



# City of Newark

City Hall  
920 Broad Street  
Newark, New Jersey 07102

## Legislation Text

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File #: 16-1342, Version: 1

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**Dept/ Agency:** Finance

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

**Purpose:** Approving Form of Sale of City-Secured Bonds

**Amount to be Financed:** \$17,000,000.00

**Source of Appropriation:** Refunding Bonds

**Purchaser:** Powell Capital Markets, Inc.

**Project Information:**

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

**Additional Information:**

**WHEREAS**, on April 20, 2016 the City of Newark, in the County of Essex, State of New Jersey (the "City") adopted a resolution authorizing a temporary emergency appropriation for the purposes of paying past due amounts owed by the City to Horizon Blue Cross/Blue Shield; and

**WHEREAS**, the City is authorized to issue refunding bonds pursuant to the provisions of N.J.S.A. 40A:2-51 et seq. (the "Local Bond Law") for the purpose of funding, financing or refinancing a temporary emergency appropriation; and

**WHEREAS**, on May 11, 2016, the Local Finance Board, Division of Local Government Services State Department of Community Affairs (the "Local Finance Board") granted its approval for the adoption of the refunding Bond Ordinance, approval and issuance of such bonds and the maturity schedule therefor and the issuance of such bonds pursuant to the Municipal Qualified Bond Act, N.J.S.A 40A:3-1 et seq.; and

**WHEREAS**, in accordance with the Local Bond Law, the Municipal Council of the City did, on May 26, 2016, finally adopt Ordinance 6PSF-b(S) (the "Refunding Bond Ordinance") authorizing the issuance by the City of its refunding bonds in an amount not to exceed \$17,000,000.00; and

**WHEREAS**, in accordance with the Local Bond Law, specifically, N.J.S.A. 40A:2-52 et seq., the City now desires to authorize and approve the issuance and sale of the General Obligation Refunding Bonds pursuant to the Refunding Bond Ordinance in the aggregate principal amount not to exceed \$17,000,000.00 (the "General Obligation Refunding Bonds") and to provide for the form and sale of the General Obligation Refunding Bonds; and

**WHEREAS**, the General Obligation Refunding Bonds are qualified under and entitled to the benefits of the provisions of the Municipal Qualified Bond Act as amended; and

**WHEREAS**, the City has appointed NW Financial Group, LLC as the Financial Advisor to the City (the "NW Financial" or the "Financial Advisor"); and

**WHEREAS**, the Financial Advisor has determined that it is in the best interests of the City to privately place the General Obligation Refunding Bonds to achieve more favorable terms and interest rates than those achieved by a public offering and negotiated sale conducted by a selected underwriter; and

**WHEREAS**, Powell Capital Markets, Inc. ("Powell"), the anticipated underwriter to be selected by the City to negotiate the sale of the General Obligation Refunding Bonds, approached the Financial Advisor regarding the direct purchase of the General Obligation Refunding Bonds through a private placement transaction; and

**WHEREAS**, Capital One Public Funding, LLC submitted a Preliminary Term Sheet dated August 8, 2016 (the "Preliminary Term Sheet") to Powell and NW Financial for the purchase of the General Obligation Refunding Bonds, which Preliminary Term Sheet is indicative of the terms and conditions under which Capital One Public Funding, LLC would purchase the General Obligation Refunding Bonds from the City; and

**WHEREAS**, the City desires to utilize Powell as a placement agent (the "Placement Agent") to privately place the General Obligation Refunding Bonds with Capital One Public Funding, LLC and Capital One Public Funding, LLC shall agree to purchase such Bonds from the City, in accordance with the terms and conditions contained in a Final Term Sheet (the "Final Term Sheet"); and

**WHEREAS**, it therefore becomes necessary to approve the contemplated transaction for the purchase of the General Obligation Refunding Bonds pursuant to the terms of this bond resolution (the "Bond Resolution") and to (i) authorize the private placement by Powell relating to the direct purchase of the City's General Obligation Refunding Bonds by Capital One Public Funding, LLC and to (ii) authorize the execution and delivery of documentation in connection therewith.

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

*Section 1.* The issuance and sale of the General Obligation Refunding Bonds of the City in the aggregate principal amount not to exceed \$17,000,000.00 is hereby authorized. The proceeds of the General Obligation Refunding Bonds shall be used to (i) finance or refinance a temporary emergency appropriation in the City's 2016 budget for the purpose of paying past due amounts owed by the City to Horizon Blue Cross/Blue Shield and (ii) pay costs of issuance.

