

SPONSOR: Sen. Lopez & Rep. Smyk

151ST GENERAL ASSEMBLY
SENATE/HOUSE BILL NO.

AN ACT TO AMEND THE CHARTER OF THE TOWN OF MILTON.

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 2 of the Charter of The Town of Milton by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 2. Territorial Limits

The boundaries and limits of the Town of Milton are hereby established and declared to be as set forth in the revised Town Map dated ~~October 3, 2016~~ 2021, which is included as Appendix A and of record in the Recorder of Deeds Office for Sussex County, presently existing and as hereafter amended.

The Mayor and Town Council may, at any time hereafter, cause a survey and plot to be made of the said boundaries and may cause suitable markers to be installed at corners of offset, and the said plot, when made and approved by the Mayor and Town Council, shall be recorded in the Office of the Recorder of Deeds in and for Sussex County, State of Delaware, and the same, or the record thereof, or a duly certified copy of said record shall be evidence in all courts of law and equity in the State.

Section 2. Amend Section 3 of the Charter of The Town of Milton by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 3. Annexation of Territory

In the event it becomes feasible, or necessary in the future, for The Town of Milton to enlarge its then existing limits and territory, such annexations accomplished pursuant to the following procedures shall be lawful:

- (a) Each and every property owner seeking annexation of territory contiguous to the then existing corporate limits and territory of the Town of Milton, by written Petition with the signature of each such Petitioner duly acknowledged, shall request the Mayor and Town Council to annex that certain territory in which they own property.
- (b) The Petition shall include a description of the territory requested to be annexed, a current survey, and the reasons for the requested annexation. If the petition or annexation agreement is ~~requiring a higher density than~~

~~an R-1 a conceptual site plan, is required~~ requesting a zoning classification other than R-1, a concept plan is required. Further, the applicant or applicants shall notify all residents within 200 feet of any boundary of the territory for which the applicant is seeking annexation at the applicant's expense, and provide copies of such notification to the Town Manager or designee.

(c) The Town Manager or designee having verified the notifications, the Mayor of the Town of Milton shall appoint a three (3) member Special Review Committee to investigate the possibility of annexation and report back to the Mayor and Town Council in no more than ~~one hundred twenty (120)~~ ninety (90) days, unless evidence is presented that indicates misinformation or possible criminal intent. In that case the Mayor and Town Council may extend the reporting time for a fixed period to fully investigate the allegation(s). Prior to beginning work on the report, the members of the Special Review Committee will have been voted upon and approved by a majority of the Mayor and Town Council. The Special Review Committee shall consist of two (2) members of the current Town Council and one (1) member of the current Planning and Zoning Commission, none of whose terms shall expire for the expected duration of the business for which the Special Review Committee shall have been appointed.

(d) ~~To finalize each of the Mayor's appointments to the Special Review Committee, each appointed member must first disclose to the State Public Integrity Commission~~ Prior to potential appointment, each potential member must first disclose to the Mayor or the Town of Milton Integrity Commission, if such Commission exists within the Town, in writing, any real or potential conflicts of interest that might affect their own objective consideration of the petition request, including items that might suggest, or provide the appearance of, impropriety in their serving on the Special Review Committee for an annexation petition. This requirement is to include conflicts, or potential conflicts as to the property, the property owners, financial or associated business interests, or any other official action or activity, involving the property. This information will be in addition to filling out an Ethics Form, established by the Mayor and Town Council. Such conflicts or appearances of conflict shall not automatically disqualify potential members from serving on the Special Review Committee, but must be fully disclosed, in writing, ~~for the consideration of the State Public Integrity Commission or Town of Milton Integrity Commission, if such Commission exists within the Town.~~

(e) Upon the majority vote of the Mayor and Town Council approving each appointee to the Special Review Committee, the new Committee is to begin work immediately to prepare a written report of its findings within ~~one hundred twenty (120)~~ ninety (90) days, unless this period is extended for due cause.

