

AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
December 14, 2021
SEAFORD CITY HALL - 414 HIGH STREET

The meeting will be streamed via live feed.

To view a live meeting visit one of the links below:

- On our website: www.seafordde.com/meetinglivefeed
- On Facebook: www.Facebook.com/cityofseaford
- On YouTube:
<http://www.youtube.com/c/CityofSeafordDe19973>

To view this meeting agenda and supporting documentation visit our website:

www.seafordde.com/meetings_and_agendas

Comments and questions may be emailed to:
Councilinfo@seafordde.com

- 7:00 P.M.** - Mayor David Genshaw calls the Regular Meeting to order.
- Invocation
 - Pledge of Allegiance to the Flag of the United States of America.
 - Executive Session - Negotiations & Personnel
 - Changes to the agenda for this meeting.
 - Approval of minutes of the regular meeting on November 23, 2021.

ALL ITEMS ON THIS AGENDA MAY OR MAY NOT BE VOTED ON.

CORRESPONDENCE:

- 1.

NEW BUSINESS:

1. SB & Company, LLC will present the City's annual audited financial statements for the period ending June 30, 2021.
2. Present for approval Resolution #2021-03 to provide tax credits to KRM Development Corporation for properties in the Western Sussex Business Campus; SCTM#331-5.00-4.29, 331-5.00-4.30, 331-5.00-4.32 and 331-5.00-4.28 to be purchased by them.

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3. Present for consideration a request from Sean Stewart, Realtor to forgo demolition of 229 N. Front Street due to a pending sale of the property to a new owner.
4. Bids - Demolitions.
5. Present for approval the request for a medical leave extension without pay for a maximum of 90 days in accordance with the Employee Handbook sec. 2-100 for a Police Department employee.

OLD BUSINESS:

1. Present for a second reading an ordinance to be added to Chapter 8 - Morals and Conduct of the City Municipal Code: Article 9, an ordinance relative to abortion to establish a process for the disposition of fetal remains from pregnant women seeking abortion within the City of Seaford.

REMINDER OF MEETINGS & SETTING NEW MEETINGS:

1. City Offices and Utility Divisions Will be closed for the Christmas Holiday, Thursday December 23 and Friday December 24, 2021.
2. City Offices and Utility Divisions Will be closed for the New Year Holiday, Friday December 31, 2021.

CITY OF SEAFORD

Municipal Election – April 16, 2022

The City of Seaford Municipal Election will be held on Saturday, April 16, 2022 in the City Council Chambers, City Hall, 414 High Street, between the hours of 7:00 a.m. E.S.T. and 3:00 p.m. E.S.T.

One (1) Mayor will be elected for a (2) year term.

One (1) Council Member will be elected for a (3) year term.

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All candidates must have filed by 5:00 p.m., E.S.T., February 25, 2022. Registration can be completed at City Hall, 414 High Street, Seaford, DE. Registration hours are Monday through Friday, 8 a.m. until 5:00 p.m. or by appointment if you cannot register during these normal business hours. Any candidate who withdraws his/her name must do so in writing. Any candidate who withdraws his/her name after 5:00 p.m., E.S.T., February 25, 2022 will still appear on the official ballot for election.

Anyone eighteen (18) years of age or older who is a bona fide City of Seaford resident and US Citizen to be eligible to vote **must have been registered at the State of Delaware Department of Elections by 5:00 p.m., E.S.T., March 26, 2022.** A nonresident property owner, to be eligible to vote, must be owner of record for a period of six (6) months immediately preceding the date of the Annual Municipal Election (October 16, 2021) and shall have one vote **provided he or she is registered on the “Books of Registered Voters” maintained at the City Hall by 5:00 E.S.T. on March 26, 2022. Registration hours are Monday through Friday, 8 a.m. until 5 p.m. or by appointment if you cannot register during these normal business hours.**

All voters will need to show proof of residency which may be a State of Delaware driver’s license, a State of Delaware identification card, a federal or state tax return with address, a City of Seaford utility bill or real estate property tax bill, or other acceptable proof of residency or ownership.

LIAISON REPORTS:

1. Administration - Councilman Jose Santos
2. Police & Fire - Councilman Dan Henderson
3. Code, Parks and Recreation - Councilman Orlando Holland
4. Electric - Councilman Matt MacCoy
5. Public Works & WWTF - Councilman James King

Mayor Genshaw solicits a motion to hold an Executive Session for the purpose of discussing negotiations and personnel.

EXECUTIVE SESSION:

1. Negotiations
2. Personnel

Mayor Genshaw solicits a motion to adjourn the Executive Session.

Mayor Genshaw reopens the regular Council meeting.

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Mayor Genshaw solicits a motion to adjourn the regular Council meeting.

NOTE: Agenda shall be subject to change to include or delete additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

Date Posted: 12/6/21

Posted by: TNT

NPS# 2
12/14/2

Resolution #2021-03

City of Seaford Resolution to provide tax credits to KRM Development Corporation

Whereas, **CITY OF SEAFORD, DELAWARE**, a body politic and corporate (“**Seller**”), and **KRM DEVELOPMENT CORPORATION**, a Maryland corporation, or its assignee (“**Purchaser**”) entered into a Purchase and Sale Agreement dated March 25, 2021, as amended by that certain First Amendment to Purchase and Sale Agreement dated August 20, 2021 and that certain Second Amendment to Purchase and Sale Agreement dated October 25, 2021 (collectively, the “**Agreement**”), whereby Seller agreed to sell to Purchaser and Purchaser agreed to purchase from Seller certain real property owned by Seller in Sussex County, Delaware, and

Whereas, Section 21 of the **Agreement** outlines certain Tax Credits that the **Seller** will grant the **Purchaser**; and

Whereas, the real properties to be purchased by the Purchaser are Sussex County Tax Map and Parcel #331-5.00-4.29; 331-5.00-4.30; 331-5.00-4.32 and 331-5.00-4.28 (collectively, the “**Property**”).

NOW, THEREFORE, BE IT RESOLVED, that, provided that Purchaser is not in default under the Agreement, the City of Seaford, Delaware shall grant the following **Tax Credits to Purchaser** at closing of the sale of the Property to offset Purchaser's liability for City real property taxes on that portion of the Property renovated or improved by Purchaser from time to time (collectively, the "**Tax Credits**"), which Tax Credits shall expire in their entirety on the fifth (5th) anniversary of the Initial Assessment Date (defined below):

- (a) For the period of time beginning on the Initial Assessment Date and ending on the second (2nd) anniversary thereof (a total of two years): fifty percent (50%) of the "eligible assessment" of Purchaser's improvements on the Property; and
- (b) For the period of time beginning on the second (2nd) anniversary of the Initial Assessment Date and ending on the fifth (5th) anniversary thereof (a total of three years): twenty-five percent (25%) of the "eligible assessment" of Purchaser's improvements on the Property.

