Legislation Details (With Text)

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Title: To authorize the issuance of public utility revenue bonds of the City of Richmond in the maximum principal amount of $87,191,049 to finance the cost of capital improvement projects of the gas, water and wastewater utilities and public utilities buildings and facilities for the following purposes and uses: enlargement, extension, repair, replacement, improvement and equipping of the gas plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the waterworks plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the wastewater plant and intercepting lines; construction, reconstruction, repair, replacement, and improvement of sanitary and storm water sewers, pumping stations, drains and culverts; construction, reconstruction, repair, replacement, improvement and equipping of public utility buildings and facilities therefor, including but not limited to the stores division; and acquisition of real property and real property rights (including without limitation easements and rights-of-way) therefor as appropriate; to authorize the Director of Finance, with the approval of the Chief Administrative Officer, for and on behalf of the City, to sell such bonds for such capital improvement projects; to provide for the form, details and payment of such bonds; to approve the form of supplemental indenture of trust; to authorize the issuance of notes of the City in anticipation of the issuance of such bonds; and to authorize the issuance of taxable bonds, for the same purposes and uses, in the same maximum principal amount and payable over the same period as such public utility revenue bonds.

Sponsors: Mayor Stoney

Indexes:

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5/13/2019	1	City Council	adopted	Pass
5/6/2019	1	City Council	continued	
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4/22/2019	1	City Council	continued	
3/6/2019	1	City Council	introduced and referred	

To authorize the issuance of public utility revenue bonds of the City of Richmond in the maximum principal amount of $87,191,049 to finance the cost of capital improvement projects of the gas, water and wastewater utilities and public utilities buildings and facilities for the following purposes and uses: enlargement, extension, repair, replacement, improvement and equipping of the gas plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the waterworks plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the wastewater plant and intercepting lines; construction, reconstruction, repair, replacement, and improvement of sanitary and storm water sewers, pumping stations, drains and culverts; construction, reconstruction, repair, replacement, improvement and equipping of public utility buildings and facilities therefor, including but not limited to the stores division; and acquisition of real property and real property rights (including without limitation easements and rights-of-way) therefor as appropriate; to authorize the Director of Finance, with the approval of the Chief Administrative Officer, for and on behalf of the City, to sell such bonds for such capital

improvement projects; to provide for the form, details and payment of such bonds; to approve the form of supplemental indenture of trust; to authorize the issuance of notes of the City in anticipation of the issuance of such bonds; and to authorize the issuance of taxable bonds, for the same purposes and uses, in the same maximum principal amount and payable over the same period as such public utility revenue bonds.

WHEREAS, the Public Finance Act of 1991, Sections 15.2-2600 et seq. of the *Code of Virginia* of 1950, as amended (the "Public Finance Act"), permits the issuance of bonds, when authorized by the Council (the "Council") of the City of Richmond, Virginia (the "City"), at one time or from time to time, in order to finance the cost of capital improvement projects for the purposes hereinafter described; and

WHEREAS, the Council desires to provide that all or a portion of the public utility revenue bonds authorized by this ordinance may be issued as taxable bonds (the "Taxable Bonds"); and

WHEREAS, it is the consensus of the Council that the City should authorize the issuance and sale of either tax-exempt or taxable public utility revenue bonds or both in the maximum principal amount of $87,191,049 (the "Bonds") to finance the cost of capital improvement projects to the City's gas, water and wastewater utilities systems (the "System") and to finance the costs of issuance of the Bonds and certain other requirements related to the Bonds; and

WHEREAS, such Bonds are to be issued as a series of bonds pursuant to a supplement to the Master Indenture of Trust dated as of April 1, 1998 between the City and U.S. Bank National Association (successor Trustee to Crestar Bank and SunTrust Bank), as Trustee, as previously supplemented and amended (the "Master Indenture"); and

WHEREAS, there has been presented to this meeting a draft of a Supplemental Indenture of Trust (the "Supplemental Indenture") between the City and the Trustee, providing for the issuance, security and form of the Bonds, pursuant to the Master Indenture (the "Master Indenture" and together with the Supplemental Indenture, the "Indenture of Trust"); and

WHEREAS, the City expects to advance its own funds to pay expenditures related to such utility System projects prior to the issuance of the Bonds, and the City intends to receive reimbursement for such expenditures from the proceeds thereof; and

WHEREAS, a public hearing on this ordinance has been advertised and held in the manner required by Section

4.10 of the Charter of the City (the "Charter") and Section 15.2-2606 of the Public Finance Act;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. The issuance of the Bonds, as either tax-exempt or taxable, is authorized in the maximum principal amount of $87,191,049 in order to finance the cost of System capital improvement projects for the purposes hereinafter described, to fund any required reserve funds, to finance capitalized interest as appropriate and to pay the costs of issuance and any credit enhancement fees associated with the Bonds.