(f) The assessment by the Special Review Committee will consider the positive and negative impacts on the capacities and qualities of the Town of Milton's town systems and services, the impact on Milton taxpayers, and other elements, as determined necessary by the Mayor and Town Council in consultation with the Town Manager or designee. By a 2/3rds vote approval by the Mayor and Town Council of the majority present, the Mayor and Town Council will also determine if a cost/benefit analysis is to be prepared so as to further identify the advantages and disadvantages to the Town of Milton with regard to the annexation. The Special Review Committee of the Council may utilize the staff of the Town of Milton to assist in the conduct of its ~~one hundred twenty (120)~~ ninety (90) day investigation as to the annexation advantages and disadvantages. The report will include a listing of the advantages and disadvantages of the annexation petition. Before, or at the end of the ~~one hundred twenty (120)~~ ninety (90) day period, the Special Review Committee will report back to the Mayor and Town Council, and include the Special Review Committee's conclusions as to the advantages and disadvantages to the Town of Milton of the annexation petition, the interest of the Town of Milton being the sole concern of the Special Review Committee. All meetings of the Special Review Committee shall be in ~~public with notice required by FOIA act (compliance with the Freedom of Information Act)~~ Act.

(g) Upon receipt of the report, the Mayor and Town Council will vote to accept the report, reject the report, or refer it to the Special Review Committee to accommodate new information. If referred to the Special Review Committee, the report must be resubmitted to the Mayor and Town Council by the Special Review Committee at its next regularly scheduled meeting and a vote must then be taken. If referred to the Special Review Committee, the Mayor and Town Council must first vote to extend the due date of the report from ~~one hundred twenty (120)~~ ninety (90) days to the next regularly scheduled meeting. If the report to the Mayor and Town Council on the annexation determines that the proposed annexation is advantageous to the Town of Milton, the Mayor and Town Council shall vote on the recommendation. If the Mayor and Town Council accept the report, then they shall vote to refer the petition to the Planning and Zoning Commission at the Commission's next duly noticed meeting. Referral of the annexation petition requires a simple majority vote of the Mayor and Town Council. If the Mayor and Town Council reject the report, refer to subsection (h) of this Section.

(h) In the event that the Special Review Committee concludes that the proposed annexation is disadvantageous to the Town of Milton, or if the Mayor and Town Council reject a report from the Special Review ~~Committee~~ Committee that determined the proposed annexation is advantageous to the Town, the applicant(s) for annexation must wait ~~365 days~~ six (6) months from the date of the presentation to the Mayor and Town Council by the Special Review Committee before again petitioning the Mayor and Town Council. Each and all the procedures pertaining to an annexation procedure, as provided, are again applicable and shall be repeated. However, the aforementioned 6-month waiting period shall not apply to a substantially different Petition.

(i) Upon receipt of the Mayor and Town Council's referral of the annexation petition to the Planning and Zoning Commission, said Commission will consider and discuss the annexation request at its next duly noticed meeting and shall review the petition and conceptual site plan (if required), including the zoning classification (s) requested by the petitioner. After not more than sixty (60) days the Planning and Zoning Commission will make its recommendation on zoning classification[s] and transmit that recommendation(s) and their comments on the annexation petition and the conceptual site plan (if required), in writing, back to the Mayor and Town Council.

(j) At its next duly noticed meeting, following the Mayor and Town Council's receipt of Planning and Zoning's report on the annexation request, conceptual site plan (if required) and recommendation(s) for the zoning classifications, the Mayor and Town Council will schedule a public hearing on the annexation petition, such hearing to be held not more than thirty (30) days ~~after its next scheduled~~ from said meeting. Following the public hearing, the Mayor and Town Council shall, within thirty (30) ~~days: days exercise one of the following options~~ (1) take a final vote on whether or not to approve the annexation request, in which case the vote to annex must pass by the affirmative vote of two-thirds (2/3) of all the members of the Mayor and Town Council present and voting; or (2) vote by simple majority, to hold a Town of Milton town-wide referendum on the annexation petition. The Mayor and Town Council reserve the right to add conditions to the terms of annexation, by simple majority vote, prior to their final vote on the annexation petition. If the Mayor and Town Council vote to accept the annexation petition, implementation of this decision must wait thirty (30) days, during which the citizenry of Milton have up to thirty (30) days to file a petition with the Town Manager or designee requesting that a referendum be held on the Town Council's decision to annex. This petition shall include over 10% of Milton's registered voters ~~able to vote in a referendum~~, and the referendum shall be held

within forty-five (45) days following the filing of the petition for referendum with the Milton Town Manager or designee.

