



# City of Newark

City Hall  
920 Broad Street  
Newark, New Jersey 07102

## Legislation Text

File #: 21-1136, Version: 1

**Dept/ Agency:** Finance

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

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

**Amount to be Financed:** \$68,024,550.00

**Source of Appropriation:** Bond Anticipation Notes

**Purchaser:** Open Market

**Project Information:**

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

**RESOLUTION OF THE CITY OF NEWARK AUTHORIZING THE CIRCULATION OF A PRELIMINARY OFFICIAL STATEMENT AND FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE NEGOTIATED SALE AND ISSUANCE OF GENERAL OBLIGATION NOTES, SERIES 2021, OF THE CITY, APPROVING A CONTINUING DISCLOSURE CERTIFICATE AND NOTE PURCHASE CONTRACT WITH RESPECT TO SAID NOTES, AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH.**

**Additional Information:**

\$48,961,000.00 Renewed Series 2021 Notes and \$19,063,550.00 New General Capital Series 2021 Notes.

### **No Action Taken 7R4-b (s) 081721**

**WHEREAS**, the City of Newark, in the County of Essex, New Jersey (the "City"), has heretofore issued on October 6, 2020 the principal amount of \$36,339,000.00 General Capital Improvement Bond Anticipation Notes, Series 2020C, maturing October 5, 2021, aggregate principal amount of \$6,060,000.00 Tax Appeal Refunding Notes, Series 2020B (the "SENS") maturing October 5, 2021, and \$12,675,000.00 principal amount of Special Emergency Notes, Series 2020D (Federally Taxable), also maturing October 5, 2021 (collectively, the "Prior Notes"); and

**WHEREAS**, the City's Director of the Department of Finance/Chief Financial Officer is desirous of selling and issuing principal amount of \$48,961,000.00 General Obligation Notes, Series 2021, consisting of \$4,040,000.00 Tax Appeal Refunding Notes, Series 2021D, \$34,781,000.00 General Capital Improvement Bond Anticipation Notes, Series 2021E and \$10,140,000.00 Special Emergency Notes, Series 2021F (Federally Taxable) (collectively, the "Renewed Series 2021 Notes") to refund, together with budgetary appropriations of the City, the Prior Notes and is authorized to do so pursuant to the Local Bond Law, specifically N.J.S.A. 40A:2-28 (the "Local Bond Law"), the Ordinances (as defined below) and this Resolution; and

**WHEREAS**, the City is also desirous of selling and issuing \$19,063,550.00 principal amount of new money general capital improvement bond anticipation notes in concert with the sale and issuance of the Renewed Series 2021 Notes (the "New Money Notes") to fund certain capital projects authorized by a bond ordinance adopted June 22, 2021; and

**WHEREAS**, in anticipation of the issuance and sale of the \$48,961,000.00 Renewed Series 2021 Notes and the \$19,063,550.00 New Money Notes in the aggregate principal amount not to exceed \$68,024,550.00 of General Obligation Notes, Series 2021 (collectively, the "Series 2021 Notes"), the City expects to receive an offer to purchase the Series 2021 Notes from an underwriter designated by the City (the "Underwriter") upon such negotiated terms and conditions as set forth in a note purchase contract (the "Note Purchase Contract") by and between the City and the Underwriter, the form of which was presented to this meeting and is on file in the Office of the City Clerk and incorporated herein by reference, and City wishes to approve the form and execution of the Note Purchase Contract; and

**WHEREAS**, the City intends to issue the Series 2021 Notes on or about October 4, 2021; and

**WHEREAS**, in connection with the offering and sale of the Series 2021 Notes, the Underwriter intends to distribute a Preliminary Official Statement on behalf of the City and a final Official Statement setting forth certain information relating to the City and the sale of the Series 2021 Notes, and to enter into a Continuing Disclosure Certificate as required by Rule 15c2-12, as amended, promulgated by the Securities and Exchange Commission (the "Rule"); and