The Initial Assessment Date shall be the date of the first assessment by the City of any of Purchaser's expansions, renovations or improvements made on any portion of the Property. Any improvement made by Purchaser within five (5) years after the Initial Assessment Date shall be eligible at the time such improvement is made. Purchaser shall pay full real property taxes beginning on the fifth (5th) anniversary of the Initial Assessment Date.

I, David C. Genshaw, Mayor of the City of Seaford, do hereby certify that the foregoing is a true and correct copy of a Resolution passed by the Mayor and City Council at its Regular Meeting held on December 14th, 2021, at which a quorum was present and voting throughout and that the same is still in full force and effect.

Dated: _____

David C. Genshaw, Mayor

Attest: _____
Charles Anderson, City Manager

NB#3
12/7/21

ttorbert

From: Sean Steward <seansteward@gmail.com>
Sent: Tuesday, December 7, 2021 11:05 AM
To: ttorbert
Subject: 229 n front street

Good Moring Tracy,
I wrote your email address down wrong. I would like to present at the next Council meeting. To show the progress of the contract we have with the sellers, the buyer intent to rehab the property and the feed backk that we have received from Wells Fargo to cooperate with the sale of the property.



UB #1
12/14/21

CITY OF SEAFORD CODE DEPARTMENT MEMORANDUM

To: Charles Anderson, City Manager From: Michael Bailey, Building Official

Re: FY2022 Demolition Bid Date: 12/06/2021
Recommendation

CC:

Urgent For Review Please Comment Please Reply

I'm recommending that we accept the Bid for the "Demolition of Structures" from the apparent low bidder, John Macklin & Son Demolition, for all locations for the total of \$25,000.

Bidder	Location 1 229 N Front St	Location 2 406 North St	Total Lump Sum Bid
Clark General Contractors	\$21,799.00	\$18,406.00	\$40,205.00
Macklin	\$13,200.00	\$11,800.00	\$25,000.00
Gateway Construction Inc	\$46,500.00	\$20,000.00	\$66,500.00
FR Beinke Wrecking Inc.	\$109,000.00	\$96,000.00	\$205,000.00

Thank You,
Michael Bailey
Building Official

OB# 1
12/14/21
" RESUME
COPY "

CHAPTER 8 – MORALS AND CONDUCT

ARTICLE 89 - ORDINANCE RELATIVE TO ABORTION

Section 8.89.1: Purpose of Ordinance.

It is the purpose of the City of Seaford to establish a process for the disposition of fetal remains from pregnant women seeking abortion within the City of Seaford. Pursuant to this Ordinance, a pregnant woman has certain rights regarding the disposition of fetal remains for an abortion performed in Seaford.

Pregnant women seeking abortion in the City limits of Seaford may either exercise their rights under this Ordinance and determine whether disposition of fetal remains following an abortion is made by cremation or interment (including the final location of any such remains), or waive their rights under this Ordinance and allow the performing abortion facility to determine whether disposition of fetal remains following an abortion is made by cremation or interment (including the final location of any such remains).

It is the Intent of the City of Seaford to create a mechanism for abortions occurring within the City of Seaford to protect the rights of its citizens and all those engaged in abortion related activities, while providing a mechanism for the dignified disposal of any such fetal remains following an abortion in Seaford.

Section 8.9.2: Findings.

The City Council of Seaford, Delaware finds that:

A. Women have a right to abortion under federal and state law.

1. In *Roe v. Wade*, the Supreme Court recognized that the constitutional "right of privacy...is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S. 113, 152 (1973).
2. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court reaffirmed the essential holding of *Roe*. "[t]he woman's right to terminate her pregnancy before viability." 505 U.S. 833, 846, 871 (1992).
3. The Supreme Court crafted *Casey's* undue burden standard to examine regulations that implicate a woman's constitutional right to terminate her pregnancy, determining "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus obtains viability." *Id.* at 878.
4. Delaware has codified *Roe v. Wade*. 24 Del. C. §1790, et. seq. (2017).
5. Under Delaware law, "[a] physician may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability." *Id.* §1790(a).
6. Under Delaware law, after viability, a physician may not terminate a pregnancy unless it "is necessary for the protection of the woman's life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus's

sustained survival outside the uterus without extraordinary medical measures.” *Id.* §1790(b).

B. States may regulate the final disposition of fetal remains from an induced abortion.

1. The Supreme Court reaffirms “that a State has a ‘legitimate interest in the proper disposal of fetal remains.’” *Box v. Planned Parenthood of Ind. And Ky., Inc.*, 139 S. Ct. 1780, 1782 (2019) (citing *Akron v. Akron Ctr. For Reprod. Health, Inc.*, 462 U.S. 416, 452, n. 45 (1983)).
2. “The [Supreme] Court’s decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate...a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.” *Roe*, 410 U.S. at 154.
3. Unless preempted by federal law, states may enact broader protections for rights than those recognized by the Constitution. U.S. Const., art. VI, cl. 2.
4. The Supreme Court has recognized the fundamental right of privacy extends to procreation, contraception, family relations, child rearing and education, and a woman’s decision whether or not to terminate her pregnancy. *Roe*, 410 U.S. at 152-153.
5. Within a women’s abortion decision, she has the right to determine the final disposition of the fetal remains.
6. Similarly, “[T]here is a substantial state interest in potential life throughout pregnancy.” *Casey*, 505 U.S. at 876.
7. “Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman’s exercise of the right to choose.” *Id.* at 877.
8. Laws protecting a woman’s right to determine the final disposition of fetal remains furthers the government’s interest in protecting the dignity of preborn human life.

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C. Unemancipated pregnant minors under age sixteen benefit from parental notification.

1. Delaware has a parental notification requirement for minors receiving an induced abortion. 24 *Del. C.* §1783 (1995).
2. “Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.” *Id.* § 1781(a)(1).
3. “The physical, emotional, and psychological consequences of teen pregnancy are serious and can be lasting, particularly when the patient is immature.” *Id.* § 1781(a)(2).
4. “The capacity to become pregnant and the capacity for mature judgment concerning how to choose among the alternatives for managing that pregnancy are not necessarily related.” *Id.* § 1781(a)(3).
5. “Parental consultation is usually desirable and in the best interest of their minor children and parents ordinarily act in the best interest of their minor children.” *Id.* § 1781(6).