(k) If a referendum on a petition for annexation is to be held, the Mayor and Town Council shall instruct the Town Manager or designee of Milton to schedule a special public referendum on the annexation petition. If the Mayor and Town Council vote in favor of a referendum, the Mayor and Town Council will order that a public referendum vote be scheduled no later than forty-five (45) days thereafter, and that a ~~Resolution~~ the Petition for annexation must be passed by a majority vote of the citizens and property owners of the Town of Milton who voted, and results of the referendum vote will be binding.

(l) At this and all ~~Special Referendum(s)~~ special referenda, every non-resident property owner, whether an individual, partnership, or a ~~corporation~~ an artificial entity, in The Town of Milton shall have one (1) vote. Resident and non-resident property owner(s) whose property is exempt from taxation or is not assessed for taxation shall not be entitled to vote. Every resident citizen of The Town of Milton over the age of eighteen (18) years whether a property owner(s) or not shall have one (1) vote. The books and records of The Town of Milton in the case of non-resident property owners, and a copy of the required personal identification in the case of resident citizens of the Town, shall be conclusive evidence of the right of such property owners and citizens to vote at the ~~Special~~ special referendum. The Board of Election of the Town of Milton shall supervise any special ~~referendums~~ referenda held under this ~~provision~~ Charter.

(m) The notice of the time and place of the said ~~Special Referendum~~ special referendum shall be printed, within fifteen (15) days immediately following the vote or petition to hold a referendum, in at least one (1) newspaper having a general circulation in the Town of Milton, and posted in four (4) public places, including the Town bulletin board and posted on the Town of Milton website, at least fifteen (15) days prior to the date set for the said ~~Special Referendum~~ special referendum.

(n) Following the thirty (30) day hold period to accommodate the filing of a petition, if no petition is filed, and if a favorable vote for annexation shall have been cast, the Mayor and Town Council shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds, in and for Sussex County, but in no event shall said recordation be completed more than one-hundred twenty (120) days following the date of the final favorable Mayor and Town Council vote or in the case of a ~~Special Referendum~~ special referendum no more than one-hundred twenty (120) days after said ~~Special Referendum~~ special

referendum. The territory considered for annexation shall be considered to be a part of The Town of Milton from the time of recordation. The failure to record the description or the plot within the specified time will cause the annexation petition to be tabled. Failure to achieve recordation in the one-hundred twenty (120) day period requires the Mayor and Town Council to vote again on the annexation petition, whether or not the Mayor or Town Council, or qualified voters of Milton in a referendum, have voted on the annexation petition. ~~(This provision is to allow accommodation of an investigation of allegations of misrepresentation and/or fraud presented to the Mayor and Town Council in the intervening one hundred twenty (120) day interim period. This provision shall not be construed to require double recording of documents at the Office of Recorder of Deeds, in and for Sussex County.)~~

(o) All territories proposed to be annexed including those territories as defined by Title 22 of the Delaware Code ~~Title 22~~ as exempt from taxation, or which are not assessed on the books on the Board of Assessment of Sussex County, shall also be required to follow all the processes and procedures required for annexations to the Town of Milton, the Mayor and Town Council and the Milton Planning and Zoning Commission must proceed in the same manner as required of any annexation petition.

Section 3. Amend Section 7(h) of the Charter of The Town of Milton by making deletions as shown by strike through and insertions as shown by underline as follows:

(h) Registration for municipal elections shall be as follows:

(1) Every applicant for registration shall be a qualified voter if such applicant is all of the following:

(A) A United States Citizen who shall have attained the age of eighteen (18) on the day of the election next succeeding the applicant's registration;

(B) A bona fide primary resident of the Town for at least 30 days on the day of the election next succeeding the applicant's registration;

(C) Not adjudged mentally incompetent in a judicial guardianship or equivalent proceeding;

(D) Not incapable of voting by reason of violating § 3 or § 7 of Article V of the Constitution of Delaware;

(E) Not incarcerated for conviction of a felony under the laws of Delaware or any other state or local jurisdiction, the United States, or the District of Columbia.

