

CHARTER

OF THE

Town of Middletown

FREDERICK COUNTY, MARYLAND

*As enacted by an unnumbered Charter Amendment
effective on December 1, 1981*

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MIDDLETOWN

ARTICLE I General Corporate Powers

Section 101. Incorporation.

The inhabitants of Middletown, Frederick, County, Maryland, are hereby constituted a body corporate under the name and title of the “Burgess and Commissioners of Middletown” and by than [that] name, shall have perpetual succession, sue and be sued, have and use a common seal which may be altered at pleasure, and shall have all of the powers incident to or may attach to a municipal corporation, and shall have and possess all the rights, powers, property and duties vested in and devolving upon the Burgess and Commissioners of Middletown except as the same may be changed by this Charter. The said Burgess and Commissioners of Middletown shall have the right to acquire property by gift, purchase, condemnation, or otherwise, and to dispose of the same by ordinance and legal conveyance. (Res. No. 99-06, 8-03-99.)

ARTICLE II Corporate Units

Section 201. Boundaries.

The taxable limits of the Town [of] Middletown shall be as they existed immediately prior to the date of this Charter, subject to all rights, reservations, limitations, and conditions as may be set forth in all prior resolutions of annexation and in the Charter of the town in effect immediately prior to this Charter, and as may be hereafter amended as provided by law. The courses and distances showing the corporate limits of the town shall be filled [filed] at all times with the Clerk of the Circuit Court for Frederick County and the Director of the Department of Legislative Services of the Maryland General Assembly. In addition, a copy of the courses and distances describing the corporate boundaries shall be on file in the town offices and available for public inspection during normal business hours. (Res. No. 99-06, 8-03-99.)

ARTICLE III Burgess and Commissioners

Section 301. Numbers, Term, Selection.

All legislative powers of the town are vested in the burgess and five commissioners, the legislative body. The term in office of the burgess and commissioners shall be four years. The terms shall be staggered. Elections shall be held every even-numbered year. The next election for the burgess and two commissioners shall be in 2000 and for the three remaining commissioners in 2002. (Res. No. 99-07, 8-03-99.)

Section 302. Qualifications of Burgess and Commissioners.

The burgess and commissioners of Middletown shall have resided in Middletown for a [at] least one year immediately preceding their election, shall be at least twenty-one years of age, and shall be qualified voters of said town.

Section 303. Compensation of Burgess and Commissioners.

The burgess and commissioners shall receive as compensation for their respective services, to be paid out of the funds of the town, an annual salary which shall be as specified from time to time by an ordinance passed by the burgess and commissioners in the regular course of business; provided, however, that the salaries specified at the time the burgess and commissioners take office shall not be changed during the period for which they were elected. The ordinance making any change in salary paid to the burgess and the several commissioners, either by way of increase or decrease, shall be finally ordained prior to the municipal election for the next burgess and commissioners and shall take effect only as to such succeeding burgess and commissioners.

Section 304. Meetings of Burgess and Commissioners.

The Burgess and Commissioners of Middletown may meet as often as occasion may require upon the business of the Town, at which meetings the Burgess shall preside, provided that the regular meeting shall be held on the second Monday of each month at such time as may be designated by the Burgess or such other day and time as may be designated for due cause by the Burgess. (4-3-84.)

Section 305. Quorum.

A majority of the legislative body shall constitute a quorum for the transaction of business, but no ordinance shall be approved without the favorable votes of a majority of the legislative body. For other business voted upon by the burgess and commissioners, unless for a specific action identified herein or by ordinance a different majority is required, a favorable vote of a majority of the members of the legislative body present and voting is required for passage. (Res. No. 99-07, 8-03-99.)

Section 306. Procedure of Meetings.

The burgess and commissioners shall determine their own rules and order of business. They shall keep minutes of the proceedings of meetings and enter therein the yeas and nays and abstentions upon final action on any question, resolution, or ordinance, or at any other time if required by any one member. The minutes shall be open to the public for inspection.

Section 307. Burgess Pro Tempore.

The commissioners, at their first meeting after each municipal election and qualifications, shall select one of their own number as burgess pro tempore, to act as burgess in the case of the

temporary absence or indisposition of the burgess and who, while so acting, shall have and exercise all the powers of the burgess conferred by this charter.

Section 308. Vacancies.

