

April 1, 2020

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, DC 20004

Re: Request to Amend Fiscal Year 2020 General Obligation Notes Acts of 2020
for April 7, 2020 Legislative Meeting

Dear Chairman Mendelson:

This letter transmits my request for the Council to approve, on an emergency basis, the "Fiscal Year 2020 General Obligation Notes Emergency Act of 2020" (GO Bill) and temporary and permanent versions of the GO Bill. The GO Bill would authorize and approve the issuance of General Obligation Notes (Notes) in an amount not to exceed \$300,000,000 to meet appropriations previously approved in the District's Budget and Financial Plan for operating or capital expenses. The GO Bill, and any successor acts, and D.C. Official Code Section 1-204.71 authorize the District to issue notes to meet appropriations. The GO Bill is necessary due to the COVID-19 public health emergency.

The Notes to be issued may be sold by private, competitive, or negotiated sale and are intended to be issued on a tax-exempt or taxable basis. The Office of the Attorney General has indicated in writing that the proposed legislation is legally sufficient. A Fiscal Impact Statement from the Office of Revenue Analysis and a reprogramming request will be filed in support of this legislation. I request that the Council consider this legislation at its Legislative Meeting scheduled for April 7, 2020.

If you have any questions, I am available at (202) 727-2476.


Sincerely,

Jeffrey S. DeWitt

Jeffrey S. DeWitt

Enclosures

cc: Nyasha Smith
Secretary to the Council of the District of Columbia



Chairman Phil Mendelson

At the request of the Chief Financial Officer

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize and approve the issuance of District of Columbia general obligation notes to finance general governmental expenses, including operating or capital expenses, for the fiscal year ending September 30, 2020 in an aggregate principal amount not to exceed \$300,000,000.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Fiscal Year 2020 General Obligation Notes Emergency Act of 2020”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Additional Notes” means District general obligation notes described in section 9 that may be issued pursuant to section 471 of the Home Rule Act and that will mature on or before September 30, 2021, on a parity with the notes.

(2) “Authorized delegate” means the City Administrator, the Chief Financial Officer, or the Treasurer to whom the Mayor has delegated any of the Mayor’s functions under this act pursuant to section 422(6) of the Home Rule Act.

(3) “Available funds” means District funds required to be deposited with the Escrow Agent, receipts, and other District funds that are not otherwise legally committed.

(4) “Bond Counsel” means a firm or firms of attorneys designated

as bond counsel or co-bond counsel from time to time by the Chief Financial Officer.

(5) "Chief Financial Officer" means the Chief Financial Officer established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "City Administrator" means the City Administrator established pursuant to section 422(7) of the Home Rule Act.

(7) "Council" means the Council of the District of Columbia.

(8) "District" means the District of Columbia.

(9) "Escrow Agent" means any bank, trust company, or national banking association with requisite trust powers designated to serve in this capacity by the Chief Financial Officer.

(10) "Escrow Agreement" means the escrow agreement between the District and the Escrow Agent authorized in section 7.

(11) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Notes" means one or more series of District general obligation notes authorized to be issued pursuant to this act.

(14) "Receipts" means all funds received by the District from any source, including, but not limited to, taxes, fees, charges, miscellaneous receipts, and any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, less funds that are pledged to debt or other obligations according to section 9 or that are restricted by law to uses other than payment of principal of, and interest on, the notes.

(15) "Secretary" means the Secretary of State of the District of Columbia.

(16) "Treasurer" means the District of Columbia Treasurer established pursuant to section 424(a)(3)(E) of the Home Rule Act.

Sec. 3. Findings.

The Council finds that:

(1) Under section 471 of the Home Rule Act, the Council may authorize, by act, the issuance of general obligation notes for a fiscal year to meet appropriations for that fiscal year.

(2) Under section 482 of the Home Rule Act, the full faith and credit of the District is pledged for the payment of the principal of, and interest on, any general obligation note.

(3) Under section 483 of the Home Rule Act, the Council is required to provide in the annual budget sufficient funds to pay the principal of, and interest on, all general obligation notes becoming due and payable during that fiscal year, and the Mayor is required to ensure that the principal of, and interest on, all general obligation notes is paid when due, including by paying the principal and interest from funds not otherwise legally committed.

(5) The issuance of general obligation notes in a sum not to exceed \$300,000,000 is in the public interest.

Sec. 4. Note authorization.

