building or structure complies with Chapter 42 of Title 31.

(78 Del. Laws, c. 368, § 4.)

§ 116 Dogs.

The municipal governments shall enact no law, ordinance, or regulation relating to dogs, or restrictions on dogs, based on a dog's breed or perceived breed.

(81 Del. Laws, c. 31, § 3.)

§ 117 Lease of public lands.

The municipal governments of this State may execute and deliver, in proper form, a lease, concession agreement, easement, or license agreement for any part of the public lands owned by them, including park land and land held in a public trust. The demise and lease of such lands, including public parks, may be upon such conditions and for such rentals as the municipal government deems advisable for the public good, provided that the demise and lease of public park lands shall be limited to recreational purposes and related activities. Whoever leases any of the lands under any restrictions or conditions of a municipal government and fails to comply with the restrictions or conditions set forth in the lease with the government forfeits the leasehold interest granted by the lease.

(81 Del. Laws, c. 361, § 2.)

§ 118 Limitation on residency and location restrictions for sex offenders.

No municipality of this State shall enact or enforce any law, ordinance, or regulation prohibiting or restricting the residency or movements of persons deemed to be a sex offender pursuant to § 4121 of Title 11 that is more restrictive than the requirements imposed by § 1112 of Title 11.

(81 Del. Laws, c. 432, § 1.)

§ 119 Residential installation of electric vehicle charging station.

(a) (1) The purpose of this section is to facilitate the ownership of electric vehicles.

(2) This section applies to a municipality with a population of 30,000 or more, as based on the most recent federal census.

(b) For purposes of this section:

(1) a. "Electric vehicle" means a motor vehicle that uses 1 or more electric motors for propulsion and which is powered through an internal battery that is charged using an external electricity source.

b. "Electric vehicle" includes both of the following:

1. A plug-in hybrid vehicle, which operates with an internal combustion engine and an electric motor that can be plugged into an external electric power source to charge the internal battery.

2. An all-electric vehicle, which operates solely from an internal electric battery.

(2) "Electric vehicle charging station" means equipment that connects an electric vehicle to an external source of electricity to recharge the electric vehicle's internal battery.

(c) Notwithstanding any other law to the contrary, a municipality shall adopt, not later than July 1, 2023, an ordinance that establishes a procedure to obtain a permit for the installation of an electric vehicle charging station on real property zoned for residential use that abuts a residential street.

(d) The ordinance adopted under subsection (c) of this section must do all of the following:

(1) Require that the electric vehicle charging station be installed by a licensed electrician.

(2) Require the written permission of the owner of the real property on which the electric vehicle charging station is requested to be installed, including the owner of a sidewalk or strip of land adjacent to a curb abutting a residential street.

(3) Establish reasonable restrictions on the type of electric vehicle charging stations that are permitted to be installed.

(4) Provide that the municipality must approve or deny a permit within 90 days of the receipt of a permit application or the permit is automatically approved.

(5) Provide that an electric vehicle charging station or privately owned electrical services may not be installed within or affect an existing or proposed Delaware right of way or easement area without the approval of the Department of Transportation.

(e) A municipality may not require an individual owner of real property to install an electric vehicle charging station for another person, including a tenant, guest, or customer, unless the requirement is adopted as part of a municipal zoning or building code that is of general applicability. This section does not create a cause of action for the failure of the owner to install an electric vehicle charging station for another person.

(f) A municipality may provide for a process for granting dedicated or reserved parking for an electric vehicle charging station permitted under the ordinance adopted under this section.

(g) (1) Subject to paragraph (g)(2) of this section, a restriction established under paragraph (d)(3) of this section is a reasonable restriction if the restriction does not do any of the following:

a. Significantly increase the purchase price of an electric vehicle charging station or the cost to install the electric vehicle charging station.

b. Significantly decrease the efficiency or specified performance of an electric vehicle charging station.

c. Effectively prohibit the installation of an electric vehicle charging station.

(2) A restriction established under paragraph (d)(3) of this section is a reasonable restriction and a municipality may enforce and adopt the restriction if the restriction addresses any of the following:

a. Health and safety.

b. Historical design review in historically designated districts.

c. Stormwater and drain management.

d. Handicap accessibility.

e. Adequate pedestrian walkway space.

f. Adequate distance from the street.

g. The delegation of electric vehicle charging station maintenance and removal responsibilities.

h. Current and planned streetscape and landscape design.

(83 Del. Laws, c. 309, § 1.)

§ 120 Deposits of revenue.

Notwithstanding any provision in the Delaware Code or a municipal charter, a municipality may deposit any revenue in any depository bank or credit union.

(85 Del. Laws, c. 257, § 2.)

Chapter 3
MUNICIPAL ZONING REGULATIONS

Subchapter I

General Provisions

§ 301 Grant of power.

For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

(39 Del. Laws, c. 22, § 2; Code 1935, § 6228; 22 Del. C. 1953, § 301.)

§ 302 Division into districts; regulations.

For any or all of the purposes provided in § 301 of this title, the legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this chapter, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in 1 district may differ from those in other districts.

(39 Del. Laws, c. 22, § 3; Code 1935, § 6229; 22 Del. C. 1953, § 302.)

§ 303 Purpose of regulations.

The regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

(39 Del. Laws, c. 22, § 4; Code 1935, § 6230; 22 Del. C. 1953, § 303.)

§ 304 Establishment and enforcement of regulations.

The legislative body of the municipality shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established and enforced and from time to time amended, supplemented or changed. However, no such regulations, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

(39 Del. Laws, c. 22, § 5; Code 1935, § 6231; 22 Del. C. 1953, § 304.)

§ 305 Changes in regulations; procedure.

The regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such changes signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent thereto extending 100 feet therefrom or of those directly opposite thereto extending 100 feet back from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the legislative body of the municipality; provided, however, that in any municipality of this State with a population in excess of 50,000 persons, the foregoing provisions regarding a protest shall not be applicable to any such change which is proposed in connection with the construction of federally assisted multi-family housing for the elderly and handicapped, in all instances of which such change shall become effective by the favorable vote of a simple majority of all the members of the legislative body of the municipality. The provisions of § 304 of this title, relative to public hearings and official notice, shall apply equally to all changes or amendments.

(39 Del. Laws, c. 22, § 6; Code 1935, § 6232; 22 Del. C. 1953, § 305; 67 Del. Laws, c. 183, § 1.)

§ 306 Zoning commission.

In order to avail itself of the powers conferred by this chapter, the mayor or the chief executive of cities or incorporated towns shall appoint a commission to be known as the zoning commission of 3 members, the appointments to be confirmed by the legislative body, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The commission shall consist of not more than 2 members from 1 party and appointments shall be made for 2, 4, and 6 years, and for 6-year terms thereafter. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

(39 Del. Laws, c. 22, § 7; Code 1935, § 6232; 22 Del. C. 1953, § 306.)

§ 307 Conflict with other laws.

Wherever the regulations made under authority of this chapter require a greater width or size of yards or courts, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this chapter shall govern. Wherever any other statute, local ordinance or regulation requires a greater width or size of yards or courts, or a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposed other higher standards than are required by the regulations made under authority of this chapter, such statute, local ordinance or regulation shall govern.

(39 Del. Laws, c. 22, § 10; Code 1935, § 6236; 22 Del. C. 1953, § 307.)

§ 308 Enforcement.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(39 Del. Laws, c. 22, § 9; Code 1935, § 6235; 22 Del. C. 1953, § 308.)

§ 309 Residential facilities for persons with disabilities.

(a) For purposes of all local zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer persons with disabilities on a 24 hour-per-day basis shall be construed to be a permitted single family residential use of such property.

(b) For the purposes of this section, the term “persons with disabilities” includes any persons with a handicap or disability as those terms are defined in the Delaware Fair Housing Act Chapter 46 of Title 6.

(62 Del. Laws, c. 390, § 4; 74 Del. Laws, c. 149, §§ 9-11.)

§ 310 Transfer of development rights; receiving zones.

For any or all the purposes provided in § 301 of this title, the legislative body of the municipality is expressly granted the authority to develop and adopt regulations governing the transfer of development rights from identified districts, zones or parcels from any unincorporated area in any county to districts, zones, or parcels designated to receive such development rights, and to enter into agreements with counties for such purposes. Whenever a municipality exercises its authority to provide for the receipt of development rights it shall:

(1) Have adopted a comprehensive plan as required by this chapter and conform thereto;

(2) Provide for the transfer of development rights as an option to the use and development of the subject property according to the otherwise applicable zoning requirements;

(3) Limit designation of receiving areas to locations where the municipality has determined that growth should be encouraged and where a transfer of development rights would not result in the inability of either existing or planned public facilities which serve the area to accommodate such growth;

(4) Demonstrate that the creation and regulation of receiving districts are otherwise consistent with promotion of the policies expressed by the comprehensive plans of the municipality and the statewide planning goals and objectives established pursuant to Chapter 91 of Title 29; and

(5) Provide for appropriate incentives for the transfer of development rights, including bonuses for the use of transferred development rights and intergovernmental agreements with counties which would permit the transfer and use of development rights between counties and municipalities.

(72 Del. Laws, c. 122, § 5.)

§ 311 Emergency Communication Systems [Effective until Feb. 1, 2027].

The zoning ordinance and regulations adopted pursuant to this chapter shall provide that newly constructed buildings of 25,000 square feet of gross floor area or more, shall be designed, constructed and/or equipped in accordance with the provisions set forth in § 2616 of Title 9.

(76 Del. Laws, c. 181, § 4.)

§ 311 Emergency Communication Systems [Effective Feb. 1, 2027].

The zoning ordinance and regulations adopted pursuant to this chapter shall provide that newly constructed, modified, or renovated buildings of 25,000 square feet of gross floor area or more, shall be designed, constructed and/or equipped in accordance with the provisions set forth in § 2616 of Title 9. The terms “newly constructed buildings,” “modified,” or “renovated” mean as defined in § 2616 of Title 9.

(76 Del. Laws, c. 181, § 4; 85 Del. Laws, c. 296, § 4.)

§ 312 Complete Community Enterprise Districts.

For any or all of the purposes provided in § 301 of this title, the legislative body of a municipality may amend its zoning regulations for parcels of land as part of a Complete Community Enterprise District established in §§ 2103 and 2104 of Title 2. However, no such regulations shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 60-days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

(80 Del. Laws, c. 224, § 5.)

§ 313 Traffic impact study requirements.

If the legislative body of a municipality enacts an ordinance, or a municipal agency adopts a regulation, that imposes a traffic impact study for a proposed change in the zoning classification for land, a new roadway access associated with site development, or for any other purpose, the ordinance or regulation must at least provide the following:

(1) That the threshold for determining if a traffic impact study is required must be based on peak hour trips, not vehicle trips per day, and the threshold must at least meet the following:

a. For a residential development, 500 peak-hour trips.

b. For a commercial development, 500 peak-hour trips, excluding pass-by trips.

(2) That the traffic impact study is not required in a "Downtown Development District" or "Downtown Development Corridor," as defined under § 1902 of this title.

(85 Del. Laws, c. 344, § 8.)

§ 314 Residential density requirements.

(a) For purposes of this section, "growth area" means an area designated within a municipal comprehensive plan as a growth area and also consistent with areas identified by the Strategies for State Policies and Spending for growth as Investment Levels 1 and 2, or any successor classifications adopted by this State.

(b) Notwithstanding § 301 of this title or any provision of this Code to the contrary, and subject to subsection (c) of this section, the legislative body of a municipality shall adopt zoning ordinances and land development regulations within a growth area that do all of the following:

(1) Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential developments.

(2) Establish bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (b)(1) of this section at densities established in paragraph (c)(2) of this section.

(3) Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027, by regulation, or in the municipality's comprehensive plan if due that same year, and thereafter at least once every 10 years in the municipality's comprehensive plan, the legislative body of a municipality shall adopt residential growth area density requirements to do all of the following:

(1) Based on the guidance under subsection (e) of this section, develop and periodically update residential density requirements applicable to growth areas throughout the municipality, beginning with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types.

(2) Require residential development meet density requirements while recognizing that varying development densities may be appropriate within different portions of a designated growth area of the municipality.

(3) Encourage compact, infrastructure-efficient, and housing-supportive development patterns within growth areas of the municipality.

(d) Each time the comprehensive plan adopted under subsection (c) of this section is approved, the legislative body of a municipality shall issue updated regulations or ordinances effectuating the residential growth area density requirements, which must be developed in consultation with the following, or a designee of the following:

(1) The Director of the State Housing Authority.

(2) The Secretary of the Department of Transportation.

(3) The Director of the Office of State Planning Coordination.

(4) The President of the Delaware League of Local Governments.

(5) The Governor.

(e) The Delaware State Housing Authority shall develop guidance for residential density requirements applicable to growth areas throughout this State starting with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types. The guidance must include all of the following:

(1) Recommendations for permitting a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.

(2) Recommendations for establishing bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (e)(1) of this section.

(3) Recommendations, developed in consultation with the Department of Transportation, for development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development.

(85 Del. Laws, c. 344, § 8.)

Subchapter II

Boards of Adjustment

§ 321 Creation and powers.

The legislative body of cities or incorporated towns shall provide for the appointment of a board to be known as the board of adjustment and in the rules and regulations adopted pursuant to the authority of this chapter shall provide that the board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 321.)

§ 322 Composition; terms of office.

(a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this title, the board of adjustment shall consist of all of the following members or their authorized agents:

(1) The chief engineer of the street and sewer department, the public works commissioner, or the city manager.

(2) The city solicitor.

(3) The mayor.

If the city or incorporated town has no city engineer or public works commissioner, or city solicitor, then the mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) In cities or incorporated towns having heretofore or hereafter adopted a home rule charter pursuant to Chapter 8 of this title, the legislative body thereof may establish a board of adjustment consisting of 5 members who shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban or suburban or rural development, and who, at the time of appointment, shall not be candidates-elect for or incumbents of an elective public office. The mayor or chief executive officer of such city or incorporated town, with consent of the legislative body thereof, shall appoint 4 members for terms of 4 years, provided that the terms of the original members shall be established in a manner that 1 shall expire each year. The mayor or chief executive officer of such city or incorporated town, with the consent of the legislative body thereof, shall appoint 1 member who shall be chairperson and who shall serve at the pleasure of that appointing official. The members shall be entitled to compensation as determined by the city or incorporated town.

(c) In the event that a city or incorporated town qualifying under subsection (b) of this section fails to establish a board of adjustment as permitted in subsection (b) of this section, the board of adjustment shall consist of those persons designated in subsection (a) of this section.

(d) (1) Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of the city or town and who shall have knowledge of the problems of urban or suburban or rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the legislative body.

(2) 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 of adjustment so selected shall elect from among their own number a chairperson and a secretary.

(3) Any member of the board of adjustment may be removed from office by the legislative body for cause after a hearing by a majority vote of all the elected members of the legislative body of such city or town. 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.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 322; 57 Del. Laws, c. 717; 58 Del. Laws, c. 276; 59 Del. Laws, c. 137, § 1; 64 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 211, § 1; 81 Del. Laws, c. 218, § 1.)

§ 323 Rules; meetings; administration of oaths; records.

The board of adjustment shall adopt rules in accordance with any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the

office of the board and shall be a public record.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 323; 70 Del. Laws, c. 186, § 1.)

§ 324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 324.)

§ 325 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that, by reason of facts stated in the certificate, a stay would in the officer's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court having jurisdiction on application on notice to the officer from whom the appeal is taken and on due cause shown.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 325; 70 Del. Laws, c. 186, § 1.)

§ 326 Notice and hearing on appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, by agent or by attorney.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 326.)

§ 327 Determinations of board.

(a) The board of adjustment may:

(1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto;

(2) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance;

(3) Authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map; provided, however, that notwithstanding any provision of law to the contrary, the legislative body of any city or incorporated town may, by ordinance, vest a designated town official or department with authority to administratively grant a dimensional variance for existing conditions that do not exceed 1 foot of the required dimension restrictions without the application being considered by the board of adjustment, subject to the standards, procedures and conditions set forth in the ordinance granting such authority.

(b) In exercising the powers provided in subsection (a) of this section the board may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 327; 65 Del. Laws, c. 61, § 1; 76 Del. Laws, c. 371, § 1.)

§ 328 Appeal to Superior Court from board's decision.

(a) Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer or any officer, department, board or bureau of the municipality may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the filing of the decision in the office of the board.

(b) Upon the presentation of the petition, the Court may allow a writ of certiorari directed to the board to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 328.)

§ 329 Priority of proceedings.

All issues in any proceeding under this subchapter shall have preference over all other civil actions and proceedings.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 329.)

§ 330 Hearing on appeal.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 330; 70 Del. Laws, c. 186, § 1.)

§ 331 Record on appeal.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. The cost of a transcript of the hearing appealed from is the responsibility of the person appealing the decision, unless the cost is awarded against the board as provided in § 332 of this title.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 331; 73 Del. Laws, c. 38, § 1.)

§ 332 Costs on appeal.

Costs shall not be allowed against the board of adjustment, unless it appears to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from. For purposes of this section, the word “costs” includes all fees paid or owed to the Prothonotary’s Office in connection with the appeal to the Superior Court and all documented out-of-pocket expenses incurred by the board of adjustment in preparing, filing and serving sufficient copies of the record of the proceedings appealed from, including but not limited to expenses for photocopying, copying and/or duplication of survey drawings or plots, audio tape recordings, video tape recordings, computer discs, and expenses for preparing the transcript of the hearing.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 332; 73 Del. Laws, c. 38, § 2.)

Chapter 5
PARKING AUTHORITIES

§ 501 Findings and declaration of policy.

It is determined and declared as a matter of legislative finding that:

(1) Residential decentralization in incorporated cities has been accompanied by an ever increasing trend in the number of persons entering the business sections by private automobile as compared with other modes of transportation;

(2) The free circulation of traffic of all kinds through the streets of cities is necessary to the health, safety and general welfare of the public whether residing in the city or traveling to, through or from the city in the course of lawful pursuits;

(3) The greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of cities;

(4) The parking of motor vehicles on the streets has contributed to this congestion to such an extent as to interfere seriously with the primary use of such streets for the movement of traffic;

(5) Such parking prevents the free circulation of traffic in, through and from the city, impedes rapid and effective fighting of fires and the disposition of police forces in the district and endangers the health, safety and welfare of the general public;

(6) Such parking threatens irreparable loss in valuations of property in the city which can no longer be readily reached by vehicular traffic;

(7) This parking crisis, which threatens the welfare of the community, can be reduced by providing sufficient off-street parking facilities properly located in the several residential, commercial and industrial areas of the city;

(8) The establishment of a parking authority will promote the public safety, convenience and welfare;

(9) The utilization of street level space for parking garages within a city's central business district reduces the available space for retail and other commercial uses, thereby interfering with the growth and development of the central business district;

(10) It is intended that the parking authority cooperate with all existing and future public and private parking facilities so that private enterprise and government may mutually provide adequate parking services for the convenience of the public;

therefore it is declared to be the policy of this State to promote the safety and welfare of the inhabitants thereof by the creation in incorporated cities of bodies corporate and politic to be known as "parking authorities" which shall exist and operate for the purposes contained in this chapter. Such purposes are declared to be public uses for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

(48 Del. Laws, c. 369, § 2; 22 Del. C. 1953, § 501; 73 Del. Laws, c. 377, § 1; 80 Del. Laws, c. 324, § 1.)

