

ORDINANCE NO. 00-49 AC CMS

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING A PORTION OF THE PROPERTY OWNERS' PORTION, IN ANTICIPATION OF THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS, OF THE COST OF RECONSTRUCTING, CONSTRUCTING AND REHABILITATING SIDEWALKS TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO

WHEREAS, this Council has previously declared the necessity of reconstructing, constructing and rehabilitating sidewalks together with all necessary appurtenances thereto; and

WHEREAS, the Auditor, as fiscal officer of the City, 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 at least ten years, and that the maximum maturity of the notes to be issued in anticipation of such bonds is five years, all as set forth that certification;

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 an aggregate principal amount not to exceed \$100,000 for the purpose of paying a portion of the property owners' portion, in anticipation of the levy and collection of special assessments, of the cost of reconstructing, constructing and rehabilitating sidewalks together with all necessary appurtenances thereto (the "Bonds").

Section 2. The Bonds shall be dated approximately July 1, 2001; shall bear interest at the estimated rate of six per centum (6%) per annum, payable semi-annually, until the principal sum is paid; and shall mature in ten annual principal installments that are substantially equal.

Section 3. It is necessary to issue and this Council hereby determines that notes in an aggregate principal amount not to exceed \$100,000 shall be issued in anticipation of the issuance of the Bonds. Those anticipatory notes shall be designated "Sidewalk Improvement Project Notes, Series 2000" (the "Notes"); shall bear interest at a rate not to exceed five and one-half per cent per annum, payable at maturity, with provision, if requested by the purchaser, that in the event of default in the payment of the principal of the Notes at maturity the same shall bear interest at a different rate not to exceed ten per cent per annum from the said maturity date until the principal sum is paid or provided for, with such rate or rates of interest to be fixed by the Auditor in her certificate awarding the Notes at private sale in accordance with Section 6 hereof. The Notes shall be dated as of their date of issuance, and shall mature on a date selected by the Auditor which shall not be more than one year from the date of issuance or less than nine months from the date of issuance unless it is a date on which other general obligation bond anticipation notes of this City mature, but shall be subject to redemption at par and accrued interest prior to maturity if agreed to by the purchaser.

If agreed to by the purchaser thereof, the Notes shall be pre-payable at any time in whole or in part at the sole option of the municipality at a price of par plus interest accrued to the date of prepayment. Prepayment prior to maturity shall be made by deposit with the paying agent designated pursuant to Section 3 hereof of the principal amount of the Notes to be prepaid together with interest accrued thereon to the date of prepayment. The municipality'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 paying agent, by certified or registered mail to the original purchaser of the Notes not less than seven days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Notes. If moneys for prepayment are on deposit with the paying agent 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 Treasurer the original purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the paying agent for prepayment and surrender and cancellation.

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 office of one or more banks or trust companies designated by the purchaser, provided any such designation shall be approved by the Auditor after determining that sufficient safeguards exist to protect the funds of this City.

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 be issued in the denominations and numbers as requested by the original purchaser and approved by the Auditor, provided that the entire principal amount may be represented by a single note. The Notes shall not have coupons attached, 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 Revised Code Chapter 133, the Charter of the City and this Ordinance.

Notwithstanding any other provisions of this Ordinance, if it is determined by the Auditor to be advantageous to the City, the Notes may be issued in book entry form for use in a book entry system and, if and as long as a book entry system is utilized: (i) the Notes may be issued in the form of a single, fully registered typewritten Note and registered in the name of a depository or its nominee, as registered owner, and immobilized in the custody of a depository; (ii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the depository and its participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the depository and its participants subject to the terms of this Ordinance; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

The Auditor is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. The Notes shall be awarded and sold by the Auditor at private sale at not less than the par value thereof in accordance with law and the provisions of this Ordinance. The Auditor shall determine the principal amount of Notes to be issued, designate the purchaser, fix the interest rate or rates, determine the maturity date, make the other designations authorized herein, 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. In connection with the issuance of the Notes 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 municipality. The City Manager, the Solicitor and the Auditor, and other City officials, 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 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. All special assessments collected for the improvement described in Section 1 and any unexpended balance remaining in the improvement fund after the cost and expenses of the improvement have been paid shall be used for the payment of the debt charges on the Notes until paid in full.

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, in each year to the extent money from the levy and collection of special assessments is available to pay debt charges on the Notes and Bonds and is appropriated for that purpose, the tax shall be reduced by the amount of money so available and so 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 1996, 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 benefitted 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.

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 and the Auditor's certificate stating the final terms of the Notes 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 of Oberlin 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 shall be in full force and effect from and after the earliest date permitted by law.

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

Attest: 
Clerk of Council


Chair of Council

Posted: 6/6/2000

Effective Date: 6/6/2000