(a) The District is authorized to incur indebtedness, for operating or capital expenses, by issuing the notes pursuant to sections 471 and 482 of the Home Rule Act, in one or more series, in a sum not to exceed \$300,000,000, to meet appropriations for the fiscal year ending September 30, 2020.

(b) The Chief Financial Officer is authorized to pay from the proceeds of the notes the costs and expenses of issuing and delivering the notes, including, but not limited to, underwriting, legal, accounting, financial advisory, note insurance or other credit enhancement, marketing and selling the notes, interest or credit fees, and printing costs and expenses.

Sec. 5. Note details.

(a) The notes shall be known as “District of Columbia Fiscal Year 2020 General Obligation Notes” and shall be due and payable, as to both principal and interest, on or before September 30, 2021.

(b) The Chief Financial Officer is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the notes, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the notes, including any redemptions applicable thereto and a determination that the notes may be issued in book-entry form;

(2) Provisions for the transfer and exchange of the notes;

(3) The principal amount of the notes to be issued;

(4) The rate or rates of interest or the method of determining the rate or rates of interest on the notes; provided, that the interest rate or rates borne by the notes of any series shall not exceed in the aggregate 10% per year calculated on the basis of a 365-day year (actual days elapsed); provided, further, that if the notes are not paid at maturity, the notes may provide for an interest rate or rates after maturity not to exceed in the aggregate 15% per year calculated on the basis of a 365-day year (actual days elapsed);

(5) The date or dates of issuance, sale, and delivery of the notes;

(6) The place or places of payment of principal of, and interest on, the notes;

(7) The designation of a registrar, if appropriate, for any series of the notes, and the execution and delivery of any necessary agreements relating to the designation;

(8) The designation of paying agent(s) or escrow agent(s) for any series of the notes, and the execution and delivery of any necessary agreements relating to such designations; and

(9) Provisions concerning the replacement of mutilated, lost, stolen or destroyed notes.

(c) The notes shall be executed in the name of the District and on its behalf by the signature, manual or facsimile, of the Mayor or an authorized delegate. The official seal of the District or a facsimile of it shall be impressed, printed, or otherwise reproduced on the notes. If a registrar is designated, the registrar shall authenticate each note by manual signature and maintain the books of registration for the payment of the principal of and interest on the notes and perform other ministerial responsibilities as specifically provided in its designation as registrar.

(d) The notes may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Sale of the notes.

(a) The notes of any series shall be sold at negotiated sale pursuant to a purchase contract or at competitive sale pursuant to a bid form. The notes shall be sold at a price not less than par plus accrued interest from the date of the notes to the date of delivery thereof. The purchase contract or bid form shall contain the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. The Chief Financial Officer's execution and delivery of the purchase contract or bid form shall constitute conclusive evidence of the Chief Financial Officer's approval, on behalf of the District, of the final form and content of the notes. The Chief Financial Officer shall deliver the notes, on behalf of the District, to the purchasers upon receiving the purchase price provided in the purchase contract or bid form.

(b) The Chief Financial Officer may execute, in connection with each sale of the notes, an offering document on behalf of the District, and may authorize the document's distribution in relation to the notes being sold.

(c) The Chief Financial Officer shall take actions and execute and deliver agreements, documents, and instruments (including any amendment of or supplement to any such agreement, document, or instrument) in connection with any series of notes as required by or incidental to:

(1) The issuance of the notes;

(2) The establishment or preservation of the exclusion from gross income for federal income tax purposes of interest on the notes, if issued tax-exempt, and the exemption from District income taxation of interest on the notes (except estate, inheritance, and gift taxes);

(3) The performance of any covenant contained in this act, in any purchase contract for the notes, or in any escrow or other agreement for the security thereof;

(4) The provision for securing the repayment of the notes by a letter or line of credit or other form of credit enhancement, and the repayment of advances under any such credit enhancement, including the evidencing of such a repayment obligation with a negotiable instrument with such terms as the Chief Financial Officer shall determine; or

(5) The execution, delivery, and performance of the Escrow Agreement, a purchase contract, or a bid form for the notes, a paying agent agreement, or an agreement relating to credit enhancement, if any, including any amendments of any of these agreements, documents, or instruments.