§ 502 Definitions.

As used in this chapter, unless the context requires a different meaning:

(1) "Authority" means a body politic and corporate created pursuant to this chapter.

(2) "Board" means the governing body of the authority.

(3) "Bonds" means and includes the notes, bonds and other evidence of indebtedness or obligations which the authority is authorized to issue pursuant to § 504 of this title.

(4) "Business owner" means any individual, general partner or owner of 50% or more of the voting stock of a corporation which has a business location within the city and which has a business license under the city business license ordinance or has a state business license in cities without licensing ordinance which lists the location of said business within the city.

(5) "City" means incorporated city or town.

(6) "Construction" means and includes acquisition and construction, and "to construct" means and includes to acquire and to construct, all in such manner as may be deemed desirable.

(7) "Facility" or "facilities" means lot or lots, buildings and structures above, at or below the surface of the earth, including equipment, entrances, exits, fencing and all other accessories necessary or desirable for the safety and convenience of the parking of vehicles.

(8) "Federal agency" means and includes the United States of America, the President of the United States of America and any department or corporation agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(9) "Improvement" means and includes extension, enlargement and improvement, and "to improve" means and includes to extend, to enlarge and to improve, all in such manner as may be deemed desirable.

(10) "Municipality" means any county, incorporated city or incorporated town of this State.

(11) "Persons" means and includes natural persons.

(12) "Project" means any structure, facility or undertaking which the authority is authorized to acquire, construct, improve, maintain or operate under this chapter.

(48 Del. Laws, c. 369, § 3; 22 Del. C. 1953, § 502; 68 Del. Laws, c. 273, § 1.)

§ 503 Method of incorporation.

(a) Whenever the city council or other governing body of a city desires to organize an authority, under this chapter, it shall adopt an ordinance signifying its intention to do so.

In the event that such ordinance sets forth the proposed articles of incorporation in full it shall not be required, any law to the contrary notwithstanding, in publishing such ordinance, under existing law, to publish such proposed articles of incorporation in full, but it shall be sufficient compliance with such law in such publication to set forth briefly the substances of such proposed articles of incorporation and to refer to this chapter. Thereafter the city council shall cause a notice of such ordinance to be published at least 1 time in a newspaper published and of general circulation in the county in which the authority is to be organized. The notice shall contain a brief statement of the substance of the ordinance, including the substance of such articles, making reference to this chapter and shall state that on a day certain, not less than 3 days after publication of the notice, articles of incorporation of the proposed authority will be filed with the Secretary of State of this State.

(b) On or before the day specified in the notice the city council shall file with the Secretary of State articles of incorporation together with proof of publication of the notice referred to in subsection (a) of this section. The articles of incorporation shall set forth:

(1) The name of the authority;

(2) A statement that such authority is formed under this chapter;

(3) The name of the city, together with the names and addresses of its council members;

(4) The names, addresses and term of office of the first members of the board of the authority.

All of which matter shall be determined in accordance with this chapter. The articles of incorporation shall be executed by the incorporating city by its proper officer and under its municipal seal.

(c) If the Secretary of State finds that the articles of incorporation conform to law the Secretary shall forthwith, but not prior to the day specified in the notice, endorse approval thereon, and when all proper fees and charges have been paid shall file the articles and issue a certificate of incorporation to which shall be attached a copy of the approved articles. Upon the issuance of such certificate of incorporation by the Secretary of State, the corporate existence of the authority shall begin when such certificate has been recorded in the office for the recording of deeds in the county where the principal office of the authority is to be located. The certificate of incorporation shall be conclusive evidence of the fact that such authority has been incorporated, but proceedings may be instituted by the State to dissolve any authority which shall have been formed without substantial compliance with this section.

(d) When the authority has been organized and its officers elected, the secretary shall certify to the Secretary of State the names and addresses of its officers, as well as the principal office of the authority. Any change in the location of the principal office shall likewise be certified to the Secretary of State within 10 days after such change. Any change in the numerical composition of the board shall likewise be certified to the Secretary of State within 10 days after such change.

(48 Del. Laws, c. 369, § 4; 22 Del. C. 1953, § 503; 68 Del. Laws, c. 273, § 5; 70 Del. Laws, c. 186, § 1.)

§ 504 Purpose and powers.

(a) The authority, incorporated under this chapter, shall constitute a public body corporate and politic, exercising public powers of the State as an agency thereof and shall be known as the parking authority of the city, but shall in no way be deemed to be in instrumentality of the city or engaged in the performance of a municipal function. The authority shall be for the purpose of conducting the necessary research activity, to maintain current data leading to efficient operation of off-street parking facilities, for the fulfillment of public needs in relation to parking, establishing a permanent coordinated system of parking facilities, and, either independently or in conjunction with private persons and entities, planning, designing, locating, acquiring, holding, constructing, improving, maintaining and operating, owning or leasing, either in the capacity or lessor or lessee, land and facilities to be devoted to the parking of vehicles of any kind.

The authority shall not directly engage in the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service, other than the parking of vehicles, and the authority shall not directly engage in the sale of any commodity of trade or commerce; provided, however, that the authority may lease space in any of its facilities for use by the lessee for the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service and may lease portions of any of its garage buildings or structures for commercial use by the lessee, where, in the opinion of the authority, such leasing is necessary and feasible for the financing and operation of such facilities, and, provided further, where, in the opinion of the authority, the space above any parking facility is not needed for parking, the authority may lease the right to occupy and use the space above any parking facility for commercial uses other than parking, together with the right to use and occupy such space within the parking facility as may be necessary for the purposes of access to and support of structures occupying the space above such parking facility and, provided further, the authority may lease up to 5 percent, or such other amended percentage under federal law that would permit the issuance of tax free revenue bonds for financing of construction, of the total square footage of any of its garage buildings or structures located within a city’s central business district for commercial use that is accessible from the level of the street adjoining the buildings or structures. Any such lease shall be granted by the authority to the highest and best bidder, upon terms specified by the authority, after due public notice has been given asking for competitive bids; provided, however, that if after such public notice no bid is received and/or the authority rejects any bid or bids received, thereafter the authority may negotiate any such lease or leases without further public notice but on a basis more favorable than that contained in any bid or bids rejected, if any. The phrase “due public notice”, as used in this section, shall mean a notice published at least 10 days before the award of any such lease in a newspaper of general circulation published in a municipality where the authority has its principal office, and, if no newspaper is published therein, then by publication in a newspaper of general circulation in the county where

the authority has its principal office. The authority may reject any or all bids if, in the opinion of the authority, any such lease granted as a result of any such bid or bids would not be adequate or feasible for the financing and operation of such facilities.

(b) Every authority may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes including, but without limiting the generality of the foregoing, the rights and powers described below:

(1) To have existence as a corporation in perpetuity unless the articles of incorporation limit the duration of the corporation's existence to a specified date. If the articles of incorporation limit the corporation's existence to a specific date, the corporation's existence shall continue thereafter until the principal and interest upon all of its bonds shall have been paid or provisions made for such payment and until all of its other obligations shall have been discharged;

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts;

(3) To adopt, use and alter at will a corporate seal;

(4) To acquire, purchase, hold, lease as lessee, and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purpose of the authority and to sell, lease or lessor, transfer and dispose of any property or interest therein at any time required by it;

(5) To acquire by purchase, lease or otherwise and to construct, improve, maintain, repair and operate projects;

(6) To make bylaws for the management and regulation of its affairs;

(7) To appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation;

(8) To fix, alter, charge and collect rates and other charges for its facilities at reasonable rates to be determined exclusively by it, subject to appeal as provided in this paragraph, for the purposes of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations or with the city. Any person questioning the reasonableness of any rate fixed by the authority may bring suit against the authority in the Superior Court of the county wherein the project is located. The Superior Court shall have exclusive jurisdiction to determine the reasonableness of rates and other charges fixed, altered, charged or collected by the authority. Appeals may be taken to the Supreme Court within 30 days after the Superior Court has rendered a final decision;

(9) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the authority, the bonds to have a maturity date not longer than 40 years from the date of issue, except that no refunding bonds shall have a maturity date longer than the life of the authority, and to secure the payment of such bonds or any part thereof by pledge or deed of trust of all or any of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the authority deems advisable, and in general to provide for the security for the bonds and the rights of the holders thereof;

(10) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(11) Without limitation of the foregoing to borrow money and accept grants from and to enter into contracts, leases or other transactions with any federal agency, the State, municipality, corporation or authority;

(12) To have the power of eminent domain;

(13) To pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority;

(14) To do all acts and things necessary for the promotion of its business and the general welfare of the authority to carry out the powers granted to it by this chapter or any other law;

(15) To enter into contracts with the State, municipalities, corporations or authorities for the use of any project of the authority and fixing the amount to be paid therefor;

(16) To enter into contracts of group insurance for the benefit of its employees and to set up a retirement or pension fund for such employees similar to that existing in the municipality where the principal office of the project is located;

(17) To make contracts with municipalities concerning the use of the space above municipal streets and sidewalks;

(18) To execute mortgages covering its lands and buildings, including construction mortgages, as may be necessary or desirable in the carrying out of its business; provided, however, that in the event of a default by the authority which results in title to a parking facility passing to a private mortgagee or person, all tax exemption privileges or other special privileges accorded to the parking facility because of its public nature shall cease, except exemption from taxation of bonds, the interest thereon or the income therefrom;

(19) To acquire, hold and dispose of interests in corporations, partnerships, limited partnerships, limited liability companies, and other business enterprises either independently or in conjunction with private persons and entities for the purpose of carrying out the powers granted to it by this chapter or any other law.

(c) The authority shall not at any time or in any manner pledge the credit or taxing power of this State, nor shall any of its obligations be deemed to be obligations of this State, nor shall this State be liable for the payment of principal or of interest on such obligations.

(d) In addition to this chapter providing for the financing of the costs of acquiring lands and premises and for the construction and improvement of parking projects, the authority may by resolution, as provided in this subsection, establish a benefit district.

(1) One benefit district may be designated for the condemnation of lands for 1 or several parking stations. The authority shall

determine the percentage of the costs of condemnation which shall be assessable to such benefit district. Not more than 80 percent of such costs shall be assessable to such benefit district or benefit districts.

(2) After a benefit district has been established, no further proceedings shall be taken unless there is filed with the secretary of the authority, within 60 days of the passage of the resolution creating the benefit district, a petition requesting the establishment of such public parking station or stations. Such petition shall be signed by the resident owners of real estate owning not less than 51 percent of the front feet of the real estate fronting or abutting upon any street included within the limits of the benefit district. In determining the sufficiency of the petition, lands owned by the city, county, State or United States or by nonresident owners of real estate within the benefit district shall not be counted in the aggregate of lands within such benefit district. After any petition has been signed by an owner of land in the benefit district, the change of ownership of the land shall not affect the petition. In any case where the owners of lands within the benefit district are tenants in common, each cotenant shall be considered a landowner to the extent of the cotenant's undivided interest in the land. The owner of a life estate shall also be deemed a landowner for the purpose of this chapter. Guardians of minors or insane persons may petition for their wards when authorized by the proper court so to do. Resident owner of land, as defined in this paragraph, shall be any landowner residing in the city and owning land in the benefit district. No suit shall be maintained in any court to enjoin or in any way contest the establishment of such parking stations or the establishment of a benefit district unless the suit be instituted and summons served within 30 days from and after the date of the filing of such petition with the secretary of the authority.

(3) Whenever the authority shall have acquired lands for public parking stations and shall have declared and ordered that not more than 80 percent of the cost of establishing or improving public parking stations, as provided in this subsection, will be paid by the levy of special assessments upon real estate situate in any 1 or more benefit districts, it shall cause to be made by some competent person an estimate, under oath, of the cost thereof, which estimate shall be filed with the secretary of the authority. The assessment against the benefit district shall be apportioned among the various lots, tracts, pieces and parcels of land within the benefit district in accordance with the special benefits accruing thereto, this apportionment of benefit assessments to be made by 3 disinterested property owners appointed by the mayor of the city or if such city has no mayor, by its chief executive officer within 30 days after the filing of the estimate of the cost of the improvement with the secretary of the authority. As soon as the amount chargeable against each piece of property is ascertained, the authority of such city shall by resolution levy such amount against this real estate in the benefit district, which resolution shall be published once in a newspaper of general circulation in such city. No suit to question the validity of the proceedings of the authority shall be commenced after 30 days from the awarding of a contract for such improvements and until the expiration of the 30 days the contractor shall not be required to commence work under the contract. If no suit shall be filed within such 30 days then all proceedings theretofore had shall be held to be regular, sufficient and valid.

(4) The cost of condemnation and improvement of such public parking stations may be levied and assessed in not to exceed 10 installments, with interest on the whole amount remaining due and unpaid each year at a rate of interest not exceeding 5 percent per annum. Any owner of land within the benefit district may, within 30 days after the assessment resolution is passed, pay the entire amount assessed against the land. The authority of such city may assess, levy and collect the cost of condemnation and improvement of such public parking stations as is assessed against the privately owned property in the benefit district. The assessment shall constitute a lien from the date the same is assessed by resolution, as provided in this paragraph, against the respective premises against which the same is levied, in the same manner as city taxes on real estate are constituted a lien, and shall be collectible in the manner provided for the collection of taxes assessed against the real estate of the City of Wilmington by monition process, as provided in Chapter 143, Volume 36, Laws of Delaware.

(e) When any real property or any interest therein heretofore or hereafter acquired by the authority is no longer needed for the purposes defined in this chapter or when, in the opinion of the authority, it is not desirable or feasible to hold and use such property for said purposes, the authority may sell the same at private or public sale as the authority shall determine, granting and conveying to the purchaser thereof a fee simple marketable title thereto. The authority may make such sale for such price and upon such terms and conditions as the authority deems advisable and for the best interests of the authority and may accept in payment, wholly or partly, cash, bonds, mortgages, debentures, notes, warrants or other evidences of indebtedness as the authority may approve. The consideration received from any such sale may be applied by the authority, in its discretion, to the repayment, in whole or in part, of any funds contributed to the authority by a municipality under § 508 of this title or retained by the authority for the purposes of this chapter. Without limitation of the foregoing, the authority may accept as consideration in whole or in part for the sale of any such real property, a covenant, agreement or undertaking on the part of any purchaser to provide and maintain off-street parking facilities on such property or a portion thereof for the fulfillment of public parking needs for such period and under such terms and conditions as the authority shall determine. Any such covenant, agreement or undertaking on the part of the purchaser as aforesaid and the right of the authority to fix and alter rates to be charged for any such parking facilities, as well as the right of appeal as in this section provided, shall be set forth and reserved in the deed or deeds of conveyance. Any such covenant, agreement or undertaking may be enforced by the authority in an action for specific performance brought in the Court of Chancery of this State.

(48 Del. Laws, c. 369, § 5; 22 Del. C. 1953, § 504; 49 Del. Laws, c. 72; 50 Del. Laws, c. 222, § 1; 50 Del. Laws, c. 279, §§ 1, 2; 55 Del. Laws, c. 293, §§ 1, 2; 57 Del. Laws, c. 51; 57 Del. Laws, c. 179, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 92, § 1; 73 Del. Laws, c. 377, § 2; 80 Del. Laws, c. 324, § 2.)

§ 505 Bonds.

(a) The bonds of any authority referred to and authorized to be issued by this chapter shall be authorized by resolution of the board thereof, and shall be of such series, bear such date or dates, mature at such time or times not exceeding 40 years from their respective dates, bear interest at such rate or rates, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in such medium or payment and at such place or places, be subject to such terms of redemption, not exceeding 105 percent of the principal amount thereof, and be entitled to such priorities in the revenues or receipts of such authority, as such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that 1 or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupon or any officer thereof shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered.

The bonds may be sold at public or private sale for such price or prices as the authority shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(b) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to:

(1) Pledging the full faith and credit of the authority or of the municipality for such obligations or restricting the same to all or any of the revenues of the authority from all or any projects or properties;

(2) The construction, improvement, operation, extension, enlargement, maintenance and repair of the project and the duties of the authority with reference thereto;

(3) The terms and provisions of the bonds;

(4) Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued or of any loan or grant by the United States may be applied;

(5) The rate of tolls and other charges for use of the facilities of or for the services rendered by the authority;

(6) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(7) Limitations on the issuance of additional bonds;

(8) The terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued; and

(9) Any other additional agreements with the holders of the bonds.

(c) Any authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company or other person or persons in the United States having power to enter into the same, including any federal agency, as security for such bonds, and may assign and pledge all or any of the revenues or receipts of the authority thereunder. Such deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments or as the authority may authorize, including provisions as to:

(1) The construction, improvement, operation, maintenance and repair of any project and the duties of the authority with reference thereto;

(2) The application of funds and the safeguarding of funds on hand or on deposit;

(3) The rights and remedies of the trustee and holders of the bonds which may include restrictions upon the individual right of action of such bondholder; and

(4) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(d) The bonds shall have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of the State.

(48 Del. Laws, c. 369, § 6; 22 Del. C. 1953, § 505; 57 Del. Laws, c. 625, §§ 1-3.)

§ 506 Remedies of bondholders.

(a) The rights and the remedies conferred upon or granted to the bondholders in this section shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by any deed of trust, indenture or other agreement under which the same may be issued. In the event that the authority shall default in the payment of principal of or interest on any of the bonds after the principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with this chapter or shall default in any agreement made with the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding by instrument or instruments filed in the office of the recorder of deeds of the county, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders for the purpose provided in this section.

(b) Such trustee and any trustee under any deed of trust, indenture or other agreement may, and, upon written request of the holders of 25 percent or such other percentages as may be specified in any deed of trust, indenture or other agreement, in principal amount of the bonds then outstanding, shall, in the trustee's own name:

(1) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect rates, rentals or other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the authority, and to require the authority to carry out any other agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter;

(2) Bring suit upon the bonds;

(3) By action or suit in equity require the authority to account as if it were the trustee of an express trust for the bondholders;

(4) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(5) By notice in writing to the authority declare all bonds due and payable, and, if all defaults shall be made good, then with the consent of the holders of 25 percent or such other percentage as may be specified in any deed of trust, indenture or other agreement, of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(c) The Court of Chancery in and for the county wherein the authority is located shall have jurisdiction of any suit, action or proceedings by the trustee on behalf of the bondholders. Any trustee when appointed or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter and take possession of the facilities of the authority or any part or parts thereof, the revenues or receipts from which are or may be applicable to the payment of the bonds in default and operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom, in the same manner as the authority or the board might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the Court shall direct. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, and all costs and disbursements allowed by the Court shall be a first charge on any revenues and receipts derived from the facilities of the authority, the revenues or receipts from which are or may be applicable to the payment of the bonds in default. The trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(d) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant to this chapter for the purpose of operating and maintaining any facilities of the authority to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver to the operation and maintenance of the facilities of the authority as the Court shall direct, and no holder of bonds of the authority nor any trustee shall ever have the right in any suit, action or proceedings at law or in equity to compel a receiver, nor shall any receiver ever be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

(48 Del. Laws, c. 369, § 7; 22 Del. C. 1953, § 506; 70 Del. Laws, c. 186, § 1.)

§ 507 Governing body.

