

Title 10 - STREETS, SEWERS, SEWAGE AND GARBAGE DISPOSAL AND DRAINS^[12]

ARTICLE I. - IN GENERAL

Sec. 10-1. - Liability of city with respect to unaccepted, etc., streets.

The city shall not be liable for the care, maintenance or upkeep, nor shall it be liable in damages for any injuries or death sustained by reason of the condition of any street, lane or alley in the city, unless the same shall have been accepted by formal action of the department of public works as a public street of the city, or unless the same shall have been opened, graded or curbed by the city.

(34 Del. L. ch. 120, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-2. - Center stones in streets.

The several posts and mark-stones now set and fixed in the earth in the middle of the streets of said city, as well as all such other posts and mark-stones as shall from time to time be set and fixed in the earth by the city surveyors or regulators, shall in all cases and in all courts of law within this state be deemed, taken and allowed as landmarks. And if any person shall willfully pluck up or remove any of said posts or mark-stones such persons shall, for every such offense, forfeit and pay a fine of one hundred dollars; and the council may reward the informer of such offense by allowing him a portion of said penalty not exceeding a moiety thereof.

(17 Del. L. ch. 207, § 114)

Sec. 10-3. - Laying of pipes, power lines, etc., under, etc., streets.

In case of the introduction into, through, under or along the streets of the city, with the consent of the council, of steam-power or heating pipes, or underground telegraph, telephone or electric-light wires, the council shall require, before such work shall commence, payment into the treasury of the city as a guarantee, or some other satisfactory security, that the streets shall not be unnecessarily torn up or obstructed, or kept or left out of repair, or travel unwarrantably impeded, and that the city shall be indemnified against loss, and it shall further require a bond, with personal security thereon, to the city, with warrant of attorney for the entering judgment thereon, in such sum as the council may deem proper, conditioned to indemnify and save harmless any and all persons, inhabitants of the said city, their persons, goods, chattels, lands and tenements from loss, damage or expense, from or by reason of the introduction into the streets of the said city of such steam-power or heating pipes, or underground telegraph, telephone or electric-light wires, which bond shall be held by the said city for the use of any and all persons who may be aggrieved or suffer loss, damage or expense by reason of the premises, to be accorded to them upon petition of the person aggrieved, under such restrictions as the council may impose; and the council may, when in its judgment the public interests may so require, cause, at the expense of the parties laying or owning the same, such pipes or wires to be removed in whole or in part, or impose such restrictions upon the use thereof as it may think fit in reference to the public interests.

(17 Del. L. ch. 207, § 127; 18 Del. L. ch. 188, § 1; 53 Del. L. ch. 12, § 1)

Sec. 10-4. - Trees in streets, etc.—Powers of department of public works generally.

The department of public works shall have full power and authority over all trees planted and to be planted in the streets, highways, lanes and alleys in the city, including the right to plant new trees and to care for the same and to remove trees, living or dead, and to train, spray and otherwise care for such trees.

(37 Del. L. ch. 140, § 1; 53 Del. L. ch. 12, § 2)

Editor's note— Section 2 of Ord. No. 89-004, adopted Feb. 16, 1989, provided that the department of parks and recreation is authorized to perform the functions and duties of the department of public works regarding trees.

Sec. 10-5. - Same—Removal of dangerous, etc., trees.

Whenever in the opinion of the public works commissioner any tree, or part thereof, living or dead, in any of the streets, highways, lanes or alleys of the city becomes defective or dangerous to public travel on such streets, highways, lanes or alleys, or injurious to sidewalks, curbs, sewers or drains, the said public works commissioner shall have power to cause a notice to be served upon the property owner in front of whose property such tree exists, requiring the property owner, within a time therein stated, which time shall be not less than three (3) days, to cause said tree or trees to be removed, and the ground or sidewalk whereon said tree existed to be restored to a condition equal to the adjoining ground or sidewalk, at the expense of said property owner. In case such property owner shall fail to cause the removal of any such tree or trees as required by such notice, the public works commissioner shall have power to cause the same to be removed and shall charge the cost of same to said property owner, and may recover the same in any appropriate action in any court of competent jurisdiction. Service of said notice may be made by leaving a copy thereof upon the premises, if same is occupied, or by posting a copy thereof upon the premises, if unoccupied, or forwarding a copy thereof by letter, duly stamped, sealed and registered, addressed to the occupant of the premises or the owner thereof, and the registered receipt, signed by such occupant or owner, shall be sufficient evidence of the service of such notice.

(37 Del. L. ch. 140, § 2; 53 Del. L. ch. 12, § 2)

Editor's note— Section 2 of Ord. No. 89-004, adopted Feb. 16, 1989, provided that the department of parks and recreation is authorized to perform the functions and duties of the department of public works regarding trees.

Sec. 10-6. - Map or plan regulating dimensions, ascents and descents of streets, etc.

The map or plan of the city made under the requirements of section 28 of chapter 376, Vol. II, Delaware Laws, showing all the streets, squares, lanes and public alleys of the said city, with their several dimensions, ascents and descents, and which, upon its completion and approval by the council, was required to be signed by the mayor and president of the council, sealed with the corporate seal, and deposited and kept in the clerk's office, and a duplicate of which, in like manner signed and sealed, was required to be deposited and kept in the office for recording deeds in and for the county, and which map and the duplicate thereof were by the said Act made public records, and the same, or an office copy thereof, made competent evidence, shall be deemed and taken to be the true map, plan, or ground plot of said city; and all the streets, squares, lanes and alleys of the city shall be and remain as they shall be laid down upon said map, with such extensions and alterations as have been or may hereafter be made by authority of the laws of this state, and with such extensions and alterations as may be made from time to time by the department of public works of said city.

The ascents and descents of all streets, lanes and alleys within the city shall be regulated and fixed conformably to said map; but the council may by ordinance (to be passed by a vote of two-thirds of all the members thereof for the time being) regulate and fix the ascents and descents of all streets, lanes and alleys within the said city the ascents and descents of which are not marked and laid down on the aforesaid map or plan.

(17 Del. L. ch. 207, § 126; 22 Del. L. ch. 406, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-7. - Registration of real estate—Plan books—Preparation, contents, etc.

The chief engineer of the city, under an ordinance and appropriation by council, shall cause to be made books of plans of the said city, divided into sections so far as the streets of the said city are or shall be laid out, which shall show the situation and dimensions of each property therein, with the city numbers thereof, who are the owners, with such succession of blank columns as will permit the names of future owners to be entered therein, with the dates of transfer and with index for recording such names alphabetically; and the person or persons who shall be employed to perform such duty shall have access to all books in the recorder of deeds office, and all records of the courts, and in the register's office, and may take copies or extracts thereof without any charge therefor.

(17 Del. L. ch. 207, § 102)

Editor's note— Pursuant to the provisions of section A-101 of the Charter, the powers, duties and functions of the chief engineer are now vested in and performed by the department of public works. This section and the following five sections should be read with this in mind.

Sec. 10-8. - Same—Same—Where located; current entries; copies; sale.

The original books, when made, shall be kept in the fireproof [vault] of the department of surveys of the said city, and the chief engineer shall keep up the said books so as to show at all times who are the owners of the lots on the plans (and said books shall at all times be accessible to the assessors of said city), and said books shall be kept in such manner as not to destroy the evidence of the ownership at any previous time, but by additions which will show the subdivisions of property and the owners thereof as transmissions of title may take place; and the chief engineer may furnish copies of the said books, or parts thereof, for such price as may be fixed by council, for the use of the city, and his certificate shall be received in evidence as and for such proof as the assessment books would be; and lithographed copies of the said books may be multiplied and sold for the profit of the said city.

(17 Del. L. ch. 207, § 103)

Sec. 10-9. - Same—Duty to register transfer of real estate—Generally.