If, during the term for which they are elected, any of the five commissioners should die, resign, remove from the town or become non compos mentis, a special election shall be called by the burgess to fill the vacancy, at which election all persons qualified, as provided in this charter, shall be entitled to vote. In the event of the death, resignation, removal or disqualification of the burgess, the board of commissioners shall select one of their own body to serve as burgess until a special election is held.

Section 309. When Elected Officials Take Office; Special Election for Filling of Vacancies.

The burgess and commissioners of Middletown shall take office on the Monday following their election. In the event of death, resignation or disqualification of the burgess or one or more commissioners more than three months prior to a regular election, the burgess and commissioners shall call a special election for the purpose of filling such vacancies.

Section 310. Ordinances.

(a) No ordinance shall be passed at the meeting at which it is introduced. At any regular or special meeting of the burgess and commissioners held not less than six nor more than sixty days after the meeting at which an ordinance was introduced, it shall be passed, or passed as amended, or rejected, or its consideration deferred to some specified future date. In cases of emergency the provision that an ordinance may not be passed at the meeting at which it is introduced may be suspended by the affirmative votes of all members of the legislative body present at that meeting, provided that a quorum exists.

(b) Every ordinance, unless it is passed as an emergency ordinance, shall become effective at the expiration of twenty calendar days following approval by the burgess and commissioners.

Section 311. Files of Ordinances.

Ordinances shall be permanently filed by the Town Administrator and shall be kept available for public inspection. (Res. No. 99-08, 8-31-99.)

Section 312. Violations of Ordinances.

A. Burgess and Commissioners shall have power to provide that violations of ordinances and resolutions authorized by this article shall be punishable as misdemeanors, but no penalty shall exceed a fine of One Thousand Dollars (\$1,000.00) and imprisonment for six months. Imprisonment in default of fine and costs shall be regulated by the provisions of Article 23A, Section 3 of the Maryland Code [Annotated Code of Maryland]. (Res. No. 99-08, 8-31-99.)

B. 1. The Burgess and Commissioners may provide that violations of any municipal ordinance shall be a “municipal infraction” unless the violation is declared to be a felony or a misdemeanor by law or ordinance. In addition, the legislative body of a municipality may classify as a “municipal infraction”: (i) A [a] violation of any zoning or land use ordinance or regulation authorized to be adopted or enacted by that municipality; and (ii) littering within the municipality, as prohibited under Article 27, Section 468, of the Maryland Code [Annotated Code of Maryland]. For purposes of this section a municipal infraction is a civil offense.

2. A fine not to exceed One Thousand Dollars (\$1,000.00) may be imposed for each conviction of a municipal infraction. The fine is payable by the recipient of the citation to the Town of Middletown within 20 calendar days of receipt of the citation. If a person charged with an infraction fails to pay the fine by the date set forth in the citation, the Town may double the fine to an amount not to exceed One Thousand Dollars (\$1,000.00). Repeat offenders may be assessed a fine not to exceed One Thousand Dollars (\$1,000.00) for each repeat offense, and each day a violation continues shall constitute a separate offense. (1-1-85; Res. No. 99-08, 8-31-99.)

ARTICLE IV General Powers

Section 401. General Powers.

(a) The burgess and commissioners shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this charter as it may deem necessary for the good government of the town; for the protection and preservation of the town’s property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the town.

(b) *Specific Powers.* The burgess and commissioners shall have, in addition, the power to pass ordinances not contrary to the Constitution and laws of this State, for the specific purposes provided in the remaining subsections of this section. This enumeration of powers shall be in addition to, not in substitution for, any power which may have been or may hereafter be granted.

(1) *Animals.* The burgess and commissioners shall prohibit the running at large of any animals.

(2) *Appropriations.* To appropriate municipal monies for any purpose within the powers of the burgess and commissioners.

(3) *Buildings.* To make reasonable regulations in regard to buildings and signs to be erected, constructed, or reconstructed in the town, and to grant building permits for

them; to formulate a building code and a plumbing code and to appoint a building inspector and a plumbing inspector, and to require reasonable charges for permits and inspections; to authorize and require the inspection of all buildings and structures and to authorize the condemnation thereof in whole or in part when dangerous or insecure, and to require that such buildings and structures be made safe or be taken down, provided that the granting of building permits, the formulation and enforcement of building and planning, as well as inspection, may be delegated to the appropriate Frederick County office pursuant to an agreement.