(a) The powers of each authority shall be exercised by a board composed of not less than 5 nor more than 7 members, all of whom shall be residents or business owners within the city creating the authority. In municipalities with population greater than 50,000, however, the powers of each authority shall be exercised by a board composed of 5 members, all of whom shall be residents of the city creating the authority. The mayor of the city, or if such city or town has no mayor, its chief executive officer, shall appoint the members of the board, 1 of whom shall serve for 1 year, 1 for 2 years, 1 for 3 years, 1 for 4 years, and 1 for 5 years from July 1 in the year in which such authority is created as provided in this chapter. If the board is composed of 6 members, initially 2 rather than 1 shall be appointed for 2-year terms and if the board is composed of 7 members, initially 2 rather than 1 shall be appointed for both 2-year terms and 3-year terms. Thereafter the mayor shall not sooner than 60 days, nor later than 30 days prior to July 1 in each year in which a vacancy occurs, appoint a member of the board for a term of 5 years to succeed the member whose term expires on July 1 next succeeding. Vacancies for unexpired terms that occur more than 60 days before the end of a term shall be promptly filled by appointment by the mayor. All such appointments shall be subject to the confirmation of the city council or other governing body of the city. Any member of the board may be removed for cause by the mayor, or if such city or town has no mayor, by its chief executive officer, with the concurrence of two thirds of all the members of the council or other governing body of the city or town, and the person against whom such charges are made shall be given a reasonable opportunity to make a defense.

(b) Members shall hold office until their successors have been appointed and may succeed themselves. A member shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(c) The members of the board shall select from among themselves a chairperson, a vice chairperson and such other officers as the board may determine. The board may employ a secretary, an executive director, its own counsel and legal staff and such technical experts and such other agents and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons. A majority of the total board membership shall constitute a quorum for its meetings. Members of the board shall not be liable personally on the bonds or other obligations of the authority, and the rights of creditors shall be solely against such authority. The board may delegate to 1 or more of its agents or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the board. The board shall have full authority to manage the properties and business of the authority and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised and embodied.

(48 Del. Laws, c. 369, § 8; 22 Del. C. 1953, § 507; 68 Del. Laws, c. 273, §§ 2-4; 70 Del. Laws, c. 186, § 1.)

§ 508 Acquisition of lands; cost financing by municipality.

The authority may acquire by purchase or eminent domain proceedings either the fee or such rights, title, interest or easement in such

lands as the authority deems necessary for any of the purposes mentioned in this chapter. When acquiring property or property rights the authority shall, in arriving at a fair and reasonable price, consider the fair market value as required by Chapter 61 of Title 10. Relocation shall be paid according to the terms set forth in Chapter 93 of Title 29. The following shall not be taken under the right of eminent domain: Property devoted to a public use, property of a public service company, property used for burial purposes, place of public worship in a municipality whose population is greater than 50,000 people, property used as a facility or facilities for the parking of motor vehicles, unless the total square footage to be utilized for the parking of motor vehicles in the total proposed project which the eminent domain proceedings concern (including square footage that may be provided on levels other than the ground level) shall be at least twice the total square footage being utilized at the time of taking for the parking of motor vehicles in the facility or facilities so taken or in a municipality whose population is 50,000 people or less, property used as a facility or facilities for parking of motor vehicles unless said property has been leased by the municipality or authority and used as a parking facility by said lessee within the preceding 3 years. The right of eminent domain shall be exercised by the authority in the manner provided by Chapter 61 of Title 10.

The right of eminent domain conferred by this section may be exercised only within the city.

Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all causes not involving the public interest in all courts to the end that the provision of parking facilities be expedited.

Any municipality establishing an authority under this chapter may, under such terms and conditions as it may deem appropriate, provide for and pay to such authority such sum or sums of money necessary to acquire, in whole or in part, the lands upon which such authority may undertake to erect a parking facility as provided in this section, or such sum or sums of money necessary to acquire or construct, in whole or in part, a parking facility or facilities as provided in this section, or such sum or sums of money necessary to pay operating expenses of the authority and debt service on outstanding bonds of the authority, or to make payments into a reserve fund for the payment of the principal of and interest on indebtedness of the authority as may be provided by any resolution of the authority authorizing the issuance of its revenue bonds or by any trust indenture securing its revenue bonds. The municipality, for the purpose of providing such sum or sums of money, may issue its general obligation bonds secured by the faith and credit of the municipality payable from unlimited ad valorem taxes on all of the real estate in the municipality subject to taxation or levy ad valorem taxes on real estate subject to taxation, unlimited as to rate or amount. In addition to the issuance of its general obligation bonds and levy of taxes as provided above, a municipality may guarantee bonds of the authority issued pursuant to § 505 of this title by pledging its full faith and credit to the payment of the principal of and interest on such revenue bonds. The aggregate amount of general obligation bonds issued by a municipality under this provision and the indebtedness so guaranteed and taxes levied shall be in addition to and not within the limitations of any existing statutory debt or tax limitation of the municipality. Any agreement by the municipality to guarantee the revenue bonds of the authority or to maintain a reserve fund or to pay debt service or operating expenses of the authority may be made a part of any contract with holders of revenue bonds of the authority and may be pledged by the authority to the payment of such revenue bonds. The enforcement or performance of such guaranty may include resort to the power of the municipality to tax real estate subject to taxation, with no limit as to rate or amount, or to any other moneys of the municipality available for such purpose.

(48 Del. Laws, c. 369, § 9; 22 Del. C. 1953, § 508; 49 Del. Laws, c. 2; 50 Del. Laws, c. 221, § 1; 55 Del. Laws, c. 293, § 3; 57 Del. Laws, c. 179, § 2; 57 Del. Laws, c. 625, § 40; 65 Del. Laws, c. 316, § 1; 69 Del. Laws, c. 304, §§ 1, 2.)

§ 509 Moneys; examination of accounts.

All moneys of any authority, from whatever source derived, shall be paid to the treasurer of the authority. The moneys shall be deposited in the first instance by the treasurer in 1 or more banks or trust companies in 1 or more special accounts. The moneys in the accounts shall be paid out on the warrant or other order of the chairperson of the authority or of such other person or persons as the authority may authorize to execute such warrants or orders. Every authority shall have at least an annual examination of its books, accounts and records by a certified public accountant. A copy of such audit shall be delivered to the city creating the authority. A concise financial statement shall be published annually at least once in a newspaper of general circulation in the city where the principal office of the authority is located. If such publication is not made by the authority, the city shall publish such statement at the expense of the authority. If the authority fails to make such an audit, then the auditor or accountant designated by the city may, from time to time, examine, at the expense of the authority, the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its finances, operation and affairs.

The Attorney General of the State may examine the books, accounts and records of any authority.

(48 Del. Laws, c. 369, § 10; 22 Del. C. 1953, § 509; 70 Del. Laws, c. 186, § 1.)

§ 510 Contracts; competitive bidding.

(a) The procurement of material and the award of contracts for construction, repairs or work of any nature made by any authority shall be subject to Chapter 69 of Title 29.

(b) No member of the Board of the Wilmington Parking Authority shall be entitled to vote on any matter before the Board if such member has a direct or indirect financial interest in the outcome of such matter under review. In the event such a financial interest exists, said member shall disclose to the Board the nature of the interest and said member shall refrain from any discussion, deliberation, action and/or vote by the Board on this matter. In situations in which a member or members do not vote by reason of such financial interest, the matter pending before the Board will be decided on the basis of a majority vote of the remaining members present who do not have a financial interest in the matter. A member or members having a financial interest as set forth herein shall be counted for purposes of

establishing a quorum, provided such member or members are present at the meeting. The disqualification of a member from voting on a matter before the Board by reason of a financial interest therein shall not affect the validity of any action taken by the Board relative to the matter before it.

(c) Subsection (a) of this section shall not apply to the construction of parking facilities intended to serve and be an integral part of a redevelopment project in any municipality where the municipality or its redevelopment agency has designated or selected a developer who is responsible for the overall development of the project including parking facilities. In such case, the authority may negotiate with the developer for the construction and design of public parking facilities on such terms and conditions as the authority may deem justified and in the public interest.

(48 Del. Laws, c. 369, § 11; 22 Del. C. 1953, § 510; 57 Del. Laws, c. 625, § 5; 58 Del. Laws, c. 219; 68 Del. Laws, c. 401, § 1.)

§ 511 Rules and regulations.

The use of the facilities of the authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the authority. The authority shall not do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefits.

(48 Del. Laws, c. 369, § 12; 22 Del. C. 1953, § 511.)

§ 512 Continuation of powers.

The State hereby pledges to and agrees with any person, firm or corporation or federal agency subscribing to or acquiring the bonds to be issued by the authority for the construction, extension, improvement or enlargement of any project or part thereof that the State will not limit or alter the rights vested in the authority until all bonds at any time issued, together with the interest thereon, are fully met and discharged. The State further pledges to and agrees with the United States and any other federal agency that, if any federal agency constructs or contributes any funds for the construction, extension, improvement or enlargement of any project or any portion thereof, the State will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the project or the improvement thereof or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority shall continue to have and may exercise all powers granted in this chapter, so long as the same shall be necessary or desirable, for the carrying out of the purposes of this chapter and the purposes of the United States in the construction or improvement or enlargement of the project or such portion thereof.

(48 Del. Laws, c. 369, § 13; 22 Del. C. 1953, § 512.)

§ 513 Termination of authority.

When any authority shall have finally paid and discharged all bonds, which, together with the interest due thereon, shall have been secured by a pledge of any of the revenues or receipts of a project, it may, subject to any agreements concerning the operation or disposition of such projects, convey such project to the city creating the authority. When any authority shall have finally paid and discharged all bonds issued and outstanding and the interest due thereon and settled all other claims which may be outstanding against it, it may convey all its property to the city and terminate its existence. A certificate requesting termination of the existence of the authority shall be filed in the office of the Secretary of State. If the certificate is approved by the city creating the authority by its ordinance or ordinances, the Secretary shall note the termination of existence on the record of incorporation and return the certificate with the Secretary's approval shown thereon to the board, which shall cause the same to be recorded in the office of the recorder of deeds of the county. Thereupon, the property of the authority shall pass to the city and the authority shall cease to exist.

(48 Del. Laws, c. 369, § 14; 22 Del. C. 1953, § 513; 70 Del. Laws, c. 186, § 1.)

§ 514 Exemption from taxation; payments in lieu of taxes.

The effectuation of the authorized purposes of the authorities created under this chapter shall and will be in all respects for the benefit of the residents of incorporated cities for the increase of their commerce and prosperity, since such authorities will be performing essential governmental functions, and for the improvement of their health, safety and living conditions, and, in effectuating such purposes, such authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for such purposes. In lieu of such taxes or special assessments an authority may agree to make payments to the city or the county or any political subdivision. The bonds issued by any authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

(48 Del. Laws, c. 369, § 15; 22 Del. C. 1953, § 514.)

§ 515 Transfer of existing facilities to authority.

(a) Any municipality or owner may sell, lease, lend, grant or convey to any authority any project or any part or parts thereof or any interest in real or personal property which may be used by the authority in the construction, improvement, maintenance or operation of any project. Any municipality may transfer, assign and set over to any authority any contracts which may have been awarded by the municipality for the construction of projects not begun or, if begun, not completed. The territory being served by any project or the territory within which such project is authorized to render service at the time of the acquisition of such project by an authority shall constitute the area in which such authority shall be authorized to render service.

(b) The authority shall first report to and advise the city by which it was created of the agreement to acquire, including all its terms and

conditions.

The proposed action of the authority and the proposed agreement to acquire shall be approved by the city council. Such approval shall be by 2/3 vote of all the members of the council.

(c) This section, without reference to any other law, shall be deemed complete for the acquisition by agreement of projects as defined in this chapter located wholly within or partially without the city causing such authority to be incorporated, any provisions of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as prescribed in this section.

(48 Del. Laws, c. 369, § 16; 22 Del. C. 1953, § 515.)

§ 516 Indemnification.

(a) The Wilmington Parking Authority shall indemnify any member who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a member of the Authority, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such member in connection with such action, suit or proceeding, if said member acted in good faith and in a manner reasonably believe to be in or not opposed to the best interests of the Authority, and with respect to any criminal proceeding or action, the member had no reasonable cause to believe that the action was unlawful.

(b) Any indemnification under this section shall be made only as authorized in the specific case upon a determination that indemnification of the member is proper under the circumstances because the member has met the applicable standard of conduct as set forth in subsection (a) of this section. Such a determination will be made by the Attorney General or the Attorney General's designee within 15 days of the date of receipt of a request for such a determination. Such request shall be filed by the member affected and shall set forth in detail the circumstances supporting the claim for indemnification. In the event the Attorney General fails to make the determination within the time frame specified, the requested indemnification shall be deemed as granted.

(c) Expenses (including attorneys' fees) incurred by a member in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Authority in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such member to repay such amount if it shall ultimately be determined that such member is not entitled to be indemnified by the Authority as authorized by this section.

(d) No payment shall be made pursuant to the provisions of this section unless the member seeking such payment shall agree that the State be subrogated, to the extent of any payment, to all rights of recovery of such member, shall agree to execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the State effectively to bring suit in the name of the State.

(68 Del. Laws, c. 401, § 2; 70 Del. Laws, c. 186, § 1.)

Chapter 7
PLANNING COMMISSION

§ 701 Establishment; membership.

Any incorporated city or town may at any time establish a planning commission under this chapter. A planning commission established hereunder shall consist of not less than 5 nor more than 9 members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council, and in towns where there is not a mayor shall be elected by the town commissioners. When a planning commission is first established the members thereof shall be appointed or elected for terms of such length and shall be so arranged that the term of at least 1 member shall expire each year and their successor shall be appointed or elected for terms of 2 to 5 years each. Any member of the planning commission so established in a city may be removed for cause after a public hearing by the mayor with the approval of city council; members of the planning commission elected by town commissioners shall be removed by them for cause after a public hearing by a majority vote. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in a city in the same manner as an original appointment and in a town by the town commissioners. Such a planning commission shall elect annually a chairperson and a secretary from among its own number and may employ experts, clerical and other assistants. It may appoint a custodian of its plan and records who may be the city engineer or town clerk.

(22 Del. C. 1953, § 701; 49 Del. Laws, c. 415, § 1; 59 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 186, § 1.)

§ 702 Comprehensive development plan [Effective until Nov. 15, 2026].

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and this State during plan preparation. The comprehensive plan must be reviewed and certified by the Governor under § 9103 of Title 29. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, climate change and resiliency, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents. The comprehensive plan for municipalities of greater than 2,000 population must also include an affordable housing plan consistent with subchapter III of Chapter 92 of Title 29.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title. Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and readopted at least every 10 years; provided, however, the municipality may request an extension of such date by forwarding an official request to the Cabinet Committee at least 90 days prior to the deadline. The basis for the request shall be clearly indicated. The decision whether to grant a request an extension, and the duration of such extension, shall be at the discretion of the Cabinet Committee.

(f) The comprehensive plan or amendments or revisions thereto shall be submitted to the Office of State Planning Coordination for review at such time as the plan is made available for public review. The plan shall be reviewed in accordance with the comprehensive plan review and certification process detailed in § 9103 of Title 29.

(g) Municipalities shall provide to the Office of State Planning Coordination a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended. The report shall be due annually no later than on each anniversary of the effective date of the most recently adopted comprehensive plan or plan update until January 1, 2012, and annually no later than July 1 each year thereafter starting on July 1, 2012.

(h) This State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the municipality where the municipality's adopted comprehensive plan or portions thereof are determined to be

substantially inconsistent with State development policies, including policies related to affordable housing.

(22 Del. C. 1953, § 702; 49 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 477, § 1; 73 Del. Laws, c. 186, §§ 7-9; 78 Del. Laws, c. 92, §§ 26-28; 85 Del. Laws, c. 343, § 4.)

§ 702 Comprehensive development plan [Effective Nov. 15, 2026].

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and this State during plan preparation. The comprehensive plan must be reviewed and certified by the Governor under § 9103 of Title 29. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, climate change and resiliency, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents. The comprehensive plan for municipalities of greater than 2,000 population must also include an affordable housing plan consistent with subchapter III of Chapter 92 of Title 29.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title. Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and readopted at least every 10 years; provided, however, the municipality may request an extension of such date by forwarding an official request to the Cabinet Committee at least 90 days prior to the deadline. The basis for the request shall be clearly indicated. The decision whether to grant a request an extension, and the duration of such extension, shall be at the discretion of the Cabinet Committee.

(f) The comprehensive plan or amendments or revisions thereto shall be submitted to the Office of State Planning Coordination for review at such time as the plan is made available for public review. The plan shall be reviewed in accordance with the comprehensive plan review and certification process detailed in § 9103 of Title 29.

(g) Municipalities shall provide to the Office of State Planning Coordination a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended. The report shall be due annually no later than on each anniversary of the effective date of the most recently adopted comprehensive plan or plan update until January 1, 2012, and annually no later than July 1 each year thereafter starting on July 1, 2012.

(h) This State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the municipality where the municipality's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development policies, including policies related to affordable housing.

(22 Del. C. 1953, § 702; 49 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 477, § 1; 73 Del. Laws, c. 186, §§ 7-9; 78 Del. Laws, c. 92, §§ 26-28; 84 Del. Laws, c. 397, § 4; 85 Del. Laws, c. 343, § 4.)

§ 703 General studies and reports.

The planning commission shall have full power and authority to make such investigations, maps and reports of the resources, possibilities and needs of the city or town as it deems desirable, providing the total expenditures of said commission shall not exceed the appropriation for its expenses. Upon completion of any such reports the planning commission shall submit the same to the city council or town commissioners with its recommendations. It shall report annually to the city council or town commissioners on the activities of the planning commission during the preceding year.

(22 Del. C. 1953, § 703; 49 Del. Laws, c. 415, § 1.)

§ 704 Adoption of official map.

Each incorporated city or town established under this title may, by action of its city council or town commissioners, adopt an official map prepared under the direction of such planning commission and showing the public ways and parks therein as theretofore laid out and

established by law and the private ways then existing and used in common by more than 2 owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map and upon any change therein or addition thereto made, as hereinafter provided, the city or town clerk shall forthwith file with the recorder of deeds in the respective counties a certificate of such action and a copy of such map as adopted or as changed or added to.

(22 Del. C. 1953, § 704; 49 Del. Laws, c. 415, § 1.)

§ 705 Change of or addition to official map.

An incorporated city or town so adopting an official map by action of its city council or town commissioners may, whenever and as often as it may deem it for the public interest, change or add to such map, so as to place thereon lines and notations showing existing or proposed locations not theretofore mapped of new or widened public ways and new or enlarged parks and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or town commissioners, at which parties in interest shall have an opportunity to be heard. At least 10 days' notice of such a public hearing shall be given by advertisement in a newspaper of general circulation in the city or town or in the county in which the city or town is located. No such change or addition which has not been previously recommended by the planning commission established by this chapter shall be adopted until after a report thereon by said commission and no variance from a plan prepared or approved by said planning commission shall be made except by a $^2/_3$ vote of all the members of a city council or by a $^2/_3$ vote of the town commissioners; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said commission for a report and it has failed to report within 30 days thereafter.

(22 Del. C. 1953, § 705; 49 Del. Laws, c. 415, § 1.)

§ 706 Establishing or changing public ways and parks.

