

# Municipal Charter of Berwyn Heights

## CHAPTER I. THE CORPORATE BODY

### Section 101. Corporate Body Defined

The residents of Berwyn Heights, Prince George's County, Maryland, within the Corporate limits legally established are hereby constituted and continued a body corporate by the name of "Town of Berwyn Heights" with all the privileges of such, by that name to sue and be sued, to plead and be pleaded in any court of law or equity, to have and use a common seal, and to have perpetual succession, unless the charter and the corporate existence are legally terminated.

## CHAPTER II. CORPORATE LIMITS

### Section 201. Corporate Limits - Record Requirements

The courses and distances showing the exact corporate limits of the Town shall be filed at all times with the Secretary of State, Hall of Records, State Library, Clerk of the Circuit Court for Prince George's County, the Commissioner of the Land Office, the Department of Legislative Reference and the Town Manager. The file or record of all such descriptions shall be in a suitable place, properly indexed and reasonably available for public inspection.

### Section 202. Public Use\*

The public rights-of-way, recreation and community property under the jurisdiction of the Town Council are dedicated to public use.

## CHAPTER III. THE COUNCIL

### Section 301. Number, Selection, Term

All legislative powers of the Town shall be vested in a Council consisting of five council members who shall be elected as hereinafter provided. Council members shall hold office for a term of two years beginning with the first public Town Meeting following the election. This meeting shall not be held prior to the certification of the election results by the Judges of Elections.

### Section 302. Qualifications and Eligibility

Candidates for Council shall have resided in the Town for at least six months immediately preceding the election, shall have attained the age of twenty-one years prior to election, shall be registered voters at the time of nomination, and must continuously reside in the Town during the term of office. No council member shall, while in office, hold any other paid office or position in the service of the Town or any other municipality in the State.

### Section 303. Compensation

Each Council member shall receive an equal annual compensation which shall be as specified by ordinance passed by the Council. Compensation specified shall take effect with the next succeeding Council.

#### Section 304. Meetings

The Council shall meet prior to the first public Town Meeting following election for the purpose of organization. Thereafter the Council shall meet at such times as determined by the Council but not less frequently than once a month. All meetings shall be open to the public and must provide residents of the Town a reasonable opportunity to be heard in regard to any municipal matter. Special meetings shall be called at the request of the Mayor or a majority of the Council. Nothing contained herein shall be construed to prevent the Council from holding an executive session. No ordinance, resolution, rule, regulation or motion shall be adopted at such an executive session. When the Council is faced with a matter the revelation of which would invade the rights of the individual on private matters or similar situations the public would not be permitted to attend.

#### Section 305. Disqualification

The Council shall be the judge of the qualifications of its members and the grounds for disqualification. Any member who fails to meet any qualification for office prescribed by the Charter, violates any provision of this Charter, is convicted of a felony, or fails to attend Council meetings for three consecutive months without being excused by the Council shall be disqualified. Decisions made by the Council under this section may be subject to court review.

#### Section 306. Mayor, Mayor Pro Tempore

The Council candidate receiving the highest number of votes in the election shall be the Mayor of the Town of Berwyn Heights. The candidate with the second highest vote shall be the Mayor Pro Tempore. In the event of a tie vote, a runoff election shall be held in accordance with Section 506.

##### Section 306.1. Mayor

The Mayor shall be recognized as head of the Town government. The Mayor shall preside at all meetings of the Council, shall exercise such other powers and perform such other duties as are conferred by this Charter or Ordinances, and shall in all other respects be an equal member of the Council.

##### Section 306.2. Mayor Pro Tempore

The Mayor Pro Tempore shall assume all or a part of Mayoral duties and responsibilities, as authorized herein, during the absence of the Mayor. The Mayor is absent when:

- A. the Mayor notifies the Council that he or she will be absent or is unable to perform all or a part of the duties of the Mayor; or
- B. the Mayor is unwilling to sign legislation duly adopted by the Council or those documents necessary to give effect to said legislation; or
- C. a supermajority of the Council determines by a public vote that the Mayor has failed to perform all or a part of the duties of the office.

In the event the Office of Mayor shall become vacant, the Mayor Pro Tempore shall become Mayor.

### Section 307. Quorum

A majority of the Members of the Council shall constitute a quorum for the transaction of business. No Charter change or ordinance shall be approved without the favorable vote of a majority of the Council.

### Section 308. Procedure of Council

The Council shall determine its own rules and order of business. Minutes of all public proceedings shall be recorded and all votes of the members shall be entered therein. The minutes shall be open to public inspection.

### Section 309. Vacancies

- A. In the event of a vacancy on the Council, the remaining members shall appoint a qualified person, in accordance with Section 302, to fill the vacancy for the unexpired term. If the Council fails to appoint a successor within forty-five days or if more than one vacancy occurs, the Board of Election Supervisors shall call a special election to fill such vacancy. Such special election shall be held not sooner than forty-five days and not later than sixty days following the occurrence of the first vacancy.
- B. In the event that three or more members of the Council are no longer active the remaining member(s) of the Council shall appeal to the District Court or Circuit Court to appoint a Town Manager to take charge of the Town Government and provide the continuing of usual services and call for an election in accordance with the provisions of this Charter and the Election Laws of Maryland.
- C. In the event there are no active members remaining on the Council, five concerned citizens qualified to vote may proceed as outlined in B. above.

