

MEMORANDUM

TO: City Council

FROM: Alfred D. Lott, CPM
City Manager

SUBJECT: Charter Amendment Resolution CAR-2-19, Amending Section 58, Authority for Borrowing

DATE: May 30, 2019

In connection with the proposed upcoming general obligation borrowing for the new Bowie Ice Arena, the City's bond counsel considered the provisions of Section 58 of the Charter regarding general obligation bonds and recommended that Section be amended to provide flexibility for general obligation borrowings, even if the amendments are not effective in time for the issuance of such general obligation bonds.

Section 58 of the Charter currently allows the Council to sell general obligation debt either by (i) private negotiated sale or (ii) at public sale after solicitation of competitive bids; however, the version of the Charter as published by the Maryland Department of Legislative Services is missing the word "or" in one place in Section 58(b)(1), while the word "or" is in the correct place in the version of the Charter on the City's website.

Section 58 of the Charter currently requires that for a public sale by solicitation of competitive bids, the City publish the full notice of sale at least once in a newspaper of general circulation in Prince George's County or in a paper having circulation primarily among the investment and financial community. Bond counsel has advised that potential bidders no longer get notice of sale details from such publications. Instead, notices of sale are included in the preliminary official statement posted on the website portal through which electronic bids are submitted.

The proposed Charter Amendment Resolution confirms that City general obligation debt may be sold by private negotiated sale or at public sale after solicitation of competitive bids. The proposed Charter Amendment Resolution gives the Council the option for any general obligation debt sold at public sale by solicitation of competitive bids to determine to publish the full notice of sale, only a summary notice of sale, or to disseminate the notice of sale in any then-customary

manner (without any publication), and specifies that if the Council chooses to publish the full or summary notice of sale, publication may be in a newspaper of general circulation in the City rather than the current authorized publications. The proposed Charter Amendment Resolution also provides (i) that certain details of a general obligation borrowing may be determined or provided for by resolution after the Council first enacts an ordinance specifying certain details, but reserves to the Council the right to determine or provide for all details of a particular financing by ordinance, and (ii) that notice of redemption may be by mail or electronic means. Having the ability to determine or provide for certain details of a general obligation borrowing by resolution will facilitate determining details of a financing and getting to closing because the City will not have to wait for an ordinance to become effective.

RECOMMENDATION:

Staff recommends the City Council amend Section 58 of the Charter (i) to confirm the methods of sale by which general obligation debt may be sold, (ii) to remove the current requirement that when general obligation debt is sold at public sale after solicitation of competitive bids the full notice of sale be published in a newspaper circulating in the County or among the investment and financial community, and (iii) provide flexibility for the method by which general obligation debt is authorized by the Council and flexibility regarding how notices of sale are disseminated. Although under the current schedule, the Charter amendments will not be effective in time to be relied upon for the proposed general obligation bond issue for the new Bowie Ice Arena, such amendments will give the City flexibility for any future general obligation borrowings.

CHARTER AMENDMENT RESOLUTION
OF THE COUNCIL (THE “COUNCIL”) OF THE CITY OF BOWIE, MARYLAND
(THE “CITY”) AMENDING SECTION 58 OF THE CHARTER OF THE CITY OF
BOWIE (THE “CHARTER”) IN ORDER TO: (1) PROVIDE THAT THE COUNCIL
SHALL DETERMINE CERTAIN MATTERS BY ORDINANCE AND MAY
DETERMINE CERTAIN MATTERS BY RESOLUTION PERTAINING TO
GENERAL OBLIGATION DEBT OF THE CITY; (2) CONFIRM THAT GENERAL
OBLIGATION DEBT OF THE CITY MAY BE SOLD BY PRIVATE NEGOTIATED
SALE WITHOUT ADVERTISEMENT OR PUBLICATION OF NOTICE OR SALE
OR AT PUBLIC SALE AFTER SOLICITATION OF COMPETITIVE BIDS; (3)
AUTHORIZE OR PROVIDE FOR THE METHODS BY WHICH GENERAL
OBLIGATION DEBT MAY BE BID FOR IN CONNECTION WITH THE SALE OF
THE SAME BY SOLICITATION OF COMPETITIVE BIDS AT PUBLIC SALE; (4)
PROVIDE FOR THE MANNER IN WHICH ANY NOTICE OF SALE OR
SUMMARY THEREOF MAY BE PUBLISHED AND THAT ANY NOTICE OF SALE
MAY BE MADE AVAILABLE BY METHODS OTHER THAN BY PUBLICATION;
(5) PROVIDE FOR THE MANNER OF GIVING NOTICE OF REDEMPTION; AND
(6) PROVIDE THAT THE POWERS SET FORTH IN SECTION 58 OF THE
CHARTER ARE ADDITIONAL AND SUPPLEMENTAL TO ANY OTHER
GENERAL OBLIGATION BORROWING AUTHORITY APPLICABLE TO THE
CITY; PROVIDING FOR COMPLIANCE WITH CERTAIN PROVISIONS OF THE
ANNOTATED CODE OF MARYLAND AND THE CHARTER REGARDING THE
AMENDMENTS PROVIDED FOR HEREIN; PROVIDING THAT THIS TITLE
CONSTITUTES A FAIR SUMMARY OF THIS CHARTER AMENDMENT
RESOLUTION; AND OTHERWISE GENERALLY RELATING TO THE CHARTER
AMENDMENTS PROVIDED FOR HEREIN.