(d) The notes shall not be issued until the Chief Financial Officer receives an approving opinion of Bond Counsel as to the validity of the notes and the exemption from the District income taxation of the interest on the notes (except estate, inheritance and gift taxes) and, if issued tax-exempt, the establishment

or preservation of the exclusion from gross income for federal income tax purposes of the interest on the notes. .

(e) The Chief Financial Officer shall execute a note issuance certificate evidencing the determinations and other actions taken by the Chief Financial Officer for each issue or series of the notes issued and shall designate in the note issuance certificate the date of the notes, the series designation, the aggregate principal amount to be issued, the authorized denominations of the notes, the sale price, and the interest rate or rates on the notes. The certificate shall be delivered at the time of delivery of the notes and shall be conclusive evidence of the actions taken as stated in the certificate. A copy of the certificates shall be filed with the Secretary to the Council not more than 3 days after the delivery of the notes covered by the certificate.

Sec. 7. Payment and security.

(a) (a) The full faith and credit of the District is pledged for the payment of the principal of, and interest on, the notes as they become due and payable through required sinking fund payments, redemptions, or otherwise.

(b) The Council shall, in the full exercise of the authority granted in section 483 of the Home Rule Act and under any other law, provide in each annual budget for a fiscal year of the District sufficient funds to pay the principal of, and interest on, the notes becoming due and payable for any reason during that fiscal year.

(c) The Mayor shall, in the full exercise of the authority granted to the Mayor under the Home Rule Act and under any other law, take such actions as may be necessary or appropriate to ensure that the principal of, and interest on, the notes are paid when due for any reason, including the payment of principal and interest from any funds or accounts of the District not otherwise legally committed.

(d) The notes shall evidence continuing obligations of the District until paid in accordance with their terms.

(e) The funds for the payment of the notes as described in this act shall be irrevocably deposited with the Escrow Agent pursuant to the Escrow Agreement. The funds shall be used for the payment of the principal of, and interest on, the notes when due, and shall not be used for other purposes so long as the notes are outstanding and unpaid.

(f) The Chief Financial Officer may, without regard to any act or resolution of the Council now existing or adopted after the effective date of this act, designate an Escrow Agent under the Escrow Agreement. The Chief Financial Officer may execute and deliver the Escrow Agreement, on behalf of the District and in the Chief Financial Officer's official capacity, containing the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. A special account entitled "Special Escrow for Payment of District of Columbia Fiscal Year 2020 General Obligation Notes" is created and shall be maintained by the Escrow Agent for the benefit of the owners of the notes as stated in the Escrow Agreement. Funds on deposit, including investment income, under the Escrow Agreement shall not be used for any purposes except for payment of the notes or, to the extent permitted by the Home Rule Act, to service any contract or other arrangement permitted under subsections (k) or (l) of this section, and may be invested only as provided in the Escrow Agreement.

(g) Upon the sale and delivery of the notes, the Chief Financial Officer shall deposit with the Escrow Agent to be held and maintained as provided in the Escrow Agreement all accrued interest and premium, if any, received upon the sale of the notes.

(h) The Chief Financial Officer shall set aside and deposit with the Escrow Agent funds in accordance with the Escrow Agreement at the time and in the amount as provided in

the Escrow Agreement.

(i) There are provided and approved for expenditure sums as may be necessary for making payments of the principal of, and interest on, the notes, and the provisions of the Fiscal Year 2020 Local Budget Act and Fiscal Year 2021 Local Budget Act, if enacted prior to the effective date of this act, relating to borrowings are amended and supplemented accordingly by this section, as contemplated in section 483 of the Home Rule Act.

(j) The notes shall be payable, as to both principal and interest, in lawful money of the United States of America in immediately available or same day funds at a bank or trust company acting as paying agent, and at not more than 2 co-paying agents that may be located outside the District. All of the paying agents shall be qualified to act as paying agents under the laws of the United States of America, of the District, or of the state in which they are located, and shall be designated by the Chief Financial Officer without regard to any other act or resolution of the Council now existing or adopted after the effective date of this act.

(k) In addition to the security available for the holders of the notes, the Chief Financial Officer is hereby authorized to enter into agreements, including any agreement calling for payments in excess of \$1 million during fiscal year 2020, with a bank or other financial institution to provide a letter of credit, line of credit, or other form of credit enhancement to secure repayment of the notes when due. The obligation of the District to reimburse the bank or financial institution for any advances made under any such credit enhancement shall be a general obligation of the District until repaid and shall accrue interest at the rate of interest established by the Chief Financial Officer not in excess of 20% per year until paid.

