

ORDINANCE

No. 20-55

1st Reading November 24, 2020

Public Hearing December 22, 2020

2nd Reading & ~~Passage~~ Failed December 22, 2020

Withdrawn Lost December 22, 2020

Date to Mayor _____

Date Returned _____

Date Resubmitted to Council _____

Approved as to Form and Legality

Factual content certified by


CITY ATTORNEY


TITLE Acting Director of Finance

Councilman /woman Julie A. Murray

HARRISON

presents the following Ordinance:

BOND ORDINANCE PROVIDING FOR PHASE 3 OF THE LEAD SERVICE LINE REPLACEMENT PROGRAM IN THE TRENTON WATER WORKS SERVICE AREA, BY AND IN THE CITY OF TRENTON, IN THE COUNTY OF MERCER, STATE OF NEW JERSEY; APPROPRIATING \$15,000,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$15,000,000 BONDS OR NOTES TO FINANCE THE COST THEREOF

WHEREAS, the Trenton Water Works ("TWW"), a public water systems owned and operated by the City of Trenton, in the County of Mercer, State of New Jersey ("City"), provides drinking water to approximately 215,000 customers with approximately 63,000 metered accounts and utilizes approximately 650 miles of distribution mains in Trenton, Hamilton, Lawrence, Ewing, and Hopewell; and

WHEREAS, the TWW is under two administrative consent orders ("ACOs") from the New Jersey Department of Environmental Protection ("DEP"); and

WHEREAS, to fulfill part of its obligations under the ACOs, TWW desires to replace all or a portion of its lead service lines in the City's public water distribution system with copper service lines in order to bring its public water system into compliance with the USEPA's lead and copper rule (the "Project"); and

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WHEREAS, TWW has heretofore prepared and filed with the New Jersey Infrastructure Bank (the "NJIB") and the New Jersey Department of Environmental Protection (the "NJDEP") a planning information document for the proposed action for potential environmental impacts in accordance with N.J.A.A. 7:22-10 (the "Planning Document"), which involves the implementation and completion of the Project; and

WHEREAS, the lead service lines connect to the City's water distribution system, but all or a portion of such lead service lines are privately owned by various property owners; and

WHEREAS, the Planning Document contemplates that the lead service lines will be replaced at a rate of 7% every six (6) months; and

WHEREAS, as of this date, the City is required to replace an aggregate of 21% of its the lead service lines with copper service lines; and

WHEREAS, if required by the Local Finance Board in the Division of Local Government Services of the Department of Community Affairs of the State of New Jersey (the "Local Finance Board"), the customers will pay their share of the lead service line replacement costs through special assessments levied against the property owners of the properties benefiting therefrom in the amount of the lesser of (i) \$1,000, (ii) the net benefit conferred on the customer's property from the Project, or (iii) the cost of the Project less any principal forgiven by the NJIB in connection with the NJIB Loan (as hereinafter defined); and

WHEREAS, the City has filed an application seeking financial assistance with the NJIB and the NJDEP under the New Jersey Water Bank Financing Program for the financing of the Project; and

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WHEREAS, Senators Rice and Ruiz sponsored and introduced legislation in the New Jersey Senate identified as Senate Bill 2695 and Assemblywomen Pintor Marin and Tucker sponsored and introduced legislation in the New Jersey General Assembly identified as Assembly Bill 4120, authorizing, among other things, municipalities, including the City, to construct, reconstruct and finance the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into a privately-owned structure, in connection with a project undertaken for the purpose of replacing lead-contaminated service connections, regardless of possible private service connection ownership, so long as the project is (1) an environmental infrastructure project, as defined under section 3 of P.L.1985, c.334 (C.58:11B-3), and (2) funded either by loans from the NJIB or by loans issued through the NJDEP (the "NJIB Loan"); and

WHEREAS, Assembly Bill 4120 was passed by the Assembly on June 21, 2018, was received in the Senate, substituted for Senate Bill 2695 and passed by the Senate on June 25, 2018, and was approved by the Governor on August 24, 2018 as Chapter 114 of the Public Laws of 2018; and

