



Legislation Text

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CityServices2018
Department fo Finance
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(Revised)

Providing for the issuance and sale of notes for the purpose of paying, in anticipation of the levy and collection of special assessments, a part of the cost of lighting streets, alleys and other public ways of the City, sprinkling, sweeping, cleaning and removing snow from streets, alleys and other public ways of the City, and controlling blight and disease of shade trees within rights of way and planting, maintaining, trimming and removing shade trees in and along streets of the City, all during the year 2018; authorizing the execution and delivery of a Trust Agreement securing the payment of the Notes; authorizing the execution and delivery of certain other documents in connection with the issuance of the Notes; and declaring an emergency.

SUMMARY & BACKGROUND

This Council has previously, by proper legislation, declared the necessity of providing certain City services (the “Services” as defined in Section 1) in 2018, has caused estimated special assessments for the Services to be prepared and filed in the aggregate amount of \$31,226,108 and has received and accepted the reports, findings and recommendations of the Board of Revision with respect to the Services to be provided and the assessments therefor.

The City is authorized, under Chapter 133 of the Revised Code, (a) to issue notes in anticipation of the levy and collection of special assessments to pay costs of certain services, including the Services; and (b) to enter into a trust agreement to provide for the payment and security of such notes.

This Council has determined that it is necessary and appropriate at this time (a) to borrow in anticipation of the levy and collection of those special assessments (and to issue the Notes authorized in Section 2 to evidence that borrowing) in order to provide funds to pay costs of the Services; and (b) to enter into the Trust Agreement with U.S. Bank National Association authorized in Section 7 to provide for the payment and security of those 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:

“Authenticating Agent” means the Trustee and the Registrar for the Notes and any bank, trust company or other Person designated as an Authenticating Agent for the Notes by or in accordance with Section 5.13 of the Trust Agreement, each of which shall be a transfer agent registered in accordance with Section 17(A) of the Securities Exchange Act of 1934, as amended.

“Authorized Denominations” means the denomination of \$100,000 or any whole multiple thereof.

“Capitalized Interest Amount” means, as to an installment of the Notes, the portion of the proceeds of that installment to be deposited in the Eligible Money Subaccount as capitalized interest as specified by the Director of Finance in the applicable Certificate of Award.

“Certificate of Award” means a certificate authorized by Section 6, to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to an installment of the Notes and its issuance, sale and delivery as this ordinance requires or authorizes to be set forth or determined therein.

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, an installment of the Notes.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Commissioner of Taxation and Treasury” means the person at the time performing the duties of the treasurer of the City.

“Designated Corporate Trust Office” means the Designated Corporate Trust Office of the Trustee from time to time as defined and provided for in the Trust Agreement.

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

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

“Eligible Money Subaccount” means the Eligible Money Subaccount in the Payment Account established in accordance with Section 4.03 of the Trust Agreement.

“Event of Default” means an Event of Default under the Trust Agreement.

“Ineligible Money Subaccount” means the Ineligible Money Subaccount in the Payment Account established in accordance with Section 4.03 of the Trust Agreement.

“Interest Payment Dates” means, as to the first installment of the Notes, the first day of each June and December, commencing June 1, 2019, and, as to each subsequent installment of the Notes, the first day of each June and December, commencing with the first such day following its date of issuance.

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

“Note Proceedings” means, collectively, this ordinance, each Certificate of Award, the Trust Agreement, and such other proceedings of the City, including the Notes, that provide collectively for, among other things,

the rights of holders of the Notes.

“Note Register” means all books and records necessary for the registration, exchange and transfer of Notes as provided in the Trust Agreement.

“Original Purchaser” means PNC Bank, National Association, or any successor, as the original purchaser of the Notes (or one or more installments of the Notes).

“Paying Agent” means the Trustee or any bank or trust company with corporate trust powers designated as a paying agent for the Notes by or in accordance with the Trust Agreement.

“Payment Account” means the Payment Account in the City’s Bond Retirement Fund, established in accordance with Section 4.03 of the Trust Agreement and maintained in the custody of the Trustee.

“Registrar” means the Trustee until a successor Registrar shall have become such pursuant to the applicable provisions of the Trust Agreement and thereafter shall mean the successor Registrar.

“Regular Record Date” means Regular Record Date as defined in the Trust Agreement.

“Service Assessment Fund” means the City’s 2018 Service Assessment Fund created pursuant to Section 2 of this ordinance.

“Services” means the services provided by the City pursuant to Ordinances No. 508-17, No. 509-17, No. 510-17 and No. 511-17, each passed by this Council on December 12, 2017.

