

**BOROUGH OF RED BANK, NEW JERSEY**

**RESOLUTION NO. 14-307**

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**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, NEW JERSEY, AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$675,000 OF TAX APPEAL REFUNDING NOTES OF THE BOROUGH; MAKING CERTAIN COVENANTS TO MAINTAIN THE EXEMPTION OF INTEREST ON SAID NOTES FROM FEDERAL INCOME TAXATION; AND AUTHORIZING SUCH FURTHER ACTIONS AND MAKING SUCH DETERMINATIONS AS MAY BE NECESSARY OR APPROPRIATE TO EFFECTUATE THE ISSUANCE AND SALE OF THE NOTES**

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**BACKGROUND**

Councilman DuPont offered the following resolution and moved its adoption:

**WHEREAS**, on November 5, 2014, the Borough Council, pursuant to N.J.S.A. 40A:2-51, introduced an ordinance entitled, "REFUNDING BOND ORDINANCE PROVIDING FUNDS FOR TAX REFUND PAYMENTS OF AMOUNTS DUE AND OWING TO THE OWNERS OF CERTAIN PROPERTIES IN THE BOROUGH; AUTHORIZING THE ISSUANCE OF UP TO \$675,000 OF GENERAL OBLIGATION TAX REFUNDING BONDS OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY, TO FINANCE THE COSTS THEREOF; MAKING CERTAIN DETERMINATIONS AND COVENANTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING" ("Refunding Bond Ordinance"); and

**WHEREAS**, pursuant to N.J.S.A. 40A:2-51 et. seq., the Local Finance Board, Division of Local Government Services, New Jersey Department of Community Affairs ("Local Finance Board"), at a meeting held on November 12, 2014, adopted a resolution authorizing the Borough to finally adopt the Refunding Bond Ordinance; and

**WHEREAS**, on November 24, 2014, the Borough Council, after a public hearing, duly and finally adopted the Refunding Bond Ordinance; and

**WHEREAS**, pursuant to the Refunding Bond Ordinance, the Borough is authorized to issue its general obligation tax refunding bonds and/or notes in the aggregate principal amount up to \$675,000 ("Refunding Bonds"); and

**WHEREAS**, it is the intent of the Borough Council hereby to authorize and approve the issuance and sale of tax appeal refunding notes in the principal amount of up to \$675,000 to pay the costs of the Tax Appeal Refunding Project (as defined in the Refunding Bond Ordinance) ("Notes"); and

**WHEREAS**, it is necessary for the Borough to adopt this resolution to authorize and effectuate the issuance and sale of said Notes.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY (NOT LESS THAN TWO-THIRDS OF ALL THE MEMBERS THEREOF AFFIRMATIVELY CONCURRING), PURSUANT TO THE PROVISIONS OF THE LOCAL BOND LAW, CONSTITUTING CHAPTER**

**169 OF THE LAWS OF 1960 OF THE STATE OF NEW JERSEY, AS AMENDED AND SUPPLEMENTED ("LOCAL BOND LAW"), AS FOLLOWS:**

**Section 1.** Pursuant to the Local Bond Law and the Refunding Bond Ordinance, the issuance of the Notes to be designated, substantially, "Borough of Red Bank, County of Monmouth, New Jersey, Tax Appeal Refunding Notes of 201\_, Series \_", in the principal amount of up to \$675,000, is hereby authorized, approved, ratified and confirmed. The exact principal amount of Notes to be issued shall be determined by the Chief Financial Officer.

**Section 2.** The Chief Financial Officer, with the assistance of the law firm of Parker McCay P.A., Bond Counsel, is hereby authorized and directed to award and sell the Notes at a public or private sale at a price not less than par, and to deliver the same to the purchaser thereof upon receipt of the payment of the purchase price thereof.

**Section 3.** At the next meeting of the Borough Council after the sale of the Notes, the Chief Financial Officer is hereby authorized and directed to report, in writing, to the Borough Council, the principal amount, rate of interest and the name of the purchaser of the Notes.

**Section 4.** The Notes shall be dated the date of delivery thereof and mature no later than one year from said date. The Notes will not be subject to redemption prior to maturity.