To enable the chief engineer of the city to keep up the said books of plans, it shall be the duty of every seller and buyer of ground upon the planned plot of the city to make report to him of every conveyance made, with the precise dimensions and locality of the premises, and in so doing the same shall be recorded without charge and noted on the deed of conveyance by said chief engineer or assistant; but if said seller and buyer shall both omit said duty, the recorder of deeds of the county shall not admit the deed of conveyance to record in his office without charging twenty-five cents for each lot described therein, and it shall then be his duty to furnish the proper description of such lot or lots, with the date of conveyance and name of grantor or grantee, within one month, into the office of the department of surveys, under the penalty of one dollar for each omission, to be recovered as penalties for taking unlawful fees are recovered for the use of the said city; and it shall be the duty of every purchaser of houses and lands at judicial sales, and of everyone to whom an allotment in partition shall have been made, and every devisee by will, to make return to the chief engineer of the purchase he has made, or allotment he has received, and of all devises made to him by will, with descriptions as aforesaid, which said chief engineer shall receive without charge, but if he shall not have done so simultaneously with the completion of his purchase, or on partition effected, or if on probate of any will the devisee shall not have done so, as to any houses or lands in the said city purchased, allotted or devised, it shall be the duty of the clerk or prothonotary of the proper court under whose authority such judgment or

partition shall have been made, and for the register of wills, to furnish such descriptions as are above required of the recorder of deeds, so far as the wills to be proved in his office shall enable him to do so, for the like charge and under the same penalty; and the clerk or prothonotary and register may make such charges against such purchaser or party taking in partition, or devisee, on delivery of the deed certifying proceedings in partition or granting probate of the will, and that whether the same be in trust or for any estate for life only, or otherwise, unless the party interested shall produce to him or them the certificate of the chief engineer that such duty has been performed.

(17 Del. L. ch. 207, § 104)

Sec. 10-10. - Same—Same—Liability for taxes for failure to register.

If neither the seller nor buyer, devisee, nor heir, or other party who has acquired title to houses and lands in the said city shall have furnished the description of the property sold as aforesaid, both he who may have parted with and he who acquired title shall be liable for the taxes thereafter assessed thereon, without right of reclamation or contribution thereof either against the other.

(17 Del. L. ch. 207, § 105)

Sec. 10-11. - Same—Same—Fine for failure to register.

And should the chief engineer apprehend that conveyances, or devises, or descents of houses or lands shall have taken place without being reported to him, he shall cause search to be made therefor and perfect his book of plans; and every person found delinquent for six months after acquiring title as aforesaid in making report as aforesaid shall be liable to a fine of five dollars, to be recovered by said engineer in the name of the city as debts of that amount are by law recoverable.

(17 Del. L. ch. 207, § 106)

Sec. 10-12. - Same—Records.

The chief engineer shall preserve on file, arranged alphabetically and according to date, all reports made to him of descriptions of houses and lands.

(17 Del. L. ch. 207, § 107)

Sec. 10-13. - Opening, extending, widening, etc., streets—Amount of damages to be paid or tendered.

Before any property or ground shall be taken or occupied for the purpose of extending, widening, laying out or opening any street, square, lane or alley, the owner or owners of such property or ground shall be paid or tendered such damages as they shall respectively be entitled to receive, which damages shall be assessed in the manner provided by law.

(17 Del. L. ch. 207, § 116; 18 Del. L. ch. 188, § 1)

Sec. 10-14. - Same—Apportionment and disposition of benefits or damages.

In any proceeding taken for extending, widening, laying out or opening any street, square, lane or alley under the provisions of the preceding section, the commissioners, in assessing the damages that may result from the extending, widening or laying out or opening of such street, square, lane or alley to the owner or owners of property or ground necessary to be taken or occupied therefor, shall take into consideration all the circumstances of benefit and convenience as well as of detriment to result of [to] such owner or owners.

(17 Del. L. ch. 207, § 117)

Sec. 10-15. - Regulation of drainage.

The council shall have the entire jurisdiction and control, within the city, of the drainage thereof, and may pass ordinances for the opening of gutters, drains and sewers within the limits thereof, and the regulating and maintaining, cleansing and keeping the same and the natural watercourses, runs and rivulets within the city open, clear and unobstructed, and for that purpose may authorize the entry upon private land, and by general regulations prescribe the mode in which they shall be opened, maintained, cleansed and kept opened and unobstructed, and who shall bear the expense thereof, and may, in its discretion, assess the costs thereof upon the persons and property, real and personal, of those particularly benefited thereby, or of those owning or holding lands through or along which such sewers, drains or watercourses shall flow or pass, and prescribe the mode of collection thereof; provided, that nothing herein contained shall be construed to authorize the taking of private property for public use without just compensation.

The jurisdiction and control of the council, as set forth in this section, shall extend to and include any and all private drains and sewers laid or to be laid under any of the streets, lanes or highways of the city, whether by individuals or corporations now, or that may hereafter be existing, the rights, powers, privileges and franchises of which shall be subject to the provisions and regulations in this section contained and of any ordinances of the council passed in conformity thereto; and the council may, if in their judgment advisable, authorize and empower any corporation or association of individuals to drain and sewer the city, granting for that purpose such rights, franchises, privileges, emoluments and compensation as shall be proper, and may pass ordinances confirming and regulating the same.

(17 Del. L. ch. 207, § 134; 17 Del. L. ch. 589; 18 Del. L. ch. 188, § 1; 22 Del. L. ch. 406; 53 Del. L. ch. 12, §§ 1, 2)

Sec. 10-16. - Cancellation of liens.

The council shall, by resolution, from time to time, as occasion may require, cancel and satisfy of record, at any meeting of the council, any and all liens entered against abutting property for the paving or curbing of any footway, sidewalk or street, as well as liens entered for the construction of any public sewer or drain, upon the presentation by the owners or agents of any property lienied for purposes aforesaid, of evidence of previous payment to the proper municipal authorities of the city for the whole number of feet contained in the street line of the property of such owners, respectively, of any curbing or paving in front or alongside of, or the drainage from such property, or for sewers.

Upon the absence of evidence of any previous payment for liens as aforesaid, the council is hereby authorized, in its discretion, to cancel and satisfy of record, any and all liens entered against abutting property, where the property so lienied has been and is draining into a public sewer previous to and at the time of the entry of the lien, as aforesaid.

(20 Del. L. ch. 93, §§ 1—3; 53 Del. L. ch. 12, § 2)

Sec. 10-17. - Authority to change, etc., natural watercourses, etc.

The council shall have the right to alter and change the course or direction of any of the natural watercourses, runs or rivulets within the city, and for that purpose to enter upon, take and occupy lands, tenements and hereditaments. Before any property or ground shall be taken or occupied for such purpose, the owner or owners of such property or ground shall be paid or tendered such damages as they shall be respectively entitled to receive, which damages shall be assessed, paid or tendered in the same manner as in the case of the taking of ground or property for extending, widening, laying out or opening of streets. The costs of such alterations or change shall be estimated, and any allotment, apportionment, assessment or division of any portion thereof, as the freeholders may deem just and reasonable, shall be made upon and

among the persons, properties, interests and estates specially benefited by such alteration or change, and collected and made a lien in the mode provided in the case of extending, widening, laying out or opening any street, as provided for in this article.

(17 Del. L. ch. 207, § 135; 18 Del. L. ch. 188, § 1)

Sec. 10-18. - Provisions refer to vehicles upon highways; exceptions; powers of local authorities.