(4) *Codification.* To provide for the codification of all ordinances which have been or may hereafter be passed.

(5) *Cooperative Activities.* To make agreements with other municipalities, counties, districts, bureaus, commissions, and governmental authorities for the joint performance of or for cooperation in the performance of any governmental functions.

(6) *Finances.* To levy and collect ad valorem property taxes and other municipal taxes permitted by law; to expend municipal funds for any public purpose; to have general management and control of the finances of the town; to appropriate municipal monies for any purpose within the powers of the burgess and commissioners; to borrow money in accordance with the provisions of this charter.

(7) *Fire.* To contribute funds to volunteer fire companies serving the town; to inspect buildings for the purpose of reducing fire hazards; to forbid and prohibit the use of fire-hazardous buildings and structures; to regulate or prevent the use of bonfires, explosives, or any other similar matters which may endanger persons or property; to take all other measures necessary to control and prevent fire in the town.

(8) *Franchises.* To grant and regulate franchises to water companies, electric light companies, gas companies, transit companies, taxicab companies, and any others which may be deemed advantageous and beneficial to the town, subject, however, to the limitations and provisions of Articles 23 and 78 of the Annotated Code of Maryland (1957 edition, as amended). No franchise shall be granted for a longer period than fifty years.

(9) *Health.* To protect and preserve the health of the town and its inhabitants; to regulate, inspect, and abate any buildings, structures, or places which cause or may cause any unsanitary conditions or conditions detrimental to health. To compel the owner or occupant of any premises, building or other structure located in the town, when the same has become filthy or unwholesome, to abate or cleanse the condition; and after reasonable notice to the owners or occupants to authorize such work to be done by the town at the owner's expense, such expense to constitute a lien upon the property collectible as tax monies. Provided, however, that the exercise of these powers shall not be construed to affect in any manner any of the powers and duties of the State Board of Health, the County Board of Health, or any public general or local law relating to the subject of health.

(10) *House Numbers.* To regulate the numbering of houses and lots and to compel owners to renumber them, or in default thereof to authorize and require the work to be

done by the town at the owner's expense, such expense to constitute a lien upon the property collectible as tax monies.

(11) *Licenses.* Subject to any restrictions imposed by the public general laws of the State, to license and regulate all persons beginning or conducting transient or permanent business in the town for the sale of any goods, wares, merchandise, or services; to license and regulate any business, occupation, trade, calling, or place of amusement or business; to establish and collect fees and charges for all licenses and permits issued under the authority of this charter.

(12) *Nuisances.* To prevent or abate by appropriate ordinance all nuisances in the town which are so defined at common law, or by the laws of the State of Maryland, whether the same be herein specifically named or not; to regulate, to prohibit, to control location of, or to require the removal from the town of all trading in, handling of, or manufacture of any commodity which is or may become offensive, obnoxious, or injurious to the public comfort or health.

(13) *Obstructions.* To remove all nuisances and obstructions from the streets lanes and alleys and from any lots adjoining thereto, or any other places within the limits of the town.

(14) *Parking Facilities.* To license and regulate and to establish, obtain by purchase, by lease or by rent, own, construct, operate, and maintain parking lots and other facilities for off-street parking.

(15) *Parks and Recreation.* To establish and maintain public parks, gardens, playgrounds, and other recreational facilities and programs to promote the health, welfare, and enjoyment of the inhabitants of the town.

(16) *Planning and Zoning.* To exercise the power as to planning and zoning, conferred upon municipal corporations generally in Article 66B of the Annotated Code of Maryland (1957 edition, as amended) subject, however, to the limitations and provisions of said article.

(17) *Police Force.* To establish, operate, and maintain a police force.

(18) *Police Powers.* To enforce all laws of the city and state equally within the limits of the city.

To enforce all ordinances relating to disorderly conduct and the suppression of nuisances equally within the limits of the city and beyond those limits for one half mile or for so much of this distance as does not conflict with the powers of another municipal corporation.

(19) *Property.* To acquire by conveyance, purchase or gift, real or leasable property for any public purposes; to erect buildings and structures thereon for the benefit of the town and its inhabitants; and to convey any real or leasehold property when no longer needed for

the public use, after having given at least twenty days' public notice of the proposed conveyance; to control, protect and maintain public buildings, grounds and property of the town.

