



Legislation Text

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Nontax Revenue Notes Property Acquisition and Site Improvements
Department of Finance
Bryan Benner (x1194)
(Revised)

Authorizing the issuance and sale of taxable industrial development bond anticipation notes, in the aggregate principal amount of \$4,450,000, to refund advances made to retire notes issued for the purpose of acquiring the former MedCorp site and other property for sale or lease for private redevelopment; appropriating the proceeds of the Notes; authorizing the expenditure of those proceeds for that purpose; and declaring an emergency.

SUMMARY & BACKGROUND:

The City is authorized and empowered by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Ohio Revised Code, among other things, (a) to issue bond anticipation notes and bonds to acquire, construct, reconstruct, equip, or improve a “project” as defined in Section 165.01 of the Ohio Revised Code, comprising an industrial, commercial or research facility, located within the boundaries of the City, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; (b) to secure such notes and bonds by a pledge of nontax revenues, as provided herein; and (c) to enact this Ordinance and enter into related agreements, upon the terms and conditions provided herein.

To create and preserve jobs and employment opportunities, opportunities and improving the economic welfare of the people of the City, the City issued, pursuant to Ordinance No. 462-17, passed on October 31, 2017, a \$4,450,000 Taxable Industrial Development Note, Series 2017, dated December 8, 2017, in anticipation of the issuance of bonds (collectively, the “Outstanding Notes”), to provide funds necessary to acquire the former MedCorp site and other property for sale or lease for private redevelopment (the “Project”), which Outstanding Notes mature on December 7, 2018.

The City will advance the funds necessary to retire the Outstanding Notes upon their maturity.

The City has determined to issue the taxable industrial development notes authorized herein, in anticipation of the issuance of the bonds described in Section 4 hereof, to provide funds necessary to refund advances made to retire the Outstanding Notes.

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

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

“Act” means Chapter 165, Ohio Revised Code, as enacted and amended pursuant to Section 13 of

Article VIII, Ohio Constitution.

“Bonds” means the bonds in anticipation of which the Notes are issued, the estimated terms of which are described in Section 4 hereof.

“Certificate of Award” means the certificate signed by the Director of Finance pursuant to Sections 3 and 7 hereof determining and specifying those final terms or other matters pertaining to the Note or its issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“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.

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

“Nontax Revenues” means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of paying Note service charges, including, but not limited to the following: (a) proceeds from the sale or lease of all or a portion of the Project site; (b) grants from the United States of America and the State; (c) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness; (d) fines and forfeitures which are deposited in the City’s General Fund; (e) fees deposited in the City’s General Fund for services provided and from properly imposed licenses and permits; (f) investment earnings on the City’s General Fund; (g) investment earnings on other funds of the City that are credited to the City’s General Fund; (h) proceeds from the sale of assets which are deposited in the City’s General Fund; (i) gifts and donations; (j) all rental payments which are deposited in the City’s General Fund; and (k) any moneys in the Project Fund which are not needed to pay costs of the Project.

“Notes” means the Taxable Industrial Development Notes of the City authorized in Section 3 hereof.

“Note service charges” means, for any period of time, the principal of and interest required to be paid by the City on the Notes for such time period.

“Ordinance” means this ordinance as amended or supplemented from time to time.

“Original Purchaser” means Fifth Third Bank.

“Parity Obligations” means bonds, notes or other obligations of or guaranties by the City payable from Nontax Revenues on a parity with or prior to the Notes or Bonds.

“Paying Agent” means the Director of Finance of the City.

“Person” or words importing persons mean firms, associations, partnerships (including, without limitation, general and limited partnerships), joint ventures, societies, estates, trusts (public or private), corporations public or governmental bodies, other legal entities and natural persons.

“Project Fund” means the Project Fund described in Section 8 of this Ordinance.

“State” means the State of Ohio.

Any reference herein to the City, to this Council, or to any officer or member of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the City’s Charter, the Toledo Municipal Code or the Ohio Revised Code, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no such amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the City or the holder of the Notes under this Ordinance, the Notes or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay the Note service charges in the amount and manner, at the times and from the sources provided in this Ordinance, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number shall include the plural number and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore” means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

The captions and headings of this Ordinance are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Ordinance.