### Section 310. Recall

Upon receipt of a legal petition signed by not less than twenty-five percent of the registered voters of the Town requesting the recall of a Council member for specific failure to properly perform the duties of the office, the Council shall call a special election within ninety days providing for vote for or against the recall. In the event the majority of the voters vote for the recall, the office shall be declared vacant and the remaining Council members shall appoint a qualified person (in accordance with Section 302) to fill the office for the unexpired term.

### Section 311. Ordinances

No ordinance shall be passed at the meeting at which it is introduced unless it is declared to be an emergency ordinance. A favorable vote by a majority of the Council is required to pass any ordinance. Prior to enactment, a copy or summary of each ordinance shall be published and circulated in the Town. Ordinances shall be permanently filed by the Town Manager and shall be made available for public inspection.

#### Section 311.1. Emergency Ordinances

Emergency ordinances shall become effective immediately upon passage. Such ordinances shall be of limited duration as specified therein but not to exceed ninety days.

#### Section 311.2. Referendum

Ordinances, except emergency ordinances, shall become effective at the expiration of twenty calendar days following passage. If, before the expiration of twenty days, a legal petition is filed with the Town Manager containing the signatures of not less than twenty percent of the registered voters of the Town and requesting that the ordinance or any part thereof be submitted to the registered voters for their approval or disapproval, the Council shall do so at the next regular Town election, or at their discretion, at a special election. Such ordinance shall be held in abeyance until approved by the voters.

## **CHAPTER IV. POWERS OF THE COUNCIL**

### Section 401. General Powers

The Council shall have the power to pass all or any such ordinances not contrary to the Constitution and Laws of the State of Maryland, Prince George's County, 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 of the health, safety, comfort, convenience, and welfare of the residents of the Town and visitors thereto and sojourners therein.

### Section 402. Specific Powers

The Council shall also have the power to pass ordinances, not contrary to the Constitution and Laws of the State or County, for the following purposes:

A. Administrative

To create, change or abolish offices and departments and assign personnel and functions to such offices and departments. To provide for advertising for purposes of the Town and for printing and publishing materials relative to the affairs of the Town. To provide for codification of all ordinances which have been or may hereafter be passed.

B. Animals

To regulate or prohibit the keeping or running at large of dogs or other animals; to authorize the impounding, keeping, sale and redemption of such animals; to place constraints on dogs and cats in the Town; and to provide for the disposition of homeless dogs and cats or dogs on which no license fee has been paid.

C. Billboards and Signs

To license, regulate or prohibit the erection or maintenance of billboards or the placing of signs, bills or posters of every kind on any building, fence, pole or other place in the Town.

D. Buildings

To make reasonable regulations in regard to buildings to be erected, constructed, or modified in the Town and to grant Building Permits for the same; to formulate a building code and to provide for inspections and enforcement of such code; to require reasonable charges for permits and inspections of all buildings and structures. To require the condemnation in whole or in part of buildings in violation of the code and to require that such buildings be made safe or taken down.

- E. Community Services  
To provide, maintain and operate community and social services for the preservation and promotion of the health, recreation, welfare and enlightenment of the inhabitants of the Town.
- F. Cooperative Activities  
To make agreements with other Municipalities, Counties, Districts, Bureaus, Commissions, and Governmental Authorities for participation or cooperation in any Governmental or Public functions. To accept on behalf of the Town gifts or grants of Federal, State or County funds from such governments or any agency thereof, and to expend same for any lawful purpose in accordance with the conditions under which the gifts or grants were made.
- G. Dangerous Conditions  
To compel persons about to undertake improvements of a dangerous nature to execute bonds with sufficient sureties conditioned that the owner or contractor will pay all damages resulting from such work which may be sustained by any person or property.
- H. Finances  
To have general management of the finances of the Town; to levy and collect municipal taxes permitted by the State; to provide that any valid charges, taxes or assessments made against property within the Town shall be liens upon such property; to appropriate Municipal funds for any purpose within the powers of the Council; to borrow money in accordance with the provisions of this Charter.
- I. Fire  
To suppress fire hazards and prevent the dangers thereof; to contribute funds to volunteer fire companies serving the Town; to inspect buildings and any combustible materials for the purpose of reducing fire hazards; to issue regulations to prohibit the use of fire-hazardous buildings or materials; to regulate or prevent the use or storage of gunpowder, gasoline or any other explosive or combustible material.
- J. Franchises  
To grant and regulate franchises to public utilities or others conducting business within the Town, subject to the limitations and provisions of the Annotated Code of Maryland. No franchise shall be granted for a period longer than fifty years.
- K. Health  
To regulate, inspect and abate any buildings, drains or places which cause or may cause unsanitary conditions or conditions detrimental to health and to compel the owner or occupant of any filthy or unwholesome premises to abate the condition. The exercise of these powers shall not conflict in any manner with the powers and duties of the State Board of Health or the Health Officer of Prince George's County.
- L. Permits

Subject to any restrictions imposed by the General Laws of the State and County and Regional Commissions, to regulate all persons or businesses beginning or conducting transient or permanent businesses in the Town, to regulate or prohibit public amusements when in the interest of public welfare. To regulate or prohibit the solicitation of funds; and to establish and collect fees and charges for all permits issued under the authority of this Charter.

