



## Legislation Text

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Resolution Authorizing the Issuance of General Obligation Bond Anticipation Notes of the City of Hampton in a maximum principal amount not to exceed \$9,250,000 to provide funding for the purchase and acquisition by the Economic Development Authority of the City of Hampton, Virginia of certain real property, and providing for the form, details and payment of such Bond Anticipation Notes

### **PURPOSE/BACKGROUND:**

The purpose of the resolution is to allow City Council to authorize the issuance of General Obligation Bond Anticipation Notes ("BANs") in the maximum principal amount of \$9,250,000 to provide funding to the Economic Development Authority ("EDA") for the purchase of the Boo Williams Sportsplex ("Sportsplex").

The resolution, if adopted, will authorize the Director of Finance, with the approval of the City Manager, to finalize the terms of the BANs and to execute the necessary documentation without further approval by City Council.

The BANs will allow for short-term financing until the City can issue long-term bonds for this project and others in the capital plan. We anticipate that the City will be issuing the long-term bonds in early 2018. By combining the Sportsplex and other capital plan financings into a singular long-term bond issue, the City benefits from the lower borrowing costs.

On August 14, 2017, Davenport & Company LLC ("Davenport"), the City's financial advisor, distributed a Request for Proposal ("RFP") to national, regional, and local financial institutions in order to obtain the most favorable interest rate for the BANs. The City received proposals from eight (8) banks. Davenport will be discussing the results of the proposals and make a recommendation on the best proposal at Council's meeting(s) on September 13.

The plan is to issue the BANs on or before October 12, 2017.

Multiple presenters will be on hand to further explain the BAN process, as well as to answer any questions Council may have. David Rose, Senior Vice President and Co-Head of Public Finance of Davenport, will discuss the results of the RFP for the financing of the BANs. George Scruggs Jr., a partner with Kutak Rock LLP, the City's bond counsel, will provide a brief presentation on the resolution and will address any questions about the resolution. Staff will be available to address any questions that City Council may have about the EDA's purchase of the Sportsplex.

### **Recommendation:**

Adopt the Resolution authorizing the issuance of General Obligation Bond Anticipation Notes.

**WHEREAS**, the Public Finance Act of 1991, Sections 15.2-2600 et seq. of the Code of Virginia of 1950, as amended (the "Public Finance Act"), permits the issuance of short-term notes in

anticipation of the issuance of long-term bonds for any purpose for which bonds have been authorized by the Council of the City (the "Council") of Hampton, Virginia (the "City"), at one time or from time to time, in order to finance the cost of capital projects;

**WHEREAS**, a presentation was made to the Council concerning the issuance of general obligation bond anticipation notes in a principal amount not to exceed \$9,250,000 (the "BANs") to provide short-term financing in advance of the issuance of long-term bonds for a project to be undertaken by the Economic Development Authority of the City of Hampton, Virginia (the "Authority") involving the purchase, acquisition and subsequent lease of the Boo Williams Sportsplex located in the area of the intersection of Armistead Avenue and Hampton Roads Center Parkway (the "Project");

**WHEREAS**, following the aforementioned presentation, which included a description of the process used to solicit proposals from financial institutions for the purchase of the BANs, the Council concurs with the recommendation of City staff and the City's financial advisor (the "Financial Advisor") to issue the BANs in a private placement to the financial institution submitting the most cost effective financing proposal, and desires to authorize the issuance and sale of the BANs in the maximum principal amount not to exceed \$9,250,000 to provide financing related to the Project pending the issuance of long-term bonds for such purpose; and

**WHEREAS**, a public hearing on the proposed issuance of the BANs for the Project has been advertised and held in the manner required by Section 15.2-2606 of the Public Finance Act of 1991.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA AS FOLLOWS:**

§ 1. **Authorization of Bonds and BANs**. The issuance of bonds for the Project is hereby authorized with the terms and details of the bonds to be provided by subsequent resolution of the Council which may be included in a resolution authorizing additional bonds for other capital projects. The principal amount of the bonds for the Project shall not exceed \$9,250,000 plus additional allocable issuance costs associated with any public issuance of long-term bonds. In anticipation of the issuance of such long-term bonds, the issuance of the BANs is authorized in the maximum principal amount not to exceed \$9,250,000 in order to finance the costs of the Project and any incidental or related cost, and to pay costs related to the issuance of the BANs. The BANs shall be designated "General Obligation Bond Anticipation Notes" or, if issued as a single note, "General Obligation Bond Anticipation Note," and may also include such other term or terms as part of their designation as the officers herein authorized deem appropriate.

