



## Legislation Text

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**File #:** O-481-21, **Version:** 1

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GONotesStmWater

Finance

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Revised

**Providing for the issuance and sale of notes in an aggregate principal amount not to exceed \$700,000, in anticipation of the issuance of bonds, to provide funds to pay costs of improving the City's storm water drainage system by constructing a storm water sewer main from an existing main at a point in Central Avenue just west of its intersection with Upton Avenue southwesterly in City streets and easements acquired and to be acquired approximately 1,400 feet to connect to an existing main in ProMedica Parkway; and declaring an emergency.**

### SUMMARY & BACKGROUND:

This is one of two of ordinances that authorize the issuance of general obligation bond anticipation notes the City plans to sell in Fall 2021.

This ordinance authorizes the sale of up to \$700,000 of general obligation bond anticipation notes to provide funds to be used to retire an outstanding bond anticipation note issued in July 2021 to provide approved debt funding for the Storm Water Drainage System Improvement Project that is stated to mature on December 31, 2021 and is being held as a treasury investment of the City. With the issuance of the notes authorized by this ordinance and the retirement of the outstanding note, the City's outstanding debt will neither increase nor decrease the City's legal borrowing capacity. The notes will be subject to statutory direct debt limitations and the statutory and constitutional indirect debt limitation.

Pursuant to Ordinance No. 328-21 passed by this Council on July 13, 2021, a note in anticipation of bonds in the amount of \$700,000, dated as of July 15, 2021 (the Outstanding Note), was issued for the purpose described in Section 1, which Outstanding Note is to mature on December 31, 2021.

This Council finds and determines that the City should retire the Outstanding Note with the proceeds of the Notes described in Section 1 and other funds available to the City.

The Director of Finance, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of each class of the improvements described in Section 1 is at least five years, the estimated 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 July 15, 2041.

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

SECTION 1. It is necessary to issue bonds of this City in an aggregate principal amount not to exceed \$700,000 (the Bonds) to provide funds to pay a portion of the costs of improving the City's storm water drainage system by constructing a storm water sewer main from an existing main at a point in Central Avenue just west of its intersection with Upton Avenue southwesterly in City streets and easements acquired and to be

acquired approximately 1,400 feet to connect to an existing main in ProMedica Parkway.

SECTION 2. The Bonds shall be dated approximately October 1, 2022, shall bear interest at the now estimated rate of 4% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty annual principal installments that are substantially equal. The first installment of principal of the Bonds is estimated to be payable on December 1, 2023, and the first installment of interest on the Bonds is estimated to be payable on December 1, 2022.

SECTION 3. It is necessary to issue and this Council determines that notes in an aggregate principal amount not to exceed \$700,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Note. The Notes shall be dated the date of their issuance and shall mature on November 1, 2022; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to thirty days earlier or thirty days later than November 1, 2022, by setting forth that maturity date in the certificate awarding the Notes in accordance with Section 6 of this ordinance (the Certificate of Award). The Notes shall bear interest at a rate not to exceed 4.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. Subject to the limitations set forth in this Section and Section 1, the aggregate principal amount of the Notes to be issued, being the amount determined by the Director of Finance to be necessary for the purpose described in Section 1, and the rate or rates of interest the Notes shall bear, shall be specified by the Director of Finance in the Certificate of Award.

SECTION 4. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America if so requested by the Original Purchaser identified in Section 6, and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or at the designated office of a bank or trust company requested by the Original Purchaser, provided that such request shall be approved by the Director of Finance after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose. The Director of Finance is authorized to enter into any agreements determined necessary in connection with obtaining the services of a paying agent for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 5. 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. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that the entire principal amount may be represented by a single note. The Notes may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry form in accordance with Section 9.96 and Chapter 133 of the Revised Code, with a single physical note certificate representing the entire issue (or the consolidated issue into which it is combined with one or more other series of unvoted general obligation bond anticipation notes of the City in accordance with Section 6 of this ordinance), if it is determined by the Director of Finance 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 Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the provisions of Chapter 133 of the Revised Code, the City Charter 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 (book entry interests) 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 Note deposited with and retained 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 book entry 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 book entry 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 deposited with and retained in the custody of the Depository or its agent for that purpose; (ii) the owners of book entry interests shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of book entry interests shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of book entry 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 Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the book entry interest 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 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 Director of Finance 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 or paying agent services 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 sold by the Director of Finance at private sale to KeyBanc Capital Markets Inc. (the Original Purchaser) at a price not less than par and accrued interest, in accordance with law and the provisions of this ordinance and the Certificate of Award referred to in Section 3. The Director of Finance is authorized, if she determines it to be in the best interest of the City, to combine the Notes with one or more other series of unvoted general obligation bond anticipation notes of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that if the aggregate principal amount of the

consolidated issue is \$1,000,000 or more, then no note of that issue shall be issued in a denomination less than \$100,000 or be exchangeable for other notes in denominations less than \$100,000. If the Notes are combined with one or more other such series of notes of the City into a consolidated note issue, a single Certificate of Award may be utilized for the consolidated issue if appropriate and consistent with the terms of this ordinance.

The Director of Finance shall sign the Certificate of Award referred to in Section 3 specifying the aggregate principal amount of the Notes to be issued, the interest rate or rates the Notes shall bear and certain other terms of the Notes and evidencing that sale, cause the Notes to be prepared, and have the Notes 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.

The Mayor, the Director of Law, the Director of Finance, 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 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. The expenditure of those proceeds for that purpose, including, without limitation, for financing costs as defined in Section 133.01 of the Revised Code, is hereby authorized and approved. 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.

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 or arbitrage bonds under Section 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 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, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, 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. As used in this ordinance, “Director of Finance” shall mean the person at the time performing the duties of the chief fiscal officer of the City; “Mayor” shall mean the person at the time performing the duties of the chief executive officer of the City; and “Director of Law” shall mean the person at the time performing the duties of the chief legal officer of the City.

SECTION 12. The retention of the law firm of Squire Patton Boggs (US) LLP to provide bond counsel services to the City in connection with the issuance and sale of the Notes is hereby confirmed and approved. 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.

If in her judgment it is necessary or appropriate, the Director of Finance is authorized to request a rating for the Notes from Moody’s Investors Service, Inc. or S&P Global Ratings, or both, as she determines is in the best interest of the City.

The expenditure of the amounts necessary to secure such legal services and any such rating or ratings on the Notes and to pay the other financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Notes, except to the extent paid by the Original Purchaser in accordance with its agreement to purchase the Notes, is authorized and approved. The amounts necessary to pay those costs, to the extent

allocable to the Notes, are hereby appropriated from Account Code 5040-14800-1135001STDSTD (Costs of Issuance) and authorized to be expended for that purpose.

SECTION 13. The Clerk of Council is directed to deliver a certified copy of this ordinance to the County Auditor.

SECTION 14. 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 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; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 15. 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 16. 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 issue and sell the Notes, which is necessary to enable the City to provide for the retirement of the Outstanding Note at or prior to its maturity; 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 12, nays 0.

Passed: September 28, 2021, as an emergency measure: yeas 12, nays 0.

Attest:

Gerald E. Dendinger  
Clerk of Council

Matt Cherry  
President of Council

Approved:

September 28, 2021  
Wade Kapszukiewicz  
Mayor