
VILLAGE OF ARDEN
SPECIAL TOWN ASSEMBLY – SUGGESTED CHARTER CHANGES
MAY 20, 2024

Town Meeting Minutes
Observation Zoom

Two not signed-In: Jeffrey Politis, Liz Resko
In-Person sign-in Attendance:

First	Last Name	
Sam	Panella	1
Ray	Seigfried	2
Kathrine	Threefoot	3
Deborah M	Ricard	4
Bob	Erenburg	5
Tom	Wheeler	6
Elizabeth	Varley	7
Sachin	Puranik	8
Daniel	Henn	9
Ellie	Hansen	10
Beverly	Clendening	11
Jess	Colgan-Snyder	12
Terri	Lamborn	13
Mike	Curtis	14
Warren	Rosenkranz	15
Jeffrey	Steen	16
Larry	Walker	17
Barbara Anne	Macklem	18
Pam	Politis	19

Zoom attendance: Irene O'Connor, Shana Pinter, Steve Benigni, Lynda Kolski
sharing a zoom?

Call to Order - Chairman Jeffrey Politis convened the meeting to order at 7:37 P.M. It has been ascertained that a quorum is not present and therefore, there would be no business nor voting will be conducted. Attendees agrees to a unanimous consent to go forward with information only presentation and discussion of proposed charter changes.

Note: The Governance Task Force (GTF) was created during the September 2021 Town Assembly Meeting and 7 residents were appointed to the GTF during the January 2022 Town Assembly Meeting. The GTF was charged with reviewing and suggesting changes to our governing documents. The GTF provided a summary of their suggested Charter changes during the January 2024 Town Assembly Meeting. During the same Meeting, a motion was approved to hold a Special Meeting of the Town Assembly to review these changes.

A Xerox copy of the suggested Charter changes was provided to all in-person attendees and those on Zoom were provided a link.

Purpose Address Governance Task Force Suggested Charter Changes

AGENDA

Introduction by the Governance Task Force Ray Seigfried read the following:

This special meeting's purpose is to continue reviewing the GTF's recommended changes to our charter. My presentation today will review the recommended changes to our charter, beginning with section 10, Vacancies. This is the only focus of today's meeting.

The GTF will meet in June to review all comments made regarding our recommendations. We will then decide on our final recommendation, present it to the Town Assembly at the June meeting, and post it on our web page. Before I review the recommendations, I want to provide some context about charters.

- A charter is a privilege for a local community to form its sense of governance.
- A total of 57 chartered communities exists throughout Delaware
- Once a charter is granted, some restrictions must be met. For example,

- Chartered communities can only recommend a change to a charter. The General Assembly and Governor will review that request and approve, *disapprove, or modify the recommendation.*
- An ordinance, resolution, policy, or procedure passed by a chartered community is the final approval needed without any state review or approval as long as it complies with state and federal law.
- Local chartered communities serve at the will of the state.
- The GTF strived to balance what the state versus what Arden has authority to approve.
- As we go through the recommendations, let me explain the color codes
 - Black is the current charter
 - Red addition text
 - Blue deleted text

With this background, I will start with section 10, Vacancies, to the end of the charter.

DRAFT 02/14/2024

The Section is an explanation of the color code used to explain the suggested changes to the Charter

Key:

~~strike through~~ = deleted text red text = additions
green = text to be removed from Charter and transferred to an ordinance

Special Note regarding green text for Section 7, 8 and 9

Several parts of Sections 7, 8, and 9 are recommended to be removed from the Charter and transferred into an ordinance without change from the text of the Charter. Those parts are as follows.

Section 7 Board of Assessors parts [a] and [b].

Section 8 Budget Committee part [a] and part of [b]

Section 9 Registration Committee part [a]

Reasoning for this recommendation

We are recommending the transfer of just the process statements and keeping the responsibility and function of The Board of Assessors, Budget Committee, and Registration Committee in the charter. Why? Delaware, like most states, is a non-home rule state. This means that our state allows communities to request a local government charter with the approval of the General Assembly. Once approved, any ordinance made on a local level, as long as they do not conflict with state or federal law, can be made without the approval of the State General Assembly. Any changes to the charter require approval by the State General Assembly. Therefore, to give Arden greater flexibility, we recommend taking the process statements out of our charter into an ordinance for our control.