**WHEREAS**, the Series 2021 Notes are authorized to be issued pursuant to the following bond ordinances of the City: (i) in the case of the Tax Appeal Refunding Notes, Series 2021D: Refunding Bond Ordinance 6PSF-c adopted by the Municipal Council on November 8, 2018 (the "TARN Ordinance"); (ii) in the case of the Special Emergency Notes, Series 2021F, Ordinance 6PSF-e adopted by the Municipal Council on August 5, 2020 (the "SEN Ordinance"); and (iii) in the case of the General Capital Improvement Bond Anticipation Notes, Series 2021E, Bond Ordinance 6PSF-a (S) adopted by the Municipal Council on March 21, 2017, Bond Ordinance 6PSF-b adopted by the Municipal Council on April 19, 2017, and Bond Ordinance 6PSF-a(S) adopted by the Municipal Council on June 22, 2021 (the "Notes Ordinances" and together with the TARN Ordinance and the SEN Ordinance, the "Ordinances"), approved and published as required by law. All other provisions for the issuance of the Series 2021 Notes (including, without limitation, maturity date and the interest rate or rates) shall be determined by the Director of the Department of Finance/Chief Financial Officer.

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

1. The Series 2021 Notes shall be designated as follows:
  - (a) \$4,040,000.00 Tax Appeal Refunding Notes, Series 2021D (the "Series 2021D Notes")
  - (b) \$53,844,550.00 General Capital Improvement Bond Anticipation Notes, Series 2021E (the "Series 2021E Notes"); and
  - (c) \$10,140,000.00 Special Emergency Notes (Federally Taxable), Series 2021F (the "Series 2021F Notes")

2. Authorization for Official Statement. The preparation by the City and its municipal advisor, NW Financial Group, LLC (the "Municipal Advisor"), of a Preliminary Official Statement relating to the Series 2021 Notes is hereby authorized. There is hereby delegated to the Director of the Department of Finance/Chief Financial Officer the authorization to approve the form of a Preliminary Official Statement, with such insertions, deletions and changes therein and any

supplements thereto as bond counsel to the City (“Bond Counsel”) and the Municipal Advisor to the City may advise and recommend and the Director of the Department of Finance/Chief Financial Officer may approve, such approval to be evidenced by such City Officer’s execution of the final Official Statement as described herein. The Business Administrator or the Director of the Department of Finance/Chief Financial Officer are each hereby authorized and directed to deem the Preliminary Official Statement (the “POS”) “final” within the meaning of the Rule and to execute and deliver a certificate to that effect to the Underwriter. The Director of the Department of Finance/Chief Financial Officer is each hereby authorized and directed to approve the contents and terms of the final Official Statement reflecting the pricing, as applicable, of the Series 2021 Notes in substantially the form of the POS. The Director of the Department of Finance/Chief Financial Officer is hereby authorized to execute and deliver the final Official Statement on behalf of the City, in substantially such form of the POS, with such insertions, deletions and changes therein and any supplements thereto as Bond Counsel and Municipal Advisor to the City may advise and the City officer executing the same may approve, such approval to be evidenced by such City officer’s execution thereof. The use and distribution of the POS by the Underwriter in connection with the offering and sale of the Series 2021 Notes are hereby authorized by the City.

3. Continuing Disclosure. The form of the Continuing Disclosure Certificate is hereby approved in the form presented at this meeting and on file in the office of the Clerk of the City and incorporated herein by reference as Exhibit A, and the execution of the Continuing Disclosure Certificate by the Director of the Department of Finance/Chief Financial Officer 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 2021 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, the failure of the City to comply with the provisions of the Continuing Disclosure Certificate shall not be considered a default on the Series 2021 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 the Continuing Disclosure Certificate.

4. Note Purchase Contract. The form of the Note Purchase Contract with respect to the Series 2021 Notes, in substantially the form presented at this meeting as Exhibit B and on file in the Office of the City Clerk and incorporated herein by reference, with such changes as may be approved by the Director of the Department of Finance/Chief Financial Officer, upon the recommendations of Bond Counsel to the City and the City’s Municipal Advisor, is hereby approved, and the execution of the Note Purchase Contract by the Business Administrator and/or the Director of the Department of Finance/Chief Financial Officer is hereby authorized, which execution shall be conclusive evidence of the approval thereof. Following execution, the fully executed Note Purchase Contract shall be filed with the City Clerk and the Underwriter.

5. Appointment of Underwriter. It is hereby delegated to the Director of the Department of Finance/Chief Financial Officer the authority to solicit proposals from the investment banking community and to select an Underwriter who will purchase the Series 2021 Notes pursuant to the provisions of the Note Purchase Contract authorized herein. The Chief Financial Officer is also authorized and directed to negotiate and determine the compensation to the Underwriter, including fees and expenses and the underwriter counsel fee for the sale of the Series 2021 Notes. 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 2021 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 2021 Notes sold, the price obtained and the name of the purchaser, and such report shall be entered in full on the minutes of such meeting.

