

*“A Historic Past”*



*“A Bright Future”*

CITY OF DELAWARE CITY  
407 Clinton Street - P.O. Box 4159  
Delaware City, Delaware 19706  
302-834-4573

**CITY OF DELAWARE CITY  
DELAWARE CITY, DELAWARE  
ORDINANCE NO. – 19-0916-03**

**ORDINANCE TO AMEND CITY SECTION 14-116  
OF THE CITY OF DELAWARE CITY CODE**

**WHEREAS**, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter (“Charter”), and pursuant to the “Powers of the City,” outlined in Article II, § 2-01 of the Charter, the Mayor and the Council of The City of Delaware City (“City Council”) possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code (“Code”);

**WHEREAS**, the Mayor and City Council desire to amend Code Section 46-116 in order to expand the membership of the Board of Adjustment (“Board”) of The City of Delaware City (“City”) such that it consists of five (5) members (the “Amendment”);

**WHEREAS**, the first sentence of Section 46-116 provides that the Board shall consist of three (3) members;

**WHEREAS**, the Mayor and City Council believe that the Board of Adjustments will operate more effectively and efficiently if its membership is expanded such that it consists of five (5) members;

**WHEREAS**, 22 *Del. C.* § 322(d)(1) provides that the Board may contain five (5) members who are resident of the City. 22 *Del. C.* § 322(d)(1) further provides that the Mayor shall appoint, and subject to confirmation by a majority vote of the City Council, members who have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the City;

**WHEREAS**, 22 *Del. C.* § 322(d)(2) provides that members of the Board shall serve terms of three (3) years such that the term of at least one (1) member shall expire each and the successor or successors shall be appointed for a term or terms of three (3) years;

**WHEREAS**, in accordance with 22 *Del. C.* § 304 and Article V, Section 5-02(B) of the Charter, a public hearing was held at which parties in interest and citizens were given the opportunity to be heard regarding the Amendment. Notice of the hearing was published in an official paper or a paper of general circulation at least fifteen (15) days in advance of the hearing. The Amendment was then introduced at a regular meeting, duly read in full or in abstract, and prominently posted for ten (10) days in The City of Delaware City.

**NOW, THEREFORE**, making the express finding that the Amendment to the Code is necessary to enhance the health, safety, and welfare of the City of Delaware City, the Mayor and the City Council of The City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Amend Section 46-116 of the City Code of Delaware City by removing the stricken text and adding the underlined text below:

### **Section 46-116 Membership, Terms, Removals, Vacancies**

The Board of Adjustment of Delaware City shall consist of ~~three (3)~~ five (5) members who shall be residents of Delaware City and who shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the City. The Mayor shall appoint such members of the Board of Adjustment, and all such appointments shall be confirmed by a majority vote of the members of City Council.

Each member of the Board of Adjustment shall be appointed for a period of three (3) years, except that one (1) of the initial members shall be appointed for a one (1) year term, one (1) of the initial members shall be appointed for a two (2) year term, and one (1) of the initial members shall be appointed for a three (3) year term. All subsequent appointments to the Board of Adjustment shall be for a period of three years unless such appointments increase the number of members of Board of Adjustment. In the event subsequent appointments to the Board of Adjustment increase the number of members of the Board of Adjustment, the length of such members' terms shall be determined and established in such a way that no more than two (2) members' terms expire in any given year. A vacancy occurring other than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment. The Board of Adjustment so selected shall elect from among its own members a chairperson and a secretary.

Any member of the Board of Adjustment may be removed from office by the City Council for cause after a hearing by a majority vote of all the City Council.

**Section 2. Inconsistent Ordinances and Resolutions Repealed.** All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed.

**Section 3. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

**Section 4. Effective Date.** This Ordinance shall become effective immediately upon its adoption by City Council.

**(Signature Page Follows)**

ADOPTED BY THE MAYOR AND COUNCIL, this 21<sup>st</sup> day of October, 2019.

ATTEST:

Brittney Loueloe  
City Secretary

Paul J. ...  
Mayor

APPROVED AS TO FORM:

[Signature]  
City Solicitor

[Signature]  
Council Member

Elizabeth Koukas  
Council Member

Margaret C. Lukas  
Council Member

Robert J. Malinowski  
Council Member

[Signature]  
Council Member

First Reading 9-16-19  
Second Reading & Adoption 10-21-19