

ORDINANCE NO.: 2009 -15

SPONSOR: MAYOR NORTON

FINANCE

INTRODUCED: MAY 26, 2009

ASSIGNED TO: _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF REFUNDING BONDS IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000 TO REFUND CERTAIN OUTSTANDING BONDS ISSUED IN 1997, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, STATE OF OHIO:

SECTION ONE:

Findings and Determinations. This Council finds and determines the following matters (capitalized terms are defined in Section 14):

- (a) This Council has previously authorized and issued the Series 1997 Bonds to finance the costs of various permanent improvements.
- (b) It is now necessary for the City to issue the Series 2009 Bonds for the purpose of (1) refunding certain maturities of the Series 1997 Bonds to achieve Debt Service savings, and (2) paying Financing Costs of the Series 2009 Bonds. The issuance of the Series 2009 Bonds for these purposes is in the best interest of the City.
- (c) All acts and conditions necessary to be performed by the City or to have been met for the issuance of the Series 2009 Bonds in order to make them legal, valid, and binding general obligations of the City, have been performed and met, or will have been performed and met at the time of delivery of the Series 2009 Bonds, as required by law.
- (d) No statutory or constitutional limitation of indebtedness or taxation will be exceeded by the issuance of the Series 2009 Bonds.
- (e) The Director of Finance has previously certified the maximum maturity of the Series 1997 Bonds.

SECTION TWO:

Terms of the Bonds. The Series 2009 Bonds will have the following terms:

- (a) **Amount.** The Series 2009 Bonds will be issued in the maximum Original Principal Amount of \$2,000,000. The principal amounts of the Bonds to be issued as Current Interest Bonds, as Capital Appreciation Bonds, as Capital Appreciation Bonds that convert at some future date to Current Interest Bonds, as Serial Bonds, and as Term Bonds will be determined by the Director of Finance in the Certificate of Award.

- (b) **Date.** The Current Interest Bonds will be dated July 15, 2009, or any later date, not more than 31 days before the Closing Date, as determined by the Director of Finance in the Certificate of Award. The Capital Appreciation Bonds will be dated the Closing Date.
- (c) **Maturity.** The Series 2009 Bonds will mature or be payable by Mandatory Sinking Fund Redemption in the amounts and on the Principal Payment Dates as follows:

Year	Amount
2010	250,000
2011	250,000
2012	250,000
2013	250,000
2014	250,000
2015	250,000
2016	250,000
2017	250,000

The Director of Finance may adjust the principal payment schedule shown above, by (1) increasing or decreasing the principal amounts of the Series 2009 Bonds maturing or payable by Mandatory Sinking Fund Redemption on any one or more of the Principal Payment Dates, or (2) by shortening the schedule so that the Series 2009 Bonds will mature over a lesser number of years. The Director of Finance must set forth any adjustment of the principal payment schedule in the Certificate of Award.

- (d) **Redemption Before Stated Maturity.** The Series 2009 Bonds will be subject to redemption before their stated maturity as described in this Section 2(d), unless otherwise determined by the Director of Finance in the Certificate of Award.
- (1) **Mandatory Sinking Fund Redemption.** If any of the Series 2009 Bonds are issued as Term Bonds, the Term Bonds will be subject to Mandatory Sinking Fund Redemption, in part, on the Mandatory Redemption Dates, at a redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date. The principal amounts to be paid by Mandatory Sinking Fund Redemption will be those in the principal payment schedule in Section 2(c) above, unless otherwise determined in the Certificate of Award.

The City will have the option to deliver Term Bonds in any principal amount to the Registrar for cancellation. The City will be entitled to a credit against its obligation to pay Debt Service by Mandatory Sinking Fund Redemption on any future Mandatory Redemption Date for Term Bonds that (A) are delivered by the City to the Registrar, (B) have previously been redeemed other than by Mandatory Sinking Fund Redemption, or (C) have been

purchased and canceled by the Registrar as provided in the Registrar Agreement.