§ 2. The City elects to issue the Bonds under the Indenture of Trust pursuant to the terms of the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Code of Virginia of 1950, as amended, and the Charter to the extent required by the Public Finance Act. The Bonds shall be designated "Public Utility Revenue Bonds" or as "Public Utility Revenue Bonds (Federally Taxable)", as appropriate, may also include the term "Refunding" as part of their designation, if appropriate, may include such other term or terms as part of their designation as the officers herein authorized deem appropriate and shall contain an appropriate series designation as determined by the officers charged herein with issuing the Bonds. The Bonds shall be secured by Net Revenues (as defined in the Master Indenture) of the System equally and ratably and on a parity basis with the outstanding principal amount of the City's public utility revenue bonds previously issued and currently outstanding under the Master Indenture and supplements thereto, and any other obligations secured by a senior pledge of such Net Revenues. The Bonds shall be limited obligations of the City, the principal of, premium, if any, and interest on which shall be paid solely from Net Revenues and from other funds that are or may be pledged for such purpose under the Indenture of Trust, and nothing in the Bonds or the Indenture of Trust shall be deemed to create or constitute an indebtedness of or a pledge of the faith and credit of the Commonwealth of Virginia or of any political subdivision thereof, including the City.

§ 3. Proceeds of the Bonds shall be used by the City to finance, in whole or in part, a program of System capital improvement projects and undertakings for the following purposes and uses: enlargement, extension, repair,

replacement, improvement and equipping of the gas plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the waterworks plant and transmission lines; enlargement, extension, repair, replacement, improvement and equipping of the wastewater plant and intercepting lines; construction, reconstruction, repair, replacement, and improvement of sanitary and storm water sewers, pumping stations, drains and culverts; construction, reconstruction, repair, replacement, improvement and equipping of public utility buildings and facilities therefor, including but not limited to the stores division; and acquisition of real property and real property rights (including without limitation easements and rights-of-way) therefor as appropriate, and each project included in such program of capital improvement undertakings is hereby approved as a "project" eligible to be financed with the proceeds of Taxable Bonds.

§ 4. The Bonds shall be in registered form, shall be dated, shall be in denominations, shall be numbered, shall pay interest at rates and times and shall be subject to redemption, all as provided in the Supplemental Indenture as determined by the Director of Finance with the approval of the Chief Administrative Officer as herein authorized. The Bonds shall bear interest from their date at the interest rate set forth in the Supplemental Indenture, but in no event shall the net interest cost of the Bonds, exceed the rate of interest herein authorized. The Bonds shall mature as provided in the Supplemental Indenture subject to the terms of this ordinance. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

§ 5. The Bonds may be subject to redemption, including sinking fund redemption, prior to maturity at the option of the City on or after dates, if any, determined by the Director of Finance, with the approval of the Chief Administrative Officer. The Director of Finance, with the approval of the Chief Administrative Officer, is authorized and directed to approve such optional redemption provisions for the Bonds as such officer or officers determine to be in the best interest of the City.

§ 6. The Supplemental Indenture in substantially the form attached to this ordinance and marked Exhibit A is hereby approved. The Director of Finance, with the approval of the Chief Administrative Officer, is hereby authorized to execute the Supplemental Indenture in substantially such form, with such completions, omissions, insertions and

changes not inconsistent with this ordinance as may be approved by the Director of Finance, whose approval shall be evidenced conclusively by the execution and delivery of the Supplemental Indenture. The Supplemental Indenture shall contain the appropriate designation as to its number as the Director of Finance determines is appropriate to indicate its numerical order among supplemental indentures issued pursuant to the Master Indenture.

§ 7. The Bonds shall be prepared in accordance with the Master Indenture and the Supplemental Indenture and shall be signed by the manual signatures of the Chief Administrative Officer and the Director of Finance. The City's seal shall be affixed thereto and attested by the manual signature of the City Clerk and delivered to the Trustee for authentication.

