

ORDINANCE NO. 02-15 N.S.

**ORDINANCE OF THE CITY OF RICHMOND ADDING CHAPTER 2.66
OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND WHICH
ESTABLISHES THE CITY OF RICHMOND SOCIAL IMPACT BOND LAW**

The Council of the City of Richmond, California, do ordain as follows:

Section I. Chapter 2.66 of the Richmond Municipal Code is hereby amended to read as follows:

“Chapter 2.66”

SOCIAL IMPACT BONDS

2.66.010 **Definitions.** As used in this chapter, the following capitalized terms shall have the following respective meanings:

- a) **BONDS** means bonds, notes, loans, interim certificates, debentures, installment-purchase agreements, leases, or other obligations that are issued or incurred under this chapter and are payable from Revenues described in the Issuing Instrument.
- b) **CITY** means the City of Richmond, a municipal corporation and charter city.
- c) **COSTS** means all costs and expenses the City pays or incurs in connection with planning, designing, acquiring, constructing, installing, furnishing, equipping, and financing a Project or Program; and obtaining governmental approvals, certificates, permits, and licenses for a Project or Program, including without limitation the following:
 - i. Reimbursement to the City or a Program Sponsor for any costs and expenses that are included in this definition, are paid by the City or a Program Sponsor, have not previously been reimbursed to the City or a Program Sponsor, and will not be reimbursed from other sources.
 - ii. Costs of preliminary investigation and development, including the cost of performing or acquiring feasibility and planning studies; the cost of securing regulatory approvals; the cost of acquiring land and land rights; fees for engineering and contractor services; the costs of labor, materials, equipment, utility services, and supplies; and legal fees and financing expenses.
 - iii. Working capital and working-capital reserves in such amounts as the City or Program Sponsor determines to be appropriate.
 - iv. Interest accruing in whole or in part on Bonds as the City or a Program Sponsor determines.

- v. Deposits from the proceeds of Bonds in any funds or accounts when the Issuing Instrument requires the deposits.
 - vi. The payment of principal, purchase price, premium, and interest of any indebtedness, the proceeds of which were applied to a Project or Program Costs.
 - vii. Training and testing costs that are properly allocable to a Project or Program.
 - viii. All costs of insurance that is in effect when a Project or Program is constructed or commenced and placed in operation.
 - ix. All costs relating to injury and damage claims that arise out of a Project or Program (less insurance proceeds).
 - x. Any federal, state, and local taxes and payments in lieu of taxes that are legally required or permitted and apply to a Project or Program.
 - xi. Amounts due the United States of America as rebate of investment earnings on the proceeds of Bonds or as penalties in lieu of rebate.
 - xii. Relocation costs and expenses in connection with a Project or Program.
 - xiii. Costs of issuance of any Bonds, including costs of legal, underwriting, feasibility, engineering, and other consultants; costs of City staff; costs of bond-reserve funds; and costs of bond insurance or other credit or liquidity enhancement.
 - xiv. Fees and expenses relating to any lending or credit facility or agreement for a Project or Program.
 - xv. All other costs the City incurs that are properly allocable to the design, acquisition, construction, or placing in operation of a Project or Program, including City staff costs.
 - xvi. Any other cost as the Council may, in its discretion, define as a Cost of a Project or Program in the Issuing Instrument.
- d) COUNCIL means the Council of the City of Richmond.
- e) DIRECTOR OF FINANCE means the Director of Finance of the City of Richmond.
- f) LOAN AGREEMENT means a loan agreement by and between the City and a Program Sponsor under which Bond proceeds will be loaned to the Program Sponsor and repaid by the Program Sponsor.
- g) FISCAL YEAR means the period between July 1st and the following June 30th both dates inclusive.

- h) **ISSUING INSTRUMENT** means the resolution of the Council adopted under this chapter and any indenture, trust agreement, loan agreement, lease, installment-purchase agreement, revolving-credit agreement, credit or liquidity agreement, or other instrument or agreement under which the City issues Bonds or which is entered into in connection with the issuance of Bonds by the City or any Program Sponsor.
- i) **PERSON** means an individual, firm, partnership, corporation, business association, institution or public agency. The singular shall include the plural.
- j) **PREMISES** means any lot or parcel of land together with any and all structures located thereon, including, without limitation, residential dwellings, flats, apartments, commercial establishments, industrial establishments, churches, public and private schools, institutional structures, government buildings and trailer courts.
- k) **PROJECT** means a capital project undertaken by the City or a Program Sponsor for a purpose authorized by Section 2.66.030.
- l) **PROGRAM** means a program providing social benefit undertaken by the City or a Program Sponsor authorized by Section 2.66.030.
- m) **PROGRAM SPONSOR** means a non-profit corporation, governmental unit or quasi-governmental unit that will use Bond proceeds to finance the construction or acquisition or a Project or the implementation and/or operation of a Program.
- n) **REVENUES** means amounts made available by a Program Sponsor or the City for the repayment of Bonds, which may include amounts generated from the sale, rental or use of any Project, grants or contributions from any Program Sponsor or other agency, or restricted special funds of the City, as provided in the Issuing Instrument; provided, however, that in no event shall Revenues include the general unrestricted funds of the City unless such amounts are specifically appropriated by the Council for such purpose in the Fiscal year in which such amounts are paid.

