

MEMORANDUM

To: President Andy Terhaar and Council Members

From: Susan A. Woolf, City Attorney 

CC: Mayor Grover C. Robinson, IV
Chris Holley, City Administrator
Ericka Burnett, City Clerk
Don Kraher, Council Executive

Date: September 26, 2019

Re: Item No. 18
Resolution No. 2019-52
Indigent Health Care Special Assessment

The State has adjusted the amount of required intergovernmental transfer of funds from the City for the hospitals' special assessment from the amount originally shown in the Resolution. The new amount is \$10.5 million. Accordingly, please find attached a revised draft Resolution in redline that reflects the following changes:

- Updating the "Maximum Lien Obligation" in Section 7 to \$10,563,226 million, which reflects the actual assessment amount
- Updating the assessment rate to 3.9%
- Revising the language in Sections 6 & 7 describing the tax base to explicitly exclude Medicare revenues

Attachment: Revised Resolution No. 2019-52 (redlined)

**A RESOLUTION
TO BE ENTITLED:**

AN ASSESSMENT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA, AUTHORIZING, LEVYING, AND IMPOSING A NON-AD VALOREM ASSESSMENT WITHIN THE AREAS OF THE CITY LIMITS DESCRIBED HEREIN FOR THE PURPOSE OF SUPPORTING THE PROVISION OF CHARITY HEALTH CARE BY THE CITY'S HOSPITALS TO INDIGENT MEMBERS OF THE NORTHWEST FLORIDA COMMUNITY; FINDING AND DETERMINING THAT CERTAIN REAL PROPERTY IS SPECIALLY BENEFITED BY THE INCREASED SUPPORT FOR CHARITY CARE; MAKING CERTAIN OTHER FINDINGS IN RELATION THERETO; ESTABLISHING THE METHOD OF ASSESSING AND COLLECTING THE ASSESSMENT AGAINST THE REAL PROPERTY; SPECIFYING THE MAXIMUM ANNUAL ASSESSMENT AMOUNT AND THE MAXIMUM ASSESSMENT LIEN TO BE LEVIED AGAINST THE SPECIALLY BENEFITED REAL PROPERTY; CONFIRMING THE ASSESSMENT RESOLUTION; PROVIDING FOR CERTAIN OTHER AUTHORIZATIONS AND DELEGATIONS OF AUTHORITY IN RELATION THERETO; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, each year, hospitals in Pensacola provide millions of dollars of uncompensated charity health care to indigent members of the Northwest Florida community; and

WHEREAS, the State of Florida (the "State") created a Low-Income Pool program (the "LIP Program") through its federal Medicaid waiver to help support the uncompensated costs of providing charity care to uninsured and low-income patients; and

WHEREAS, the State has not provided the full allowable LIP Program support to certain eligible hospitals; and

WHEREAS, the impacted hospitals (the "Hospitals") have requested that the City of Pensacola, Florida (the "City") impose an assessment upon certain real property owned by the Hospitals to help finance that non-federal share of the State's LIP Program; and

WHEREAS, the funding from the City assessment will be transferred to the State to enable the State to draw down a federal match equal to approximately 150% of the assessed funds, thereby allowing the State to pay the Hospitals a much higher percentage of their uncompensated charity care costs to maintain and even expand their charity care programs; and

WHEREAS, among the uncompensated charity care costs that the LIP payments will cover and that the Hospitals incur are the costs of operating and maintaining the assessed real property, as documented in hospital cost reports submitted to the Agency for Health Care Administration (“AHCA”) and the federal Centers for Medicare and Medicaid Services (“CMS”); and

WHEREAS, as with many local governments, it is within the City’s public purposes to promote access to healthcare to its uninsured and low-income residents as well as the broader community through support of charity care provided by local hospitals; and

WHEREAS leveraging federal support for certain eligible hospitals to continue to provide that care benefits all providers in the City who would otherwise take on a greater share of that burden; and

WHEREAS, imposing an assessment to help fund the provision of charity health care by the Hospitals to indigent and uninsured members of the Northwest Florida community is a valid public purpose that benefits the health, safety, and welfare of the citizens of Pensacola; and

WHEREAS, on September 26, 2019, the City Council of the City of Pensacola, Florida (the "City Council") adopted Ordinance No. _____ (the “Ordinance”), enabling the City to levy non-ad valorem assessments on properties within the jurisdictional limits of the City owned by the Hospitals that are specially benefited by this special assessment for supporting charity health care.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

Section 1. Definitions. As used in this Resolution, the following capitalized terms, not otherwise defined herein or in the Ordinance, shall have the following meanings unless the context hereof otherwise requires:

“Assessment Area” means the Hospital facilities within City limits that provide inpatient hospital services, namely real property located at:

Sacred Heart Hospital
5151 North 9th Avenue
Pensacola, FL 32504

Baptist Hospital
1000 W Moreno Street
Pensacola, FL 32501

Select Specialty Hospital
7000 Cobble Creek Road
Pensacola, FL 32504

“Delinquent” means not paid within thirty (30) days of the due date.