(2) The Identification for registration shall be one (1) or more of the following items that individually or together show the identity and address of the person:

(A) A current State of Delaware drivers' license or ID Card bearing an address within the territorial limits of the Town of Milton;

(B) A uniformed services ID card;

(C) Another current photo ID issued by the State of Delaware, U.S. Government, the voter's employer, high school or higher education institution;

(D) A current utility bill, bank statement, credit card statement, a paycheck or pay advice, or another type of bill or statement;

(E) A lease or sales agreement; or

(F) Any other document that a person can reasonably and commonly accept as proof of identity and address.

(3) By simple majority vote of the Mayor and Town Council, the Town may elect to administer and conduct registration by agreement with and pursuant to regulations promulgated by the Department of Elections for Sussex County.

(4) If voting in person on Election Day, one must provide identification in accordance with Title 15, § 7554 of the Delaware Code.

Section 4. Amend Section 14 of the Charter of The Town of Milton by inserting a new subsection (c) by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) Notwithstanding the foregoing provisions of this Section 14 and without complying with the competitive bidding procedures described in this Section 14, the Mayor and the Town Council may enter into any contract necessary or desired in connection with a special development district or tax increment financing district created or designated by the Mayor and the Town Council pursuant to Section 29(41) of this Charter, except a contract in which the Mayor and the Town Council is directly contracting for the procurement of the labor or material for public improvements for the benefit of such district, provided that the foregoing exception shall not apply to development, funding or similar type contracts between the Mayor and the Town Council and an owner of real property in such district when the contract is generally for the transfer by the owner to the Town of Milton of the work performed and the cost of labor or material provided by such owner for the benefit of such district.

Section 5. Amend Section 27 of the Charter of The Town of Milton by inserting a new subsection (j) by making deletions as shown by strike through and insertions as shown by underline as follows:

(j) The provisions of this Section 27 shall apply to all special ad valorem taxes and special taxes levied by the Mayor and the Town Council pursuant to Section 29(41) of this Charter, provided that all references in this Section 27 to an Annual Tax List shall, for all purposes relating to such special ad valorem taxes and special taxes, be deemed to refer to the tax list showing the amounts of special ad valorem taxes or special taxes levied against the real property within a special development district.

Section 6. Amend Section 29(8) of the Charter of The Town of Milton by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 29. Enumeration of Powers

Not by way of limitation upon the power vested in the Mayor and Town Council to exercise all powers delegated by this Charter to the municipal corporation or to the Mayor and Town Council except as may expressly appear herein to the contrary, but, rather by way of enumeration and for purposes of clarity, the Mayor and Town Council are vested by this Charter with the following powers, to be exercised by the Mayor and Town Council in the interest of good governance, and the safety, health and public welfare of the Town, its inhabitants and affairs, that is to say:

...

(8) To provide an ample supply of potable water for the Town and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property or rights used in or about the collection, storage purification, conveyance, or distribution or sale of water; to regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town; to furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; to define and protect source water protection and recharge areas, and to contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the Town itself. The powers under this paragraph are subject to the following:

(A) Prior to contracting for any additive to the Town of Milton drinking water supply, the Mayor and Town Council must have a written recommendation from the appropriate state regulatory authority, the findings

of such recommendation to be published in at least one (1) newspaper of general circulation in the Town of Milton and on the Town website. In addition, such written recommendation shall be duly noticed as an agenda item at the next meeting of the Mayor and Town Council. In addition, the Mayor and Town Council may hold a public hearing on such written recommendation for town citizens.

(B) Should, by a 2/3 majority of its members, the Mayor and Town Council determine it necessary to sell, exchange, interconnect, or dispose of all or any part of the Town's potable water system, such action shall then be subject to a special referendum vote within sixty (60) days. The proposed sale, exchange, interconnection, or disposal must be passed by a majority vote of the citizens and property owners of the Town of Milton who voted, and results of the referendum vote will be binding.