2.66.020 **Short Title.** The chapter shall be known as the “City of Richmond Social Impact Bond Law.”

2.66.030 **Purpose.** The purpose of this chapter is to authorize the City to issue Bonds for the purpose of financing Projects or Programs, either directly or through the loan of the proceeds of the Bonds to one or more Program Sponsors. A Program includes, without limitation the rehabilitation and/or reconstruction of dilapidated housing stock, providing programs and or facilities for youth, senior citizens, mentally or physically disabled people, child care, education, after-school programs, blight abatement, or any other program or service determined by the City Council to be beneficial for the health, safety and welfare of the residents of the City. A Project is a capital expenditure to implement or assist in a Program.

2.66.040 **Power to Issue Bonds.** The City is authorized and empowered to do the following:

- a) Issue Bonds for the purposes of financing Costs of Projects or Programs, refunding outstanding Bonds, and paying all costs incurred in connection with Bonds.
- b) Establish the terms for financings undertaken in accordance with this chapter.
- c) Employ or contract for such legal, underwriting, feasibility, engineering, and other consultant services the Council determines to be necessary for the issuance and sale of Bonds.
- d) Do all things necessary or convenient to carry out the purposes of this chapter.

2.66.050 **Authorization and Terms of Bonds.**

- a) The Council may adopt a resolution authorizing the issuance of Bonds in accordance with this chapter. Every issue of Bonds must be payable from Revenues.
- b) The resolution that authorizes issuance of Bonds and the Issuing Instrument may prescribe any or all of the following for the Bonds:
 - i. The form of the Bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination of them.
 - ii. The date or dates to be borne by the Bonds.
 - iii. The date or dates of maturity of the Bonds.
 - iv. The interest to be borne by the Bonds, which may be taxable or tax-exempt, fixed or variable, and which may be paid on a current-interest-rate basis or a capital-appreciation basis.
 - v. The date or dates that the Bonds will be payable.
 - vi. The denominations, form, and registration privileges of the Bonds.
 - vii. The manner of execution of the Bonds.
 - viii. The place or places the Bonds are payable.
 - ix. The terms of redemption of the Bonds.
 - x. Any other terms and conditions the Council deems necessary.
- c) In the discretion of the Council, any Bonds issued under this chapter may be secured or evidenced by an Issuing Instrument in the form of an indenture or a trust agreement between the City and a corporate trustee or trustees, which may be any trust company or

bank having the powers of a trust company. An Issuing Instrument may contain any lawful provisions the Council determines to be reasonable and proper.

- d) The Director of Finance may obtain bond insurance or other credit enhancement or liquidity support for the Bonds and may enter into any credit agreement, reimbursement agreement, standby bond-purchase agreement, or similar agreement with any person or entity. Such an agreement must contain the terms of the credit, reimbursement, liquidity support, interest rate, and security, and any other terms the Director of Finance deems necessary or appropriate.

2.66.055 Sale of Bonds.

The Bonds may be sold at either a public or private sale, on either a negotiated or competitive basis, and at a price at, above, or below the par value.

2.66.060 Bonds and Investments; Contracts to Place on interest-rate, cash-flow, or other basis.

- a) In connection with, or incidental to, the issuance or carrying of Bonds, or the acquisition or carrying of any investment or program of investment with respect to Bonds, the Director of Finance may, on the City's behalf, enter into any contracts that he or she determines to be necessary or appropriate to place the obligation or investment of the City (as represented by the Bonds, investment, or program of investment) and the contract or contracts, in whole or in part, on the interest-rate, currency, cash-flow, or other basis he or she desires, including the following:
 - i. Contracts commonly known as interest-rate-swap agreements, currency-swap agreements, forward-payment-conversion agreements, and futures.
 - ii. Contracts providing for payments based on levels of, or changes in, interest rates, currency-exchange rates, or stock or other indices.
 - iii. Contracts to exchange cash-flows or a series of payments.
 - iv. Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest-rate floors or caps, options, puts, and calls.
- b) The Director of Finance may also enter into these contracts in connection with, or incidental to, entering into or maintaining any agreement that secures Bonds.
- c) These contracts must contain the payment, security, default, remedy, and other terms the Director of Finance determines to be appropriate. When determining the terms of, and the other parties to, these contracts, the Director of Finance shall give due consideration to the creditworthiness of the other parties, including any ratings of the parties by a nationally recognized rating agency.