- (a) The provisions of this title [21 of the Delaware Code] relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:
 - (1) Where a different place is specifically referred to in a given section.
 - (2) That subchapter IX of this chapter shall apply upon highways and elsewhere throughout the State.
 - (3) That subchapter VIII of this chapter and § 4164 of this title [21 of the Delaware Code] shall apply upon highways and elsewhere throughout the State, except that subchapter VIII of this chapter and § 4164 of this title [21 of the Delaware Code] shall not apply upon any nonresidential, commercial property. For the purposes of this paragraph, "elsewhere" shall mean only those areas regulated by traffic-control devices which have been reviewed and approved as acceptable for the area by the Delaware Department of Transportation.
 - (4) Upon application by a majority of persons having a property interest in a private road or way upon which motor vehicles are driven, the appropriate agency or officer of any town, city or county in which such private property is located may petition the Department of Safety and Homeland Security (hereinafter "Department") in a manner prescribed by the Department, requesting the Department assume jurisdiction over such private property. Upon acceptance of jurisdiction over the private property, the Department shall, by written notice, so notify each governmental body and property owner affected and shall supply copies of such notice to all appropriate courts and law-enforcement agencies. One week following the official acceptance of such jurisdiction, all provisions of Title 17 [of the Delaware Code] and this title [21 of the Delaware Code] shall apply to the affected private property. The installation and maintenance of all traffic-control devices authorized by the Department of Transportation shall be undertaken by the owners at no cost to the State.
- (b) Local authorities, except as expressly authorized by law, shall not enact or enforce any rules or regulations contrary to this chapter. Traffic ordinances and regulations adopted by local authorities, and substantially conforming to the sections of this chapter, shall have the same force and effect as the traffic laws of this title [21 of the Delaware Code]. Whenever any provision of this title [21 of the Delaware Code] refers to a specific section of this title [21 of the Delaware Code], such section shall be deemed to include substantially conforming ordinances and regulations enacted by local authorities. The court's notice of conviction for violating a local ordinance or regulation that substantially conforms to this title [21 of the Delaware Code], when included in the person's driving record, shall be deemed to be equivalent to a violation of the state statute to which it conforms. This section shall not be deemed to affect the jurisdiction for violations of local traffic ordinances or regulations nor the fine to be imposed for such a violation. Local authorities may regulate the use of the highways by processions or assemblages. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use nor requiring other or different or additional conditions than those specified in this chapter or otherwise regulating such use as seems best to such owner.
- (c) The authority to authorize, maintain, install and remove all traffic-control devices necessary to implement this title [21 of the Delaware Code] is provided to the Department of Transportation and to local authorities in

their respective jurisdictions by Chapter 1 of Title 17 [of the Delaware Code]. Unless otherwise provided in this title [21 of the Delaware Code], the authorities granted are uniformly applicable to all sections of this title [21 of the Delaware Code].

(d) Liability for failure of owner to comply with traffic light signals.

- (1) The Department of Public Safety and/or the governing body of any city or any county may provide, by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with traffic light signals in accordance with the provisions of this subsection. This subsection allows the Department of Transportation and/or the governing body of any city or county to install and operate traffic light signal violation monitoring systems; provided however, that in the event the installation other than by the Department of Transportation on state-maintained streets or roads, the Department of Transportation must first approve such installation; and provided further that the duration of the yellow light change interval, at any intersection where a traffic control photographic system or other traffic light signal violation monitoring system is in use, must be no less than the yellow light change interval duration specified in the design manual developed by the Department of Transportation.
- (2) Liability—The owner or operator of a vehicle which has failed to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal violation monitoring system, shall be subject to a civil or administrative assessment not to exceed \$75; provided, however, that the city or county may provide for an additional assessment not to exceed \$10 if the civil or administrative assessment is not paid within 20 days, which assessment may be increased to an amount not to exceed \$20 if the assessment is not paid within 45 days, and may be increased to an amount not to exceed \$30 if the assessment is not paid within 90 days. Court costs or similar administrative fees not to exceed \$35 may also be assessed against an owner or operator who requests a hearing to contest the violation and is ultimately found or pleads responsible for the violation or who fails to pay or contest the violation in a timely manner. Assessments and court costs may not be suspended and no assessments, other than those specified in this subsection may be imposed. A violation for which a civil assessment is imposed under this subsection shall not be classified as a criminal offense and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance. Assessments collected as a result of a traffic control signal monitoring system shall be paid to the city or county which controlled the monitoring system, or the General Fund for personnel, after first being applied to reimburse the applicable state agencies for their costs of administering such systems.
- (3) Definitions—For purpose of this subsection only:
 - a. "Owner" means the registered owner of such vehicle on record with this or any other state; provided, however, that in the event that the owner is a vehicle leasing company, the "owner," for purposes of this subsection, shall mean the person shown on the records to be the lessee of such vehicle. Vehicle rental companies are excluded from the definition of "owner."
 - b. "Traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces 2 or more photographs, or 2 or more microphotographs, or a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this subsection.
- (4) Summons and notice of violation—Any nonresident owner or operator of any motor vehicle which is operated or driven on the public streets, roads, turnpikes or highways of this State is deemed to have submitted to the jurisdiction of the Delaware courts for purposes of this subsection. Notwithstanding any

other provision of the Delaware Code, a summons for a violation of this subsection may be executed by mailing to any Delaware resident or nonresident by first class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles of this or any other state, as appropriate. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing by first class mail of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include the:

- a. Name and address of the owner of the vehicle;
 - b. Registration number of the motor vehicle involved in the violation;
 - c. Violation charges;
 - d. Location where the violation occurred;
 - e. Date and time of the violation;
 - f. Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;
 - g. Amount of the civil assessment imposed and the date by which the civil assessment should be paid;
 - h. Information advising the summonsed person of the matter, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and
 - i. Notice of the summonsed person's ability to rebut the presumption that he or she was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.
- (5) Payment by voluntary assessment—Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Justice of the Peace Court or an entity designated by the Court, the Department of Safety and Homeland Security, or by the city or county in which the traffic light was located. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court, by regulation of the Department of Safety and Homeland Security, or by regulation, code or ordinance of the applicable city or county, and shall be in lieu of the procedures set forth in § 709 of this title [21 of the Delaware Code].
- (6) Procedures to contest the violation—A person receiving the summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date. Upon receipt of a timely request for a hearing a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or such other entity as designated by the Department of Safety and Homeland Security or applicable county or city. The hearing may be informal and shall be held in accordance with Justice of the Peace Court rules or policy directive, regulation of the Department of Safety and Homeland Security, or by regulation, code or ordinance of the applicable city or county. Additional administrative collection processes may be established by Court rule, policy directive, regulation, code or ordinance, as applicable. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.
- (7) If the owner or an operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time, or submit an affidavit stating that he or she was not the driver, the Department of Motor Vehicles may refuse to register or deny the renewal of the registration

of any of the owner's or operator's vehicles or both. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Department of Motor Vehicles shall suspend the license of the owner or operator.

Upon receiving a record of failure to comply, the clerk may enter a civil traffic judgment against the owner or operator in the amount of the civil penalty, costs, and any applicable penalty amounts, giving credit for any amount paid. Such judgment may, upon motion, be transferred by the Court to the civil docket. Any judgment so transferred may be executed and enforced or transferred in the same manner as other judgments of the Court and the Department of Public Safety or its designee, or the applicable city or county shall have authority to seek such execution, enforcement or transfer.

- (8) Proof of violation—Proof of a violation of this subsection shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this subsection. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic light signal violation monitoring system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by a technician employed by a locality authorized to impose assessments pursuant to this subsection, or by an employee of an entity designated by such locality to administer records under this subsection. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to regulation, ordinance or other law adopted pursuant to this subsection.
- (9) Presumptions—The owner of any vehicle found to be in violation of this subsection shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title [21 of the Delaware Code], unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:
- a. Furnishes an affidavit by regular mail to the entity indicated on the summons that he or she was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate(s) thereof had been reported to the police as stolen prior to the time of the alleged violation of this subsection; or
 - b. Provides proof in court that he or she was not the operator of the vehicle at the time of the alleged violation or that he or she failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.

A summons may be issued to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated the traffic light signal. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

- (10) Notwithstanding any other provision in this section, if the motor vehicle which is found by the traffic light signal violation monitoring system to have failed to comply with a traffic light signal is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law

enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title [21 of the Delaware Code] and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of subsection (d) to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in subsection (d)(4) of this section.

