

SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-005

Rev. 1

#4487

Sponsor:

Council
Member
Freel

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY’S GENERAL OBLIGATION BONDS AND/OR GENERAL OBLIGATION BOND ANTICIPATION NOTES, IN ONE OR MORE SERIES ON A TAX-EXEMPT AND/OR TAXABLE BASIS, IN ORDER TO PROVIDE THE FUNDS TO FINANCE VARIOUS CAPITAL PROJECTS OF THE CITY; TO FUND A GENERAL OBLIGATION BOND ANTICIPATION NOTE OF THE CITY; TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE SALE OF THE BONDS; AMENDING PRIOR BOND ORDINANCES; AND AUTHORIZING OTHER NECESSARY ACTION

WHEREAS, the City presently intends: (i) to fund various, duly authorized capital projects specified in the City’s capital budget for its Fiscal Year ending June 30, 2016, as amended and supplemented from time to time (the “Capital Projects”); (ii) to fund on a long-term basis the City’s General Obligation Bond Anticipation Note (Street Repairs Project), Series of 2017 (the “2017 BAN”); and (iii) to refund certain outstanding debt of the City, including the 2007 General Obligation Bonds (the “Refunding Project”) (the Capital Projects, the 2017 BAN, and the Refunding Project are collectively referred to as the “Project”); and

WHEREAS, in order to finance the Capital Projects and the 2017 BAN, the City has determined to issue its General Obligation Bonds in an aggregate principal amount not to exceed \$44,000,000 in one or more series on a tax-exempt and/or taxable basis, and/or its General Obligation Bond Anticipation Notes in anticipation thereof; and

WHEREAS, in order to finance the Refunding Project, the City has determined to issue its General Obligation Bonds in an aggregate principal amount not to exceed \$13,000,000 in one or more series on a tax exempt and/or taxable basis; and

WHEREAS, the City has determined to amend certain prior bond ordinances so as to authorize the use of any outstanding proceeds of the bonds issued thereunder to (i) finance various, duly authorized capital projects specified in the City’s various, prior capital budgets enacted prior to the Fiscal Year 2016 capital budget (the “Prior Capital Projects”) and/or (ii) make any debt service payments due, or which become due, on such prior bonds, or bonds that refunded such prior bonds, as appropriate; and

WHEREAS, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the “General Ordinance”), authorizing the City to issue General Obligation Bonds secured by a pledge of the City’s full faith, credit and taxing power, for the purpose of, among other things, paying the costs of capital projects of the City; and

WHEREAS, this Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Bonds.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Defined Terms. Terms used in this Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

SECTION 2. Authorization of General Obligation Bonds. The City hereby authorizes the issuance of its General Obligation Bonds in an aggregate principal amount not to exceed \$44,000,000 in one or more series on a tax-exempt and/or taxable basis (the “Capital Bonds”), and/or its General Obligation Bond Anticipation Notes in anticipation thereof (the “BAN”) in order to finance the Capital Projects and the 2017 BAN. Any Capital Bond issued to fund a BAN (other than the 2017 BAN) shall not be counted toward the \$44,000,000 limit. The City hereby also authorizes the issuance of General Obligation Bonds in an aggregate principal amount not to exceed \$13,000,000 in one or more series on a tax-exempt and/or taxable basis (the “Refunding Bonds”) in order to refund certain outstanding debt of the City, including the 2007 General Obligation Bonds. The Capital Bonds and the Refunding Bonds (collectively, the “Bonds”) shall be issued pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Project, including the costs and expenses associated with issuing and providing for on-going continuing legal compliance of the Bonds and/or prior series of bonds. The Bonds and the BAN shall be sold at private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee.

The Bonds and the BAN shall be awarded and sold by the Bond Committee to an underwriter or group of underwriters, or to one or more financial institutions (the “Underwriter” or “Bank”, as appropriate) to be selected by the Bond Committee at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Bond Purchase Agreement or a Note Purchase Agreement to be entered into by the Underwriter/Bank and the City, or (ii) in the case of a competitive sale, in a Bid Form submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the Bid Form which represents the lowest true interest cost to the City. The appropriate officials of the City are hereby authorized to enter into such Bond Purchase Agreement or Note Purchase Agreement and to execute the Bond Purchase Agreement or Note Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds and the BAN shall bear such rate or rates of interest provided that the true interest cost of the Bonds or the BAN does not exceed 7.0%, shall mature in such principal amounts and on such dates, shall be subject to redemption, shall bear such series designation, shall be sold at such price and in such manner, and shall be in such forms and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the “Bond Committee Resolution”). A series designation for any particular series of bonds shall be made in the Bond Committee Resolution corresponding to such series.