*Section 2.* The City hereby appoints Powell as Placement Agent for the General Obligation Refunding Bonds. The Chief Financial Officer, in consultation with the Financial Advisor is hereby authorized and directed to negotiate, approve, execute and deliver a Placement Agent Agreement with Powell for services rendered. A placement agent fee in an amount not to exceed \$2.50 per \$1,000.00 of General Obligation Refunding Bonds issued is hereby approved to be paid to the Placement Agent in connection therewith out of the proceeds of the General Obligation Refunding Bonds. The form of the Placement Agent Agreement attached hereto as Exhibit A and incorporated by reference herein is hereby approved.

*Section 3.* The direct purchase of the General Obligation Refunding Bonds in an amount not to exceed \$17,000,000.00 by Capital One Public Funding, LLC in accordance with the parameters contained in the Preliminary Term Sheet attached hereto as Exhibit B and incorporated by reference

herein, is hereby authorized and approved. The Chief Financial Officer of the City, upon consultation with the Financial Advisor and DeCotiis, FitzPatrick & Cole, LLP, Bond Counsel to the City ("Bond Counsel") is hereby authorized and directed to approve and execute a Final Term Sheet which reflects the terms of the Preliminary Term Sheet and to undertake all actions and execute all documents to facilitate and consummate the transaction contemplated hereby. The proceeds of the General Obligation Refunding Bonds shall be applied for the purposes described in the Refunding Bond Ordinance.

*Section 4.* The Chief Financial Officer is hereby authorized and directed to approve and execute (a) the Placement Agent Agreement for the private placement of the General Obligation Refunding Bonds by Powell and (b) a Final Term Sheet with Capital One Public Funding, LLC, all such terms for the General Obligation Refunding Bonds to be within the parameters set forth in the Placement Agent Agreement, the Preliminary Term Sheet and this Bond Resolution.

*Section 5.* The General Obligation Refunding Bonds (as previously defined) shall be issued as one series of bonds and shall be designated as "Qualified General Obligation Refunding Bonds, Series 2016". The General Obligation Refunding Bonds shall be dated the date of delivery, shall be numbered upward from GORB-1 (2016), shall be issued as a single fully registered bond registered in the name of Capital One Public Funding, LLC in accordance with Section 6 hereof. Principal on the General Obligation Refunding Bonds shall be payable annually on such month and date as shall be determined by the Chief Financial Officer of the City within the limitations hereinafter provided, in consultation with Bond Counsel and the Financial Advisor and in accordance with the parameters set forth in the Preliminary Term Sheet. Notwithstanding the foregoing, the Chief Financial Officer is authorized to approve a not to exceed annual interest rate up to 2.30% for the General Obligation Refunding Bonds. Interest on the General Obligation Refunding Bonds shall accrue at the rate or rates and be payable semi-annually on such month and date as shall be determined by the Chief Financial Officer of the City in consultation with Bond Counsel and Financial Advisor and in accordance with the parameters set forth in the Preliminary Term Sheet.

The Municipal Council hereby delegates to the Chief Financial Officer of the City the power and authority to sell and award the General Obligation Refunding Bonds to Capital One Public Funding, LLC in accordance with this Bond Resolution and in accordance with the following parameters: General Obligation Refunding Bonds shall be issued in a maximum aggregate principal amount not to exceed \$17,000,000.00; the principal redemption schedule on the General Obligation Refunding Bonds shall conform to the maturity schedule presented to and approved by the Local Finance Board on May 11, 2016. Should the City determine to market the General Obligation Refunding Bonds with a principal redemption schedule other than that which was approved by the Local Finance Board, the City shall adopt a resolution and make an additional application to the Local Finance Board seeking approval of a revised principal redemption schedule prior to such sale, all in accordance with the provisions of N.J.S.A. 40A:3-4(e); and the General Obligation Refunding Bonds shall mature within 10 years from the date of issuance. The Chief Financial Officer of the City is hereby authorized and directed, within 10 days of the closing on the sale of the General Obligation Refunding Bonds, to file with the Local Finance Board and with the City Business Administrator, the Mayor and the Municipal Council of the City at its first meeting after the sale of the General Obligation Refunding Bonds, a summary of the terms of the sale of the General Obligation Refunding Bonds, including the closing date of and the total amount of the financing; a debt service schedule; and an itemized accounting of all costs of issuance in connection with the issuance of the General Obligation Refunding Bonds.