WHEREAS, pursuant to Md. Code Ann., Local Gov’t. Article §4-301 *et seq.*, the Council (the “Council”) of The City of Bowie, a Maryland municipality (the “City”), has the authority to amend the Charter of the City, in accordance with the procedures set forth therein; and

WHEREAS, the Charter of the City sets forth, in Section 58, “Authority for borrowing”, the right of the City to issue general obligation debt and certain procedures and other parameters regarding general obligation debt of the City; and

WHEREAS, bond counsel to the City has recommended that Section 58 of the Charter of the City be amended to clarify certain matters, to accommodate current common practices for the sale of general obligation debt by public sale at competitive bid, and to provide borrowing flexibility to the City; and

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Bold brackets [] : Indicate matter deleted from existing law

WHEREAS, the Council deems it to be in the best interests of the City and its residents to so amend Section 58 of the Charter of the City; and

WHEREAS, a public hearing has been held on the proposed amendments to Section 58 of the Charter of the City as required by Md. Code Ann., Local Gov't. Article §4-304(a)(2) and Section 98 of the Charter of the City before this Charter Amendment Resolution is considered for adoption.

Section 1: NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie, Maryland, that Section 58, "Authority for borrowing", of the Charter of the City of Bowie, as published in Municipal Charters of Maryland, Volume 1, 2014 Replacement Edition, as amended to date (the "Charter"), is hereby amended to read as follows:

Section 58. Authority for borrowing.

(a) The [city] CITY shall have the power to borrow money for any proper public purpose and to evidence such borrowing by the issue and sale of its general obligation bonds or notes in the manner prescribed in THIS [section] SECTION 58(b).

(b) (1) The City's bonds or notes may be sold for any public purpose by private negotiated sale without advertisement or publication of notice of sale OR at public sale after solicitation of competitive bids[, as determined by the ordinance authorizing the issuance of the bonds or notes].

(2) THE CITY'S BONDS AND NOTES, UNLESS AUTHORIZED AND ISSUED IN ACCORDANCE WITH OTHER APPLICABLE MARYLAND LAW, SHALL BE AUTHORIZED BY AN ORDINANCE THAT SHALL CONTAIN: (A) A STATEMENT OF THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF SUCH OBLIGATIONS TO BE ISSUED; (B) A STATEMENT OF THE PURPOSE OR PURPOSES FOR WHICH THE PROCEEDS OF SUCH OBLIGATIONS ARE TO BE EXPENDED; (C) A PLEDGE OF THE SECURITY FOR SUCH OBLIGATIONS, INCLUDING ANY SOURCE FROM WHICH SUCH OBLIGATIONS WILL BE PAYABLE IN THE FIRST INSTANCE, OR PROVISIONS FOR THE MAKING OF SUCH PLEDGE BY RESOLUTION; AND (D) A REQUIREMENT THAT, SUBJECT TO THE PROVISIONS OF SUBSECTION (C) BELOW, PRIOR TO THE ISSUANCE OF ANY SUCH OBLIGATIONS, THE COUNCIL SHALL ADOPT A RESOLUTION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (B)(3) BELOW.