(20) *Regulations.* To adopt by ordinance and enforce within the corporate limits, police, traffic, speed, parking, and other similar regulations not in conflict with the laws of the State of Maryland or with this charter.

(21) *Sidewalks.* To construct, maintain, and improve sidewalks and regulate the use of sidewalks and all structures in, under or above the same; to require the owner or occupant of premises to keep the sidewalks in front thereof free from snow or other obstructions; to prescribe hours for clearing and cleaning sidewalks.

(22) *Streets.* To construct, maintain and improve the streets and to control the public ways of the town; to erect and maintain bridges; to provide for the lighting of the town.

(23) *Trespassing.* To adopt ordinances for the control and punishment of trespassing.

(24) *Water and Sewer.* To provide for the establishment, regulation and management of a water and sewer department to furnish water and sewer services to the town and to all its residents, to fix and establish rates or charges for the water and sewer services and to provide for the collection and enforcing payments of water and sewer bills and all other related charges.

Section 402. Exercise of Powers.

For the purpose of carrying out the powers granted in this article or elsewhere in this charter, the burgess and commissioners may pass all necessary ordinances. All the powers of the town shall be exercised in the manner prescribed by this charter, or, if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

ARTICLE V
Registration, Nomination and Elections

Section 501. Voters.

The citizens of Middletown of the age of eighteen years and upwards, being citizens of the United States, shall be entitled to vote, provided that they have registered as provided in this charter, at any election for burgess and commissioners or any other municipal election in the town. (Res. No. 99-09, 8-03-99.)

Section 502. Registration.

The registration of eligible voters residing within the corporate limits of Middletown shall be conducted by the Frederick County Election Board following universal registration

procedures as authorized by ACM Article 33, Section 3-2(d). A public notice to this effect will be posted at the Middletown Municipal Center at least 60 days prior to an election. In order to vote in an election, a voter must be registered at least 15 days prior to the election, including weekends and holidays. (Res. No. 99-09, 8-03-99.)

Section 503. Nominations.

The burgess of Middletown shall, at least forty days before the time of election in each election year, issue a call for a nominating convention, to be composed of the residents of the town who may attend the same, and who shall be entitled to vote in the coming election. The nominating convention shall be held at some public place in the town, to be designated by the burgess, notice of which shall be published in newspaper of general circulation in the town at least four days prior to the time of the holding of such convention, giving the time and place thereof, which convention shall be held not later than thirty days prior to the date of election.

The convention shall nominate not less than one nor more than two candidates for burgess and not less than one nor more than two candidates for each commissioner's position to be voted upon at the forthcoming election.

Each aspirant for the office of burgess or commissioner in the town who shall not have been nominated by the nominating convention may file with the town administrator, not later than twenty days before the election, excluding Sunday, nominating papers for the office for which they may be aspiring, in writing, signed by at least forty of the qualified voters of the town. No signature shall be counted if it shall appear upon the nomination papers of more than one candidate for the office of burgess or more than the exact number of candidates for commissioner to be voted on at that election.

Only those persons nominated by the convention or by the petition shall be considered valid candidates for municipal office. Only the votes for candidates so nominated shall be counted. (Res. No. 99-09, 8-03-99.)

Section 504. Election of Burgess and Commissioners.

Elections for the burgess and commissioners of Middletown shall be held biennially on the first Monday of April, between the hours of 7:00 a.m. and 8:00 p.m. every even-numbered year. (4-3-84.)

On the first Monday in April, 2002, and on the same day every four years thereafter, the qualified voters of the town shall elect three commissioners. Said three commissioners shall serve for a term of four years.

On the first Monday in April, 2000, and on the same day every four years thereafter, the qualified voters of the town shall elect a burgess and two commissioners to serve for a term of four years.

The burgess and commissioners shall at least fourteen (14) days prior to any scheduled election appoint two or more persons to serve as election judges on the day of the election. (Res. No. 99-09, 8-03-99.)

Section 505. Ballots.

