

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A TAX AND REVENUE ANTICIPATION NOTE, SERIES OF 2020, OF THE CITY OF WILMINGTON IN A PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000; PROVIDING FOR THE SALE OF THE NOTE AT PRIVATE NEGOTIATED SALE; AUTHORIZING THE CITY'S BOND COMMITTEE TO DETERMINE THE PRINCIPAL AMOUNT, INTEREST RATE, METHOD OF SALE, AND OTHER TERMS AND CONDITIONS OF THE NOTE; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY AS SECURITY FOR THE NOTE; AND AUTHORIZING OTHER NECESSARY ACTION.

#4801

WHEREAS, The City of Wilmington (the "City") anticipates the receipt during

Sponsor:

its Fiscal Year 2021 beginning on July 1, 2020 and ending on June 30, 2021, of taxes and

**Council
Member
Guy**

other revenues as yet uncollected;

WHEREAS, based on monthly estimates of its expected taxes, revenues and expenditures for Fiscal Year 2021, the City anticipates that because of the differences in timing between the receipt of such taxes and other revenues and the making of such expenditures, its cash on hand at certain times during such period may temporarily be reduced to undesirably low levels; and

WHEREAS, the City is authorized, pursuant to the Wilmington Tax and Revenue Anticipation Note Ordinance, as amended (the "General Ordinance"), to borrow money from time to time in any fiscal year in anticipation of the receipt of taxes and revenues and to evidence such borrowings by the issuance and sale of its Tax and Revenue Anticipation Note; and

WHEREAS, the City desires by the enactment of this Ordinance to authorize the issuance and sale of its Tax and Revenue Anticipation Note in accordance with the General Ordinance, as amended.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

Section 1. Definitions. The terms used in this Ordinance shall have the

meanings specified herein or in the preambles hereto, or, if not otherwise defined herein, as specified in the General Ordinance, unless a different meaning is clearly indicated by the context.

Section 2. Authorization. This Ordinance is enacted pursuant to the provisions of the Home Rule Enabling Act as effectuated by qualified voters in the adoption of the Home Rule Charter of the City and in accordance with the provisions of the General Ordinance, as amended.

Section 3. Interpretation. All references in this Ordinance to articles, sections and other subdivisions of this Ordinance are to the designated articles, sections or other subdivisions of this Ordinance as originally enacted. The words "herein", "hereof", "hereby" and "hereunder", and other words of similar import refer to this Ordinance as a whole and not to any particular article, section or other subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

Section 4. Descriptive Headings. The descriptive headings in the sections of this Ordinance are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

Section 5. Severability. In case any one or more of the provisions contained in this Ordinance or in the Note or other documents executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Ordinance or of said Note or other documents, and this Ordinance, said Note or other documents shall be construed or enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 6. Authorization of Note. The Council hereby determines it to be in the best financial interest of the City to issue its Tax and Revenue Anticipation Note, Series of 2020 (the "Note"). The Council hereby authorizes the issuance of the Note in a principal amount not to exceed \$20,000,000 in anticipation of the receipt of taxes and other revenues to be received during the City's Fiscal Year 2021. The Note may be issued as a single note or several notes, as determined by the Bond Committee of the City.

Section 7. Terms of the Note. The Note shall be issued in typewritten form, shall be dated the date of issuance, mature no later than June 30, 2021 and shall bear interest at a rate not to exceed 8 %. The actual rate, principal amount, maturity date and the other terms and conditions of the Note shall be determined by the Bond Committee of the City. Interest on the Note shall be payable at maturity or at such other time or times as determined by the Bond Committee of the City. The final terms and conditions of the Note shall be determined in a resolution to be adopted by the City's Bond Committee (the "Resolution").

The principal of and interest on the Note shall be payable in lawful money of the United States of America at the principal office of a paying agent to be selected by the City's Bond Committee, which institution is hereby appointed paying agent for the Note (the "Paying Agent").

Section 8. Prepayment of Note. The Note may be subject to prepayment prior to maturity as determined by the Bond Committee of the City.

Section 9. Award of Note. The Note shall be awarded and sold at private sale by negotiation to a purchaser or underwriter to be determined by the City's Bond Committee (the "Purchaser"), at a price of par and in accordance with the other terms

and conditions set forth in the Resolution to be adopted by the City's Bond Committee. The Purchaser may also be appointed Paying Agent if such appointment is determined by the Bond Committee to be appropriate.

Section 10. Security for Note. The Note shall be a full faith and credit general obligation of the City and shall be equally and ratably secured by the pledge of, security interest in, and a lien and charge on, the taxes and other revenues to be received by the City during the period when the Note will be outstanding. Such pledge, lien and charge shall be fully effective as against the City, all its creditors and all third parties from and after the filing of appropriate financing statements in accordance with the Uniform Commercial Code and Section 13 of the General Ordinance. The filing of such financing statements is hereby authorized and directed.