- (2) **Optional Redemption.** Unless otherwise determined by the Director of Finance in the Certificate of Award, the Series 2009 Bonds will not be subject to redemption at the option of the City.

The Director of Finance may determine to change the optional redemption provisions relating to the Series 2009 Bonds set forth above by (A) providing that the Series 2009 Bonds will be subject to redemption at the option of the City, (B) establishing the earliest optional redemption date, which may be any date before the final maturity of the Series 2009 Bonds, and (C) establishing the redemption prices for the Series 2009 Bonds, which may not exceed 110% in any year in which the Series 2009 Bonds are subject to optional redemption. The Director of Finance must set forth any change to the optional redemption provisions in the Certificate of Award.

- (3) **Terms of Redemption.** The procedures for partial redemption, for notice of redemption, and for payment of redeemed Series 2009 Bonds must be set forth in the Registrar Agreement.

- (e) **Interest Rates.** The Series 2009 Bonds will bear interest at the rate or rates determined in the Certificate of Award. The weighted average of the rates of interest on the Series 2009 Bonds, determined by taking into account the principal amounts of the Series 2009 Bonds and the terms to maturity or Mandatory Redemption Dates of those principal amounts, may not exceed 9% per annum. Interest will be calculated on a 360-day year of twelve, 30-day months.

- (1) **Current Interest Bonds.** Current Interest Bonds will 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. Interest on the Current Interest Bonds will be payable on the Interest Payment Dates until the principal amount has been paid or provided for. All Current Interest Bonds with the same stated maturity must bear interest at the same rate.
- (2) **Capital Appreciation Bonds.** Any Capital Appreciation Bonds will bear interest from their date. The rate of interest on a Capital Appreciation Bond must be a rate that will result in a Maturity Amount for that Capital Appreciation Bond, payable at maturity, as determined by the Director of Finance in the Certificate of Award. Interest on a Capital Appreciation Bond will be accrued and compounded on each Interest Payment Date, and will be payable at maturity. All Capital Appreciation Bonds with the same stated maturity must bear interest at the same compounding rate.

The total interest accrued on any Capital Appreciation Bond as of any date will be an amount equal to the amount by which the Compound Accreted Amount of that Capital Appreciation Bond exceeds the Original Principal

Amount of that Capital Appreciation Bond as of that date. The Compound Accreted Amounts of the Capital Appreciation Bonds as of the Interest Payment Dates must be set forth in the Certificate of Award. The Compound Accreted Amount of a Capital Appreciation Bond as of any date other than an Interest Payment Date will be calculated in the manner described in the definition of "Compound Accreted Interest" in Section 14.

- (f) **Form, Numbering, and Denominations.** The Series 2009 Bonds must be issued in fully registered form. They must be issued in Authorized Denominations and in such numbers as requested by the Original Purchaser and approved by the Director of Finance. They must be numbered as determined by the Registrar. They must express on their faces the purpose for which they are issued and that they are issued in accordance with this ordinance. The Series 2009 Bonds will be designated "Various Purpose Improvement Limited Tax General Obligation Refunding Bonds, Series 2009" unless otherwise designated in the Certificate of Award.

SECTION THREE:

Payment. The Debt Service on the Series 2009 Bonds will be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal and any premium on the Series 2009 Bonds will be payable when due upon presentation and surrender of the Series 2009 Bonds at the office of the Registrar. Interest on the Current Interest Bonds will be paid on each Interest Payment Date by check or draft mailed on the Interest Payment Date to the Holder as shown on the Register at the close of business on the 15th day of the month preceding the Interest Payment Date. Interest on the Capital Appreciation Bonds will be payable at maturity, in accordance with Section 2(e)(2) of this ordinance. Notwithstanding the foregoing, so long as the Series 2009 Bonds are issued in Book-Entry Form in a Book-Entry System, Debt Service on the Series 2009 Bonds will be payable as provided in any agreement entered into by the City in connection with the Book-Entry System. Payment of Debt Service on any Bond will be made only to or upon the order of the Holder. All such payments will be valid and effectual to satisfy and discharge the City's liability upon that Bond to the extent of the amount or amounts so paid.

