

CHAPTER 103
FORMERLY
SENATE BILL NO. 52

AN ACT TO AMEND THE CHARTER OF THE CITY OF HARRINGTON RELATING TO BORROWING POWERS

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 Section 16 of the Charter of the City of Harrington by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 16. Borrowing Powers.

16.1. Short-Term Borrowings by City Council Without Voter Approval, Revenue Anticipation Loans. The City Council shall have the power to borrow money on the full faith and credit of the City, without approval of the voters and without regard to the provisions of Section 16.2 or 16.3 of this Charter, such sum or sums not exceeding in the aggregate ~~five hundred thousand dollars (\$500,000.00)~~ a sum equal to five percent (5%) of the total assessed value of all non-tax-exempt real property situated within the bounds of the City of Harrington as such boundaries shall from time to time appear for general purposes when, in the opinion of a majority of the entire City Council, the needs of the City require it; provided, however, that any new borrowings under this Section 16.1 made after the effective date of this act shall, by their terms, be repayable in full within ~~five (5)~~ ten (10) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the City Council duly authorized by Resolution of the City Council and signed by the Mayor and attested by the Clerk of the City Council with the municipal seal affixed. No Council member nor the Mayor shall be personally liable for the payment of any such note or any other evidence of indebtedness because it is signed by him as a Council member or as Mayor, provided that he is so authorized by Resolution of City Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions (including any county or municipal government). Any sum(s) of money borrowed on the full faith and credit of the City shall be paid from the general funds of the City. The aggregate amount of outstanding principal from any such borrowing or borrowings under this § 16.1 shall at no time exceed ~~five hundred thousand dollars (\$500,000.00)~~ a sum equal to five percent (5%) of the total assessed value of all non-tax-exempt real property situated within the bounds of the City of Harrington as such boundaries shall from time to time appear.

16.2. Long-Term Borrowings for Certain Projects Without Voter Approval; Public Hearing and Super-Majority Vote of City Council Required.

16.2.1. Limit on Borrowing and Aggregate Indebtedness without Voter Approval; Super-Majority Vote. Subject to the provisions of this Section 16.2, 1, the City Council shall have the power to borrow money on the full faith and credit of the City for the payment of principal thereof and interest due thereon, without approval of the voters and without regard to the provisions of Section 16.3 of this Charter, such sum or sums not exceeding in the aggregate a sum equal to three and one half percent (3.5%) of the total assessed value of all non-tax-exempt real property situated within the bounds of the City of Harrington as such boundaries shall from time to time appear, for those specific municipal purposes specified in Section 16. 2.3, when, in the opinion of at least five (5) members of the City Council, the needs of the City require it; provided, however, that any new borrowings under Section 16.2 made after the effective date of this Act, shall, by their terms, be repayable in full within thirty (30) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Mayor and Council duly authorized by Resolution adopted by at least five (5) members of the City Council and signed by the Mayor and attested by the Clerk of Council with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the City shall be paid from the general funds of the City.

16.2.2. Procedure: Notice, Hearing. In order to proceed under the power granted in Section 16.2, the City Council shall authorize such borrowing in the following manner:

- (a) The Mayor and Council by Resolution shall give notice to the residents and property

owners of the City that the City Council propose to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose authorized under Section 16.2.3. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other facts relating to the loan which are deemed pertinent by the City Council and in their possession at the time of the passage of the Resolution; and shall fix a time, date, and place for a public hearing on the said resolution.

(b) Notice of Public Hearing on Resolution Authorizing Borrowing Required.

(1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in a newspaper of general circulation in the City not less than ten (10) days, nor more than twenty (20) days, prior to the date set for the public hearing. In addition to the time, date, and place of the public hearing, such notices shall contain the same information as required under Section 16.2.2(a) above.

(2) In addition to publication as herein provided, the City Council shall, not less than ten (10) nor more than twenty (20) days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five (5) public places in the City. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

(c) If, at any time following the public hearing, the City Council determines to proceed with the proposed borrowing, it shall pass a second Resolution, by the affirmative vote of at least five (5) members of the City Council, to proceed with the proposed borrowing.