WHEREAS, the United States Environmental Protection Agency (the "USEPA") has adopted regulations to control lead and copper in drinking water and the NJDEP has directed the City to replace lead service lines in accordance with the USEPA's lead and copper rule; and

WHEREAS, the Project will improve the City's drinking water quality and public health conditions and will also comply with the New Jersey Department of Environmental Protection's August 21, 2017 and July 26, 2018 letters from the Bureau

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of Safe Drinking Water, which requires Trenton Water Works to replace or offer to replace lead service lines in response to the lead action level exceedances; and

WHEREAS, the City believes that the provision of clean, lead free drinking water to its residents is a public purpose beneficial to the City as a whole and any benefit to any private land owner in accomplishing this purpose in accordance with the Planning Document is incidental and subordinate to this primary public and governmental purpose; and

WHEREAS, the City previously adopted bond ordinances totaling \$40,000,000 to finance Phase 1 and Phase 2 of its lead service line replacement program, it now desires to adopt a bond ordinance in the amount of \$15,000,000 to finance Phase 3 of its lead service line replacement program.

BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF TRENTON, IN THE COUNTY OF MERCER, STATE OF NEW JERSEY (not less than two-thirds of all the members thereof affirmatively concurring), **AS FOLLOWS:**

SECTION 1. The improvements described in Section 3 of this bond ordinance are hereby authorized to be undertaken on behalf of the Trenton Water Works ("TWW") by the City of Trenton, in the County of Mercer, State of New Jersey (the "City") as general improvements. For the said improvements stated in Section 3, there is hereby appropriated the amount of \$15,000,000. Pursuant to the provisions of N.J.S.A. 40A:2-11(c) of the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as amended and supplemented (the "Local Bond Law"), no down payment is required as this bond ordinance authorizes obligations for environmental infrastructure projects which are funded by a loan from the New Jersey Infrastructure Bank (the "I-Bank") and the State

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of New Jersey, acting by and through the Department of Environmental Protection. Additionally, pursuant to the provisions of N.J.S.A. 40A:2-7(h) and 40A:2-11(c) of the Local Bond Law, no down payment is required as the Trenton Water Works is a self-liquidating water utility of the City.

SECTION 2. For the financing of said improvements or purposes described in Section 3 hereof, negotiable bonds of the City are hereby authorized to be issued in the principal amount of \$15,000,000 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 a principal amount not exceeding \$15,000,000 are hereby authorized to be issued pursuant to, and within the limitations prescribed by, said Local Bond Law. The obligations authorized herein are deductible from gross debt of the City, as more fully described in Section 7(e) of this bond ordinance.

SECTION 3. The improvements and purposes hereby authorized and purposes for the financing of which said debt obligations are to be issued are for Lead and Copper Rule (LCR) compliance, including, but not limited to, the replacement of lead service lines throughout Trenton Water Works service area with copper tubing (or comparable material), treatment improvements to mitigate lead contamination, reservoir/piping improvements to reduce potential for algae growth, the furnishing and installation of lead rated filters, and lead service inventory development. The improvements shall also include all engineering and design work, surveying, construction planning, preparation of plans and specifications, permits, bid documents, construction

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inspection and contract administration, site and environmental remediation, and all work, materials, labor, appurtenances and equipment necessary therefor or incidental thereto.

a. The estimated maximum amount of bonds or notes to be issued for said improvements or purposes is \$15,000,000.

b. The estimated cost of said improvements and purposes is \$15,000,000.

SECTION 4. In the event the United States of America, the State of New Jersey, and/or the County of Mercer make a loan, contribution or grant-in-aid to the City for the improvements 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 Mercer. In the event, however, that any amount so loaned, contributed or granted by the United States of America, the State of New Jersey, and/or the County of Mercer shall be received by the City 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 such 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 Chief Financial Officer of the City, provided that no note shall mature later than one (1) year from its date, unless such bond anticipation

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notes are permitted to mature at such later date in accordance with the provisions of the New Jersey Infrastructure Trust Act, N.J.S.A. 58:11B-1 et seq. ("NJIT Act"). The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer shall determine all matters in connection with the notes issued pursuant to this bond ordinance, and the signature of the 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, as applicable, the provisions of the NJIT Act. The 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 accrued interest thereon from their dates to the date of delivery thereof. 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 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.