(l) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and the Financial Institutions Deposit and Investment Amendment Act of 1997, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall

not apply to any contract which the Chief Financial Officer may from time to time determine to be necessary or appropriate to place, in whole or in part, including:

(1) An investment or obligation of the District as represented by the notes;

(2) An investment or obligation or program of investment; or

(3) A contract or contracts based on the interest rate, currency, cash flow, or other basis as the Chief Financial Officer may desire, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures; contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread, or similar exposure, including, without limitation, interest rate floors, or caps, options, puts, and calls. The contracts or other arrangements also may be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the notes. The contracts or other arrangements shall contain whatever payment, security, terms, and conditions as the Chief Financial Officer may consider appropriate and shall be entered into with whatever party or parties the Chief Financial Officer may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the notes, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and any other terms and conditions as the Chief Financial Officer determines. Proceeds of the notes and any money set aside for payment of the notes or of any contract or other arrangement entered into pursuant to this section may be used to service any contract or other arrangement entered into pursuant to this section.

Sec. 8. Defeasance.

(a) The notes shall no longer be considered outstanding and unpaid for the purpose of this act and the Escrow Agreement, and the requirements of this act and the Escrow Agreement shall be deemed discharged with respect to the notes, if the Chief Financial Officer:

(1) Deposits with an Escrow Agent, herein referred to as the “defeasance escrow agent,” in a separate defeasance escrow account, established and maintained by the Escrow Agent solely at the expense of the District and held in trust for the note owners, sufficient moneys or direct obligations of the United States, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, and interest payable at maturity on, all the notes; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or proceeds of the investments to the payment of the notes at their maturity.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The moneys and direct obligations referred to in subsection (a)(1) of this section may include moneys or direct obligations of the United States of America held under the Escrow Agreement and transferred, at the written direction of the Chief Financial Officer, to the defeasance escrow account.

(d) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Council now existing or adopted after this act becomes effective, except for this act.

Sec. 9. Additional debt and other obligations.

(a) The District reserves the right at any time to: borrow money or enter into

other obligations to the full extent permitted by law; secure the borrowings or obligations by the pledge of its full faith and credit; secure the borrowings or obligations by any other security and pledges of funds as may be authorized by law; and issue bonds, notes, including Additional Notes, or other instruments to evidence the borrowings or obligations.

(b) (1) The District may issue Additional Notes pursuant to section 471 of the Home Rule Act that shall mature on or before September 30, 2021, and the District shall covenant to set aside and deposit under the Escrow Agreement, receipts and other available funds for payment of the principal of, and the interest on, the Additional Notes issued pursuant to section 471 of the Home Rule Act on a parity basis with the notes.

(2) The receipts and available funds referred to in subsection (a) of this section shall be separate from the special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(3) Any covenants relating to any Additional Notes shall have equal standing and be on a parity with the covenants made for payment of the principal of, and the interest on, the notes.

(4) If Additional Notes are issued pursuant to section 471 of the Home Rule Act, the provisions of section 7 shall apply to both the notes and the Additional Notes and increase the amounts required to be set aside and deposited with the Escrow Agent.

(5) As a condition precedent to the issuance of any Additional Notes, the Chief Financial Officer shall deliver a signed certificate certifying that the District is in full compliance with all covenants and obligations under this act and the Escrow Agreement.

Sec. 10. Tax matters.

At the full discretion of the Chief Financial Officer, the notes authorized by this act may be issued as federally taxable or tax-exempt. If issued as tax-exempt, the Chief Financial Officer shall take all

actions necessary to be taken so that the interest on the notes will not be includable in gross income for federal income tax purposes.

Sec. 11. Contract.

This act shall constitute a contract between the District and the owners of the notes authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

Sec. 12. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the notes or be subject to any personal liability by reason of the issuance of the notes.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the notes shall be valid and sufficient for all purposes, notwithstanding the fact that the official ceases to be that official before delivery of the notes.

Sec. 13. Authorized delegation of authority.

To the extent permitted by the District and federal laws, the Mayor may delegate to the City Administrator, the Chief Financial Officer, or the Treasurer the performance of any act authorized to be performed by the Mayor under this act.

Sec. 14. Maintenance of documents.

Copies of the notes and related documents shall be filed in the Office of the Secretary of State of the District of Columbia.

Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 17. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rules Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).