M. Nuisances

To prevent or abate all nuisances in the Town which may be so defined by the Laws of the State or County, or by Ordinance of the Town.

N. 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 residents of the Town.

O. Pollution

To regulate, control or prohibit the pollution of the air, waters or land in any manner whatsoever detrimental to the public health, or welfare within the limits of the Town whether the source be within or without the Town.

P. Refuse

To prevent the deposit of any unwholesome or objectionable substance such as garbage, refuse, or other waste either on private or public property, and to compel its removal to designated points. To require, regulate or provide for the collection, removal and disposal of refuse or any other matter that is or may become injurious to the health of or comfort of the residents of the Town. To make reasonable charges for the removal or disposition of refuse other than household garbage.

Q. Zoning

To exercise the powers as to planning and zoning conferred upon municipalities generally by the Annotated Code of Maryland subject to the limitations and provisions thereof.

Section 402.1. Saving Clause

The enumeration of powers in Section 402 is not to be construed as limiting the powers of the Council to the subjects mentioned.

Section 403. Enforcement

- A. To ensure the observance of the Ordinances of the Town, the Council shall have the power to prosecute violations thereof. Where the violation is of a continuing nature and is persisted in, the conviction for one violation shall not be a bar to a conviction for a continuation of the offense subsequent to the first or any succeeding conviction. Any person subject to any penalty for violation of any ordinance passed under the authority of this Charter shall have the right of appeal within thirty days to a court of competent jurisdiction.
- B. 1. The Council may provide that violations of any municipal ordinance shall be a municipal infraction unless that violation is declared to be a felony or misdemeanor

by the laws of the State or other ordinance. For purposes of this article a municipal infraction is a civil offense.

2. A fine may be imposed for each conviction of a municipal infraction. The fine is payable by the offender to the municipality within 20 calendar days of receipt of a citation. Repeat offenders may be assessed a fine for each repeat offense, and each day a violation continues shall constitute a separate offense.

3. Any person receiving a citation for an infraction may elect to stand trial for the offense by notifying the Town in writing of this intention at least five days prior to the date set for payment of the fine. Failure to pay the fine or to give notice of intent to stand trial may result in an additional fine or adjudication by a court of competent jurisdiction.

4. Adjudication of a municipal infraction is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

## **CHAPTER V. REGISTRATION, NOMINATION, ELECTION**

### Section 501. Voters

Every person who is a citizen of the United States, is at least 18 years of age at the time of the election, has resided within the Corporate Limits of the Town for thirty days immediately preceding any Town election, and is registered in accordance with the provisions of this Charter or the Annotated Code of Maryland, Article 33, is a qualified voter and is entitled to vote at all Town elections.

### Section 502. Supervisors of Elections

There shall be a Board of Supervisors of Elections consisting of three Judges of Elections and two Clerks who shall be appointed by the Council in February of each election year to serve for a term of two years.

#### Section 502.1. Qualifications

Members of the Board shall be qualified voters of the Town and not hold or be candidates for any elective office during their term of office. Immediate family members of Council members or Candidates for Council are also disqualified.

#### Section 502.2. Vacancies

Vacancies on the Board shall be filled by the Council for the remainder of the unexpired term.

#### Section 502.3. Compensation

Compensation of the Members of the Board shall be determined by the Council.

#### Section 502.4. Removal

Any member of the Board may be removed for good cause by the Council if in the judgment of the Council the member is not properly performing or will not properly perform the duties of the position. Before removal, the member shall be given a written copy of the charges against him and, shall have a hearing on them before the Council if request is made within ten days after receiving the written copy of the charges.

### Section 502.5. Duties

The Board shall exercise general supervision of Town elections and voter registration. The Board shall give at least two weeks notice of every election by an advertisement in at least one newspaper of general circulation in the Town and by posting a motion thereof in at least three public places in the Town.

### Section 503. Voter Registration

Supplemental Town voter registration shall be held at any time during normal Town Office hours and also between 7:00 p.m. and 10:00 p.m. on the last Monday of March of election year. At those times the Town Clerk or others so authorized by the Council shall accept applications for registration. Application shall be in writing in such form as the Council shall prescribe and shall be submitted under oath or affirmation. Registration shall be closed thirty days prior to election.

### Section 503.1. Validation

Voter registration is complete upon validation by the Judges of Elections. Applicants refused registration shall be notified in writing.

### Section 503.2. Registration Records

No person shall be entitled to vote in Town Elections unless registered at the County or Town. The Judges of Elections shall cause the name of any person who has died, terminated residence in the Town, has failed to vote in the previous three Town elections, or who has otherwise become disqualified, to be stricken from the Town supplemental registration records. A notice of this action and the reason therefor shall be sent to the last known address of the voter notifying him of the Action as may be legally or reasonably applicable under this section. The records shall be revised by the Judges of Elections after the close of registration prior to the Town election. A list of all registered Town voters shall be prepared by the Judges of Election as requested by the Council. All old registration books or forms shall be retained for a period of at least sixty years.