In addition, the Chief Financial Officer is hereby authorized and directed in connection with the approval of the issuance of the General Obligation Refunding Bonds by the Local Finance Board to:

- a. file Realized Revenue Statements on a monthly basis with the Executive Secretary of the Local Finance Board; and
- b. provide the Local Finance Board with a report which details the status of the General Obligation Refunding Bond Ordinance included the Local Finance Board approval; and
- c. certify at the time of closing on the General Obligation Refunding Bonds that the Chief Financial Officer has notified the Treasurer of the State of New Jersey, and the Local Finance Board as to the details of the sale of the General Obligation Refunding Bonds pursuant to the Municipal Qualified Bond Act and, further, that said certification shall also be promptly forwarded to both the State Treasurer and the Local Finance Board after closing; and
- d. file a certified copy of the within Bond Resolution with the Local Finance Board upon adoption.

The General Obligation Refunding Bonds shall be substantially in the form as provided in Exhibit C of this Bond Resolution, with such omissions, insertions and variations as are properly required to reflect the sale of such bonds in accordance with the Final Term Sheet. The principal redemption schedule and other terms for the issuance and sale of the General Obligation Refunding Bonds shall be as set forth in Exhibit D attached hereto and incorporated by reference herein.

*Section 6.* The General Obligation Refunding Bonds will be initially issued in the form of one single physical certificate for the aggregate principal amount of the General Obligation Refunding Bonds maturing in the year 2026 and, when issued, will be registered in the name of and held by Capital One Public Funding, LLC, as registered owner. As long as Capital One Public Funding, LLC is the registered owner of the General Obligation Refunding Bonds, annual payments of the principal of, redemption premium, if any, and interest on the General Obligation Refunding Bonds will be made by the City, or by a bank or trust company selected by the Chief Financial Officer to act as paying agent and bond registrar for the General Obligation Refunding Bonds (the "Paying Agent"), by wire transfer directly to Capital One Public Funding, LLC without physical presentation of the bond certificate. The registration books of the City shall be kept by the Chief Financial Officer of the City or, the duly appointed Paying Agent. No transfer of the General Obligation Refunding Bonds to another registered owner or owner(s) shall be valid unless such transfer is made (a) to not more than 35 sophisticated investors (as such term is defined in S.E.C. Rule 15c2-12) and (b) in authorized denominations of not less than \$1,000,000.00 and integral multiples of \$5,000.00 in excess thereof.

The General Obligation Refunding Bonds shall be payable as to both principal, redemption premium, if any, and interest in lawful money of the United States of America. The General Obligation Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer under the official seal or facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the City Clerk. If a Paying Agent is appointed, the foregoing attestation may be made by facsimile signature of the City Clerk, provided that the General Obligation Refunding Bonds shall be authenticated by the manual signature of the Paying Agent.

The following matters are hereby confirmed with respect to the General Obligation Refunding Bonds:

Date of General Obligation Refunding Bonds: Date of Delivery

Interest Payment Dates: To be Determined by the Chief Financial Officer. Such interest payment dates to occur semiannually until maturity, or earlier redemption, with payment being made to the Registered Owner, by the City or the Paying Agent

Placement Agent: Powell Capital Markets, Inc.

Bond Registrar/Paying Agent: T.D. Bank, National Association

Registered Owner: Capital One Public Funding, LLC

Authorized Denominations: As determined by Bond Counsel, Financial Advisor, and the City's Chief Financial Officer

*Section 7.* There is hereby delegated to the Chief Financial Officer the authority, after consulting with the City's Financial Advisor and Bond Counsel, to provide that the General Obligation Refunding Bonds may be subject to optional redemption prior to maturity as specified by the Chief Financial Officer; provided however, that any such optional redemption provisions shall be in accordance with the parameters set forth in the Preliminary Term Sheet and Final Term Sheet and Exhibit D hereto.

