Legislation Text

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To authorize the issuance of general obligation public improvement bonds of the City of Richmond in the maximum principal amount of $96,417,470 to finance the cost of school projects and general capital improvement projects of the City for the following purposes and uses: construction, reconstruction, improvements and equipment for public schools; construction, reconstruction, improvement and equipment for various infrastructure needs, including traffic control facilities, streets, sidewalks and other public ways, bridges, storm sewers, drains and culverts, and refuse disposal facilities; to make grants or loans to assist in financing capital expenditures for the purposes of promoting the development of housing projects for the benefit of persons with low or moderate incomes; participation in redevelopment, conservation and community development programs, including the construction, reconstruction, improvement and equipment for targeted public facilities included in these programs; construction, reconstruction, improvements and equipment for public institutional, operational, cultural, educational and entertainment buildings and facilities, including but not limited to the theaters, parks, playgrounds, cemeteries, libraries and museums; acquisition of real property therefor as appropriate; and the making of appropriations to the City's Economic Development Authority and the Richmond Redevelopment and Housing Authority to be used to be used to finance capital expenditures or to make loans or grants to finance capital expenditures or to make loans or grants to finance capital expenditures for the purposes of promoting economic development or promoting the development of housing projects for the benefit of persons with low or moderate incomes; 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 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 general obligation public improvement 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 , at one time or from time to time in one or more series, in order to finance the cost of capital improvement projects for the purposes hereinafter described; and

WHEREAS, Section 15.2-953 of the *Code of Virginia* of 1950, as amended, permits the City to make gifts, donations and appropriations of money to industrial development authorities for the purposes of promoting economic development; and

WHEREAS, Section 15.2-958 of the *Code of Virginia* of 1950, as amended, permits the City to make gifts or loans to owners of residential rental property occupied, or to be occupied, by persons of low and moderate income; and

WHEREAS, Section 36-2 and 36-7 of the *Code of Virginia* of 1950, as amended, permits the City to make loans or grants to its housing authority to promote the availability of affordable housing for all citizens of the Commonwealth and in particular to provide safe, decent, and sanitary housing for those citizens with low or moderate incomes;

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

WHEREAS, it is the consensus of the Council of the City that the City should authorize the issuance and sale of either tax-exempt or taxable general obligation public improvement bonds or both in the maximum principal amount of $96,417,470 (the "Bonds") to finance the cost of school projects and general capital improvement projects and to finance the costs of issuance of the Bonds and certain other requirements related to the Bonds; and

WHEREAS, the City expects to advance its own funds to pay expenditures related to such projects prior to the issuance of such Bonds, and it is the intention of the City to reimburse itself 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 $96,417,470 in order to finance the cost of capital improvement projects for the purposes hereinafter described, to finance capitalized interest as appropriate and to pay the cost of issuance of the Bonds and any credit or liquidity enhancement fees or other fees associated with the Bonds. The Bonds shall be designated "General Obligation Public Improvement Bonds" or "General Obligation Public Improvement Bonds (Federally Taxable)", as appropriate, and may include the term "Refunding", if appropriate, and may also include such other term or terms as part of their

designation as the officers herein authorized deem appropriate.

§ 2. Proceeds of the Bonds shall be used by the City to finance in whole or in part, a program of general capital improvement undertakings for the following purposes and uses: construction, reconstruction, improvements and equipment for public schools; construction, reconstruction, improvements and equipment for various infrastructure needs, including traffic control facilities, streets, sidewalks and other public ways, bridges, storm sewers, drains and culverts, and refuse disposal facilities; to make grants or loans to assist in financing capital expenditures for the purposes of promoting the development of housing projects for the benefit of persons with low or moderate income; participation in redevelopment, conservation and community development programs, including the construction, reconstruction, improvement and equipment for targeted public facilities included in these programs; construction, reconstruction, improvements and equipment for public institutional, operational, cultural, educational and entertainment buildings and facilities, including but not limited to theaters, parks, playgrounds, cemeteries, libraries and museums; acquisition of real property therefor as appropriate; and the making of appropriations to the City's Economic Development Authority and the Richmond Redevelopment and Housing Authority to be used to finance capital expenditures or to make loans or grants to finance capital expenditures for the purposes of promoting economic development or promoting the development of housing projects for the benefit of persons with low or moderate incomes; and each such 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.