SECTION FOUR:

Signing and Authentication of Bonds.

- (a) **Signing.** The Series 2009 Bonds must be signed on behalf of the City by the Mayor and the Director of Finance. In the absence of the Mayor, the Series 2009 Bonds must be signed by the President of Council, and in the absence of the Director of Finance, the Series 2009 Bonds must be signed by any deputy Director of Finance. Both signatures on the Series 2009 Bonds may be facsimiles.
- (b) **Authentication.** No Series 2009 Bond will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the bond certificate is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Series 2009 Bond so authenticated has been duly issued, signed,

and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2009 Bonds.

SECTION FIVE:

Registration; Transfer and Exchange; Book-Entry System.

- (a) **Registration.** So long as any of the Series 2009 Bonds remain outstanding, the City must cause the Registrar to maintain the Register. The person in whose name a Series 2009 Bond is registered on the Register must be regarded as the absolute owner of that Series 2009 Bond for all purposes of the Bond Proceedings. Neither the City nor the Registrar will be affected by any notice to the contrary, but the registration may be changed as provided in this Section and in the Registrar Agreement.
- (b) **Transfer and Exchange.** Any Series 2009 Bond may be exchanged for Series 2009 Bonds of any Authorized Denomination, as provided in the Registrar Agreement.

All Series 2009 Bonds issued and authenticated upon any exchange or transfer will be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Series 2009 Bonds surrendered upon that exchange or transfer.

- (c) **Book-Entry System.** The Series 2009 Bonds must be originally issued in Book-Entry Form to a Depository, initially Depository Trust Company, for use in a Book-Entry System upon the terms provided in the Registrar Agreement.

Subject to the provisions of this ordinance relating to the City's Continuing Disclosure Agreement, the City and the Registrar must recognize and treat the Depository as the Holder of the Series 2009 Bonds for all purposes, including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Series 2009 Bonds for use in a Book-Entry System or if the City determines to discontinue the 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 must direct the Registrar to make provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Series 2009 Bonds from the Book-Entry System.

SECTION SIX:

Sale of the Series 2009 Bonds.

- (a) **Private Sale.** This Council authorizes and directs the Director of Finance to sell the Series 2009 Bonds in a private sale to the Original Purchaser. The purchase price of the Series 2009 Bonds must not be less than 97% of the aggregate Original Principal Amount of the Series 2009 Bonds, plus any accrued interest on the Series 2009 Bonds from their date to the date of delivery and payment. The Director of Finance may enter into a Purchase Agreement with the Original Purchaser, or he may sell the Series 2009 Bonds without a Purchase Agreement. The Director of Finance may sell the Series 2009 Bonds at the same time, in the same manner, and in the same offering with other bonds of the City, whether or not those other bonds have been consolidated with the Series 2009 Bonds in accordance with (b) below.
- (b) **Consolidation.** If the Director of Finance determines it to be in the best interest of the City, he may combine the Series 2009 Bonds with one or more other general obligation bond issues of the City, payable from taxes subject to the ten-mill tax limitation.
- (c) **Certificate of Award.** The Director of Finance must deliver a Certificate of Award to the Original Purchaser in connection with the sale of the Series 2009 Bonds. The Director of Finance must state in the Certificate of Award: the Original Principal Amount of the Series 2009 Bonds; the principal amounts to be issued as Current Interest Bonds, Capital Appreciation Bonds, convertible Capital Appreciation Bonds, Serial Bonds, and Term Bonds; the interest rates on the Series 2009 Bonds; the Maturity Amounts of any Capital Appreciation Bonds; the date of the first Interest Payment Date; the purchase price for the Series 2009 Bonds; and any other terms required by this ordinance. The Director of Finance may state in the Certificate of Award: any changes in the date of the Series 2009 Bonds; any changes in the principal payment schedule; any changes in the redemption provisions; whether the Series 2009 Bonds are to be consolidated with other bond issues; and any other terms authorized by this ordinance.
- (d) **Delivery.** The Director of Finance must cause the Series 2009 Bonds to be prepared, signed, and delivered to the Original Purchaser. This Council authorizes and directs the Clerk of Council to deliver a true transcript of proceedings of the issuance of the Series 2009 Bonds to the Original Purchaser upon payment of the purchase price. This Council authorizes and directs the Director of Finance to provide to the Clerk of Council, for inclusion in the transcript, a statement of the indebtedness of the City and the other information required by Section 133.33, Revised Code.