“Designated City Official” means the Chief Financial Officer, or such other official as shall be designated by the Mayor to act as such hereunder, or such person’s designee.

“Ordinance” means Ordinance No. _____ adopted by City Council on September 26, 2019, enabling the City to levy non-ad valorem assessments on properties within the jurisdictional limits of the City that are specially benefited by certain local improvements or local services.

“Owner,” “Owner(s),” or “Owners” means any one or more of the owners of the real property within the Assessment Area determined by the City Council to be subject to the Assessment based on the selected methodology defined herein.

Section 2. Interpretation. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Resolution; and the term “hereafter” means after, and the term “heretofore” means before, the effective date of this Resolution. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 3. Authority. This Resolution is adopted pursuant to Section 2(b), Article VIII of the Constitution of the State of Florida, Parts I and III of Chapter 166, Florida Statutes, and the Ordinance (collectively the "Act").

Section 4. Findings. It is hereby ascertained, found, determined and declared by the City Council that:

(A) Article VIII of the Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, grant to a city all powers of local self-government to perform city functions and to render services for city purposes in a manner not inconsistent with general law or with special law approved by vote of the electors, and such power may be exercised by enactment of ordinances and resolutions.

(B) The Ordinance was enacted to provide for the creation of a special assessment imposed on certain real property owned by the Hospitals.

(C) The City’s support of access to health care services provided through hospital charity care programs, by leveraging local funding and Medicaid federal matching funds to provide such access, constitutes Local Services as defined in the Ordinance.

(D) The City’s decision to leverage available funding to support the provision of hospital charity care programs through LIP funding serves a valid public purpose by supporting the provision of health care to indigent members of the Northwest Florida community, supporting the other providers who would otherwise take on such charity care, and supporting the viability of certain LIP eligible hospitals as important institutions to the City economy, and, therefore, the Assessment is in the best interest of the health, safety, and welfare of the citizens of Pensacola.

(E) City Council desires to create the Assessment Area to fund the Local Service as set forth herein.

(F) The Local Service will provide a special benefit to the property located within the Assessment Area by generating additional funding to cover the cost of charity health care, including costs of operating and maintaining the real property and improvements thereon in which the charity care is provided, such costs to be documented in cost reports submitted to AHCA and CMS.

(G) The Assessment to be imposed in accordance with this Resolution provides an equitable method of funding increased charity care.

(H) A reasonable methodology has been applied in determining the basis and rate of the Assessment and which hospitals are subject to the Assessment within the jurisdictional limits of the City (the Assessed Hospitals).

Section 5. Special Assessment. There is hereby authorized and imposed a non-ad valorem assessment, the amount of which shall be computed in accordance with Section 7 herein. The Assessment shall be imposed, levied, collected, and enforced against the specially benefited real property located in the Assessment Area to fund the non-federal share of LIP payments to certain eligible hospitals for uncompensated costs of charity care. When imposed by this Resolution, the Assessment shall constitute a lien upon the real property in the Assessment Area equal in rank and dignity with the liens of all state, county, district, or municipal taxes and other non-ad valorem assessments, and failure to pay may cause foreclosure proceedings to be instituted that could result in loss of title. The Assessment will be billed and collected as provided in Section 9 hereof and in the Ordinance.

Section 6. Assessment Scope, Basis, and Use.

(A) The Assessment pursuant to this Resolution shall be imposed on all providers of inpatient hospital services within the City limits, which is limited to Sacred Heart Hospital, Baptist Hospital, and Select Specialty Hospital. The City will assess net inpatient service revenues [less Medicare revenues](#) of each Hospital subject to the Assessment.

(B) The amounts collected from the Assessment may only be used for the following purposes:

(1) to transfer funds to the Agency for Health Care Administration (“AHCA”) for the purposes of providing local funding for the non-federal share of LIP payments to eligible hospitals that are Regional Perinatal Intensive Care Centers; or

(2) to refund to the assessed Hospitals any overpayment or amounts otherwise collected in error with respect to the Assessment.

(C) In the event that all or a portion of the LIP payments are recouped by the federal government and the associated non-federal share funded by the Assessment is returned to the City, the City will refund such amounts to the Assessed Hospitals.

