

ORDINANCE NO. 00-40 AC CMS

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF RECREATIONAL FACILITIES IMPROVEMENT BONDS, SERIES 2000, OF THIS CITY, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$700,000, FOR THE PURPOSE PAYING COSTS OF IMPROVING THE CITY'S RECREATION COMPLEX BY GRADING, DRAINING, CONSTRUCTING BALL FIELDS AND PROVIDING NECESSARY EQUIPMENT

WHEREAS, this Council has requested that the Auditor, as fiscal officer of this City, certify the estimated life or period of usefulness of the improvements described in Section 1 and the maximum maturity of the Bonds described in Section 1; and

WHEREAS, the Auditor has certified that the estimated life or period of usefulness of the property described in Section 1 is at least five years and that the maximum maturity of the Bonds herein authorized is at least ten years;

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

Section 1. It is necessary and in the best interests of the City to issue bonds of this City in an aggregate principal amount not to exceed \$700,000 for the purpose of paying costs of improving the City's Recreation Complex by grading, draining, constructing ball fields and providing necessary equipment (the "Bonds"). The Bonds shall be designated "Recreational Facilities Improvement Bonds, Series 2000" and shall be issued in one lot and only as fully registered bonds. Anticipatory securities have not been issued in anticipation of the issuance of the Bonds. The principal amount of Bonds to be issued and the other terms of the Bonds not determined in this Ordinance shall be set in a certificate of the City Auditor awarding the Bonds to the purchaser (the "Certificate of Award") in accordance with Section 7 hereof.

Section 2: The Bonds shall be dated as of their date of issuance and may be issued as a single bond reflecting all the principal maturities set forth herein. Unless otherwise specified in the Certificate of Award, the Bonds shall mature in the following principal amounts on December 1 in each of the years shown below:

Year	Principal Amount	Year	Principal Amount
2001	\$55,000	2006	\$70,000
2002	55,000	2007	75,000
2003	60,000	2008	80,000
2004	65,000	2009	85,000
2005	65,000	2010	90,000

The Bonds shall bear interest on the unpaid principal amount from their date at the rate or rates of interest set by the Auditor in the Certificate of Award, payable on June 1 and December 1 of each year, commencing December 1, 2000, until the principal sum is paid or provided for.

The Auditor may adjust the principal amounts of Bonds maturing and the years in which the Bonds mature if in her judgment it is advantageous to and in the best interest of the City to make any such adjustments; provided, however, that no such adjustment shall (i) increase or decrease the principal and interest payable on the Bonds in any year in which principal is payable by more than thirty percent (30%) of the amount of principal and interest estimated to be payable that year as shown on the debt service schedule for the Bonds set forth herein and the further detail on file with the Auditor at the time of adoption of this Resolution, or (ii) cause the aggregate principal amount of the Bonds to exceed the amount authorized herein. The Auditor is further specifically authorized to provide for a principal maturity in a year other than those set forth above, provided that the maximum maturity of the Bonds, as set forth herein, may not be exceeded. Any adjustments made by the Auditor pursuant to the authorizations set forth in this Section and this Ordinance shall be reflected in final maturity schedules set forth in the Certificate of Award.

The Bonds shall be subject to redemption prior to stated maturity in whole or in part at the sole discretion of the City. Prepayment prior to maturity of all or a portion of the Bonds shall be made by deposit with the Bond Registrar designated pursuant to Section 4 hereof of the principal amount of the Bonds to be prepaid together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Bond Registrar, by certified or registered mail to the original purchaser of the Bonds not less than seven days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Bonds. If moneys for prepayment are on deposit with the Bond Registrar on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Auditor the original purchaser of the Bonds shall arrange for the delivery of the Bonds at the designated office of the Bond Registrar for prepayment and surrender and cancellation.

Section 3. The Bonds shall be signed by the City Manager and the Auditor in the name of the City of Oberlin and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be numbered as determined by the Auditor, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Chapter 133 of the Revised Code, this Ordinance and the Charter of the City. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar, or by any other person acting as an agent of the Bond Registrar and approved by the Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. The Auditor of the City is hereby appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the "Bond Registrar").

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and interest on the Bonds shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar.

Section 6. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at its office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this section (the Bond Register). Subject to the provisions of Section 8, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer, the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall provide for the signing and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings, as the Bonds surrendered upon that exchange or transfer.

Section 7. In accordance with this Ordinance, the Bonds shall be awarded and sold by the City Auditor at private sale at a price of par. The Auditor shall determine the principal amount of

Bonds to be issued, the interest rate or rates the Bonds shall bear and make all other determinations authorized herein and shall conclusively evidence that sale on those terms by signing the Certificate of Award. In connection with the issuance of the Bonds herein authorized, the legal services of the law firm of Squire, Sanders & Dempsey L.L.P. are hereby retained to act as bond counsel to this City. The City Manager, the Solicitor and the Auditor, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 8. There shall be levied on all taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation prescribed 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. 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 Bonds when and as the same fall due.

Section 9. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 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 of the Code applies, and (b) the interest thereon will not be 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 them for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (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 Bonds to the governmental purposes 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 Bonds 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 and the City, together with all their subordinate entities or entities that issue obligations on their behalf, or on behalf of which the City issues obligations, in or during the calendar year in which the Bonds 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 Bonds, 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 Bonds, 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 Bonds as "qualified tax-exempt obligations". Further, the Council represents and the City covenants that, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations", they have not formed or participated in the formation of, or benefitted from or availed themselves 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 themselves of, any such entity. The City further represents that the Bonds 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.

The Auditor, as fiscal officer of this City, or any other officer of the City having responsibility for the issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City or the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the Bonds 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 this City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, 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 Bonds.

Section 10. The Clerk of Council is directed to deliver a certified copy of this Ordinance and the Certificate of Award to the County Auditor of Lorain County.

Section 11. This Council determines that all acts and conditions necessary to be performed by the Council and the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City of Oberlin have been performed and have been met, or will at the time of delivery of the Bonds 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 8) of the City are pledged for the timely payment of

the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Revised Code, the Charter of the City and this Ordinance.

Section 12. 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 13. This Ordinance shall be in full force and effect from and after the earliest date permitted by law.

Passed: 1st Reading - April 17, 2000
2nd Reading - May 1, 2000
3rd Reading - May 15, 2000 Tabled until June 5, 2000
3rd Reading - June 5, 2000 (Suspension of Rules and elevated to Emergency)

Attest:

Eugene F. Simon
Clerk of Council

Charles M. Hummer
Chair of Council

Posted: 6/6/2000

Effective Date: 6/6/2000