



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 21-0216, Version: 1

Dept/ Agency: Finance

Action: () Ratifying (X) Authorizing () Amending

Purpose: Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$25,128,423.00

Source of Appropriation: Special Emergency Notes

Purchaser: Competitive Sale

Project Information:

(Description/ Project No./ Amount Appropriated/Ordinance No.)

RESOLUTION DETERMINING CERTAIN MATTERS IN CONNECTION WITH THE SALE AND ISSUANCE OF NOT TO EXCEED \$25,128,423.00 AGGREGATE PRINCIPAL AMOUNT OF SPECIAL EMERGENCY NOTES (COVID 19) (FEDERALLY TAXABLE), SERIES 2021C OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY.

Additional Information:

Special Emergency Notes for the Operation Deficit in the 2020 Budget Year, as a result of the COVID-19 Public Health Emergency.

WHEREAS, a public health emergency has been declared by the Governor of the State of New Jersey pursuant to Emergency Health Powers Act (N.J.S.A. 26:13-1 et seq.), in response to the COVID 19 pandemic (the "Public Health Emergency"); and

WHEREAS, as a result of the Public Health Emergency, the City of Newark, in the County of Essex, New Jersey (the "City") has experienced a deficit balance in the City's Current Fund Results of Operations in the 2020 budget year in the amount of \$25,128,423.00 (the "Operational Deficit"); and

WHEREAS, the City's Chief Financial Officer has prepared a Certification with respect to the Operational Deficit being directly attributable to the loss of revenues caused by Public Health Emergency (the "Certification"), which Certification has been approved by a majority of the members of the Municipal Council; and

WHEREAS, the City submitted an application, including the Certification, which application was approved by the Municipal Council prior to its submission, to the Director of the Division of Local Government Services ("DLGS") to obtain approval of the Operational Deficit and the special emergency appropriation related thereto and the issuance of special emergency notes; and

WHEREAS, upon approval by the Director of the DLGS, N.J.S.A. 40A:4-53(m) permits a municipality to finally adopt an ordinance authorizing the issuance of special emergency notes to fund the special emergency appropriation in order to fund the Operational Deficit of the City; and

WHEREAS, the Municipal Council adopted Ordinance 6PSF-a on December 29, 2020 (the "Ordinance"), which Ordinance authorized the issuance of Special Emergency Notes (the "Notes"),

in the principal amount not to exceed \$25,128,423.00 to fund the special emergency appropriation; and

WHEREAS, the City has determined that the application for Certification of the special emergency demonstrates that the full appropriation of the special emergency appropriation by the last day of the sixth year will cause the City significant fiscal distress; and

WHEREAS, pursuant to N.J.S.A. 40A:4-55(c), the City submitted an application (the "LFB Application") to the Local Finance Board, in the Division of Local Government Services, Department of Community Affairs (the "LFB") and received approval from the LFB on January 13, 2021 to extend the repayment period of the Notes for a period of ten (10) years (from the first maturity date of the SEN's); and

WHEREAS, the City has determined to authorize the offering, sale and issuance of new money special emergency notes in the principal amount of \$25,128,423.00 (the "Series 2021C Notes"), to fund the Special Emergency Appropriation by negotiated sale pursuant to the terms and conditions of the attached Note Purchase Contract (the "Purchase Contract") described herein; and

WHEREAS, in connection with the offering and sale of the Series 2021C Notes, the City determines to authorize the distribution of a Preliminary Official Statement and final Official Statement with respect to the Series 2021C Notes, and to authorize the execution and delivery of a Continuing Disclosure Certificate.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, OF NEW JERSEY THAT:

Section 1. Confirmation of Intention to Issue Special Emergency Notes. Pursuant to the provisions of the Ordinance and the within resolution, the Director of Finance/Chief Financial Officer is hereby authorized and directed to sell, issue, execute and deliver the \$25,128,423.00 principal amount of Special Emergency Notes (COVID 19) (Federally Taxable), Series 2021C Notes (the "Series 2021C Notes") the proceeds of which will be used to fund the special emergency appropriation related to the Operational Deficit created by the COVID 19 Public Health Emergency. The Series 2021C Notes will be dated and shall mature within one (1) year of the date of issuance thereof as shall be determined by the Director of the Department of Finance/Chief Financial Officer. The Series 2021C Notes may be additionally renewed from time to time by the Chief Financial Officer for a period not to exceed ten (10) years from the year in which the first budgeted payment for debt service on the Series 2021C Notes occurs, to wit: 2022. The Series 2021C Notes shall not be subject to redemption prior to maturity. The Chief Financial Officer is directed to report in writing to the Governing Body at the meeting next succeeding the date when any sale or delivery of the Series 2021C Notes pursuant to this resolution is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the Series 2021C Notes sold, the price obtained and the name of the underwriter, and such report shall be entered in full on the minutes of such meeting.