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6. “Parental involvement legislation enacted in other states has been shown to have significant impact in reducing abortion, birth and pregnancy rates among minors.” Id. § 1781(7).

D. The Supreme Court upheld Indiana’s fetal remains law. *Box v. Planned Parenthood of Ind. And Ky., Inc.*

1. Indiana’s fetal remains law recognizes “[a] pregnant woman who has an abortion...has the right to have the health care facility or abortion clinic dispose of the aborted fetus by interment...or cremation.” Ind. Code §16-34-3-2(a) (2015).
2. Indiana’s fetal remains law has a parental consent provision for minors. Id. § 16-34-3-2(c).
3. Indiana’s fetal remains law requires “The abortion clinic or the health care facility [to] document the pregnant woman’s decision concerning disposition of the aborted fetus in the pregnant woman’s medical record.” Id. § 16-34-3-2(d).

E. Delaware grants municipalities a broad statutory home rule power. 22 Del. C. §801, et. seq. (1953).

1. According to the 2020 U.S. Census, Seaford, Delaware has a population of 7,957 persons.
2. Seaford, Delaware thus is “a municipal corporation in [Delaware] containing a population of at least 1,000 persons...and may...amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute.” Del. Code tit. 22 § 802.
3. “The purpose of the home rule provisions was to enable municipalities to exercise the powers of the sovereign except as limited by either the State Constitution or State statute.” NAACP v. Wilmington Med. Ctr., Inc., 426 F. Supp. 919, 927 (D. Del. 1977), rev’d on other grounds by NAACP v. Med. Ctr., Inc., 599 F.2d 1247 (3d Cir. 1979).
4. Seaford’s city charter provides, “it is intended that the City of Seaford shall have, and may exercise, all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter specifically to enumerate.” Seaford, Del., Charter of Seaford § 4(B) (1961).
5. Seaford’s city charter indicates “the City shall have all powers and functions requisite to or appropriate for the government of the City, its peace and order, its sanitation, beauty, and the health, safety, convenience, comfort and well being of its population, and the protection and preservation of property, public and private.” Id. § 4(A).
6. The home rule statute prohibits “any charter amendment in contravention of any general statute of this State.” Del. Code tit. 22 § 835(a)(2).
7. Under preemption doctrine, “where a conflict exists between a state statute and a municipal ordinance, the statute must always prevail.” State v. Putman, 552 A.2d 1247, 1249 (Del. Super. Ct. 1988).

8. According to the Delaware Supreme Court, “[t]he predominant test for conflict in a preemption analysis is whether the state statute was intended to be exclusive.” Cantinca v. Fontana, 884 A.2d 468, 473 (Del. 2005).

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Section 8.89.23: Definitions.

A. **“Abortion”** means the use of any instrument, medicine, drug, or any other similar device or substance used with intent to terminate the pregnancy of a woman known to be pregnant, with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

B. **“Abortion Facility”** means any of the following in which abortions are induced or performed:

(i) **“Ambulatory Surgical Treatment Center”**, which means any institution, place or building devoted primarily to the maintenance and operation of a facility for the performance of surgical procedures or any facility in which a medical or surgical procedure is utilized to terminate a pregnancy.

(ii) **“Another Facility”**, which means any institution, place, or building providing health care services required to be licensed under the laws of the State of Delaware, in which abortion is legally provided.

C. **“Cremation”** means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation or other similar methods.

D. **“Crematory”** means the building, or any portion of a building or similar facility utilized to house one (1) or more cremation chambers which is used for the reduction of body parts or bodies of deceased persons to cremated remains and the holding facility. **“Crematory”** includes **“Crematorium”** or other similar phrases used to describe any such building or facility.

E. **“Emancipated Minor”** means any minor female who is or has been married or has been, by court order or otherwise, been freed from the care, custody and control of her parents or any other legal guardian.

F.F. **“Fetal Remains”** means an aborted or miscarried fetus, fetal tissue or any other similar remains that results from the miscarriage or an abortion of an Unborn Child.

G.F. **“Funeral Establishment”** means any business, regardless of the corporate form or lack thereof of any such business, engaged in arranging, directing or supervising funerals, for profit or other benefit, involved in: the preparing of dead human bodies for burial, the disposition of dead human bodies, the provision or maintenance of place for the preparation for disposition, or for the care or disposition of human bodies.

H.G. **“Gestational Age”** or **“Gestation”** means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.

I.H. **“Interment”** means the burial or entombment of fetal remains.

J.J. **“Medical Emergency”** means a condition that, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible

impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.

K. "Minor" means a female person under the age of 16.

L.J. "Pregnant" means the human female reproductive condition, of having a living Unborn Child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full Gestation and childbirth.

M.K. "Serious Risk of the Substantial and Irreversible Impairment of a Major Bodily Function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. Such conditions include preeclampsia, inevitable abortion, and premature rupture of the membranes and, depending upon the circumstances, may also include, but are not limited to, diabetes and multiple sclerosis, but does not include any condition relating to the woman's mental health.

N.L. "Unborn Child" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to Full gestation and childbirth.

O.M. "Viable" and "Viability" mean that stage of fetal development when the Unborn Child is capable of sustained survival outside of the womb, with or without medical assistance.

Section 8.89.3.4: Cremation or Interment Required for all Abortions and Miscarriages.

Final disposition of Fetal Remains from a surgical Abortion at an Abortion Facility must be by either: (i) Cremation or (ii) Interment. Cremation must occur in a licensed Crematory facility.

Section 8.89.45: Rights of a Pregnant Woman Pursuing Abortion.

A pregnant woman who has a surgical Abortion in Seaford has the right to determine the following regarding the Fetal Remains: (i) whether the final disposition of the remains is by Cremation or Interment, and (ii) the location for the final disposition of the remains.

A pregnant woman who has a surgical Abortion must be provided with a notification form described in Section 8.89.1+2(i) herein by an Abortion Facility performing an Abortion.

Section 8.89.56: Procedure for Pregnant Woman Exercising Rights.

If a pregnant woman desires to exercise her rights under Section 8.89.45 herein, the woman must make the determination in writing using a disposition form prescribed by the department of health as described in Section 8.89.1+2(iii) herein. Any such determination must clearly indicate the following: (i) whether the final disposition will be by Cremation or Interment; and (ii) whether the final disposition will be at a location other than the location provided by the Abortion Facility.

