

**CITY OF VIENNA**  
Special Council Session  
Council Chambers  
609 29<sup>th</sup> Street, Vienna, WV  
9:00am

**AGENDA**  
**November 27, 2023**

**Invocation and Pledge of Allegiance**

**Call to Order**

**Roll Call**

**Public Forum**

**Report of the Minutes**

**Unfinished Business**

1. ORDINANCE – SECOND READING: Authorizing And Approving The Conveyance Of Certain Real Property, Fixtures And Personal Property And Appurtenances To The City Of Vienna Building Commission For The Purpose Of Facilitating The Design, Acquisition, Construction, Renovation And Equipping Of A New Aquatic Facility At Jackson Park By The City Of Vienna On Behalf Of The City Of Vienna Municipal Building Commission; The Leasing Of Such Real Property And All Project Improvements And Appurtenances Thereto By The City Of Vienna From The City Of Vienna Municipal Building Commission; The Sale And Issuance By The City Of Vienna Municipal Building Commission Of Not To Exceed \$4,000,000 In Principal Amount Of Lease Revenue Bonds, In One Or More Series To Pay All Or A Portion Of The Costs Of The Project And Costs Of Issuance Of The Bonds; Authorizing The Execution And Delivery Of An Agreement And Lease And Other Instruments And Authorizing And Approving Other Documents And Matters Relating To The Terms And Security Of Such Bonds; And Providing For Other Matters In Connection Therewith.  
(Sponsored by: Mayor Randy Rapp and Recorder Melissa Elam)

**New Business**

1. None.

**Council Comments**

**Announcements**

**ORDINANCE OF THE  
CITY OF VIENNA**

**AN ORDINANCE AUTHORIZING AND APPROVING THE CONVEYANCE OF CERTAIN REAL PROPERTY, FIXTURES AND PERSONAL PROPERTY AND APPURTENANCES TO THE CITY OF VIENNA BUILDING COMMISSION FOR THE PURPOSE OF FACILITATING THE DESIGN, ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A NEW AQUATIC FACILITY AT JACKSON PARK BY THE CITY OF VIENNA ON BEHALF OF THE CITY OF VIENNA MUNICIPAL BUILDING COMMISSION; THE LEASING OF SUCH REAL PROPERTY AND ALL PROJECT IMPROVEMENTS AND APPURTENANCES THERETO BY THE CITY OF VIENNA FROM THE CITY OF VIENNA MUNICIPAL BUILDING COMMISSION; THE SALE AND ISSUANCE BY THE CITY OF VIENNA MUNICIPAL BUILDING COMMISSION OF NOT TO EXCEED \$4,000,000 IN PRINCIPAL AMOUNT OF LEASE REVENUE BONDS, IN ONE OR MORE SERIES TO PAY ALL OR A PORTION OF THE COSTS OF THE PROJECT AND COSTS OF ISSUANCE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT AND LEASE AND OTHER INSTRUMENTS AND AUTHORIZING AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE TERMS AND SECURITY OF SUCH BONDS; AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of Vienna (the “City”) has, pursuant to an ordinance enacted August 10, 1989, created and established the City of Vienna Building Commission (the “Issuer”), a public corporation and municipal building commission of the State of West Virginia, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the “Act”);

**WHEREAS**, the Issuer, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes to such persons and upon such terms as the Issuer deems proper;

**WHEREAS**, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, recreation facilities, police stations, fire stations, and other public buildings;

**WHEREAS**, the City desires to convey unto the Issuer pursuant to such deed or deeds, bills of sale or other instruments of transfer as may be necessary and appropriate under the circumstances (collectively, the “Conveyance Documents”), the parcels of real property located in the City of Vienna, together with all improvements and appurtenances thereto, which parcels of real property shall be more particularly described in **EXHIBIT A – REAL ESTATE DESCRIPTION**, attached hereto and made a part hereof (collectively, the “Aquatic Facility Site”);

**WHEREAS**, the City desires to design, acquire, construct, renovate and equip on the Aquatic Facility Site a new swimming pool and recreational aquatic facility (the “Aquatic Facility”) together with all necessary appurtenances in connection therewith (the “Project”; the Aquatic Site, together with all rights of way, appurtenances, buildings, personal property and fixtures associated therewith, including, but not limited to, the Project improvements to be constructed thereon and all additions and improvements thereto now or hereafter acquired, created or constructed, of every kind and nature, herein called the “Facilities”);

**WHEREAS**, the Issuer, under the Act, has plenary power and authority to issue negotiable bonds, notes, debentures, or other evidence of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness, issue any obligations, and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

**WHEREAS**, the Issuer desires, pursuant to an Ordinance to be enacted prior thereto (the “Issuer Ordinance”), to issue its Lease Revenue Bonds, in one or more series, in an aggregate principal amount not to exceed \$4,000,000 (the “Bonds”) to (i) finance a portion of the costs of the Project, (ii) pay costs of issuance of the Bonds and related costs, (iii) fund a reserve account, if any, for the Bonds, and (iv) pay capitalized interest, if any, on the Bonds;