- (11) Any person found responsible for a civil traffic offense shall have a right of appeal only in those cases in which the civil penalty imposed exceeds \$100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the time of the finding of responsible. Such appeal shall operate as a stay or supersedes of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court. Additional penalty assessments for late payment/response pursuant to subsection (d)(2) of this section shall be included in determining the amount of the civil penalty for purposes of determining the right to an appeal.

(21 Del. C. 1953, § 4101; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 670, § 13A; 58 Del. Laws, c. 515, § 1; 60 Del. Laws, c. 701, § 8; 63 Del. Laws, c. 449, § 1; 68 Del. Laws, c. 390, §§ 1, 2; 71 Del. Laws, c. 89, §§ 1, 2; 73 Del. Laws, c. 204, § 1; 74 Del. Laws, c. 66, § 1; 74 Del. Laws, c. 110, §§ 84, 85, 138; 74 Del. Laws, c. 301, § 1; H.B. No. 100(2005), §§ 1—11)

Secs. 10-19—10-40. - Reserved.

ARTICLE II. - SEWER CONSTRUCTION GENERALLY^[13]

Sec. 10-41. - Authorization.

The council through the agency of the board of directors of the department of public works of the city is hereby authorized and empowered to construct such sewers in accordance with any plan now or that may hereafter from time to time be adopted, as may seem to them necessary to meet with the requirements of the city, and the cost of constructing such sewers shall be met in the following manner.

(19 Del. L. ch. 209, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-42. - Manner of computing costs and assessments against abutting property.

The board of directors of the department of public works, from the approximate estimate of the whole cost of constructing any sewer in accordance with any plan now or that may hereafter from time to time be adopted, shall apportion the said cost to each lineal foot of sewer to be built in accordance with the aforesaid system, said cost to be apportioned alike upon each and every size of sewer, be it a lateral or trunk sewer; and the said cost per lineal foot shall be paid for by the abutting property upon the streets or highways in which such sewers are constructed at the time of completing each sewer, and the aforesaid property shall be assessed for such costs per lineal foot as follows:

All assessments shall be made upon the properties abutting upon that portion of any street or highway, lane or alley in which any public sewer may be constructed under this provision, at such rate for each front foot of such property upon such street, highway, lane or alley, and at such rate for each square foot of such property between such street, highway, lane or alley and a line not exceeding two hundred feet distant from and parallel with the line of such street, highway, lane or alley,

as the board of directors of the department of public works, or its successors, shall determine; provided, that when any property is situated at the corner of two streets or highways, or otherwise so situated as to be assessed for the expenses of building a sewer on one of such streets or highways, only the front of such property, together with the area, shall be liable for such assessment, and the whole assessment shall be made on the completion of any portion of a sewer, either in front or on the side of such property, so as to make the said property accessible to such sewer; and provided further, that the board of directors of the department of public works shall determine, in all cases, what portion of a property shall be considered as side frontage, unless said property has been divided into building lots and a plot thereof filed in the department of public works, or published, or both, then in such case the side frontage shall be determined by such plan; provided further, however, that should the owner or owners of such corner property decide, after the above assessments are made or paid, to make the side of such property, as determined by the board, the frontage of such property, then in such case the owner or owners of such corner property shall pay such additional sum of money as the board of directors may determine upon, in accordance with the provisions of this article; and provided also, that no property or portion of property shall be assessed for the construction of any sewer, unless such property or some portion thereof shall abut and be bounded upon said street on which said sewer shall have been constructed, or unless such property or portion thereof has a right of access to the street or highway by a private alley, or desires to use said sewer before a sewer is constructed upon said street or highway upon which said property abuts, in which case said property shall be liable for the same assessment as though the sewer was constructed in the streets or highways upon which the property abuts, and the property shall not be liable for any further assessment for sewer purposes.

Properties abutting upon a street or highway, lane or alley wherein a public sewer has been constructed previous to the passage of 19 Delaware Laws, Chapter 209, and 19 Delaware laws, Chapter 735, shall pay to the board of directors of the department of public works the same amount for sewer benefits as is herein provided for; provided, however, that no assessment shall be made upon such property until a permit is granted by said board for the property to make connection with such sewer, whereupon the whole assessment shall be due and payable before any such connection is made. And be it further provided, that all properties or portions of properties abutting upon any navigable stream within the city, and lying between said stream and the first street, highway, lane or alley, lying back from and in or near unto the same direction with said stream, shall not be liable for any sewer assessment whatever, unless such property, or any portion thereof, desires the use of the public sewer, in which case, said property shall be liable for the same assessments as hereinbefore provided.

(19 Del. L. ch. 209, § 6; 19 Del. L. ch. 735, § 3; 31 Del. L. ch. 28, § 1; 46 Del. L. ch. 219, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-43. - Right of landowners assessed to connect with sewer.

When any such assessment shall be made upon any land for the expense of constructing any such sewer, the owner so assessed shall have the right to connect such land with such sewer, under and subject to such rules and regulations as the board of directors of the department of public works shall from time to time prescribe, upon executing to said board a release of all damages which may at any time happen to such property in any way resulting from such connection.

(19 Del. L. ch. 209, § 4; 53 Del. L. ch. 12, § 2)

Sec. 10-44. - Assessment lien; enforcement thereof, etc.

All assessments made under authority of this article shall be a lien upon the property upon which they are made from the date upon which they are certified by the board of directors of the department of public works to the clerk of such board for collection, and such lien shall have priority against any lien, incumbrance or conveyance made or suffered by the owner or owners of such property after the date of the certifying of such assessment as aforesaid.

All moneys received by the board of directors of the department of public works from sewer liens dated subsequent to July 1, 1912, may be retained by the department of public works and the council is hereby authorized to pay to the department of public works the sums transferred to the council by the department of public works for receipts from sewer liens dated subsequent to July 1, 1912.

Any such assessment shall be due and payable upon the date of the certifying, and if paid within sixty days after the date of the presentation of the bill of such assessment a discount of five per cent will be allowed on the face of the bill so presented; and upon all assessments paid after sixty days, and on or before ninety days after presentation of the bill, the face of the bill will be payable; and upon all assessments not paid within ninety days after the date of the presentation of the bill as aforesaid, interest, at the rate of six per cent per annum, may be charged from ninety days after the date of the certifying of such assessment as aforesaid until the same is paid in full. If, however, any such assessment or part of such assessment shall remain unpaid at the end of one year after the date of the certifying as aforesaid, it shall be the duty of the mayor of the city to issue his warrant, directed to the board of directors of the department of public works, commanding them to levy the same with the interest thereon accrued, and all costs thereon, upon the grounds or buildings of such owner abutting on any such streets or highways aforesaid, which such grounds or buildings or any part thereof shall be sold by the board at public auction after ten days' notice in two newspapers published in the city, and a deed from the city shall convey to the purchaser of such grounds or buildings as full and complete a title to such premises, in fee simple or otherwise, as if the same were executed by said owner thereof. And it shall be the duty of said board of directors, out of the purchase money of said premises so sold as aforesaid, to pay all costs arising from such process and sale to the parties entitled thereto, respectively, and to retain the amount of such assessment with accrued interest thereon as aforesaid. The residue of the purchase money shall be immediately deposited by the board of directors in the Bank of Delaware, to the credit of the owner of the property so sold.

(19 Del. L. ch. 209, § 5; 19 Del. L. ch. 735, § 2; 20 Del. L. ch. 92, § 1; 27 Del. L. ch. 206, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-45. - Modification of assessments.

The board of directors of the department of public works are hereby authorized to alter or modify any and all assessments heretofore made for the cost of constructing sewers in accordance with this article so as to adjust said assessments in accordance with the above provisions, and out of any moneys received for current expenses to refund to the person or persons who have paid such sewer assessments so as to conform to the said provisions. Provided that such alterations or modifications shall not invalidate the said assessments or the lien thereof.

(19 Del. L. ch. 735, § 4; 53 Del. L. ch. 12, § 2)

Sec. 10-46. - Additional rules and regulations.