§ 3. The Bonds shall be in registered form and shall be designated by title, date and series, bear interest from the date, be payable on the payment dates, be issued in the denomination, and mature at such time or times not exceeding 40 years from their date and in amounts as either serial or term bonds, or both, with sinking fund payments, if any, all as determined by the Director of Finance of the City (the "Director of Finance"), with the approval of the Chief Administrative Officer of the City (the "Chief Administrative Officer").

Each bond shall bear interest (i) with respect to any fixed-rate bond issuance, at such rate as shall be determined

at the time of sale, calculated on the basis of a 360-day year and a 30-day month, payable semiannually, and (ii) with respect to any variable or auction rate bond issuance, such rate shall be determined initially at or proximate to the time of sale and thereafter be subject to adjustment on such dates or during such periods, calculated on such basis, and payable on such dates or during such periods; all as determined by the Director of Finance, with the approval of the Chief Administrative Officer, subject to the terms of this ordinance.

Principal and premium, if any, shall be payable to the registered owners upon surrender of bonds as they become due at the office of the Registrar, as hereinafter defined. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar on the date prior to each interest payment date that shall be determined by the Director of Finance, with the approval of the Chief Administrative Officer (the "Record Date"); provided however, any Record Date contained in the bond certificate shall be deemed the determination of such officers. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

The Director of Finance, with the approval of the Chief Administrative Officer, may (a) enter into an agreement for a book-entry system for the Bonds with a qualified securities depository (the "Securities Depository") and (b) appoint a paying agent and registrar for the bonds (the "Registrar"), as well as a trustee (the "Trustee") if necessary or appropriate.

§ 4. The Bonds may be subject to redemption or purchase 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.

Any term bonds may be subject to mandatory sinking fund redemption as determined by the Director of Finance, with the approval of the Chief Administrative Officer.

The City shall provide for the purchase of bonds in the manner specified in any bonds subject to purchase as

approved by the officers herein authorized.

§ 5. The Bonds shall be signed by the manual or facsimile signatures of the Chief Administrative Officer and the Director of Finance, and the City's seal shall be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the City Clerk. No bond signed by facsimile signatures shall be valid until it has been authenticated by the manual signature of an authorized officer or employee of the Registrar or Trustee, as appropriate, and the date of authentication noted thereon.

§ 6. The Bonds shall be in the form or forms as the Director of Finance may select, with such terms and provisions not inconsistent with this ordinance as may be approved by the officers signing the Bonds, whose approval shall be evidenced conclusively by the execution and delivery thereof.

§ 7. The power and obligation of the City to pay principal of, premium, if any, and interest on the Bonds shall be unlimited and the City shall levy and collect ad valorem taxes upon all taxable property within the City, without limitation as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the Bonds. The full faith and credit of the City are pledged for the payment of principal of, premium, if any, and interest on the Bonds.

§ 8. The Registrar shall maintain registration books for the registration of the Bonds. Upon surrender of any bond at the corporate trust office of the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute, and the Registrar shall authenticate and deliver in exchange, a new bond or bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or his duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments

shall be made to the person shown as owner on the registration books as of the Record Date.

§ 9. The Council has ascertained and hereby determines and states that the maximum principal amount of the Bonds authorized by this ordinance and all other outstanding general obligation bonds or other general obligation indebtedness heretofore issued or contracted by the City for any purpose, or in any manner, does not exceed 10% of the assessed valuation of the real estate in the City subject to taxation, as shown by the last preceding assessment for taxes, and that, accordingly, the Bonds are within the limitation of indebtedness as provided in Section 7B.02 of the Charter and Section 15.2-2634 of the Public Finance Act.

§ 10. 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 and/or liquidity enhancement premium, exceed 8% per year; provided; however, that variable or adjustable rate Bonds may be issued with interest rate adjustment provisions not to exceed 12%; (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 or such lesser period as set forth from time to time in the City's general obligation bond debt policy. The Director of Finance, with the approval of the Chief Administrative Officer, is authorized to negotiate and acquire credit and/or liquidity enhancement for the Bonds. Bonds sold with an interest rate subject to adjustment as variable or auction rate bonds may be subject to such repurchase and/or remarketing terms as the Director of Finance may determine with the approval of the Chief Administrative Officer. 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, to provide for their issuance and sale and to execute and deliver any and all documentation in connection therewith 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 or liquidity 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 or liquidity enhancement, interest rate swap or similar agreements. The actions of the Director of Finance in selling the Bonds shall be conclusive, and no further action shall be necessary on the part of the Council.