This chapter shall not abridge the powers of the city council or the town commissioners of any town or any other municipal officer in regard to public ways or parks in any manner except as provided herein, nor shall they authorize the taking of land or the laying out or construction of a way or a park or the alteration, relocation or discontinuance thereof, except in accordance with the laws governing the same; provided, that after an incorporated city and/or town has adopted an official map under this chapter no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town established under this chapter and such planning commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. After a city or town has adopted an official map under this chapter, no person shall open a way for public use, except as provided under the sections of this chapter, unless the location of such way is in accordance with the official map as it then appears or has been approved by the planning commission established under this chapter, and, in either case, the grading, surfacing and draining of such way have been approved by such commission or by the city or town engineer.

(22 Del. C. 1953, § 706; 49 Del. Laws, c. 415, § 1.)

§ 707 Public way or park to be shown on official map.

Upon final action by the proper authorities in laying out, altering or relocating a proper way or in discontinuing the whole or any part thereof or in establishing or enlarging a public park or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected, shall, without further action by the city council or town commissioners, be made a part of the official map, if any, of the incorporated city or town in which such public way or park is located.

(22 Del. C. 1953, § 707; 49 Del. Laws, c. 415, § 1.)

§ 708 Reference of certain matters to planning commission.

In a city or town having a planning commission established under this chapter, but which has not adopted an official map, no public way shall be laid out, altered, relocated or discontinued unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town and such commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. Any city or town having a planning commission established under this chapter may, by ordinance, bylaw or vote, provide for the reference of any other matter or class of matters to the planning commission before final action thereon with or without provision that final action shall not be taken until the planning commission has submitted its report or has had a reasonable fixed time to submit such report. Such planning commission shall have full power to make such investigations, maps and reports and recommendations in connection therewith, relating to any of the subjects referred to under this section, as it deems desirable.

(22 Del. C. 1953, § 708; 49 Del. Laws, c. 415, § 1.)

§ 709 Entry upon lands; making examinations and surveys.

Planning commissions established under this chapter, their officers and agents may, so far as they deem it necessary in carrying out this chapter, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

(22 Del. C. 1953, § 709; 49 Del. Laws, c. 415, § 1.)

§ 710 Enforcement.

The Court of Chancery shall have jurisdiction on petition of the planning commission established hereunder to enforce this chapter and

any ordinance or bylaws made thereunder and may restrain by injunction violations thereof.

(22 Del. C. 1953, § 710; 49 Del. Laws, c. 415, § 1.)

§ 711 Limitations on powers and liabilities.

This chapter shall not be construed to authorize the taking of land nor the authorization of a city or town to lay out or construct any way which may be indicated on any plan or plot until such way has been laid out as a public way in the manner prescribed by law, nor shall this chapter be construed to render a city or town liable for damages except as may be sustained under § 705 of this title by reason of changes in the official map.

(22 Del. C. 1953, § 711; 49 Del. Laws, c. 415, § 1.)

Chapter 8
HOME RULE

Subchapter I

General Provisions

§ 801 Definitions.

As used in this chapter:

(1) “Charter amendment” means language which will amend, adopt or repeal a municipal charter.

(2) “Chief executive officer” means the mayor if such there be or, if there be none, then it means the president of the legislative body of a municipal corporation or, if there be none, then it means the presiding officer of the legislative body of a municipal corporation.

(3) “Municipal corporation” includes all cities, towns and villages created before or after December 28, 1961, under any general or special law of this State for general governmental purposes which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of elected and other officials.

(4) “Qualified voter” means those persons who, under the terms of a municipal charter, shall be authorized to vote in elections within that municipal corporation.

(22 Del. C. 1953, § 801; 53 Del. Laws, c. 260.)

§ 802 Applicability of chapter; grant of power.

Every municipal corporation in this State containing a population of at least 1,000 persons as shown by the last official federal decennial census may proceed as set forth in this chapter to amend its municipal charter and may, subject to the conditions and limitations imposed by this chapter, amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute. This grant of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

(22 Del. C. 1953, § 802; 53 Del. Laws, c. 260.)

Subchapter II

Method of Exercising Power

§ 811 Amendment of charter.

The amendment of a charter shall be proposed either by a resolution of the legislative body of a municipal corporation, 3/4 of all members elected thereto concurring or by a charter commission of 7 members elected by the qualified voters of the municipal corporation from their membership at large pursuant to petition for such an election bearing the signatures of at least 10% of the qualified voters of the municipal corporation and filed with the clerk or other chief recording officer of the legislative body of the municipal corporation. The charter commission candidates who receive the most votes shall constitute the commission. On the death, resignation or inability of any member of a charter commission to serve, the remaining members shall elect a successor. The commission shall have authority to propose the amendment of the charter as specified in the petition, to hold public hearings thereon and to arrange for putting the proposed amendment on the ballot or voting machine to be used at the next referendum election.

The legislative body of the municipal corporation in which the amendment of a charter is proposed by a charter commission may provide by ordinance or resolution for that procedure which it deems necessary to conduct the election of a charter commission and for enabling the charter commission to exercise the functions specified above. The legislative body of the municipal corporation may, if it defaults in the exercise of this authority, be compelled by judicial mandate and at the instance of at least 10 signers of a petition filed under this section to exercise such authority.

In addition to the procedure hereinbefore set forth, a charter may be amended by act of the General Assembly, passed with the concurrence of two thirds of all the members elected to each House thereof.

(22 Del. C. 1953, § 811; 53 Del. Laws, c. 260; 60 Del. Laws, c. 166, § 1.)

§ 812 Publication of proposed charter, charter amendment or repeal proposition and resolution.

At least 30 days before an election thereon, notice shall be given by publication in a newspaper of general circulation within the municipal corporation that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the clerk or other chief recording officer of the legislative body of the municipal corporation and that a copy will be furnished by the clerk or other chief recording officer to any qualified voter or taxpayer of the municipal corporation upon request.

(22 Del. C. 1953, § 812; 53 Del. Laws, c. 260; 70 Del. Laws, c. 186, § 1.)

§ 813 Referendum.

(a) *Conduct of election; ballots; expenses.* — On the day and during the hours specified for any referendum, the proposed charter amendment or amendments shall be submitted to the qualified voters of the municipal corporation. The official or officials thereof whose duty it is to arrange for and conduct the regular municipal elections shall perform the same duties so far as relevant to the referendum election on the proposed charter amendment or amendments. The referendum election shall be conducted generally according to the procedures and practices observed for regular municipal elections, except as specifically or necessarily modified by this subchapter. The wording specified in the proposal for a charter amendment or amendments shall be placed on the ballots or voting machines used at the referendum election. The expenses of the referendum election and all necessary or proper expenses of a charter commission shall be defrayed by the municipal corporation.

(b) *Officials to tally and certify results.* — The official or officials charged with the duty to arrange for and conduct the referendum, promptly following the closing of the polls, shall tally the results thereof and shall forthwith certify the results of the referendum to the chief executive officer of the municipal corporation.

(c) *Proclamation of result; effective date of amendment.* — The chief executive of the municipal corporation shall proclaim the result of the referendum within 10 days after receiving certification from the official or officials who tally the vote. If a majority of those who vote on any question submitted to the voters of the municipal corporation shall cast their votes in favor of the proposed charter amendment or amendments, it shall be adopted; provided, however, that no charter amendment so adopted will be effective until the chief executive officer files copies thereof with the Governor, President Pro Tem of the Senate, Speaker of the House, Secretary of State and the Director of the Legislative Reference Bureau, and until the General Assembly shall have been in session 30 calendar days after such filing. During said 30-day period, failure of the General Assembly by statute to negate such charter amendment by a two-thirds majority of all members elected to each House thereof shall be deemed to be an assent by the General Assembly thereto and the charter amendment shall be as effective as if enacted into law by a statute of this State. Neither shall a charter amendment be effective until final adjudication of an action brought for judicial review of charter referendum pursuant to § 820 of this title.

(22 Del. C. 1953, § 813; 53 Del. Laws, c. 260.)

§ 814 Each proposed amendment may be submitted for separate vote.

Alternative restatements of amendments may be submitted and the one receiving the larger vote shall prevail if the amendment otherwise qualifies for adoption.

(22 Del. C. 1953, § 814; 53 Del. Laws, c. 260.)

§ 815 Codification of amendments.

The exact text of any amendment or amendments to the charter of any municipal corporation, adopted as in this chapter specified, shall thereafter be included in any subsequent edition or codification of the charter of the municipal corporation, until altered, modified or repealed by a subsequent amendment or amendments to the charter.

(22 Del. C. 1953, § 815; 53 Del. Laws, c. 260.)

Subchapter III

Judicial Review

§ 820 Judicial review of election.

(a) Not later than 20 days after the result of a referendum has been proclaimed by the chief executive officer of a municipal corporation, any person resident therein may seek judicial review of the election by filing a verified complaint in the Superior Court of the county in which at least part of the municipal corporation is located. The complaint shall allege that the referendum was conducted unlawfully and shall set forth with particularity the unlawful acts which are the basis of the complaint.

(b) Notice of the pendency of an action for judicial review of an election shall be given to the chief executive officer of the municipal corporation, the Governor, President Pro Tem of the Senate, Speaker of the House, Secretary of State and Director of the Legislative Reference Bureau by sending to each a copy of the verified complaint by registered or certified mail on the same date that the action is filed in the Superior Court. Notice mailed to the chief executive officer of the municipal corporation shall not, however, supplant or be a substitute for service of process.

(c) When the verified complaint is filed, the case shall proceed, insofar as possible, as other civil cases in the Superior Court. However, the Superior Court may adopt special rules to govern review under this section. Cases brought under this section shall be accorded the same precedence as civil actions arising under § 3323(a) of Title 19.

(d) The Court's jurisdiction shall be confined solely to the lawfulness of the election. No person shall have standing in law or equity to attack the legality of substantive provisions of a municipal charter amended by referendum until the General Assembly has failed to negate the charter amendment in accordance with § 813(c) of this title nor while an action for review of the referendum is pending.

(e) If, after hearing the evidence, the Court concludes that the referendum was conducted lawfully, the result of the election as proclaimed by the chief executive officer of the municipal corporation shall be affirmed. Otherwise, the election shall be declared a nullity,

unless the Court is persuaded the irregularity did not materially affect the result of the election. Court costs shall be imposed or apportioned among the litigants as the Court deems just.

(f) The Court's order under subsection (e) of this section shall not be appealable to the Supreme Court.

(22 Del. C. 1953, § 820; 53 Del. Laws, c. 260; 55 Del. Laws, c. 135.)

Subchapter IV

Provision for Transition in Event of Charter Repeal

§ 825 Termination of home rule charter status.

A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified voters a specification of the form of government under which the municipal corporation would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or 1 of such optional forms as may have been authorized by general law for municipalities of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government would take place in the event of repeal and make such other provision, as may be appropriate, to effect an orderly transition from home rule charter to nonhome rule charter status.

(22 Del. C. 1953, § 825; 53 Del. Laws, c. 260.)

Subchapter V

Legislation Increasing Municipal Financial Burdens

§ 830 Amendments relating to bonded indebtedness and taxing powers.

(a) No municipal corporation, the charter of which imposes a limitation on the indebtedness of the municipal corporation, shall amend its charter, pursuant to this chapter, so as to permit it to raise the limitation on its total indebtedness, except that any municipal corporation which may amend its charter pursuant to this chapter may adopt a charter amendment, pursuant to this chapter, which provides that:

(1) Capital improvement bonds may be authorized payable in not more than 30 years from date of issue;

(2) The bonds may be issued from time to time, as long as the total bonded indebtedness of the municipal corporation does not exceed 15% of the total assessed value of all the real estate subject to taxation located within the municipal corporation;

(3) Any other provision relating to the issuance and payment of the bonds which is not inconsistent with paragraphs (a)(1) and (2) of this section.

(b) No municipal corporation, the charter of which imposes a limitation on the taxing power of the municipal corporation, shall amend its charter, pursuant to this chapter, so as to permit the municipal corporation to increase the amount of money that may be raised by taxes or to permit the levying of any new taxes, except that any such municipal corporation which may amend its charter pursuant to this chapter may adopt a charter amendment pursuant to this chapter which provides that the municipal corporation may raise, in addition to the taxes necessary to service the bonded indebtedness of the municipal corporation, by taxes upon real estate, a sum of money not in excess of 2% of the total assessed value of all the real estate subject to taxation located within the municipal corporation.

(22 Del. C. 1953, § 830; 53 Del. Laws, c. 260.)

Subchapter VI

Limitations and Exceptions

§ 835 Amendments prohibited.

(a) This chapter shall not permit the amending of a municipal charter so as to:

(1) Permit the changing of any term of any elected official until the incumbent has completed the term to which the incumbent was elected;

(2) Permit any charter amendment in contravention of any general statute of this State;

(3) Change the qualifications of those entitled to vote at municipal elections;

(4) Change the date for holding of municipal elections;

(5) Enlarge or otherwise alter the power or procedure whereby a municipal corporation may enlarge its boundaries;

(6) Prohibit, restrict or license ownership, transfer, possession or transportation of firearms or components of firearms or ammunition, except that the discharge of a firearm may be regulated; provided that any regulation or ordinance incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate existing municipal ordinances.

(b) No municipal corporation charter which permits nonresident persons to vote in any municipal election or to hold any municipal office shall be amended, pursuant to this chapter, so as to eliminate or limit the right of nonresident persons to vote or hold office, nor shall the percentage of nonresident officials allowed or required be changed.

(c) No municipal corporation charter which provides a method of appeal to the Superior Court for any matter shall be amended, pursuant to this chapter, so as to eliminate or restrict any such appeal.

(22 Del. C. 1953, § 835; 53 Del. Laws, c. 260; 65 Del. Laws, c. 133, § 1; 70 Del. Laws, c. 186, § 1.)

§ 836 Filing of existing charter.

In order for any municipal corporation to proceed under this chapter, it shall file before June 1, 1963, with the Secretary of State and with the Director of the Legislative Reference Bureau a complete copy of its then existing charter. The copy shall show by appropriate citations the source of each section of the charter. The citations shall show the original source of each section of the charter and the source of all amendments thereto. The copy of the charter shall include a certificate from an attorney-at-law licensed to practice law in this State that the attorney has made a careful search of the local acts of the General Assembly relating to the municipal corporation and is of the opinion that the copy of the charter and the citations are true and correct. There shall also be a certificate of the chief executive officer attested with the seal of the municipal corporation that the chief executive officer verily believes the copy of the charter is true and correct. All subsequent amendments to the charter adopted by action of the General Assembly shall be filed within 20 days of becoming law.

(22 Del. C. 1953, § 836; 53 Del. Laws, c. 260; 70 Del. Laws, c. 186, § 1.)

Subchapter VII

Residency Requirements

§ 841 Residency requirements.

Notwithstanding any charter provision, ordinance or other provision to the contrary, no municipal corporation with a population exceeding 50,000 shall require that, as a condition of continued employment, an employee with at least 5 years of service for the municipality be, become or remain a resident of the municipality during their employment.

(68 Del. Laws, c. 271, § 1; 71 Del. Laws, c. 224, § 1; 75 Del. Laws, c. 22, §§ 1, 2.)

§ 842 School capacity application for municipal corporations.

(a) (1) This section shall apply only to residential development. Prior to recording a residential subdivision plan for over 5 units in size for any lands in any municipality located in a county that utilizes voluntary school assessments as set forth in Title 9 and notwithstanding any home rule or charter provision to the contrary, the applicant shall provide certification from the Secretary of the Department of Education, after consultation with the superintendent of the appropriate individual school district, that the school district has adequate capacity for the proposed development. The Secretary shall respond to any request for certification or voluntary school assessments within 60 days of receipt of a completed request for such certification. That certification shall include the following information:

a. Existing classrooms and service levels based upon the Delaware Department of Education, Delaware School Construction Manual, September 19, 1996, as may be amended or supplemented from time to time, or based upon other standards accepted as accurate by the Secretary of the Department of Education; and

b. Capacity calculations, which shall include the current student population, increased demand resulting from prior certifications from the Department of Education, and the increased demand that will result from the proposed development. The municipality shall, within 20 days, provide the Department of Education with all necessary information regarding the number and type of dwelling units proposed and other information which the Secretary may request.

(2) This subsection shall apply to all new residential subdivision plans over 5 units in size for lands located within or annexed into a municipality located in New Castle County on or after July 1, 1992, and first submitted for review after July 1, 1999.

(3) This subsection shall apply to all new residential subdivision final plans over 5 units in size for lands located within or annexed into a municipality located in Sussex County if such County utilizes voluntary school assessments.

(b) Notwithstanding the foregoing provisions of this section, no certificate of adequate school capacity shall be required where either:

(1) The residential development is restricted by recorded covenants to provide housing or shelter predominantly for individuals 55 years of age or older pursuant to the provisions of the federal Fair Housing Act [42 U.S.C. § 3601, et seq.];

(2) The residential development is for low-income housing, which, for purposes of this section; shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the Secretary of Housing and Urban Development or the Delaware State Housing Authority or which is developed by a nonprofit corporation certified under § 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3)]; or

(3) The applicant has pledged, in a writing recorded and running with the subject property, to pay a voluntary school assessment in an amount determined pursuant to § 103(c) of Title 14 for each lot for which the applicant would otherwise be required to obtain a certificate.

(c) Voluntary school assessments will be calculated on a per unit basis as of the issuance of the first building permit, and the fee shall

remain constant throughout the development of the subdivision (and shall not be increased for any reason, including but not limited to any resubdivision); provided, however, that after 5 years the voluntary school assessment amount may be recalculated. Any voluntary school assessments paid under this subsection shall be paid to the Department of Education at the time that a certificate of occupancy is obtained for each unit, and shall be deposited by the Department into an interest-bearing account as set forth below. With the approval of the Secretary, after consultation with the superintendent of the affected school district, an applicant may receive a credit against voluntary assessments to be paid in an amount equal to the fair market value of any lands or properties set aside by the applicant and deeded to the school district for school uses. Any such lands shall not be used for nonschool purposes, other than as parkland or open space. All voluntary assessments paid shall be held in an interest-bearing account by the State for the school district in which the applicant's project is located until such time as the school district engages in construction activities which increase school capacity, at which time such assessments shall be released to the school district by the State in the amount of voluntary school assessments paid into an interest-bearing account for such district. It is the intent of this section that lands or properties required to be conveyed by the applicant to a municipality as a condition either to annexation or subdivision approval shall not be eligible to be used for purposes of obtaining a credit against the voluntary school assessment, notwithstanding the fact that such lands or properties may subsequently be conveyed by the municipality to a school district.

(d) To the extent any municipality located in a county that utilizes voluntary school assessments has adopted (or in the future attempts to adopt) any regulations or ordinances linking or tying residential development to school capacity or otherwise restricting residential development in the absence of school capacity for lands covered by this section, such regulations and ordinances are hereby preempted and of no force and effect.

(72 Del. Laws, c. 237, § 2; 73 Del. Laws, c. 350, § 109; 74 Del. Laws, c. 308, § 151(c), (d); 84 Del. Laws, c. 210, § 2.)

Chapter 9
MUNICIPAL USER TAX

§ 901 Authority to levy, assess and collect tax; deduction by employers.

