

**ORDINANCE OF THE MAYOR AND COMMISSIONERS  
OF THE TOWN OF HENLOPEN ACRES  
RESPECTFULLY REJECTING THE GOVERNOR OF DELAWARE'S  
RECOMMENDATIONS RELATING TO THE 2014 COMPREHENSIVE PLAN  
UPDATE AND AFFIRMING THE ADOPTION AND EFFECTIVENESS OF THE  
2014 COMPREHENSIVE PLAN UPDATE.**

**WHEREAS**, Title 22, Section 702(a) of the Delaware Code provides, in relevant part, that “[a] planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate.”

**WHEREAS**, the Comprehensive Plan of the Town of Henlopen Acres was certified by the State of Delaware on July 9, 2004.

**WHEREAS**, Title 22, Section 702(e) of the Delaware Code provides, in relevant part, that “[a]t least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.”

**WHEREAS**, Title 22, Section 702(f) of the Delaware Code provides, in relevant part, that “[t]he plan shall be subject to the state review and certification process set forth in § 9103 of Title 29.”

**WHEREAS**, Title 29, Section 9103(e) of the Delaware Code provides, in relevant part, that “the Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Governor or designee for certification.”

**WHEREAS**, Title 29, Section 9103(e) of the Delaware Code further provides, in relevant part, that “If there is a finding that such a plan, amendment, revision or update is inconsistent or if there is a dispute, the report and the plan are to be forwarded to the Cabinet Committee for State Planning Issues and shall follow the same process as for the certification of county plans.”

**WHEREAS**, the Town of Henlopen Acres has been actively engaged in preparing and finalizing the ten year Comprehensive Plan update since 2011.

**WHEREAS**, the Planning Commission conducted public hearings to accept public comment on the draft 2014 Comprehensive Plan update on December 7, 2011 and June 27, 2014.

**WHEREAS**, the Mayor and Commissioners held public Commission meetings and accepted public comment on the draft 2014 Comprehensive Plan update on October 10, 2014 and December 12, 2014.

**WHEREAS**, the Planning Commission reviewed and approved the 2014 Comprehensive Plan update attached hereto as Exhibit A at a public meeting on July 10, 2015.

**WHEREAS**, the 2014 Comprehensive Plan update was reviewed and considered by the Mayor and Commissioners of the Town of Henlopen Acres.

**WHEREAS**, the Mayor and Commissioners determined that the 2014 Comprehensive Plan amply meets the Town's obligation under Title 22, Section 702(a) "to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development, and infrastructure investment actions with those of other municipalities, counties, and the State through a process of municipal comprehensive planning."

**WHEREAS**, the Mayor and Commissioners adopted an Ordinance on July 10, 2015, making the 2014 Comprehensive Plan "effective on the earlier of (1) the date on which the Governor of Delaware certifies the 2014 Comprehensive Plan update, or (2) the date on which a majority of the Mayor and the Commissioners of the Town of Henlopen Acres act to accept or reject any recommendations forwarded to the Town by the Governor pursuant to Subsection 9103(f) of Title 29 of the Code of Delaware, or (3) November 13, 2015."

**WHEREAS**, due to a dispute between the Town and the State Office of Planning Coordination, the Governor was not provided an opportunity to certify the 2014 Comprehensive Plan or to make recommendations relating to the 2014 Comprehensive Plan prior to November 13, 2015.

**WHEREAS**, consistent with 29 *Del. C.* § 9103, due to the dispute between the Town and the State Office of Planning Coordination, on October 28, 2015 the 2014 Comprehensive Plan was sent to the Cabinet Committee on State Planning Issues for dispute resolution.

**WHEREAS**, on November 19, 2015, the Cabinet Committee on State Planning Issues convened a public meeting for the purpose of considering the dispute and making findings and recommendations to be submitted to the Governor.