Section 8.89.67: Procedure for Pregnant Woman Declining to Exercise Rights.

If a pregnant woman does not desire to exercise her rights under Section 8.89.45 herein, then the Abortion Facility shall determine whether final disposition of Fetal Remains is by (i) Cremation or (ii) Interment, and the location of the Fetal Remains.

Section 8.89.78: ~~Notification Consent~~ Required for Certain Class of Pregnant Women.

~~A pregnant woman who desires to exercise her rights under Section 8.8.4 herein and is (i) under eighteen (18) years of age, and (ii) unmarried, and (iii) unemancipated, shall obtain parental consent from one (1) of the pregnant woman's parents, guardian, or custodian to the final disposition determination she makes pursuant to this Ordinance. This consent must be made in writing using the form prescribed by Section 8.8.11(ii) herein. Such consent is not required for a pregnant woman exercising her rights under Section 4 herein if an order authorizing the minor to consent, or the Court to consent on behalf of the minor, to the Abortion is issued by a Court of competent jurisdiction. A pregnant woman who desires to exercise her rights under Section 8.9.4 herein and is an unemancipated Minor may do so after the physician or medically authorized person, or an agent of the physician or of the medically authorized person has given at least 24 hours actual notice to one or both parents (either custodial or noncustodial), a grandparent, a licensed mental health professional (who shall not be an employee or under contract to an abortion provider except employees or contractors of an acute care hospital) or to the legal guardian of the pregnant minor of the woman's intention to exercise her rights under Section 8.9.5, or unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has received a written statement or oral communication from another physician or medically authorized person, certifying that the referring physician or medically authorized person has given such notice. This notification must be made in writing using the form prescribed in Section 8.9.12(B) herein.~~

~~Notification is not required for a pregnant woman exercising her rights under Section 8.9.5 herein if she has received a waiver under 24 Del. C. §1783(2), 1784 for the state's notice requirement for an induced abortion upon an unemancipated minor. The waiver under 24 Del. C. §1783(2), 1784 need not reference a woman's rights under Section 8.9.5 or any other provisions herein.~~

~~No physician or other abortion provider shall charge a referral fee to a person authorized under this section to receive notice; nor shall a person authorized under this section to receive notice charge a referral fee to a physician or other abortion provider.~~

~~Nothing in this section shall affect the obligations of a person pursuant to state law to report instances of child abuse to the appropriate government agencies.~~

Section 8.98.89: Abortion of More Than One Unborn Child.

A pregnant woman carrying more than one (1) Unborn Child and who desires to exercise her rights under Section 8.89.45 herein, shall complete one (1) ~~-disposition form under Section 8.89.142(iii)~~ for each Unborn Child that will be Aborted.

~~Notification given~~A pregnant woman who obtains parental consent pursuant to Section 8.89.78 herein shall use one (1) ~~notification consent~~ form for each Unborn Child that will be Aborted.

A disposition form under Section 8.8.124(iii) that covers more than one (1) Unborn Child that will be Aborted is invalid.

Section 8.89.910: Requirements of Abortion Facility.

An Abortion Facility shall:

- A. ~~(i)~~ Document in the pregnant woman's medical records the final disposition determination made, and if applicable, the ~~notification~~~~consent~~ made, pursuant to Section 8.89.12~~(ii)~~ herein.
- B. ~~(ii)~~ Maintain evidentiary documentation demonstrating the date and method of the disposition of Fetal Remains from surgical Abortions performed or induced in the facility; and,
- C. ~~(iii)~~ Have written policies and procedures regarding Cremation or Interment of Fetal Remains from surgical Abortions performed or induced in the facility; and,
- D. ~~(iv)~~ Develop and maintain a written list of locations at which the facility provides or arranges for the final disposition of Fetal Remains from surgical Abortions.

An Abortion Facility shall not release Fetal Remains from a surgical Abortion, or arrange for the Cremation or Internment of the Fetal Remains, until the facility obtains a final disposition determination made, and if applicable, the consent made, pursuant to Section 78 herein.

Section 8.89.101: Costs of Cremation or Interment.

If the disposition form as required by Section 8.89.12~~(iii)~~ herein identifies a location for final disposition other than allocation provided by the Abortion Facility, then the pregnant woman is responsible for the costs related to the final disposition of the Fetal Remains at the chosen location.

If the location for final disposition is the location provided by the Abortion Facility, then the Abortion Facility shall pay for and provide for the Cremation or Internment of the Fetal Remains from a surgical Abortion performed at that facility.

Section 8.89.112: Forms

Each Abortion Facility in Seaford shall promulgate rules as necessary to effectuate the purposes of this Ordinance, including rules that prescribe the following:

- A. ~~(i)~~ A notification form informing pregnant women who seek surgical abortions of the following: (a) the right to determine final disposition of Fetal Remains under Section 8.89.45 of this Ordinance, and (b) the available options for locations and methods for the disposition of Fetal Remains.
- B. ~~(ii)~~ The ~~notification~~~~consent~~ forms for purposes of Section 8.89.78 herein;
- C. ~~(iii)~~ A disposition form that meets the following requirements:

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(a)1. Indicates whether the pregnant woman has indicated a preference as to the method of disposition of the Fetal Remains and the preferred method selected; and,

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(b)2. Indicates whether the pregnant woman has indicated a preference as to the location of disposition of the Fetal Remains; and,

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(c)3. Provides for the signature of the physician who is to perform or induce the Abortion; and,

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(d)4. Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature.

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If a Medical Emergency (as defined in Section 8.89.23 herein) prevents the pregnant woman from completing the Form described in Section 8.89.142 (iii) herein, procedures to complete that form within a reasonable time after the Medical Emergency has ended.

Section 8.89.123: Rules Regarding Ambulatory Surgical Treatment Centers.

Regardless of the method selected for the disposition of remains by a pregnant woman, Ambulatory Surgical Treatment Centers shall not provide beds or other accommodations for the stay of a patient to exceed twelve (12) hours duration; provided, that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed necessary by the attending physician, the facility medical director, or the anesthesiologist for observation or recovery, but in no event shall the length of stay exceed twenty-four (24) hours.

No patient for whom a medical or surgical procedure is utilized to terminate a pregnancy shall stay at such a facility for a period exceeding twelve (12) hours duration, provided, that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed necessary by the attending physician, the facility medical director, or the anesthesiologist for observation in recovery, but in no event shall the length of stay exceed twenty-four (24) hours.

Section 8.89.134: Liability.