2.66.065 **Loan or use of Proceeds of Bonds.** The City may loan the proceeds of the Bonds to a Program Sponsor under terms specified in an Issuing Instrument, or may use the proceeds directly, to pay the Costs of a Program or Project.

2.66.070 **Investment of Bond Proceeds.** In connection with, or incidental to, the issuance or carrying of Bonds, the Director of Finance may, on the City's behalf, enter into investment agreements, forward-purchase agreements, and other investments relating to the investment of amounts held according to an Issuing Instrument. A Program Sponsor may invest any Bond proceeds held by it in any investment permitted pursuant to an Issuing Instrument.

2.66.080 **Limited Liability.** Bonds shall be limited obligations of the City payable solely from the Revenues as identified in the Issuing Instrument and neither the full faith and credit of the City is pledged for the payment of the interest on or principal of the Bonds and no tax or other source of funds other than the Revenues is pledged to pay the interest on or principal of the Bonds. Neither the payment of the principal of nor interest on the Bonds constitutes a debt, liability or obligation of the City within the meaning of any statutory or constitutional debt limitation. No member of the Council nor any officer, employee or agent of the City shall be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds.

2.66.085 **Repayment of Bonds.** The principal and purchase price and any premium of, and interest on, the Bonds must be payable exclusively from Revenues and other funds pledged under the Issuing Instrument, and as described in the Issuing Instrument. The issuance of Bonds may not directly, indirectly, or contingently obligate the Council to levy or pledge any form of taxation.

2.66.090 **Refunding Bonds.** The Council may issue Bonds to refund outstanding Bonds. Such a refunding includes payment of the principal, purchase price, interest, and redemption premiums, if any, of the outstanding Bonds. At the discretion of the Council, based on the recommendation of the Director of Finance, the proceeds of Bonds issued to refund outstanding Bonds may be applied to the retirement of the outstanding Bonds at maturity or to the redemption (on any redemption date) or purchase of the outstanding Bonds before maturity, upon such terms as the Council determines to be appropriate.

2.66.095 **Liberal construction.** This chapter, being necessary for the health, welfare, and safety of the City and its residents, is to be liberally construed to carry out its purposes.

2.66.100 **Validity of Bonds.** The validity of any Bonds does not depend on, and is not affected in any way by, any proceedings taken by the City or a Program Sponsor for any Program or for acquisition, construction, or completion of any Projects for which the Bonds are issued or any agreements made in connection with the Program or the acquisition, construction, or operation of those Projects. The Bonds will be incontestable and by their issuance and delivery will conclusively establish the due performance of all conditions precedent to their issue.

2.66.105 **Authority.** This chapter provides a complete, additional, and alternative method for doing the things authorized and is to be regarded as supplemental and additional to the powers conferred by other laws.

2.66.110 Amendment of chapter. This chapter may not be amended to have a material, adverse effect upon the rights of the holders of any outstanding Bonds without the written consent of any Program Sponsor or the Bond holders, except as follows: this chapter may be amended at any time if the amendment is needed to cure an ambiguity or to correct or supplement a defective provision; if the Council finds that the amendment will not materially impair or adversely affect the City's interests or the interests of any Program Sponsor or Bond holder; or if the amendment will apply solely to Bonds issued after its effective date.

2.66.105 Chapter controlling. To the extent this chapter is inconsistent with any general statute or special act, this chapter will control.

2.66.110 Partial invalidity. If, for any reason, any part of this chapter is invalid, then all valid parts that are severable from the invalid part remain in effect.

Section II. If any section, subsection, subdivision, paragraph, sentence, clause or phrase or this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. This Ordinance becomes effective 30 days after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held December 16, 2014, and finally passed and adopted at a regular meeting thereof held January 20, 2015, by the following vote:

AYES: Councilmembers Bates, Beckles, McLaughlin, Martinez, Vice Mayor Myrick, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 02-15 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on January 20, 2015.

