

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 22-007**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S  
GENERAL OBLIGATION BONDS AND GENERAL OBLIGATION BOND  
ANTICIPATION NOTE IN ORDER TO PROVIDE THE FUNDS  
NECESSARY TO FINANCE VARIOUS CAPITAL PROJECTS SPECIFIED  
IN THE CITY'S FISCAL YEAR 2020 AND 2022 CAPITAL BUDGETS;  
PROVIDING FOR THE SALE OF THE BONDS AND THE NOTE; AND  
AUTHORIZING OTHER NECESSARY ACTION**

**Rev. 1  
#0139**

**WHEREAS**, the City of Wilmington (the "City") presently intends to fund various capital projects specified in the capital budgets for its Fiscal Years ending June 30, 2020 and June 30, 2022 (the "Project"); and

**Sponsor:**

**Council  
Member  
Johnson**

**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 \$15,000,000 (the "Bonds") and (ii) one or more series of its General Obligation Bond Anticipation Note in an aggregate principal amount not to exceed \$15,000,000 (the "Note") to provide permanent and temporary financing, respectively, for the Project and the costs associated with issuing such Bonds and/or Note, as the case may be; and

**WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 7 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 Substitute Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Bonds and/or the Note.

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

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

**SECTION 2. Authorization of General Obligation Bonds and General Obligation Bond Anticipation Note.** The City hereby authorizes the issuance of its tax-exempt or taxable General Obligation Bonds in an aggregate principal amount not to exceed \$15,000,000 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 Note 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 Note. The Bonds and the Note shall

be issued pursuant to and in accordance with the General Ordinance, as supplemented by this Substitute Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Project and the costs of issuing the Bonds and/or the Note, as the case may be. The Bonds and the Note shall be sold at a private negotiated sale or competitive sale as determined by such Bond Committee Resolution. It is intended that the Note will be paid from the proceeds of the Bonds.

The Bonds and/or the Note 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 Note shall bear such rate or rates of interest (not to exceed 5.0%), 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 3. 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 Note 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 4. Preparation of Preliminary Official Statement and Official Statement.** If the City determines to sell the Bonds and/or the Note pursuant to a public sale, 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 and/or the Note. The final Official Statement shall contain the final terms of the Bonds and/or the Note and shall be prepared for use in the public offering and the sale of the Bonds and/or the Note.

**SECTION 5. Execution of the Bonds and the Note.** The Bonds and the Note 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. The Bonds in definitive form may be printed, typewritten or lithographed without steel engraved borders.

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

**SECTION 7. Federal Tax Covenants.** In the event that the Bonds and/or the Note 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 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 Bonds and the Note, as the case may be. The City further covenants with the registered owners of the Bonds and the Note that it will make no investments or other use of the proceeds of the Bonds and the Note, respectively, which would cause such Bonds or Note 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 Substitute Ordinance will be used to reimburse itself for qualifying expenditures paid prior to the date of issuance of the obligations authorized by this Substitute 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 Substitute 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 Note, or any term or condition contained in any agreement relating to the Bonds, the Note or in this Substitute Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Bonds or the Note, such agreements and this Substitute Ordinance shall be controlling with respect to the Bonds, the Note, such agreements and this Substitute Ordinance.

**SECTION 11. Relation to General Ordinance.** This Substitute 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 Note authorized hereunder. This Substitute Ordinance shall take effect immediately upon its passage.

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

First Reading.....February 17, 2022  
Second Reading.....February 17, 2022  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Substitute Ordinance authorizes the issuance of up to \$15,000,000 aggregate principal amount of General Obligation Bonds (the “Bonds”) and up to \$15,000,000 aggregate principal amount of a General Obligation Bond Anticipation Note (the “Note”) in order to (i) provide temporary and permanent financing for any duly authorized capital project of the City specified in the City’s capital budgets for its Fiscal Years ending June 30, 2020 and June 30, 2022 and (ii) to pay the costs associated with issuance of the Bonds and the Note.