

**CITY OF NEWARK
DELAWARE**

October 15, 2014

TO: The Honorable Mayor and City Council
VIA: Carol S. Houck, City Manager
FROM: Louis C. Vitola, Finance Director
SUBJECT: Recommended Changes to City of Newark Charter

The City of Newark has been unable to take advantage of the low-interest loan programs and revolving funds made available by the State of Delaware for drinking water, wastewater, and stormwater projects. Sussex County, the City of Wilmington, Laurel, Lewes, and Delmar are undertaking almost \$16 million in drinking water projects alone in 2014, which will be funded in part by drinking water state revolving funds ("DWSRF"). From 2001 through 2014, DWSRF closed on dozens of public and private loans totaling \$122 million to support water infrastructure projects throughout Delaware. Clean water state revolving funding ("CWSRF") is also available for sanitary sewer and stormwater infrastructure projects, at times with a partial subsidy for land conservation projects. From 1994 through 2014, CWSRF disbursed nearly \$277 million for projects throughout Delaware. As we head into 2015, the State of Delaware DWSRF and CWSRF cash flow can support \$35 million and \$81 million in projects, respectively. While Newark has been successful securing small planning grants, we are unable to enter into loan agreements with the State of Delaware because the resulting debt is considered bonded indebtedness, which requires voter approval through a referendum process.

The referendum process would not entirely preclude the City from procuring revolving funds, but the competitiveness of the loans, the uncertainty of available funding levels, and the state's time requirements for loan applications and loan closing would serve as formidable roadblocks to successfully funding the projects. The cost of the referendum process, especially if undertaken repeatedly on a project by project basis in order to secure periodic state funding, would further serve as an impediment to successful loan funding. In order to streamline the process required to secure loan funding for smaller, regular infrastructure projects, I recommend a change to the City's Charter to allow for the issuance of debt by resolution of Council.

To be clear, the City's total debt limit would remain unchanged. The table below provides debt statistics for Newark and comparable municipalities in Delaware.

City	2013 Population	2013 GO Debt Outstanding \$ (000)	2013 Taxable Assessment (000)	Resolution Debt Limit		Referendum Debt Limit		Total Debt Limit	
				%	\$ (000)	%	\$ (000)	%	\$ (000)
Newark	31,679	11,654	800,658	0.0%	-	10.0%	80,066	10.0%	80,066
Newark, Proposed	31,679	N/A	800,658	4.0%	32,026	10.0%	80,066	10.0%	80,066
Dover	36,492	4,479	3,181,496	1.0%	31,815	5.0%	159,075	5.0%	159,075
Middletown	19,600	23,095	599,164	4.0%	23,967	15.0%	89,875	15.0%	89,875
Smyrna	11,100	12,844	876,385	4.5%	39,437	N/A	N/A	4.5%	39,437

The City of Newark's debt authorization parameters are established in Section 406 of the Charter. Council is required to pass a resolution to initiate the process to amend the Charter in order to change the City's debt authorization parameters. Upon successful passage of the resolution, the change would be directed to the State Legislature for consideration. A resolution will be drafted and circulated to Council under separate cover, but in the interest of providing Council with as much time as possible to review the changes proposed at the May 5, 2014 Financial Policies Workshop and discussed at the September 22, 2014 meeting of Council, the relevant segment of the Charter is redlined with the proposed changes and attached here for review. The proposed changes were drafted under consultation with the City's bond counsel, Saul Ewing.

Please do not hesitate to reach out to me with any questions or concerns.

Excerpt from City of Newark Charter

All gray, black or stricken red text reflects the current, in-force Charter. All text in red reflects recommended changes to the Charter. The recommended changes are being provided in advance of the Council resolution required to start the Charter amendment process to allow Council additional time to review the recommendation.

406 - BORROWING FOR CURRENT EXPENSES AND OTHER LIABILITIES.

Whenever the needs of the city shall require more money than is, at the time, in the city treasury from current receipts, the council may, and it is hereby authorized and empowered, to anticipate current revenue by borrowing such amounts as are needed; provided, however, the amount of such indebtedness shall not at any time exceed one per cent of the assessed valuation of the assessable and taxable real property within the limits of the city.

