


City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 19, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: CONSIDERATION OF A RESOLUTION EXTENDING THE CORPORATE
EXISTENCE OF THE ALEXANDRIA SANITATION AUTHORITY TO 2050

ISSUE: Ability of the Alexandria Sanitation Authority to finance its capital program.

RECOMMENDATION: Adopt by roll call vote the attached resolution which extends the Alexandria Sanitation Authority's corporate existence from the year 2034 to the year 2050.

DISCUSSION: In order to borrow funds to finance a portion of necessary planned capital improvements to its wastewater treatment facility, the Alexandria Sanitation Authority (ASA) has requested that its corporate existence (i.e., authority to exist) be extended. Currently, ASA's corporate existence expires in 2034. Under Virginia law, ASA's corporate existence is established by Council, and enables ASA to function as a separate and independent body with such abilities as operating sanitary sewer facilities, raising revenues through fees, entering into contracts, and borrowing funds for capital improvements. ASA is also the backup guarantor to the revenue stream which repays the Energy-From-Waste facility revenue bonds. Since ASA is planning to undertake major multi-year capital improvement projects at its wastewater treatment facility, and since these improvements would be financed in part by bonds that have a 30-year term, and since the 30-year term exceeds the current 2034 limit of the ASA Council-approved corporate existence, ASA cannot borrow funds for its capital program unless Council extends ASA's corporate existence. Since it is in the City's interest to have ASA be able to access capital markets to borrow funds to meet its capital needs, it is recommended that ASA's corporate existence be extended to 2050. This will not only give ASA an extension to meet its immediate need to borrow funds with a 30-year term, but will also add an additional eleven years, as ASA will need to borrow additional funds in the coming decade for its planned capital improvements. The year 2050 is recommended as that is ASA's planning horizon date. ASA was created in 1952 with a corporate existence for 50 years to 2002. In 1984 this was extended until 2034. Providing an extension at this time gives ASA sufficient time to be able to finance its upcoming capital improvement plans, as well as equate to its 2050 planning horizon.

FISCAL IMPACT: While there is no direct fiscal impact to the City, extending the life of ASA's corporate existence will enable ASA to finance its planned capital projects over a longer period of time and, therefore, lessen to some degree the impact of these borrowings on ASA rate payers.

ATTACHMENT: Resolution authorizing the extension of ASA's corporate existence

STAFF: Mark Jinks, Deputy City Manager

**RESOLUTION
OF THE COUNCIL OF THE
CITY OF ALEXANDRIA, VIRGINIA**

WHEREAS, on December 20, 1952, the Council of the City of Alexandria, Virginia (the "Council") created the City of Alexandria, Virginia Sanitation Authority, under the Virginia Water and Sewer Authorities Act (the "Act").

WHEREAS, as permitted by the Act, the Authority's term of corporate existence as initially created by the Council was for 50 years.

WHEREAS, the Authority's term of corporate existence was extended for an additional 50 years until September 1, 2034, by action of the Council at a meeting duly called and held on September 15, 1984.

WHEREAS, the Authority typically issues its revenue bonds with terms up to 30 years and expects to issue such bonds again in the near future; accordingly, it is deemed advisable to extend the corporate existence of the Authority once again, to ensure that the Authority's term of corporate existence is greater than the term of its revenue bonds.

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA:

1. The Authority shall have a term of existence as a corporation of 42 years from the date of this Resolution and for such period or periods as may from time to time be further provided by appropriate resolutions of the Council acting pursuant to the Act.
2. This Resolution shall take effect immediately upon its adoption.

Adopted by the Council of the City of Alexandria, Virginia this ____ day of _____, 2008.

COUNCIL OF THE CITY OF ALEXANDRIA

William D. Euille, Mayor

[SEAL]

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Phone: 703.712.5000
Fax: 703.712.5050
www.mcguirewoods.com

Jonathan P. Rak
Direct: 703.712.5411

EXHIBIT NO. 1

24
11-25-08

McGUIREWOODS

jrak@mcguirewoods.com
Direct Fax: 703.712.5231

November 20, 2008

VIA E-MAIL AND FIRST CLASS MAIL

Honorable Mayor and Members of City Council
Alexandria City Hall, Room 2300
301 King Street
Alexandria, Virginia 22314

Re: City of Alexandria, Virginia, Sanitation Authority,
Extension of Corporate Existence

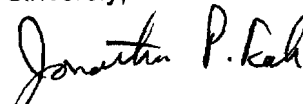
Dear Mayor Euille and Members of Council:

Under §15.2-5114(1) of the Virginia Water and Waste Authorities Act an Authority's corporate existence extends for a term of fifty years and for such further period as may be provided by appropriate resolution of the City.

The corporate existence of the City of Alexandria, Virginia, Sanitation Authority last was extended as of September 15, 1984 for fifty years until September 1, 2034. It is necessary to extend that existence before the Authority issues further debt which will be repayable over a period of thirty years. We request an extension until 2050.