§ 2. **Award and Sale of BANs**. The award and sale of the BANs to the financial institution presenting the most favorable proposal to the City as determined by the Director of Finance, in consultation with the Financial Advisor and with the approval of the City Manager, is authorized, subject to the limitations in section 3 below.

§ 3. **Limitation of Terms**. The BANs (i) shall be in an aggregate principal amount not to exceed \$9,250,000, (ii) shall have a true interest cost not to exceed 2.50%, (iii) shall have a final maturity not later than one year from the date of issuance, and (iv) shall be subject to optional redemption, with any optional redemption premium not in excess of two percent (2%) of the principal amount thereof.

§ 4. **Delegation of Authority**. The actions of the Director of Finance, with the approval of the City Manager, in selling the BANs shall be conclusive, and no further action shall be necessary on the part of the Council. This Resolution is intended to grant to the Director of Finance and the City Manager full and complete authority to finalize the terms of the BANs, to provide for their issuance and sale and to execute and deliver any and all documentation in connection therewith, including any purchase agreement, without further approval by the Council, subject to the requirements and conditions of this Resolution, the Public Finance Act, the City Charter and the Constitution and other laws of the Commonwealth of Virginia.

§ 5. **BAN Details**. The BANs shall be in registered form and shall be designated by title, date and series, bear interest from the date, be payable on the payment dates, and mature, subject to the limitations set forth above, as determined by the Director of Finance, with the approval of the City Manager. Each BAN shall bear interest at such rate as shall be determined at the time of sale, calculated on the basis of a 360-day year and a 30-day month, payable as determined by the Director of Finance, with the approval of the City Manager, subject to the terms of this Resolution. Principal and premium, if any, shall be payable to the registered owner or owners upon surrender of BANs or as otherwise provided in accordance with their terms as they become due at the office of the Registrar. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar on the date prior to each interest payment date that shall be determined by the Director of Finance, with the approval of the City Manager (the "Record Date"); provided however, any Record Date contained in the BAN certificate shall be deemed the determination of such officers. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

§ 6. **Preparation, Execution and Delivery of BANs**. The City Manager, the Director of Finance and the City Clerk are authorized and directed to take all proper steps to have the BANs prepared, initially in typewritten form, and executed in accordance with their terms and to deliver the BANs to or for the account of the purchaser thereof upon payment therefor. The BANs shall be signed by the manual or facsimile signatures of the City Manager or the Director of Finance, and the City's seal may be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the City Clerk. The BANs may also be signed by the Mayor of the City. No BAN signed by facsimile signatures shall be valid until it has been authenticated by the manual signature of an authorized officer or employee of the Registrar and the date of authentication noted thereon.

§ 7. **Form of BANs**. The BANs shall be in the form the Director of Finance may select, with such terms and provisions not inconsistent with this Resolution as may be approved by the officers signing the BANs, whose approval shall be evidenced conclusively by the execution and delivery thereof.

§ 8. **Pledge of Full Faith and Credit**. The power and obligation of the City to pay principal of, premium, if any, and interest on the BANs shall be unlimited and the City shall levy and collect ad valorem taxes upon all taxable property within the City, without limitation as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the BANs to the extent other funds of the City are not sufficient or available for such purpose. The full faith and credit of the City are pledged for the payment of principal of, premium, if any, and interest on the BANs.

§ 9. **Duties of Registrar**. The Registrar shall be selected by the Director of Finance, with the

approval of the City Manager. The Registrar shall maintain registration books for the registration of the BANs. Upon surrender of any BAN to the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute, and the Registrar shall authenticate and deliver in exchange, a new BAN or BANs having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or his duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto. The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as owner on the registration books as of the Record Date.

§ 10. **Legal Debt Limit.** The Council has ascertained and hereby determines and states that the maximum principal amount of the BANs authorized by this Resolution and all other outstanding general obligation bonds or other general obligation indebtedness heretofore issued or contracted by the City for any purpose, or in any manner, does not exceed 10% of the assessed valuation of the real estate in the City subject to taxation, as shown by the last preceding assessment for taxes, and that, accordingly, the BANs are within the limitation of indebtedness as provided in Section 6.16 of the City Charter, Section 15.2-2634 of the Public Finance Act and Article VII, Section 10 of the Virginia Constitution.