16.2.3. Municipal Purposes for Which the City Council May Make Long-Term Borrowings Without Voter Approval. The power and authority of the City Council to incur long-term indebtedness on the full faith and credit of the City without voter approval under Section 16.2 shall be limited to the following:

(a) Erecting, enlarging, repairing, or replacing any plant, building, structure, machinery, or equipment for the production, treatment, collection storage, supply, distribution of water, sanitary sewage, or storm waters, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefore.

(b) Laying out, constructing, paving, widening, or extending streets, lanes, alleys, and public ways, curbs, and gutters, including storm sewers along the same, and the condemning or purchasing of lands, easements, or rights-of-way which may be required therefore.

(c) Erecting, enlarging, repairing, or replacing any municipal building including, by way of example, a Town Hall, a Police Department Building, a municipal warehouse, and the condemning or purchasing of lands, easements, or rights-of-way which may be required therefore.

(d) Paying all expenses deemed necessary by the Mayor and Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expense of bond counsel.

16.23. Long-Term Borrowings, Voter Approval Required. In addition to other borrowing powers granted to the City under this Charter or by special act, the City Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the City, or such other security or securities as the City Council shall elect, for the payment of principal thereof and interest due thereon.

16.23.1. Proper Municipal Purpose. By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to: (a) refunding any or all outstanding bonds or other indebtedness of the City at the maturity thereof or in accordance with any callable feature or provision contained therein, (b) erecting, extending, enlarging, maintaining, or repairing any plant, building, machinery, or equipment for the handling, production, manufacture, supply, treatment or distribution of gas, water, electricity, sanitary sewer, or stormwater drainage system, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefore, (c) constructing, paving, laying out, widening, extending, repairing and maintaining streets, lanes, alleys and ways, sidewalks, curbing and/or gutters, including stormwater sewers, along the same, and the condemning or purchasing of lands, easements or rights of ways which may be required therefor, (d) defraying the costs to the City of any other municipal improvement provided for or authorized or implied by the

provisions of this Charter (e) paying all expenses deemed necessary by the City Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

16.23.2. Exempt From Taxation. All bonds or other kinds or forms of certificate or certificates of indebtedness issued by the City pursuant to the provisions of this section, and the interest thereon, shall be exempt from all taxation by the State of Delaware, its agencies, and political subdivisions (including any County or municipal government).

16.23.3. Limit of Aggregate Long-Term Indebtedness. The aggregate of the amount so borrowed together with all other bonded indebtedness for which the full faith and credit of the City of Harrington has been pledged shall not at any time exceed a sum equal to ~~fifteen percent (15%)~~ twenty-five percent (25%) of the total assessed value of all non-tax-exempt real property situated within the bounds of the City of Harrington as such boundaries shall from time to time appear.

16.23.4. Procedure: Notice, Hearing, Election. In order to proceed under the power granted in this section, the City Council shall authorize such borrowing in the following manner:

(a) The City Council shall by resolution, give notice to the residents and property owners of the City that the City Council proposes to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other facts relating to the loan which are deemed pertinent by the City Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution. Where the City Council is proposing to borrow money for several distinct purposes, the resolution shall identify each such purpose and the amount desired to be borrowed as to each.

(b) Notice of Public Hearing on Resolution Authorizing Borrowing Required.

(1) Notice of the time, date, and place of the hearing on the resolution authorizing said borrowing shall be published in a newspaper of general circulation in the City not less than ten (10) days, nor more than twenty (20) days, prior to the date set for the public hearing. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under § 16.23.4(a) above.

(2) In addition to publication as herein provided, the City Council shall, not less than ten (10) days nor more than twenty (20) days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five (5) public places in the City. In the event the publications and/or postings do not appear on the same date, the date of the last publication shall control.