The board of directors of the department of public works is hereby authorized and empowered to pass and adopt such rules and regulations as the said board may see proper for regulating, controlling and prescribing the manner in which any sewer or drain constructed by order of or in charge of said board shall be used, and the manner in which connections therewith, or with any private sewer now existing or hereafter to be constructed in any public street, lane, or alley in the city, any house, building, yard or other place, shall be made, and for the keeping of the same in proper repair, and shall prescribe certain fines and penalties for the non-observance of such rules and regulations, said fines to be collected in the same manner that other fines for offenses against the ordinances of the city are now or may hereafter be collected.

(19 Del. L. ch. 209, § 7; 53 Del. L. ch. 12, § 2)

Secs. 10-47—10-60. - Reserved.

ARTICLE III. - SEWERS WITHIN ONE MILE OF CITY^[14]

Sec. 10-61. - Authority to construct or acquire; use of small streams.

The city, acting through the board of directors of the department of public works, be and it is hereby authorized and empowered to build sewer or sewers and to acquire the right to use such sewer or sewers already built outside the limits of said city and within one mile thereof, as the public interests, in their judgment, require. And further, to acquire and take such small streams and watercourses, and the beds thereof, within the distance aforesaid outside the limits of the said city, as the public interests may require; provided, that such small streams or watercourses shall be drained into sewers by it to be constructed, and that the authority for taking any such under the provisions of this article shall not be construed to authorize the taking of any streams or water rights, or the condemnation thereof, where the same are now used by or for the benefit of manufacturing establishments in or near said city, or for producing power therefor; and if the said board of directors shall be unable amicably to agree with the owner or owners thereof, or of the land through which the same shall pass or may need to be constructed, the damages to such land owners or to the owners thereof shall be assessed in the same manner as damages are now assessed where land is condemned for opening, widening or laying out streets in the said city and all sums which shall be agreed upon or assessed as damages in such cases shall be paid out of the funds provided for the purpose of building sewers.

(20 Del. L. ch. 566; 53 Del. L. ch. 12, § 2)

Sec. 10-62. - Authority to borrow money.

The authority for the borrowing of money by the city, for the building of sewers, etc., as set forth in the act entitled "An Act to Authorize `The Mayor and Council of Wilmington,' to Borrow Money for the Curbing, Guttering, Grading, Widening, Paving and Improving of Streets and Avenues and the Building of Sewers and Conduits, in the City of Wilmington, Delaware," approved March 4, 1907, being chapter 180, Volume 24, Laws of Delaware, shall be held to apply to the building of sewers authorized under chapter 566 of Volume 20, Laws of Delaware, entitled "An Act to Authorize `The Mayor and Council of Wilmington', Acting Through the Board of Directors of the Street and Sewer Department, to Take by Condemnation the Right to Build Sewers or Lay Sewer Pipes or to Acquire the Right to Use Such Pipes Already Laid, or to Use Certain Watercourses of Lands Outside of the said City and Within One Mile Thereof" [this article].

(28 Del. L. ch. 114, § 1; 53 Del. L. ch. 12, § 2)

Secs. 10-63—10-70. - Reserved.

ARTICLE IV. - PLOTTING LAND, ESTABLISHING STREET GRADES, ETC., OF LANDS OUTSIDE CITY LIMITS^[15]

Sec. 10-71. - Lands contiguous to city—Owners may establish street grades, plots, etc.

It shall be lawful for the owner or owners of any tract of land lying immediately contiguous to the boundary line of the city, as now or hereafter established by law, to lay out such lands in blocks and building lots, with streets conforming to the streets of the city, so far as the extension of such streets beyond the city line would pass through such tract of land; and the owner or owners of such land may fix the grade of such streets, and the grade so fixed, when approved as hereinafter

provided, shall be binding upon all persons thereafter becoming purchasers of lots abutting on such streets. It shall be the duty of any owner or owners, so laying out a tract of land as aforesaid, to make or cause to be made a plot of the same, designating the blocks by letters or numbers, and the lots in each block by numbers, and designating thereon the size of each lot and the width and grades of each street, and such plot, when completed, shall be submitted to the board of directors of the department of public works of the city, for the approval of said board. Upon the approval of said plot by the said board, and the endorsement of such approval thereon, and the further endorsement of an acknowledgment as hereinafter provided, a copy thereof shall be lodged in the office of the recorder of deeds in and for the county, and one copy thereof in the office of the chief engineer of the city.

(19 Del. L. ch. 205, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-72. - Same—Plots generally; acknowledgments.

The copies of the plot or plots herein authorized to be made shall be upon the best and most durable material used for such purposes, and each shall have written upon it as an original the approval of the said board of directors of the department of public works and the acknowledgment by the owner or owners before any officer authorized under the laws of this state to take the acknowledgment of deeds. Such acknowledgment may be substantially in the following form:

State of _____ County, ss.

Be it remembered that on this _____ day of _____ A.D. 19 _____, personally came before me, A. B., notary public for the State of Delaware (or title of officer taking acknowledgment), C. D. and E. F., owners of the land designated on this plot, and severally acknowledged this plot to be their deed, and that they have dedicated such streets, lanes and alleys as are thereon laid out to public use as highways, and have designated the tract of land hereon indicated by the name of (designation of land).

Given under my hand and seal of office the day and year aforesaid.

The making of such acknowledgment by a married woman, being the wife of any owner, with a private examination in the usual form, shall operate as a relinquishment of dower in the land occupied by said streets, lanes and alleys. In the case of a corporation the acknowledgment shall be adapted to the form prescribed by law for acknowledgment of deeds by a corporation.

(19 Del. L. ch. 205, § 2; 53 Del. L. ch. 12, § 2)

Sec. 10-73. - Same—Effect of filing plots.

The filing of said plots in the office of the recorder of deeds, as aforesaid, shall operate as a dedication for public use as highways, by such owner or owners, of all lands designated on said plot as streets, lanes or alleys; and if at any time hereafter the said tracts of land shall be duly incorporated in the city by the extension of the boundaries of said city, all such streets, lanes or alleys shall become streets, lanes or alleys of the city, and subject to all laws and ordinances relating thereto, and all grades established under this article shall remain in force until changed under the laws or ordinances of the city.

(19 Del. L. ch. 205, § 3)

Sec. 10-74. - Same—Recordation of plots.

It shall be the duty of the recorder of deeds to cause to be recorded all plots filed under the provisions of this article in a book or books to be procured by him for that purpose, and to be paid for as other record books are paid for; and he shall receive for filing and recording any such plot the sum of five dollars, together with any expense actually and necessarily incurred by him for recording the same.

The original of any such plot, or the record thereof, or a duly certified copy thereof, shall be evidence as in the case of deeds.

(19 Del. L. ch. 205, § 4)

Sec. 10-75. - Same—Services of city engineer.

If in any case the said board of directors of the department of public works shall require for their information any service from the city engineer of said city, or any of his assistants, such service shall be paid for by the owner or owners of the property at such price as shall be fixed by the said board of directors of the department of public works.

(19 Del. L. ch. 205, § 5; 53 Del. L. ch. 12, § 2)

Sec. 10-76. - Same—Extension of law to land lying within one-half mile of city limits—Generally.

The provisions of an act entitled "An Act to Provide for the Establishment of Streets and Grades on Land Contiguous to the City of Wilmington," passed at Dover, April 29, 1891, chapter 205, Vol. 19 Laws of Delaware [sections 10-71—10-75] be and the same are hereby extended and made applicable to any and all tracts of land lying outside the boundary line of the city, as now or hereafter extended, but within one-half mile thereof, and it shall be lawful for the owner or owners of any tract of land within one-half mile of said boundary line to lay out such land in the manner provided in said Act, and it shall be the duty of such owner or owners so laying out a tract of land to comply with the provisions of the aforesaid Act.

(20 Del. L. ch. 201)

Sec. 10-77. - Same—Same—When damages not allowed.

