

MEMORANDUM

TO: Hon. Pete Panepinto, Mayor
Lacy Landrum, Director of Administration
Andre G. Coudrain, City Attorney

FROM: Foley & Judell, L.L.P.

RE: Hammond Charter Amendment – November 5, 2024 Election

DATE: March 1, 2024

We have been asked to assist the City of Hammond (the "City") in calling an election for November 5, 2024, to propose an amendment to the Home Rule Charter (the "Charter") of the City. The City may want to consider additional amendments to the Charter, particularly an amendment to Section 5-08 pertaining to the incurrence of debt by the City. The City should consider the following factors in determining whether or not to proceed with this additional amendment at this time:

1. The City, unlike other municipalities around the State, is currently unable to promptly refinance its outstanding bonds to take advantage of lower interest rates. The lengthy delay in securing voter approval to refinance may result in a lost opportunity to realize savings to City taxpayers.
2. The delay in securing voter approval will impair the City's ability to respond to natural disasters or other emergencies. Many political subdivisions need to borrow money quickly after a natural disaster to cash flow critical repairs and debris removal in anticipation of FEMA reimbursement or other funds.
3. With respect to financing new capital improvements, delays in obtaining voter approval may result in the following:
 - i. Lost opportunity to access Federal or State grants and/or low interest rate loans (such as the LDEQ or LDH revolving loan programs) due to the inability to meet deadlines.
 - ii. Even without any loss regarding grants or low interest rate loans, delays could result in higher borrowing costs as well as higher project costs due to inflation and supply chain issues.
4. The City is already bearing the cost of the election, and the November election date may be less expensive than future election dates as the State of Louisiana will be responsible for 50% of the election costs.

5. Pursuant to Section 7-04 of the Charter, the City may be prohibited from proposing any additional amendments to the Charter for a period of 2 years after the November election.

I. DISCUSSION OF PROPOSED AMENDMENT

A. Current Charter Provisions

The Charter provides relative to the incurrence of debt by the City in various places, namely in Sections 2-16 and 5-08.

Section 2-16 provides that the Council shall have the authority "to incur debt, and issue bonds and other evidences of indebtedness, as is now or hereafter conferred on governing authorities of municipalities by the constitution and general laws of the state . . ." Essentially, this allows the City to incur debt in accordance with general state law, including the Consolidated Local Government Public Finance Act (Part II of Chapter 4 of Subtitle II of Title 39 of the Louisiana Revised Statutes of 1950, as amended). Under current State law, general obligation bonds are required to be approved at an election.

In contrast, Section 5-08 provides that "the City is empowered to incur bonded debt in accordance with this charter and the constitution and statutes of the state, when approved by a majority of the electors voting thereon in an election held for that purpose. No resolution shall be passed calling for a referendum to incur a bonded debt until an engineering and economic feasibility report shall have been made to the council and a summary thereof published in the official journal . . ."

The Attorney General's office rendered opinion La. Atty. Gen. Op. No. 18-0119 on October 7, 2019, to address the contradiction between these sections. This opinion provides that the City must hold an election pursuant to Section 5-08 prior to the incurrence of any type of debt, notwithstanding the broad grant of authority contained within Section 2-16. Thus, bonds to refinance outstanding debt to effect taxpayer savings are required to be approved at an election.

B. State Law Requirements

Under State law, including the Consolidated Local Government Public Finance Act, the only type of indebtedness that requires approval at an election is general obligation bonds which are secured by unlimited *ad valorem* taxes. This applies only to general obligation bonds issued to finance new projects (not to refunding bonds). Other types of indebtedness, such as bonds secured by sales taxes, limited ad valorem taxes, utilities revenues, and excess revenues may be issued without an election (although there is a petition/reverse referendum requirement for utilities revenues bonds). There is no requirement in state law that a feasibility report be prepared and published prior to the issuance of general obligation bonds or any other indebtedness. As such, the Charter is much more restrictive than state law. The nature of these restrictions is detrimental to the City as noted above.

C. Proposed Text of Amendment

In order to clear up the inconsistencies, we would recommend that the amendment make the following changes to Section 5-08:

Section 5-08. – Bonded debt.

The City is empowered to incur bonded debt in accordance with this charter and the constitution and statutes of the state, ~~when approved by a majority of the electors voting thereon in an election held for that purpose. No~~ When voter approval is required, no resolution shall be passed calling for a referendum to incur a bonded debt until an engineering and economic feasibility report shall have been made to the council and a summary thereof published in the official journal at least sixty (60) days prior to the proposed date of the election, unless the council is required to call such an election pursuant to a petition as provided for under the general laws of this state.

II. TIMING OF AMENDMENT, POSSIBLE 2-YEAR RESTRICTION

Since the City is already considering holding an election on November 5, 2024, the City should consider placing the amendment discussed herein on the same ballot, given that:

- i. The City is already bearing the cost of holding an election on November 5, 2024, and the State will share in the costs of the election for the November ballot.
- ii. If the City does not include this amendment on the November 5, 2024, ballot, it may be prohibited from calling another election to amend the Charter for 2 years. Section 7-04 of the Charter provides that "Proposals to amend or replace this charter shall not be submitted more often than every two (2) years . . ." It is unclear if this prohibits the submission of any amendment within a 2-year period, or if it only prohibits the re-submission of an amendment that has previously failed within a 2-year period. In the absence of an opinion as to the interpretation of this Section, it is possible that the submission of any amendment within a 2-year period may be challenged or the results of any such election dismissed.

If the City desires to include this amendment on the November 5, 2024 ballot, the Council must introduce an ordinance proposing the amendment at its March 12, 2024 meeting, and adopt the ordinance and the resolution calling the election at its March 26, 2024 meeting.

We hope this information is helpful, and please let us know if there is any additional information you may need.