SECTION 3. Authorization of Paying Agent's Agreement. A fiscal agent, paying agent and registrar for the Bonds (the "Paying Agent") may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the appropriate officials of the City are hereby authorized and directed to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

SECTION 4. Preparation of Preliminary Official Statement. The Bond Committee is authorized and directed to prepare, approve and "deem final" a Preliminary Official Statement and an Official Statement with respect to the Bonds to be used in connection with the public sale of the Bonds. The final Official Statement shall contain the final terms of the Bonds and shall be prepared for use in the public offering and sale of the Bonds.

SECTION 5. Execution of the Bonds and the BAN. The Bonds and the BAN shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the seal of the City, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

SECTION 6. Security for the Bonds and the BAN. The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Bonds and the BAN. The Bonds and the BAN shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy *ad valorem* taxes upon all taxable property in the City for the payment of the Bonds and the BAN without limitation as to rate or amount.

SECTION 7. Federal Tax Covenants. In the event that part or all of the Bonds or the BAN are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Bonds or the BAN to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto, throughout the term of the Bonds or the BAN. The City further covenants with the registered owners of the Bonds and the BAN that it will make no investments or other use of the proceeds of the Bonds or the BAN which would cause such Bonds or BAN to be "arbitrage bonds" as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable. In the event the Bonds or the BAN could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Bonds or the BAN pursuant to Section 265 of the Code.

SECTION 8. Official Intent. In accordance with Treasury Reg. § 1.150-2, the City hereby confirms its intentions that a portion of the proceeds of the Bonds or the BAN

authorized by this Ordinance, or any other obligations issued by the City, will be used to reimburse itself for qualifying expenditures of the Project paid prior to the date of issuance of the Bonds or the BAN authorized by this Ordinance. All original expenditures to be reimbursed will be capital expenditures (as defined in Treas. Reg. §1.150-1(b)) and other amounts permitted to be reimbursed pursuant to Treas. Reg. §1.150-2(d)(3) and (f).

SECTION 9. Amendments to Prior Bond Ordinances. Pursuant to (i) Ordinance No. 98-065, (ii) Ordinance No. 02-041, (iii) Ordinance No. 05-086, (iv) Substitute No. 2 to Ordinance No. 08-024, (v) Ordinance No. 11-049, and (vi) Substitute No. 1 to Ordinance No. 15-003 (collectively, the “Prior Bond Ordinances”), the City authorized the issuance of general obligation bonds (collectively, the “Prior Bonds”) to fund various capital projects specified in the City’s capital budgets for its Fiscal Years ending (a) June 30, 1998 and June 30, 1999, (b) June 30, 2000, (c) June 30, 2004, (d) June 30, 2006 and June 30, 2008, (e) June 30, 2012, and (f) June 30, 2014, respectively. To the extent that proceeds remaining from these Prior Bonds have not been expended (the “Prior Bond Proceeds”), the City hereby amends the Prior Bond Ordinances to allow for the Prior Bond Proceeds to be used to pay: (i) the cost of any duly authorized Prior Capital Project of the City, including the payment of any bond anticipation note which financed the cost of any such project; and/or (ii) any debt service payments due, or which become due, on such Prior Bonds, or bonds that refunded such Prior Bonds, as appropriate, all as determined by the Bond Committee.

SECTION 10. Further Action. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

SECTION 11. Inconsistent Provisions. In the event that any provision of the Bonds or the BAN, or any term or condition contained in any agreement relating to the Bonds or the BAN or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Bonds or the BAN, such agreements and this Supplemental Ordinance shall be controlling with respect to the Bonds or the BAN, such agreements and this Supplemental Ordinance.

SECTION 12. Relation to General Ordinance. This Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Bonds and the BAN authorized hereunder. This Ordinance shall take effect immediately upon its passage.

SECTION 13. Effective Date. This Ordinance shall be deemed effective as of its date of passage by City Council and approval by the Mayor.

First Reading.....March 1, 2018
Second Reading.....March 1, 2018
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance: 1) authorizes the issuance of up to \$44,000,000 aggregate principal amount of General Obligation Bonds, and/or General Obligation Bond Anticipation Notes in anticipation thereof, in order to finance (i) any duly authorized capital project of the City specified in the City’s capital budget for its Fiscal Year ending June 30, 2016 and (ii) the City’s General Obligation Bond Anticipation Note (Street Repairs Project), Series of 2017; 2) authorizes the issuance of up to \$13,000,000 aggregate principal amount of General Obligation Bonds in order to finance certain outstanding debt of the City, including the 2007 General Obligation Bonds; and 3) amends certain prior bond ordinances to authorize the use of any proceeds remaining from the prior bonds that have not been expended to (i) finance any duly authorized capital project of the City specified in the City’s various, prior capital budgets enacted prior to the Fiscal Year 2016 capital budget and/or (ii) make any debt service payments due, or which become due, on such prior bonds, or bonds that refunded such prior bonds, as appropriate, all as determined by the Bond Committee.