§ 11. 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.

§ 12. 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 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.

§ 13. 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.

§ 14. 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 their terms and to deliver the Bonds to or for the account of the purchasers thereof upon payment therefor.

§ 15. 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.

§ 16. 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.

§ 17. 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.

§ 18. The City desires to assist the purchasers of the Bonds in complying with the provisions of Section (b)(5)(i) of the Rule. In order to accomplish this, the City covenants to do the following to the extent required or requested:

(A) Annual Disclosure.

(1) The City shall provide annually certain financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule, as follows:

(a) audited financial statements, prepared in accordance with generally accepted accounting principles; and

(b) the operating data with respect to the City of the type appearing in portions of the Official Statement in final form relating to and describing (i) a statement of General Fund Revenues and Other Financing Sources and a statement of General Fund Expenditures and Other Financing Uses in the section relating to discussions of certain financial information, (ii) schedules relating to property assessments, real estate tax levies and collections and personal property tax levies and collections in the section relating to revenues of the City, and (iii) schedules relating to legal debt margin, percentage of bonded debt to assessed values of real estate and bonded debt per capita and percentage of debt service to total General Fund Expenditures and Transfers in the section relating to debt of the City.

(2) The City shall annually provide the financial information and operating data described in subsection (1) above (the “Continuing Disclosure”) within 220 days after the end of the City's fiscal year, commencing with the City's fiscal year in which the Bonds are issued, to the Municipal Securities Rulemaking Board (the “MSRB”) for publication on its Electronic Municipal Market Access (“EMMA”)

System, or as otherwise designated by the Rule and to the appropriate state information depository if any then exists ("SID").

(3) Any of the Continuing Disclosure may be included by specific reference to other documents previously provided to the MSRB and to the SID, if any, or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(4) The City shall provide in a timely manner to the MSRB and to the SID, if any, notice specifying any failure of the City to provide the Continuing Disclosure by the date specified.

If the City fails to comply with any covenant or obligation specified in this Section, any holder (within the meaning of the Rule) of the Bonds then outstanding may, by notice to the City, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the City's covenant to provide financial information and operating data.

(B) Event Disclosure. The City shall provide in a timely manner not in excess of ten (10) business days to the MSRB and to the SID, if any, notice of the occurrence of any of the following events with respect to the Bonds:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

(3) unscheduled draws on debt service reserves reflecting financial difficulties;

(4) unscheduled draws on any credit enhancement reflecting financial difficulties;

(5) substitution of credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other materials notices or determinations with respect to the tax status of the security, or other material events affecting the

tax-exempt status of the Bonds;

(7) modifications to rights of bondholders, if material;

(8) Bond calls, if material, and tender offers;

(9) defeasance of all or any portion of the Bonds;

(10) release, substitution, or sale of property securing repayment of the Bonds, if material;

(11) rating changes;

(12) bankruptcy, insolvency, receivership or similar event of the obligated person;

(13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(C) Termination. The covenants and obligations of the City specified in subsections (A) and (B) to the extent they apply shall terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the Bonds.

(D) Amendment. The City reserves the right to modify its obligations specified in subsections (A) and (B) without the consent of bondholders, provided that such modification complies with the Rule as it exists at the time of modification. The City shall, within a reasonable time thereafter, send to the MSRB and the SID, if any, a description of such modification(s).

(E) Additional Disclosure. The City may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the City shall not incur any obligation to continue to provide, or to update, such additional information or data.

§ 19. 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, subject to the limitations set forth herein, 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. Such bond anticipation note issuance may be in the form of a line of credit with one or more financial institutions; a variable or auction rate financing with provisions for purchasing and remarketing of the notes; a commercial paper financing; or a fixed rate financing as the Director of Finance may determine with the approval of the Chief Administrative Officer. Such bond anticipation note financing 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. The limitations as to interest rate and sales price in Section 10 of this ordinance for the issuance of the Bonds shall also apply to the issuance of notes; provided the term of any such bond anticipation note issuance shall not exceed 5 years in accordance with Section 15.2-2628 of the Public Finance Act. 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.

§ 20. 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.

§ 21. 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.

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