



Attorney-Client Privileged
Confidential
Attorney Work Product

MEMORANDUM

December 11, 2018

TO: Camp Hill Borough Council

FROM: E. Lee Stinnett II
Isaac P. Wakefield

RE: Forming an Authority Pursuant to the Municipality Authorities Act

I. SCOPE AND PURPOSE

The purpose of this memorandum is to outline the steps that will be taken toward forming an authority within Camp Hill Borough and to inform Camp Hill Borough Council members of the process Salzmann Hughes, P.C. will undertake on its behalf to form the Authority.

II. ANALYSIS

A. Authority to Provide for Stormwater Management Planning

The General Assembly recently amended Pennsylvania’s Municipality Authorities Act, 53 Pa.C.S. §§ 5601 – 5623 (the “MAA”), to empower authorities to engage in stormwater planning, management, and implementation.¹ Salzmann Hughes, P.C. has assisted several municipalities and municipal authorities in exercising this power now granted under the MAA. With respect to forming a new authority, the incorporating body must understand the general process for accomplishing incorporation.

¹ See 53 Pa.C.S. § 5607(a)(18).

B. Creating the Authority

In forming an authority, municipalities must closely adhere to certain statutory requirements.

i. Ordinance of Intent

Where a municipality wishes to organize² a new authority, including a sanitary sewer and stormwater authority, the MAA requires that the governing body of the municipality (i.e., Borough Council) first adopt an ordinance signifying its intent to do so.³ The Borough must hold a public hearing prior to adopting the ordinance. Thirty days' notice of the hearing must be given by publishing the same at least once in the legal periodical of the county in which the authority will be organized and in a newspaper in general circulation in that county. Salzmans Hughes, P.C. will prepare the ordinance and will arrange for the required publication in cooperation with the Borough.

If, after notice and the hearing, the Borough adopts the ordinance, the Borough must provide notice of the ordinance by publishing the same at least once in the legal periodical of the county in which the authority will be organized and in a newspaper in general circulation in that county.⁴ The contents of this notice are statutorily specified in 53 Pa.C.S. § 5603(b) and Salzmans Hughes, P.C. will assist in preparing and publishing the notice in cooperation with the Borough. Among other things, the notice must state that on a date certain, not less than three days after publication of this notice, articles of incorporation of the proposed authority shall be filed with the Secretary of the Commonwealth.

² Note that the formation process differs slightly where an existing authority amends its articles of incorporation.

³ See 53 Pa.C.S. § 5603(a).

⁴ See 53 Pa.C.S. § 5603(b).

ii. Articles of Incorporation

Before the date specified in the notice referred to above, the Borough must file articles of incorporation with the Secretary of the Commonwealth and the Borough's proper officers must execute the articles of incorporation under seal. The Borough must provide proof that the notice was published. The articles of incorporation must include certain elements specified in 53 Pa.C.S. § 5603(c), including the "names, addresses and term of office of the first members of the board of the authority."⁵ Because the initial authority board members will be identified in the articles of incorporation, Borough Council should immediately begin the process of identifying members to serve on the new authority's board. This decision is a prerequisite to completing and filing the articles of incorporation.

Salzmann Hughes, P.C. will prepare and file the articles of incorporation in compliance with the statutory requirements, working closely with Borough Council and appropriate Borough staff. The Secretary of the Commonwealth, provided the articles of incorporation comply with the law, will endorse his approval of them and will file the articles. The Secretary will then issue a certificate of incorporation, upon which issuance the corporate existence of the authority begins.⁶

iii. Election and Certification of Officers

As explained above, because the articles of incorporation must identify the names, addresses, and terms of office for the first members of the authority's board, Borough Council must appoint individuals to serve on the authority's board. The authority's board will govern the authority and exercise the authority's powers under the MAA. The Borough's authority's board must consist of at least five members.⁷ The board members' terms will commence on the effective

⁵ 53 Pa.C.S. § 5603(c)(5).

⁶ 53 Pa.C.S. § 5603(e).

⁷ 53 Pa.C.S. § 5610(a)(1).

date of the appointment and the terms are staggered: one member serves for one year, one for two years, one for three years, one for four years, and one for five years.⁸ Terms expire on the first Monday in January, and Borough Council would then make another appointment to the next five-year term.

To be eligible for appointment to the authority's board, an individual must be "a taxpayer in, maintain a business in or be a citizen of the municipality by which he is appointed or be a taxpayer in, maintain a business in or be a citizen of a municipality into which one or more of the projects of the authority extends or is to extend or to which one or more projects has been or is to be leased."⁹ A majority of the board's members must, however, be citizens of the municipality incorporating the authority.¹⁰ Importantly, once the authority has been organized and its officers are elected, the authority's secretary shall certify to the Secretary of the Commonwealth the names and addresses of the officers and shall identify the authority's principal office.¹¹

iv. Adoption of Rates, Rules & Regulations of Authority

Finally, as part and parcel of assisting municipalities in forming authorities or in working with existing authorities to amend their articles of incorporation, Salzmans Hughes, P.C. generally recommends adopting a set of Rates, Rules & Regulations for the authority. Along with the appropriate rate resolution and any technical guidance documents that the authority may adopt, a comprehensive set of Rates, Rules & Regulations offers concrete guidance to ratepayers and all interested parties regarding the authority's operation, policies, and procedures. Salzmans Hughes, P.C. regularly prepares such Rates, Rules & Regulations by working closely with the authority to

⁸ *Id.*

⁹ 53 Pa.C.S. § 5610(b)(1).

¹⁰ *See id.* The summary contained in this memorandum is limited to discussing appointment. The Borough or, ultimately, the authority board should consult the MAA for additional information regarding the board's operation.

¹¹ 53 Pa.C.S. § 5603(f).

ensure that all required and desired terms are incorporated therein. Additional agreements between the Borough and the Authority will also need to be crafted. Among these are Management Agreements and Asset Transfer Agreements. A Management Agreement governs the relationship between the Borough and the Authority for services provided by the Borough on behalf of the Authority. For instance, the Authority may rely on the Borough for billing and collections, operation and maintenance of the sanitary sewer and stormwater system, and equipment use. The Management Agreement would provide the details of this arrangement, including reimbursement for expenses and wages.

III. CONCLUSION

The foregoing offers a brief synopsis of the various components of forming the Borough's authority and generally outlines the tasks that Salzmann Hughes, P.C. will accomplish in assisting with that endeavor. Salzmann Hughes, P.C. will be glad to answer more specific or in-depth questions regarding any requirement of the MAA or other law related to the formation of the authority.