



Legislation Text

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HUDSection108Notes/Swayne Field
Department of Housing and Community Development
Rosalyn Clemens 3647

Authorizing the City to enter into agreements with the United States Secretary of Housing and Urban Development for loan guarantee assistance to provide funds necessary to pay costs of rehabilitation, renovation and improvement of the Swayne Field Shopping Center and its site; authorizing the issuance and sale of special limited obligation revenue notes to evidence the loan to be obtained under that federal loan guarantee assistance program; authorizing the pledge and assignment of the City's present and future community development block grants as security for the notes, appropriating the proceeds of the notes and authorizing expenditure of those funds; authorizing and approving related agreements; and declaring an emergency.

SUMMARY & BACKGROUND:

To create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the City, the City has submitted an application (the Application) to the United States Department of Housing and Urban Development (HUD) for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. §5308), in the principal amount of not to exceed \$616,000 to provide funds necessary for the City's Department of Housing and Community Development to finance the acquisition and improvement of commercial, industrial and residential facilities, including particularly rehabilitation, renovation and improvement of the Swayne Field Shopping Center and its site (the Project);

The City has now received from HUD the agreements that are to be entered into by the City for the loan guarantee assistance program and this Council wishes to authorize the execution of those agreements and to issue special limited obligation revenue notes (the Notes) pursuant to the laws of the State of Ohio, including Sections 13 of Article VIII of the Ohio Constitution, to evidence the loan to be obtained by the City under that loan guarantee assistance program and to authorize the pledge of certain funds pursuant to the requirements of HUD, including the City's present and future Community Development Block Grants as security for the repayment of the Notes.

NOW THEREFORE Be it ordained by the Council of the City of Toledo:

SECTION 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Contract for Loan Guarantee Assistance” means the Contract for Loan Guarantee Assistance between the City and the Secretary of HUD to be entered into in connection with the issuance of the Notes.

“Director of Finance” means the person at the time performing the duties of the chief financial officer and fiscal officer of the City.

“Director of Law” means the person at the time performing the duties of the chief legal officer of the City.

“Eligible Investments” means those investments that are permitted by the HUD Program Documents as eligible for the investment of moneys in the Special Funds.

“Fiscal Agent” means The Bank of New York Mellon and any successor fiscal agent under the Fiscal Agency Agreement.

“Fiscal Agency Agreement” means the Amended and Restated Master Fiscal Agency Agreement dated as of May 17, 2000, between The Chase Manhattan Bank (formerly known as Chemical Bank), as Fiscal Agent, and the Secretary of Housing and Urban Development.

“Fixed Rate” means, as to each Note maturing in each calendar year, the fixed rate of interest to be determined on the Public Offering Date as the rate which the underwriters selected by HUD determine will enable them to sell interests in the Notes under then prevailing market conditions as of the Public Offering Date at 100% of the principal amount thereof, as more particularly provided in the Notes and the HUD Program Documents.

“Guaranteed Loan” means the loan to be made to the City from the proceeds of the Notes.

“Holder” means the person in whose name the Notes are registered in the Note Register provided for in the Fiscal Agency Agreement.

“HUD Program Documents” means all of the agreements, letters of instruction and certificates required by HUD to be delivered by the City to obtain the guaranteed loan assistance, including, without limitation: the Contract for Loan Guarantee Assistance, the Fiscal Agency Agreement and the Notes, and any related or replacement documents in connection with the public sale of interests in the Notes on the Public Offering Date.

“Mayor” means the person at the time performing the duties of the chief executive and administrative officer of the City.

“Note Service Charges” means the principal of and interest on the Notes.

“Notes” means the aggregate of each of the separate Notes maturing in the years commencing with the year of issuance of the Notes, or the next following year, and delivered by the City to evidence the Guaranteed Loan, and, as requested by HUD, initially in the form of interim Notes as set forth in an Exhibit to the Fiscal Agency Agreement, and includes any Replacement Note or Notes, as defined in the HUD Program Documents, representing the same principal amount and maturing on the same dates as the Notes.

“Original Purchaser” means the entity that initially purchases the Notes.