Vacancies

Section 10

In case of vacancy created in any office established under the provisions of this Act and the doings of the Town Assembly by reason of death, resignation, loss of residence in the Village, conviction of a felony or otherwise, the Town Assembly, at the earliest possible meeting, shall elect ~~some suitable person~~ a resident to serve the unexpired term of such office.

Powers and Ordinances

Section 11

The Village shall have all powers possible for the Village to have under the Constitution and laws of Delaware as fully and completely as though they were specifically enumerated by this Act. In furtherance thereof, the Town Assembly is hereby vested with the authority to enact ordinances and adopt resolutions relating to any subject within the powers or functions of the Village, or relating to the government of the Village, its peace and order, ~~its sanitation~~, beauty, the health, safety, convenience and comfort of its population, and the protection and preservation of property and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances or resolutions, and no provision of this Charter as to ordinances or resolutions on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated. Notwithstanding any statute, act or law of the State of Delaware to the contrary, the power to acquire and/or to vacate the use of lands, tenements, personal property, easements, rights of way or any interest in property within the limits of the Village, as described in Section 2 hereof, by way of condemnation and eminent domain shall be and is vested exclusively in the Town Assembly; provided, however, that the Town Assembly may, but is not obliged to do so, consent to the exercise of any such power by an agency, commission or department of the State of Delaware for any lawful purpose.

Comments/Questions/Clarifications: Section 11 (Paragraph 1) Powers and Ordinances

Clarified: The reason “its sanitation” was struck out is because the Village has no authority in terms of sewers. If we do not have it in the Charter, can we take it back and do our own sanitation? The Village has an ordinance that describes Arden’s relationship to the county. Its redundant to have it in the Charter because the language in the New Castle County Code covers this relationship and it is discussed how it is done in the Arden Ordinance.

To address redundancy: We may have something the county has so we are saying we don’t need it. Can redundancy as long as it is saying the same thing, be a good thing, or is there a reason that we are bias in saying we don’t want the redundancy that we say we are going to do it even though the county says their going to do it.

Why take “its sanitation” out of the Charter? It could stay in the Charter or it can be taken out. If taken out it can be in an Ordinance resolution or a policy governing sewers.

The Village may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with any one or more states or civil divisions or agencies thereof, including the government of New Castle County, or the United States or any agency thereof.

It shall be the duty of the Town Assembly, at a reasonable time or times, to compile the ordinances, **policies**, codes, orders and rules of the Town Assembly of the Village. The Town Assembly shall ~~have a reasonable number of~~ **provide access to** copies ~~printed~~ for the use of the officials of the Village and for public information. From time to time, upon the enactment of new ordinances, **policies**, codes, rules and regulations, or upon the enactment of amendments to the same, the Secretary of the Town Assembly shall enroll the same in the ~~journal record~~ of the Town Assembly and keep copies of the same ~~in a book~~ to be provided for that purpose so that the same may be readily **accessed and** examined.

Enforcement, Fines and Penalties

Section 12

(a) The Justices of the Peace sitting (whether regularly, specially or otherwise) in the Justice of the Peace Court located nearest to the Village shall have jurisdiction and cognizance of all offenses against the provisions of this Act or the authorized ordinances of the Village committed within the limits of the Village as far as to arrest and hold to bail or fine and imprison offenders; provided that ~~he shall impose no fine or, penalty, in excess of that fixed by the ordinance and shall not commit to no prison sentence for a longer term than 30 days. or sentence of imprisonment in excess of the limits prescribed by State law. The New Castle County Correctional Institution may be used for imprisonment under the provisions of this Act provided that the Town Assembly shall pay for the board of persons committed for breaches of ordinances which are not breaches of the general law.~~

Comments/Questions/Clarifications: Section 12(a) Enforcement, Fines and Penalties

“he shall impose” was struck out because it should be gender neutral.

Removing “in excess of that fixed by the ordinance and shall not commit to no prison sentence for a longer-term than 30 day” because it would not work this way today. This was substituted with “or sentence of imprisonment in excess of the limits prescribed by State law”. This give the Village the flexibility to be within the state’s recommendations.

The final sentence would read as follows:

Provided that no fine, penalty, or sentence of imprisonment in excess of the limits prescribed by State law. (Add the verb be. Should read ..of the limits be prescribed...)