### Section 503.3. Appeal

If any person shall feel aggrieved by the action of the Board of Supervisors of Elections in refusing to register or in striking off the name of a person, or by any other action, such person may appeal to the Council. Any decision or action of the Council upon such appeals may be appealed to the Circuit Court for Prince George's County within thirty days of the decision or action of the Council.

### Section 504. Nomination for Council

Persons qualified for membership on the Council shall be nominated by filing a certificate of nomination at the Town Office before the close of business on the first Tuesday in March preceding the Town Election. Certificates of nomination shall be in the form prescribed by the Council and shall include the signatures of five registered voters residing in the town indicating their support of the nomination of the candidate.

### Section 505. Elections

On the first Tuesday in May of every even numbered year the qualified voters of the Town shall elect, at large, five persons to the Council to serve for terms of two years. Elections shall be on a non-partisan basis.

#### Section 505.1. Conduct of Elections

For each General or Special Election the Council shall provide a suitable place for voting and suitable ballots or voting machines in the manner prescribed by Maryland Registration and Election Laws.

#### Section 505.2. Election Hours

The Board of Supervisors of Elections shall keep the polls open on Election Day from 7:00 a.m. to 7:00 p.m.

#### Section 505.3. Vote Count

Immediately after the closing of the polls, the ballots shall be publicly counted and the Judges of Elections shall, within forty-eight hours, certify the results of the election to the Mayor, who shall have the results recorded in the Minutes of the Council. The five candidates for Council with the highest number of votes shall be declared elected to the Council. In the event of the claim of Fraud of the election, the Council shall call for a recount of the ballots.

#### Section 505.4. Preservation of Ballots

All ballots used in any Town Election shall be preserved for at least six months from the date of election.

#### Section 506. Run-off Elections

If under the provisions of this Charter, one or more Council seats or the positions of Mayor and Mayor Pro-Tempore remain unfilled after the election because of an equal number of votes being received by two or more candidates, a second election shall be held among those candidates for the Council Seat or seats remaining unfilled. Such election shall be held no later than the second Tuesday of June and shall in all respects be in accordance with the election provisions of this Charter.

#### Section 507. Special Elections

All special Town Elections shall be conducted by the Board of Supervisors of Elections in the same manner as regular Town Elections.

#### Section 508. Failure to Proclaim Election

In the event the Council fails to proclaim an election at the time appointed or neglects to do any needful thing to ensure the holding of a legal election to elect their successors, the Circuit Court of Prince George's County shall, upon the petition of five voters of the Town, appoint five town residents to conduct an election on a date to be fixed by the Court in the manner provided for in this Charter.

#### Section 509. Regulation and Control

The Council shall have the power to provide by ordinance for any procedure in the elective process not otherwise covered by the provisions of this Charter.

#### Section 510. Emergency Actions

When a State of Emergency has been declared for the Town by the Mayor and Council, or by the State of Maryland or Prince George's County, pursuant to State or local law, and in the judgment of the Mayor and Council the State of Emergency prevents the safe, orderly and efficient conduct of a Town election, the Mayor and Council may, by resolution,

postpone an election until such time as the election may be conducted in a safe, orderly and efficient manner and make necessary changes to the method, conduct, or voting system of an election to ensure an accurate vote count and certification of the election results.

## **CHAPTER 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 end on the last day of June in each year. Such fiscal year shall constitute the budget year and the accounting year.

### Section 602. Budget

The proposed annual budget shall be presented at a regular public meeting of the Council in April of each year for the purpose of a Public Hearing. Prior to or at the Public Hearing, the proposed budget, together with the current year's budget as adjusted, shall be distributed to Town residents. Before adoption of the budget, the Council may adjust items and sums but must retain a balance between proposed expenditures and anticipated revenues. The budget shall be adopted at a regular public meeting of the Council in May. Adoption requires a favorable vote of a majority of the Council.

### Section 602.1. Appropriations

No public money may be expended without having been appropriated by the Council. The amounts stated in the adopted budget as proposed expenditures shall be appropriated to the several objects and purposes named therein. Any transfer of money appropriated for different purposes must be approved by a majority of the Council.

### Section 602.2 Over-Expenditure Prohibited

During any budget year, no officer or employee shall expend or contract to expend any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purposes in excess of the amounts appropriated for or transferred to that general classification of expenditure. Any contract, verbal or written, made in violation of this section shall be null and void. Nothing in this section shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of leases, purchases or for services for a period exceeding the budget year in which such contract is made.

### Section 602.3. Capital Equipment and Outlay

All capital equipment included in the proposed annual budget shall be identified as a separate line item under the appropriate Town Department requiring it.

### Section 602.4. Appropriations Lapse

All appropriations not spent or encumbered shall lapse at the end of the budget year and shall be included among the anticipated revenues for the succeeding budget year.

