

ORDINANCE NO. 92- 41 AC CMS

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE CITY'S SEWERAGE SYSTEM BY CONSTRUCTING AND RENOVATING SANITARY AND STORM SEWERS, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, the Auditor as fiscal officer has certified to this Council that the estimated life of the improvements hereinafter mentioned is at least five years, that the maximum maturity of the bonds hereinafter referred to is forty years, and that the maximum maturity of the notes to be issued in anticipation of such bonds is twenty years from their date of issuance;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, that:

Section 1. It is hereby declared necessary to issue bonds of the City of Oberlin in the aggregate principal amount of \$400,000 for the purpose of paying costs of improving the City's sewerage system by constructing and renovating sanitary and storm sewers, together with all necessary appurtenances thereto (the "Bonds").

Section 2. The Bonds shall be dated approximately June 1, 1993; shall be issued in one lot; shall bear interest at the estimated rate of nine per centum (9%) per annum, payable semi-annually, until the principal sum is paid; and shall mature in forty substantially equal annual installments.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of \$400,000 shall be issued in anticipation of the Bonds. Those anticipatory notes shall be designated "Sewerage System Improvement Notes, Series 1992" (the "Notes"); shall bear interest at a rate per annum, payable at maturity, with such rate of interest to be fixed by the Auditor in his certificate awarding the Notes at private sale in accordance with Section 6 hereof; shall be dated the date of their issuance; shall mature on one year from that date or such date which is within fourteen days prior to that date as shall be selected by the City Auditor and designated in his certificate awarding the Notes at private sale in accordance with Section 5 hereof; shall be issued in such numbers and denominations as shall be requested by the purchaser thereof and approved by the Auditor, provided that the entire principal amount may be represented by a single note; and shall be numbered as determined by the Auditor.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America, without deduction for services of the City's paying agent, at the Oberlin, Ohio office of The Lorain County Bank, Elyria, Ohio.

Section 5. The Notes shall be signed by the City Manager and Auditor, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall not have coupons attached and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Revised Code Chapter 133, the Charter of the City and this Ordinance. The City Manager, the

Auditor, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements, other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 6. The Notes shall be awarded and sold by the Auditor at private sale to McDonald & Company Securities, Inc., Cleveland, Ohio, at not less than the par value thereof in accordance with law and the provisions of this Ordinance. The Auditor shall fix the interest rate or rates, the maturity date, and make the other designations authorized herein, execute a certificate of award relating thereto, and cause the Notes to be prepared, signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

Section 7. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof; provided, however, that in each year to the extent the income from the City sewerage system is available for the payment of such notes and bonds and is appropriated for such purpose, the amount of such tax shall be reduced by the amount of the income so available and appropriated. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities which issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Notes, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations". Further, the City represents and covenants that, during any time or in any manner as might affect the treatment of the Notes as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

The Auditor, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax

laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

Section 11. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor of Lorain County.

Section 12. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 13. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 14. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to provide the funds necessary to make urgently needed improvements to the City's sewerage system; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: June 1, 1992


Chairman of Council

Attest:


Clerk of Council

Posted: June 4, 1992

CERTIFICATE OF FILING

State of Ohio }
Lorain County } SS

I, JULIAN A. PIJOR, the duly elected, qualified and acting Auditor in and for the
County and State aforesaid, do hereby certify that Julie A. Simonson

the duly elected, qualified and acting Clerk of Council

in and for said City of Oberlin, Oh County of Lorain, Ohio,

and ex-officio Fiscal Officer for said District, has this day officially filed in the office of
the Auditor of Lorain County a certified copy of ORDINANCE NO. 92041 AC CMS

providing for THE ISSUANCE OF NOTES IN ANTICIPATION OF ISSUANCE OF BONDS

~~FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE CITY'S~~

SEWERAGE SYSTEM BY CONSTRUCTING & RENOVATING SANITARY & STORM SEWERS,
TOGETHER W/NECESSARY APPURTENANCES THERETO, & DECLARING AN EMERGENCY.

NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF \$400,000.00

WITNESS my hand and Official Seal at Elyria, Ohio this 8 day of JUNE 1992.

Julian A. Pijor
County Auditor in and for
Lorain County, Ohio

(SEAL)