City of Salisbury

Memo

To: Mr. John R. Pick, City Administrator

From: J. H. Cawley

Date: April 6, 2005

Re: Debt Limit

The most recent estimate for the total cost of the wastewater treatment plant upgrade and expansion project is $64 million. Of this amount, $ 28 million is to be offset by federal and state grants. The remaining $ 36 million is to be provided by the City. We are fortunate that we are able to borrow these funds through Maryland Water Quality Bonds at very favorable interest rates, however, the amount we would have to borrow, added to our current outstanding debt, will exceed the City's self-imposed debt limit.

At the City's current assessed valuation, our debt limit is $55 million. Our current outstanding debt is $25 million. With the estimated additional debt attributable to the wastewater treatment plant, our total outstanding debt would be $ 58 million, which will exceed our debt limit by $ 3 million.

I recommend that the Council increase the City's debt limit from 3% to 4% of real property valuation, with a corresponding increase in the personal property limit. If this recommendation is adopted, the City's debt limit would increase to $72 million. While this new limit would exceed our new estimated debt amount, it would provide a cushion in the event that the wastewater treatment plant project actually costs more than we currently anticipate or in the event that we find it necessary to issue further debt in the future for other projects.

After this resolution is passed by the Council there will be 50 day waiting period before the resolution goes into effect. Making this change at this time, would allow this waiting period to pass before we begin the process issue the remaining dent for this project. Currently, our plan is to award the bid in June, with construction beginning by August 1st.

Attached, for your information, is a copy of a memo from Lindsey Rader, counsel for the Maryland Water Quality Bonds, which puts an increase in the City's debt limit into perspective and explains the effect it would have on the City's overall financial condition.

If you have any questions, please give me a call.

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MEMORANDUM

TO: John H. Cawley, Finance Director
City of Salisbury

FROM: Lindsey A. Rader

DATE: July 27, 2004

RE: Charter Tax Rate and Debt Limitations

I have been asked to provide advice regarding certain limitations contained in the City's Charter that impact the City's ability to issue debt. The two Charter provisions are Sections SC7-35, which imposes a tax rate limitation, and SC7-48, which imposes a debt limit.

Section SC7-35 provides: "The Mayor and Council of Salisbury shall not tax property for all general purposes *other than servicing bonds* at a rate greater than sixty-eight cents ($0.68) on each one hundred dollars ($100.) of assessed valuation [emphasis added]."

Section SC7-48 provides: "The total bonded indebtedness of the City of Salisbury represented by its bonds payable from its general tax revenues shall at no time exceed an amount which is equal to three (3) percent of the assessed va luation of all property subject to taxation by the City of Salisbury."

I had previously advised you that I was aware of very few Maryland municipal corporations that remain subject to tax rate limitations and/or debt limitations, and that Salisbury was the only Maryland municipal corporation I knew of that is subject to both such limitations. My curiosity was piqued, and so I undertook a quick, unscientific review of the <u>Municipal Charters of Maryland</u> series. By my count, of the 156 Maryland municipal corporations (excluding Baltimore City, which functions more like a county), 13 are subject to a tax rate limitation (and most of those tax rate limitations are similar to Salisbury's in that the rate limitation does not apply to taxes levied to pay debt), 27 are subject to a debt limitation, and five are subject to both a tax rate limitation and a debt limitation.

The five municipal corporations subject to both such limitations, with their 2000 population counts as reflected in the Maryland Municipal League's *Directory of Maryland Municipal Officials 2004*, are: Mardela Springs (population 360), Morningside (population 2,000), New Carrollton (population 12,811), Ridgely (population 1,352) and Riverdale Park (population 6,800). The largest of these has roughly half the population of Salisbury. I am not surprised that municipal corporations significantly smaller than Salisbury may be subject to both such limitations (although I am surprised that a city the size of New Carrollton is under such strictures)--an argument can be made that if the jurisdiction may issue debt seemingly without limits, the per capita tax burden could grow too large.

Section SC7-35 (the "Tax Rate Limitation") poses less of a concern from a bonding standpoint than Section SC7-48 (the "Debt Limitation"). The Tax Rate Limitation expressly provides that the stated rate does not apply for the purpose of servicing bond debt service, which allows the City to pledge its full faith and credit and unlimited taxing power to the payment of its general obligation bonds, notes or other evidences of indebtedness. Nevertheless, if the City's property tax rate is approaching the limit for all purposes, or the City anticipates that it will need to increase the rate above the stated limit in order to accommodate general purposes and general obligation debt service, the City should consider increasing the cap or eliminating it entirely.