### Section 603. Checks

All checks issued in payment of salaries or other municipal obligations shall be issued and signed by the Town Manager and shall be countersigned by at least one member of the

Council. In the absence of the Town Manager checks shall be signed by three Councilmembers.

#### Section 604. Taxes

- A. All real property, franchises, and all personal property within the Corporate limits of the Town shall be subject to taxation for Municipal purposes as permitted by State Laws. Exempted from taxation are household furniture and effects held for household use and not held or employed for the purposes of profit or in connection with any business, profession or occupation. The assessment used for municipal taxation shall be the same as that for State and County taxes. No authority is given to impose taxes on any property which is exempt from taxation by any Act of General Assembly.
- B. From the effective date of the budget, the amount stated therein 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.
- C. The Council shall have authority to levy taxes annually upon all property and franchises within the Town. Such taxes shall be levied at rates necessary to meet the anticipated expenses for the next fiscal year. The rate of taxation shall be determined at the regular public meeting in May of each year. (Res. 10-83; 12-14-83)

#### Section 604.1. Notice of Tax Levy

- A. The Town Manager shall contract with the County Treasurer to make out and mail or deliver in person to each taxpayer or his agent at his last known address, a bill or account of the taxes due. This bill or account shall contain a statement of the assessed valuation of property, the rate of taxation, amount of taxes due, and the date on which taxes will bear interest. Failure to receive any tax notice required by this section shall not relieve any taxpayer of the responsibility to pay all taxes levied on his property.
- B. The taxes provided herein 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. While in arrears they shall bear interest at the rate of two-thirds of one percent and penalties at the rate of one percent for each month or fraction thereof until paid. All taxes not paid and in arrears after the first day of the following January shall be collected as provided for in Section 604.1.C below.
- C. A list of all property on which the Town taxes are not paid and are in arrears after the first day of January shall be turned over to the Official of Prince George's County responsible for the sale of tax delinquent property. All property listed thereon shall, if necessary, be sold for taxes in the manner prescribed by State Law.

#### Section 605. Fees

All fees, fines and other funds received by any official or employee of the Town in his official capacity shall belong to the Town and be accounted for by the Town Manager.

#### Section 606. Audit

The financial books and accounts of the Town shall be audited annually as required by the Annotated Code of Maryland. Financial records and the audit reports shall be made available for inspection upon written request by any resident of the Town in the manner prescribed by State Law.

#### Section 607. Tax-anticipation Borrowing

The Town shall have the power to borrow in anticipation of the collection of property taxes, and to issue tax anticipation notes or other evidence of indebtedness therefor. Such notes or evidence of indebtedness shall be a first lien upon the proceeds of such tax and shall mature and be paid not later than six months after issued. Total tax anticipation indebtedness of the Town shall not exceed fifty percent of the property tax levy for the fiscal year in which issued. The Council shall have authority to regulate all matters concerning the issuance and sale of tax anticipation notes.

#### Section 607.1. General Obligation Borrowings\*

- A. The Town shall have the power to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds, notes or other evidences of indebtedness in the manner prescribed in this Section.
- B. All general obligation bonds, notes or other evidences of indebtedness issued under the provisions of this Section shall be authorized by an ordinance that shall contain:
  - (1) a statement of the maximum aggregate principal amount of such obligations to be issued;
  - (2) a statement of the purpose or purposes for which the proceeds of such obligations are to be expended;
  - (3) a pledge of the security for such obligations and, if applicable, a statement that such obligations shall be payable in the first instance from a specified source of revenue or provisions for the making of such statement by resolution; and
  - (4) a requirement that, subject to subsection (d) below, prior to the issuance of any such obligations, the Council shall adopt a resolution in accordance with the provisions of subsection (c) below. Any such ordinance shall be subject to petition to referendum in accordance with Section 311.2 of this Charter.
- C. Prior to issuing any such obligations identified in subsection (b) above, the Council shall adopt a resolution containing, determining or providing for the determination of, or approving or providing for the approval of:
  - (1) the designation, date of issue, denomination or denominations, form or forms and tenor of such obligations;
  - (2) the rate or rates of interest payable on such obligations (which may be fixed or variable or may be determined by a method approved or provided for);
  - (3) the date or dates and amount or amounts of maturity, which may be in any denomination;
  - (4) the manner of selling such obligations, which may be either at public sale after publication or dissemination of the notice of sale or by private (negotiated) sale without advertisement or solicitation of competitive bids;
  - (5) the price or prices of such obligations, which may be at, above or below par value;

(6) any desired provisions relating to the redemption of such obligations prior to maturity (which may be at, above or below par value), and the manner of publishing or otherwise giving notice of such redemption;

(7) the manner of executing and sealing such obligations, which may be by facsimile;

(8) any documents pursuant to which such obligations are to be issued or secured, including, without limitation, agreements with banks, fiduciaries, insurers or others for the purpose of enhancing the marketability of or as security for such obligations and for securing any tender option granted to the holders thereof; and

(9) such other provisions regarding the terms, conditions, issuance, sale, delivery and security of and for such obligations as the Council may determine necessary or desirable, including, without limitation, whether such obligations shall be sold for cash or other valuable consideration or further specifying the purposes for which such obligations are to be expended (within the limitations set forth in the applicable ordinance). By resolution the Council may delegate to a specified official or officials the authority to approve any matters or make any determinations contemplated by this subsection (c). A resolution adopted pursuant to this subsection (c) may be introduced and adopted at a single session of the Council, may not be petitioned to referendum and shall become effective immediately upon adoption or upon the date specified in such resolution, notwithstanding the provisions of any other Section of this Charter.