6. Sale and Issuance of all Series 2021 Notes. The sale and issuance of the Series 2021 Notes is hereby authorized and approved. The terms and provisions of the Series 2021 Notes (including, without limitation, registered or book-entry only form, the aggregate principal amount, the maturity date, interest rate and redemption provisions) shall be determined by the Director of the Department of Finance/Chief Financial Officer as authorized by the Local Bond Law and the Ordinances heretofore adopted by the Municipal Council and this Resolution. The Mayor of the City of Newark, the Business Administrator, the City Clerk and the Director of the Department of Finance/Chief Financial Officer are each authorized and directed to take all actions which are necessary or convenient to effectuate the terms of this Resolution and the issuance, sale and delivery of each series of the Series 2021 Notes, including, but not limited to the execution of the Continuing Disclosure Certificate, and the Note Purchase Contract, and closing certificates, documents and opinions in connection therewith, in consultation with and upon the advice of Bond Counsel.

7. Tax Exemption. To the extent that one or more series of the Series 2021 Notes are issued as tax exempt obligations (which determination shall be made prior to sale), the City shall covenant in a Tax and Arbitrage Certificate that it will comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and that it will take no action or omit to take any action that would cause the interest on such series of Series 2021 Notes to lose its tax exemption under the Code. The Director of the Department of Finance/Chief Finance Officer of the City is hereby authorized and directed to execute and deliver the Tax and Arbitrage Certificate in connection with the issuance of the Series 2021 Notes.

8. Reimbursement. The City may finance the New Money Notes with all or a portion of tax-exempt notes, but may pay for certain costs of the Projects ("Project Costs") prior to the issuance of such notes with funds of the City which are not proceeds of tax-exempt notes. The City desires to preserve its right to treat an allocation of proceeds of the notes to the reimbursement of Project Costs paid prior to the issuance of notes as an expenditure for such Project Costs to be reimbursed for purposes of Sections 103 and 141-150 of the Internal Revenue Code (the "Code"). The City reasonably expects to reimburse its expenditure of Project Costs paid prior to the issuance of the New Money Notes with proceeds of notes. This Section is intended to be and hereby is a declaration of the City's official intent to reimburse the expenditure of Project Costs paid prior to the issuance of the notes with the proceeds of a borrowing to be incurred by the City, in accordance with Treasury Regulations Section 150-2. The maximum principal amount of the New Money Notes expected to be issued to finance the Project is \$19,063,550.00. The Project Costs to be reimbursed with the proceeds of the New Money Notes will be "capital expenditures" in accordance with the meaning of Section 150 of the Code. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations Section 1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code. The proceeds of the New Money Notes used to reimburse the City for Project Costs, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds," including "sinking funds," "pledged funds," or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations Section 1.148-1) of the notes or another issue of debt obligations of the City, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations Section

1.148-1). All reimbursement allocations will occur not later than eighteen (18) months after the later of: (i) the date the expenditure from a source other than the notes is paid; or (ii) the date the Project is "placed in service" (within the meaning of Treasury Regulations Section 1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid.

10. Pledge of the City. 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 2021 Notes authorized by this resolution. The Series 2021 Notes shall be direct, unlimited obligations of the City. The powers and obligations of the City to pay any Series 2021 Note issued pursuant to this Resolution 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 Series 2021 Notes and interest thereon, without limitation as to rate or amount.

11. Execution of Series 2021 Notes. All Series 2021 Notes issued pursuant to this Resolution shall be executed by the Chief Financial Officer and the Mayor of the City of Newark under the seal of the City and attested by the City Clerk. Such officers are hereby authorized and directed to execute and deliver all documents necessary or convenient in connection with the issuance, sale and delivery of the Series 2021 Notes.

12. Effectiveness. This Resolution shall take effect immediately upon adoption.

### **STATEMENT**

Resolution authorizing the distribution of a Preliminary Official Statement and Final Official Statement, authorizing forms of Note Purchase Contract and Continuing Disclosure Certificate and related matters in connection with the issuance and sale of the Series 2021 Notes.