



## Legislation Text

File #: 23-1238, Version: 1

**A BOND ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, PROVIDING FOR LOANS TO THE NEWARK HOUSING AUTHORITY OR ITS RELATED ENTITIES FOR THE PURPOSE OF ACQUIRING AND MAINTAINING VARIOUS PROPERTIES FOR USE AS AFFORDABLE HOUSING; APPROPRIATING \$20,000,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$20,000,000.00 IN BONDS OR NOTES OF THE CITY TO FINANCE THE COST THEREOF.**

**WHEREAS**, the Housing Authority of the City of Newark (the "Authority") has been duly created as a public body corporate and politic of the State of New Jersey (the "State") by an Ordinance of the members of the Municipal Council of the City of Newark (the "City"), in the County of Essex (the "County"), New Jersey (the "State") duly adopted pursuant to and in accordance with all applicable law, including the Local Housing Authorities Law, constituting Chapter 19 of the Pamphlet Laws of 1938 (N.J.S.A. 55:14A-1 et seq.) of the State and the acts amendatory thereof and supplemental thereto, as repealed and replaced by the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 (N.J.S.A. 40A:12A-1 et seq.) of the State and the acts amendatory thereof and supplemental thereto (the "Housing Law"); and

**WHEREAS**, Roizman Development, Inc. (the "Developer") previously acquired, constructed, furnished, equipped and developed properties commonly known as West Kinney Gardens Phase I-A ("West Kinney"), West Kinney Gardens Phase I-B ("Hayes"), and Stella Gardens Apartments ("Prince" and together with West Kinney and Hayes, the "Properties") as affordable housing projects on land owned by the Authority and leased to the Developer; and

**WHEREAS**, the Developer financed the acquisition, construction, furnishing, equipping and development of the Properties, in part, with low-income housing tax credits, loans from the Authority, the New Jersey Department of Community Affairs, and the New Jersey Housing and Mortgage Finance Agency, and Developer equity; and

**WHEREAS**, since the fifteen (15) year tax compliance period for the low income housing tax credits has expired, the Authority desires to exercise its option and right of first refusal to acquire the Properties from the Developer for the purpose of maintaining the Properties as affordable housing projects for the benefit of the residents of the City; and

**WHEREAS**, the Authority is the sole member of certain related entities known as Newark HP I, LLC ("Newark I"), Newark HP II, LLC ("Newark II") and Newark HP III, LLC ("Newark III" and together with Newark I and Newark II, the "Authority Entities"); and

**WHEREAS**, Newark I, Newark II and Newark III will be the acquiring properties commonly referred to as West Kinney, Hayes and Prince, respectively; and

**WHEREAS**, the Authority has requested the City's assistance in obtaining funds to assist the Authority Entities in acquiring the Properties from the Developer, including the payoff of any outstanding loans encumbering the Properties; and

**WHEREAS**, in order to aid the Authority Entities in acquiring the Properties for the purpose of maintaining low and moderate income housing in the City, the City desires to issue general obligation bonds or notes in one (1) or more series in an aggregate principal amount not to exceed Twenty Million Dollars and Zero Cents (\$20,000,000.00) (the "Notes"), pursuant to the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as amended and supplemented (the "Local Bond Law"), and the Housing Law to provide loans in an aggregate amount not to exceed Twenty Million Dollars and Zero Cents (\$20,000,000.00) to the Authority Entities (the "Loans"), which will be used by the Authority Entities to fund the costs of acquiring the Properties and to pay other costs related thereto, including, but not limited to, as applicable, appraisal fees, environmental testing and remediation, surveys, title work, and legal and professional fees and expenses; and

**WHEREAS**, the City plans to issue the Notes, which, pursuant to Section 37(c)(2) of the Housing Law, may mature in annual installments commencing not more than two (2) and ending not later than forty (40) years from the date of initial issuance of the Notes, to finance the Loans, which Loans are expected to be paid in full by the Authority and/or the Authority Entities within twenty-four (24) months after the initial issuance of the Notes; and

**WHEREAS**, the City will capitalize the interest due on its Notes during the first year of issuance of such Notes and it is anticipated that the Authority Entities will pay any interest due on the Notes in its second year and, if necessary, in future years from revenues projected to be generated from the respective Properties; and