The town administrator shall prepare, for each town election, a ballot containing the names of all persons nominated. The ballot shall be prepared and printed under the direction and supervision of the town administrator and shall be supplied at the election to voters desiring to vote. Such ballots shall be official ballots and shall be distributed only to the voters as they present themselves to the election officials on the day of the election. Such ballots shall be immediately used by the voter and shall not be removed from the voting room, except after they are counted by the election officials. No other ballots shall be used or permitted to be used at such election, although specimen ballots may be printed by the register or by any candidate or other citizens for circulation prior to the election. Any ballot used in the election other than the official ballot prepared by the register and supplied by the election officials to the voters shall be null and void and shall not be counted.

Persons desiring to vote shall make a clear and distinct mark after the name of the person on the ballot for whom they desire to vote. In no event shall a voter vote for more than one candidate for burgess and more than two or three candidates for commissioner, depending on the election year. (Res. No. 99-09, 8-03-99.)

Section 506. Absentee Ballots.

(a) Any qualified voter registered to vote in Middletown is entitled to vote in any municipal election by absentee ballot.

(b) The town administrator shall mail absentee ballots to qualified voters, at the request of those voters, not less than ten days prior to the elections. (Res. No. 99-09, 8-03-99.)

Section 507. Vote Count.

Immediately after the closing of the polls, the election judges shall determine all the votes cast, including regular and absentee ballots, for each candidate or question and shall certify the results of the election to the burgess and commissioners of the town who shall record the results in their minutes. Only the votes for candidates nominated under the provisions of Section 503 above shall be counted. (Res. No. 99-09, 8-03-99.)

Section 508. Preservation of Ballots.

All ballots and records used in any town election shall be preserved for at least six months from the date of the election.

Section 509. Election to Comply with Ordinances of Town.

All town elections shall be held and conducted as shall from time to time be directed by the ordinances of the town not inconsistent with this article.

ARTICLE VI

Finance

Section 601. Fiscal Year.

The town shall operate on an annual budget. The fiscal year of the town shall begin on the first day of July and shall end on the last day of June in each year. Such fiscal year shall constitute the tax year, the budget year, and the accounting year.

Section 602. Operating Budget.

The burgess shall prepare and submit an operating budget to the commissioners at least thirty-two days before the beginning of any fiscal year. The budget shall provide a complete financial plan for the budget year and shall contain estimates of anticipated revenues and proposed expenditures for the coming year. The total of the anticipated revenues shall equal or exceed the total of the proposed expenditures. The budget shall be a public record in the office of the town administrator, open to public inspection by anyone during normal business hours. (Res. No. 99-10, 8-31-99.)

Section 603. Operating Budget Adoption.

Before adopting the operating budget the commissioners shall hold a public hearing on the matter after notice in a newspaper having general circulation within the town. The commissioners may insert new items or may increase or decrease the items of the budget. Where the commissioners shall increase the total proposed expenditures they shall also increase the total anticipated revenues in an amount at least equal to such total proposed expenditures. The budget shall be prepared and adopted in the form of a resolution. A favorable vote of a majority of the legislative body shall be necessary for adoption. (Res. No. 99-10, 8-31-99.)

Section 604. Transfer of Funds.

Any transfer of funds between major appropriations for different purposes must be approved by the burgess and commissioners before becoming effective.

Section 605. Appropriations Lapse After One Year.

All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully encumbered. Any unexpended and unencumbered funds shall be considered a surplus at the end of the budget year and shall be included among the anticipated revenues for the next succeeding budget year.

Section 606. Checks.

All checks issued in payment of salaries or other municipal obligations shall be signed by the register and one other person who shall be designated by the Burgess and Commissioners. (4-3-84.)

Section 607. Taxable Property.

All real property and/or business personal property within the corporate limits of the town shall be subject to taxation for municipal purposes. The assessment used for municipal taxation shall be the same as that for state and county taxes. No authority is given by this section to impose taxes on property which is exempt from taxation by any Act of the General Assembly.

Section 608. Budget Authorized Levy.

From the effective date of the budget, the amount stated there as the amount to be raised by the property tax shall constitute a determination of the amount of the tax levy in the corresponding tax year.

Section 609. Notice of Tax Levy.

Each year after the tax levy is made, a bill or account of the taxes due from him shall be mailed or delivered in person to each taxpayer or his agent at his last known address. This bill or account shall contain a statement of the amount of real estate property and/or business personal property with which the taxpayer is assessed, the rate of taxation, the amount of taxes due, and the date on which the taxes will bear interest. Failure to give or receive notice required by this section shall not relieve any taxpayer of the responsibility to pay on the dates established by this charter all taxes levied on his property.