Section 11. Sinking Fund. The Bond Committee of the City is hereby authorized but not required to establish a sinking fund (the "Sinking Fund") for the Note to be held by the Paying Agent in the name of the City but subject to withdrawal only by the Paying Agent. The City covenants and agrees to deposit in any Sinking Fund so established not later than the maturity date of the Note the amount representing the principal of and interest on the Note due on such date.

The Paying Agent shall, without further authorization, withdraw moneys from any Sinking Fund so established and apply such moneys to the payment of the principal of and interest on the Note. Moneys to the credit of the Sinking Fund (to the extent established and available) shall, upon the written order of the City, signed by the Mayor or the Treasurer or Director of Finance of the City, be invested by the Paying Agent in specified direct obligations of the United States of America. All such investments or deposits shall mature or shall be subject to redemption by the holder

thereof at the option of such holder upon the date or dates specified in such written order.

Section 12. Execution and Delivery of Note. The Mayor, the City Auditor and the City Treasurer are hereby authorized and directed to execute in the name of, on behalf of, and under the seal of the City, the Note in the form and containing the terms described herein and the City Clerk or Deputy Clerk is hereby authorized and directed to attest such signatures and seal. The appropriate officers of the City are hereby authorized and directed to deliver the Note to the Purchaser upon compliance with all conditions precedent to such delivery required by the General Ordinance, this Ordinance and the Resolution of the Bond Committee. Immediately upon receipt of all or part of the purchase price for the Note, the Director of Finance or Treasurer of the City is authorized to make or direct disbursements to pay the financing costs incurred in connection with the issuance of the Note.

Section 13. Cash Flow Certificate. The Mayor, in consultation with the Director of Finance of the City, is authorized and directed to prepare a Certificate as to anticipated cash flow (the "Cash Flow Certificate"), including a calculation of the anticipated cumulative cash flow deficit. The Cash Flow Certificate submitted in accordance with Section 14 of the General Ordinance shall be approved by the Bond Committee.

It is hereby determined that the anticipated principal amount of the Note does not exceed fifty percent (50 %) of the sum of the taxes and revenues to be collected or received during the period when the Note will be outstanding as estimated in the Cash Flow Certificate. The Mayor and the City Treasurer are hereby authorized to certify to the Purchaser of the Note at the time of delivery that the principal amount of the Note does not exceed the limitations set forth in the General Ordinance or, if the Note is issued

on a tax-exempt basis, in applicable United States Treasury Regulations.

Section 14. Federal Tax Covenant. In the event it is determined that the Note is issued on a federal tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Note 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 Note. The City further covenants with the owner of the Note that it will make no investments or other use of the proceeds of the Note which would cause such Note to be an "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(t) 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 that the Note could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Note pursuant to Section 265 of the Code.

Section 15. Department of Finance Filing. The City Clerk is hereby authorized and directed. to cause certain documents and proceedings in connection with the authorization, issuance and sale of the Note (including certified copies of this Ordinance and the Cash Flow Certificate and a true copy of the accepted proposal for the purchase of the Note) to be filed with the Department of Finance of the City in accordance with Section 16 of the General Ordinance.

Section 16. Binding Effect of Covenants and Agreements. All covenants,

obligations and agreements of the City set forth in this Ordinance and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the City to the full extent authorized or permitted by law.

Section 17. Further Action. The proper officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such instruments and documents (including, but not limited to, the execution and delivery of any investment contract which the Bond Committee may authorize in connection with investments of proceeds of the Note, preparation of any offering materials if determined by the Bond Committee to be appropriate, and execution of a purchase agreement or bank loan agreement, as the case may be, and a paying agent agreement), publish all notices and otherwise comply with the provisions of this Ordinance in the name and on behalf of the City.

Section 18. Inconsistent Provisions. In the event that any prior ordinances, including the General Ordinance, or portions thereof are inconsistent with this Ordinance, this Ordinance shall be controlling with respect to the Note.

Section 19. Effective Date. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading.....May 7, 2020
Second Reading.....May 7, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this _____ day of _____, 2020

Mayor

SYNOPSIS: This Ordinance is presented by the City Treasurer for Council's consideration and approval and authorizes the City to issue its Tax and Revenue Anticipation Note in principal amount not exceeding \$20,000,000 in anticipation of and secured by taxes and revenues to be received by the City during its Fiscal Year 2021 commencing on July 1, 2020 and ending on June 30, 2021. The Note will be a general obligation of the City secured by the full faith, credit and taxing power of the City.

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