“Pledged Receipts” means (i) Community Development Block Grant money awarded to the City by HUD, or for which the City may become eligible, under Section 106 of Title I of the Housing and Community Development Act of 1974, as amended, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q), (ii) program income, if any, as defined in 24 C.F.R. Section 570.500(a), directly generated from the use of the Guaranteed Loan funds and (iii) all proceeds (including insurance and condemnation proceeds) from any of the foregoing.

“Public Offering Date” means the date of sale of interests in the Notes to the Underwriters (as defined in the HUD Program Documents) in connection with a public sale of the Notes.

“Special Funds” means to the extent established, as provided in Section 6, the Guaranteed Loan Funds Account, the Guaranteed Loan Funds Investment Account, the Loan Repayment Account, the Loan Repayment Investment Account and the Debt Service Reserve Account.

“Variable Rate” means rate or rates of interest on the Notes prior to the Public Offering Date, which rates will be set on the date of an advance under the Notes, if any (as provided in the HUD Program Documents), and will be equal to (i) with respect to the initial interest rate for the first advance, 35 basis points (0.35%) above the 3-Month T-Bill Rate (as defined in the HUD Program Documents) one New York Banking Day (as defined in the HUD Program Documents) before the date of such first advance, (ii) with respect to the initial interest rate for any subsequent advance made before the first Reset Date (as defined in the HUD Program Documents), the interest rate borne by the first advance, (iii) with respect to the initial interest rate for any subsequent advance made after the first Reset Date, 35 basis points (0.35%) above the 3-Month T-Bill Rate one New York Banking Day before the immediately preceding Reset Date and (iv) with respect to the subsequent interest rate at any Reset Date for any advance, 35 basis points (0.35%) above the 3-Month T-Bill Rate one New York Banking Day before such Reset Date.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 2. Determinations of Council. It is hereby determined that (i) the amount necessary to finance the costs of or related to the Project, including the financing thereof, will require the issuance and delivery of the Notes, in an aggregate principal amount not to exceed \$616,000, (ii) the Project is a “project” as defined in Chapter 165 of the Revised Code and consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution and (iii) the utilization of the Project is in furtherance of the purposes of Chapter 165 of the Revised Code and Section 13 of Article VIII of the Ohio Constitution and will benefit the people of the City and of the State of Ohio by creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State. The Notes shall be equally and ratably payable and secured as provided herein and in the HUD Program Documents.

SECTION 3. Authorization and Terms of the Notes. It is hereby determined to be necessary to, and the City shall, issue and deliver the Notes, all as provided and authorized herein, in an aggregate principal amount not to exceed \$616,000, as determined by the Director of Finance as necessary to pay costs of the Project, to evidence the indebtedness incurred by the City under the Contract for Loan Guarantee Assistance and to enable the City to pay costs of the Project, including issuance costs and, if required by HUD, a reserve fund to secure the Notes.

The Notes shall contain the terms provided in the HUD Program Documents. The Notes shall be issued in registered form, shall be exchangeable, shall be numbered, and otherwise may be in such form as is consistent with the requirements of this Ordinance and the HUD Program Documents. The Notes shall be dated as of the date and shall be in the denomination provided for in the HUD Program Documents.

The Notes shall mature in 20 annual principal installments on August 1 of each year, commencing August 1, 2024 (or, if the Notes are not issued on or before July 15, 2024, then August 1, 2025), and the

principal maturities shall be such that the total principal and interest payments in any fiscal year in which principal is payable is anticipated to be substantially equal to the total principal and interest payments payable in any other such fiscal year.

The Notes initially shall bear interest at the Variable Rate if they are delivered as interim Notes prior to the Public Offering Date, determined as provided in the HUD Program Documents, and following the public offering of the Notes, shall bear interest at the Fixed Rate. So long as the Notes bear interest at the Variable Rate, interest shall be paid quarterly on February 1, May 1, August 1 and November 1, beginning on the date of the first advance thereunder as provided for in the HUD Program Documents, and on the Public Offering Date, all as more specifically provided in the HUD Program Documents. After the interest rate on the Notes is converted from the Variable Rate to the Fixed Rate, interest shall be payable on February 1 and August 1 of each year, commencing on such date as provided for in the HUD Program Documents. Principal and interest shall be payable to the Holder of the Notes at the places and in the manner set forth in the HUD Program Documents.