“Special Assessments” means the special assessments resulting from the procedures initiated by Ordinances No. 508-17, No. 509-17, No. 510-17 and No. 511-17, each passed by this Council on December 12, 2017.

“Trust Agreement” means the Trust Agreement between the City and the Trustee, as it may be modified from the form on file with the Clerk of Council and executed by the Mayor and the Director of Finance in accordance with Section 7(a) and as it may be modified, amended or supplemented from time to time in accordance with its terms.

“Trustee” means U.S. Bank National Association, as the initial trustee, authenticating agent, bond registrar, transfer agent and paying agent for the Notes under the Trust Agreement and until a successor Trustee shall have become such pursuant to the provisions of the Trust Agreement and, thereafter, “Trustee” shall mean the successor Trustee.

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. Authorized Principal Amount; Purpose and Application of Proceeds. It is necessary to issue, and there shall be issued, notes of this City in the maximum aggregate principal amount of \$24,900,000 (the Notes) for the purpose of paying, in anticipation of the levy and collection of the Special Assessments, a part of the cost of (i) lighting streets, alleys and public ways of the City during the year 2018 as provided in Ordinances No. 509-17 and No. 510-17, each passed December 12, 2017, (ii) sprinkling, sweeping, cleaning and removing snow from streets, alleys and other public ways of the City during the year 2018 as provided in

Ordinance No. 508-17, passed December 12, 2017, and (iii) controlling blight and disease of shade trees within public rights of way and planting, maintaining, trimming and removing shade trees in and along streets of the City in the Toledo Forestry District during the year 2018 as provided in Ordinance No. 511-17, passed December 12, 2017. The Notes shall be issued and sold in one or more installments at such time or times, and, subject to the foregoing, in the principal amount or amounts, as the Director of Finance certifies in one or more Certificates of Award to be necessary and appropriate to pay costs of the Services, giving recognition to the applicable arbitrage restrictions imposed by the federal government.

The proceeds from the sale of each installment of the Notes shall be used for the purpose for which the Notes are being issued. Those proceeds shall be allocated and applied as follows: (i) any Capitalized Interest Amount and any premium shall be paid to the Trustee, credited to the Eligible Money Subaccount and invested and applied as provided in the Trust Agreement; and (ii) the balance of the proceeds shall be (A) deposited in a separate account, designated the "2018 Service Assessment Fund" (Account No. 3050-14800-9135001STDA10), which shall be maintained as a separate bond fund (as defined in Section 5705.10 of the Revised Code) in the custody of the Commissioner of Taxation and Treasury, separate and apart from any other moneys of the City, and (B) disbursed (as provided in Section 4.02 of the Trust Agreement) to pay, or to reimburse the City for, costs of the Services as those costs are incurred or to be reimbursed. Until such time as they are so disbursed, moneys in the Service Assessment Fund shall be invested and reinvested in Authorized Investments, as defined in Chapter 192 of the Toledo Municipal Code.

SECTION 3. Terms and Provisions of the Notes.

(a) Generally. The Notes (i) shall be designated "City Services Special Assessment Notes (Services 2018)"; (ii) shall be issued only as fully registered notes, substantially in the form set forth in Exhibit A to the Trust Agreement, in the Authorized Denominations and numbers requested by the Original Purchaser and approved by the Director of Finance, but in no case as to a particular maturity date exceeding the principal amount maturing on that date; (iii) shall be numbered as determined by the Trustee in order to distinguish each Note from any other Note; (iv) shall express on their faces, in summary terms, the purpose for which they are issued and that they are issued pursuant to this ordinance and Section 133.13 of the Revised Code; and (v) shall be dated as of their respective dates of issuance.

(b) Interest Rate or Rates and Interest Payment Dates. The Notes shall bear the rate or rates of interest per year (computed on the basis of a 360-day year consisting of twelve 30-day months), not exceeding 4.25% per year for any stated maturity, as shall be specified by the Director of Finance in the Certificate of Award applicable to their issuance. Interest on the Notes shall be payable on each Interest Payment Date until the principal amount has been paid or provided for. The Notes shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(c) Principal Payment Schedule. The Notes shall mature on June 1, 2020 and December 1, 2020, in principal amounts as shall be determined by the Director of Finance in one or more Certificates of Award consistently with her determination of the best interest of and financial advantages to the City; provided, however, that the aggregate principal amount of the Notes maturing on June 1, 2020 shall be not more than 40% and not less than 30% of the aggregate principal amount of the Notes issued from time to time pursuant to this ordinance.