SECTION 2. Determinations by Council. That this Council determines that (i) the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution; (ii) the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and (iii) it is necessary for the City to borrow money, by the issuance and sale of the Notes, as provided herein, to provide funds necessary to pay costs of the Project and refund advances made by the City to retire the Outstanding Notes at their maturity since moneys pledged for the payment of such Outstanding Notes will be insufficient to retire the Outstanding Notes at their maturity for purposes of Section 165.07 of the Ohio Revised Code.

SECTION 3. Authorization and Terms of Notes. That this Council determines it to be necessary to issue, and the City shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, the Notes, in anticipation of the issuance of the Bonds, in the principal amount of \$4,450,000 for the purpose of refunding advances made to retire the Outstanding Notes, which were issued to paying costs of the Project. The Note shall be issued as a single instrument in the full principal amount, shall be designated as a “Taxable Industrial Development Note,” unless otherwise designated in the Certificate of Award, and shall be numbered or designated by series or project identification as determined by the Director of Finance, to distinguish the Note from other City notes.

The Note shall be dated the date of issuance and shall mature, subject to prepayment as provided in Section 5 hereof, not earlier than ten months from the date of issuance and not later than twelve months from

that date, as shall be fixed by the Director of Finance in the Certificate of Award. The Note shall bear interest from its date of issuance at a rate not to exceed 4.0% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity or at any date of earlier prepayment as provided for in Section 5 of this Ordinance and until the principal amount is paid or payment is provided for.

The Note service charges shall be payable in lawful money of the United States of America, and shall be payable, without deduction for services of the Paying Agent, at the office of the Paying Agent.

Based on the best interests of and financial advantages to the City and conditions then existing in the financial markets and subject to the limitations set forth in this Section, the Director of Finance shall determine and specify in the Certificate of Award the date of issuance and maturity of the Note and the rate of interest that Note shall bear.

The City has issued and may in the future issue Parity Obligations. The Director of Finance may agree in the Certificate of Award to reasonable limits on the future issuance of Parity Obligations, consistent with that officer's determination of the best interest of and financial advantages to the City; provided, that any limit on the maximum annual aggregate of estimated service charges on the Bonds and required payments on any existing Parity Obligations and proposed Parity Obligations payable from Nontax Revenues shall not be less than 50% of estimated Nontax Revenues for the fiscal year immediately following the issuance of the proposed Parity Obligations.

SECTION 4. Estimated Bond Terms. That the Bonds shall be dated approximately December 1, 2019, shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty annual principal installments beginning December 1, 2020 that are such that the total amount of principal and interest payments on the Bonds in any fiscal year in which principal is payable is substantially equal to the total amount of those payments in each other such fiscal year. Nothing in this Ordinance shall prevent the City from retiring the Notes with the proceeds of bond anticipation notes or with the proceeds of Bonds or other obligations containing terms different than those described in this Ordinance.

SECTION 5. Prepayment Provisions. That if agreed to by the Original Purchaser, the Notes shall be subject to prepayment prior to stated maturity, by and at the sole option of the City, in whole or in part on any date, at a prepayment price equal to the principal amount prepaid, plus interest accrued to the prepayment date. Prepayment prior to maturity shall be made by deposit with the Original Purchaser of the principal amount of the Notes to be prepaid together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing or otherwise delivering a notice of prepayment, stating the date of prepayment and the name and address of the Original Purchaser, 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 money for prepayment is on deposit with the Original Purchaser 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 Director of Finance the Original Purchaser of the Notes shall arrange for the delivery of the Notes to be prepaid at the office of the Original Purchaser for prepayment and surrender and cancellation.

SECTION 6. Execution. That the Notes shall be negotiable instruments in accordance with the Act, and each Note shall express on its face the purpose for which it is issued and such other statements or legends as may be required by law.

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.

SECTION 7. Sale of Notes. That the Notes shall be awarded and sold by the Director of Finance at private sale to the Original Purchaser, in accordance with this Ordinance, at a purchase price of not less than the par value thereof. The Director of Finance is authorized and directed to sign and deliver the Certificate of Award to evidence each such sale and to establish, consistent with the provisions, and subject to the limitations set forth herein, certain final terms of that Note. It is hereby determined that the price for and the terms of the Notes, and the sale thereof, all as provided in this Ordinance and in the Certificate of Award are in the best interest of the City and in compliance with all legal requirements.

