

CHAPTER 303
FORMERLY
HOUSE BILL NO. 344

AN ACT TO AMEND THE CHARTER OF THE MUNICIPAL SERVICE COMMISSION OF THE CITY OF NEW CASTLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend the Charter of the Municipal Service Commission of the City of New Castle by making deletions as shown by strike through and insertions as shown by underline as follows:

THE MUNICIPAL SERVICE COMMISSION

Section 1. Municipal Services Commission; Appointments; Vacancies; Definitions

(a) A Municipal Services Commission for the City of New Castle is hereby created, the business and affairs of which shall be managed by or under the direction of a Commission composed of three Commissioners who shall be residents of and qualified voters of the City of New Castle and who shall have resided in said City for at least three years prior to their appointment.

(b) The Commissioners shall serve until their successors shall have been appointed and qualified. One of said Commissioners shall be appointed by the Mayor of the City, one by the Council of the City, and one by the Trustees of the New Castle Common of said City. In the month of March in each year a successor to the Commissioner whose term expires on April 1 in that year shall be appointed for the term of three years by the power who appointed the member whose term is to expire.

(c) Any vacancy during a term shall be filled for the remainder of the term by appointment of the power who made the original appointment. In exercising the above appointing power, the Mayor shall not appoint himself, the Council shall not appoint one of its own members, and the Trustees of the Common shall not appoint one of its own members.

(d) Definitions. The following words, terms and phrases, when used in this Chapter, shall have meanings ascribed to them in this section:

(1) 'Additional Systems' shall include, but is not limited to, systems for the purpose of furnishing steam, manufactured gas, natural gas, heat, power, and wired and wireless telecommunications or other communication services, all as may be approved by resolution of the Council for the City of New Castle, which approval shall not be unreasonably withheld. However, any Additional Systems operated by the Commission shall not interfere with franchise rights granted by the City Council to third parties, nor shall any franchise right granted by the City Council to third parties interfere with the rights, duties, obligations, and responsibilities of the Commission as herein provided.

(2) 'City' shall refer to the City of New Castle;

(3) 'Commission' shall refer to the Municipal Services Commission of the City of New Castle;

(4) 'Commissioner' shall refer to a member of the Municipal Services Commission of the City of New Castle;

(5) 'Municipal Corporation' shall refer to the City of New Castle as an incorporated municipality;

(6) 'Telecommunications' shall include, but is not limited to, internal communications; communication services to the City of New Castle, schools, and non-profit institutions; and commercial and residential voice, data, and video services.

Section 2. Commission Elections and Appointments; Secretary and Treasurer

(a) The ~~Commissioners~~ Commissioners, in April of each year, shall elect one of their number as President, and shall appoint a Secretary and a Treasurer, neither of whom need be a Commissioner.

(b) The Treasurer of the Commission shall hold the funds of the Commission in one or more separate accounts at such banks and trust companies and upon such terms and conditions as the Commission may by resolution from time to time prescribe, ~~and shall pay the same out on orders signed by the President and Secretary.~~ Checks and other transfer of monies may be signed by such persons as are authorized by the Commission from time to time. The Treasurer shall give such additional bond as the Commission may require.

(c) No Commissioner shall hold any office of profit under the Commission, except as otherwise provided in Section 11, or contract with it for work or supplies.

Section 3. Commission Authority; Water, Light and Additional Systems;

(a) The Commission shall have exclusive control of the water and electric light supply in the City of New Castle, and the management and operation of the City water system, ~~and the City light system shall be entirely under its control, direction and supervision,~~ and any other Additional Systems approved by City Council and operated by the Commission, which shall be entirely under its exclusive control, direction, and supervision.

(1) The Commission, in addition to the power and authority which it now has to supply and distribute water within the corporate limits of the City of New Castle, may, in its discretion, supply and distribute water throughout all of that territory included within three miles of the corporate limits of said City.

(2) The Commission shall determine the person or persons, firm or firms, corporation or corporations, to which it shall supply and distribute water throughout said territory included within three miles of the boundary of said corporate limits; shall fix the rates therefor; shall regulate the use of said water; and shall supply the same upon such terms and conditions as may be agreed upon by such person or persons, firm or firms, corporation or corporations, and the Commission.

(3) The Commission shall have and exercise all the power and authority necessary to the accomplishment of said supplying and distributing of water throughout the territory included within three miles of the boundary of said corporate limits as it now has and exercises in the installation, operation and maintenance of its systems for supplying and distributing water in the City of New Castle.

(4) Whenever the Commission shall deem it necessary or expedient to obtain private property either within the limits of the City of New Castle for the purpose of constructing facilities for supplying and distributing water and/or electricity or without such limits to a distance not exceeding three miles for the purpose of constructing facilities for the supplying and distributing of water ~~and, the Commission~~ shall advise the ~~Council of the Mayor and~~ Council of the City of New Castle, in writing, of the location, description and estimated fair value for which such property is deemed necessary or expedient, and upon such approval by resolution of the Council of the City of New Castle, which approval shall not be unreasonably withheld, the said Commission shall be empowered to acquire such property by agreement with the owner thereof or if such agreement cannot be reached, the said property or land may be acquired by condemnation proceedings as prescribed and fully set forth in Section 25 of an Act entitled "An Act Amending, Revising and Consolidating the Charter of the City of New Castle" being Chapter 216 of Volume 27, Laws of Delaware, and all Acts amendatory thereof and supplemental thereto for condemning and taking land for the purpose of laying out, opening, extending or widening of any street, road, lane or alley in the City of New Castle.