Whenever the city shall require money for the construction or installation of sewers, paving, or other municipal improvements, the cost of which is assessable directly to the owners of property to be benefited by such construction or installation, the council shall be authorized and empowered to anticipate the receipt of such assessments by borrowing such amounts as are needed; provided, however, the amount of such indebtedness shall not at any time exceed the sum of five hundred thousand dollars (\$500,000.00).

The council shall be authorized to take whatever action is necessary to obtain an appeal bond as may be required for the appeal of a court judgment, including obtaining security for such appeal bond such as through the securing of a letter of credit. The city's obligation to reimburse any amount drawn under a letter of credit shall constitute a general obligation of the city secured by the full faith, credit and taxing power of the city.

To exercise the power aforesaid, the council shall adopt an ordinance to that effect by the affirmative vote of five (5) of the members of council. The indebtedness created under this provision shall be evidenced by notes or bonds of the city, and the full faith and credit of the city shall be deemed to be pledged thereby. ~~The Any short-term~~ debt authorized hereinabove payable within two (2) years of the date of issuance shall not be considered as part of the bonded debt of the city when limitations under indebtedness, as set forth elsewhere in this charter, are computed. ~~The Any~~ debt authorized for the payment of unfunded court judgments, and any debt incurred with respect to securing an appeal bond shall be considered as part of the bonded debt of the city when limitations under indebtedness, as set forth elsewhere in this charter, are computed.

(76 Del. Laws, Ch. 319)

Editor's note—

Senate Bill No. 277 (Res. No. 08-N), approved July 9, 2008, changed the title of § 406 from "Borrowing for current expenses" to "Borrowing for current expenses and other liabilities."

407 - POWER TO INCUR BONDED INDEBTEDNESS AND TAX INCREMENT FINANCING.

407.1 - Power to Borrow Money. The city may incur indebtedness by issuing either general obligation bonds or certificates of indebtedness secured by the full faith and credit of the city, or by issuing revenue bonds, either in whole or in part of the total amount necessary to provide funds for the erection, extension, enlargement or repair of any plant, machinery, appliances or equipment for the supply and distribution of electricity or gas; for the furnishing of water; for the construction, repair or improvement of highways, streets or lanes, or the paving, curbing, or erection of gutters along the same; for the construction or repair of sewers or sewage disposal equipment; or to defray the cost of the share of the city in the cost of any permanent municipal improvement; or to fund notes issued by the city pursuant to the preceding section to finance any one or more of such projects, or to replace any monies advanced from current funds of the city to finance any one or more of such projects; or to carry out any capital improvement project deemed by the council to be necessary to the proper execution of any function or power of the city; or to fund tax increment financing districts or programs, as provided in Title 22, Delaware Code, Ch. 17 or to fund the payment of any judgment against the city entered by a court after the conclusion of adversary proceedings.

If general obligation bonds are issued, the total outstanding debt secured by such bonds shall not exceed ten (10) per centum of the assessed value of all the real estate subject to taxation located within the city.

If revenue bonds are issued, 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 City of Newark within the meaning of the bonded indebtedness limitation; provided, however, that in the event of some emergency, the city may temporarily borrow, advance or loan such amount as is necessary to meet current interest on outstanding bonds, such advance or loan to be repaid to the city out of revenue subsequently received from the undertaking. If revenue bonds are issued, the council shall prescribe and have collected reasonable rates, fees or charges for the service, facilities and accommodations of said 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 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 to provide for all expenses of operation and maintenance of such undertaking, payments in lieu of taxes, depreciation and other reserves.

No capital improvement bonds, notes or certificates of indebtedness may be authorized, which bonds are payable more than thirty (30) years from the date of issuance thereof.