Attached is a draft proposed Resolution for adoption by the City Council which will extend the Authority's corporate life until 2050. We would appreciate your adoption of this Resolution.

Sincerely,


Jonathan P. Rak

JPR:kce
Enclosure

cc: Mark Jinks, Deputy City Manager
Ignacio Pessoa, Esq., City Attorney
Edward Semonian
Karen L. Pallansch

\\6694479.1

RESOLUTION NO. 2304

WHEREAS, on December 20, 1952, the Council of the City of Alexandria, Virginia (the "Council") created the City of Alexandria, Virginia Sanitation Authority, under the Virginia Water and Sewer Authorities Act (the "Act"); and

WHEREAS, as permitted by the Act, the Authority's term of corporate existence as initially created by the Council was for 50 years; and

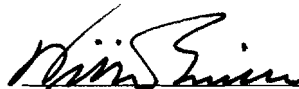
WHEREAS, the Authority's term of corporate existence was extended for an additional 50 years until September 1, 2034, by action of the Council at a meeting duly called and held on September 15, 1984; and

WHEREAS, the Authority typically issues its revenue bonds with terms up to 30 years and expects to issue such bonds again in the near future; accordingly, it is deemed advisable to extend the corporate existence of the Authority once again, to ensure that the Authority's term of corporate existence is greater than the term of its revenue bonds;

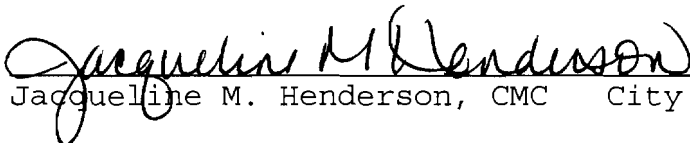
NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA:

1. The Authority shall have a term of existence as a corporation of 42 years from the date of this Resolution and for such period or periods as may from time to time be further provided by appropriate resolutions of the Council acting pursuant to the Act.
2. This Resolution shall take effect immediately upon its adoption.

ADOPTED: November 25, 2008


WILLIAM D. EULLE MAYOR

ATTEST:


Jacqueline M. Henderson, CMC City Clerk

24
11-25-08

FAGELSON, SCHONBERGER, PAYNE & DEICHMEISTER, P. C.

ATTORNEYS AND COUNSELLORS AT LAW

11320 RANDOM HILLS ROAD, SUITE 325

FAIRFAX, VIRGINIA 22030

BERNARD M. FAGELSON**
ROBERT A. PAYNE
ROBERT L. DEICHMEISTER*
JOHN L. FAGELSON
WILLIAM C. THOMAS, JR.

(703) 385-8282
FACSIMILE (703) 385-8761
e-mail fspd@fspd.com

**RETIRED

ALEXANDRIA OFFICE
1775 JAMIESON AVENUE
SUITE 200
ALEXANDRIA, VIRGINIA 22314
(703) 548-8100

HERBERT S. BILLOWITZ (1910-1987)
VICTOR G. TRAPASSO (1935-1989)
EUGENE SCHONBERGER (1925-2008)

* ALSO ADMITTED IN D.C.

December 3, 2008

Ignacio Pessoa, City Attorney
City of Alexandria
301 King Street, Suite 1300
Alexandria, Virginia 22314

Re: Resolution Extending the Corporate Existence of the Alexandria Sanitation
Authority. Docket Item 24, November 25, 2008 City Council Hearing.

Dear Ignacio:

At the captioned hearing you said you understood that the title issue, while not formally withdrawn, had "fallen by the wayside" and was no longer central to the litigation. As the property owners, we were surprised to hear this news. We have not discussed the status of the litigation or our efforts to resolve the title matter with anyone so I have to assume that you were told this information by the representatives of the Alexandria Sanitation Authority. While we have always regarded their challenge to our title as unfounded and merely a delaying tactic we did not know that they were no longer interested in pursuing the matter. For your reference, the actual status of the case is that there was a hearing on the ASA's title related motion on September 24. The court granted the motion in part and denied it in part. The court further authorized the ASA to file a separate action with respect to the property's title. The parties have not agreed upon an order. No order has been entered yet and no further action has been filed.

There is no trial date for the eminent domain case. Unfortunately, even though the ASA may feel that it has accomplished all it intended to by challenging our title and may not be interested in pursuing the matter, as a result of the ASA's statements about our title we are forced, at considerable expense, to resolve their assertions, however unjustified they may be.

Ignacio Pessoa, City Attorney
December 3, 2008
Page 2 of 2

Please call me if you have any questions or if I can provide any further information.

Very truly yours,

Fagelson, Schonberger, Payne and Deichmeister, P.C

A handwritten signature in black ink, appearing to read 'John L. Fagelson', with a stylized flourish at the end.

John L. Fagelson

cc: Mayor and City Council, City of Alexandria
Mr. Charles R. Hooff III