Any person who disposes of Fetal Remains from a surgical Abortion is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or professional disciplinary action related to the disposal of Fetal Remains, if that person does both of the following:

A. (i) Complies in good faith with all aspects of this Ordinance; and,

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B. (ii) Acts in furtherance of the final disposition of the Fetal Remains.

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Section 8.89.145: Requirements for Operators of Crematories.

An operator of a Crematory facility shall not:

~~A. (i)~~ Cremate fetal remains without receiving a copy of a properly executed decision regarding disposition form described in Section 8.89.124~~(iii)~~.

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~~B. (ii)~~ Dispose of Cremated Fetal Remains by a means other than one (1) of the following:

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- (a) Placing the Cremated Fetal Remains in a grave, crypt or niche; or,
- (b) Scattering the Cremated Fetal Remains in a dignified manner, including in a memorial garden, at sea, by air, or at a lawful scattering ground; or,
- (c) Releasing the Cremated Fetal Remains to the pregnant woman or a party designated by the pregnant woman; or,
- (d) Any other lawful manner.

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~~C. (iii)~~ Arrange for the disposal of Cremated Fetal Remains by a means other than one described in subsection (ii) above.

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~~D. (iv)~~ Arrange for the transfer of the Cremated Fetal Remains for disposal by a means other than the means described in subsection (ii) above.

~~An operator of a Crematory facility is not required to secure a death certificate, burial permit, transportation permit, or a cremation authorization form to Cremate Fetal Remains.~~

Section 8.89.156: Required Reporting of Abortion.

~~A. (i)~~ Each Abortion that occurs in Seaford shall be reported to The Office of Vital Statistics within ten (10) days after the procedure by the person in charge of the institution in which the Abortion was performed. If the Abortion was performed outside an institution, the attending physician shall prepare and file the report. Each such report shall indicate whether the Abortion involved a surgical procedure and, if so, which method was employed, and shall indicate which method authorized by this Ordinance was employed to dispose of the aborted Fetal Remains. If the Aborted Fetal Remains were transferred to a third party for disposition, the report shall indicate the name and address of the third party and the date of the transfer.

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~~B. (ii)~~ The individual undergoing Abortion shall not be identified by name on the report required by Section 8.89.125~~(i)~~, but shall be identified by her medical identification number to provide retrieval of further information if necessary.

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Section 8.89.167: Authorization for Final Disposition of Fetal Remains.

~~A. (i)~~ Prior to final disposition of Fetal Remains pursuant to this Ordinance, regardless of the duration of pregnancy, the Funeral Establishment, the person in charge of the institution, or other person assuming responsibility for final disposition of the Fetal Remains, shall obtain from the mother authorization for final disposition.

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~~B. (ii)~~ When the demise of a fetus is the result of a surgical Abortion, a copy of the mother's authorization for disposition, specifying the means of the disposition, shall be appended to the informed consent signed by the mother prior to the procedure.

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~~C. (iii)~~ After final disposition, the authorization shall be retained for a period of three (3) years by the Funeral Establishment, the person in charge of the institution, or other person making the final disposition.

Section 8.89.178: Severability.

If any provision of this Ordinance or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to that end, the provisions of this Ordinance are severable.

Section 8.89.189: Effective Date.

For the purpose of promulgating rules, this Ordinance takes effect upon City Council approval and an advertising period of thirty days, the public welfare requiring it, and applies to actions occurring on or after that date.

Section 8.89.1920: Violation of Ordinance – Penalties.

Violation of this Ordinance shall be enforced either by way of civil infraction or by way of notice and order, with associated fines for such violation.

Section 8.89.201: Fetal Remains as Part of Criminal Investigation.

~~A. (i)~~ An Abortion Facility does not violate this Ordinance if upon the request of a law enforcement officer made prior to final disposition of Fetal Remains, the Abortion Facility retains the Fetal Remains and permits the law enforcement officer to collect a portion or all of the Fetal Remains as evidence in a criminal investigation, as long as the Abortion Facility subsequently makes final disposition of any remaining Fetal Remains in accordance with this Ordinance.

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~~B. (ii)~~ An Abortion Facility that retains fetal remains pursuant to this Section 201:

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~~1. (a)~~ Shall retain all of the Fetal Remains of the Unborn Child that may remain following the collection of evidence by the law enforcement officer; and,

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~~2. (b)~~ Except for those portions of the Fetal Remains collected as evidence by the law enforcement officer, shall not dispose of any portion of the Fetal Remains of that Unborn Child independently of other Fetal Remains of the same Unborn Child.

Section 8.89.212 through Section 8.89.99 RESERVED

CHAPTER 8 – MORALS AND CONDUCT

ARTICLE 9 - ORDINANCE RELATIVE TO ABORTION

Section 8.9.1: Purpose of Ordinance.

It is the purpose of the City of Seaford to establish a process for the disposition of fetal remains within the City of Seaford. Pursuant to this Ordinance, a pregnant woman has certain rights regarding the disposition of fetal remains for a fetal death that occurs in Seaford by abortion or miscarriage.

Pregnant women who experience a fetal death by miscarriage or abortion in the City limits of Seaford may either exercise their rights under this Ordinance and determine whether disposition of fetal remains is made by cremation or interment (including the final location of any such remains), or waive their rights under this Ordinance and allow the performing health care facility to determine whether disposition of fetal remains following an abortion is made by cremation or interment (including the final location of any such remains).

It is the Intent of the City of Seaford to create a mechanism for fetal deaths occurring within the City of Seaford to protect the rights of its citizens and all those engaged in health care and abortion related activities, while providing a mechanism for the dignified disposal of any such fetal remains following a fetal death in Seaford.

Section 8.9.2: Findings.

The City Council of Seaford, Delaware finds that:

- A. Women have a right to abortion under federal and state law.
 1. In *Roe v. Wade*, the Supreme Court recognized that the constitutional “right of privacy...is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” 410 U.S. 113, 152 (1973).
 2. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court reaffirmed the essential holding of *Roe*, “[t]he woman’s right to terminate her pregnancy before viability.” 505 U.S. 833, 846, 871 (1992).
 3. The Supreme Court crafted *Casey*’s undue burden standard to examine regulations that implicate a woman’s constitutional right to terminate her pregnancy, determining “[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus obtains viability.” *Id.* at 878.
 4. Delaware has codified *Roe v. Wade*. 24 *Del. C.* §1790, *et. seq.* (2017).
 5. Under Delaware law, “[a] physician may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability.” *Id.* §1790(a).
 6. Under Delaware law, after viability, a physician may not terminate a pregnancy unless it “is necessary for the protection of the woman’s life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus’s

sustained survival outside the uterus without extraordinary medical measures.” *Id.* §1790(b).