I realize that eliminating entirely, or increasing the stated rate of, the Tax Rate Limitation may be politically unpalatable, particularly in light of the voter-led Charter amendment to Wicomico County's Charter imposing a property tax revenue limitation. Clearly, this is an issue about which the citizens are sensitive. If the City does not increase the stated rate of or eliminate the Tax Rate Limitation entirely, the City should be prepared to tie any increase in the tax rate above the stated limit to the payment of debt service, and to document and justify the same for the citizens' benefit.

Increasing or eliminating the Debt Limitation is of more immediate concern. As you know, Ordinance No. 1865 passed in 2002 authorizes the City to borrow up to $28,000,000 from the Maryland Water Quality Financing Administration for various sewer projects; the City "papers" any such loan by issuing a general obligation bond to MWQFA. The City utilized $3,163,361 of such borrowing authority in 2003. At the time, the City certified in the implementing resolution that issuance of debt in such amount did not violate the Debt Limitation. I recall our discussing, however, that the City did not have enough cushion under the cap to issue the remaining $24+ million in debt authorized by Ordinance No. 1865. I understand that the City wishes to issue more debt to MWQFA pursuant to this existing authority later this year or next year. If the Debt Limitation is not increased sufficiently or eliminated entirely, the City will be unable to finance in a timely fashion all of the sewer projects authorized by such Ordinance.

Unless the Debt Limitation is increased or eliminated, it could hamper the City's ability to undertake other needed capital improvements, particularly any that are mandated by federal or state authorities. When the economy is strong, the City may be able to pay for required, needed or desirable improvements on a pay-go basis. In lean years, if the City's ability to borrow is hamstrung by the Debt Limitation, the City may have to reduce citizen services in order to accumulate enough pay-go funds to pay for capital projects that are deemed more important than such services. (The City can borrow funds on a tax-exempt basis to pay for capital improvements, but except in limited circumstances, it cannot issue tax-exempt debt to pay operating expenses.)

Many of the Maryland municipal corporations that are subject to charter debt limits have populations significantly smaller than Salisbury's. More populous subdivisions (over 10,000 people) that are subject to debt limits include Aberdeen, Annapolis, Easton, Elkton, Frederick, Greenbelt, Havre de Grace and Laurel.

If the City wishes to increase or eliminate the Debt Limitation and the suggestion proves politically unpopular, one compromise may be to simultaneously amend Charter Section SC2-16 so that ordinances (but not resolutions) regarding the issuance of bonds are subject to petition to referendum; currently, ordinances and resolutions regarding bond issues are expressly excepted from the referendum provisions of the Charter. By making the enabling ordinance subject to a petition drive, you give the citizens the chance to defeat proposed borrowings for capital projects that they deem unnecessary.

The City would not want to make bond resolutions subject to petition to referendum because, as you will recall, the City historically passes a parameters ordinance that describes a proposed general obligation borrowing, states a maximum principal amount authorized to be borrowed, documents the City's pledge of its full faith and unlimited taxing power to payment of the debt, and authorizes the Mayor and Council to fix the details of the bond issue by resolution. Normally a resolution fixing the details is passed only several weeks prior to the closing. By making bond resolutions subject to petition to referendum the City would hamper its ability to close deals expeditiously and its borrowing costs could be adversely impacted. By way of illustration, borrowing costs could be increased because when the City sells general obligation bonds by competitive bid or private sale to an investment banking firm (such as Legg Mason or Ferris, Baker Watts) that offers the bonds to the public, the purchase price for the bonds typically is fixed by resolution roughly one to three weeks prior to closing. Underwriters in a negotiated sale understand that there are certain conditions that could delay or scuttle a bond closing (which conditions are stated in the purchase contract--such as the IRS declaring bonds of the same nature to be taxable, a banking moratorium, an outbreak of hostilities), but a petition to referendum period is not one of the standard conditions. Nor is waiting out a petition to referendum period a standard condition to a public sale. Consequently, the underwriter would probably price the bonds at higher interest rates because it and its identified investors are taking the risk that the bond issue could be petitioned to referendum. Such a petition to referendum risk may cause some investment banking firms to not bid in a competitive sale or to not pursue a private sale of the City's bonds.