The Director of Finance and other City officials are authorized and directed to make the necessary arrangements with 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 and delivery of the Notes, 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 under the terms of this Ordinance. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council 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 8. Appropriation and Expenditure of Proceeds of Notes - Project Fund. That the proceeds from the sale of the Notes shall be deposited and credited to a separate account, which is hereby created by the City, to be maintained in the City Treasury (the "Project Fund"). Moneys in the Project Fund shall be invested in accordance with the provisions of Chapter 192 of the Toledo Municipal Code. Those proceeds are hereby appropriated to Account Code 5040-14800-408935-1135001STDSTD and shall be used to refund advances made by the City to retire the Outstanding Notes and pay financing costs in connection with the issuance of the Notes, and are hereby appropriated for that purpose. The expenditure of funds for the foregoing purpose is hereby authorized.

SECTION 9. Payment and Security of the Notes. That the Notes and the Bonds shall be special obligations of the City, and the Note service charges on the Notes and the debt charges on the Bonds shall be payable solely from the Nontax Revenues, and the payment of Note service charges is secured by a pledge of and lien on the Nontax Revenues on deposit in the Note Fund, as described below. The Notes and the Bonds are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Notes and the Bonds do not and shall not represent or constitute a debt or 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 on the Notes or debt charges on the Bonds.

There is hereby created a separate account or fund designated as the "Land Acquisition Note Retirement Fund" (the "Note Fund") into which Nontax Revenues shall be deposited on or prior to the date of maturity of the Notes in an amount sufficient to pay Note service charges on the Notes. The City covenants and agrees that while the Notes are outstanding, it will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with the proceeds of the Bonds or renewal notes issued in anticipation of the Bonds available for the purpose, to pay the Note service charges on the Notes and required payments on Parity Obligations when due and will so restrict the issuance of future Parity Obligations as will ensure the continuing availability for appropriation of sufficient Nontax Revenues to pay Note service charges and required payments on outstanding Parity Obligations when due, which Nontax Revenues are hereby selected by

the City pursuant to Section 165.12 of the Ohio Revised Code as moneys that are not raised by taxation.

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 Note service charges on the Notes at maturity and are pledged for that purpose.

Nothing herein shall be construed as requiring the City to use or apply to the payment of Note service charges on the Notes any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

SECTION 10. Covenants and Representations of City. That in addition to other covenants and representations of the City contained in this Ordinance, the City covenants and agrees that:

(a) Payment of Note Service Charges. Except to the extent paid from the proceeds of refunding bond anticipation notes or the Bonds, the City will, solely from the Nontax Revenues, 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. For that purpose, in each year while the Notes are outstanding, this Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Nontax Revenues required to pay, and for the purpose of paying, the Note service charges and required payments on Parity Obligations due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those Note service charges and required payments on Parity Obligations.

(b) Performance of Covenants and City Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Notes and under all proceedings of this Council pertaining thereto. The City represents that (i) it is, and upon delivery of the Notes covenants that it will be, duly authorized by the Constitution and laws of the State including particularly and without limitation the Act, and its Charter, to issue the Notes and the Bonds and to provide the security for payment of the Note service charges in the manner and to the extent set forth herein and in the Notes; (ii) all actions on its part for the issuance of the Notes have been or will be taken duly and effectively; and (iii) the Notes will be valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to the Ordinance and the Notes is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the City's possession relating to the Project and the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the holder as the holder of the Notes may from time to time designate.

(d) Transcript of Proceedings. The Clerk of Council, or another appropriate officer of the City, shall

furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Notes along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Notes.

SECTION 11. Tax Matters. That the City does not intend or represent that the interest on the Notes will be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.

SECTION 12. Payment and Discharge. That if the City shall pay or cause to be paid and discharged the Notes, the covenants, agreements and other obligations of the City hereunder and in the Notes shall be discharged and satisfied.

SECTION 13. 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 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 14. 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 enable the City to timely refund advances made by the City to retire the Outstanding Notes and thereby preserve its credit and to provide for additional 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 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