

IMPORTANT SPECIAL PUBLIC NOTICE

To: The Residents of Town of Delmar, Maryland
From: Mayor and Commissioners of Delmar, Maryland
Date: February 5, 2020

The Town of Delmar is the town too big for one State. Its residents are proud of its schools, its fire department, its library and its many other institutions regardless of which side of the State line they may be located on. What is often forgotten or overlooked is that the Town of Delmar is actually made up of two separate and legally distinct municipal governments; a Maryland municipal corporation and a Delaware municipal corporation.

For many, many years Delmar, Maryland and Delmar, Delaware have operated under a Unification Agreement that permits a unified municipal government consisting of one Town Manager for both Delmar, Maryland and Delmar, Delaware, one set of municipal employees operating from one Town Hall located on Pennsylvania Avenue in Delmar, Maryland and one Department of Public Works operating from a unified wastewater treatment plant in Maryland and a unified water treatment plant in Delaware.

The Unification Agreement also allows Delmar Maryland and Delmar Delaware to operate under a unified budget that requires separate approval by Delmar, Maryland and Delmar, Delaware. Any appropriation or expenditure for any unified municipal service is separately approved by both Delmar, Maryland and Delmar, Delaware through the unified budgeting process.

One of the most important aspects of the Unification Agreement is the ability of Delmar, Maryland and Delmar, Delaware to operate one unified police department with one Chief of Police and with officers trained and certified in both Maryland and Delaware. The officers are required to swear an oath of office to uphold the Constitution of the United States, the Constitutions of Maryland and Delaware, the state laws of Maryland and Delaware and laws of Delmar, Maryland and Delmar, Delaware. Under the terms of the Unification Agreement, Delmar, Maryland funds sixty percent (60%) of the costs associated with the Delmar Police Department and Delmar, Delaware is responsible for the remaining forty percent (40%) of the costs.

Although the Town of Delmar operates under the Unification Agreement, Delmar Maryland and Delmar Delaware meet separately, to enact and enforce their own laws and in areas not governed by the Unification Agreement, they operate as independent municipal corporations.

In 2007, the Fraternal Order of Police, Lodge 111, presented a petition to Delmar, Maryland seeking to amend the Delmar, Maryland charter to permit and authorize Delmar police employees to organize and to collectively bargain. As a result of the petition, the charter of Delmar Maryland was amended to provide that Delmar, Maryland shall adopt a Labor Law Ordinance that permits the employees of the Delmar Police Department to organize and collectively bargain. Up until now, Delmar, Delaware has not amended its charter to permit employees of the Delmar Police Department to organize and collectively bargain.

From the date of the adoption of the Labor Law Ordinance by Delmar Maryland in 2009 until 2019, there has been no effort by the employees of the Delmar Police Department to organize under the Ordinance. During that ten (10) year period of time there have repeated attempts by the police officers to have Delmar, Delaware permit Delmar Police Department employees to organize and collectively bargain, all with no success.

There is currently pending a matter before the Delaware Public Employment Relations Board in which Delmar's police employees are seeking to certify a bargaining unit of Delmar police officers under authority of the Delaware Police Officers and Firefighters Employment Relations Act (19 Del. C. § 1601 et seq.) so that the police officers may engage in collective bargaining with the unified Town of Delmar under authority of Delaware law. Delmar, Delaware has opposed the petition because, in part, Delmar Delaware is not the exclusive employer of the Delmar police officers, as required by Delaware law, and all budgeting authority and managerial responsibility for the Delmar Police Department is jointly shared between Delmar Delaware and Delmar, Maryland under authority of the Unification Agreement. The Delaware Public Employment Relations Board has dismissed previous petitions by the Delmar police officers because, in part, the Board concluded that sovereign authority pre-empted the application of Delaware law to the unified Delmar Police Department and its law enforcement employees, which are jointly employed by Delmar, Maryland.

The continuing effort by the Delmar police employees to require Delmar, Delaware to permit collective bargaining for police department employees is a recognition by the police officers that under the Unification Agreement it is not possible to have collective bargaining for only one party to the Unification Agreement that is responsible for sixty percent (60%) of the funding for the unified Police Department. The effect of collective bargaining under the Delmar Maryland Labor Law would be to impose a Maryland municipal ordinance on the sovereign State of Delaware and Delmar, Delaware.

Under the Unification Agreement, Delmar Maryland cannot legally require Delmar Delaware to agree to collective bargaining. Should the collective bargaining process result in a decision to require pay increases, benefit changes or work related changes, Delmar, Delaware will not be obligated to agree to any of the changes. If Delmar, Delaware should refuse to recognize the collective bargaining decision, Delmar Maryland will be required to fund all the costs associated with the changes. Such a result has the potential to threaten the continuance of the Unification Agreement between Maryland and Delaware.

In recognition of the issues caused by requiring collective bargaining by only one party to the Unification Agreement, Delmar, Maryland passed an amendment to its charter to permit, but not require, collective bargaining. This change does not prevent collective bargaining by Maryland, but merely gives Maryland the option to not permit collective bargaining until or unless Delaware similarly agrees to allow collective bargaining.

The continuing effort by Delmar police employees to require Delmar, Delaware to permit collective bargaining is a clear indication that the police officers understand the inherent problems associated with requiring Delmar, Maryland to collectively bargain when Delmar, Delaware has no such requirement. Requiring collective bargaining by Delmar, Maryland, without a similar requirement for Delmar Delaware, threatens the foundations of the Unification Agreement and is the reason that Delmar Maryland acted to amend its charter.