- D. The Council may, at its option, determine or provide for the determination of, or approve or provide for the approval of, any of the matters referenced in subsection (c) above by ordinance instead of by resolution, which ordinance shall be subject to petition to referendum in accordance with Section 311.2 of this Charter.
- E. In connection with any sale of general obligation bonds, notes or other evidences of indebtedness by the solicitation of competitive bids at public sale, any such competitive bids may be delivered by electronic and/or facsimile means and/or by any other then-commercially reasonable manner for the sale of municipal obligations at competitive bid; and any notice of sale may be published solely in summary form in a newspaper of general circulation in the Town and/or in a generally recognized financial journal such as The Bond Buyer, or any notice of sale may be disseminated solely in electronic form and/or by any other then-commercially reasonable manner for the sale of municipal obligations, as determined by the Council in accordance with subsection (c) or subsection (d) above, as applicable.
- F. The power conferred on the Town under this Section shall be deemed to be additional and supplemental to any other general obligation borrowing authority granted to the Town by Maryland public general or public local law, and the Town may authorize, issue and secure any such general obligation debt in conformity with this Charter and/or any other applicable law.
- G. The provisions of this Section shall not apply to any tax anticipation borrowing incurred in accordance with Section 607 of this Charter.
- H. All general obligation bonds, notes or other evidences of indebtedness validly issued by the Town previous to the effective date of this Charter, as amended, and all

ordinances and resolutions 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 608. Payment of Indebtedness

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

#### Section 608.1. Previous Issues

All bonds, notes, or evidence of indebtedness issued by the Town previous to the effective date of this Charter, and all ordinances concerning them, are hereby declared to be valid, legal, and binding as in herein fully set forth.

#### Section 609. Purchases

All expenditures for equipment, public improvements, or contractual services involving more than ten thousand dollars (\$10,000) shall be made through solicitation of at least three competitive bids and obtaining a written contract. All such contracts shall be approved by the Council at a Public Meeting before becoming effective.

#### Section 609.1. Negotiated Contracts

- A. The Mayor is authorized to negotiate a purchase or contract without regard to the formal advertising and bidding procedures required by Sections 609 and 806 of this Charter under the following circumstances:
  - 1) In the event of any emergency situation, and with the consent of the Town Council, in which the immediate procurement of supplies, contractual services or capital improvements is required to preserve the public order and to protect the health, safety and general welfare of the citizens of the Town. Any contract or purchase negotiated under the provisions of this subsection must be approved by the Town Council before being signed or executed by the Mayor.
  - 2) When proprietary articles are involved or when only one source of supply is available.
  - 3) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material or similar circumstances.
  - 4) When bids have been solicited pursuant to the requirements of formal advertising in Sections 609 and Section 806 and no responsive bid was received from a responsible bidder.
- B. Authority to negotiate does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best advantage of the Town, price and other factors considered. The authority to negotiate contracts in no way eliminates the need of

the Mayor to exert every reasonable effort to obtain the most favorable prices possible. Bargaining shall be free from practices or actions which may cause inequities for bidders or justified criticism of the purchase policies and procedures. Each purchase or contract negotiated under this authority shall be supported by a statement signed by the Mayor justifying the use of negotiation procedures.

## **CHAPTER VII. PERSONNEL**

### Section 701. Authority to Hire

The Council shall have the authority to appoint, hire or otherwise engage such persons as deemed necessary to fulfill the responsibilities and duties of the Town.

### Section 702. Compensation of Employees

The Council shall determine and periodically review the compensation of all officers and employees of the Town, subject to the restrictions imposed on their own compensation.

### Section 703. Employee Benefit Programs

The Council shall be authorized by ordinance to provide for or participate in hospitalization or other forms of reasonable benefit or welfare programs for its officers and employees, and to expend public funds of the Town for such purposes.

### Section 704. Retirement System

The Council shall have the authority to do all things necessary to include its officers and employees, themselves excepted, within a retirement or pension system, and to pay the employer's share of the cost of such a system out of the general funds of the Town.

### Section 705. Insurance and Bonding

The Council shall determine bonding and insurance requirements for its officers and employees and may expend public funds for such purposes.

### Section 706. Personnel

The Council is authorized to appoint the following personnel. This in no way restricts the Council from engaging the services of other employees as deemed necessary to carry out the duties and responsibilities of the Town.

#### Section 706.1. Town Manager\*

The Council shall appoint a Town Manager to serve at the pleasure of the Council. The Town Manager shall, under the supervision of the Council, be the financial and administrative officer of the Town. Duties and responsibilities of the Administrator may be as specified by Ordinance.