Should the owner or owners of any tract of land within one-half mile of the boundary line of said city, lay out such land contrary to and in violation of the provisions of the above-recited Act, and of sections 10-76 and this section, then in the event of the extension of the limits of the city so as to include such land or lands, it shall be unlawful for any commission appointed for the purpose of opening and condemning streets extended through said tract or tracts of land to award any damages or compensation to any person or persons, for any house, building or structure hereafter placed or erected upon any ground lying between lines drawn from the building lines of such street or streets, as laid out in the city, to a point or points one-half mile from the limits thereof, in the direction which the said street or streets would take if extended thereto.

(20 Del. L. ch. 201, § 2)

Sec. 10-78. - Same—Same—Exceptions.

Whenever the board of directors of the department of public works of the city shall, on account of the conformation of the land and the difficulty of securing proper grades in the plotting out of any tract of land lying outside of the boundary line of the city as now, or hereafter extended, but within one half mile thereof, deem it advisable that such tract of land should not be laid out in conformity with the streets of the city if extended, the said board of directors may approve of the plotting of any such tract of land in such manner, as in their judgment will be for the best interests of the said city.

(22 Del. L. ch. 403, § 1; 53 Del. L. ch. 12, § 2)

Secs. 10-79—10-90. - Reserved.

ARTICLE V. - BRIDGES^[16]

Sec. 10-91. - Lancaster Avenue Bridge—Construction required of Baltimore and Philadelphia Railroad Company.

The Baltimore and Philadelphia Railroad Company be and it is hereby ordered and directed to construct, make and maintain a suitable overhead street bridge for public travel over the track and roadbed of said railroad company, where such track and roadbed intersects Lancaster Avenue in the city. Such bridge shall be constructed within such times as the board of directors of the department of public works of the city shall determine, and shall be of such height above such track and roadbed, and of such width, and of such general construction as the said board of directors of the department of public works may determine. The construction of said bridge shall include the making of all necessary and proper approaches to said bridge. The said railroad company shall be solely responsible for all damages resulting to contiguous property by reason of the making of said bridge, and the making of the approaches thereto. Should the said railroad company neglect or refuse to construct such bridge, or the approaches thereto, in conformity with and within the time specified by the said board of directors of the department of public works of the city, the said board of directors are hereby authorized and empowered to erect and construct such bridge and all necessary approaches thereto at the expense of the city, and the city may then collect the cost of such erection and construction in an action on the case against such delinquent railroad company.

(19 Del. L. ch. 211, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-92. - Same—Supervision, etc.

The board of directors of the department of public works of the city shall have supervision over the bridge authorized by section 10-91 to be constructed, and may, from time to time, order the widening or repairing of said bridge by said railroad company in such manner and within such times as in their judgment public convenience may require; and in case the said railroad company shall neglect or refuse to obey any such order or direction in respect to the widening or repairing said bridge, said board of directors of the department of public works for said city may cause the required widening or repairing to be executed at the expense of the city, and the city may then collect the amount of such expense in an action on the case brought in its corporate name against such delinquent railroad company.

(19 Del. L. ch. 211, § 2; 53 Del. L. ch. 12, § 2)

Sec. 10-93. - Philadelphia, Wilmington and Baltimore Railroad Company bridges—Construction, etc., generally.

The Philadelphia, Wilmington and Baltimore Railroad Company, when in the opinion of its board of directors exigencies of public travel demand the same, be and it is hereby authorized and empowered to construct, make and maintain in the city a suitable overhead street bridge and necessary approaches thereto for public travel from a point in Fourth Street, between Spruce and Pine Streets, in a southerly direction to a public bridge over the Christiana River called the Third Street Bridge, and also in connection with said overhead bridge to construct and maintain an overhead foot bridge on the line of Church Street for pedestrians. Such bridge or bridges shall be constructed of such height and width and of such general construction as may be determined upon by the said railroad company with the approval of the board of directors of the department of public works of the city.

(19 Del. L. ch. 741, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-94. - Same—Acquisition of property—Generally.

The said company shall have power and authority to take, hold and acquire any lands, property or rights necessary for the erection and construction of said bridge or bridges, and in case the same cannot be acquired amicably, then that the said company shall have power to take, acquire and enter upon such land, property and rights as may be necessary for the purpose aforesaid in the same manner and by the same proceedings as are now provided by law for the acquisition of land, property or rights for the purpose of locating and constructing said railroad in this state.

(19 Del. L. ch. 741, § 2)

Sec. 10-95. - Same—Same—Damages.

In case it shall be necessary, proper, or expedient to use, occupy or vacate, in whole or part, any street, avenue, square, lane, road or alley, for the purpose aforesaid, the city, by the agency of the board of directors of the department of public works of said city, shall have power by resolution to authorize such use, occupation or vacation, which resolution shall be published daily for one month in two daily newspapers published in said city; and any person sustaining injury by reason of such use, occupation or vacation may apply, in writing, to the court of general sessions of the peace and jail delivery in and for the county, to appoint three disinterested and impartial freeholders to value the said damages, who shall make return of their award to the said court at the next succeeding term, and the damages so assessed shall be paid by said company before any street, avenue, land, road or alley shall be used, occupied, closed up or obstructed for the purpose aforesaid; provided that all such applications shall be made and filed with the clerk of said court within three months after the publication above mentioned.

(19 Del. L. ch. 741, § 3; 53 Del. L. ch. 12, § 2)

Secs. 10-98—10-110. - Reserved.

ARTICLE VI. - SEWER REVENUE BOND ACT OF 1949^[17]

Sec. 10-111. - Short title of article.

This article may be cited as "Wilmington Sewer Revenue Bond Act of 1949."

(47 Del. L. ch. 269, § 1)

Sec. 10-112. - Definitions.

Whenever used in this article, unless a different meaning clearly appears from the context:

- (a) The term "undertaking" shall mean plants, properties, works, systems, or facilities, or any part thereof, used or useful in connection with the collection, treatment and disposal of sewage, waste, garbage and storm water.
- (b) The term "municipality" shall mean the City of Wilmington, a municipal corporation of the State of Delaware.
- (c) The term "governing body" shall mean the council of the City of Wilmington.

(47 Del. L. ch. 269, § 2)

Sec. 10-113. - Declaration of policy.

It is hereby declared to be the policy of this state that to provide benefits to the public health and welfare by the abatement, prevention or reduction of pollution of the rivers, waters and streams of this state, any municipality planning, acquiring, purchasing, constructing, reconstructing, improving, bettering or extending an undertaking pursuant to this article, shall manage such undertaking in the most efficient manner consistent with sound economy and public advantage to the end that such pollution shall be reduced, prevented or abated and that the services of the undertaking shall be furnished to consumers at the lowest possible cost.

(47 Del. L. ch. 269, § 3)

Sec. 10-114. - Additional powers of municipality.

In addition to the powers which it may now have, the municipality shall have power under this article: (a) To plan, construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith; (b) to operate and maintain any undertaking and furnish the services, facilities and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality; (c) to enter into and perform contracts, whether long term or short term, with any industrial establishment for the provision and operation by a municipality of the undertaking to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of the governing body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the undertaking or part thereof serving such industrial establishment; (d) to issue its bonds to finance, either in whole or in part, the cost of the planning, acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking; (e) to prescribe and collect rates, fees, [and] charges for the services, facilities and commodities furnished by such undertaking; (f) to pledge to the punctual payment of said bonds and interest thereon an amount of the revenues of such undertaking (including the revenues of the existing facilities, if any, comprising an undertaking which is being improved, bettered, or extended, and the revenues to be derived from any improvements, betterments, extensions thereafter constructed or acquired), or of any part of such undertaking, sufficient to pay, on either equal or priority basis, said bonds and interest as the same shall become due and to create and maintain reasonable reserves therefor, which amount may consist of all or any part or portion of such revenues; and (g) to accept from any authorized agency of the state or the federal government, or from persons, firms, or corporations, grants or contributions for the planning, construction, acquisition, lease, reconstruction, improvement, betterment or extension of the undertaking and to enter into agreements with such agency respecting such loans and grants. The governing body of the municipality in determining the cost of acquiring or constructing any undertaking may include all costs and estimated costs of the issuance of said bonds, all planning, engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter or money borrowed or which it is estimated will be borrowed pursuant to this article.