The Notes shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. In case any officer whose signature or a facsimile of whose signature shall appear on any Note shall cease to be such officer before the issuance, authentication or delivery of such Note, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time. There shall be delivered to the Holder interim Notes which, on or before the Public Offering Date and, if requested by HUD, shall be exchanged for a Replacement Note or Notes, as provided in the HUD Program Documents.

Note Service Charges on the Notes shall be payable in lawful money of the United States of America to the Fiscal Agent as the paying agent, registrar and calculation agent for the Notes. The Notes shall be negotiable instruments, subject to applicable provisions for registration and substantially in the form provided in the HUD Program Documents.

The Notes may be prepaid or redeemed prior to maturity if and to the extent permitted by the HUD Program Documents.

SECTION 4. Sources of Payment and Security for the Notes. The Notes shall be limited, special obligations payable solely from the moneys in the Special Funds and the Pledged Receipts, including Community Development Block Grant funds awarded to the City by HUD, or for which the City may become eligible, under Section 106 of Title I of the Housing and Community Development Act of 1974, as amended.

In addition to the above, as additional security for its obligations under the Notes, the City will enter into a Loan Agreement, Promissory Note, Mortgage, Security Agreement, Assignment of Leases and Rents and Assignment of Licenses, Permits and Other Agreements with Swayne Field Shopping Center, Inc. (Swayne Field), the owner of the Project, and a Guaranty Agreement with an officer of Swayne Field personally guaranteeing Swayne Field's obligations under the related Loan Agreement. The City will collaterally assign its interest in each of these forms of additional security to HUD.

As provided herein, the Notes shall be (i) payable solely from the Special Funds and Pledged Receipts and (ii) secured by a pledge of and lien on the Special Funds and the Pledged Receipts. Anything in this Ordinance, the HUD Program Documents or the Notes to the contrary notwithstanding, the Notes shall not constitute a pledge of the faith and credit or taxing power of the City, and the holders thereof have and shall have no right to have taxes levied by the City for the payment of Note Service Charges and the Notes are

payable solely from the Special Funds and Pledged Receipts. However, nothing herein shall be deemed to prohibit the City, of its own volition, from using to the extent lawfully authorized to do so, any other sources for the fulfillment of any of the terms, conditions or obligations of the Notes.

SECTION 5. Sale of the Notes. The Notes shall be sold and awarded to the Original Purchaser by the City at the purchase price of 100% of the principal amount thereof. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, either individually or collectively, as the case may be, are authorized and directed to make the necessary arrangements with HUD and the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Notes to the Original Purchaser, and to take all steps necessary to effect due execution, authentication and delivery to the Original Purchaser of the Notes under the terms of this Ordinance and the HUD Program Documents.

SECTION 6. Establishment of Special Funds and Appropriation. The Director of Finance shall establish the following separate deposit account with a financial institution selected by the Director of Finance that satisfies the requirements of the HUD Program Documents: the Guaranteed Loan Funds Account, for the deposit by the City of all funds received by the City under the Notes.

The proceeds received by the City from the sale of the Notes up to a maximum of \$616,000, are hereby appropriated for the Project.

The Director of Finance is hereby authorized and directed to draw his warrant or warrants for the payment of authorized Project costs upon presentation of proper vouchers therefor and the expenditure of those funds is hereby authorized.

The Director of Finance shall establish the Guaranteed Loan Funds Investment Account, the Loan Repayment Account and the Loan Repayment Investment Account under the terms, conditions and requirements provided in the HUD Program Documents and, if required by the HUD Program Documents, with a financial institution selected by the Director of Finance that meets the requirements of the HUD Program Documents. Moneys in the Special Funds may be invested as provided in Section 8. The City shall pay the costs of issuance of the interim Notes and in connection with a public offering of the Notes from the proceeds of the Notes or from Pledged Receipts or other funds legally available and appropriated for the purpose.

Amounts in the Guaranteed Loan Funds Account shall be disbursed by the City for the purpose of paying costs of the Project until such time permitted in the HUD Documents at which time any remaining funds shall be immediately transferred to the Loan Repayment Account. All proceeds and income derived from investments in the Guaranteed Loan Funds Investment Account shall be returned to the Guaranteed Loan Funds Account as provided in the HUD Program Documents, to pay costs and expenses of the City in connection with the Project. Pending disbursement of amounts in the Guaranteed Loan Funds Account and Guaranteed Loan Funds Investment Account, those amounts are pledged to the payment of Note Service Charges of the Notes.