#### Section 706.2. Town Attorney

The Council shall appoint a Town Attorney who shall be a member of the Bar of the Maryland Court of Appeals. He shall serve as the legal advisor and legal representative of the Town. He shall serve at the pleasure of the Council and his compensation shall be determined by the Council. The Council shall have the authority to employ other legal consultants as it deems necessary.

### Section 706.3. Code Enforcement Officer

The Council may appoint a Code Enforcement Officer who shall be responsible for enforcing the Town Codes and the Maryland livability code, and perform other related duties as may be specified by ordinance.

### Section 706.4. Town Engineer

The Council may appoint a Town Engineer who shall be a registered land surveyor for the State and shall be the engineering advisor for the Town and shall perform such other related duties as may be required by the Council.

### Section 706.5. Police Officers

The Council may appoint one or more Police Officers for the Town. They shall have all police powers in accordance with Federal, State and County Laws. Duties and responsibilities shall be further specified by ordinance.

## **CHAPTER VIII. PUBLIC WAYS AND STORM DRAINAGE**

### Section 801. Control of Public Ways

The Town shall have control of all public ways in the Town except those under the jurisdiction of the State Highway Administration. The Town may do whatever it deems necessary to establish, operate, and maintain the public ways of the Town.

### Section 802. Streets, Sidewalks, Curbs and Bridges

The Town Council shall have the power:

- A. To establish or change the grade lines, placements, width and construction materials of any new or existing public way of the Town.
- B. To grade, pave, repair, improve, open or close any public way of the Town or part thereof including streets, sidewalks, curbs, gutters and bridges.
- C. To have surveys, plans, specifications and estimates made for any of the above activities

### Section 803. Consent of Property Owners

When it is determined by the Council that the cost of constructing public ways is to be paid for by special assessment, such construction shall not be authorized without the signature, consent or request of at least fifty-one percent of the front foot abutting property owners representing at least fifty-one percent of the front footage on the street or section thereof.

### Section 804. Special Assessment

- A. To make the improvements to the public ways under the special assessment provision, the Council is authorized to levy and collect special assessment taxes upon property for the benefits conferred thereon by such improvements. The cost of any project to be paid for in whole or in part by special assessment shall include the direct cost, land acquired for the project, interest on bonds or certificates of indebtedness, a reasonable charge for the services of Town personnel, and any other costs which may be reasonably attributed to the project.

- B. The Council shall levy against each parcel of land abutting the improvement an assessment based on the assessable front footage of the property multiplied by the cost per unit foot for the entire project. When two or more sides of a parcel of land abut two or more public ways under the jurisdiction of the Town, the Council shall have the authority to adjust the assessable front footage in such amounts as may be just and equitable; however, such adjustment shall be computed at not less than fifty percent of the actual footage abutting the improvements.
- C. Special assessments when made shall constitute a tax or lien upon the abutting property and shall be payable from the date of assessment. Any assessment or part thereof remaining due and unpaid shall be collected in the same manner as Town taxes are collected provided the Town serves legal notice on the property owners of such assessment.

#### Section 805. Certificates of Indebtedness

- A. To effectuate the construction and repairs of public ways, the Council is authorized to borrow on the credit of the Town sums of money which shall not in total amount exceed ten percent of the assessed valuation of all real property in the Town. They may issue bonds or certificates of indebtedness thereof which shall be payable on or before twenty years from the date of issuance, at the most acceptable interest rate available, but not to exceed the current prime interest rate. Funds derived from the sale of such bonds or certificates of indebtedness shall be deposited in a safe banking institution in the State and shall be subject to withdrawal by check only when countersigned by at least three Council members. (Resolution 16-81; August 27, 1981)
- B. The bonds or certificates of indebtedness authorized to be issued will be sold through public advertisements for bids. Notice of sale of such bonds or certificates of indebtedness shall be advertised at least once a week for two consecutive weeks in a newspaper having general circulation in the Town. The advertisement shall state that the Council shall be in readiness at a specified place, time and date not less than fifteen days after final publication of the advertisement to publicly open and read the sealed bids. Provided the bids are adequate in the judgement of the Council, the bonds or certificates of indebtedness shall then be sold to the highest responsible bidder.

#### Section 806. Construction Bids

When construction of public ways is authorized, the Council shall invite bids for such construction by advertisement for two weeks in a newspaper having general circulation in the Town. The Council shall award the contract for such construction to the lowest responsible bidder, reserving at all times the right to reject any or all bids received. Notwithstanding the foregoing, the Council may, when deemed in the public interest, upon unanimous vote of the Council, contract directly with any responsible contractor for the construction of improvements which do not exceed ten thousand dollars (\$10,000) in cost. All contractors awarded contracts shall post bond in such sum as the Council shall require for the faithful performance of the contract.

#### Section 807. Storm Drainage

- A. The Council is authorized to plan, design, construct, maintain, and operate a system for the control and disposition of surface waters, including storm water drainage, within the limits of the Town. For such purposes the Council is authorized to condemn, obtain easements, and to negotiate and make contracts with any Public Agency including the Washington Suburban Sanitary Commission.
- B. The Council is authorized to borrow on the credit of the Town, sums of money for the purpose of paying for storm water or surface drainage improvements. Total annual expenditures to meet principal and interest payments for all such improvements shall not exceed one-half one percent of the assessed valuation of all real property in the Town unless approved by a majority of all the votes cast on a referendum submitted to the voters of the Town.
- C. The Council is authorized to levy and collect an ad valorem tax upon all the assessed property of the Town sufficient to meet the annual cost of storm drainage improvements.