SECTION SEVEN:

Disclosure.

- (a) **Primary Offering Disclosure—Official Statement.** This Council authorizes and directs the Mayor and the Director of Finance, or either of them, (1) to prepare or cause to be prepared, and to make or authorize modifications, completions, or changes of or supplements to, a disclosure document in the form of an official

statement, (2) to determine, and certify or otherwise represent, when the official statement is to be “deemed final” (except for permitted omissions) or is a final official statement for purposes of the SEC Rule, (3) to use and distribute, or authorize the use and distribution of, that official statement and any supplements in connection with the original issuance of the Series 2009 Bonds, and (4) to complete and sign the final official statement together with certificates, statements, or other documents in connection with the finality, accuracy, and completeness of that official statement.

- (b) **Secondary Market Disclosure—Continuing Disclosure Agreement.** For the benefit of the Holders of the Series 2009 Bonds and the beneficial owners of book-entry interests in the Series 2009 Bonds, the City agrees, as the only obligated person with respect to the Series 2009 Bonds under the SEC Rule, to provide financial information and operating data, financial statements, and notices, in the manner required for purposes of paragraph (b)(5)(i) of the SEC Rule.

(1) **Information Filing.** The City further agrees, in particular, to provide:

- (A) to each NRMSIR and to the SID, (i) Annual Information for each City fiscal year, not later than the end of the ninth month following the end of the fiscal year, and (ii) when and if available, audited City financial statements for each of those fiscal years; and
- (B) to each NRMSIR or to the MSRB, and to the SID, in a timely manner, notice of (i) any Specified Event if that Specified Event is material, (ii) the City’s failure to provide the Annual Information within the time specified above, and (iii) any change in the accounting principles applied in the preparation of its annual financial statements, any change in its fiscal year, its failure to appropriate funds to meet costs to be incurred to perform the Continuing Disclosure Agreement, and the termination of the Continuing Disclosure Agreement; and
- (C) if the filing is due after the effective date of the EMMA System, to EMMA, in a timely manner, the filings required by (A) and (B) above, to the extent required by the SEC Rule. The filings required by (A) and (B) need not be made with the NRMSIRs, SID, or MSRB to the extent that filing with the EMMA System is sufficient under the SEC Rule.

- (2) **Continuing Disclosure Certificate.** To further describe and specify certain terms of the Continuing Disclosure Agreement, this Council authorizes and directs the Director of Finance to (A) complete, sign, and deliver the Continuing Disclosure Certificate, in the name and on behalf of the City, and (B) to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the SEC Rule), whether the City has

obtained any credit enhancement for the Series 2009 Bonds, and the City's expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and whether they will be available together with, or separately from, the Annual Information.