Any municipality of this State with a population in excess of 50,000 persons is hereby authorized to levy, assess and collect a tax for general revenue purposes on earned income of its residents and on any income earned within the city by persons not residing within such city but engaged or employed in any business, profession or occupation within such city. Any employer whose business is located outside the corporate limits of a city but who employs persons who are residents of the city shall deduct from such employees' total income the assessed municipal user tax imposed by said city.

(22 Del. C. 1953, § 901; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14; 59 Del. Laws, c. 121, § 3; 59 Del. Laws, c. 122, § 1; 60 Del. Laws, c. 621, § 1.)

§ 902 Limitations.

Any tax assessed within this tax shall not exceed 1.25 percent of the income of residents of such city per annum and 1.25 percent of the income of nonresidents earned within the city per annum.

(22 Del. C. 1953, § 902; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14; 59 Del. Laws, c. 121, § 2.)

§ 903 Income; definition.

"Income" means the total income from whatever source earned by any resident of such city and the total income earned within such city by any nonresident of the city.

(22 Del. C. 1953, § 903; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 904 Regulations.

Each such municipality is authorized to promulgate and enforce such regulations as it deems necessary for the assessment, collection and enforcement of such tax.

(22 Del. C. 1953, § 904; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 905 Enforcement in Superior Court.

Any such municipality which adopts this chapter is, in addition to all other means of enforcement available, authorized to bring suit in the Superior Court of the county in which such city is located.

(22 Del. C. 1953, § 905; 57 Del. Laws, c. 11; 58 Del. Laws, c. 14.)

§ 906 Taxes due under tax adopted prior to March 30, 1971.

Taxes due under any municipal user tax adopted prior to March 30, 1971, shall continue to be collected and enforced and shall not be abated.

(22 Del. C. 1953, § 906; 58 Del. Laws, c. 14.)

§ 907 Event tax.

(a) Any municipality with a population greater than 50,000 may impose, by duly enacted ordinance, a surcharge of up to $2.50 on any admission fee of more than $10 that is charged for admission to any sporting, cultural, amusement, athletic, recreational or other entertainment event that is held within the boundaries of the municipality, which such procedures for collection and distribution to be established by duly enacted ordinance of the municipality.

(b) "Sporting, cultural, athletic, recreational or other entertainment event" shall mean any such event for which any member of the general public is charged an admission fee, including theaters, amphitheaters, dance halls, auditoriums, observation towers, stadiums, athletic pavilions or fields, athletic parks, circuses, side shows, carnivals and outdoor amusement parks, but not including events held by educational institutions which require approval of the State Department of Public Education or another governmental agency that is authorized to approve, license or issue a permit for the operation of a school, and events organized for the purpose of fund raising for political campaigns for public office.

(74 Del. Laws, c. 121, § 1.)

§ 908 Lodging tax.

Any municipality with a population greater than 50,000 may impose, by duly enacted ordinance, a local lodging tax of no more than 3 percent of the rent, in addition to the amount imposed by the State, for any room or rooms in a hotel, motel or tourist home, as defined in § 6101 of Title 30, which is located within the boundaries of the municipality.

(74 Del. Laws, c. 117, § 1.)

Chapter 10
EXEMPTIONS FROM MUNICIPAL TAXATION ON REAL PROPERTY FOR PERSONS 65 YEARS OF AGE OR OVER

§ 1001 Definitions.

As used in this chapter:

(1) “Income” means all income from whatever source derived including, but not limited to, realized capital gains and, in their entirety, pension, annuity, retirement and social security benefits.

(2) “Income tax year” means the 12-month period for which the property owner files a federal personal income tax return or, if no such return is filed, the calendar year.

(3) “Municipality” means any incorporated town or city of this State.

(4) “Resident” means one legally domiciled within the municipality for the period required by this chapter. Mere seasonal or temporary residence within the municipality, of whatever duration, shall not constitute domicile within the municipality for the purposes of this chapter. Absence from the municipality for a period of 12 months shall be prima facie evidence of abandonment of domicile in the municipality. The burden of establishing legal domicile within the municipality shall be upon the property owner.

(22 Del. C. 1953, § 1001; 57 Del. Laws, c. 195, § 1; 57 Del. Laws, c. 425.)

§ 1002 Exemption to be provided for by municipal law or ordinance.

Every person a resident of a municipality of this State and the owner of real property located therein who is 65 years of age or over shall be entitled, within the limitations of this chapter, to an exemption from municipal taxation on such real property to the extent the governing body of such municipality adopts a local law or ordinance providing therefor.

(22 Del. C. 1953, § 1002; 57 Del. Laws, c. 425; 65 Del. Laws, c. 11, § 1.)

§ 1003 Application for exemption.

Application for such exemption must be made by the property owner on forms to be furnished by the appropriate assessing authority and shall furnish the information and be executed in the manner required on such forms and shall be filed in such assessor’s office on such date as is prescribed by the municipality.

(22 Del. C. 1953, § 1004; 57 Del. Laws, c. 195, § 1; 57 Del. Laws, c. 425; 65 Del. Laws, c. 11, § 2.)

§ 1004 Tenants in common; joint tenants; tenants by entirety; partnerships; fiduciaries; corporations.

(a) Where title to property on which an exemption from municipal taxation is claimed is held by more than 1 person either as tenants in common or as joint tenants, each tenant shall not be allowed an exemption against its interest in the property in excess of the assessed valuation of the tenant’s proportionate share in the property, which proportionate share, for the purposes of this chapter, shall be deemed to be equal to that of each of the other tenants, unless it is shown that the interests in question are not equal, in which event each tenant’s proportionate share shall be as shown.

(b) Nothing in this chapter shall preclude more than 1 tenant, whether title be held in common or joint tenancy, from claiming exemption against the property so held, but no more than the equivalent of 1 full exemption in regard to such property shall be allowed in any year, and in any case in which the tenants cannot agree as to the apportionment thereof, the exemption shall be apportioned between or among them in proportion to their interest. Property held by both spouses, as tenants by the entirety, shall be deemed wholly owned by each tenant, but not more than 1 exemption in regard to such property shall be allowed in any year.

(c) The right to claim exemption from municipal taxation on real property shall extend to property the title to which is held by a partnership to the extent of the claimant’s interest as a partner therein and by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim exemption from municipal taxation on real property, but not to property the title to which is held by a corporation.

(22 Del. C. 1953, § 1005; 57 Del. Laws, c. 195, § 1; 57 Del. Laws, c. 425; 65 Del. Laws, c. 11, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1005 Rules and regulations.

Each municipality granting an exemption under this chapter may promulgate such rules and regulations and prescribe such forms as they shall deem necessary to implement this chapter.

(22 Del. C. 1953, § 1006; 57 Del. Laws, c. 425; 65 Del. Laws, c. 11, § 2.)

§ 1006 Appeals.

An aggrieved taxpayer may appeal from the disposition of an exemption claim from municipal real property taxation in the same manner as is provided for appeals from assessments generally.

(22 Del. C. 1953, § 1007; 57 Del. Laws, c. 195, § 1; 57 Del. Laws, c. 425; 65 Del. Laws, c. 11, § 2.)

§ 1007 [Transferred.]

Chapter 11
ASSESSMENTS FOR MUNICIPAL TAXATION

§ 1101 Adoption of county assessments.

Any municipal corporation in this State (hereinafter referred to as "municipality") may by ordinance elect to use the assessments and supplementary assessments for property in the municipality as established annually or quarterly by the board of assessment or board of assessment review in which such municipality is located, subject to statutory judicial appeals, as the assessment roll of such municipality for municipal taxation.

(22 Del. C. 1953, § 951; 57 Del. Laws, c. 278.)

§ 1102 Time for adoption; notice.

The election by the municipality to use the county assessments shall be made before February 1 of any year and shall continue in effect from year to year until revoked by ordinance adopted by the municipality. Notice of such election shall be given to the board of assessment or board of assessment review prior to March 1 in the year in which such election occurs and shall be published at least once a week for 2 weeks prior to March 1 of each year in at least 2 newspapers in the municipality, or to the extent no such newspaper exists, then in a newspaper of general circulation in the county in which such municipality is located.

(22 Del. C. 1953, § 952; 57 Del. Laws, c. 278.)

§ 1103 Costs.

The municipality shall be entitled to receive a copy of the county assessments for the properties in the municipality from the board of assessment or board of assessment review upon payment of the costs of producing the copy.

(22 Del. C. 1953, § 953; 57 Del. Laws, c. 278.)

§ 1104 Certification.

At the time of certification provided in § 8314 of Title 9, the board of assessment or board of assessment review shall certify the total assessed valuation for properties in the municipality to each municipality which shall have theretofore furnished the notice provided for in § 1102 of this title.

(22 Del. C. 1953, § 954; 57 Del. Laws, c. 278.)

§ 1105 Tax rate upon reassessment; notice.

(a) When any total reassessment of taxable properties within a municipal corporation of this State (hereinafter "municipality") shall have become effective, a tax rate shall be computed so as to provide the same tax revenue as was levied during the prior fiscal year. That rate shall be known as the "rolled-back rate." Any initial assessment made on new construction shall not be taken into account in determining such limitation.

(b) The ordinance establishing a property tax rate upon total reassessment shall state the percent, if any, by which the tax rate to be levied exceeds the rolled-back rate computed pursuant to subsection (a) of this section, which shall be characterized as the percentage increase in property taxes adopted by the governing body. Within 15 days of the meeting at which the ordinance shall be considered by the governing body, the municipality shall advertise, in a newspaper of general circulation in the municipality, said percentage increase in the tax rate.

(64 Del. Laws, c. 363, § 1.)

§ 1106 Assessment of land used for agricultural, horticultural or forestal purposes.

The municipality shall use the county assessment, regardless of any election under § 1101 of this title, for all property within a municipality whose value has been assessed by the county pursuant to §§ 8328-8337 of Title 9 for its agricultural, horticultural or forestal use.

(64 Del. Laws, c. 480, § 1.)

§ 1107 Tax rates.

(a) A municipality may establish, by local law or ordinance, a different tax rate for each of the following:

(1) Residential real property.

(2) Nonresidential real property.

(b) Tax rates established under subsection (a) of this section must be uniform for all property in the same classification, as required under § 1 of Article VIII of the Delaware Constitution.

(85 Del. Laws, c. 131, § 1.)

Chapter 13
MUNICIPAL ELECTRIC COMPANIES

§ 1301 Findings and declaration of policy.

It is determined and declared as a matter of legislative finding that:

(1) Operation of electric utility systems by municipalities and the improvement of the systems through joint action in the fields of the generation, transmission and distribution of electric power and energy is in the public interest;

(2) There is a need in order to ensure the stability and continued viability of the municipal systems to provide for a means by which municipalities which operate the systems may act jointly in all ways possible, including development of coordinate bulk power and fuel supply programs;

(3) The establishment by municipalities which own or operate electric utilities of municipal electric companies will facilitate such joint action and will thereby aid in the stability and continued viability of such municipally owned or operated electric utilities.

Therefore, it is declared to be the policy of this State to promote the welfare of the inhabitants thereof by authorizing municipally owned or operated electric utilities to establish bodies corporate and politic to be known as "municipal electric companies" which shall exist and operate for the purposes contained in this chapter. Such purposes are declared to be public purposes for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

(61 Del. Laws, c. 496, § 1.)

§ 1302 Definitions.

As used in this chapter unless the context clearly indicates otherwise:

(1) "Bonds" means any bonds, interim certificates, notes, debentures or other obligations of a company issued under this chapter.

(2) "Company" and "electric company" mean a municipal electric company.

(3) "Contracting municipality" means a municipality which contracts to establish an electric company under this chapter.

(4) "Municipal electric company" means a public corporation created by contract between 2 or more municipalities under this chapter .

(5) "Municipality" means a city or town.

(6) "Person" means a natural person, a public agency, cooperative or private corporation, association, firm, statutory trust, partnership or business trust of any nature whatsoever, organized and existing under the laws of any state or of the United States.

(7) "Project" means any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange or interchange of electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes, including, but not limited to, the acquisition of fuel deposits and the acquisition or construction and operation of facilities for extracting fuel from natural deposits, for converting it for use in another form, for burning it in place, for transportation, storage and reprocessing or for any energy conservation measure which involves public education or the actual fitting and application of a device.

(8) "Public agency" means any municipality or other municipal corporation, political subdivision, government unit or public corporation created under the laws of this State or of another state or of the United States, and any state or the United States, and any person, board or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof.

(61 Del. Laws, c. 496, § 1; 73 Del. Laws, c. 329, § 66.)

§ 1303 Creation.

(a) Any combination of municipalities engaged in or desiring to engage in the transmission or distribution of electric power and energy may, by contract with each other, establish a separate governmental entity to be known as a municipal electric company to be used by such contracting municipalities to effect joint development of electric energy resources or production, distribution and transmission of electric power and energy in whole or in part for the benefit of the contracting municipalities. The municipalities party to the contract may amend the contract as provided in this chapter.

(b) Any contract entered into under this section shall be filed with the Secretary of State. Upon receipt, the Secretary shall record the contract and issue a certificate of incorporation stating the name of the company and the date and fact of incorporation. Upon issuance of the certificate, the existence of the company shall begin.

(61 Del. Laws, c. 496, § 1.)

§ 1304 Contract.

Any contract establishing an electric company under this chapter shall specify:

(1) The name and purpose of the company and the functions or services to be provided by the company. The name may refer to the company as an agency, authority, company, corporation, group, system or other descriptive title.

(2) The establishment and organization of a governing body of the company which shall be a board of directors in which all powers of the company are vested. The contract may provide for the creation by the board of an executive committee of the board to which the

powers and duties may be delegated as the board shall specify.

(3) The number of directors, the manner of their appointment, terms of office and compensation, if any, and the procedure for filling vacancies on the board. Each contracting municipality shall have the power to appoint 1 member to the board of directors and shall be entitled to remove that member at will.

(4) The manner of selection of the officers of the company and their duties.

(5) The voting requirements for action by the board; but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board.

(6) The duties of the board which shall include the obligation to comply or to cause compliance with this chapter and the laws of the State and, in addition, with each and every term, provision and covenant in the contract creating the company on its part to be kept or performed.

(7) The manner in which additional municipalities may become parties to the contract by amendment.

(8) Provisions for the disposition, division or distribution of any property or assets of the company on dissolution.

(9) The term of the contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the contract may be rescinded or terminated, but that the contract may not be rescinded or terminated so long as the company has bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

(61 Del. Laws, c. 496, § 1.)

§ 1305 Powers.

The general powers of an electric company shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve 1 or more projects within or outside the State and act as agent, or designate 1 or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project.

(2) Produce, acquire, sell, distribute and process fuels necessary to the production of electric power and energy and implement energy conservation measures necessary to meet energy needs.

(3) Enter into franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person or public agency.

(4) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the company.

(5) Employ agents and employees.

(6) Contract with any person or public agency within or outside the State, for the construction of any project or for the sale or transmission of electric power and energy generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as its board of directors shall determine.

(7) Purchase, sell, exchange, transmit or distribute electric power and energy within and outside the State in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person or public agency with respect to such purchase, sale, exchange or transmission, on such terms and for such period of time as its board of directors shall determine.

(8) Acquire, own, hold, use, lease (as lessor or lessee), sell or otherwise dispose of, mortgage, pledge or grant a security interest in any real or personal property, commodity or service or interest therein.

(9) Exercise the powers of eminent domain.

(10) Incur debts, liabilities or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, as provided for in § 1311 of this title.

(11) Sue and be sued in its own name.

(12) Have and use a corporate seal.

(13) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the company.

(14) Make, and from time to time amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the company.

(15) Notwithstanding any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the company deems proper.

(16) Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the company’s purposes.

(17) Exercise any other powers which are deemed necessary and convenient by the company to effectuate the purposes of the company.

(18) Do and perform any acts and things authorized by this chapter under, through or by means of any agent or by contracts with any person.

(61 Del. Laws, c. 496, § 1.)

§ 1306 Public character.

An electric company established by contract under this chapter shall constitute a political subdivision and body public and corporate of the State, exercising public powers, separate from the contracting municipalities. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate but shall not have taxing power.

(61 Del. Laws, c. 496, § 1.)

§ 1307 Purchase and sales agreements; advance payments.

(a) The contracting municipalities may provide in the contract created under § 1303 of this title for payment to the company of funds for commodities to be procured and services to be rendered by the company. These municipalities and other persons and public agencies may enter into purchase agreements with the company for the purchase of electric power and energy whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the company to meet its expenses, interest and principal payments (whether at maturity or upon sinking fund redemption) for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the company and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for power irrespective of whether energy is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The contract created under § 1303 of this title or a purchase agreement may provide that if 1 or more of the purchasers defaults in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the power and energy to be purchased by the defaulting purchaser. For purposes of this section the phrase “purchase of electric power and energy” includes any right to capacity or interest in any project.

(b) The obligations of a municipality under a purchase agreement with a company or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal electric utility and shall be treated as expenses of operating a municipal electric utility.

(c) The contract also may provide for payments in the form of contributions to defray the cost of any purpose set forth in the contract and as advances for any such purpose subject to repayment by the company.

(61 Del. Laws, c. 496, § 1.)

§ 1308 Sale of excess capacity.

(a) An electric company may sell or exchange excess power and energy produced or owned by it not required by any of the contracting municipalities for such consideration and for such period and upon such terms and conditions as it may determine to any other person or public agency.

(b) Notwithstanding any other provision of this chapter or any other statute, nothing shall prohibit a company from undertaking any project in conjunction with or owning any project jointly with any person or public agency.

(61 Del. Laws, c. 496, § 1.)

§ 1309 Regulation.

Except as otherwise provided in §§ 201, 203A and 203B of subchapter II of Title 26, the Delaware Public Service Commission shall have no supervision or regulation over any municipal electric company formed pursuant to this chapter or over the budget, operations, rates, property, property rights, equipment, facilities or franchises of any municipal electric company formed under this chapter.

(61 Del. Laws, c. 496, § 1; 68 Del. Laws, c. 299, § 1.)

§ 1310 Bond issues.

(a) An electric company may issue such types of bonds as it may determine, subject only to any agreement with the holders of particular bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenues from 1 or more projects, or from 1 or more revenue producing contracts made by the company with any person or public agency, or from its revenues generally, or which may be additionally secured by a pledge of any grant, subsidy or contribution from any public agency or other person, or a pledge of any income or revenues, funds or moneys of the company from any source whatsoever.

(b) A company may from time to time issue its bonds in such principal amounts as the company deems necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including the establishment or increase of reserve interest accrued during construction of a project and for a period not exceeding 1 year after the completion of construction of a project, and the payment of all other costs or expenses of the company incident to and necessary or convenient to carry out its corporate purposes and powers.

(c) Neither the members of the board of directors of a company nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(d) The bonds of an electric company (and such bonds shall so state on their face) shall not be a debt of the municipalities which are

parties to the contract creating the company or of the State and neither the State nor any such municipality shall be liable thereon nor in any event shall such bonds be payable out of any funds or properties other than those of the company.

(61 Del. Laws, c. 496, § 1.)

§ 1311 Form and sale of bonds.

(a) Bonds of an electric company shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument in 1 or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption (with or without premium) as such resolution, trust indenture or other security instrument may provide, and without limitation by any other law limiting amounts, maturities or interest rates.

(b) The bonds may be sold at public or private sale as the company may provide and at such price or prices as the company shall determine.

(c) In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

(61 Del. Laws, c. 496, § 1.)