(3) PRIOR TO ISSUING ANY CITY BONDS OR NOTES, THE COUNCIL SHALL ADOPT A RESOLUTION CONTAINING, DETERMINING OR PROVIDING FOR THE DETERMINATION OF, OR APPROVING OR PROVIDING FOR THE APPROVAL OF: (A) THE DESIGNATION, DATE OF ISSUE, DENOMINATION OR DENOMINATIONS, FORM OR FORMS AND TENOR OF SUCH OBLIGATIONS; (B) THE RATE OR RATES OF INTEREST PAYABLE ON SUCH OBLIGATIONS, WHICH MAY BE FIXED OR VARIABLE, OR THE METHOD OF DETERMINING SUCH INTEREST RATE OR RATES; (C) THE DATE OR DATES AND AMOUNTS OF MATURITY OR PRINCIPAL INSTALLMENT PAYMENTS; (D) THE MANNER

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OF SELLING SUCH OBLIGATIONS, WHICH MAY BE EITHER AT PUBLIC OR PRIVATE SALE; (E) ANY DESIRED PROVISIONS RELATING TO THE REDEMPTION OF SUCH OBLIGATIONS PRIOR TO MATURITY; (F) ANY DOCUMENTS PURSUANT TO WHICH SUCH OBLIGATIONS ARE TO BE ISSUED OR SECURED; AND (G) SUCH OTHER PROVISIONS REGARDING THE TERMS, CONDITIONS, ISSUANCE, SALE, DELIVERY AND SECURITY OF AND FOR SUCH OBLIGATIONS AS THE COUNCIL MAY DETERMINE NECESSARY OR DESIRABLE. BY RESOLUTION THE COUNCIL MAY DELEGATE TO A SPECIFIED OFFICIAL OR OFFICIALS THE AUTHORITY TO APPROVE ANY MATTERS OR MAKE ANY DETERMINATIONS CONTEMPLATED BY THIS SUBSECTION (B)(3). A RESOLUTION ADOPTED PURSUANT TO THIS SUBSECTION (B)(3) MAY BE INTRODUCED AND ADOPTED AT A SINGLE SESSION OF THE COUNCIL.

[(2) (a) Any public sale of the City’s bonds or notes may be held only after one (1) or more insertions of a notice of the sale in either a newspaper of general circulation in Prince George’s County or a publication having a circulation primarily among the investment and financial community.] (4) AS DETERMINED BY OR PROVIDED FOR BY RESOLUTION, THE BONDS OR NOTES MAY BE ISSUED AND SOLD BY PRIVATE NEGOTIATED SALE WITHOUT ADVERTISEMENT OR PUBLICATION OF NOTICE OR SALE OR AT PUBLIC SALE AFTER SOLICITATION OF COMPETITIVE BIDS (WHICH COMPETITIVE BIDS MAY BE DELIVERED BY ELECTRONIC OR FACSIMILE MEANS OR BY ANY OTHER COMMERCIALY REASONABLE MANNER). ANY NOTICE OF SALE MAY BE PUBLISHED IN FULL OR IN SUMMARY FORM IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY OR PRINCE GEORGE’S COUNTY OR IN A PUBLICATION HAVING A CIRCULATION PRIMARILY AMONG THE INVESTMENT AND FINANCIAL COMMUNITY, OR ANY NOTICE OF SALE, RATHER THAN BEING PUBLISHED IN FULL OR SUMMARY FORM, MAY BE MADE AVAILABLE SOLELY VIA THE INTERNET OR BY OTHER ELECTRONIC MEANS, INCLUDING BY BEING POSTED ON A WEBSITE COMMONLY ACCESSIBLE TO BIDDERS FOR MUNICIPAL OBLIGATIONS, AND/OR PROVIDED OR DISSEMINATED IN ANY OTHER COMMERCIALY REASONABLE MANNER. TO THE EXTENT THE CITY DETERMINES TO PUBLISH THE NOTICE OF SALE IN FULL OR SUMMARY FORM, ANY SUCH PUBLICATION NEED ONLY BE MADE ONCE AT LEAST TEN (10) DAYS BEFORE THE INITIAL DATE FIXED FOR SALE.

[(b) The first insertion of the notice of sale shall be published at least ten (10) days before the date fixed for the sale.]

[(3)] (5) [(a)](A) Bonds or notes issued under this [subsection] SECTION 58 may be sold or redeemed for a price or prices which may be at, above, or below the par value of the bonds or notes[, as provided in the authorizing ordinance].