- (3) **Disclosure Procedures.** This Council further authorizes and directs the Director of Finance to establish procedures to ensure compliance by the City with the Continuing Disclosure Agreement, including timely provision of information and notices as described above. Before making any filing in accordance with (b)(2) above or providing notice of the occurrence of any other events, the Director of Finance may consult with and obtain legal advice from bond counsel or other qualified independent special counsel selected by the City. The Director of Finance, acting in the name and on behalf of the City, may rely upon that legal advice in determining whether a filing should be made.
- (4) **Amendments.** The City reserves the right to amend the Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency, formal defect, or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted by the City. Any amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account that waiver) would have complied with the requirements of the SEC Rule at the time of the primary offering of the Series 2009 Bonds, after taking into account any applicable amendments to or official interpretations of the SEC Rule, as well as any change in circumstances, and until the City has received either (A) a written opinion of bond counsel or other qualified independent special counsel selected by the City that the amendment or waiver would not materially impair the interests of Holders or beneficial owners of book-entry interests in the Series 2009 Bonds, or (B) the written consent to the amendment or waiver by the Holders of at least a majority of the principal amount of the Series 2009 Bonds then outstanding. Annual Information containing any revised operating data or financial information must explain, in narrative form, the reasons for any amendment or waiver and the impact of the change on the type of operating data or financial information being provided.
- (5) **Enforcement.** The Continuing Disclosure Agreement will be solely for the benefit of the Holders of, and beneficial owners of book-entry interests in, the Series 2009 Bonds. The exclusive remedy for any breach of the Continuing Disclosure Agreement by the City will be limited, to the extent permitted by law, to a right of Holders and beneficial owners to institute and maintain legal proceedings to obtain the specific performance by the City of

its obligations under the Continuing Disclosure Agreement. Any individual Holder or beneficial owner may institute and maintain those proceedings to require the City to provide a filing if the filing is due and has not been made. Any proceedings to require the City to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any filing) may be instituted and maintained only (A) by a trustee appointed by the Holders and beneficial owners of not less than 25% in principal amount of the Series 2009 Bonds then outstanding, or (B) by Holders and beneficial owners of not less than 10% in principal amount of the Series 2009 Bonds then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1), Revised Code, as applicable, or any comparable successor provisions.

- (6) **Appropriation.** The performance by the City of the Continuing Disclosure Agreement will be subject to the annual appropriation of any funds that may be necessary to perform it.
- (7) **Term.** The Continuing Disclosure Agreement will remain in effect only for the period that the Series 2009 Bonds are outstanding in accordance with their terms and the City is an obligated person with respect to the Series 2009 Bonds within the meaning of the SEC Rule. The obligation of the City to provide the Annual Information, audited financial statements, and notices of the events described above will terminate if and when the City is no longer an obligated person with respect to the Series 2009 Bonds.

SECTION EIGHT:

Financing Costs. The City retains the professional services and authorizes the payment of the Financing Costs for the Series 2009 Bonds, as provided in this Section 8.

- (a) **Bond Counsel.** The City retains the legal services of Vorys, Sater, Seymour and Pease LLP, as bond counsel for the Series 2009 Bonds. The legal services will 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 Series 2009 Bonds and rendering legal opinions upon the delivery of the Series 2009 Bonds. Bond Counsel will render those services to the City in an attorney-client relationship. Bond Counsel will be paid just and reasonable compensation for those legal services and will be reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services.
- (b) **Original Purchaser.** The City retains the services of the Original Purchaser as an underwriter and senior manager for the Series 2009 Bonds. The senior manager may designate additional members of the underwriting syndicate. The Original Purchaser will be paid for services in accordance with any Purchase Agreement or, if there is no Purchase Agreement, in accordance with its proposal.