Section 7. Computation of Assessment.

(A) The annual installment of the Assessment shall equal 4.63.9 percent of net inpatient service revenues less Medicare revenues for each Hospital subject to the Assessment.

(B) Net inpatient hospital services revenue data for each assessed Hospital will be derived from the 2017 Florida Hospital Uniform Reporting System, as available from AHCA.

(C) The full amount of the annual assessment is payable by October 31, 2019.

(D) The maximum lien obligation of the Assessment is \$13,326,56710,563,226 (the "Maximum Lien Obligation").

Section 8. Non-Ad Valorem Assessment Roll; Certification. The Non-Ad Valorem Assessment Roll, a copy of which is attached hereto as Exhibit A, is hereby approved in accordance with Section 1.05 of the Ordinance.

Section 9. Timing and Method of Collection.

(A) The amount of the assessment is to be collected from the Hospitals as described herein.

(B) The City shall provide Assessment bills by first class mail to the owner of each affected Hospital. The bill or accompanying explanatory material shall include (1) a reference to this Resolution, (2) the total amount of the hospital's Assessment for the appropriate period, (3) the location at which payment will be accepted, (4) the date on which the Assessment is due, and (5) a statement that the Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(C) The Hospitals shall pay to the City the full assessment promptly upon the passing of this Resolution, but in no event later than the date set forth in Section 7(C) above.

Section 10. Public Hearing. A public hearing will be conducted by the City Council on September 26, 2019, at 5:30 p.m. or at such other time as noticed in Council Chambers at City Hall, 222 West Main Street, Pensacola, to consider adoption of this Assessment Resolution for the imposition and collection of the Assessment.

Section 11. Assessment.

(A) The methodology for computing the Assessment described herein is hereby approved. The Assessment is hereby imposed on the Assessment Area.

(B) The Assessment shall constitute a lien against the Assessment Area equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens and claims until paid. The lien shall be perfected upon adoption of this Assessment Resolution.

Section 12. Direction to Mail Copies. The City Council does hereby authorize the Mayor to send a copy of this Resolution by United States Mail to the Escambia County Property Appraiser, the Escambia County Tax Collector, and to the State of Florida Department of Revenue.

Section 13. Assessment Lien Notice. If the Assessment is not paid in full within thirty (30) days of the due date set forth in Section 7(C) hereof, City Council does hereby authorize the appropriate City official to record a general notice of the lien resulting from the imposition of the Assessment in the Official Records of Escambia County, Florida.

Section 14. Indemnification. The owners of the affected hospitals shall indemnify the City against any and all net losses incurred by the City if any clause, section or provision of this Resolution is declared unconstitutional or invalid for any reason or cause, after accounting for any funds returned by AHCA. If, notwithstanding the restricted use of the proceeds of the assessment set forth in Section 6, a creditor of the City is adjudged entitled to claim any portion of the proceeds of the assessment, the affected hospitals shall indemnify the City if it is required to pay to such creditor and AHCA an amount in excess of the assessment proceeds received. Each hospital's share of the total indemnification amount shall be equal to their share of the total assessment amount.

The Hospitals also agree to indemnify and hold the City, its subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents harmless from any and all claims, suits, actions, damages, liability and expenses, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with the adoption, implementation, or performance of the activities associated with this Resolution and Assessment and the Ordinance.

Section 15. Other Authorizations. The Mayor and his designees are hereby authorized to (a) do all things necessary to carry out the terms and conditions of this Resolution, consistent with the intent of the City Council, including, if necessary, contracting with the Escambia County Property Appraiser and the Escambia County Tax Collector to administer the levy and collection of the Assessment and executing a Low Income Pool Letter of Agreement with the Agency for Health Care Administration (AHCA); and (b) record a copy of this Resolution and any other necessary notice in the Public Records of Escambia County, Florida, to preserve the status of the lien created hereby on all properties in the Assessment Area against all the world, including any subsequent purchasers of the affected properties.

Section 16. Severability. If any clause, section or provision of this Resolution shall be declared unconstitutional or invalid for any reason or cause, the remaining portion hereof shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

Section 17. Effective Date. This resolution shall become effective on the fifth (5th) business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
Council President

Attest:

Ericka L. Burnett, City Clerk

(SEAL)

EXHIBIT A
Non-Ad Valorem Assessment Roll

Sacred Heart Hospital:

- 5151 North 9th Avenue, Pensacola, FL 32504

Baptist Hospital:

- 1000 W Moreno Street, Pensacola, FL 32501

Select Specialty Hospital:

- 7000 Cobble Creek Road, Pensacola, FL 32504