(b) No ordinance of the Village shall provide for a fine in excess of ~~\$100~~ **the limits prescribed by State law.** ~~or imprisonment of more than 30 days.~~

(c) Any person convicted before such Justice of the Peace for the violation of any Village ordinance may appeal from such conviction to the Superior Court in and for New Castle County ~~upon giving bond to the State with or without surety, as such Justice of the Peace shall determine, binding the person taking the appeal to appear before the Court. Notice of such an appeal shall be given to such Justice of the Peace within five (5) days from the time of conviction, counting the day of conviction as one, and the bond with surety, if any, shall be filed within five (5) days. No bond upon appeal from a conviction for violation of a Village ordinance shall exceed the sum of one hundred dollars (\$100). Such appeal shall be prosecuted and the proceedings shall be had as in an appeal from a conviction before a Justice of the Peace in the case of a violation of the laws relating to the operation of motor vehicles.~~

Comments/Questions/Clarifications: Section12(c) Enforcement, Fines and Penalties

Clarify Would this apply only if there was a police officer? No. It could be an ordinance that prescribed certain things like parking illegally with a fine or 30 days in jail and a fine. Then this would apply. It would be detailed in the ordinance as to who would be charged in enforcing it.

Police Force

Section 13

The Town Assembly may appoint a police force consisting of such person or persons as the Town Assembly may deem **appropriate.** ~~wise and advisable. The Town Assembly shall from time to time, upon recommendations of its Safety Committee, adopt rules and regulations as may be necessary for the organization, government and control of the police force. The members of the force shall be subject to the direction of the Town Assembly and may be removed by the Town Assembly at any time. They shall preserve peace and order and shall compel obedience within the Village limits to the ordinances of the Village and the laws of the State; and they shall have such other duties as the Town Assembly shall from time to time prescribe.~~

~~Each member of the police force shall be vested with all powers and authority of a constable of New Castle County within the Village limits and within one mile outside such limits, and in the case of the pursuit of an offender, his power and authority shall extend to all parts of the State of Delaware.~~

~~Every person sentenced to imprisonment by the Justice of the Peace, as provided in Section 12 of this Act, shall be delivered by a member of the police force to the New Castle County Correctional Institution, to be there imprisoned for the term of the sentence.~~

~~It shall be the duty of the police to suppress riotous, disorderly or turbulent assemblages of persons in the streets and public places of the Village, or the noisy conduct of any person in the same, and upon view of the above, or upon the view of the violation of any ordinance of the Village relating to the peace and good order thereof, the police shall have the right and power to arrest without warrant and to take the offender before the Justice of the Peace, as aforesaid.~~

Comments/Questions/Clarifications: Section 13 Police Force

There were four (4) paragraphs that describe the process of a police force that was struck out. Instead of going into all this detail, the GTF decided to crunch it down into the first sentence which they believe is more appropriate.

The first sentence where it refers to a police force that means you can hire a security guard, contract with county or state, or hire a resident of the Village. Note to be careful because of the infrastructure surrounding that individual or groups of people, laws, regulations, would be tricky.

Is it necessary to have a police force in the Charter?

The history of a police force in Arden is that they had three policemen over the years. The type of crime was typically mischievous juvenile behavior, illegal parking. At the present time there is no enforcement mechanism in place. Whether there would ever be interest to create an enforcement mechanism, would be up to the Village to decide. It's an option. It can be done by resolution which is flexible. You don't need to put it into the Charter because they are rights of a Municipality. Those rights exist whether it is in the Charter or not. Is it something specifically stated in the charter.

Terminology for the Charter - Recommend using a more general title like enforcement which will allow the town assembly to create an enforcement mechanism which could be a security officer or police or a fine.

Terminology - Law enforcement personnel can be a broad term that can be defined as needed.

Instead of neighbors becoming triggered over hot button issues that can easily be resolved by law enforcement, is comforting.

Contracts of the Town Assembly

Section 14

The Town Assembly is vested with authority on behalf of the Village to enter into contracts for the rendering of services to the Village and/or the purchase of supplies and doing of work for any municipal purpose of the Village. All formal contracts shall be signed by the Chair~~man~~ of the Town Assembly, with the seal of the Village attached and attested by a ~~second official of the Village.~~ ~~the Secretary of the Town Assembly.~~ **a second official of the Village.**

Comments/Questions/Clarifications: Section 14 Contracts of the Town Assembly

Removed “the Secretary of the Town Assembly” and replaced it with “a second official of the Village”. The reason to remove the secretary was to address an absent town secretary, then there would be a second official of the Village to take care of formal contracts.