§ 1312 Covenants.

The company shall have power in connection with the issuance of its bonds to:

(1) Covenant as to the use of any or all of its property, real or personal.

(2) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(3) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements to a project, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(4) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders.

(5) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenues producing contract or contracts made by the company with any person or public agency to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist.

(6) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, moneys, funds or property with respect to which the company may have any rights or interest.

(7) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(8) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds.

(9) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(10) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds, the holders of which must consent thereto, and the manner in which such consent may be given.

(11) Covenant to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon and the use and disposition of insurance proceeds.

(12) Covenant as to the vesting in a trustee or trustees, within or outside the State, of such properties, rights, powers and duties in trust as the company may determine.

(13) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the State.

(14) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion or the company tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the company power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the Constitution of the State.

(15) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the company may reasonably require.

(61 Del. Laws, c. 496, § 1.)

§ 1313 Refunding bonds.

A company may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the company deems

to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof and the rights, duties and obligations of the company in respect of the same shall be governed by this chapter relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

(61 Del. Laws, c. 496, § 1.)

§ 1314 Bonds eligible for investment.

Bonds issued by a company under this chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision for any purpose for which the deposit of bonds or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(61 Del. Laws, c. 496, § 1.)

§ 1315 Tax exemption.

(a) All bonds of a municipal electric company are declared to be issued on behalf of the State for an essential public and governmental purpose and to be debts of a state municipal corporation.

(b) The property of a company including any pro rata share of any property owned by a company in conjunction with any other person or public agency is declared to be a public property used for essential public and governmental purposes and such property or pro rata share, a company and its income shall be exempt from all taxes of the State or any state public body.

(61 Del. Laws, c. 496, § 1.)

§ 1316 Successor entities.

A company shall, if the contract so provides, be the successor to any nonprofit corporation, agency or any other entity theretofore organized by such contracting municipalities to provide the same or a related function, and the company shall be entitled to all rights and privileges and shall assume all obligations and liabilities of the other entity under existing contracts to which the other entity is a party.

(61 Del. Laws, c. 496, § 1.)

§ 1317 Other statutes.

The powers granted under this chapter do not limit the powers of municipalities to enter into intergovernmental cooperation or contracts or to establish separate legal entities under municipal charters or any other applicable law or otherwise to carry out their powers under applicable statutory provisions, nor shall such powers limit the powers reserved to municipalities by state law. By enacting this chapter, the General Assembly contemplates that activities by municipalities or municipal agencies pursuant to this chapter should not be subject to the antitrust laws of the United States.

(61 Del. Laws, c. 496, § 1.)

§ 1318 Construction.

This chapter shall be interpreted liberally to effect the purposes set forth in this chapter.

(61 Del. Laws, c. 496, § 1.)

§ 1319 Termination of services to a dwelling unit [For application of this section, see 85 Del. Laws, c. 253, § 23].

(a) For purposes of this section:

(1) “Cooling season” means that portion of the calendar year extending from June 1 through September 30.

(2) “Employee” includes:

a. Any person who is an employee of such utility authorized to accept payment for sales and services.

b. The individual who is to terminate such sale or service.

(3) “Heating season” means that portion of the calendar year extending from November 1 to March 31.

(4) “Person” includes any individual, corporation, partnership, association, or joint-stock company.

(b) (1) An electric company may not discontinue services to a dwelling unit due to nonpayment of past charges for services without at least 72 hours’ notice to the occupants of the dwelling unit of intention to terminate, except as otherwise provided by this section.

(2) All electric companies must maintain a voluntary third-party notification program where a customer may designate, in writing, a third party to also receive the notice of termination of service required by paragraph (b)(1) of this section. The designated third party must indicate, in writing, willingness to receive such notice on behalf of the customer and may not be held liable to the electric company by reason of acceptance of third-party status.

(c) (1) Unless there is a safety-related emergency, an electric company may not suspend or turn off utility services to a dwelling unit outside the hours of 8:00 a.m. and 4:00 p.m., Monday through Thursday, unless such utility provides facilities for payment and restoration of services at all times during such period. Should Thursday or Friday be a legal, state or national holiday, Wednesday must be substituted for Thursday. Should Monday be a state or national, legal holiday, the next succeeding business day must be substituted for Monday.

(2) Unless there is a safety-related emergency, an electric company may not suspend or turn off utility services to a dwelling unit from December 21 of each year to January 1 of the following year.

(d) In no event may such termination occur if an occupant of a dwelling unit is so ill that the termination of service will adversely affect the occupant's health or recovery, which has been certified by a signed statement from a duly licensed physician, physician associate, or advanced nurse practitioner, of this State or of a state with similar accreditation and received by any employee or officer of an electric company. Signed statements from a licensed physician, physician associate, or advanced nurse practitioner, obtained pursuant to this section are effective for 120 days. Signed statements may be renewed by means of a new signed statement to prevent termination only if a customer makes a good faith effort to make payments towards the electric company. The electric company must create a dispute resolution process where disputes under this section may be reviewed. While such dispute is pending, an electric company must continue to provide utility service to the customer until the dispute is resolved. When possible, no termination under this section may occur without advance notice to any known case manager or coordinator of an occupant in an affected dwelling unit.

(e) (1) An electric company may not terminate service to a dwelling unit for nonpayment of past charges on a day when the National Weather Service reports that the 8:00 a.m. temperature measured at an airport in the same county as the subject dwelling unit is 35 degrees Fahrenheit or below on the morning of the date when the service is scheduled for termination.

(2) An electric company may not terminate service to a dwelling unit for nonpayment of past charges on a day when the 8:00 a.m. National Weather Service forecast contains a special weather statement or other information predicting that the heat index measured at an airport in the same county as the subject dwelling unit may equal or exceed 95 degrees Fahrenheit on the date when service is scheduled for termination.

(3) When termination of service, otherwise authorized, has been deferred under paragraph (e)(1) or (e)(2) of this section, notice of deferral must be given to the account holder on the date on which termination was to be effected, notifying the occupant that unless proper payment arrangements are made, service will be terminated on a day where paragraph (e)(1) or (e)(2) of this section does not apply. If termination of service involves an apartment complex, trailer park, or other grouping of individual residential dwellings units to which service is provided directly or indirectly through a master meter without individual meters, the notice must be given to all occupants of each dwelling unit in the building complex in which service is proposed to be terminated.

(f) (1) No electric company may terminate service to a dwelling unit during the heating or cooling season for nonpayment of a past due bill unless at least 14 calendar days prior to such termination, written notice is given to the account holder. Where the billing address is different than the location of the dwelling unit, written notice must be sent to the billing address and to the address of the dwelling unit. During the heating season, the electric company must make at least 2 documented attempts on separate days to contact the account holder by telephone, text message, or email prior to actual termination of service. One attempt must be after 5:00 p.m. During the cooling season, the electric company must make at least 1 documented attempt to contact the account holder by telephone, text message, or email prior to actual termination of service.

(2) Written notice required by paragraph (f)(1) of this section must include the following information:

a. The date on or after which termination of services will occur unless some satisfactory arrangement is made for the payment of the undisputed delinquent bills, which date may be no less than 14 calendar days from the mailing of written notice.

b. That if there is a good faith dispute concerning the unpaid bills, termination of service will not take place pending determination of the dispute.

c. That if the occupant or other payor is unable to pay the full amount of the undisputed bill, termination of service may be avoided by entering into an initial payment installment agreement with the electric company.

d. A referral to charitable or governmental assistance programs, including the Low-Income Home Energy Assistance Program.

e. That if any occupant is ill and the termination of services would adversely affect the occupant's health or recovery, the occupant or other payor may defer termination of services under subsection (d) of this section.

(g) Each contracting municipality under this chapter that engages a municipal electric company must adopt regulations and ordinances to enforce the provisions of this section. The contracting municipality may assess a civil penalty of up to $1,000 for each violation of this section. Each day of continued violation is considered a separate violation.

(h) Notwithstanding any other provision of this section, an electric company may discontinue service to a dwelling unit if the utility account holder requests that utility services be discontinued and the request is voluntary.

(85 Del. Laws, c. 24, § 2; 85 Del. Laws, c. 253, § 20.)

Chapter 15
MUNICIPAL BUSINESS IMPROVEMENT DISTRICTS

§ 1501 Findings and declaration of policy.

The General Assembly hereby finds and declares that:

(1) Preserving and enhancing commercial enterprise in the traditional business centers of the cities and towns of Delaware are critical to the long-term financial well-being of the State;

(2) The availability of enhanced municipal services within Delaware's urban commercial centers, which result in significantly improved street and sidewalk sanitation, facilities and infrastructure maintenance and public security, serve as a magnet to the consuming public;

(3) Numerous cities and towns throughout the United States, including Philadelphia, Baltimore, Buffalo and Allentown, have successfully funded and witnessed the benefit of such enhancements through the creation of business improvement districts as authorized by State legislative enactment;

(4) The cost of the enhanced municipal services provided for within a business improvement district is funded exclusively by the principal beneficiaries thereof, the commercial enterprises within each such district, thereby avoiding further demand on the strained public treasury.

(69 Del. Laws, c. 328, § 1.)

§ 1502 Definitions.

(a) "Assessable property" means all property owned or used by a commercial enterprise which is located within a business improvement district (whether or not it is subject to a real property tax abatement) and which is not part of a class of property which is exempted from assessment pursuant to § 1503(a) of this title.

(b) "Assessment base" means any tax or license fee lawfully imposed by a municipality relating to real property or the operation of a commercial enterprise.

(c) "Assessment zone" means an area of a business improvement district designated by the municipality to fund a certain percentage of the district's annual budget within which the assessment rate is uniform.

(d) "Authority" means a body politic or corporate exercising public powers of the State as an agency thereof in accordance with the provisions of this chapter and the ordinance creating such authority.

(e) "Business improvement district" or "district" means an area of a city designated for the provision of services by an authority or management company as defined by an ordinance adopted by the city in accordance with this chapter.

(f) "City" or "municipality" means any incorporated municipality or town.

(g) "Management company" means an authority which in accordance with the express terms of the ordinance creating it is duly incorporated under the not-for-profit incorporation provisions of the Delaware General Incorporation Law [Chapter 1 of Title 8].

(h) "Services" means those functions undertaken directly or indirectly by an authority or management company for the benefit and advantage of the business improvement district.

(69 Del. Laws, c. 328, § 1.)

§ 1503 Establishment.

(a) The Mayor and Council or other governing body of any municipality of this State may create 1 or more business improvement districts comprising all or any portions of any area within such municipality which is either zoned for commercial use or predominantly used for commercial purposes. Such ordinance shall include the following:

(1) A description of the geographic boundaries of such district, including the geographic boundaries of any assessment zones within the district;

(2) A description of the authority or management company which will govern such district, which authority or management company shall be comprised of not less than 5 members or directors respectively who either own a commercial property within such district, or are the designee of such owner;

(3) A general description of the services and/or improvements which the district shall be authorized to provide;

(4) The specific assessment base through which the annual budget of the district shall be funded;

(5) If the district is divided into assessment zones, the percentage of the district's annual budget which each zone shall fund;

(6) Any limitations on the special assignment or borrowing authority of the district;

(7) The duration of the existence of the district, which shall not exceed 30 years;

(8) The properties to be exempted from the district; provided, that all residential properties having not more than 4 rental units shall be exempt, and provided further, that the municipality may specifically exempt all properties owned by organizations exempt from the municipality's real property tax; and

(9) The method, manner and frequency of reports which each such district must file with the municipality with respect to its affairs.

(b) The ordinance required by this section shall, in addition to any other applicable public notice procedures, be advertised in a periodical

which is generally circulated within the area designated as the district not less than 10 days prior to its introduction. Such ordinance shall, unless the ordinance shall otherwise expressly provide, be effective 30 days after the date of its enactment.

(69 Del. Laws, c. 328, § 1.)

§ 1504 Creation and powers of the authority or management company.

(a) The authority or management company authorized by ordinance to govern a district shall be created by the filing of a certificate of authority or incorporation with the Secretary of State, which certificate shall include:

(1) Citation to the ordinance authorizing its creation;

(2) The names and business addresses of those nominated and approved as the initial members or directors of the authority or management company;

(3) The term of existence of the authority or management company;

(4) Any express terms or conditions proposed by the enabling ordinance regarding the powers, duties or restrictions imposed upon the authority or management company.

(b) Except as restricted by this chapter or the ordinance creating it, an authority or management company shall have, by way of example not limitation, the power:

(1) To acquire, hold and use property necessary to achieve its purposes;

(2) To make contracts;

(3) To sue and be sued;

(4) To incur debt, and pledge or hypothecate its assets in security thereof;

(5) To propose an annual budget, and to calculate and assess against all assessable properties within the district, through the assessment base selected by the municipality, such amount as is necessary to fund such budget;

(6) To adopt by-laws for its governance;

(7) To indemnify its members, officers and employees to the full extent authorized by the General Corporation Law [Chapter 1 of Title 8]; and

(8) To otherwise exercise all necessary powers with respect to the conduct of the functions of a business improvement district.

(69 Del. Laws, c. 328, § 1.)

§ 1505 Method of assessment.

(a) The authority or management company shall assess each assessable property within the district by multiplying the total service and improvement cost as reflected in the adopted budget for each year (less any allocated surplus or estimated revenue from other sources) by the ratio of the amount of such assessable property's assessment base to the total amount of the assessment base for all assessable properties in the district or, if the district is divided into assessment zones, in the respective assessment zone; provided, that in all cases the assessment base shall be the one designated in the enabling ordinance by the municipality to fund the district; and provided further, that notwithstanding the above, the authority or management company shall have the power to impose an assessment of a minimum amount; and provided further, that notwithstanding the above, the authority or management company may impose a lower rate or minimum amount of assessment on properties owned by organizations exempt from the municipality's real property tax if the municipality has chosen not to exempt such properties from the district.

(b) The authority or management company may by resolution authorize the payment of such assessment in annual, or more frequent, equal installments, over such time and bearing interest at such rate as may be specified in such resolution.

(c) All assessments imposed by an authority shall constitute a lien on each property so assessed, the nonpayment of which shall be collectable in the same manner as the collection of a property tax delinquency by the municipality in which the district lies. No action taken to enforce a claim by the authority or management company for any annual payment or installment payment shall affect the status of any subsequent installment of the same or the next assessment, each of which shall constitute a lien upon the property.

(69 Del. Laws, c. 328, § 1.)

§ 1506 Prohibitions.

(a) No authority or management company shall issue bonds or other forms of securities; nor shall any authority or management company pledge the full faith and credit of the municipality in which its district lies for the payment of its debts, or of the State.

(b) No authority or management company shall undertake or make any assessment in support of the provision of a service which is presently offered by the municipality in which the district lies.

(c) No authority or management company may make any assessment for the provision of any service which is not for the direct benefit and advantage of the business improvement district.

(69 Del. Laws, c. 328, § 1.)

§ 1507 Annual review by municipality.

Not less frequently than annually, the municipality shall review the performance of each authority or management company created by such municipality and shall prepare for public inspection a report which certifies that:

(1) The authority or management company is in compliance with its enabling ordinance, its certificate of incorporation and by-laws

and the provisions of this chapter;

(2) The authority or management company is fiscally sound; and

(3) The authority or management company has not discriminated against any person based upon race, sex, national origin, religion, age or disability.

(69 Del. Laws, c. 328, § 1.)

Chapter 16
MUNICIPAL REALTY TRANSFER TAX

§ 1601 Realty transfer tax.

(a) Notwithstanding any statute or municipal charter to the contrary, any municipality of this State shall have the power by ordinance to impose and collect a tax, to be paid by the transferor or transferee as determined by the municipality, upon the transfer of real property within the municipality; provided however, that any realty transfer tax which is imposed by any municipal government shall not be greater than $1^{1}/_{2}$ percent of the value of the real property as represented by the document transferring the property.

(b) Sections 5401 and 5403 of Title 30 shall apply with respect to any realty transfer tax imposed by a municipal government pursuant to authority granted in this section.

(c) Any funds realized by a municipality pursuant to this section shall be segregated from the municipality's general fund and the funds, and all interest thereon, shall be expended solely for the capital and operating costs of public safety services, economic development programs, public works services, capital projects and improvements, infrastructure projects and improvements and debt reduction.

(71 Del. Laws, c. 349, § 15.)

Chapter 17
MUNICIPAL TAX INCREMENT FINANCING ACT

§ 1701 Title.

This chapter, consisting of §§ 1701-1713, shall be known as the "Municipal Tax Increment Financing Act."

(74 Del. Laws, c. 145, § 1.)

§ 1702 Definitions.

(a) In this chapter the following terms have the meanings indicated, unless the context clearly indicates another or different meaning or intent.

(b) "Act" means the Municipal Tax Increment Financing Act.

(c) "Adjusted assessed value" means:

(1) For real property that qualifies for an agricultural, horticultural or forest use under § 8329 of Title 9, the fair market value of the property without regard to its agricultural, horticultural or forest use assessment as of January 1 of that year preceding the effective date of the resolution creating the TIF District under § 1706 of this title; or

(2) In the event the municipality grants an exemption from taxes, the original assessed value less the amount of taxes subject to such exemption.

(d) "Assessed value" means the total assessed value of all real property in a TIF District subject to taxation as determined by the Assessor, with any adjustment pursuant to § 1702(c) of this title taken into account.

(e) "Assessor" shall mean the town or City Assessor or, if there is no town or City Assessor, the Department of Land Use for New Castle County, the Board of Assessment for Kent County and the Board of Assessment for Sussex County.

(f) "Bonds" or "bond" means any revenue or general obligation bonds or bond, notes or note, or other similar instruments or instrument issued by any municipality pursuant to and in accordance with this chapter.

(g) "Chief executive officer" means the mayor, or other chief executive officer of a municipality.

(h) "County" or "county" means 1 of the 3 counties of the State.

(i) "Development" includes new development, redevelopment, revitalization and renovation.

(j) "Issuer" or "issuer" means a municipality that issues bonds.

(k) "Issuing body" means a municipality (other than the municipality issuing bonds under this chapter or Chapter 18 of this title), county or other political subdivision, department or agency of the State when it acts to issue a bond, a note, or other similar instrument.

(l) "Municipality" means any town or city located in the State with a population in excess of 35,000 people.

(m) "Original assessed value" means the assessed value as of January 1 of that year preceding the effective date of the resolution creating the TIF District under § 1706 of this title.

(n) "Other obligations" or "other obligation" means a bond, a note, or other similar instrument issued by an issuing body for any of the purposes stated in § 1705 of this title.

(o) "Tax increment" means for any tax year the amount by which the assessed value as of January 1 preceding that tax year exceeds the original assessed value.

(p) "Tax year" means the fiscal year for the municipality.

(q) "TIF District" means an area designated by a resolution described in § 1706(1) of this title.

(74 Del. Laws, c. 145, § 1; 81 Del. Laws, c. 24, § 1.)

§ 1703 Bonds to finance development of industrial, commercial or residential area authorized.

In addition to whatever other powers it may have, and notwithstanding any limitation of law, any municipality may borrow money by issuing and selling bonds, at any time and from time to time, for the purpose of financing the development of an industrial, commercial or residential area.

(74 Del. Laws, c. 145, § 1.)

§ 1704 Payment of bonds.