Section 610. When Taxes are Overdue.

The real property taxes provided for in Section 609 of this charter shall be due and payable on the first day of July in the year for which they are levied and shall be overdue and in arrears on the first day of the following October. They shall bear interest while in arrears at the rate prescribed by law for each month or fraction of a month until paid. All taxes not paid and in arrears after the first day of the following March may be collected as provided in Section 611.

Business personal property taxes are due and payable upon receipt of the tax bill by the business upon which the tax was levied. Business personal property taxes are overdue and in arrears at the end of the third month following the date on which the personal property tax was levied. Business license application forms will not be approved by the town if a business' personal property tax is in arrears for the current or any prior year at the time the application is received. Business personal property taxes which are in arrears at the end of the ninth month may be collected as provided in Section 611. (Res. No. 99-10, 8-31-99.)

Section 611. Sale of Tax Delinquent Property.

A list of all property on which the town taxes have not been paid and which are in arrears as provided by Section 610 of this charter shall be turned over by the register to the official of the county responsible for the sale of tax delinquent property as provided in state law. All property listed thereon shall if necessary be sold for taxes by this county official, in the manner prescribed by state law.

Section 612. Audit.

The financial books and accounts of the town shall be audited annually in a manner determined by the burgess and commissioners but not contrary to applicable state law.

Section 613. Authorization to Borrow Money.

The burgess and commissioners shall have the power to borrow money for any proper public purpose and to evidence such borrowing by tax anticipation notes or by the issuance and sale of general obligation bonds, revenue bonds or bonds secured primarily by revenues from projects and secondarily by the general obligation of the town. The issuance of the tax anticipation notes and bonds shall be pursuant to the procedures of laws of the State of Maryland; however, when the burgess and commissioners determine it to be in the public interest, the tax anticipation notes and the bonds may be sold at a private negotiated sale and not at a public sale and when the burgess and commissioners decide to sell tax anticipation notes and bonds at a private negotiated sale, any advertising or public notice requirements for the sale of bonds need not be followed. (Res. No. 99-10, 8-31-99.)

Section 614. Payment of Indebtedness.

The power and obligation of the town to pay any and all bonds, notes, or other evidences of indebtedness issued by it shall be unlimited and the town shall levy ad valorem taxes upon all the taxable property of the town for the payment of such bonds, notes, or other evidences of indebtedness and interest thereon. The faith and credit of the town is hereby pledged for the payment of the principal of and the interest on all bonds, notes, or other evidences of indebtedness, hereafter issued under the authority of this charter, whether or not such pledge be stated in the bonds, notes, or other evidences of indebtedness, or in the ordinance authorizing their issuance.

Section 615. Previous Issues.

All bonds, notes, or other evidences of indebtedness validly issued by the town previous to the effective date of this charter and all ordinances passed concerning them are hereby declared to be valid, legal, and binding and of full force and effect as if herein fully set forth.

Section 616. Purchasing and Contracts.

(a) Purchases for the town government shall be made under the direction of the burgess and commissioners. They shall have the power to provide by ordinance for rules and regulations regarding purchasing procedures such as the use of competitive bids.

(b) All contracts involving professional services such as accounting, architecture, auditing, engineering, law, planning, and surveying shall be negotiated by the burgess and commissioners.

Section 617. Sale of Certain Town Property.

The burgess and commissioners of Middletown are hereby authorized and empowered to lease, sell or convey, as they may see fit, any property, real, personal or mixed, now owned by the town which, in the judgment of the burgess and commissioners, is no longer needed for town purposes.

ARTICLE VII
General Provisions and Administration

Section 701. Oath of Office of Town Officials; Bond of Burgess.

The burgess of Middletown shall qualify by taking and subscribing the oath of office before the clerk of the circuit court for the county or before one of his sworn deputies. The commissioners and all other officers of the town, before entering upon the duties of their respective offices, shall severally take and subscribe before the burgess, the following oath: "I, _____, in the presents [presence] of Almighty God, do solemnly promise and declare that I will faithfully execute the office of _____ to the best of my knowledge and ability, without favor, affection or partiality."

If the persons elected burgess and commissioners shall fail to take the oath prescribed in this section within ten days after notice of their election shall have been communicated to them in writing by the person who, under the ordinances of the town, may be appointed to hold such election, such person so appointed, within five days thereafter, shall order an election to fill the vacancy caused by such failure to qualify.