(d) Redemption. The Notes shall not be subject to redemption prior to maturity.

(e) Payment of Debt Charges. Except as otherwise provided in the Trust Agreement, (i) the debt

charges on the Notes shall be payable in lawful money of the United States of America without deduction for Paying Agent services; (ii) principal of the Notes shall be payable when due upon presentation and surrender of the Notes at the Designated Corporate Trust Office of the Trustee, initially its Cleveland, Ohio corporate trust office, or at the office, designated by the Trustee, of any Paying Agent; and (iii) interest on any Note shall be payable on each Interest Payment Date by check or draft that the Trustee shall cause to be mailed on that date to the person in whose name the Note (or one or more Predecessor Notes) was registered, and to that person's address appearing, on the Note Register at the close of business on the applicable Regular Record Date.

SECTION 4. Execution and Authentication of Notes. The Notes shall be signed by the Mayor and Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. No Note shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Note Proceedings unless and until the certificate of authentication printed thereon is signed by the Trustee or another Authenticating Agent on behalf of the Trustee. Authentication by the Trustee or another Authenticating Agent shall be conclusive evidence that the Note so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this ordinance and the Trust Agreement. The certificate of authentication may be signed by any authorized officer or employee of the Trustee or Authenticating Agent or by any other person acting as an agent of the Trustee or Authenticating Agent. The same person need not sign the certificate of authentication on all of the Notes.

SECTION 5. Registration; Transfer and Exchange. So long as any of the Notes remain outstanding, the City will cause the Registrar to keep and maintain the Note Register at its Designated Corporate Trust Office, initially its Cleveland, Ohio corporate trust office. Except as otherwise provided in the Trust Agreement, the person in whose name a Note is registered on the Note Register shall be regarded as the absolute owner of the Note for all purposes of the Note Proceedings. Any Note may be exchanged for Notes of any Authorized Denomination, or transferred, as provided in the Trust Agreement.

SECTION 6. Sale of the Notes. Each installment of the Notes shall be sold at private sale to the Original Purchaser at a purchase price of not less than 100% of the principal amount of such installment, as shall be determined by the Director of Finance in a Certificate of Award, and shall be awarded by the Director of Finance with and upon such other terms as are required or authorized by this ordinance to be specified in a Certificate of Award, in accordance with law, and the provisions of this ordinance.

The Director of Finance shall sign and deliver each Certificate of Award 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, to the Original Purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Director of Law, the Commissioner of Taxation and Treasury, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements, financing statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate and secure the transactions contemplated by this ordinance.

SECTION 7. Security Provisions.

(a) Trust Agreement; Trustee. To secure (i) payment of the debt charges on the Notes as they shall become due and payable, (ii) the performance of the City as provided in this ordinance, the Notes and the Trust Agreement and (iii) the payment of all fees, expenses and other amounts owed to the Trustee under the Trust Agreement, the Mayor and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Trust Agreement between the City and the Trustee, in substantially the form as is now on file with the Clerk of Council. The Trust Agreement is approved, together with any changes or amendments that are not

inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Mayor, the Director of Finance and the Director of Law on behalf of the City, all of which shall be conclusively evidenced by the signing of the Trust Agreement and any amendments thereto. U.S. Bank National Association is appointed to act as the initial Trustee for the Notes.

(b) Maximum Principal Amount. The City covenants and agrees that the aggregate outstanding principal amount of notes, including without limitation the Notes, issued in anticipation of the Special Assessments to pay costs of the Services (collectively, Services 2018 Notes) will at no time exceed \$24,900,000. For purposes of this ordinance, Services 2018 Notes shall not be deemed to be outstanding if the Trustee holds to the credit of the appropriate funds cash or direct or guaranteed obligations of the United States sufficient that those Notes are no longer outstanding within the meaning of Section 133.01 of the Revised Code.

(c) Covenants Relating to the Levy, Collection and Application of the Special Assessments. The City covenants and agrees, for the benefit of the registered owners of the Notes, that it will (i) promptly after January 1, 2019 determine the actual costs of providing the Services; (ii) after that determination, prepare the final assessment list for the Services setting forth the properties to be assessed and the amount to be assessed against each such property; (iii) prior to August 1, 2019, have the ordinances levying the Special Assessments against the properties to be assessed for the Services passed by this Council and order delivery of the final assessment list to the Auditor of Lucas County; (iv) deliver the final assessment list to the Auditor of Lucas County on or prior to the second Monday of September, 2019, or such other date as may hereafter be established by law or otherwise as the last day for such delivery in order for the Special Assessments to be collected with taxes on real property levied on the 2019 tax list and duplicate; and (v) take such other actions as may be required in order for the Special Assessments to be collected with taxes on real property levied on the 2019 tax list and duplicate.