Section 5 the secretary "shall attest the seal" and in Section 14 you are removing the secretary. These documents need to match. Suggests state a secretary designee in the absence of a secretary.

There is a need to create policy/ordinance to clarify terms and provide definitions. (i.e., Contracts, formal contracts, officers, official of the Village, etc.)

All formal contracts shall be signed by the Chair~~man~~ of the Town Assembly, . . .
What is a formal contract?

~~Fire, Zoning and Housing Codes~~

~~Section 15~~

~~For protection against fire and for the preservation of the beauty of the Village and the health of the inhabitants, the Town Assembly may adopt ordinances to zone or district the Village and to make particular provisions for particular zones or districts with regard to buildings and building materials; to prohibit the use of building materials that may be deemed to create a fire hazard, and this power shall embrace new buildings or additions to or alterations of existing structures of every kind, to condemn and/or vacate buildings or structures, or portions thereof, that constitute a fire and/or health menace and to require or cause the same to be torn down or removed or so altered as to eliminate the menace of fire or danger to health; to prescribe the height and thickness of walls of any building and the kind and grade of materials used in the construction thereof; and to establish a building line for buildings to be erected.~~

~~The Town Assembly may adopt zoning ordinances limiting and specifying districts and regulating thereon buildings, structures and uses according to their construction and according to the nature and extent of the use or business to be carried on therein.~~

~~The powers to be exercised under and by virtue of this Section shall be deemed to have been exercised under the police power and for the general welfare of the inhabitants of the Village.~~

~~The Town Assembly may create a Village Zoning Commission for the development, improvement and beautification of the Village and may prescribe its powers and duties.~~

~~The Town Assembly may provide for the issuance of building permits and may forbid the construction of any new building or the addition to, or alteration or repair of any existing building unless a building permit has been obtained therefor.~~

~~The Town Assembly may adopt a housing code to regulate and govern the occupancy of residential structures in the Village, the structural requirements of residential and commercial properties for the health, safety, welfare and comfort of occupants thereof, and to appoint a commission to carry out and enforce the provisions of the housing code.~~

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Comments/Questions/Clarifications: Section 15-Fire, Zoning and Housing Codes

Ordinance #10 is about the contract with the county and there is a chart that specifies all of the services from the county (i.e. housing code, building code, zoning, etc.). The Village is in conflict with the county in that we want the county to regulate the codes but in Section 15 it says we can regulate the codes if we choose to. The GTF recommends to continue with Ordinance #10. It still gives the Village the option in the future to regulate any of these services should there be an interest and it can be done through an ordinance. Section 1 where it clearly states in the All-Powers Act - what is in the Charter we have to do, and what is not in the Charter the town assembly meeting has total authority to do. To go deeper into this, if it is not in the Charter, does the state allow us to do it? As a Municipality, do we have this right whether it is in the Charter or not because the state gives municipalities this ability. As long as it is not in violation of county, state or federal law/regulations, we can do it.

Discussion of changes to Ordinance vs Charter

There is a longer time-frame to change an ordinance than to change the Charter. An Ordinance is presented at the town Assembly and if approved then it is read at three consecutive town assembly's meetings. This process is at least a year to approve an Ordinance.

To change the Charter, it is presented at town meeting and if approved it goes referendum and it could go within a matter of months to the General Assembly. For clarification to change the Charter does not require a referendum. Per the Village lawyers they have stated that the Charter the way it is written today, gives the Town Assembly the ability to vote to change the Charter and then present it to the General Assembly, The General Assembly would have to agree to it. That's is

all that is required. That is not to saying that is all the Village wants to do. The charter has been changed twice on a town assembly vote in the past. There appears to be confusion about the Bylaws and how it reads on the Charter. The Bylaws do not say anything about the Charter. The Bylaws do not say change the charter. It says change the Bylaws. The Bylaws were written before the Charter was completed and that is why they could not read on the Charter.