§ 8. The Council hereby approves the following terms of the sale of the Bonds. The Bonds may be sold all at one time, in one or more series or otherwise, as may be determined by the Director of Finance, with the approval of the Chief Administrative Officer. The Bonds shall be sold by competitive bid or by negotiation with one or more underwriters or other purchasers as the Director of Finance may determine pursuant to the Public Finance Act, at such price or prices as the Director of Finance, with the approval of the Chief Administrative Officer, shall determine to be in the best interest of the City, provided that in no event shall (i) the net interest cost of the Bonds, after taking into account any premium or discount on the Bonds, but excluding credit enhancement premium, exceed 8% per year, (ii) the sale price of the Bonds to the underwriters, excluding any original issue discount, be less than 97% of the aggregate principal amount thereof, and (iii) the final maturity of the Bonds be later than 40 years from their dated date. The Director of Finance, with the approval of the Chief Administrative Officer, is authorized to enter into a line of credit with a bank or other financial institution, which line of credit may provide for a maximum amount not in excess of the amount herein authorized which may be drawn down and repaid from time to time by the City; provided, however, that the interest rate on any line of credit borrowing will not exceed the then current prime rate as quoted by the bank or institution providing such line of credit; and to negotiate and acquire credit enhancement for the Bonds, the line of credit or other Bond anticipation financing or any portion thereof. The Director of Finance, with the approval of the Chief Administrative Officer, is also authorized to enter into contracts with respect to the Bonds, commonly known as

interest rate swap agreements, and contracts providing for payments based on levels of, or changes in, interest rates; provided that the form of such contract or arrangement shall have been previously approved by resolution or resolutions hereafter adopted by the Council. These contracts or arrangements may be entered into by the Director of Finance, with the approval of the Chief Administrative Officer, in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Director of Finance, with the approval of the Chief Administrative Officer, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. This ordinance is intended to grant to the Director of Finance and the Chief Administrative Officer full and complete authority to finalize the terms of the Bonds and provide for their issuance under the Indenture of Trust without further approval by Council, unless otherwise required in connection with any refunding, consistent with the requirements of this ordinance, the Public Finance Act, the Charter and the Constitution and other laws of the Commonwealth of Virginia. The Director of Finance is authorized to negotiate, execute and deliver a bond purchase agreement with the underwriters or other purchasers of the Bonds if the Bonds are sold by negotiation, a copy of which shall be filed with the City Clerk. If the Bonds are sold by competitive bid, the Director of Finance shall file a certificate following the award of the Bonds setting forth the final terms of the Bonds with the City Clerk. In connection with the obtaining of any line of credit, credit enhancement, interest rate swap or similar agreements, the Director of Finance, with the approval of the Chief Administrative Officer, is authorized to include in the borrowing the cost of obtaining such line of credit, credit enhancement, interest rate swap or similar agreements. The actions of the Director of Finance, with the approval of the Chief Administrative Officer, in selling the Bonds shall be conclusive, and no further action shall be necessary on the part of the Council.

§ 9. The City intends to advance funds from time to time to pay expenditures related to projects for the purposes for which the Bonds are to be issued as generally described herein and to receive reimbursement for such expenditures from proceeds of the Bonds. This ordinance constitutes the City's declaration of "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended,

to reimburse itself for such expenditures with Bond proceeds. The Director of Finance shall keep on file records of the expenditures for which reimbursement will be sought.

§ 10. The Chief Administrative Officer and the Director of Finance are authorized and directed to have prepared and distributed, in accordance with standard practices of municipal securities, one or more Preliminary Official Statements of the City describing the Bonds as authorized herein, the security therefor and providing any other customary pertinent or relevant information. The Director of Finance shall make such completions, omissions, insertions and changes in such Preliminary Official Statement not inconsistent with this ordinance as are necessary or desirable to complete it as a final Official Statement. The City shall arrange for the delivery to the purchasers of the Bonds of a reasonable number of copies of the final Official Statement, within seven business days after the date the Bonds have been awarded, for delivery to each potential investor requesting a copy of the final Official Statement and to each person to whom such underwriter or bidder and members of the underwriting or bidding group initially sell Bonds.

