

Alternative recommendation for sections 24 & 25

Section 24 Collection of Charges Due the Town.

Delete existing section in its entirety and replace with proper legal language that addresses the general collection of all types of charges along the following lines:

1) the Town Council has the authority to impose license fees, charges for the abatement of nuisances, and other charges and taxes

2) collection thereof is the responsibility of the Town Manager

3) Define the situation where the fees, etc are levied against the owner(s) of a property in town related to that property, e.g. failure to pay a business use license fee, building permit fee, property tax assessment, or charge related to abatement of a nuisance or obstruction, and a process for recovery. The recourse should provide for due process and might be something like: the property owner(s) shall have XX days following notification by the Town Manger of such delinquency to pay or file an appeal in the appropriate court and if at the end of the XX day period or XX days after a final court ruling in favor of the Town the charges due the Town are not paid the Town Manager is authorized to place a lien on any or all real property of the delinquent property owner(s).

4) Define the situation where the fees, etc are levied against an individual or corporation which doesn't own property in town or the fee, fine, etc is not related to an owners real property, e.g., a fine for jay walking or a parking violation. The recourse for failure to pay needs to be defined.

5) replace the current (c) with an appropriate catchall

(a)

In the collection of license fees, charges growing out of abatement of nuisances, or other charges due the Town and authorized to be levied and charged against the owner or owners of property within the Town, the collection thereof shall be under the supervision of the Town Manager. It shall be the duty of the Town Manager to collect all such rentals, bills, fees, and charges and as appropriate keep the Town Council advised as to any and all failures or neglects to pay the same.

(b)

In respect to the amount of any such license fees, charges growing out of abatement of nuisances, laying out and repairing sidewalks, or other charges due the Town and authorized to be levied and charged against the owner or owners of property within the Town, and which owner or owners of property within the Town shall have failed or neglected to apply the same within the time prescribed by the provisions of this Charter, or a duly adopted Ordinance of said Town and should the required procedure, if any there be, have been complied with as regards the imposition thereof against such owner or owners, the Town Council shall issue a warrant directing the Town Manager to collect the same against the person or persons, firm or firms, corporation or corporations from which it shall be due, together with interest from the due date and other charges attendant thereto. Thereafter, from the date of the issuance of any such warrant

Comment [DSK1]: Suggest flagging this entire section for the Council to pass onto the town attorney for a modern update, and in so doing remove the Council (as currently in place in subsection b) from the process

Comment [DSK2]: Note, as currently written this ONLY deals with debtors who own property in town. What about debtors who do not?

Comment [DSK3]: In re-writing, a) should be broadened to include all fees, charges, taxes, etc.

Then b) could have a part b)1 dealing with fees, fines, charges, taxes, etc on owners of real property in town -- that are directly tied to issues related said property -- and the recourse to placement of liens due to failure to pay, and a part b)2 regarding failure to pay fees/ fines, charges, etc assessed against individuals/companies that do not own property in Town or if against property owners, for charges not related to said property (e.g., jay-walking or a parking violation)

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~~or warrants, the amount or amounts therein provided shall be and constitute liens upon the respective property or properties of such owner or owners upon which or for which any such rentals, bills, fees or other charges shall have been made and such liens shall, for a period of two (2) years from the date of such warrant or warrants, have priority over any liens, encumbrances or conveyances except tax liens, general or special sewer assessment liens and prior liens of a like nature.~~

(c)

~~Nothing contained in this Section shall be construed as a limitation upon the Town Council to establish and fix fines, or other penalty, in a proper case, for neglects or failures nor shall any fines imposed by a judicial officer with reference to any such neglects or failures be construed as being within the provisions hereof. (70 Del. Laws, c. 191, 7/10/1995)~~

Comment [DSK4]: Not clear what this subsection means. Any ideas?

Section 25 Removal or Abatement of Obstruction, Nuisances, and Unsanitary Conditions.

Comment [DSK5]: Recommend referral to the town attorney for a total re-write, to modernize and to align with the goal that the Council establishes policy and ordinance defining obstructions, nuisances & unsanitary conditions and the town manager enforces the law – get the Council out of the enforcement process.