**WHEREAS**, the purchaser of the Bonds (the “Purchaser”), the terms, conditions and provisions of the Bonds and the forms of certain documents to be executed and delivered in connection with the issuance and sale of the Bonds shall be approved by the Issuer pursuant to a resolution of the Issuer which is supplemental to the Issuer Resolution (the “Issuer Supplemental Resolution”);

**WHEREAS**, the City desires to lease the Facilities from the Issuer pursuant to an Agreement and Lease (the “Lease”) to be dated the Closing Date (as hereinafter defined), by and between the Issuer, as lessor, and the City, as lessee;

**WHEREAS**, the Issuer, pursuant to the Issuer Ordinance, has appointed the City to undertake the design, acquisition, construction and equipping of the Project including being party

to any construction contracts and fulfilling the obligations of the City under such construction contracts as may be necessary in connection with same and for the purpose of requisitioning and applying the proceeds of the Bonds to the payment of the costs of the Project and the costs of issuance of such Bonds and related costs, for and on behalf of the Issuer as herein described, and the City desires to authorize such actions on its part pursuant to this Ordinance; and

**WHEREAS**, the City desires to take all steps necessary to authorize the conveyance of the Aquatic Facility Site, its undertaking of the design, acquisition, construction and equipping of the Project for and on behalf of the Issuer, its requisitioning of the Bond proceeds and application thereof to the payment of the costs of the Project, its leasing of the Facilities from the Issuer pursuant to the terms of the Lease and to permit the Issuer to promptly proceed with the issuance of the Bonds;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF VIENNA, AS FOLLOWS:**

**Section 1.** Pursuant to the Act, this Ordinance is adopted and enacted and it is hereby found and determined that, to accomplish the purposes of the Act and the findings set forth in the preambles hereof, the following is hereby authorized and approved: (i) the conveyance of the Aquatic Facility Site by the City to the Issuer pursuant to the Conveyance Documents; (ii) the design, acquisition, construction, renovation and equipping of the Project by the City for and on behalf of the Issuer including but not limited to engaging such architects and other professionals, undertaking such public bidding processes, providing notice of award and notice to proceed to such construction contractors, entering into such construction contracts, purchase agreements and other documents as may be necessary in connection with same and performing under such agreements; (iii) the leasing of the Facilities by the City from the Issuer pursuant to the terms of the Lease and the payment of such lease rentals and other payments by the City which are provided for pursuant to the Lease; and (iv) the issuance and delivery of the Bonds by the Issuer in the aggregate principal amount of not to exceed \$4,000,000 for the purpose of financing all or a portion of the costs of the design, acquisition, construction and equipping of the Project, the payment of costs of issuance of the Bonds and related costs if to be paid from Bond proceeds, the funding of a reserve account, if any, for the Bonds and the payment of capitalized interest, if any, on the Bonds, are hereby authorized, approved, ratified and confirmed. The Bonds shall be issued in accordance with, and shall have the terms provided in, the Issuer Ordinance authorizing the issuance of the Bonds, which Issuer Ordinance is hereby approved.

**Section 2.** The City hereby agrees to undertake all actions necessary for the design, acquisition, construction and equipping of the Project and to requisition and apply the proceeds of the Bonds to the payment of the costs of the Project and related costs, and to execute all construction contracts, requisitions, certificates, or other documents necessary in connection therewith, and to give any and all authorizations as may be necessitated thereby. The City hereby authorizes and approves the payment of costs of the Project which may be incurred prior to the issuance of the Bonds from its General Revenue Fund and/or Capital Improvement Fund and the reimbursement of such fund from the proceeds of the Bonds following their execution and delivery in an amount not to exceed \$1,000,000. The adoption of this Ordinance by the Council of the City on first reading shall constitute a “declaration of official intent” pursuant to Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal

Revenue Code of 1986, as amended. Any reimbursement allocations shall be in writing within sixty (60) days of the closing on the Bonds.

**Section 3.** The Lease, by and between the Issuer, as lessor, and the City, as lessee, pursuant to which the City will lease the Facilities from the Issuer and will agree to pay as Lease Rentals (but only from the sources set forth therein), amounts sufficient to pay the principal of and interest on the Bonds and any other amounts payable thereunder, shall be substantially in the form as shall be approved pursuant to a resolution of the City which is supplemental to this Ordinance (the “City Supplemental Resolution”), with such changes, variations, insertions and omissions as may be approved by the City. The Mayor of the City is hereby authorized to execute, acknowledge, as necessary, and deliver the Lease and the Recorder of the City is hereby authorized and directed to affix the seal of the City thereto and to attest the seal. The execution of the Lease by the Mayor shall be conclusive evidence of any approval required by this Section.

**Section 4.** The Lease Assignment (the “Assignment”), by the Issuer to the Purchaser, pursuant to which the Issuer shall assign certain of its rights under the Lease and rentals thereunder, to be dated or effective as of the Closing Date, shall be substantially in the form as shall be approved pursuant to the City Supplemental Resolution, with such changes, variations, insertions, and omissions as may be approved by the Issuer and the City. The execution of the Assignment by the Chairman of the Issuer shall be conclusive evidence of any such approval.