§ 11. **Tax Compliance Undertakings.**  
In the event the BANs are issued as tax-exempt obligations:

(a) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause any of the BANs issued as tax-exempt obligations to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the “Code”), or otherwise cause interest on the BANs issued as tax-exempt obligations to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the BANs, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the BANs issued as tax-exempt obligations from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. The City shall pay any such required rebate from its legally available funds.

(b) Such officers of the City as may be requested are authorized and directed to execute appropriate certificates setting forth facts and covenants related to the expected use and investment of the proceeds of the BANs issued as tax-exempt obligations in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificates, covenants and elections shall be in such form as may be requested by bond counsel for the City.

§ 12. **Post-Issuance Tax Compliance.** In the event the BANs are issued as tax-exempt obligations, the Post Issuance Policies and Procedures previously established by the City Manager and Director of Finance as directed by the Council to ensure compliance with the Tax Compliance Undertakings shall apply to the BANs, and shall be administered by the Director of Finance and such other officers and staff as the Director of Finance may designate and authorize for such purpose.

§ 13. **Continuing Disclosure Undertakings.** While the BANs are outstanding, the City desires to voluntarily comply with the continuing disclosure provisions of Securities and Exchange Commission Rule 15c2-12 (the "Rule") by providing the same undertakings for the provision of certain financial information and operating data that the City provides in connection with its publicly issued bonds. In order to accomplish this, the City covenants to do the following:

(A) Annual Disclosure.

(1) The City shall provide annually certain financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule, as follows:

(a) audited financial statements, prepared in accordance with generally accepted accounting principles; and

(b) the operating data with respect to the City of the type provided by the City for its publicly issued bonds.

(2) The City shall annually provide the financial information and operating data described in subsection (1) above (the "Continuing Disclosure") within 180 days after the end of the City's fiscal year, commencing with the City's fiscal year in which the BANs are issued, to the Municipal Securities Rulemaking Board ("MSRB") through its Electronic Municipal Market Access System or such other system as the MSRB may designate for such purpose.

(3) Any of the Continuing Disclosure may be included by specific reference to other documents previously provided to the MSRB or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(4) The City shall provide in a timely manner to the MSRB notice specifying any failure of the City to provide the Continuing Disclosure by the date specified. If the City fails to comply with any covenant or obligation specified in this Section, any holder (within the meaning of the Rule) of the BANs then outstanding may, by notice to the City, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the City's covenant to provide financial information and operating data.

(B) Event Disclosure. The City shall provide notice in a timely manner to the MSRB of the occurrence of any of the following events with respect to the BANs, such notice to be provided not more than ten business days after the occurrence of the event:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancement reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the BANs, or other material events affecting the tax status of the BANs;
- (7) modifications to rights of holders of the BANs, if material;
- (8) BAN calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the BANs, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the City;
- (13) the consummation of a merger, consolidation or acquisition involving the City or sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(C) Termination. The covenants and obligations of the City specified in subsections (A) and (B) to the extent they apply shall terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the BANs.

(D) Amendment. The City reserves the right to modify its obligations specified in subsections (A) and (B) without the consent of holder or holders of the BANs, provided that such modification complies with the Rule as it exists at the time of modification. The City shall, within a reasonable time thereafter, send to the MSRB, a description of such modification(s).

(E) Additional Disclosure. The City may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the City shall not incur any obligation to continue to provide, or to update, such additional information or data.

§ 14. **Filing of Resolution.** The City Clerk, with the assistance of the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this Resolution in the

Circuit Court of the City of Hampton and is directed to make a copy of this Resolution continuously available for inspection by the general public during normal business hours at the City Clerk's office from the date of adoption hereof through the date of the issuance of the BANs.

§ 15. **Confirmation and General Authorization**. All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the BANs are approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale, delivery and investment of proceeds of the BANs.

§ 16. **Investment Authorization**. The Council hereby authorizes the Director of Finance to utilize the State Non-Arbitrage Program of the Commonwealth of Virginia ("SNAP") in connection with the investment of the proceeds of the BANs or any portion thereof, if the Director of Finance determines that the utilization of SNAP is in the best interest of the City. The Council acknowledges that the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the City in connection with SNAP, except as otherwise provided in any contract with SNAP.

§ 17. **Effective Date**. This Resolution shall be in force and effect upon adoption.