Suggest to put into the Charter language on how we change the Charter so that it is clearer. State wide it is a resolution because of a practicality issues. Local community governments do not have the authority to change the charter. They can only recommend a change to the Charter. It is up to the state legislature and the governor to sign that change. Not only can they change, they can modify and deny recommendations. When you have a referendum, most people think of it as the final decision. Its not a final decision. It is only a recommendation. The idea getting a recommendation resolved before a town assembly meeting. The Village has the All-Powers Act which clearly states that the Village has the authority to make that happen. We are the only direct democracy in the state of Delaware. Part of that is that we have trust in each other. We do not elect officials who make the decisions on our behalf. Residents of the Village vote on issues directly. It is a collective idea of us meeting together and forming the type of government we want.

In Section 15 Savings Clause -The 1965 charter the Act to Incorporate was the Commissioners. It was recreated in 1967. The Bylaws say to change the Bylaws you need a referendum. The Charter supersedes the Bylaws.

Suggest to change the Charter to send it to referendum first. GTF: In one of the earlier versions of recommendations by the GTF they added a section that said in order to change the Charter it needs to go to referendum. The feedback from the lawyers saying that is not appropriate. The GTF agrees with you that it should go to referendum. Referendum allows everyone the opportunity to vote if they cannot attend in person town meeting. To overcome this an Ordinance can be created on how you can change the Charter. At any town meeting you can vote for a referendum. Whatever way you do it when it goes to the General Assembly they can change it, reject or modify it. The main concern is to have everyone involved and a choice to vote.

Savings Clause

Section 165

All ordinances, resolutions and motions adopted by the Commissioners of the Village of Arden and in force at the time of the approval, acceptance and going into effect of this Act are

continued in force until the same or any of them, shall be repealed, modified or altered by the Town Assembly under the provisions of this Act. All the acts and doings of the Commissioners of the Village of Arden or of any official of the Village of Arden which shall have been lawfully done or performed under the laws of this State, prior to the approval, acceptance and going into effect of this Act are hereby ratified and confirmed unless otherwise provided herein.

Comments/Questions/Clarifications: Section 16 Savings Clause

Commissioners

They decided to keep the term Commissioners because that is the way it was originally written. Depending on the significance of the changes that are made the Savings Clause would refer back to everything that we have done since this charter was done. You don't want this charter to be another Act to reincorporate because we are not making that level of change to it that would be a new reincorporation. You don't want it to eliminate the last fifty or sixty years of work that the Town Assembly has done to get us where we are. The reason the term Commissioner is there is because it refers back to the 1965 charter. The 1965 Charter gives the entire government not to town assembly but to the commissioners and the three commissioners where the Trustees. <https://archives.delaware.gov/town-and-city-histories/village-of-arden/>

Another way to look at this is if the Charter is changed, are there things in here that we want to make sure we save. When this was written they did not want to accidentally illuminate what was put into place in the previous two years (1965 Act of Incorporation and 1967 Act of Reincorporation). The Savings Clause should be written in a way that we make sure we don't accidentally illuminate ordinances, policies that we created by making changes to the Charter. Everything that is done before this Charter was rewritten is still in effect. You do not have to redo ordinances, policies.

Severability

Section 17~~6~~

If any part of this Act shall be held unconstitutional, such holding shall not in anywise invalidate the remaining provisions of this Act.

Section 18~~7~~

This Act shall be deemed and taken to be a public Act.

56 Del. Laws, c. 125; 58 Del. Laws, c. 91; 69 Del. Laws, c. 30

The three Del. Laws listed have been incorporated into our charter:

- 1) HB 26 Lowered voting age from 21 to 18
- 2) Exempt towns which are direct democracies from keeping individual voting records
- 3) Specific number of people serving on the Registration Committee.

These three would carry on with the revision.

Lowering the voting age and number of people serving on Registration Committee was done by Town Assembly vote, setting precedent.

Commented [er1]:

The attendees were asked if there is anything else they would like the GTF to consider before they present their final suggested recommendations to the Charter at the June 2024 Town Assembly meeting. Their recommendations would be based on the feedback/recommendations they received at both Charter Change Special Town Assembly meetings (March 4 and May 20).

New Recommendations

- There are no mechanisms for passing the Budget Referendum in the Charter. Present, if the Budget is not approved, then they go to the prior year. But the Charter specifically says it's a Fiscal Year issue.

- There is no mechanism to replace an Assessor's vacant position. It could be done by ordinance.

Motion to Adjourn 9:07 p.m.

Respectfully submitted,

Elizabeth Resko, Village Secretary