Bonds shall be payable from the special fund described in § 1706(3)b. of this title, and the governing body of the issuer may also pledge its full faith and credit or establish sinking funds, establish debt service reserve funds or pledge other assets and revenues towards the payments of the principal, premium, if any, and interest, including special taxes levied and collected pursuant to Chapter 18 of this title.

(74 Del. Laws, c. 145, § 1.)

§ 1705 Application of bond proceeds.

All proceeds received from any bonds issued and sold pursuant to this chapter shall be applied solely for:

(1) The cost of purchasing, leasing, condemning or otherwise acquiring land or other property, or an interest in them, in the designated TIF District or as necessary for a right-of-way or other easement to or from the TIF District;

(2) Demolition and site removal;

(3) Plans, specifications, studies, surveys, forecasts and estimates of cost and revenues;

(4) Relocation of businesses or residents;

(5) Installation of utilities, construction of parks and playgrounds, and other necessary improvements, including streets and roads to, from, or within the TIF District, parking, lighting and other facilities;

(6) Construction or rehabilitation of buildings;

(7) Reserves or capitalized interest;

(8) Necessary costs of issuing bonds;

(9) Permissive costs of issuing and servicing the bonds, which may include up to 0.5% of the bond issues as origination costs incurred by the municipality, and up to 2.0% of the bond debt service payments as administrative costs if administered by the municipality;

(10) Payment of the principal, premium, if any, and interest on loans, money advanced or any indebtedness incurred by a municipality for any of the purposes set out in this section, including the refunding of bonds previously issued under this chapter; and

(11) Any costs permitted under § 1801(2) of this title, and for any purposes described in § 1802(b)(2) of this title; provided, however, that the purposes described in § 1802(b)(2) of this title shall be with reference to the designated TIF District.

(74 Del. Laws, c. 145, § 1.)

§ 1706 Conditions precedent to issuance of bonds.

Before issuing any bonds, the governing body of the issuer shall:

(1) Designate by resolution an area within its jurisdiction as a "TIF District".

(2) Receive from the appropriate assessor a certification as to the amount of the original assessed value.

(3) Pledge that until the bonds have been fully paid, or thereafter, the municipal property taxes on real property within the TIF District shall be divided as follows:

a. That portion of the taxes which would be produced by the rate at which taxes levied each year by or for a municipality upon the original assessed value shall be allocated to and when collected paid into the funds of the taxing body in the same manner as taxes by or for the taxing body on all other property are paid.

b. That portion of the taxes representing the levy on the tax increment that would normally be paid to the issuer shall be paid into a special fund to be applied in accordance with the provisions of § 1708 of this title.

c. That portion of the taxes representing the levy on the tax increment that would normally be paid to a taxing body other than the issuer shall be allocated to and, when collected, paid into the funds of such taxing body in the same manner as taxes by or for the taxing body on all property are paid, or any other manner that public agencies so determine (school districts, etc.); provided however, if such taxing body has agreed pursuant to § 1709 of this title that such taxes shall be paid into a special fund created in accordance with § 1707 of this title, then such taxes shall be paid into such special fund.

(74 Del. Laws, c. 145, § 1.)

§ 1707 Resolution creating special fund.

The governing body of any municipality may adopt a resolution creating a special fund with respect to a TIF District, even though no bonds authorized by this chapter have been issued by such municipality with respect to that TIF District or are then outstanding. The taxes allocated to such special fund by § 1706(3)b. or c. of this title shall thereafter be paid over to such special fund, as long as such resolution remains in effect.

(74 Del. Laws, c. 145, § 1.)

§ 1708 Uses of special fund; issuance of general obligation bond.

(a) *Uses of special fund when no bonds outstanding.* — When no bonds authorized by this chapter are outstanding with respect to a TIF District and the governing body of the municipality so determines, moneys in the special fund for that TIF District created pursuant to § 1707 of this title may be:

(1) Used for any of the purposes described in § 1705 of this title for which bond proceeds could be used;

(2) Accumulated for payment of debt service on bonds subsequently issued under this chapter;

(3) Used to pay or to reimburse the municipality for debt service which the municipality is obligated to pay or has paid (whether such obligation is general or limited) on bonds issued by the municipality, or any agency, department or political subdivision thereof, the proceeds of which have been used for any of the purposes specified in § 1705 of this title; or used to pay or reimburse any developer loan;

(4) Used to pay or to reimburse an issuing body for debt service which the municipality is obligated to pay (whether such obligation is general or limited) on other obligations under an agreement described in subsection (b) of this section; or

(5) Paid to the municipality to provide funds to be used for any legal purpose as may be determined by the municipality.

(b) *Pledge agreement.* —

The municipality may pledge, by written agreement, that amounts deposited to the special fund created for the TIF District pursuant to § 1707 of this title shall be paid over to secure the payment, or reimbursement of a payment, of debt service on other obligations. Such agreement shall be between the municipality and the issuing body, and shall run to the benefit of and be enforceable on behalf of any holder, of such other obligations.

(c) *Restrictions on use of special funds.* — When any bonds authorized by this chapter are outstanding with respect to a TIF District and the governing body of the municipality so determines, moneys in the special fund for that TIF District created pursuant to § 1707 of this title may be used as provided in subsection (a) or (b) of this section in any fiscal year by the municipality, but only to the extent that:

(1) The amount in such special fund exceeds the unpaid debt service payable on such bonds in such fiscal year and is not restricted so as to prohibit the use of such moneys;

(2) Such use is not prohibited by the ordinance authorizing the issuance of such bonds; and

(3) To the extent not prohibited by bond or loan covenants.

(d) *Compliance with charter requirements.* — The issuance of general obligation bonds pursuant to this section shall comply with appropriate municipal charter requirements.

(74 Del. Laws, c. 145, § 1; 81 Del. Laws, c. 24, § 2.)

§ 1708A Pledge of revenue from taxes on tax increment into other fund.

The municipality may pledge, by written agreement, that some or all of its property taxes levied on the tax increment shall be paid into a special fund created by an issuing body for the payment or reimbursement of the debt service on other obligations. Such agreement shall be between the municipality and such issuing body and shall run to the benefit of and be enforceable on behalf of any holder of such other obligations.

(81 Del. Laws, c. 24, § 3.)

§ 1709 Agreements to pay revenue from taxes on tax increment into special fund.

A county, which is not the issuing body, may pledge, by written agreement, that some or all of its property taxes levied on the tax increment shall also be paid into a special fund created pursuant to § 1707 of this title. Such agreements shall be between the governing bodies of a municipality and the county. They shall run to the benefit of and be enforceable on behalf of any bondholder.

(74 Del. Laws, c. 145, § 1.)

§ 1710 Ordinance authorizing bonds.

(a) *Required; mandatory provisions.* — In order to implement the authority conferred upon it by this chapter to issue bonds, the governing body of any municipality shall adopt an ordinance which:

(1) Specifies and describes the proposed undertaking and states that it has complied with § 1706 of this title;

(2) Specifies the maximum rate or rates of interest the bonds are to bear.

(b) *Additional provisions.* — The resolution described in § 1707 of this title may itself specify and prescribe, or may authorize its finance board or department, by resolution or ordinance, or its chief executive officer, by executive order, to specify and prescribe any of the following as it deems appropriate to effect the financing of the proposed undertaking:

(1) The actual principal amount of the bonds to be issued;

(2) The actual rate or rates of interest the bonds are to bear;

(3) The manner in which and the terms upon which the bonds are to be sold;

(4) The manner in which and the times and places that the interest on the bonds is to be paid;

(5) The time or times that the bonds may be executed, issued and delivered;

(6) The form and tenor of the bonds and the denominations in which the bonds may be issued;

(7) The manner in which and the times and places that the principal of the bonds is to be paid, within the limitations set forth in this chapter;

(8) Provisions pursuant to which any or all of the bonds may be called for redemption prior to their stated maturity dates; or

(9) Such other provisions not inconsistent with this chapter as shall be determined by such legislative body to be necessary or desirable to effect the financing of the proposed undertaking.

(c) *Referendum.* — Neither the ordinance authorizing the bonds referred to herein, nor any ordinance, resolution or executive order passed or adopted in furtherance thereof, nor the bonds themselves, shall be subject to any referendum by reason of any other state or local law, except that an ordinance authorizing the pledge of the full faith and credit of a municipality to the payment of principal and interest on bonds issued pursuant to this chapter shall be subject to any applicable provisions for referendum.

(74 Del. Laws, c. 145, § 1.)

§ 1711 Exemption of bonds from taxation.

The principal amount of the bonds, the interest payable thereon, their transfer, and any income derived therefrom, including any profit made in the sale or transfer thereof, shall be exempt from taxation by the State and by the several counties and municipalities of this State.

(74 Del. Laws, c. 145, § 1.)

§ 1712 Nature and incidents of bonds.

(a) *Form of bond; deemed "securities."* — All bonds shall be in fully registered form. Each of the bonds shall be deemed to be a "security" within the meaning of § 8-102 of Title 6, whether or not it is either 1 or a class or series or by its terms is divisible into a class or series of instruments.

(b) *Signing and sealing.* — All bonds shall be signed manually or in facsimile by the chief executive officer of the issuer, and the seal of

the issuer shall be affixed thereto and attested by the clerk or other similar administrative officer of the issuer. If any officer whose signature or countersignature appears on the bonds ceases to be such officer before delivery of the bonds, the officer's signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery.

(c) *Maturity.* — All bonds shall mature not later than 30 years from their date of issuance.

(d) *Sale.* — All bonds shall be sold in such manner, either at public or private sale and upon such terms as the governing body of the issuer deems best. Any contract for the acquisition of property may provide that payment shall be made in bonds.

(e) *Bonds issued are securities.* — Bonds issued under this section are securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, state banks and trust companies, national banking associations, savings banks, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(f) *Construction of section.* — This section, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purpose of this section.

(74 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1713 TIF District consistency with certified comprehensive plan.

The use of lands in a TIF District shall be consistent with the Comprehensive Plan for the area as certified pursuant to § 9103(f) of Title 29.

(74 Del. Laws, c. 145, § 1.)

§ 1714 Construction of chapter.

This chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purpose of this chapter.

(74 Del. Laws, c. 145, § 1.)

§ 1715 Taxation of leased property in TIF District.

Whenever the municipality, as lessor, leases its property within the TIF District, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provided that the lessee shall pay taxes or payments in lieu of taxes upon the assessed value of the entire property and not merely the assessed value of the leasehold interest.

(74 Del. Laws, c. 145, § 1.)

§ 1716 Special provision applicable to the City of Dover, Delaware.

(a) Any ordinance, resolution, or other law enacted by the City of Dover, Delaware under the provisions of this chapter may not pledge the full faith and credit of the City of Dover towards the payment of any bonds authorized by this chapter.

(b) For the purpose of § 1702(c)(1) of this title of the definition of "adjusted assessed value" in the "adjusted assessed value" of any real property in a TIF District designated under this chapter by the City of Dover, Delaware, that qualifies for an agricultural, horticultural or forest use under § 8329 of Title 9 shall mean the fair market value of the property without regard to its agricultural, horticultural or forest use assessment as of January 1 of that year preceding the effective date of the resolution creating such TIF District or such later date as may be designated in such resolution by the City Council of the City of Dover.

(c) For the purpose of the definition of "original assessed value" in § 1702 of this title, the "original assessed value" of a TIF District designated by the City of Dover, Delaware under this chapter shall mean the assessed value as of January 1 of that year preceding the effective date of the resolution creating such TIF District or such later date as may be designated in such resolution by the City Council of the City of Dover.

(81 Del. Laws, c. 24, § 4; 81 Del. Laws, c. 63, § 1.)

Chapter 18
SPECIAL DEVELOPMENT DISTRICTS

§ 1801 Definitions.

In this chapter, the following terms have the meanings indicated.

(1) "Bonds" or "bond" means a special obligation bond, revenue bond, note or other similar instrument issued by any municipality in accordance with this section.

(2) "Cost" includes the cost of:

a. Construction, reconstruction and renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of way, franchises, easements and interests acquired or to be acquired by a municipal, local, county, state, or federal government or any agency, department, or office thereof for a public purpose;

b. All machinery and equipment including machinery and equipment needed to expand or enhance the services of a municipal, local, county, state, or federal government or any agency, department, or office thereof to the special development districts created pursuant to § 1802(a) of this title;

c. Financing charges and interest prior to and during construction, and, if deemed advisable by the municipality, for a limited period after completion of the construction, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty, liquidity support and costs of issuance;

d. Extensions, enlargements, additions and improvements;

e. Architectural, engineering, financial and legal services;

f. Plans, specifications, studies, surveys and estimates of cost and of revenues;

g. Administrative expenses necessary or incident to determining to proceed with the infrastructure improvements; and

h. Other expenses as may be necessary or incident to the construction, acquisition, financing and operation of the infrastructure improvements including administrative expenses charged to collect and/or administer the tax revenues.

(3) "County" or "county" means New Castle County, Kent County or Sussex County.

(4) "Issuing body" means a municipality (other than the municipality issuing bonds under this chapter or Chapter 17 of this title), a county, or other political subdivision, department or agency of the State when it acts to issue a bond, a note, or other similar instrument.

(5) "Municipality" means any town or city located within the State with a population in excess of 35,000 people.

(6) "Other obligations" or "other obligation" means a bond, a note, or other similar instrument issued by an issuing body for any of the purposes stated in § 1802 of this title.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 1.)

§ 1802 Special taxes authorized; purpose; requirements and restrictions.

(a) (1) For any purpose stated in paragraph (b)(1) or (b)(2) of this section, any municipality may:

a. Create a special development district;

b. Levy ad valorem or special taxes; and

c. Issue bonds and other obligations.

(2) For any purpose stated in paragraph (b)(3) of this section, any municipality may:

a. Create a special development district;

b. Levy ad valorem or special taxes; and

c. Pledge funds under an agreement described in paragraph (b)(3) of this section to secure payment on other obligations.

(b) The purpose of the authority granted under subsection (a) of this section is:

(1) To provide financing, refinancing, or reimbursement for the cost of the design, construction, establishment, extension, alteration or acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, parks and recreation facilities, libraries, schools, transit facilities, solid waste facilities and other infrastructure improvements as necessary, whether situated within the special development district or outside the special development district if the infrastructure improvement provides service or benefit to the property within the special development district, for the development and utilization of the land, each with respect to any defined geographic region within the municipality;

(2) To provide financing, refinancing, or reimbursement for the costs associated with tax increment financing undertaken with respect to TIF Districts pursuant to Chapter 17 of this title; and

(3) To pledge under a written agreement the ad valorem or special taxes levied under this chapter to secure the payment, or reimbursement of a payment, of other obligations. Such agreement shall be between the municipality and the issuing body, and shall run to the benefit of and be enforceable on behalf of any holder, of other obligations.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 2.)

§ 1803 Authority granted; section self-executing.

(a) In addition to other powers any municipality may have, and notwithstanding the provisions of any other public local law, or public

general law, or the charter of any municipality, a municipality may borrow money by issuing and selling bonds, or impose ad valorem or special taxes under this chapter for any of the purposes stated in § 1802(b) of this title, if a request to the municipality is made by both:

(1) The owners of at least 2/3 of the assessed valuation of the real property located within the special development district; and

(2) At least 2/3 of the owners of the acreage located within the special development district, provided that:

a. Multiple owners of a single parcel are treated as a single owner; and

b. A single owner of multiple parcels is treated as 1 owner.

(b) This section is self-executing and does not require the municipality to enact legislation or, if applicable, to amend its charter to exercise the powers granted under this section.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 3.)

§ 1804 Bond payable from special fund; complementary powers of governing body; proceeds.

(a) Bonds shall be payable from the special fund required under § 1805 of this title.

(b) If the governing body of the municipality issues bonds under this chapter, the governing body may also:

(1) Establish sinking funds;

(2) Establish debt service reserve funds;

(3) Pledge other assets and revenues towards the payments of the principal, premium, if any, and interest; or

(4) Provide for municipal bond insurance or any other type of credit enhancement or liquidity support of the bonds.

(c) All proceeds received from any bonds issued and sold shall be applied solely to pay costs, including:

(1) Costs of design, construction, establishment, extension, alteration or acquisition of infrastructure improvements;

(2) Costs of issuing bonds;

(3) Payment of the principal and interest on loans, including developer loans, money advances or any indebtedness for any of the purposes stated in § 1802(b)(1) and (2) of this title, including the refunding of bonds previously issued under this section;

(4) Funding of a debt service reserve fund or payment of interest prior to, during or for a limited period of time after construction; and

(5) Purposes described in § 1705 of this title.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 4.)

§ 1805 Special fund.

(a) By resolution, the governing body of the municipality may:

(1) Designate by resolution an area or areas within the municipality as a special development district even though no bonds authorized by this chapter have been issued by the municipality with respect to that special development district or are then outstanding;

(2) Subject to subsection (b) of this section, adopt a resolution creating a special fund with respect to the special development district; and

(3) Provide for the levy of an ad valorem or special tax on all real property within the special development district at a rate or amount designed to provide adequate revenues to pay the principal of, interest on, and redemption premium, if any, on the bonds, to replenish any debt service reserve fund, for any other purpose related to the ongoing expenses of or security, including debt service coverage requirements, for the bonds, or to secure payment by the municipality of its obligations under an agreement described in § 1802(b)(3) of this title. Ad valorem taxes shall be levied in the same manner, upon the same assessments, for the same period or periods, and as of the same date or dates of finality as are now or may hereafter be prescribed for general ad valorem real property tax purposes within the district, and shall be discontinued when all of the bonds have been paid in full. Special taxes shall be levied pursuant to § 1813 of this title.

(b) The resolution creating a special fund under paragraph (a)(2) of this section shall:

(1) Pledge to the special fund the proceeds of the ad valorem or special tax to be levied as provided under paragraph (a)(3) of this section; and

(2) Require that the proceeds from the tax be paid into the special fund.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 5.)

§ 1806 When no bonds or other obligations outstanding.

(a) When no bonds are outstanding, the municipality may use money in the special fund for payment or reimbursement of debt service on other obligation that the municipality is obligated to pay under an agreement described in § 1802(b)(3) of this title.

(b) When no bonds are outstanding with respect to a special development district and no other obligations are outstanding:

(1) The special development district shall be terminated; and

(2) Any moneys remaining in the special fund on the date of termination of the special development district shall be paid to the general fund of the municipality.

(74 Del. Laws, c. 145, § 2; 81 Del. Laws, c. 22, § 6.)

§ 1807 Adoption of ordinance to implement authority.

(a) In order to implement the authority conferred upon it by this chapter to issue bonds, the governing body of the municipality shall adopt an ordinance that:

(1) Specifies and describes the proposed undertaking and states that it has complied with § 1805 of this title;

(2) Specifies the maximum principal amount of bonds to be issued;

(3) Specifies the maximum rate or rates of interest for the bonds; and

(4) Agrees to a covenant to levy upon all real property within the special development district, ad valorem taxes or special taxes in rate and amount at least sufficient in each year in which any of the bonds are outstanding to provide for the payment of the principal of, premium, if any, and the interest on the bonds.