**WHEREAS**, prior to the City issuing this debt on behalf of the Authority and/or the Authority Entities it must receive Municipal Council approval; and

**WHEREAS**, the City now wishes to authorize the issuance of the Notes, the making of the Loans and any and all actions related thereto via the adoption of this Bond Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY THAT: (not less than two-thirds of all members thereof affirmatively concurring)**

**SECTION 1.** The improvements or purposes described in Section 3 of this bond ordinance are hereby authorized as general improvements or purposes to be undertaken by the City of Newark (the "City"). For the said improvements or purposes stated in Section 3, there is hereby appropriated in an amount not to exceed Twenty Million Dollars and Zero Cents (\$20,000,000.00). Pursuant to the provisions of N.J.S.A. 40A:12A-37(c)(2) of the Housing Law, notwithstanding the provisions of Section 11 of the Local Bond Law (N.J.S.A. 40A:2-1 et seq), no down payment is required as this bond ordinance authorizes obligations for the purpose of aiding the Authority and the Authority Entities with housing projects located in the City and as to which the federal government has contracted with the Newark Housing Authority (the "Authority") and/or the Newark HP I, LLC ("Newark I"), Newark HP II, LLC ("Newark II") and Newark HP III, LLC ("Newark III" and together with Newark I and Newark II, the "Authority Entities") to furnish financial assistance.

**SECTION 2.** For the financing of said improvements or purposes described in Section 3 hereof and to meet the Twenty Million Dollars and Zero Cents (\$20,000,000.00) appropriation, negotiable bonds of the City are hereby authorized to be issued in the principal amount of Twenty Million Dollars and Zero Cents (\$20,000,000.00) pursuant to, and within the limitations prescribed by, the Local Bond Law. In anticipation of the issuance of said bonds and to temporarily finance said improvements or purposes, negotiable notes of the City in the principal amount not exceeding Twenty Million Dollars and Zero Cents (\$20,000,000.00) are hereby authorized to be issued pursuant to, and within the limitations prescribed by, the Local Bond Law.

**SECTION 3.** (a) The improvements hereby authorized and purposes for the financing of which said bonds or notes are to be issued is to provide aid and finance a loan to the Authority Entities for the purpose of the acquisition of, and the payment of the purchase price for, West Kinney Gardens Phase I-A (“West Kinney”), West Kinney Gardens Phase I-B (“Hayes”), and Stella Gardens Apartments (“Prince” and together with West Kinney and Hayes, the “Properties”), as defined in the preambles hereof, which the Properties are necessary to maintain low and moderate income affordable housing in the City, including any structures, buildings, improvements, personal property, fixtures, easements, rights-of-way or other property rights currently located thereon and other costs related thereto, including, but not limited to, as applicable, appraisal fees, environmental testing and remediation, surveys, title work, and legal and professional fees and expenses related to the acquisition of the Properties, including all work and materials necessary therefore and incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for said improvements or purposes is Twenty Million Dollars and Zero Cents (\$20,000,000.00).

(c) The estimated cost of said improvements or purposes is Twenty Million Dollars and Zero Cents (\$20,000,000.00).

**SECTION 4.** In the event the United States of America, the State of New Jersey, and/or the County of Essex make a contribution or grant in aid to the City and/or the Authority, for the improvement and purpose authorized hereby and the same shall be received by the City prior to the issuance of the bonds or notes authorized in Section 2 hereof, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey and/or the County of Essex. In the event, however, that any amount so contributed or granted by the United States of America, the State of New Jersey and/or the County of Essex, shall be received by the City and/or the Authority after the issuance of the bonds or notes authorized in Section 2 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the City, as a result of using funds from this Bond Ordinance as “matching local funds” to receive such contribution or grant in aid.