When any General Obligation Refunding Bonds are to be redeemed, the Chief Financial Officer (or the Paying Agent) shall give notice of the redemption of the General Obligation Refunding Bonds by mailing such notice by first class mail in a sealed envelope postage prepaid to the registered owners of the portion of any General Obligation Refunding Bonds which are to be redeemed, at their respective addresses as they last appear on the registration books of the City or the Paying Agent, as applicable, at least thirty (30) but not more than sixty (60) days before the date fixed for redemption. Notice of redemption having been given as aforesaid, the portion of the General Obligation Refunding Bonds which are to be redeemed shall, on the date fixed for redemption, become due and payable at the redemption price, plus accrued interest to the redemption date and, upon presentation and surrender thereof at the place specified in such notice, such portion of the General Obligation Refunding Bonds shall be paid at the redemption price, plus accrued interest to the redemption date. On and after the redemption date (unless the City shall default in the payment of the redemption price and accrued interest), such General Obligation Refunding Bonds shall no longer be considered as outstanding.

*Section 8.* TD Bank, National Association is hereby designated as the Paying Agent for the General Obligation Refunding Bonds. The Chief Financial Officer of the City is hereby authorized and directed to execute and deliver a Paying Agent Agreement with the Paying Agent.

*Section 9.* Subject to the provisions of Section 6 hereof with respect to payments made to Capital One Public Funding, LLC, the principal of, redemption premium, if any, and interest on the General Obligation Refunding Bonds will be payable by check mailed or wire transfer to the respective addresses of the registered owners thereof as shown on the registration books of the City

or the duly appointed Paying Agent as of the close of business on the first day of the calendar month preceding the applicable interest payment date.

*Section 10.* In order to maintain the exclusion from gross income for federal income tax purposes of interest on the General Obligation Refunding Bonds, and for no other purpose, the City covenants to comply with each applicable requirement of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the General Obligation Refunding Bonds, and the City covenants not to take any action or fail to take any action which would cause the interest on the General Obligation Refunding Bonds to lose the exclusion from gross income for federal income taxation purposes under Section 103 of the Code.

The City covenants and agrees with the holders of the General Obligation Refunding Bonds that the City shall not take any action or omit to take any action which would cause the General Obligation Refunding Bonds to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141(a) or 148, respectively, of the Code, or any successor provision.

*Section 11.* The City covenants that it will take no action which would cause the General Obligation Refunding Bonds to be federally guaranteed (within the meaning of Section 149(b) of the Code).

*Section 12.* The Mayor, the Chief Financial Officer, the City Business Administrator and the City Clerk are each hereby designated, authorized and directed to perform or determine any other matters or details relating to the issuance, private placement and direct purchase of the General Obligation Refunding Bonds, to do or perform or cause to be done or performed any and all acts as such officers, the Financial Advisor or Bond Counsel may deem necessary or appropriate in order to effect the proper issuance, execution and delivery of the General Obligation Refunding Bonds, and to execute, *inter alia*, a tax and arbitrage certificate certifying, among other things, that the City, to the extent it is empowered and allowed under applicable law, covenants that it will do and perform all acts and things necessary or desirable for the purpose of monitoring compliance to assure that interest paid on the General Obligation Refunding Bonds is excludable from gross income under the Code, including the filing of an IRS Form 8038-G pertaining to the General Obligation Refunding Bonds, and the execution, delivery of and filing, if necessary, of any and all instruments, opinions, affidavits, certificates, resolutions, documents or other papers as may be deemed necessary. The Chief Financial Officer of the City is authorized and directed to provide for the payment of the costs of the City incurred in connection with the issuance of the General Obligation Refunding Bonds.

*Section 13.* To the extent applicable, Capital One Public Funding, LLC shall complete and submit a Business Entity Disclosure Certification pursuant to which Capital One Public Funding, LLC shall certify that it has not made any reportable contributions to a political or candidate committee in the City in the previous one year, and the Final Term Sheet will prohibit the Capital One Public Funding, LLC from making any future reportable contribution so long as Capital One Public Funding, LLC is the Registered Owner of the General Obligation Refunding Bonds.

*Section 14.* This resolution shall take effect upon final adoption by the City.

## **STATEMENT**

Resolution providing for the issuance of General Obligation Refunding Bonds in an amount not to

exceed \$17,000,000.00, for funding a temporary emergency appropriation for payments due to Horizon Blue Cross/Blue Shield; providing for the form, maturity and other details of said refunding; providing for the private placement of such refunding bonds; and approving and authorizing the execution and delivery of a placement agent agreement and final term sheet.