**Section 5.** The Notes shall be executed in the name of the Borough by the manual or facsimile signatures of the Mayor and Chief Financial Officer, and shall be under the corporate seal of the Borough affixed, imprinted, or reproduced thereon, and attested by the manual or facsimile signature of the Borough Clerk.

**Section 6.** The Notes will be general obligations of the Borough, ultimately payable from ad valorem taxes that shall be levied upon all taxable real property in the Borough without limitation as to rate or amount.

**Section 7.** The Borough hereby covenants that it will not make any use of the proceeds of the Notes or do or suffer any other action that would cause: (i) the Notes to be "arbitrage bonds" as such term is defined in Section 148(a) of the Internal Revenue Code of 1986, as amended ("Code") and the Income Tax Regulations promulgated thereunder; (ii) the interest on the Notes to be included in the gross income of the owners thereof for federal income taxation purposes; or (iii) the interest on the Notes to be treated as an item of tax preference under Section 57(a)(5) of the Code.

**Section 8.** The Borough hereby covenants as follows: (i) it shall timely file with the Ogden, Utah Service Center of the Internal Revenue Service, such information report or reports as may be required by Sections 148(f) and 149(e) of the Code; and (ii) it shall take no action that would cause the Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 9.** Unless otherwise exempt, the Borough hereby covenants that it shall make, or cause to be made, the rebate required by Section 148(f) of the Code in the manner described in Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2, as such regulations and statutory provisions may be modified insofar as they apply to the Notes.

**Section 10.** The Borough hereby designates the Notes as "qualified tax-exempt obligations" as defined in and for the purposes of Section 265(b)(3) of the Code. For purposes of this designation, the Borough hereby represents that: (i) during the period from January 1, 2014 through and including the date hereof, the Borough has not issued tax-exempt obligations in an amount which, when added to the principal amount of the Notes, exceeds \$10,000,000; (ii) during the period from January 1, 2014 through and including the date hereof, the Borough has not

designated as "qualified tax-exempt obligations" bonds or other tax-exempt obligations in an amount which, when added to the principal amount of the Notes, exceeds \$10,000,000; and (iii) it reasonably anticipates that the amount of tax-exempt obligations to be issued by the Borough during the period from January 1, 2014 to December 31, 2014, and the amount of obligations designated as "qualified tax-exempt obligations" by it, will not exceed \$10,000,000 when added to the principal amount of the Notes.

**Section 11.** For purposes of this Section 11, the following obligations are not taken into account in determining the aggregate principal amount of tax-exempt obligations issued by the Borough: (i) a private activity bond as defined in Section 141 of the Code (other than a qualified 501(c)(3) bond, as defined in Section 145 of the Code); and (ii) any obligation issued to refund any other tax-exempt obligation (other than to advance refund within the meaning of Section 149(d)(5) of the Code) as provided in Section 265(b)(3)(c) of the Code.

**Section 12.** All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Administrator, Chief Financial Officer, Borough Clerk, other Borough officials or by the Borough's professional advisors, in connection with the issuance and sale of the Notes are hereby ratified, confirmed, approved and adopted.

**Section 13.** The Mayor, Administrator, Chief Financial Officer and Borough Clerk are hereby authorized and directed to determine all matters and execute all documents and instruments in connection with the Notes not determined or otherwise directed to be executed by the Local Bond Law, the Refunding Bond Ordinance or by this or any subsequent resolution, and the signature of the Mayor, Administrator, Chief Financial Officer or Borough Clerk on such documents or instruments shall be conclusive as to such determinations.

**Section 14.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 15.** This Resolution shall take effect immediately upon adoption this 24th day of November, 2014.

Seconded by Councilwoman Horgan and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilman Murphy	( x )	( )	( )	( )
Councilwoman Burnham	( x )	( )	( )	( )
Councilwoman Horgan	( x )	( )	( )	( )
Councilwoman Lewis	( x )	( )	( )	( )
Councilman Zipprich	( x )	( )	( )	( )
Councilman DuPont	( x )	( )	( )	( )

Dated: November 24, 2014