(47 Del. L. ch. 269, § 4)

Sec. 10-115. - Eminent domain.

Whenever the city, acting by and through the agency of the department of public works, cannot agree with the owner or owners for the purchase of any land, building, franchise, easement, or other property necessary to be taken or used for the construction, reconstruction, improvement, betterment, extension, operation and maintenance of plants, properties, works, systems or facilities for the collection, treatment and disposal of sewage, waste, garbage and storm water the said city, acting by and through the agency of the department of public works, may apply to the associate judge of the state, resident in the county, for the condemnation of such land, building, franchise, easement, or other property necessary as aforesaid, first giving to the owner or the owners of said property at least five days' notice in writing of the intended application. If such owner or owners are within the state, and if said party or owner is unknown or without the state, or if under legal disability and having no legal representative in the state, then such notice shall be published in some newspaper in the county at least five days prior to the intended application, and such publication shall be sufficient notice; upon application made as aforesaid, the said associate judge shall appoint five judicious and impartial freeholders to view the premises or ascertain the easement or franchise, and assess the damages which the owner or owners will sustain by reason of the taking of such land, building, franchise, easement, or other property necessary to be taken or used for the construction, reconstruction, improvement, betterment, extension, operation and maintenance of plants, properties, works, systems or facilities for the collection, treatment and disposal of sewage, waste, garbage and storm water. The freeholders shall be sworn or affirmed before some officer authorized to administer oaths or affirmations, before entering on the premises or before ascertaining the easement or franchise, faithfully and impartially to perform the duties assigned them. They shall give ten days' notice, in writing, to the owner or owners of the premises or property so proposed to be condemned or to their guardian or guardians, duly appointed, if within the state and to the said city of the time of their meeting to view the premises or ascertain the easement or franchise; if the owner or owners are unknown or are without the state or if under legal disability and having no legal representative in the state, publication of such last mentioned notice shall be made in some newspaper in the county at least ten days prior to the said meeting, and such publication shall be sufficient notice thereof. The said commissioners shall keep a record of their proceedings with their findings and awards and return the same to the prothonotary of the county, and shall certify their findings and awards to the owner or owners of the property and to the city; if the city or any party in interest is dissatisfied with such findings or awards, it or he may, on application to said prothonotary within fifteen days after such findings and awards have been made and filed, sue out a writ of ad quod damnum, requiring the sheriff of said county, in the usual form, to inquire of twelve impartial men of his bailiwick of the damages which will be sustained as aforesaid, and their report shall be final. The said commissioners or the said jury shall, in assessing the damages aforesaid, take into consideration the benefits and advantages to the owner or owners resulting from the proposed improvement and set off the value of such benefits or advantages against the loss, detriment and disadvantages, which such owner will suffer, provided that in no case shall the amount estimated as and for benefits and advantages exceed the amount allowed for loss, detriment or disadvantage to such owner. The amount of damages being ascertained, the city may pay or tender the amount thereof within two months after the same shall have been so ascertained, to the person or persons so entitled thereto, or, if the person or persons so entitled refuse to accept or reside out of or are absent from the county during all or any part of said period of two months, the same may be deposited to his credit in the Farmers' Bank of the State of Delaware, within said time, and thereupon said property may be taken and occupied for the use and purpose for which it was condemned, provided that the city, in its discretion, after it has made application as aforesaid for the condemnation of property, may occupy or use such property without delay, and the proceedings for the ascertainment of the damages shall proceed as in this section provided, but in the event of such immediate use or occupation as last aforesaid, the city shall pay to the owner or owners thereof if within the state, or if such owner or owners refuse to accept the amount of damages or are without the county, deposit to his or their credit in the said bank as aforesaid, within twenty days after the damages have been ascertained, the amount thereof, provided that no application has been made to the said prothonotary suing out a writ of ad quod damnum, as herein above provided. The expenses of the assessment by the said commissioners of the damages

aforesaid, of the fees of the said sheriff and prothonotary and of all costs incurred in the execution of the writ of ad quod damnum, shall in all cases be paid by the city. The said judge shall have power to fill any vacancy in any commission and thereafter the commission shall proceed as though no vacancy had occurred.

In addition to manner of condemnation of property in this section provided, the said city, acting by and through the agency of the directors of the department of public works, shall have the right to condemn any property in this article mentioned for the purposes of this article, in the same manner as fully as the said city might or could condemn any property under the provisions of section 116, chapter 207, Volume 17, Laws of Delaware. When any property shall be acquired by eminent domain, the title to such property shall be in the city.

After the directors of the department of public works have determined upon the land, buildings, franchise, easement or other property necessary to be taken or used for the construction, reconstruction, improvement, betterment, extension, operation and maintenance of plants, properties, works, systems or facilities for the collection, treatment and disposal of sewage, waste, garbage and storm water, it may cause notice thereof to be sent by mail, a record of which shall be preserved, to all persons owning any land, buildings, franchise, easement or other property necessary to be taken for the purposes aforesaid, and any such owner or the legal representative of any such owner who, after any such notice has been given, shall construct any building or in any manner improve or add to any building on any land, franchise, easement or other property necessary to be taken for the purposes aforesaid, shall be allowed no compensation for such building, improvement or addition, upon the condemnation thereof, or the land upon which it is situated, unless such owner shall serve legal notice upon the directors of the department of public works within three months from the time he received such notice that he claims damages by the reasons of the provisions of this paragraph, in which event the city, by the agency aforesaid, may apply, as hereinabove provided, for the ascertainment of such damages so claimed by such owner. Nothing in this section shall be construed to authorize the condemnation of any land, building, franchise, easement, or other property of a public utility used by it in providing its service to the public.

(48 Del. L. ch. 132, § 1; 53 Del. L. ch. 12, § 2)

Sec. 10-115A. - Acquisition by eminent domain.

- (a) The policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development.
- (b) Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning agency, including an agency as defined in § 9501(b), shall use eminent domain other than for a public use, as defined in § 9501A(c) of Title 29.
- (c) The term 'public use' shall only mean (1) the possession, occupation, or utilization of land by the general public or by public agencies (including authorized passive agency uses such easements that may restrict private land use); (2) the use of land for the creation or functioning of public utilities, electric cooperatives, or common carriers, or (3) where the exercise of eminent domain (a)(i) removes a "blighted area" as defined at 31 Del. C. § 4501(3), or a "slum area"; as defined at 31 Del. C. § 4501(21); (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned real property and (b) eliminates a direct threat to public health and safety caused by or related to the real property in its current condition."
- (d) Whenever real property is condemned and will be used, including owned, occupied or developed by a private party, the State or agency thereof or a political subdivision must establish by clear and convincing evidence that the use of eminent domain complies with the definition of "public use" in § 9501A(c) of Title 29.

- (e) No written notice or correspondence shall be sent to property owners from the State, an agency or a political subdivision communicating to the property owner that the real property is subject to eminent domain without the State, an agency or a political subdivision first notifying the property owner in writing of the public use as defined in § 9501A(c) and as § 9505(15) of Title 29.

(29 Del. C. ch. 95, §§ 1, 2)

Sec. 10-115B. - Transportation and eminent domain.

The provisions of Section 9501A of this Title shall not apply to the acquisition of property or property rights by the Department of Transportation for any transportation facility, project, or program as defined in Titles 2, 9, 14, 17, and 29 of this code, if the primary purpose of such acquisition is to maintain or improve the State's transportation network, as sworn to by the Secretary of the Department or her authorized designee.

(29 Del. C. ch. 95, § 5)

Sec. 10-116. - Authorization of undertaking; form, content, etc., of bonds.