[(b)](B) The [ordinance] RESOLUTION that authorizes the bonds or notes may provide for prior redemption of the bonds or notes AND THE MANNER OF GIVING NOTICE OF ANY SUCH REDEMPTION, INCLUDING BY MAIL OR ELECTRONIC MEANS.

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[(c) Bonds or notes of the City may be issued, sold and delivered on such terms and conditions, including fixed or variable rate or rates of interest or method of determining interest rate or rates, as provided in the authorizing ordinance.]

[(4)] (6) City bonds or notes may be issued for either cash or other variable consideration.

[(5)] (7) The official signatures and seals affixed to any City bonds or notes may be imprinted in facsimile.

[(6)] (8) The City may enter into agreements with agents, banks, fiduciaries, insurers, or others for the purpose of enhancing the marketability of or as security for the bonds or notes and for securing any tender option granted to holders.

(C) THE COUNCIL MAY, AT ITS OPTION, DETERMINE OR PROVIDE FOR THE DETERMINATION OF, OR APPROVE OR PROVIDE FOR THE APPROVAL OF, ANY OF THE MATTERS REFERENCED IN SUBSECTION (B) ABOVE AS BEING DETERMINED BY RESOLUTION BY ORDINANCE INSTEAD OF BY RESOLUTION.

(D) REFERENCES TO BONDS, NOTES OR OBLIGATIONS IN THIS SECTION 58 SHALL BE CONSTRUED TO MEAN GENERAL OBLIGATION BONDS, NOTES OR OTHER EVIDENCES OF INDEBTEDNESS OF THE CITY.

(E) THE POWER CONFERRED ON THE CITY UNDER THIS SECTION 58 SHALL BE DEEMED TO BE ADDITIONAL AND SUPPLEMENTAL TO ANY OTHER GENERAL OBLIGATION BORROWING AUTHORITY APPLICABLE TO THE CITY UNDER MARYLAND LAW, AND THE CITY MAY AUTHORIZE, ISSUE AND SECURE ANY SUCH GENERAL OBLIGATION DEBT IN CONFORMITY WITH THIS SECTION AND/OR ANY OTHER APPLICABLE LAW.

Section 2: BE IT FURTHER RESOLVED that any provision of the Charter which is inconsistent with Section 58 as amended is hereby repealed.

Section 3: BE IT FURTHER RESOLVED that this Charter Amendment Resolution is adopted this _____ day of [May] AUGUST, 2019, and that the amendment to the Charter proposed by this Charter Amendment Resolution shall be and become effective fifty (50) days after its passage by the Council unless petitioned to referendum in accordance with Md. Code Ann., Local Gov't. Article §§4-304(d) and 4-307 within 40 days following its adoption. A complete and exact copy of this Charter Amendment Resolution shall be posted in the City Hall building for forty (40) days following its adoption by the Council and a fair summary of the Charter amendments shall

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be published in a newspaper having general circulation in the City at least four (4) times, at weekly intervals, within the forty (40) days following adoption of this Charter Amendment Resolution.

Section 4: BE IT FURTHER RESOLVED that promptly after this Charter Amendment Resolution becomes effective, either as herein provided or following referendum, the City Manager of the City shall send to the Maryland Department of Legislative Services in accordance with Md. Code Ann., Local Gov't. Article §§4-308 and 4-109, the following information concerning this Charter Amendment Resolution: (i) the complete text of the Charter amendments; (ii) the date of referendum election, if any, held with respect thereto; (iii) the number of votes cast for and against this Charter Amendment Resolution by the Council or in a referendum; and (iv) the effective date of the Charter amendments.

Section 5: BE IT FURTHER RESOLVED that the City Manager of the City be and hereby is specifically instructed to carry out or cause to be carried out the provisions of Sections 3 and 4 of this Charter Amendment Resolution.

Section 6: BE IT FURTHER RESOLVED that the title to this Charter Amendment Resolution is deemed a fair summary hereof for publication and all other purposes.

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INTRODUCED by the Council of the City of Bowie, Maryland at a meeting on _____, 2019.

PASSED by the Council of the City of Bowie, Maryland at a meeting on _____, 2019.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Awilda Hernandez
City Clerk

G. Frederick Robinson
Mayor

**APPROVED AS TO FORM AND
SUFFICIENCY:**

Elissa D. Levan, City Attorney

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