Section 702. Town Register.

The burgess and commissioners shall have power to appoint a town administrator, assign his or her duties, and allow him or her compensation as they deem proper. This administrative and supervisory position is responsible for performing the variety of administrative, fiscal, and program duties involved in the day-to-day operation of the town, including serving as office manager, chief financial officer, grants administrator, contract administrator and public works administrator. He or she schedules, assigns and oversees the work of the town staff. The administrator shall receive and disburse, on the order of the burgess, all money collected under

any of the ordinances of the town. He or she shall give bond to the burgess and commissioners, with such security as they shall require. The administrator shall report to the burgess and commissioners annually, and as often as required by them, the financial condition of the town, with an account of all money received and expended. (Res. No. 99-11, 8-03-99.)

Section 703. Water and Sewer Superintendent.

The commissioners of Middletown may appoint a water and sewer superintendent, whose duties shall be prescribed by ordinance. (Res. No. 99-11, 8-03-99.)

Section 704. Appointments and Compensation.

The burgess and commissioners may appoint, or may abolish the appointment of, town officers and may add or abolish town employee positions as may be necessary to carry out the intent and objectives of this charter and town ordinances. The compensation for all such positions must be consistent with and stated in the town operating budget. (Res. No. 99-11, 8-03-99.)

Section 705. Town Hall; Town Hall Commission.

The burgess and commissioners of Middletown may purchase and maintain a public building for town purposes, for a community and town hall or for other related purposes, upon such terms and at such prices as may be fair and equitable in the judgment of the burgess and commissioners. (Res. No. 99-11, 8-03-99.)

ARTICLE VIII

Public Ways and Sidewalks

Section 801. Definition of Public Ways.

The term “public ways” as used in this charter includes all streets, avenues, roads, highways, public thoroughfares, lanes, and alleys.

Section 802. Improvements—Opening, Grading, Widening, Etc., of Streets.

The burgess and commissioners of Middletown shall have power to provide for the laying out, opening, grading, widening and extending any street or alley within the taxable limits of the town and may fix the dimensions thereof, which in their judgment the public welfare or convenience may require. They may provide for ascertaining whether any and what amount of value of damages will be caused thereby for which the owner of the property through or over which such street or alley may pass ought to be compensated and paid and for assessing or laying, either generally on the whole of the assessable property within the town or specially on the property of the persons benefited by such improvement, the whole or any part of the damages and expenses which may be incurred in laying out, opening, grading, widening or extending such street or alley. They may provide, in case they determine to levy and assess the whole or any part

of the damages and expenses upon the owners of the property in the town specially benefited by such improvements, for the apportionment among them of such damages and expenses so determined, to be levied upon them in due proportion to the amount of benefits by them respectively received.

They may provide for the condemnation of all land and property so taken for public use in opening, grading, widening or extending any street or alley, provide for the notice to be given in relation thereto for the payment of the damages so awarded and provide for the collection and mode of payment under any action allowed by law for the benefits so determined to be assessed. They may pass all ordinances necessary and proper to the exercise and enforcement of the powers granted in this section; provided, that no land or property shall be taken under the power granted in this section without payment or tender of just compensation to the party entitled to such compensation, as agreed on with the owners of such property or awarded by jury; and provided further, that the ordinances regulating the condemnation of land or property lying wholly or partly within the taxable limits of the town shall provide for a reasonable notice to the owners thereof and for appeals to the circuit court for the county by any person interested, including the burgess and commissioners, from the decision of any commissioners, jury or other persons appointed to value or assess damages for taking of any such land or property or interest therein under the powers granted in this section.

Section 803. Improvements—Paving, Curbing, Sewering, Etc., of Streets.