B. States may regulate the final disposition of fetal remains from an induced abortion.

1. The Supreme Court reaffirms “that a State has a ‘legitimate interest in the proper disposal of fetal remains.’” *Box v. Planned Parenthood of Ind. And Ky., Inc.*, 139 S. Ct. 1780, 1782 (2019) (citing *Akron v. Akron Ctr. For Reprod. Health, Inc.*, 462 U.S. 416, 452, n. 45 (1983)).
2. “The [Supreme] Court’s decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate...a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.” *Roe*, 410 U.S. at 154.
3. Unless preempted by federal law, states may enact broader protections for rights than those recognized by the Constitution. U.S. Const., art. VI, cl. 2.
4. The Supreme Court has recognized the fundamental right of privacy extends to procreation, contraception, family relations, child rearing and education, and a woman’s decision whether or not to terminate her pregnancy. *Roe*, 410 U.S. at 152-153.
5. Within a women’s abortion decision, she has the right to determine the final disposition of the fetal remains.
6. Similarly, “[T]here is a substantial state interest in potential life throughout pregnancy.” *Casey*, 505 U.S. at 876.
7. “Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman’s exercise of the right to choose.” *Id.* at 877.
8. Laws protecting a woman’s right to determine the final disposition of fetal remains furthers the government’s interest in protecting the dignity of preborn human life.

C. Unemancipated pregnant minors under age sixteen benefit from parental notification.

1. Delaware has a parental notification requirement for minors receiving an induced abortion. 24 *Del. C.* §1783 (1995).
2. “Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.” *Id.* § 1781(a)(1).
3. “The physical, emotional, and psychological consequences of teen pregnancy are serious and can be lasting, particularly when the patient is immature.” *Id.* § 1781(a)(2).
4. “The capacity to become pregnant and the capacity for mature judgment concerning how to choose among the alternatives for managing that pregnancy are not necessarily related.” *Id.* § 1781(a)(3).
5. “Parental consultation is usually desirable and in the best interest of their minor children and parents ordinarily act in the best interest of their minor children.” *Id.* § 1781(6).

6. “Parental involvement legislation enacted in other states has been shown to have significant impact in reducing abortion, birth and pregnancy rates among minors.” Id. § 1781(7).
- D. The Supreme Court upheld Indiana’s fetal remains law. *Box v. Planned Parenthood of Ind. And Ky., Inc.*
1. Indiana’s fetal remains law recognizes “[a] pregnant woman who has an abortion...has the right to have the health care facility or abortion clinic dispose of the aborted fetus by interment...or cremation.” Ind. Code §16-34-3-2(a) (2015).
 2. Indiana’s fetal remains law has a parental consent provision for minors. Id. § 16-34-3-2(c).
 3. Indiana’s fetal remains law requires “The abortion clinic or the health care facility [to] document the pregnant woman’s decision concerning disposition of the aborted fetus in the pregnant woman’s medical record.” Id. § 16-34-3-2(d).
- E. Delaware grants municipalities a broad statutory home rule power. *22 Del. C. §801, et. seq.* (1953).
1. According to the 2020 U.S. Census, Seaford, Delaware has a population of 7,957 persons.
 2. Seaford, Delaware thus is “a municipal corporation in [Delaware] containing a population of at least 1,000 persons...and may...amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute.” Del. Code tit. 22 § 802.
 3. “The purpose of the home rule provisions was to enable municipalities to exercise the powers of the sovereign except as limited by either the State Constitution or State statute.” *NAACP v. Wilmington Med. Ctr., Inc.*, 426 F. Supp. 919, 927 (D. Del. 1977), rev’d on other grounds by *NAACP v. Med. Ctr., Inc.*, 599 F.2d 1247 (3d Cir. 1979).
 4. Seaford’s city charter provides, “it is intended that the City of Seaford shall have, and may exercise, all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter specifically to enumerate.” Seaford, Del., Charter of Seaford § 4(B) (1961).
 5. Seaford’s city charter indicates “the City shall have all powers and functions requisite to or appropriate for the government of the City, its peace and order, its sanitation, beauty, and the health, safety, convenience, comfort and well being of its population, and the protection and preservation of property, public and private.” Id. § 4(A).
 6. The home rule statute prohibits “any charter amendment in contravention of any general statute of this State.” Del. Code tit. 22 § 835(a)(2).
 7. Under preemption doctrine, “where a conflict exists between a state statute and a municipal ordinance, the statute must always prevail.” *State v. Putman*, 552 A.2d 1247, 1249 (Del. Super. Ct. 1988). However, where the state has not expressed exclusive authority over a particular subject, a municipality is free to enact an

ordinance addressing that subject. *Cantina v. Fontana*, 844 A. 2d 468, 473 (Del. 2005).

8. According to the Delaware Supreme Court, “[t]he predominant test for conflict in a preemption analysis is whether the state statute was intended to be exclusive.” *Ibid.*

- F. The State of Delaware Has Not Addressed, By Statute or Regulatory Scheme, the Disposition of Fetal Remains and the Dignity Ordinance is not in Conflict With Any State Law.
 1. The State of Delaware has not, by statute or regulation, expressed an intent to regulate the disposition of fetal remains.
 2. Consequently, a municipal Ordinance which furthers a woman’s right to determine the final disposition of fetal remains and upholds prenatal dignity is within the City of Seaford’s broad home rule power and is not inconsistent with any Delaware state law.

Section 8.9.3: Definitions.

A. “**Abortion**” means the use of any instrument, medicine, drug, or any other similar device or substance used with intent to terminate the pregnancy of a woman known to be pregnant, with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

B. “**Abortion Facility**” means any of the following in which abortions are induced or performed:

- (i) “**Ambulatory Surgical Treatment Center**”, which means any institution, place or building devoted primarily to the maintenance and operation of a facility for the performance of surgical procedures or any facility in which a medical or surgical procedure is utilized to terminate a pregnancy.
- (ii) “**Another Facility**”, which means any institution, place, or building providing health care services required to be licensed under the laws of the State of Delaware, in which abortion is legally provided.

C. “**Cremation**” means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation or other similar methods.

D. “**Crematory**” means the building, or any portion of a building or similar facility utilized to house one (1) or more cremation chambers which is used for the reduction of body parts or bodies of deceased persons to cremated remains and the holding facility. “**Crematory**” includes “**Crematorium**” or other similar phrases used to describe any such building or facility.