(b) The Commission may, in its discretion and with the advance approval of the Council of the City of New Castle, manage and operate, as the sole provider or in conjunction with any person, firm, association, corporation, or entity, one or more Additional Systems within the corporate limits of the City of New Castle. Notwithstanding the foregoing, the Commission's operation of any Additional Systems shall not abridge the rights of the holder of any franchise granted by the Council of the City of New Castle, nor shall any franchise right granted by the City Council to third parties interfere with the rights, duties, obligations, and responsibilities of the Commission as herein provided.

(c) For the purposes set forth in Section 3(a) and Section 3(b) of this Chapter, the Commission shall have the power to enter into contracts on behalf of the City and in the name of the Municipal Corporation. The Commission shall have exclusive charge of the collection of and shall receive revenue due for water and light and any other Council-approved Additional System managed and operated by it, and shall fix the rates for water and light and for goods and/or services furnished by any such Additional System from time to time.

(d) The Commission may appoint one or more supervisors and regulate their duties, and shall provide for such other employees as may from time to time be necessary, and shall fix the salary or pay of all employees.

(e) The Commission shall provide for all supplies and work that may from time to time be necessary, and in general shall have full and exclusive charge of the maintenance and operation of the City water and light system and the City Council-approved Additional Systems managed and operated by it.

(f) The Commission shall have the power to borrow temporarily from time to time on the faith and credit of the City in order to provide for the expenses of maintenance, replacement and operation of the water and light system, as well as any Additional System that the Commission, in its discretion, chooses to manage and operate; but the Commission shall have no power to enlarge or extend the water and light system, plant, mains, lines, or apparatus, or Additional System, except out of surplus earnings, without the authority and approval of the Council of the City first had and obtained.

(g) Notwithstanding anything in this Chapter to the contrary, the Commission, upon unanimous approval of the Commissioners, and following approval by resolution of the Council of the City of New Castle, is authorized and empowered to borrow sums of money through the issuance of revenue bonds or other debt obligations in the name of the Commission in accordance with the following provisions:

(1) The revenue bonds or other debt obligation shall not be backed by the full faith and credit of the City of New Castle.

(2) The revenue bonds or other debt obligations shall be backed by the revenue generated by the Commission.

(3) The Commission shall provide the Council of New Castle and the Mayor of New Castle with ~~thirty~~ ~~(30)~~ 30 days' advance written notice of its intention to issue such revenue bonds or other debt obligations.

(4) The maximum amount of outstanding revenue bonds or other debt obligations issued under this Section shall not exceed the annual gross revenues of the Commission for the year preceding the year of the issuance of such revenue bonds or other debt obligations.

(5) The proceeds from the revenue bonds or other debt obligations shall be used solely for expansion of the existing water and electric systems of the Commission, and the upgrade and maintenance of such systems, and other capital expenditures for real or personal property deemed by the Commissioners as reasonably necessary to the operations of the Commission.

(6) Revenue bonds or debt obligations may be issued in one or more service, shall bear such date or dates, shall mature at such time or times, shall bear interest at such rate or rates, shall be payable at such time or times, at such place or places, shall be in such denominations and shall contain such other provisions as the Commissioners, by unanimous consent, may provide and shall be set forth in such revenue bonds or other debt obligations. Revenue bonds may or may not be coupon bonds and may be registered or otherwise as the Commissioners, by unanimous consent, deem advisable.

(7) The Commissioners shall direct and effect the preparation and sale of said revenue bonds or other debt obligations at such time or times, at such price or prices and upon such terms as the Commissioners, by unanimous consent, deem advisable and all net monies raised from the issuance of such proceed shall be used in accordance with the terms of this Act.

(8) The form of the revenue bonds or other debt obligations shall be as prescribed by the Commissioners and all such bonds shall be signed by a duly authorized commissioner. A facsimile signature may be imprinted on the bonds in lieu of signature of the aforementioned Commissioner.

(9) Bonds shall be exempt from all state, county and municipal taxes.

(10) A statement appearing on the bond that the bonds have been duly authorized shall be deemed and held to be conclusive evidence in favor of the lawful holder of any such bonds that the terms and conditions of this Section have been fully met and complied with.

Section 4. Commission Meetings; Promulgation of Rules and Regulations; Collection of Sums Due

(a) The Commission shall meet at least once every month, and shall have power to make all needful rules and regulations for their meetings and for the regulation of the employees.

(b) The Commission shall have the power to make rules regulating the use and supply of water and light by and to consumers, and the goods and/or services furnished by any Additional System(s).