The burgess and commissioners of Middletown are hereby authorized and empowered, whenever in their judgment the public interests or convenience require it, to provide by ordinance for the grading, paving, curbing and sewerage or for the regrading, repaving, recurbing, or re-sewerage, in such manner, at such time and with such material as they shall see fit, of any street, lane or alley, or any portion thereof, in the town condemned, ceded, opened, widened, straightened or altered according to the laws and ordinances relating to the same. The burgess and commissioners also may provide for assessing the costs of any such work in whole or in part upon the property binding upon such street, lane or alley, or part thereof, according to such rule or basis as they may determine and for collecting such assessment as other town taxes are collected or in such manner as may be prescribed by ordinance of the burgess and commissioners, either before or after the work shall have been done; provided, that before the passage by the burgess and commissioners of any ordinance of requiring the whole or any portion of the costs to be assessed upon the property, ten days' notice shall be given by the burgess in some newspaper published in the town, notifying all persons interested to appear and giving them the opportunity to be heard before the burgess and commissioners at such time as shall be provided in such notice. The burgess and commissioners are hereby authorized and empowered to provide by ordinance for the appointment of a committee of the burgess and commissioners or such other persons as they shall appoint, not exceeding three, who shall act as commissioners, to determine the amount of the assessment to be made upon any such property under the provisions of this section and the ordinance passes [passed] in pursuance hereof. After the commissioners shall have completed their apportionment of the expenses to be assessed upon the property binding on any street, lane or alley or portions thereof, they shall give notice by advertisement inserted once a week for two successive weeks in some newspaper published in the town, notifying all persons interested therein to appear and giving them an opportunity to be

heard before the amount assessed against them are [is] finally established by the commissioners. Any person, including the town itself, feeling aggrieved at the action of the commissioners, shall have the right to appeal to the circuit court for the county and to a trial by jury; provided, that such appeal be taken within thirty days after the determination of the commissioners in such case. An appeal may be taken to the court of appeals by either party; provided, that such appeal be entered within thirty days after the rendition of such by the circuit court for the county. The burgess and commissioners may, if they see fit, provide by a general ordinance for the grading, paving, curbing and sewerage or for the regrading, repaving, recurbing, repairing and resewerage of any street, lane or alley, or any portion thereof, in the town without the passage of a special ordinance in the particular case, subject to the provisions and requirements of this section, except as otherwise provided in this section, whenever the owner of a majority of the front feet of property binding on such street, lane or alley, or part thereof, shall apply for the same upon terms and conditions to be prescribed in such general ordinance and for the assessment in any such case of the cost of such work, in whole or in part, pro rata, upon all the property binding upon such street, lane or alley, or any part thereof, and for the collection of such assessment as other taxes are collected. No notice need be [be] given before the passage of such general ordinance. Such ordinance shall provide for the appointment of commissioners to determine the amount of the assessment to be made upon any such property, as provided by such ordinance. Such commissioners shall give notice to all persons interested, as hereinbefore required, before the amounts assessed against them are finally determined upon, and either party feeling [feeling] aggrieved at the action of such commissioners shall have the right to appeal, as hereinbefore provided.

Section 804. Improvement—Paving and Repair of Footways.

The burgess and commissioners of Middletown shall cause the footways in the town to be paved and repaired at the expense of the owners of lots binding thereon when ever [whenever] they may direct such work to be done and shall direct how and or [and/or] what materials the same shall be paved or repaired.

Section 805. Improvements—Liability of Nonresident Property Owners.

If the owner of any house, lot or part of a lot binding on a street which the burgess and commissioners of Middletown may direct to be paved or repaired shall not reside in the town, the tenant or person occupying same or who has charge thereof shall cause such work to be done and the money expended by him thereon, in obedience to the ordinance of the town, shall be allowed by such owner and deducted from the rent. If any such owners or tenants shall neglect or refuse so to do, the burgess and commissioners shall have such footway paved and repaired and collect the expense thereof, with costs, by distraining or selling such property or by an action of debt.

NOTES

(1) Resolution No. 51-92, effective June 25, 1992, provided for the annexation of 14.270 acres of land, and Resolution No. 52-92, effective June 25, 1992, provided for the annexation of 9.559 acres of land. Resolution No. 51-93, effective April 30, 1993, provided for the annexation of 13.305 acres of land, and Resolution No. 51-94, effective February 24, 1994, provided for the annexation of 0.489 acres of land. The Resolutions, however, failed to provide for the change in the boundary description that is contained in this charter. Accordingly, these annexations are simply noted pursuant to the municipal general powers section of this charter.

(2) Resolution No. 97-02, effective April 24, 1997, provided for the annexation of 118.7386 acres of land. This resolution purported to amend § 201 of the charter, but failed to provide for the actual change in the boundary description contained in § 201. This annexation is noted here for historical purposes.