E. “**Emancipated Minor**” means any minor female who is or has been married or has been, by court order or otherwise, been freed from the care, custody and control of her parents or any other legal guardian.

F. “**Fetal Remains**” means an aborted or miscarried fetus, fetal tissue or any other similar remains that results from the miscarriage or abortion of an Unborn Child.

G.. “**Funeral Establishment**” means any business, regardless of the corporate form or lack thereof of any such business, engaged in arranging, directing or supervising funerals, for profit or other benefit, involved in: the preparing of dead human bodies for burial, the disposition of dead human

bodies, the provision or maintenance of place for the preparation for disposition, or for the care or disposition of human bodies.

H. **“Gestational Age”** or **“Gestation”** means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.

I. **“Health Care Facility”** means any place that, through licensed professionals, provides health care to pregnant woman, including hospitals, clinics, outpatient care centers and specialized care centers, such as birthing centers.

J. **“Interment”** means the burial or entombment of fetal remains.

K. **“Medical Emergency”** means a condition that, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.

L. **“Minor”** means a female person under the age of 16.

M. **Miscarriage** means the spontaneous or accidental death of an unborn child before expulsion or extraction from the Unborn Child's mother.

N. **“Pregnant”** means the human female reproductive condition, of having a living Unborn Child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full Gestation and childbirth.

O. **“Serious Risk of the Substantial and Irreversible Impairment of a Major Bodily Function”** means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. Such conditions include preeclampsia, inevitable abortion, and premature rupture of the membranes and, depending upon the circumstances, may also include, but are not limited to, diabetes and multiple sclerosis, but does not include any condition relating to the woman's mental health.

P. **“Unborn Child”** means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to Full gestation and childbirth.

Q. **“Viable”** and **“Viability”** mean that stage of fetal development when the Unborn Child is capable of sustained survival outside of the womb, with or without medical assistance.

Section 8.9.4: Cremation or Interment Required for all Fetal Remains.

Final disposition of Fetal Remains from a Miscarriage at a Health Care Facility or surgical Abortion at an Abortion Facility must be by either: (i) Cremation or (ii) Interment. Cremation must occur in a licensed Crematory facility.

Section 8.9.5: Rights of a Pregnant Woman.

A pregnant woman who has a Miscarriage at a Health Care Facility or surgical Abortion in Seaford has the right to determine the following regarding the Fetal Remains: (i) whether the final disposition of the remains is by Cremation or Interment, and (ii) the location for the final disposition of the remains.

A pregnant woman who has a Miscarriage at a Health Care Facility or surgical Abortion must be provided with a notification form described in Section 8.9.12 herein by a Health Care Facility or Abortion Facility.

Section 8.9.6: Procedure for Pregnant Woman Exercising Rights.

If a woman desires to exercise her rights under Section 8.9.5 herein, the woman must make the determination in writing using a disposition form as described in Section 8.9.12 herein. Any such determination must clearly indicate the following: (i) whether the final disposition will be by Cremation or Interment; and (ii) whether the final disposition will be at a location other than the location provided by the Health Care Facility or Abortion Facility.

Section 8.9.7: Procedure for Woman Declining to Exercise Rights.

If a woman does not desire to exercise her rights under Section 8.9.5 herein, then the Health Care Facility or Abortion Facility shall determine whether final disposition of Fetal Remains is by (i) Cremation or (ii) Interment, and the location of the Fetal Remains.

Section 8.9.8: Notification Required for Certain Class of Pregnant Women.

A woman who desires to exercise her rights under Section 8.9.4 herein and is an unemancipated Minor may do so after the physician or medically authorized person, or an agent of the physician or of the medically authorized person has given at least 24 hours actual notice to one or both parents (either custodial or noncustodial), a grandparent, a licensed mental health professional (who shall not be an employee or under contract to an abortion provider except employees or contractors of an acute care hospital) or to the legal guardian of the pregnant minor of the woman's intention to exercise her rights under Section 8.9.5, or unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has received a written statement or oral communication from another physician or medically authorized person, certifying that the referring physician or medically authorized person has given such notice. This notification must be made in writing using the form prescribed in Section 8.9.12(B) herein.

Notification is not required for a pregnant woman exercising her rights under Section 8.9.5 herein if she has received a waiver under 24 *Del. C.* §1783(2), 1784 for the state's notice requirement for an induced abortion upon an unemancipated minor. The waiver under 24 *Del. C.* §1783(2), 1784 need not reference a woman's rights under Section 8.9.5 or any other provisions herein.

No physician or other abortion provider shall charge a referral fee to a person authorized under this section to receive notice; nor shall a person authorized under this section to receive notice charge a referral fee to a physician or other abortion provider.

Nothing in this section shall affect the obligations of a person pursuant to state law to report instances of child abuse to the appropriate government agencies.

Section 8.9.9: Abortion of More Than One Unborn Child.

A woman carrying more than one (1) Unborn Child and who desires to exercise her rights under Section 8.9.5 herein, shall complete one (1) disposition form under Section 8.9.12 for each Unborn Child.

Notification given pursuant to Section 8.9.8 herein shall use one (1) notification form for each Unborn Child.

A disposition form under Section 8.8.12 that covers more than one (1) Unborn Child is invalid.

Section 8.9.10: Requirements of Health Care Facility and Abortion Facilities.

Health Care Facilities and Abortion Facilities shall:

- A. Document in the woman's medical records the final disposition determination made, and if applicable, the notification made, pursuant to Section 8.9.12 herein.
- B. Maintain evidentiary documentation demonstrating the date and method of the disposition of Fetal Remains from Miscarriages and surgical Abortions performed or induced in the facility; and,
- C. Have written policies and procedures regarding Cremation or Interment of Fetal Remains ; and,
- D. Develop and maintain a written list of locations at which the facility provides or arranges for the final disposition of Fetal Remains.

A Health Care Facility or Abortion Facility shall not release Fetal Remains or arrange for the Cremation or Internment of the Fetal Remains, until the facility obtains a final disposition determination made, and if applicable, the consent made, pursuant to Section 8 herein.

Section 8.9.11: Costs of Cremation or Interment.

If the disposition form as required by Section 8.9.12 herein identifies a location for final disposition other than allocation provided by the Health Care Facility or Abortion Facility, then the woman is responsible for the costs related to the final disposition of the Fetal Remains at the chosen location.

If the location for final disposition is the location provided by the Health Care Facility or Abortion Facility, then the Health Care Facility or Abortion Facility shall pay for and provide for the Cremation or Internment of the Fetal Remains.