- (c) **Ratings and Insurance.** If, in the judgment of the Director of Finance, the filing of an application for (1) a rating on the Series 2009 Bonds by one or more nationally recognized statistical rating organizations, or (2) a policy of insurance, from one or more bond insurance providers, to better assure the payment of Debt Service on the Series 2009 Bonds, is in the best interest of and financially advantageous to the City, this Council authorizes and directs the Director of Finance to prepare and submit those applications and to provide to those rating agencies or insurance providers the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under (i) below.
- (d) **Registrar.** This Council authorizes and directs the Director of Finance to appoint a Registrar for the Series 2009 Bonds. The Registrar must be a financial institution able to complete transfer and exchange functions for the Bonds in accordance with standards and conditions applicable to registered corporate securities. The City retains the services of the Registrar for the Series 2009 Bonds. The Registrar will perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Series 2009 Bonds as provided in this ordinance. The Registrar will be paid for those services in accordance with the Registrar Agreement.
- (e) **Escrow Agent.** This Council authorizes and directs the Director of Finance to select an Escrow Agent for the Refunded Prior Bonds unless the Director of Finance determines to establish the Escrow Fund in the Bond Retirement Fund of the City. The Escrow Agent must be a bank or trust company authorized to exercise corporate trust powers in Ohio. The Escrow Agent must be paid for its services in accordance with the Escrow Agreement or its letter of engagement.
- (f) **Verification Agent.** This Council authorizes and directs the Director of Finance to select a Verification Agent unless the Director of Finance has determined that it is unnecessary that the Refunded Prior Bonds be no longer considering outstanding as provided in Section 133.34(D), Revised Code. The Verification Agent must be an independent public accounting firm. The Verification Agent must be paid for its services in accordance with its letter of engagement.
- (g) **Financial Adviser.** This Council retains the services of Sudsina & Associates, LLC, as financial adviser for the Bonds. The financial adviser will be paid for those services in accordance with its letter of engagement. This Council authorizes the fees for the financial adviser's services to be included in the Financing Costs authorized under (i) below.
- (h) **Limits on Authority of Service Providers.** In rendering the services described above, as independent contractors, those service providers must 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.

- (i) **Payment of Financing Costs.** This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Series 2009 Bonds. Those Financing Costs may be paid by the Original Purchaser in accordance with any Purchase Agreement. To the extent they are not paid by the Original Purchaser, this Council authorizes and directs the Director of Finance to provide for the payment of those Financing Costs from the proceeds of the Series 2009 Bonds to the extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

SECTION NINE:

Use of Proceeds and Refunding. The proceeds from the sale of the Series 2009 Bonds must be deposited and used, and the Refunded Prior Bonds must be paid, as provided in this Section 9.

- (a) This Council appropriates those proceeds for the following purposes, and those proceeds must be used for those purposes.
- (1) Any accrued interest or premium received on the sale of the Series 2009 Bonds must be deposited in the Bond Retirement Fund of the City and used for the payment of interest on the Series 2009 Bonds on the first Interest Payment Date.
 - (2) An amount necessary to pay the Financing Costs of the Series 2009 Bonds, to the extent not paid by the Original Purchaser in accordance with any Purchase Agreement and to the extent that the Director of Finance determines to pay those Financing Costs from the proceeds of the Series 2009 Bonds, must be deposited in a separate fund and used for the payment of those Financing Costs.
 - (3) The remainder of the proceeds must be deposited into the Escrow Fund. If the Escrow Fund is held by the Escrow Agent under the Escrow Agreement, and if the proceeds of the Series 2009 Bonds in the Escrow Fund are not needed to pay the Debt Service on the Refunded Prior Bonds, either as determined in the Verification Report or upon payment and discharge of the Refunded Prior Bonds, those excess proceeds must be transferred to the Bond Retirement Fund.
- (b) This Council establishes the Escrow Fund, either as a separate account in the Bond Retirement Fund or as a separate fund in the custody of the Escrow Agent, as determined by the Director of Finance. The money in the Escrow Fund is pledged for the purpose of refunding the Refunded Prior Bonds.
- (1) The money in the Escrow Fund to be invested must be invested in direct obligations of or obligations guaranteed as to payment by the United States. Any money not so invested must remain uninvested.