In reviewing the City's Charter I noticed some inconsistencies between Sections SC7-45 and SC7-46 that the City may wish to correct if it decides to undertake other Charter amendments and, particularly, if it anticipates issuing general obligation debt other than pursuant to MWQFA's revolving loan fund program. Charter Section SC7-45 provides that the City may determine to sell its general obligation debt at private sale if the ordinance or resolution authorizing such borrowing so provides, but such Section further provides that the sale of such general obligation debt will be in accordance with Charter Section SC7-46. Section SC7-46 provides that only revenue bonds may be sold at private sale and then only after notice of the proposed sale by mail or advertisement (an unusual provision for private sale authority). The City is able to sell its bonds to MWQFA for water or sewer purposes by private sale because of express authority contained in the Environment Article. However, if the City wishes to borrow money from a local bank (which it would effect by issuing a general obligation bond to the bank) or to negotiate with an investment banking firm to underwrite its bonds, the inconsistencies in such provisions call into question its ability to do so.

Please let me know if I can provide you with further assistance in regard to these matters.

L.A.R.

#74157;58111.001

PAUL D. WILBER
CITY SOLICITOR FOR THE CITY OF SALISBURY
115 Broad Street
Salisbury, Maryland 21801

RESOLUTION NO. 1235

CHARTER AMENDMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALISBURY TO AMEND CHARTER SECTION SC7-48 TO INCREASE THE DEBT LIMIT TO PROVIDE THAT THE TOTAL CITY BONDED INDEBTEDNESS PAYABLE FROM CITY GENERAL TAX REVENUES OUTSTANDING AT THE TIME ANY SUCH BONDS ARE ISSUED SHALL NOT EXCEED AN AMOUNT EQUAL TO FOUR PERCENT OF THE ASSESSED VALUATION OF ALL REAL PROPERTY SUBJECT TO TAXATION BY THE CITY PLUS TEN PERCENT OF THE ASSESSED VALUATION OF ALL PERSONAL, CORPORATE AND UTILITY PERSONAL PROPERTY SUBJECT TO TAXATION BY THE CITY, AND TO EXCLUDE CITY BONDS (OTHER THAN GENERAL OBLIGATION BONDS) ISSUED PURSUANT TO THE TAX INCREMENT FINANCING ACT FROM THE CALCULATION OF SUCH DEBT LIMIT; PROVIDING THAT THIS TITLE IS A FAIR SUMMARY OF SUCH CHARTER AMENDMENTS; AND PROVIDING FOR THE PROCEDURES TO BE FOLLOWED FOR THE EFFECTIVENESS OF THIS CHARTER AMENDMENT RESOLUTION.

WHEREAS, the City Council of the City of Salisbury has determined that it is in the best interest of the citizens of Salisbury that the debt limit be increased and its scope be clarified and limited;

NOW, THEREFORE, be it enacted and ordained by the Salisbury City Council that §SC7-48 Debt Limit be amended to read as follows:

§SC7-48. Debt Limit.

The total bonded indebtedness of the City of Salisbury represented by its bonds payable from its general tax revenues outstanding at the time any such bonds are issued shall not **[shall at no time]** exceed an amount which is equal to four (4) **[three (3)]** percent of the assessed valuation of all real property subject to taxation by the City of Salisbury, plus **[and]** ten (10) **[seven and one half (7 ½)]** percent of the assessed valuation of all personal, corporate and utility personal property subject to taxation by the City of Salisbury. Any bonds issued pursuant to the authority of Article 41, Sections 14-201 through 14-214 of the Annotated Code of Maryland (the Tax Increment Financing Act), as replaced, supplemented or amended, shall not be counted in calculating such debt limit unless such bonds are also issued as general obligation bonds in accordance with such Act.

AND be it further enacted by the City Council that the title of this Resolution shall be deemed a fair summary of the amendments provided for herein for publication and all other purposes.

AND be it further enacted by the City Council that this Resolution shall take effect fifty (50) days after the date of its final passage subject to the right of petition to referendum. The City Clerk, on behalf of the Mayor, is hereby directed to proceed with the posting and publication of this Resolution and the sending of information concerning the charter amendments provided for herein to the Maryland Department of Legislative Services pursuant to the requirements of Article 23A of the Annotated Code of Maryland.

The above Resolution was introduced, read and passed at the regular meeting of the City Council of the City of Salisbury held on this _____ day of _______________, 2005.

____
Brenda J. Colegrove
City Clerk

____
Michael P. Dunn
President of the City Council of the City of Salisbury