(b) The ordinance may specify or may authorize its finance board or department or other appropriate financial officer, by resolution or ordinance, or its chief executive officer, by executive order, to specify any of the following as it deems appropriate to effect the financing of the proposed undertaking:

(1) The actual principal amount of the bonds to be issued;

(2) The actual rate or rates of interest for the bonds;

(3) The manner in which and the terms upon which the bonds are to be sold;

(4) The manner in which and the times and places that the interest on the bonds is to be paid;

(5) The time or times that the bonds may be executed, issued and delivered;

(6) The form and tenor of the bonds and the denominations in which the bonds may be issued;

(7) The manner in which and the times and places that the principal of the bonds is to be paid, within the limitations set forth in this chapter;

(8) Provisions pursuant to which any or all of the bonds may be called for redemption prior to their stated maturity dates; or

(9) Any other provisions not inconsistent with this chapter as shall be determined by the governing body of the municipality to be necessary or desirable to effect the financing of the proposed undertaking.

(c) (1) An ordinance authorizing the bonds required under this section, an ordinance, resolution or executive order passed or adopted in furtherance of the required ordinance, the bonds, the designation of a special development district, or the levy of a special ad valorem tax or special tax may not be subject to any referendum by reason of any other state or local law.

(2) The ordinance authorizing the bonds required under this section, any ordinance, resolution, or executive order passed or adopted in furtherance of the required ordinance, the bonds, the designation of a special development district, or the levy of a special ad valorem tax or special tax shall be subject to the request of the landowners as specified under § 1803(a) of this title.

(74 Del. Laws, c. 145, § 2.)

§ 1808 Taxation of bonds.

The principal amount of the bonds, the interest payable on the bonds, their transfer and any income derived from the transfer, including any profit made in the sale or transfer of the bonds, shall be exempt from taxation by the State and by the counties and municipalities of the State.

(74 Del. Laws, c. 145, § 2.)

§ 1809 Bond form; signatures; maturity; manner of sale.

(a) *All bonds shall be in fully registered form.* — Each of the bonds shall be deemed to be a security as defined in § 8-102 of Title 6, whether or not it is either 1 of a class or series or by its terms is divisible into a class or series of instruments.

(b) All bonds shall be signed manually or in facsimile by the chief executive officer of the municipality, and the seal of the municipality shall be affixed to the bonds and attested by the clerk or other similar administrative officer of the municipality. If any officer whose signature or countersignature appears on the bonds ceases to be such officer before delivery of the bonds, the officer's signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery.

(c) All bonds shall mature not later than 30 years from their date of issuance.

(d) All bonds shall be sold in the manner, either at public or private sale, and upon the terms, as the governing body of the municipality deems best. Any contract for the acquisition of property may provide that payment shall be made in bonds.

(74 Del. Laws, c. 145, § 2.)

§ 1810 Bonds issued are securities.

Bonds issued under this chapter are securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, state banks and trust companies, national banking associations, savings banks, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(74 Del. Laws, c. 145, § 2.)

§ 1811 Powers granted are supplemental to other laws.

The powers granted under this chapter shall be regarded as supplemental and additional to powers conferred by other laws, and may not be regarded as in derogation of any powers now existing.

(74 Del. Laws, c. 145, § 2.)

§ 1812 Construction of chapter.

This chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purpose stated in § 1802(b) of this title.

(74 Del. Laws, c. 145, § 2.)

§ 1813 Special taxes on real property as alternative to ad valorem taxes.

(a) As an alternative to levying ad valorem taxes under this chapter, the governing body of the municipality may levy special taxes on real property in a special development district to cover the cost of infrastructure improvements.

(b) In determining the basis for and amount of the tax, the cost of an improvement may be calculated and levied:

(1) Equally per front foot, lot, parcel, dwelling unit or square foot;

(2) According to the value of the property as determined by the governing body, with or without regard to improvements on the property; or

(3) In any other reasonable manner that results in fairly allocating the cost of the infrastructure improvements.

(c) The governing body of the municipality may provide by ordinance or resolution for:

(1) A maximum amount to be assessed with respect to any parcel of real property located within a special development district;

(2) A tax year or other date after which no further special taxes under this section shall be levied or collected on a parcel; and

(3) The circumstances under which the special tax levied against any parcel may be increased, if at all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the special development district.

(d) The governing body by ordinance or resolution may establish procedures allowing for the prepayment of special taxes under this section.

(e) Special taxes levied under this section shall be collected and secured in the same manner as general ad valorem real property taxes unless otherwise provided in the ordinance or resolution and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for general ad valorem real property taxes.

(74 Del. Laws, c. 145, § 2.)

§ 1814 Bonds not to constitute general obligation debt.

Bonds issued under this chapter are a special obligation of the municipality and may not constitute a general obligation debt of the municipality, or a pledge of the municipality's full faith and credit or taxing power.

(74 Del. Laws, c. 145, § 2.)

§ 1815 Special development district consistency with certified comprehensive plan.

The use of lands in a special development district shall be consistent with the comprehensive plan for the area as certified pursuant to § 9103(f) of Title 29.

(74 Del. Laws, c. 145, § 2.)

§ 1816 Limitation on ad valorem or special taxes within a special development district.

The levy of an ad valorem or special tax pursuant to § 1802(a) or § 1813(a) of this title shall not be applicable to and shall not be imposed on special betterments property as defined in § 8101(e) of Title 9 owned or leased by a "public utility" as defined in § 102 of Title 26.

(81 Del. Laws, c. 22, § 7.)

§ 1817 Special provision applicable to the City of Dover, Delaware.

Notwithstanding § 1807(c)(2) of this title, before the City of Dover may establish a special development district under this chapter, all of the owners of real property in the proposed special development district shall request the City of Dover to establish the special development district.

(81 Del. Laws, c. 22, § 8.)

Chapter 19
The Downtown Development Corridors and Districts Act
Subchapter I
Establishment, Amendment, and Termination of Corridors and Districts

§ 1901 Purpose.

Healthy and vibrant downtowns are critical components of Delaware's economic well-being and quality of life. The purpose of this chapter is to leverage the resources of state government in a limited number of designated areas in Delaware's cities, towns, and unincorporated areas in a multifaceted effort to:

(1) Spur private capital investment in commercial business districts and surrounding neighborhoods;

(2) Stimulate job growth and improve the commercial vitality of such districts and neighborhoods;

(3) Help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and

(4) Help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.

(79 Del. Laws, c. 240, § 1.)

§ 1902 Definitions.

As used in this chapter:

(1) "Committee" means the Cabinet Committee on State Planning Issues established under § 9101 of Title 29.

(2) "Corridor plan" or "district plan" means the strategic plan or other detailed description of the overall strategy for the development of a proposed corridor or district submitted by the municipality or unincorporated area as part of its application for corridor or district designation.

(3) "Downtown" means that portion of a city, town, or unincorporated area that traditionally comprises its downtown or central business district, as determined by such city, town, or unincorporated area in accordance with guidelines promulgated by the Office.

(4) "Downtown Development Corridor" or "corridor" means an area within a municipality with a population of 30,000 or more based on the 2020 federal census that is designated as a Downtown Development Corridor under this chapter.

(5) "Downtown Development District" or "district" means an area within a municipality or unincorporated area designated as a Downtown Development District under this chapter.

(6) "DSHA" means the Delaware State Housing Authority.

(7) "Municipality" means any incorporated town or city of this State.

(8) "Office" means the Office of State Planning Coordination.

(9) "Unincorporated area" means an area of this State having a concentration of population that is not a municipality and that is eligible to apply for and receive district designation in accordance with rules promulgated by the Office.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 3.)

§ 1903 Applications for corridor or district designation.

(a) At the request of the Governor, the Office shall solicit applications from municipalities and unincorporated areas to have an area designated as a Downtown Development Corridor or Downtown Development District. Such application shall include a description of the area to be included; the need for corridor or district incentives; the corridor plan or district plan; local incentives offered; and such other information as may be required by the Office.

(b) The Office shall administer the application process and establish criteria to determine what areas qualify as Downtown Development Corridors and Downtown Development Districts. The Office is authorized to take such actions as may be necessary or convenient to fulfill its responsibilities under this chapter, including promulgating rules and regulations relating to the establishment, amendment, and termination of corridors and districts and providing assistance to municipalities and unincorporated areas in connection with the application process.

(c) The criteria for designating an area as a Downtown Development Corridor or Downtown Development District must include all of the following:

(1) The need and impact of the designation for the area, including income, unemployment rate, homeownership rate, and prevalence of vacant or abandoned housing units in the municipality or unincorporated area. Need and impact factors must account for at least 50 percent of the consideration given to applications for corridor or district designation.

(2) The quality of the municipality's or unincorporated area's corridor plan or district plan.

(3) The quality of the local incentives offered.

(4) Such other criteria as may be determined by the Office.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 4.)

§ 1904 Review and approval of applications.

(a) Applications for corridor or district designation must be evaluated by the Cabinet Committee on State Planning Issues, which shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of this chapter.

(b) On receipt from the Committee of any recommended application, the Governor may do any of the following

(1) Designate immediately the recommended area as a corridor or district.

(2) Designate the recommended area as a corridor or district effective 1 year from the date of the determination by the Governor.

(3) Deny the application.

(c) [Repealed.]

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 5.)

§ 1905 Designation, renewal, and amendment of corridors or districts.

(a) Not more than 15 districts may be designated at any 1 time. Not more than 1 corridor may be designated for each municipality.

(b) A corridor or district is to be designated for an initial 10-year period. On recommendation of the Committee, the Governor may renew a corridor or district for up to 2 5-year renewal periods. Recommendations for renewals must be based on the performance of corridor or district responsibilities by the municipality, or county in the case of a district in an unincorporated area; the continued need for the corridor or district; and the corridor's or district's effectiveness in creating capital investment, increasing population, creating jobs, improving housing stock, providing enhanced retail and entertainment opportunities, and otherwise improving the quality of life within the corridor or district.

(c) Any municipality, or county in the case of a district in an unincorporated area, having a corridor or district within its borders is responsible for providing the local incentives specified in its application, providing timely submission of reports and evaluations as required by rule or regulation, implementing an active local development corridor or district program within the context of overall economic and community development efforts, and fulfilling such other responsibilities as may be required by law, rule, or regulation in connection with the corridor or district.

(d) Each corridor or district shall submit regular reports and information to the Office as may be necessary to evaluate the corridor's or district's effectiveness and compliance with this section.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 6.)

§ 1906 Local incentives.

(a) A municipality or unincorporated area applying for district designation, or municipality applying for a corridor designation, shall propose local incentives that address local economic and community conditions, and that will help achieve the purposes set forth in § 1901 of this title. The local incentives may include a reduction in fees or taxes. In addition, the application may also contain proposals for regulatory flexibility, which may include permit process reforms, special zoning districts, or exemptions from local ordinances.

(b) All incentives proposed in the application are binding on a municipality or unincorporated area applying for district designation, or municipality applying for a corridor designation, on designation of the corridor or district. The extent and duration of the incentives must be consistent with the requirements of the Delaware Constitution and the United States Constitution.

(c) A municipality or county may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 7.)

§ 1907 Amendments to corridor or district boundaries and incentives.

A municipality or county may apply to the Office to amend the boundaries of a corridor or district or to amend 1 or more corridor or district incentives for a corridor or district designated by the municipality or county, if any revised incentive proposed by the municipality or county is equal or superior to the incentive for which the amendment is sought. All proposed amendments are subject to approval by the Committee.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 8.)

§ 1908 Formal review and termination of corridors or districts.

(a) If a municipality or county fails to fulfill its obligations under § 1905 of this title or as otherwise set forth in this chapter, the Office may recommend to the Committee that the corridor or district be placed under formal review or that its corridor or district designation be terminated.

(b) Unless a municipality fails to provide local incentives under § 1906 of this title, the Office may not recommend any of the following:

(1) Placing a corridor or district under formal review for at least 2 years following the initial designation of the corridor or district.

(2) Terminating the designation of a corridor or district for at least 1 year following the placement of the corridor or district on formal review by the Committee.

(c) The Office may not recommend formal review or termination of a corridor or district without providing sufficient notice and opportunity to be heard to the corridor or district.

(d) The Committee may approve any recommendation by the Office to place a corridor or district under formal review or to terminate a corridor's or district's designation on the affirmative vote of ⅗ of the members of the Committee.

(e) The Office may promulgate regulations to authorize the continuation of previously authorized corridor or district incentives for a reasonable period following termination of the corridor or district. A new incentive may not be authorized for any entity after the date of termination.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 9.)

Subchapter II

Downtown Development Corridor and District Grants

§ 1921 Qualifications for Downtown Development Corridor and Downtown Development District Grants; definitions.

(a) Subject to the limitations set forth in this subchapter, any qualified corridor or district investor making a qualified real property investment in a corridor or district is entitled to a grant in an amount up to 20% of the qualified real property investments made by the qualified corridor or district investor in excess of the minimum qualified investment threshold.

(b) For purposes of this subchapter:

(1) "DDC Grant," "DDD Grant, or grant" means a Downtown Development Corridor or Downtown Development District Grant under subsection (a) of this section.

(2) "Facility" means a complex of buildings, co-located at a single physical location within a corridor or district, all of which are necessary to facilitate the conduct of the same residential, trade, or business use. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

(3) "Minimum qualified investment threshold" means the minimum level of qualified real property investments required to be made by a qualified corridor or district investor in a building or facility to qualify for a grant, as determined by DSHA. Not more often than once per year, DSHA may amend the minimum qualified investment threshold with respect to uses (residential, commercial, industrial, etc.), types of projects (rehabilitation, new construction, etc.), or other criteria determined by DSHA to be necessary or convenient to accomplish the purposes of this chapter.

(4) "Qualified corridor or district investor" means an owner or tenant of real property located within a corridor or district that expands, rehabilitates, or constructs the real property for residential, commercial, industrial, or mixed use. For a tenant, the amounts of qualified real property investment specified in this section relates to the proportion of the building or facility for which the tenant holds a valid lease. For an owner of an individual unit within a "common interest community," as defined in § 81-103 of Title 25, the amounts of qualified real property investments specified in this chapter relates to that proportion of the building for which the owner holds title and not to common elements.

(5) a. "Qualified real property investment" means the amount in excess of the minimum qualified investment threshold that is properly chargeable to a capital account for improvements to rehabilitate, expand, or construct depreciable real property placed in service during the calendar year within a corridor or district. Specific inclusions and exclusions from the definition of "qualified real property investments" are to be determined by DSHA, but the definition must generally include expenditures associated with all of the following:

1. Any exterior, interior, structural, mechanical, or electrical improvements necessary to construct, expand, or rehabilitate a building or facility for residential, commercial, industrial, or mixed use.
2. Excavations.
3. Grading and paving.
4. Installing driveways.
5. Landscaping or land improvements.
6. Demolition.

b. Notwithstanding paragraph (b)(5)a. of this section, an investment in the rehabilitation, expansion, or construction of any building or facility in a corridor or district is not a qualified real property investment unless it is performed in accordance with the corridor plan or district plan.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 11.)

§ 1922 Limitations and conditions.

(a) The availability of grants in any given year is subject to appropriation by the General Assembly.

(b) In addition to its other powers and responsibilities under this chapter, DSHA is expressly authorized to establish other limitations and conditions with respect to grants as may be necessary or convenient to accomplish the purposes of this chapter, including all of the following:

(1) Amending the minimum qualified investment threshold.

(2) Establishing caps or limits on grants available to any qualified corridor or district investor, alone or in combination with other

local, state, or federal incentives for any individual building or facility, including state historic preservation tax credits under Chapter 18 of Title 30.

(3) Establishing additional qualifying criteria with respect to uses (residential, commercial, industrial, etc.) or types of projects (rehabilitation, new construction, etc.).

(4) Incentivizing particular types of uses or projects in 1 or more corridors or districts.

(5) Establishing other limitations and conditions in 1 or more corridors or districts as DSHA determines.

(c) DSHA may not establish or amend the limitations and conditions authorized under this section more often than once per year.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 12.)

§ 1923 Policies and procedures for allocation of Downtown Development Corridor Grants and Downtown Development District Grants.

(a) Qualified corridor or district investors may receive a grant provided for in this chapter to the extent that the investors apply for and are approved for grant allocations through DSHA.

(b) The accuracy and validity of information on qualified real property investments is subject to verification procedures in accordance with rules promulgated by DSHA on forms supplied by DSHA and in accordance with dates specified by DSHA.

(79 Del. Laws, c. 240, § 1; 85 Del. Laws, c. 200, § 13.)

§ 1924 Administration.

(a) DSHA has the primary responsibility for administering the grants program. In connection with administering the grants program, DHSA's powers and duties include all of the following:

(1) Adopting rules and procedures as may be necessary or desirable to effectuate the provisions of this chapter.

(2) Administering, enforcing, and interpreting the rules and procedures adopted under paragraph (a)(1) of this section.

(3) Allocating grant funds in accordance with the provisions of this subchapter.

(4) Monitoring the implementation and operation of this subchapter.

(b) Beginning not later than December 31, 2015, DSHA shall issue an annual report to the Governor and the General Assembly, with a copy to the Director of the Division of Legislative Services evaluating the effectiveness of the grant program established under this subchapter.

(c) DSHA may delegate to, and receive assistance from, other entities including the Office, the Division of Small Business, and other state agencies in carrying out its responsibilities under this subchapter.

(79 Del. Laws, c. 240, § 1; 81 Del. Laws, c. 374, § 56; 81 Del. Laws, c. 49, § 21; 85 Del. Laws, c. 200, § 14.)

Chapter 20
LIMITATION OF MUNICIPAL TAXING POWERS

§ 2001 Limitation of municipal taxing powers [For application of this section, see 79 Del. Laws, c. 382, § 2 and 80 Del. Laws, c. 140, § 3].

(a) Every municipal corporation in this State, regardless of population, shall only have the power to impose, levy, assess, or collect a tax of any kind whatsoever as expressly authorized in its municipal charter or this title.

(b) Any provision in a municipal charter granting the municipal corporation "all powers," or any derivation thereof, shall not be construed as exempting the municipal corporation from the limitation set forth in subsection (a) of this section.

(c) The amount of tax imposed on a communication provider who was being taxed as of June 30, 2015, by municipal corporations on poles, wires, conduit and cable for distribution of telephone communication may not exceed the amount of tax actually paid by such provider to each municipal corporation in fiscal year ending June 30, 2015.

(79 Del. Laws, c. 382, § 1; 80 Del. Laws, c. 140, § 2.)

Chapter 21
Data Centers

§ 2101 Nondisclosure agreements prohibited.

(a) For purposes of this chapter:

(1) "Data center" means a facility consisting of 1 or more buildings that has a primary purpose of providing for the storage, management, processing, or transmission of digital data, and that contains equipment such as routers, graphics processing units, servers, and switches.

(2) "Large-scale data center" means a data center that uses or is able to use 100 megawatts of power or more.

(3) "Municipality" means a municipality or any person or entity with authority to act on its behalf.

(4) "Nondisclosure agreement" means a contract, agreement, clause, term, condition, or understanding, whether verbal or written, that has the purpose or effect of restricting or prohibiting the disclosure of information, including confidentiality agreements, secrecy provisions, side letters, memoranda of understanding, or settlement agreements.

(b) A municipality may not enter into a nondisclosure agreement if the nondisclosure agreement restricts the municipality from disclosing information to the public about potential or actual large-scale data center development in the municipality.

(c) An agreement or contract, or a provision of an agreement or contract, that violates this section is against public policy and is void and unenforceable.

(85 Del. Laws, c. 447, § 2.)