The City further covenants and agrees, for the benefit of the registered owners of the Notes, that all Special Assessments so levied, which the Director of Finance is directed to collect or cause to be collected from the County Auditor as soon as they are available, shall be (vi) placed promptly upon collection in the Ineligible Money Subaccount in the custody of the Trustee, separate and apart from any other moneys of the City, all as provided in the Trust Agreement, and (vii) pledged and used, to the extent necessary, for the payment of debt charges on the then outstanding Notes, and that any unexpended balance remaining in the funds into which the proceeds of the Notes are paid, after the costs and expenses of the Services have been paid, shall be applied to the payment of debt charges thereon. The Special Assessments and any such unexpended balance are hereby appropriated for such purposes. No other appropriations shall be made from the Special Assessments until after the debt charges on the Notes shall have been paid in full. All Special Assessments held in the custody of the Trustee shall be invested and reinvested as provided in the Trust Agreement.

(d) Special Obligations; Pledge of Special Assessments. As provided in the Trust Agreement, the Notes shall be special obligations, not general obligations, of the City, and no tax has been or shall be levied for, nor are the faith, credit or revenues (other than the Special Assessments) of the City pledged for, the payment of the debt charges on the Notes. The Notes shall be payable solely from the Special Assessments and any proceeds of the Notes available and appropriated therefor and shall be secured equally and ratably by (i) a pledge of the Special Assessments and (ii) the Trust Agreement.

The Special Assessments (i) shall be applied to the payment of the debt charges on the Notes to the full extent required for that purpose and (ii) in accordance with Section 133.13 of the Revised Code, shall be deemed to be irrevocably pledged and appropriated as a matter of law for that payment for the benefit of the

registered owners of the Notes. The City covenants that it will give effect to that pledge and appropriation, to the extent stated herein, in all ordinances this Council hereafter passes appropriating money for expenditure or encumbrance. For the purposes recited in this paragraph, the City, to the extent permitted by law, grants to the Trustee, and to its successors in trust, and its and their assigns, for the benefit of the registered owners of the Notes, a security interest in the accounts receivable and any proceeds therefrom relating to Special Assessments.

If otherwise lawful, nothing herein shall be deemed to prohibit the City from using, of its own volition, any of its resources, other than ad valorem property taxes, for the payment of debt charges on the Notes.

(e) Duties Mandatory. All of the agreements, covenants and duties under this ordinance are hereby established as duties specifically enjoined by law or resulting from an office, trust or station upon this City within the meaning of Section 2731.01 of the Revised Code.

SECTION 8. Federal Tax Considerations. 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 or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes 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 it for the interest on the Notes 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 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 Director of Finance, 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 9. Satisfaction of Conditions for Note Issuance. This Council determines that all acts and

conditions necessary to be 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 special obligations of the City of Toledo, 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; and that no statutory or constitutional limitation of indebtedness will have been exceeded in the issuance of the Notes.

SECTION 10. Legal Services and Financing Costs. The legal services of the law firm of Squire Patton Boggs (US) LLP be and are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and rendering at delivery related legal opinions. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services.

The expenditure of the amounts necessary to pay those fees and expenses and the other financing costs (as defined in Section 133.01(K) of the Revised Code) in connection with the Notes is authorized and approved. The amount necessary to pay those financing costs payable in 2018 is hereby appropriated and shall be paid from the proceeds of the Notes and otherwise from Account No. 3050-14800-1135001STDSTD (Other Debt Service Charges).

SECTION 11. Certification and Delivery of Ordinance and Certificates. The Clerk of Council is directed to forward a certified copy of this ordinance and a signed copy of each Certificate of Award to the County Auditor as they become available.

SECTION 12. Open Meetings. 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, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 13. Effective Date. 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 effective immediately in order to permit the timely issuance and sale of the Notes to provide funds to pay when due amounts owed by the City for and in connection with the provision of the Services and thereby preserve its credit and to timely reimburse moneys temporarily advanced by the City for that purpose from other funds; wherefore, this ordinance shall be in full force and effect from and immediately after its passage, or at the earliest time allowed by law.

Vote on emergency clause: yeas _____, nays _____.

Passed: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council