(c) The Commission shall establish regulations for the payment of bills for water and light, and any Additional System(s), and may cause suit to be brought in the name of the Commission and/or the Municipal Corporation for all bills overdue. All sums due for water shall be a lien upon the property to which such water was furnished in the same ways as the taxes due the City of New Castle.

(d) The Commission shall arrange for the prompt collection of all sums due for water and light, and for services and/or goods furnished by any Additional System(s), and shall have power to make rules for cutting off the service when bills are overdue.

Section 5. Quarterly Statement; Annual Statement and Report

(a) The Commission shall furnish to the Mayor, the Council of the City and the Trustees of the Common, quarterly, a full statement of their receipts and expenses.

(b) The Commission, in December of each year, shall publish an annual statement and report for the benefit of the Citizens of the City of New Castle.

Section 6. Superintendent

Intentionally omitted.

Section 7. Sufficiency of Revenue; Fixed Rental to City; Payment of Expenses Relating to Water and Light Systems

~~(a) In lieu of water and light rental for the water and light supply to the City itself, the Council of the City shall turn over from time to time to the credit of the Commission such sums as may be necessary to meet any deficiency for current bills of the Commission. In July of each year, or oftener in their discretion if the revenue warrants, the Commission shall turn over to the Council of the City such sum in their hands as may not be required to provide for current expenses and operation, which sums shall be used by the Council of the City for the payment of interest on the water and light bonds and for a sinking fund for the payment of said bonds.~~

~~(b) The Council of the City and the Commission may, by mutual agreement if deemed desirable, arrange that the City shall pay a fixed rental to the Commission for the water and light supplied to the City in lieu of the above payments to meet a deficiency.~~

~~(c) The Commission shall aim, in the operation of the water and light systems and in fixing the rates therefor, to produce revenue at least sufficient, when supplemented by fair allowances by the City for the water and light furnished for public purposes, to pay the operating expenses of the system and the interest on the any water and light bonds as well as provide for ordinary maintenance.~~

Section 8. Municipal Services Commission as Agency of the City of New Castle

~~(a) The Commission is intended to be a separate agency of the City created pursuant to 72 Del. Laws c. 116 for the operation of the water and light systems and City Council-approved Additional Systems. All contracts and bills may be in the name of and on behalf of the Commission or in the name of the Municipal Corporation, through the agency of the Commission.~~

Section 9. Removal of Commissioners

~~(a) The Council of the City shall have the power to remove any Commissioner upon proper cause shown, but such removal shall be only after charges made and hearing thereon and by vote of two-thirds of all the members of the Council of the City.~~

Section 10. Expenditures for Alteration or Improvement of Water and Light Systems; Control

(a) The Commission shall have full control and direction of all money borrowed pursuant to Section 3(g) above or borrowed by the City, by bond issue or otherwise, for the improvement or alteration of the City's water and light systems.

(b) All money borrowed pursuant to Section 3(g) above or borrowed by the City, by bond issue or otherwise, for the alteration or improvement of the City's water and light systems, shall be held by the Treasurer of the Commission subject to the direction of the Commission.

Section 11. Rates; Compensation of Commissioners

~~(a) The Commission annually, when making its estimates and budget and fixing the rates for water and electric current, shall fix such rates for water and electric current as will produce an annual sum of at least Three~~

~~Thousand Dollars to provide a sinking fund for the payment of all the water and light bonds of the City when the same shall become due, such fund so raised to be turned over to the Treasurer of the City and held as a sinking fund for the payment of said bonds and used for no other purpose, and such sum shall be annually raised until adequate provision has been made for the payment of all of the water and light bonds at maturity.~~

~~(b) The President of the Commission shall receive an annual salary of Two Thousand Five Hundred Dollars (\$2,500.00) Three Thousand Six Hundred Dollars (\$3,600.00) and each other Commissioner, Commissioner shall receive an annual salary of Two Thousand Four Hundred Dollars (\$2,400.00) Three Thousand Dollars (\$3,000.00) for their services, payable monthly out of the funds of the Commission, and in addition to their necessary expenses in the performance of their duties.~~

Section 12. ~~Discretionary~~ Annual Payments to the City ~~Mayor and Council~~ of New Castle

~~(a) Anything in this Act to the contrary notwithstanding, the Commission is hereby authorized, from time to time and in the Commissioners' sole discretion, to make payments out of surplus earnings to the Mayor and Council of New Castle. The Commission shall pay to the City of New Castle an appropriation of six percent (6%) of the Commission's previous fiscal year's audited annual user charges, whether or not collected (the "MSC Contribution"). Quarterly payments of the MSC Contribution shall be made on or before June 30, September 30, December 31, and March 31 of each year. The City Council shall pay monthly out of the general fund of the City to the Commission for electric services, including street lighting. The electric service shall be charged at a rate equal to the purchase of power rate paid by the Commission. The City of New Castle shall not be charged for water consumption. In the event that the MSC Contribution drops below \$500,000 in any fiscal year (computed on an annual basis), the Commission and the City of New Castle shall meet and discuss in good faith an adjustment to the MSC Contribution for that year.~~

Section 2. This Act shall take effect 30 days after enactment.

Approved July 11, 2016