

ORDINANCE NO. 08-61 AC CMS

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$1,400,000 OF NOTES , IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PAY COSTS OF CONSTRUCTING A PUBLIC PARK AREA AND STORM DRAINAGE FACILITIES THEREIN AND ACQUIRING LAND AND INTERESTS IN LAND RELATED THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, the Finance Director, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvements described in Section 1 is at least five years, the maximum maturity of the Bonds described in Section 1 is at least twenty years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is 20 years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, 5/7ths of all members elected thereto concurring:

Section 1. It is hereby declared necessary to issue bonds of the City of Oberlin in an aggregate principal amount not to exceed \$1,400,000 to pay costs of constructing a public park area and storm drainage facilities therein and acquiring land and interests in land related thereto (the "Bonds").

Section 2. The Bonds shall be dated approximately September 1, 2009; shall bear interest at the now estimated rate of five per centum (5.50%) per annum, payable semi-annually, until the principal sum is paid; and are estimated to mature in nineteen annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2010.

Section 3. It is necessary to issue and this Council hereby determines that notes in an aggregate principal amount not to exceed \$1,400,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds. Those Notes shall bear interest at a rate of interest not to exceed 5.00% per annum (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity, designated by the Finance Director in the certificate awarding the Notes as authorized in Section 6 hereof (the "Certificate of Award"). The Notes shall be dated their date of issuance and shall mature between ten and twelve months from the date of issuance, as determined by the Director of Finance in the Certificate of Award. The Notes may be subject to prior redemption at the sole option of the City if agreed to by the purchaser thereof. The Notes shall be issued in the principal amount not to exceed \$1,400,000, that the Director of Finance determines is necessary to pay costs of the improvement described in Section 1.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America and shall be payable, without deduction for services of the City's paying agent, at the office of a bank or trust company selected by the Finance Director in the Certificate of Award, after determining that sufficient safeguards exist to protect the funds or

securities of this City, or at the office of the Finance Director if agreed to by the Finance Director and the original purchaser of the Notes.

Section 5. The Notes shall be signed by the City Manager and Finance Director, 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 Finance Director, provided that no Note shall be issued in a denomination less than \$100,000 if the principal amount of the Notes equals or exceeds \$1,000,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Finance Director will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Finance Director that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Finance Director, and shall express upon their faces the purpose, which may be 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. As used in this Section and this Ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes “immobilized” in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository 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 Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the 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; 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.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Finance Director may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Finance Director does not or is unable to do so, the Finance Director, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Finance Director 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 Finance Director at private sale at not less than 97% of par plus any accrued interest, in accordance with law and the provisions of this Ordinance. In the Certificate of Award the Finance Director shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, make the designations authorized herein, including determining the original purchaser of the Note and fixing the interest rate the Notes shall bear, the principal amount of the Notes, and the maturity date of the Notes, and shall 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 City. The City Manager, the Clerk of Council, the Finance Director, the City Law Director, 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 transaction contemplated by this Ordinance. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with the other note issue of the City authorized on this date into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code, provided that (i) no note of that combined issue shall be issued in a denomination less than \$100,000 if the principal amount of the combined issue equals or exceeds \$1,000,000 and (ii) the principal amount of the combined issue shall not exceed \$1,400,000.

The services of Sudsina & Associates, LLC, as financial advisor, be and are hereby retained. The financial advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes and Bonds. In rendering those financial advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those financial advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those financial advisory services. The Director of Finance is authorized and directed, to

the extent they are not paid by the original purchaser of the Notes or Bonds, as applicable, to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

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 of the City, 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. 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. In each year, to the extent money from the municipal income tax is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes and Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Sections 133.05(B)(7) and 5705.51(A)(5) and (D) of the Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges. Nothing in this paragraph in any way diminishes the pledge of the full faith and credit and property taxing power of the City to the prompt payment of the debt charges on the Notes.

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 104(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 that 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 status 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.

The Finance Director, 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 Finance Director 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 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 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 and of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees 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 must be immediately effective in order to proceed with the improvement in appropriate weather conditions and to enhance the flow of and convenience to pedestrian traffic in the downtown area; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: July 22, 2008



PRESIDENT OF COUNCIL

Attest: 
CLERK OF COUNCIL

EFFECTIVE DATE: July 22, 2008

Posted: July 23, 2008