**SECTION 5.** All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Acting Chief Financial Officer of the City, provided that no note shall mature later than one (1) year from its date. All notes shall be issued for a period not exceeding one (1) year and may be renewed from time to time for additional periods, none of which shall exceed one (1) year, but all notes, including renewals, shall mature and be paid not later than the first (1<sup>st</sup>) day of the fifth (5<sup>th</sup>) month following the close of the tenth (10<sup>th</sup>) fiscal year next following the date of the original note. The notes shall bear interest at such rate or rates and be in such form as may be determined

by the Acting Chief Financial Officer. The Acting Chief Financial Officer shall determine all matters in connection with the notes issued pursuant to this Bond Ordinance, and the signature of the Acting Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of the Local Bond Law and the Housing Law. The Acting Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and, if applicable, accrued interest thereon from their dates to the date of delivery thereof. The Acting 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 notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, and the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

**SECTION 6.** The City hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the City is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services and is on file with the City Clerk.

**SECTION 7.** The following additional matters are hereby determined, declared, recited and stated:

(a) The improvements or purposes described in Section 3 of this Bond Ordinance are not current expenses and are improvements, which the City may lawfully undertake as general improvements, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(b) Pursuant to N.J.S.A. 40A:12A-37(c), the obligations authorized herein shall mature in annual installments commencing not more than two (2) and ending not more than forty (40) years from the date of issuance.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly made and filed in the Office of the City Clerk and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, and such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds or notes provided for in this Bond Ordinance by Twenty Million Dollars and Zero Cents (\$20,000,000.00) and the said bonds or notes authorized by this Bond Ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An aggregate amount not exceeding Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) for items of expense listed in and permitted under Section 20 of the Local Bond Law is included in the estimated cost indicated herein for the purposes or improvements hereinbefore described.

(e) The obligations of the City authorized by this Bond Ordinance shall bear interest at a maximum rate of not to exceed six (6.00%) per centum per annum, without further authorization

of the Municipal Council, which authorization may be by Resolution.

**SECTION 8.** The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and the interest on the bonds or notes authorized by this Bond Ordinance. The bonds or notes shall be direct, unlimited obligations of the City, and the City shall be obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment of the bonds or notes and the interest thereon without limitation as to rate or amount.

**SECTION 9.** The Acting Chief Financial Officer of the City is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the City, which are authorized herein, and to execute such disclosure document on behalf of the City. The Acting Chief Financial Officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the City pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the City, which are authorized herein, and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized Bond Counsel, consistent with the requirements of the Rule. In the event that the City fails to comply with its undertaking, the City shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

**SECTION 10.** The Mayor of the City of Newark, Business Administrator, Acting Chief Financial Officer, Corporation Counsel and City Clerk, upon the advice and recommendations of advisors and professionals of the City, are each hereby authorized, as applicable, to negotiate, approve, execute, attest, and deliver, and perform any actions contemplated by, any loan agreement or other agreements, documents, affidavits, certificates and instruments related to the loan or grant of bond or note proceeds, which are authorized herein, to or on behalf of the Housing Authority of the City of Newark for the purpose of acquiring the Properties.

**SECTION 11.** The City reasonably expects to reimburse any expenditures toward the costs of the improvements or purposes described in Section 3 hereof and paid prior to the issuance of any bonds or notes authorized by this bond ordinance with the proceeds of such bonds or notes. This Section 11 is intended to be and hereby is a declaration of the City's official intent to reimburse any expenditures toward the costs of the improvements or purposes described in Section 3 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein in accordance with Treasury Regulations §1.150-2. 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 any bonds or notes authorized herein is paid, or (ii) the date the improvements or purposes described in Section 3 hereof is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid.

**SECTION 12.** If tax-exempt bonds or notes are issued under this Bond Ordinance, the City covenants to maintain the exclusion from gross income under section 103(a) of the Internal Revenue Code of 1986, as amended, of the interest on such tax-exempt bonds and notes issued under this Bond Ordinance.

**SECTION 13.** This Bond Ordinance shall take effect twenty (20) days after the first publication of this Bond Ordinance after final adoption as provided by the Local Bond Law.

**STATEMENT**

Ordinance providing for loans to the Newark Housing Authority or its related entities for the purpose of acquiring and maintaining various properties for use as affordable housing; appropriating in an amount not to exceed \$20,000,000.00 therefore and authorizing the issuance of \$20,000,000.00 in Bonds or Notes of the City to finance the cost thereof.