Section 8.9.12: Forms

Each Health Care Facility and Abortion Facility in Seaford shall promulgate rules as necessary to effectuate the purposes of this Ordinance, including rules that prescribe the following:

- A. A notification form informing the woman of the following: (a) the right to determine final disposition of Fetal Remains under Section 8.9.5 of this Ordinance, and (b) the available options for locations and methods for the disposition of Fetal Remains.
- B. The notification forms for purposes of Section 8.9.8 herein;
- C. A disposition form that meets the following requirements:
 - 1. Indicates whether the woman has indicated a preference as to the method of disposition of the Fetal Remains and the preferred method selected; and,
 - 2. Indicates whether the pregnant woman has indicated a preference as to the location of disposition of the Fetal Remains; and,
 - 3. Provides for the signature of a licensed medical professional; and,
 - 4. Provides for a medical identification number for the woman but does not provide for the woman's printed name or signature.

If a Medical Emergency (as defined in Section 8.9.3 herein) prevents the woman from completing the Form described in Section 8.9.12 herein, procedures to complete that form within a reasonable time after the Medical Emergency has ended.

Section 8.9.13: Rules Regarding Ambulatory Surgical Treatment Centers.

Regardless of the method selected for the disposition of remains by a woman, Ambulatory Surgical Treatment Centers shall not provide beds or other accommodations for the stay of a patient to exceed twelve (12) hours duration; provided, that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed necessary by the attending physician, the facility medical director, or the anesthesiologist for observation or recovery, but in no event shall the length of stay exceed twenty-four (24) hours.

No patient for whom a medical or surgical procedure is utilized to terminate a pregnancy shall stay at such a facility for a period exceeding twelve (12) hours duration, provided, that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed necessary by the attending physician, the facility medical director, or the anesthesiologist for observation in recovery, but in no event shall the length of stay exceed twenty-four (24) hours.

Section 8.9.14: Liability.

Any person who disposes of Fetal Remains pursuant to this Ordinance is not liable for or subject to damages in a civil action, prosecution in a criminal proceeding, or professional disciplinary action related to the disposal of Fetal Remains, if that person does both of the following:

- A. Complies in good faith with all aspects of this Ordinance; and,
- B. Acts in furtherance of the final disposition of the Fetal Remains.

No civil liability may be assessed, nor criminal proceeding brought, against the woman upon whom an Abortion is performed or who has suffered a Miscarriage.

Section 8.9.15: Requirements for Operators of Crematories.

An operator of a Crematory facility shall not:

- A. Cremate fetal remains without receiving a copy of a properly executed decision regarding disposition form described in Section 8.9.12.
- B. Dispose of Cremated Fetal Remains by a means other than one (1) of the following:
 - (a) Placing the Cremated Fetal Remains in a grave, crypt or niche; or,
 - (b) Scattering the Cremated Fetal Remains in a dignified manner, including in a memorial garden, at sea, by air, or at a lawful scattering ground; or,
 - (c) Releasing the Cremated Fetal Remains to the woman or a party designated by the woman; or,
 - (d) Any other lawful manner.
- C. Arrange for the disposal of Cremated Fetal Remains by a means other than one described in subsection (ii) above.
- D. Arrange for the transfer of the Cremated Fetal Remains for disposal by a means other than the means described in subsection (ii) above.

Section 8.9.16: Required Reporting of Abortion.

- A. Each Abortion that occurs in Seaford shall be reported to The Office of Vital Statistics within ten (10) days after the procedure by the person in charge of the institution in which the Abortion was performed. If the Abortion was performed outside an institution, the attending physician shall prepare and file the report. Each such report shall indicate whether the Abortion involved a surgical procedure and, if so, which method was employed, and shall indicate which method authorized by this Ordinance was employed to dispose of the aborted Fetal Remains. If the Aborted Fetal Remains were transferred to a third party for disposition, the report shall indicate the name and address of the third party and the date of the transfer.
- B. The individual undergoing Abortion shall not be identified by name on the report required by Section 8.9.12, but shall be identified by her medical identification number to provide retrieval of further information if necessary.

Section 8.9.17: Authorization for Final Disposition of Fetal Remains.

- A. Prior to final disposition of Fetal Remains pursuant to this Ordinance, regardless of the duration of pregnancy, the Funeral Establishment, the person in charge of the

institution, or other person assuming responsibility for final disposition of the Fetal Remains, shall obtain from the mother authorization for final disposition.

- B. A copy of the mother's authorization for disposition, specifying the means of the disposition, shall be appended to the informed consent signed by the mother.
- C. After final disposition, the authorization shall be retained for a period of three (3) years by the Funeral Establishment, the person in charge of the institution, or other person making the final disposition.

Section 8.9.18: Severability.

If any provision of this Ordinance or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to that end, the provisions of this Ordinance are severable.

Section 8.9.19: Effective Date.

For the purpose of promulgating rules, this Ordinance takes effect upon City Council approval and an advertising period of thirty days, the public welfare requiring it, and applies to actions occurring on or after that date.

Section 8.9.20: Violation of Ordinance – Penalties.

Violation of this Ordinance shall be enforced either by way of civil infraction or by way of notice and order, with associated fines for such violation.

Section 8.9.21: Fetal Remains as Part of Criminal Investigation.

- A. A Health Care Facility or Abortion Facility does not violate this Ordinance if upon the request of a law enforcement officer made prior to final disposition of Fetal Remains, the Health Care Facility or Abortion Facility retains the Fetal Remains and permits the law enforcement officer to collect a portion or all of the Fetal Remains as evidence in a criminal investigation, as long as the Health Care Facility or Abortion Facility subsequently makes final disposition of any remaining Fetal Remains in accordance with this Ordinance.
- B. A Health Care Facility or Abortion Facility that retains fetal remains pursuant to this Section 21:
 - 1. Shall retain all of the Fetal Remains of the Unborn Child that may remain following the collection of evidence by the law enforcement officer; and,
 - 2. Except for those portions of the Fetal Remains collected as evidence by the law enforcement officer, shall not dispose of any portion of the Fetal Remains of that Unborn Child independently of other Fetal Remains of the same Unborn Child.

Section 8.9.22: Construction

- A. Nothing in the Dignity Ordinance shall be construed as creating or recognizing a right to an abortion;
- B. It is not the intention of this ordinance to make lawful an abortion that is currently unlawful.

Section 8.9.23 through Section 8.9.99 RESERVED