(76 Del. Laws, Ch. 319)

407.2 - Method of Borrowing Money. Before the city may incur indebtedness by the issuance of bonds as set out in the preceding section, the borrowing of money shall have been authorized by the council and shall have been approved in the manner set out in this section:

(1)

The council shall, by resolution, propose to the qualified voters according to law in the City of Newark the purposes for which the stated amount of money shall be borrowed. The resolution shall state the amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan, including data on total related debt and the debt limitations established by this charter; shall fix a time and place for hearing on the resolution; and shall provide for publication of an announcement of the hearing in a newspaper of general circulation in the city at least one week prior to the hearing date.

(2)

A public hearing shall be held, at which time all interested persons shall be given an opportunity to express their views. Their testimony shall be considered in evidence by the council.

(3)

If the council desires to continue with the bond proceedings, it shall then, by resolution, direct that the question be submitted to a referendum. An election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of such resolution.

(4)

The notice of the time and place for holding said special election shall be printed in a newspaper of general circulation in the city once a week for three (3) consecutive weeks prior to the election. The special election shall be conducted by the election board as herein established and provided for regular council elections.

(5)

The council shall cause the election board to prepare, print and have available for distribution a sufficient number of ballots not less than five (5)

days prior to the day of the special election. At said referendum, all qualified voters of the City of Newark shall be entitled to one vote. In addition thereto, every person owning property in the City of Newark and who is not otherwise a qualified voter and each corporation owning property in the City of Newark shall be entitled to one vote under this section.

(6)

The election board shall count the votes for and against the proposed bond issue and shall announce the result thereof; shall make a certificate under their hands of the number of votes cast for and against the proposed issue; and shall deliver the same to the council, which certificate shall be entered on the council minutes and the original thereof filed by the city secretary. No bond issue shall be deemed approved unless a majority of those voting at such referendum shall vote for such bond issue.

(7)

The form of the bonds or certificates of indebtedness, the date of payment of interest, the classes, the dates of maturity, and the provisions pertaining to any registration thereof, shall be determined by the council. The bonds may be sold by competitive or negotiated sale. The council shall provide, in the budget, for revenues sufficient to pay the interest and principal on said bonds or certificates at the maturity or maturities thereof. The full faith and credit of the city shall be deemed pledged for the due payment of the principal and interest of general obligation bonds issued within the prescribed debt limitation when the same have been properly executed and delivered for value.

(58 Del. Laws, Ch. 479; 76 Del. Laws, Ch. 319)

Editor's note—

Senate Bill No. 277 (Res. No. 08-N), approved July 9, 2008, changed the title of § 407 from "Power to incur bonded indebtedness" to "Power to incur bonded indebtedness and tax increment financing."

407.3 – Alternative Method of Borrowing Money Subject to Certain Limitations.

The city may incur indebtedness by the issuance of bonds as set out in section 407.1 by resolution of council, approved by affirmative vote of four (4) members of council, provided that the principal amount of such indebtedness outstanding at any one time shall not exceed four (4) per centum of the assessed value of all the real estate subject to taxation located within the city, and further provided that the purchaser of such bonds is The United States of America or any of its federal agencies, including but not limited to the Environmental Protection Agency ("EPA") or any of its regional subdivisions, The United States Department of Agriculture ("USDA") or any of its regional subdivisions, The State of

Delaware or any of its agencies, departments, offices, or authorities, including but not limited to the Department of Health and Social Services ("DHSS"), the Delaware Safe Drinking Water Revolving Fund ("DWRF" or "DWSRF"), and the Delaware Water Pollution Control Revolving Fund ("WPCRF" or "CWSRF"), subject to the total debt limitation of ten (10) per centum established in section 407.1.

In addition to the indebtedness authorized in the first paragraph of this section 407.3, the city may incur indebtedness by the issuance of bonds as set out in section 407.1 by resolution of council, approved by affirmative vote of four (4) members of council, provided that the principal amount of such indebtedness outstanding at any one time shall not exceed two (2) per centum of the assessed value of all the real estate subject to taxation located within the city, subject to the debt limitation of four (4) per centum established in the first paragraph of this section 407.3 and the total debt limitation of ten (10) per centum established in section 407.1.