- (2) The investments in the Escrow Fund must mature or be subject to redemption by and at the option of the holder of those investments not later than the date or dates when the money, together with interest or other investment income accrued on that money, will be required for the payment of Debt Service on the Refunded Prior Bonds.
- (3) If the Director of Finance has determined to appoint a Verification Agent to deliver a Verification Report under Section 8(f), that Verification Agent must deliver its Verification Report to the Escrow Agent and the City on the Closing Date. The Verification Report must establish that the investments in the Escrow Fund, together with the interest or other investment income on those investments and any uninvested money in the Escrow Fund, will be sufficient, without further reinvestment, for the payment of principal of and interest on the Refunded Prior Bonds due and payable after the Closing Date for the Series 2009 Bonds and before the Redemption Date, and the payment of the remaining principal, any premium, and all accrued interest on the Refunded Prior Bonds on the Redemption Date. The Verification Report must also determine the yield on the investments in the Escrow Fund and the yield on the Series 2009 Bonds and the Refunded Prior Bonds.
- (4) This Council authorizes and directs the Director of Finance to select the maturities of the Series 1997 Bonds to be refunded, to establish the Redemption Date of the Refunded Prior Bonds, and to give any required notices of redemption of the Refunded Prior Bonds. The Redemption Date must be the earliest date on which the Refunded Prior Bonds are subject to redemption at par, or any earlier date that will achieve greater interest cost savings to the City, or any later date that will achieve greater interest cost savings to the City and that is permitted by the Code.

SECTION TEN:

Security and Source of Payment. The Series 2009 Bonds will be general obligations of the City.

- (a) This Council pledges to the payment of Debt Service on the Series 2009 Bonds the full faith and credit of the City including, without limitation:
 - (1) The general taxing power of the City, including the power to levy taxes within the ten-mill limitation, as defined in Section 5705.02, Revised Code.
 - (2) Any money remaining from the sale of the Series 2009 Bonds after the payment of accrued interest or premium and the Financing Costs of the Series 2009 Bonds and not required to refund the Refunded Prior Bonds.
- (b) During the years while the Series 2009 Bonds are outstanding, there will be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually, in an amount sufficient to pay Debt Service on the Series 2009 Bonds when due. The tax will not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax will be and is ordered to

be computed, certified, levied, and extended upon the tax list 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 computed, certified, levied, extended, and collected. The tax will be placed before and in preference to all other items and for its full amount. The money derived from that tax levy must be placed in the Bond Retirement Fund of the City and is irrevocably pledged for the payment of Debt Service on the Series 2009 Bonds, when and as that Debt Service falls due.

- (c) The tax provided in (b) above will be reduced in each year the Series 2009 Bonds are outstanding by the sum of the following items, if available to pay Debt Service on the Series 2009 Bonds and appropriated for that purpose:
- (1) Any surplus in the Bond Retirement Fund.
 - (2) Any proceeds of bonds issued to refund the Series 2009 Bonds.
 - (3) Any other money lawfully available to the City.

SECTION ELEVEN:

Federal Tax Matters. The City covenants that it will take those actions required to maintain the Federal Tax Status of the Series 2009 Bonds and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status. Without limiting these covenants, the City specifically covenants as follows:

- (a) **Private Activity Bonds.** The City will apply the proceeds received from the sale of the Series 2009 Bonds to the uses described in Section 9. The City will not permit the use of the Projects by any person, will not secure or derive the money for payment of Debt Service on the Series 2009 Bonds by any property or payments, and will not loan the proceeds of the Series 2009 Bonds to any person, all in a manner as to cause the Series 2009 Bonds to be "private activity bonds" within the meaning of Code Section 141(a).
- (b) **Arbitrage.** The City will restrict the use of proceeds of the Series 2009 Bonds in the manner and to the extent as may be necessary, after taking into account reasonable expectations on the Closing Date of the Series 2009 Bonds, so that the Series 2009 Bonds will not constitute "arbitrage bonds" within the meaning of Code Section 148. The Director of Finance or any other official having responsibility for issuing the Series 2009 Bonds, is authorized and directed, alone or in conjunction with any other official, employee, or consultant of the City, to sign and deliver a certificate of the City, for inclusion in the transcript of proceedings for the Series 2009 Bonds. That certificate must set forth the reasonable expectations of the City on the Closing Date, regarding the amount and use of the proceeds of the Series 2009 Bonds in accordance with Code Section 148. If required, the City will limit the yield on any "investment property" (as defined in Code Section 148(b)(2)) acquired with the proceeds of the Series 2009 Bonds.