## **CHAPTER IX. TOWN PROPERTY**

### Section 901. Acquisition, Possession and Disposal

The Council may acquire real, personal or mixed property within or without the Corporate limits of the Town for any public purpose by purchase, gift, bequest, devise, lease, condemnation, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Town. All municipal property, funds, and franchises of every kind belonging to or in possession of the Town at the time this Charter becomes effective are vested in the Town, subject to the terms and conditions thereof.

### Section 902. Condemnation

The Council shall have power to condemn property of any kind, or interest therein or franchise connected therewith, in fee or as an easement, within the corporate limits of the Town, for any public purpose, any activity, project or improvement authorized by the provision of this Charter or any State Law applicable to the Town shall be deemed to be a public purpose. The manner and procedure of any condemnation proceeding shall be that established in the Annotated Code of the General Public Laws of Maryland under Eminent Domain.

### Section 903. Town Buildings

The Council shall have the power to acquire, to obtain by lease or rent, to purchase, construct, and maintain all buildings and structures it deems necessary for the operation of the Town Government or for the welfare of Town residents.

### Section 904. Protection and Accountability of Town Property

The Council shall have the power and responsibility to do whatever may be necessary to account for, to protect and to maintain all Town property in good condition.

## **CHAPTER X. GENERAL PROVISIONS**

### Section 1001. Oath of Office

- A. Before entering upon the duties of their offices, the Council, the Town Manager, the Members of the Board of Supervisors of Elections, and all other persons elected or appointed to any office of trust or profit in the Town Government shall take and subscribe the following oath or affirmation:

"I, \_\_\_\_\_, do swear (or affirm) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the Office of \_\_\_\_\_, according to the Constitution and Laws of this State and the Charter and Ordinances of Berwyn Heights".

- B. The Council shall take this oath or affirmation before the Clerk of the Circuit Court for Prince George's County or before a sworn Deputy of the Clerk. All other persons taking the oath shall do so before the Mayor.

### Section 1002. Prior Rights and Obligations

All rights, title, and interest held by the Town or any other person or corporation at the time this Charter is adopted, in and to any lien acquired under any previous Charter of the Town, are hereby preserved for the Holder in all respects as if this Charter had not been adopted, together with all rights and remedies in relation thereto. This Charter shall not discharge, impair, or release any contract, obligation, duty, liability, or penalty whatever existing at the time this Charter becomes effective. All suits and actions, both civil and criminal, pending, or which may be hereafter instituted for causes of action now existing or offenses already committed against any law or ordinance repealed by this Charter, shall be instituted, proceeded with, and prosecuted to final determination and judgment as if this Charter had not become effective. All officials elected or appointed under the previous Charter will continue in effect until terminated as specified herein.

### Section 1003. Effect of Charter on Existing Ordinances

- A. All ordinances, resolutions, rules and regulations in effect in the Town at the time this Charter becomes effective which are not in conflict with the provisions of this Charter shall remain in effect until changed or repealed.
- B. All ordinances, resolutions, rules and regulations in effect in the Town at the time this Charter becomes effective which are in conflict with the provisions of this Charter are hereby repealed to the extent of such conflict.

### Section 1004. Misdemeanors

Every act or omission which is made a misdemeanor under the authority of this Charter, unless otherwise provided shall be punishable upon conviction before any District Court or in the Circuit Court for the County within which the offense is committed by a fine not exceeding one hundred dollars or imprisonment for thirty days in the County jail, or both, at the discretion of the District Court or Circuit Court. The party aggrieved shall have the right to appeal as is now provided under the General Laws of the State. Where the act or omission is of a continuing nature and persisted in, a conviction for one offense shall not be a bar to a conviction for a continuation of the offense subsequent to the first or any succeeding conviction.

Section 1005. Liability for Damages

- A. Before the Town shall be liable for damages of any kind, someone in behalf of, or the person injured must give the Town Manager notice in writing of the injury within one hundred and eighty days after the injury has been received, stating when, where and how the injury occurred and the extent of the injury.
  
- B. The Town shall not be liable for damage or injury to any person or property arising from or occasioned by any public way or public grounds or any defect thereon, unless proper diligence has not been exercised to correct the defect.

Section 1006. Separability

If any section or part of a section of the Charter shall be held invalid by a Court of Competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid shall appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

Section 1007. Amendment

This Charter may be amended in accordance with the constitution of Maryland and Article 23A of the Annotated Code of Maryland.

Section 1007.1. Effectiveness of Amendment

Any amendment to the Charter adopted by referendum can be changed by referendum only and shall not be negated by a Town Council resolution.

\*Section 607.1, Private Sale Authority, adopted 02/13/08

\*Section 202. Corporate Boundaries, amended 04-12-2017

\*Section 706.1 et al Town Administrator, amended 07-11-2018