**WHEREAS**, by memorandum dated December 31, 2015, the Cabinet Committee on State Planning Issues provided the Governor with the following summary of its findings and recommendation:

Summary of Findings: While the Cabinet Committee is not aware of any legal deficiency in the proposed Comprehensive Plan, as a matter of policy, the proposed Plan is deficient in its failure to address the long-term operational concerns of the Rehoboth Art League, a cultural and historical institution that the State has consistently supported. While the Town has no legal obligation to change the zoning classification of the RAL, the Town's unwillingness to consider a new zoning category and apparent inability to negotiate a mutually acceptable MOU that would protect the Town and the RAL's respective interests within the existing residential classification is not consistent with the Administration's policy priority of supporting artistic and cultural institutions like the Rehoboth Art League. The Cabinet Committee recognizes, however, that it takes two

parties to negotiate, and makes no findings with respect to the reasonableness of either the Town or the RAL in any prior negotiations.

Summary of Recommendation: The Cabinet Committee recommends returning the proposed Plan to the Town in lieu of certification, with the following proposed revisions:

- (1) The Cabinet Committee recommends that the Town re-submit the Plan to the OSPC for certification following the execution of a reasonable, mutually acceptable Memorandum of Understanding between the Town and the RAL that addresses the RAL's operational needs and the Town's concerns within the framework of the existing zoning designation of the RAL property.
- (2) In addition or in the alternative to Recommendation # 1, the Cabinet Committee recommends revising the Plan to reflect the creation of a new zoning category for the RAL. Recognizing the reality that this recommendation is contingent upon an unlikely future decision by the Town to allow the new zoning category, the Cabinet Committee acknowledges that this Recommendation will not be adopted without a major change in the Town's current position.

**WHEREAS**, 29 *Del. C.* § 9103(f) provides that “[w]ithin 20 days of receipt of the findings and recommendations from the Cabinet Committee, the Governor shall certify the comprehensive plan or return the comprehensive plan to the municipality or county for revision...”

**WHEREAS**, on January 20, 2016, the Governor returned the 2014 Comprehensive Plan to the Town with the recommendation that it be revised consistent with the recommendation of the Cabinet Committee on State Planning Issues.

**WHEREAS**, although the Mayor and Commissioners of the Town of Henlopen Acres endorses the reasonableness of recommendation (1) of the Cabinet Committee and the Governor, such course of action has been rejected by the Rehoboth Art League.

**WHEREAS**, as recognized by both the Cabinet Committee and the Governor, 29 *Del. C.* § 9103(f) further provides that “...[t]he municipality or county shall have the right to accept or reject any or all of the [Governor's] recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.”

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Commissioners of the Town of Henlopen Acres, in session met, this 4<sup>th</sup> day of March, 2016, as follows:

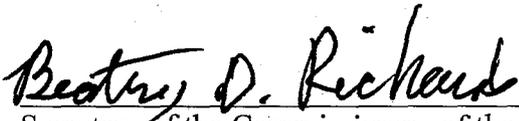
**Section 1.** Having thoughtfully considered the recommendations of the Governor, the Mayor and Commissioners of the Town of Henlopen Acres respectfully reject the recommendations.<sup>1</sup>

**Section 2.** Consistent with 29 *Del. C.* § 9103(f)'s declaration that "...[t]he final decision on the adoption of the comprehensive plan is that of the municipality or county," the Mayor and Commissioners of the Town of Henlopen Acres hereby affirm their July 10, 2015 approval of the 2014 Comprehensive Plan update, and affirm that the 2014 Comprehensive Plan update is in full force and effect.

**Section 3.** This Ordinance shall be effective immediately upon its adoption.

Adopted Unanimously by the Mayor and  
the Commissioners of the  
Town of Henlopen Acres

Mar. 4, 2016

  
Secretary of the Commissioners of the  
Town of Henlopen Acres

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<sup>1</sup> As previously noted, the Mayor and Commissioners of the Town of Henlopen Acres endorse the reasonableness of recommendation (1). In the event the Rehoboth Art League reconsiders its rejection of the development of an MOU, the Town will work in good faith with the Rehoboth Art League to develop and enter into a mutually acceptable MOU outside of the framework of the Comprehensive Plan update. If such an agreement is reached, and if it requires any modifications to the Town's Comprehensive Plan, the Plan can and will be amended as necessary at that time.