Amounts in the Loan Repayment Account and Loan Repayment Investment Account shall be disbursed by the City to pay Note Service Charges when due, at the times and in the manner provided in the HUD Program Documents. Amounts in the Loan Repayment Account and Loan Repayment Investment Account are hereby pledged to, and shall be used so long as the Notes are outstanding, solely and exclusively for the payment of Note Service Charges as provided herein and in the HUD Program Documents.

SECTION 7. Covenants of the City. In addition to other covenants of the City in this Ordinance, the City further covenants and agrees as follows:

(a) Payment of Note Service Charges. The City will, solely from the sources herein provided, pay or cause to be paid the Note Service Charges on the dates, at the places and in the manner provided herein and in the Notes and HUD Program Documents.

(b) Performance of Covenants, Authority and Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Notes and the HUD Program Documents. The City warrants and covenants that it is, and upon delivery of the Notes will be, duly authorized by the Constitution and laws of the State of Ohio, to issue the Notes and to execute the HUD Program Documents, to provide the security for payment of the Note Service Charges in the manner and to the extent herein and in the HUD Program Documents set forth; that all actions on its part for the issuance of the Notes and execution and delivery of the HUD Program Documents have been or will be duly and effectively taken; and that the Notes pertaining thereto in the hands of the holders thereof will be a valid enforceable special obligation of the City according to the terms thereof. Each provision of this Ordinance and the Notes is binding upon such officer of the City as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the City and of its officers and employees undertaken pursuant to such proceedings for the Notes is established as a duty of the City and of each such officer and employee having authority to perform such duty, specifically enjoined by law resulting from an office, trust, or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

(c) Maintenance of Lien. The City will not make any pledge or assignment of or create any lien or encumbrance upon the Special Funds other than the pledge and assignment thereof under this Ordinance and the HUD Program Documents.

SECTION 8. Investment of Special Funds. Moneys in the Special Funds may be invested and reinvested in any Eligible Investments, provided that investments of moneys in the Loan Repayment Account and Loan Repayment Investment Account shall mature or be redeemable at the times and in the amounts necessary to provide moneys to pay Note Service Charges when due and that investments of moneys in the Guaranteed Loan Funds Account and Guaranteed Loan Funds Investment Account shall in any event mature or be redeemable at such time as may be necessary to make payments from those Accounts. Subject to any such orders with respect thereto, there may from time to time be sold such investments and the proceeds therefrom may be reinvested in Eligible Investments maturing or redeemable as aforesaid.

SECTION 9. HUD Program Documents. The Mayor and Director of Finance, in the name of the City and in their official capacities, are hereby authorized and directed to sign, attest and deliver the HUD Program Documents, including the Contract for Loan Guarantee Assistance, in substantially the forms thereof on file with the Clerk of Council, with such changes as may be approved by those parties as not being substantially adverse to the City with signing and delivery of those documents being conclusive evidence of such approval. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and any other City official, either individually or collectively, as the case may be, is authorized and directed to sign and deliver to HUD such other HUD Program Documents and any other documents and certificates as may be necessary or appropriate to carry out the HUD-guaranteed loan arrangements and in connection with the public offering of the Notes.

SECTION 10. Retention of Bond Counsel. In connection with the issuance of the Notes, the legal services of Squire Patton Boggs (US) LLP, as bond counsel, are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the

issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, 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 legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise is authorized and directed 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 11. Compliance with Open Meeting Requirements. That this Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council and any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 12. Declaration of Emergency; Effective Date. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and property 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 Notes are urgently needed to create or preserve jobs and employment opportunities and to improve the economic welfare of the City and its residents; wherefore, this Ordinance shall be in full force and effect immediately upon its passage or at the earliest time allowed by law.

Vote on emergency clause: yeas 10, nays 0.

Passed: June 18, 2024, as an emergency measure: yeas 10, nays 0.

Attest:

Julie A. Gibbons
Clerk of Council

Carrie Hartman
President of Council

Approved:

June 18, 2024
Wade Kapszukiewicz
Mayor