(c) If, at any time following the public hearing, the City Council determines to proceed with the proposed borrowing, it shall pass a second resolution ordering a special election to be held, upon not less than twenty-one (21) nor more than sixty (60) days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the City Council to proceed with the matter in issue; provided however, that the City Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution passed by a majority of the entire Council to cancel the Special Election and abandon the proposed borrowing.

(d) Notice of Special Election Required.

(1) The notice of the time, date, and place of holding the said Special Election shall be printed in a newspaper of general circulation in the City, once a week for three successive weeks prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under § 16.23.4(a).

(2) In addition to such publication as herein provided, the City Council shall, not less than twenty-one (21) days nor more than sixty (60) days before the date set for the election, cause public notice, containing the information set out in subsection (d)(1) above (using date of "posting" for date of "publication"), to be posted in at least three (3) public places in the City. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

(e) At such special election, any person who is entitled to vote in the regular municipal

election if it were held on that day, shall be entitled to one vote.

(For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the regular municipal election).

(f) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

- (1) For the proposed borrowing
- (2) Against the proposed borrowing

In the event the City is proposing to borrow monies for several projects, the foregoing designation shall be set opposite each such project so as to allow the voter to cast his vote for or against each. The voter shall be instructed to mark the box for which he casts his vote.

(g) The Mayor, by and with the advice and consent of the majority of the City Council, shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be opened for a minimum of seven hours. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

(h) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing(s) and shall announce the result thereof. The Board of Special Election shall make a certificate under their hands of the number of votes cast for and against the proposed borrowing(s) and the number of void votes and shall deliver the same to the City Council which said certificate shall be retained by the City Council with the other papers of the City.

(i) If a majority of the votes cast at such special election shall be in favor of any such borrowing(s), the City Council shall proceed with the issuance of the said bonds or certificates of indebtedness; provided, however, that based upon a significant change in the relevant circumstances, the City Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, by resolution passed by a majority of the entire Council, abandon the proposed borrowing.

16.23.5. Form of Bonds. The form of the bonds or certificates of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the City Council after said Special Election.

16.23.6. Public or Private Sale. The bonds may be sold at either public or private sale. If the bonds shall be offered for public sale they shall be sold to the best and most responsible bidder(s) therefore after advertisement in a manner to be prescribed by the City Council, for at least one (1) month before offering the same for sale.

16.23.7. Provision for Payment: Special Tax, Sinking Fund. The City Council shall provide for the payment of interest on and principal of the said bonds or certificates of indebtedness at the maturity or maturities thereof. The said City Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the City or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds and/or principal; and at the Council's discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of this Section; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed a sum equal to five per centum of the total bonded indebtedness. The special tax provided for in this Section 16.23.7 shall be collected from the owners of real estate in the same manner as the other real property taxes levied by the said City Council are collected. Said City Council may also appropriate and set aside for such sinking fund so much of the general funds of the City as it may from time to time think advisable. The sinking fund provided for by this Section 16.23.7 shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

16.23.8. Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the City of Harrington shall be deemed to be pledged for the due payment of the bonds and the interest thereon issued under the provisions of this section when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

16.23.9. Statute of Limitations, 60 Days. No action contesting any proceedings conducted, or action taken, by the City Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section 16. 23 shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the City of Harrington and one which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

(a) That the City Council has determined to borrow a certain sum or sums of money and to issue bonds or certificates of indebtedness therefor;

(b) That the proposal(s) has/have been approved by a majority of those casting votes at a special election in the City called for the purpose of voting for or against the borrowing;

(c) The amount(s) of money to be borrowed;

(d) The purpose(s) for which each amount is to be borrowed;

(e) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring legal action within sixty (60) days from the date of publication of such notice or forever be barred from doing so;

(f) In addition to publication as herein provided, the City Council shall cause a public notice, containing the information set out in subsections (a) through (e) above (using date of "posting") for date of "publication") to be posted in at least three (3) public places in the City. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

Approved July 15, 2013