**Section 5.** The Credit Line Deed of Trust, Fixture Filing and Security Agreement (the “Deed of Trust”) by the Issuer to the trustees named therein, pursuant to which the Issuer shall convey the Facilities to the trustees named therein, in trust, for the benefit and security of the Purchaser in the repayment of the Bonds, shall be substantially in the form as shall be approved pursuant to the City Supplemental Resolution, with such changes, variations, insertions and omissions as may be approved by the Issuer and the City. The execution of the Deed of Trust by the Chairman of the Issuer shall be conclusive evidence of any such approval.

**Section 6.** The Bonds shall be substantially in the form as shall be approved pursuant to the City Supplemental Resolution, with such changes, variations, insertions, and omissions as may be approved by the Issuer and the City. Such approval shall constitute the approval of the issuance of the Bonds by an “applicable elected official” to the extent such approval may be required by any State or federal law. The execution of the Bonds by the Chairman of the Issuer shall be conclusive evidence of any such approval.

**Section 7.** The City hereby approves the sale of the Bonds to the Purchaser, as shall be designated by the Issuer Supplemental Resolution. The Bonds shall be in such aggregate principal amount, not to exceed \$4,000,000, bear interest at such rate, not to exceed 8%, mature on such date, not to exceed 30 years from the dated date of the Bonds, and have a price of 100% of par value, there being no interest accrued thereon. The Bonds shall have such other terms as provided in the Supplemental Resolution or as further approved by the Chairman of the Building Commission. The Bonds shall be dated the date of delivery thereof (the “Closing Date”).

**Section 8.** All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Lease and all other instruments and documents relating thereto shall be deemed to be the special and limited covenants, stipulations, obligations and

agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred, and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and by the Lease and all other instruments and documents relating thereto shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Lease and all other instruments and documents relating thereto shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity and neither the City nor any officer or employee thereof shall be liable personally on the Lease or the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 9.** The City hereby authorizes and ratifies all actions necessary to authorize and approve the design, acquisition, construction and equipping of the Project by the City.

**Section 10.** The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby designated as bond counsel in connection with the issuance of the Bonds.

**Section 11.** The execution, delivery and due performance of the Lease are hereby in all respects approved, authorized, ratified and confirmed, including, without limitation, all acts heretofore taken in connection with the design, acquisition, construction and equipping of the Project; the issuance of the Bonds and the leasing of the Facilities, and it is hereby ordered that the Mayor, the Recorder, the council members and other employees and officers of the City execute and deliver such other documents, certificates, agreements and instruments and take such other action as may be required or desirable to carry out the purposes of this Ordinance, the Bonds and the aforesaid documents, certificates, agreements and instruments.

**Section 12.** All ordinances, orders, resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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**Section 13.** This Ordinance shall take effect immediately following the public hearing hereon and approval on second and final reading.

First Reading: September 28, 2023

Enacted on Second Reading  
Following Public Hearing: November 27, 2023

CITY OF VIENNA

By: \_\_\_\_\_  
Its Mayor

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Recorder of the City of Vienna does hereby certify that the foregoing Ordinance was duly adopted and enacted by the Council of the City of Vienna at regular meetings duly held, pursuant to proper notice thereof, on September 28, 2023 and November 27, 2023, quorums being present and acting throughout, and which Ordinance has not been repealed, rescinded, modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand and the seal of the City of Vienna this \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Recorder, City of Vienna



## EXHIBIT A - REAL ESTATE DESCRIPTIONS

That certain lot, tract or parcel of real estate situate, lying and being in the City of Vienna, District of Williams and State of West Virginia, more particularly described as follows:

BEGINNING at the common corner of the Board of Education and Griffin property, said corner being the southwest corner of the property hereinafter conveyed; thence with the Board of Education N. 24° 55' E. 811.1 feet to a point; thence N. 84° 54' E. 386.9 feet; thence S. 60° 10' E. 374.53 feet; thence S. 22° 8' W. 900 feet; thence S. 66° 52' E. 601.64 feet; thence S. 12° 4' W. 176.4 feet; and thence with the Bird and Griffin lines N. 62° 45' W. 1392.52 feet to the place of beginning, containing 18.30 acres, more or less, as surveyed by Paul Marshall, surveyor, and being the same property conveyed to the grantor by two deeds, the first from the Board of Education of the County of Wood, dated January 17, 1972, and of record in the Office of the Clerk of the County Commission of Wood County, West Virginia, in Deed Book No. 595, at page 427, and the second from William W. Jackson and wife, dated December 29, 1975, and of record in said Clerk's Office in Deed Book No. 662, at page 715.

The City of Vienna, a municipal corporation, hereby understands and agrees to comply with Section 6(f) of the Land and Water Conservation Fund Act of 1965, as amended, (78 Stat. 897), which establishes by Federal law that:

No property acquired or developed with assistance from the Land and Water Conservation Fund shall, without the written approval of the Secretary of the Department of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of at least equal fair market value and of reasonably equivalent usefulness and location.

Being that real property conveyed by the Vienna Recreation and Improvement Association to the City of Vienna by deed dated July 3<sup>rd</sup>, 1979, filed in the property records of Wood County, West Virginia in Book 723, Page 661.