Delete existing section in its entirety and replace with proper legal language that addresses the Removal or Abatement of Obstructions, etc along the following lines:

Recommended flow:

1. The Town Council has the authority to establish regulations regarding obstructions, nuisances, and unsanitary conditions, as those terms may be defined by the Town and to impose fines and penalties for the removal and/or abatement of such obstructions, nuisances, and unsanitary conditions.
2. The Town Manager is responsible for action taken against identified obstructions, nuisances & unsanitary conditions that are in violation of town ordinances or resolutions or that are contrary to health, welfare & safety of the town and its people/visitors.
3. Define process for notification of property owner(s) in the case of violation of ordinance or resolution.
4. Define process where obstruction, nuisance and/or unsanitary condition is potentially harmful to the public HS&W but not addressed in an existing ordinance or resolution (i.e., Town Manager files a report and requests the Town Council to review the situation and pass an appropriate ordinance or resolution.
5. With an appropriate ordinance/resolution in place, define the process that includes due process considerations for the removal or abatement process of such an obstruction, nuisance and/or unsanitary condition
6. Define the removal/abatement process at the end of an appropriate waiting period if no legal recourse is sought and/or a favorable final court ruling. This should include the authority of the Town Manager or designees (town employees or contractors) to enter the property, move vehicles/implements onto the property, and remove or abate the obstruction, nuisance or unsanitary condition.
7. The Town Manager then needs to have the authority to charge the property owner(s) for said removal/abatement . (the process should already be defined in Section 24)

(a)

~~In addition to the power to impose fines and penalties for the maintenance of obstructions, nuisances, and unsanitary conditions, as those terms may be defined by the Town, if the Town~~

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~~Council either upon its own inspection or upon information obtained from the Town Manager, shall deem that such obstruction, nuisances, or unsanitary condition ought to be removed or abated in a timely manner, the Town Council shall enact an ordinance or adopt a resolution or both in a properly noticed Town Council Meeting, to that effect and thereupon shall direct the Town Manager to forward, to the person or persons continuing or causing such obstruction, nuisances, or unsanitary condition, or to the person or persons who are responsible for its existence or continuance, by the mails of the United States, in a sealed wrapper addressed to said person's or persons' last and best known post office address, a notice to remove or abate the same as soon as may be possible. If such person or persons refuse or neglect, for the space of fifteen (15) days after such notice is mailed, to remove or abate the same, the Town Council may have a warrant issued in the name of the Town of Dewey Beach. The warrant shall command said person or persons forthwith to remove or abate such obstruction, nuisance, or unsanitary condition. The Town Manager shall forthwith proceed to remove or abate the same and, to that end, shall have full power and authority to enter into and upon any lands and premises in the Town. The Town Manager shall likewise have the authority to take such assistants, implements, vehicles or other things as may be necessary and proper to do and perform all matters and things in connection with the removal or abatement of such obstruction, nuisance, or unsanitary condition.~~

(b)

~~At the meeting of the Town Council next succeeding the delivery of the warrant to the Town Manager, the Town Manager shall make a return to the Town Council of the proceedings upon the warrant and shall specify the costs and expenses of all necessary work, labor, and proceedings incurred by the Town in the abatement or the removal of the same.~~

(c)

~~At such meeting, the Town Council shall determine, from the return of the Town Manager, the costs and expenses of all necessary work, labor, and proceedings in reference to the abatement or removal of such obstruction, nuisance or unsanitary condition. The Town Council shall issue or have issued a warrant, containing an itemized account of that information, together with the name and last and best known address of the person or persons from whom the Town Council shall determine the amount to be due and shall deliver such warrant to the Town Manager. The warrant shall command Town Manager forthwith to collect the amount stated to be due thereon from the person or persons designated therein. The Town Manager shall forward to such person or persons, in a sealed wrapper, a true and correct copy of the warrant by depositing the same in the United States mails and addressed to such person's or persons' last and best known post office address. If such person or persons shall refuse or neglect to pay the same to the Town Manager for the use of the Town within thirty (30) days from the date of the mailing of such true and exact copy of the warrant, the Town Manager shall then be authorized and required to collect the same in any of the manners hereinbefore provided. (70 Del. Laws, c. 191, 7/10/1995)~~