Section 7. Amend Section 29 of the Charter of The Town of Milton by inserting a new subsection (41) by making deletions as shown by strike through and insertions as shown by underline as follows:

(41)(A) In addition to all other powers the Mayor and the Town Council may have, and notwithstanding any limitation of law, the Mayor and the Town Council shall have all powers and may undertake all actions for the purposes set forth in, and in accordance with Title 22 of the Delaware Code, Chapter 17, relating to the Municipal Tax Increment Financing Act, and Chapter 18 relating to Special Development Districts.

(B) Bonds issued under this Section 29(41) are nonrecourse to property owners who purchase property in a special development district and a tax increment financing district created under Chapters 17 and 18 of Title 22 of the Delaware Code. Property owners who purchase property in these districts shall only be responsible for the payment of ad valorem real property taxes and special taxes levied by the Mayor and the Town Council pursuant to Chapters 17 and 18 of Title 22 of the Delaware Code.

(C) All provisions of this Section 29, Section 33 of this Charter, and any other section of this Charter, limiting the amounts of indebtedness to be incurred or taxes to be levied by the Mayor and the Town Council shall not apply to any indebtedness incurred or any special ad valorem taxes, special taxes or ad valorem taxes levied pursuant to or in connection with this subsection (41) of Section 29.

Section 8. Amend Section 33(a) of the Charter of The Town of Milton by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) As opposed to the authority pursuant to Section 29(38) or Section 29(41), the Mayor and Town Council may borrow money and issue bonds or certificates of indebtedness to secure the repayment thereof on the faith and credit of the Town of Milton to provide funds for the erection, extension, enlargement, purchase or the repair of any plant, machinery, appliances, or equipment for the supply, or the manufacture and distribution of electricity or gas for light, heat or power purposes; for the furnishing of water to the public, for the construction, repair and improvements of highways, streets or lanes or the paving, curbing or erection of gutters and curbs along the same; for the purchase of real estate for any municipal purpose; for the construction or repair of sewage disposal equipment; or to defray the cost or the share of the Town of the costs of any permanent municipal improvements; provided however, that the borrowing of money therefore shall have been authorized for the Mayor and Town Council in the manner following;

Section 9. Amend Section 33 of the Charter of The Town of Milton by inserting a new subsection (b) making deletions as shown by strike through and insertions as shown by underline as follows:

Section 33. Power to Borrow Money and Issue Bonds

...

(b) Notwithstanding subsection (a) of this Section, upon the Town receiving notice of being granted 100% principal forgiveness from a Federal, State, or Local government funding source, a referendum vote shall not be required for any municipal project under this Section. The Town Manager or designee shall proceed with the aforementioned Resolutions and public hearing on the project. Should the Town be required to expend any funds on the project over the principal forgiveness value, the amount of expenditure and source of payment shall be detailed in the Resolutions.

Section 10. This Act shall take effect upon its enactment into law.

Section 11. If any provision of this Act or the application thereof to any person at circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or applications, and to that end the provisions of this Act are declared severable.

SYNOPSIS

This Act amends the Charter of The Town of Milton. Specifically, the Act updates the referenced Town Map. The Act revises the annexation process for the Town. The Act authorizes the Town Council to contract with the Sussex County Department of Elections for voter registration. The Act creates parameters for any proposed sale,

exchange, interconnection, or disposal of the Town's water system. The Act provides an exception for the need to hold a referendum if the government funding source is providing 100% principal forgiveness on the loan for a municipal project. This Act also allows the Mayor and the Town Council of The Town of Milton to: (i) exercise the powers given other municipalities as set out in the Municipal Tax Increment Financing Act and the Special Development District Act, (ii) enter into certain contracts without competitive bidding in connection with municipal tax increment financing and special development districts, (iii) collect special ad valorem taxes and special taxes related to the municipal development districts, and (iv) levy special ad valorem taxes, special taxes, and ad valorem taxes in amounts it deems necessary for any municipal tax increment financing and any municipal development districts.