§ 11. The Director of Finance is authorized, on behalf of the City, to deem such Preliminary Official Statement and such Official Statement in final form, each to be final as of its date within the meaning of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission (the "SEC"), except for the omission in such Preliminary Official Statement of certain pricing and other information allowed to be omitted pursuant to the Rule. The distribution of such Preliminary Official Statement and such Official Statement in final form shall be conclusive evidence that each has been deemed final as of its date by the City, except for the omission in such Preliminary Official Statement of such pricing and other information permitted by the Rule.

§ 12. The Chief Administrative Officer, the Director of Finance and the City Clerk are authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with the terms of the Master Indenture and Supplemental Indenture and to deliver the Bonds to or for the account of the purchasers thereof upon payment therefor.

§ 13. The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as

amended, including regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Bonds to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bonds, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bonds from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. The City shall pay any such required rebate to the United States from its legally available funds. This Section shall not apply to Taxable Bonds.

§ 14. Such officers of the City as may be requested are authorized and directed to execute appropriate certificates setting forth facts and covenants related to the expected use, expenditure and investment of the proceeds of the Bonds in order to show that such expected use, expenditure and investment will not violate the provisions of Section 148 of the Code and any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificates, covenants and elections shall be in such form as may be requested by bond counsel for the City. This Section shall not apply to Taxable Bonds.

§ 15. The City covenants that it shall not permit the proceeds of the Bonds or the facilities financed with the proceeds of the Bonds to be used in any manner that would result in (a) 5% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds or the facilities financed with such proceeds being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the City receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bonds from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the City need not comply with such covenants. This Section shall not apply

to Taxable Bonds.

§ 16. The Director of Finance is hereby authorized and directed to execute a continuing disclosure agreement setting forth the annual reports and notices to be filed by the City and containing such covenants as may be necessary to assist the underwriters for the Bonds in complying with the provisions of the Rule. Such continuing disclosure agreement shall be in the form approved by the Director of Finance, in collaboration with the City Attorney and the City's bond counsel, the execution thereof by the Director of Finance to constitute conclusive evidence of the Director of Finance's approval of such continuing disclosure agreement.

§ 17. The Director of Finance is authorized to issue and sell from time to time, with the approval of the Chief Administrative Officer, at either public sale or private sale without prior public bidding at such prices as the Director of Finance, with the approval of the Chief Administrative Officer, may determine, in accordance with the provisions of the Public Finance Act, notes of the City in anticipation of the sale of the Bonds authorized to be issued by this ordinance for the purpose of defraying the whole or any part of the cost of any one or more of the capital improvement projects described in this ordinance, provided that in no event shall the net interest cost of such notes, after taking into account any premium or discount on such notes, exceed 10% per year. Except to the extent modified by this paragraph, the Director of Finance, with the approval of the Chief Administrative Officer, shall have the same authorization granted herein for the issuance of the Bonds in connection with any issuance of notes in anticipation of the issuance of such Bonds.

§ 18. The City Clerk, with the assistance of the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this ordinance in the Circuit Court of the City of Richmond and is directed to make a copy of this ordinance continuously available for inspection by the general public during normal business hours at the City Clerk's office from the date of adoption hereof through the date of the issuance of the Bonds.

§ 19. All other actions of officers of the City in conformity with the purposes and intent of this ordinance and in furtherance of the issuance and sale of the bonds are approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be

considered necessary or desirable in connection with the issuance, sale and delivery of the Bonds, including entering into contracts and arrangements to provide credit and/or liquidity enhancement or insurance for all or a portion of the Bonds and for the investment of the proceeds of the Bonds. The authorization granted herein to the Director of Finance, the Chief Administrative Officer and the City Attorney shall apply equally to any person serving in such capacity on an interim or acting basis pending a permanent appointment to any such office.

§ 20. The transactions authorized by this ordinance shall be conducted only with the assistance of bond counsel retained by the City as provided in this section. The City shall have conducted a competitive procurement in accordance with the procedure for competitive negotiation for professional services set forth in Chapter 21 of the Code of the City of Richmond (2015), as amended, to obtain bond counsel for the transactions authorized by this ordinance. The City Attorney shall have selected and shall be the using agency for bond counsel. Only bond counsel selected in accordance with this section may be used for the transactions authorized by this ordinance.

§ 21. This ordinance shall be in force and effect from and after its effective date in accordance with the Charter.

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