Section 2. Sale and Award Delegation. It is hereby delegated to and the Director of the Department of Finance/Chief Financial Officer is hereby authorized and directed to sell and award the purchase of the Series 2021C Notes to the Underwriter (as hereinafter defined) pursuant to the terms and conditions of the Note Purchase Contract, dated the date of sale, by and between the City

and the Underwriter (the "Purchase Contract"). The Purchase Contract in substantially the form attached hereto as Exhibit A is hereby approved, and the execution of a Note Purchase Contract by the Director of of the Department of Finance/Chief Financial Officer of the City is hereby authorized with such changes as may be approved by the Director of the Department of Finance/Chief Financial Officer, upon the advice of the City's bond counsel (the "Bond Counsel") and the City's municipal advisor (the "Municipal Advisor"). Oppenheimer & Co. Inc. is hereby appointed underwriter (the "Underwriter") for the Series 2021C Notes on such terms and with such compensation as may be determined by the City's Chief Financial Officer as reflected in the Purchase Contract. The execution and delivery of the Purchase Contract by the Director of the Department of Finance/Chief Financial Officer shall be conclusive evidence of the approval thereof and no further action or approval by the Municipal Council shall be required.

Section 3. Authorization for Official Statement. The distribution by the Underwriter on behalf of the City of a Preliminary Official Statement in connection with the sale of the Series 2021C Notes is hereby authorized. There is hereby delegated to the Chief Financial Officer the authority to approve the Preliminary Official Statement with such insertions, deletions and changes therein and any supplements thereto as Bond Counsel may advise. The Business Administrator or Director of the Department of Finance/Chief Financial Officer is hereby authorized and directed to deem the Preliminary Official Statement "final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission and to execute and deliver a certificate to that effect. The Business Administrator and the Director of the Department of Finance/Chief Financial Officer are each hereby authorized and directed to approve the contents and terms of the final Official Statement in respect of the sale of the aforementioned Series 2021C Notes in substantially the form of the Preliminary Official Statement. The Business Administrator and the Director of the Department of Finance/Chief Financial Officer are each hereby authorized and directed to execute and deliver such Official Statement to the Underwriter on behalf of the City, in substantially such form, with such insertions, deletions and changes therein and any supplements thereto as Bond Counsel and Municipal Advisor may advise, including revisions to reflect the terms of the sale of the Series 2021C Notes, purchase price, interest rate and yield, and the City officer executing the same may approve, such approval to be conclusively evidenced by such City officer's execution thereof. The distribution of the Preliminary Official Statement and final Official Statement by the Underwriter on behalf of the City in connection with the offering and sale of the Series 2021C Notes is hereby authorized and approved.

Section 4. Continuing Disclosure. The form of the Continuing Disclosure Certificate in substantially the form attached hereto as Exhibit B is hereby approved, and the execution of such Continuing Disclosure Certificate by the Director of the Department of Finance/Chief Financial Officer of the City is hereby authorized. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the Series 2021C Notes, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered a default on the Series 2021C Notes; however, any holder may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section.

Section 5. Form of Note Certificate. The form of the Note certificate substantially in the form attached hereto as Exhibit C is hereby approved. The Note certificate shall be executed in the name

of the City by the Mayor, the Chief Financial Officer and attested to by the City Clerk and the seal of the City affixed thereto. The executed Notes are hereby authorized to be delivered to the Underwriter upon receipt of payment of the purchase price for the Series 2021C Notes.

Section 6. Further Action. Any matter relating to the award, sale or execution of the Series 2021C Notes which has been delegated by the Ordinance to the Director of the Department of Finance/Chief Financial Officer may be performed, and any document authorized by this resolution may be executed by the Mayor, the City Clerk, the Business Administrator or the Director of the Department of Finance/Chief Financial Officer in accordance with the Local Bond Law and the Local Budget Law (collectively, the "Authorized Officers"). On behalf of the City, the Authorized Officers of the City are each authorized and directed to take all steps which are necessary or convenient to effectuate the terms of this Resolution with respect to the issuance, sale, execution and delivery of the Series 2021C Notes, including, but not limited to the execution of any and all other closing documentation. All such actions heretofore or hereafter taken are hereby ratified, approved and confirmed.

Section 7. Tax Consequences. Interest on the Series 2021C Notes shall be includable in gross income for federal income tax purposes as of the date hereof and under current law. Interest on the Series 2021C Notes and any gain on the sale thereof are not includable as gross income under the New Jersey Income Tax Act.

Section 8. Pledge of City Full Faith and Credit. The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and the interest on the Series 2021C Notes authorized by this resolution. The Series 2021C Notes shall be direct, unlimited obligations of the City. The powers and obligations of the City to pay any Series 2021C Notes issued pursuant to this Resolution and the Local Budget Law shall be unlimited and the City shall have the power and be obligated to levy ad valorem taxes upon all taxable property within the City for the payment of such Special Emergency Notes and interest thereon, without limitation as to rate or amount.

Section 9. Filing of Within Resolution with DLGS. A copy of this resolution as adopted shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs, State of New Jersey.

Section 10. Effective Date. This resolution shall take effect immediately.

STATEMENT

This resolution authorizes the issuance and sale of the Special Emergency Series 2021C Notes, the distribution of a Preliminary Official Statement and Final Official Statement, and approval of the form of a Purchase Contract and the distribution thereof containing the terms for the offering and sale of the Series 2021C Notes and Continuing Disclosure Certificate regarding the sale of the City's Series 2021C Notes.