The planning, acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this article and bonds may be authorized to be issued under this article to provide funds for such purpose or purposes by resolution or resolutions of the governing body which may be adopted at the same meeting at which they are introduced by a majority of all the members thereof then in office and shall take effect immediately upon adoption. Said bonds shall bear interest at such rate or rates, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at public sale, after advertisement: Provided, however, that any of said bonds may be sold at private sale to the United States of America, or any agency, instrumentality or corporation thereof, at not less than par. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this article. The rate of interest may be determined in advance of sale, or the bonds may be offered for sale at a rate of interest to be fixed by the successful bidder for such bonds.

(47 Del. L. ch. 269, § 5)

Sec. 10-117. - Covenants in resolution authorizing issuance of bonds.

Any resolution or resolutions authorizing the issuance of bonds under this article may contain covenants as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves, (c) the transfer from the general funds of the municipality to the account or accounts of the undertaking an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the services, facilities and commodities of said undertaking, (d) the issuance of other or additional bonds payable from the revenue of said undertaking, (e) the operation and maintenance of such undertaking, (f) the insurance to be carried thereon and the use and disposition of insurance moneys, (g) books of account and the inspection and audit thereof, and (h) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by the appropriate court, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of said undertaking, operate and maintain the same, prescribe rates, fees,

or charges, and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do. The provisions of this article and any such resolution or resolutions shall be a contract with the holder or holders of said bonds, and the duties of the municipality and of its governing body and officers under this article and any such resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action or proceedings in any court of competent jurisdiction.

(47 Del. L. ch. 269, § 6)

Sec. 10-118. - Validity of bonds.

Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the planning, acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued. The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

(47 Del. L. ch. 269, § 7)

Sec. 10-119. - Lien of bonds.

All bonds of the same issue may, subject to the prior and superior rights of outstanding bonds, claims or obligations, have a prior and paramount lien on the revenue of the undertaking, for which said bonds have been issued, over and ahead of all bonds of any issue payable from said revenue which may be subsequently issued and over and ahead of any claims or obligations of any nature against said revenue subsequently arising or subsequently incurred. All bonds of the same issue may be equally and ratably secured without priority by reason of number, date of bonds, of sale, of execution, or of delivery, by a lien on said revenue in accordance with the provisions of this article and the resolution or resolutions authorizing said bonds, or all bonds of the same issue, or such ones thereof as may be specified, may, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the resolution or resolutions authorizing said bonds.

(47 Del. L. ch. 269, § 8)

Sec. 10-120. - Types of bonds to be issued to finance undertaking.

The municipality may issue either revenue bonds or general obligation bonds, or a series or combination of either type of such bonds, either in whole or in part of the total amount necessary to finance any undertaking under this article. If revenue bonds are issued under this article, each such bond shall recite in substance that said bond, including interest thereon, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the municipality within the meaning of any statutory or constitutional limitation; provided, however, that in the event of some emergency, the municipality may temporarily appropriate, advance or loan such amount as is necessary to meet current interest on outstanding bonds, such advance or loan to be repaid to the municipality out of revenue subsequently received from the undertaking. If general obligation bonds are issued under this article, the aggregate amount of any such bonds so issued shall be in addition to and not within the limitations of any existing statutory or constitutional debt limitations of the municipality.

(47 Del. L. ch. 269, § 9)

Sec. 10-121. - Undertakings to be self-supporting.

The governing body of the municipality issuing bonds pursuant to this article shall prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities of such undertaking, and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will procure revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor. The base for rates, charges or fees against any property shall be the measured quantity of wastes actually carried away by the sewer from such property.

(47 Del. L. ch. 269, § 10)

Sec. 10-122. - Use of revenue from undertaking.

The municipality issuing bonds pursuant to this article for the planning, acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking shall have the right to appropriate, apply or expend the revenue of such undertaking for the following purposes: (a) To pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor, (c) to pay and discharge notes, bonds or other obligations and interest thereon, not issued under this article for the payment of which the revenue of such undertaking is or shall have been pledged, charged or encumbered, (d) to pay and discharge notes, bonds or other obligations and interest thereon, which do not constitute a lien, charge or encumbrance on the revenue of such undertaking, which shall have been issued for the purpose of financing the planning, acquisition, purchase, construction, reconstructions, improvement, betterment or extension of such undertaking, and (e) to repay any advance or loan made by the municipality to meet current interest on outstanding bonds, and (f) to provide a reserve for betterments to such undertaking. Unless and until adequate provision has been made for the foregoing purposes, the municipality shall have no right to transfer the revenues of such undertaking to its general funds.

(47 Del. L. ch. 269, § 11)

Sec. 10-123. - Joint action by municipality.

The municipality through its governing body is hereby authorized and empowered to enter into and perform such contracts and agreements with others, including towns, cities, and counties, as it may deem proper for or concerning the planning, construction, lease or other acquisition and the financing of an undertaking and the maintenance and operation thereof.

(47 Del. L. ch. 269, § 12)

Sec. 10-124. - Rates, fees or charges.

Any rate, fee or charge prescribed pursuant to the provisions of this article may include a discount for payment within a certain period of time and a penalty for failure to pay within a certain period of time. All rates, fees or charges prescribed pursuant to the provisions of this section remaining unpaid from the date they become due and payable shall be and constitute a lien upon the lands and premises of the owner to which the service was furnished, and such liens shall have preference and priority to all liens of recognizance, mortgage or judgment on such lands and premises created or suffered by

said owner, although such other lien or liens shall be of a date prior to the time of the attaching of such lien for services furnished hereunder. In case of sale under execution process of any lands and premises upon which the liens hereby established shall exist, such liens shall be transferred to the fund arising from such sale in the hands of the officer making the same and the said real estate so sold shall be discharged therefrom. The lien herein provided shall remain a lien for the period of ten years and no longer. The municipality may also collect the rates, fees or charges out of real estate upon which there is a lien under the provisions of this section in the manner now or hereafter prescribed by law for the collection of taxes out of real estate by the municipality. The municipality may also shut off the water supply, or order any person supplying water to the premises to shut off the water supply, in the event any rate, fee or charge prescribed pursuant to the provisions of this section remains unpaid for a period of ninety days. The rates, fees or charges fixed pursuant to this article may be made to be payable in advance, and such rates, fees or charges may be placed in effect immediately after the issuance of any bonds pursuant to this article.

(47 Del. L. ch. 269, § 13; H.B. No. 365, § 1, 7-3-08)

Sec. 10-125. - Delegation of authority.

The construction, erection, maintenance, and operation of any undertaking may be placed under the jurisdiction, supervision, and control of an appropriate department or agency of the municipality, such as the department of public works, which shall be designated by the governing body of the municipality, and such department or agency shall have the full power and authority to fix the rates, fees, or charges which are to be imposed under this article. The governing body of the municipality may also place the duty of collecting the rates, fees, or charges so imposed, under the jurisdiction, supervision and control of an appropriate department or agency of the municipality, such as the water department, and such rates, fees or charges may be measured in whole or in part by the quantity of water consumed. The governing body of the municipality may also delegate any other duties in connection with any undertaking or the administration thereof to an appropriate department or agency of the municipality.

(47 Del. L. ch. 269, § 14; 53 Del. L. ch. 12, § 2)

Sec. 10-126. - Construction of article.

The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other general, special or local law. The undertaking may be planned, acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this article for said purposes, notwithstanding that any general, special or local law may provide for the planning, acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, including, but not limited to, any requirement for the approval by the voters of the municipality or any existing debt limitations. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article shall be controlling.

(47 Del. L. ch. 269, § 15)

Sec. 10-127. - Excision of unconstitutional or ineffective parts of article.

It is hereby declared that the sections, clauses, sentences and parts of this article are severable, are not matters of mutual essential inducement, and any of them may be excised by any court of competent jurisdiction, and if any provision shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions

thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part of this article in any one or more instances shall not be taken to affect or prejudice in any way the applicability or invalidity in any other instances.

(47 Del. L. ch. 269, § 16)