

SUBSTITUTE NO. 1 TO ORDINANCE NO. 19-032

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS AND GENERAL OBLIGATION BOND ANTICIPATION NOTES IN ORDER TO PROVIDE THE FUNDS NECESSARY TO (I) FINANCE STREET REPAIRS AND IMPROVEMENTS OF VARIOUS STREETS AND ROADWAYS LOCATED WITHIN THE CITY LIMITS AND (II) REFINANCE ANY CITY DEBT RELATED TO THE WILMINGTON HOUSING PARTNERSHIP; PROVIDING FOR THE SALE OF THE BONDS AND THE NOTES; AND AUTHORIZING OTHER NECESSARY ACTION

Rev. 1
#4669

Sponsor:

**Council
Member
Freel**

Co-Sponsors:

**Council
President
Shabazz**

**Council
Member
Adams**

WHEREAS, the City of Wilmington (the "City") presently intends: (i) to fund street repairs and improvements of various streets and roadways located within the City limits as specified in the City's capital budget for its Fiscal Year ending June 30, 2018 (the "FY 2018 Street Repairs"); (ii) to fund street repairs and improvements of various streets and roadways located within the City limits as specified in the City's capital budget for its Fiscal Year ending June 30, 2020 (the "FY 2020 Street Repairs") (the FY 2018 Street Repairs and the FY 2020 Street Repairs are collectively referred to as the "Street Repairs"); and (iii) to refinance any City General Obligation Bonds issued to fund a loan to the Wilmington Housing Partnership as specified in the City's capital budget for its Fiscal Year ending June 30, 2020 (the "Debt") (the Street Repairs and the Debt are collectively referred to as the "Project"); and

WHEREAS, the City has determined to issue on a tax-exempt and/or taxable basis: (i) one or more series of its General Obligation Bonds in an aggregate principal amount not to exceed \$15,600,000; and (ii) one or more series of its General Obligation Bond Anticipation Notes in an aggregate principal amount not to exceed \$15,600,000 to provide permanent and temporary financing, respectively, for the Project and the costs associated with issuing such bonds and notes, as the case may be; 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 or General Obligation Bond Anticipation Notes 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; and

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

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 Project. The City hereby approves the Project as described in the recitals hereto and the proper officers of the City are hereby authorized to take all action necessary to proceed with the Project.

SECTION 3. Authorization of General Obligation Bonds and General Obligation Bond Anticipation Notes. The City hereby authorizes the issuance of its tax-exempt or taxable General Obligation Bonds in an aggregate principal amount not to exceed \$15,600,000 (the "Bonds") for the purpose of providing permanent financing for the Project and for the costs associated with issuing the Bonds. Prior to and in anticipation of the issuance of the Bonds, the City is also authorized to issue its General Obligation Bond Anticipation Notes (the "Notes") on a tax-exempt or taxable basis for the purpose of providing temporary, interim financing for the Project and for the costs associated with issuing the Notes. The Bonds and the Notes 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 and the costs of issuing the Bonds or the Notes, as the case may be. The Bonds and the Notes shall be sold at a private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee. It is intended that the Notes will be paid from the proceeds of the Bonds.

The Bonds and the Notes shall be awarded and sold by the Bond Committee to one or more underwriters, placement agents or other financial institutions to be selected by the Bond Committee (the "Purchaser") 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 Note Purchase Agreement or a Bond Purchase Agreement, as the case may be, or similar agreement or commitment, to be entered into by the Purchaser 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 Note Purchase Agreement or such Bond Purchase Agreement, as the case may be, and to execute the Note Purchase Agreement or Bond Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds and the Notes shall bear such rate or rates of interest (not to exceed 8%), shall mature in such principal amounts and on such dates, shall be subject to redemption, shall be sold at such price and in such manner, and shall be in such form 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").

SECTION 4. Authorization of Paying Agent's Agreement. If the Bond Committee determines that retaining a Paying Agent is in the best financial interests of the City, a fiscal agent, paying agent and registrar for the Notes or 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 5. Execution of the Bonds and the Notes. The Bonds and the Notes 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 City Seal, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

SECTION 6. Security for the Bonds and the Notes. 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 Notes. The Bonds and the Notes 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 Notes without limitation as to rate or amount.

SECTION 7. Federal Tax Covenants. In the event that the Bonds and/or the Notes 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 and the Notes 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 and the Notes, as the case may be. The City further covenants with the registered owners of the Bonds and the Notes that it will make no investments or other use of the proceeds of the Bonds and the Notes, respectively, which would cause such Bonds or Notes 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.

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 obligations authorized by this Ordinance will be used to reimburse itself for qualifying expenditures paid prior to the date of issuance of the obligations 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. 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 10. Inconsistent Provisions. In the event that any provision of the Bonds or the Notes, or any term or condition contained in any agreement relating to the Bonds, the Notes or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the Bonds or the Notes, such agreements and this Supplemental Ordinance shall be controlling with respect to the Bonds, the Notes, such agreements and this Supplemental Ordinance.

SECTION 11. 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 Notes authorized hereunder. This Ordinance shall take effect immediately upon its passage.

SECTION 12. Effective Date. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading June 6, 2019
Second Reading June 6, 2019
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2019.

Mayor

SYNOPSIS: This Ordinance authorizes the issuance of up to \$15,600,000 aggregate principal amount of General Obligation Bonds (the “Bonds”) and up to \$15,600,000 aggregate principal amount of General Obligation Bond Anticipation Notes (the “Notes”) in order to: (i) provide temporary and permanent financing for street repairs and improvements of various streets and roadways located within the City limits; (ii) provide temporary and permanent financing for the refinancing of any outstanding City debt related to the Wilmington Housing Partnership; and (iii) to pay the costs associated with issuance of the Bonds and the Notes.