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

a. The purpose described in Section 3 of this bond ordinance is not a current expense. It is an improvement which the City may lawfully undertake as a local improvement, the cost of which may be specially assessed on property specially benefitted thereby via the levy of a special assessment against the benefitted properties. The portion of the costs of such purpose not specially assessed on property specially benefitted thereby shall be undertaken as a general improvement.

b. The period of usefulness of said improvements within the limitations of said Local Bond Law, according to the reasonable life thereof computed from the date of the said bonds authorized by this bond ordinance, is 30 years.

c. The supplemental debt statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the City 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 gross debt of the City, as defined in the Local Bond Law, is increased by the authorization of bonds or notes provided for in this bond ordinance by \$15,000,000 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

d. An amount not exceeding \$1,500,000 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 improvements hereinbefore described.

e. This bond ordinance authorizes obligations of the Local Unit

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solely for purposes described in N.J.S.A. 40A:2-7(h). The obligations authorized herein are to be issued for purposes that are deemed to be self-liquidating pursuant to N.J.S.A. 40A:2-47(a) and are deductible from gross debt pursuant to N.J.S.A. 40A:2-44(c).

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 debt obligations authorized by this bond ordinance. The debt obligations 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 debt obligations and the interest thereon without limitation as to rate or amount.

SECTION 9. 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 9 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 Section 150-2 .

SECTION 10. The City covenants to maintain the exclusion from gross income under section 103(a) of the Code of the interest on all bonds and notes issued under this ordinance.

SECTION 11. The bonds authorized herein shall be designated as "Qualified Bonds", pursuant to the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq. (the "Municipal Qualified Bond Act"), and shall contain a recital that it is issued pursuant to

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Title 40A of the New Jersey Statutes and is entitled to the benefits of the provisions of the Municipal Qualified Bond Act. The City shall certify to the State Treasurer the name and address of the paying agent, the maturity schedule, the interest rate and the dates of payment of debt service on such Qualified Bonds within ten (10) days after the date of issuance of such Qualified Bonds.

SECTION 12. By virtue of ordinances previously adopted in 2019 by the City Council of the City as well as by the governing bodies of the Townships of Ewing, Hamilton, and Lawrence (collectively, the "Municipalities"), all of which are part of the service area of the TWW (it being determined at the time that the properties in the Township of Hopewell which is part of the TWW were not impacted by lead pipes), requiring the replacement of lead service lines with copper lines, a special assessment of a portion of the costs of such lead service line replacements as well as the execution and delivery of Shared Services Agreements among such entities was previously authorized and the statutory required notice was previously provided to all affected properties within the TWW service area as part of and beyond Phase 1 thereof, all in accordance with the procedures and processes set forth therein and in the Shared Services Agreements. The Mayor and the City Clerk, if necessary, are hereby authorized to execute and deliver, and, if necessary, attest, to a Share Services Agreement or to amend and/or supplement any previously executed and delivered Share Service Agreement between the City and, as applicable, each of the Municipalities.

SECTION 13. This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, as provided by the Local Bond Law and

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upon the Proposed Legislation being adopted and taking effect in accordance with the laws of the State of New Jersey.

	INTRODUCTION				ADOPTION					INTRODUCTION				ADOPTION					INTRODUCTION				ADOPTION															
	AYE	NAY	NV	AB	AYE	NAY	NV	AB		AYE	NAY	NV	AB	AYE	NAY	NV	AB		AYE	NAY	NV	AB	AYE	NAY	NV	AB												
BLAKELEY	✓				✓				MUSCHAL	✓				✓				MCBRIDE		✓																		
CALDWELL WILSON	✓				✓				RODRIGUEZ		✓					✓																						
HARRISON	✓				✓				VAUGHN		✓					✓																						
NV - NO VOTE					AB - ABSENT																																	

Adopted on first reading at a meeting of the City Council of the City of Trenton, NJ on November 24, 2020
~~Adopted~~ ^{Failed} on second reading after the public hearing on December 22, 2020

Mayor
Kathy McBride
 President of Council

APPROVED
 REJECTED

Reconsidered by Council - Override Vote
[Signature]
 City Clerk