- (c) **Arbitrage Rebate.** Unless the gross proceeds of the Series 2009 Bonds are expended in accordance with one of the spending period exceptions set forth in Treas. Reg. §1.148-7, the City will pay the amounts required by Code Section 148(f)(2) to the United States at the times required by Code Section 148(f)(3). The City will maintain the books and records and make calculations and reports as are required to comply with the Code's arbitrage rebate requirements.
- (d) **Federal Guarantee.** The City will not permit the use of the Projects, or make loans of the proceeds of the Series 2009 Bonds, or invest the proceeds of the Series 2009 Bonds in a manner as to cause the Series 2009 Bonds to be "federally guaranteed" within the meaning of Code Section 149(b).
- (e) **Information Reporting.** This Council authorizes and directs the Director of Finance or any other official of the City having responsibility for issuing the Series 2009 Bonds to sign and file Form 8038-G for the Series 2009 Bonds with the Internal Revenue Service.
- (f) **Bank Qualified.** This Council designates the Series 2009 Bonds as "qualified tax-exempt obligations".

SECTION TWELVE:

Signing and Delivery of Bonds and Documents. This Council authorizes and directs the Mayor and the Director of Finance, and the persons designated to sign in their absence, to sign and deliver the Series 2009 Bonds in accordance with Section 4 of this ordinance. This Council authorizes and directs the Mayor and the Director of Finance, or either of them, to sign and approve a preliminary official statement, a final official statement, and supplements and amendments to both in accordance with Section 7 of this ordinance.

- (a) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City:
 - (1) The Certificate of Award.
 - (2) Any Purchase Agreement.
 - (3) The Registrar Agreement.
 - (4) The Continuing Disclosure Certificate.
 - (5) Any Escrow Agreement.
 - (6) Any agreements or letters of representation in connection with a Book-Entry System for the Series 2009 Bonds.
 - (7) Applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Series 2009 Bonds.

- (8) Applications for and agreements in connection with obtaining one or more ratings for the Series 2009 Bonds.

In the absence of the Director of Finance, this Council authorizes and directs the Mayor to sign and deliver any of those documents and certificates.

- (b) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City, in his capacity as fiscal officer of the City:
 - (1) Any certificates in accordance with Section 5705.41, Revised Code, required for any of the agreements in connection with the Series 2009 Bonds.
 - (2) The statements of indebtedness provided for in Section 133.33(B), Revised Code.

In the absence of the Director of Finance, this Council authorizes and directs any deputy Director of Finance to sign and deliver any of those certificates and statements.

- (c) This Council authorizes and directs the Mayor, the Director of Finance, the Law Director, the Clerk of Council, and any other City officials:
 - (1) to sign and deliver any agreements, certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the issuance and sale of the Series 2009 Bonds, and that are not inconsistent with this ordinance; and
 - (2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

SECTION THIRTEEN:

Certification to County Fiscal Officer. This Council directs the Clerk of Council or Director of Finance to forward a certified copy of this ordinance and a copy of the Certificate of Award to the County Fiscal Officer.

SECTION FOURTEEN:

Definitions. Words and terms are used in this ordinance with the following meanings:

“Annual Information” means the annual financial information and operating data of the type to be specified in the Continuing Disclosure Certificate in accordance with the SEC Rule.

“Authorized Denominations” means the denomination of \$1,000 or any integral multiple of \$1,000.

“Book-Entry Form” or “Book-Entry System” means a form or system under which (a) the ownership of book-entry interests in Series 2009 Bonds and the Debt Service on the Series 2009

Bonds may be transferred only through a book entry, and (b) physical note certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Series 2009 Bonds deposited and retained in the custody of the Depository or its agent.

“Bond Proceedings” means, collectively, this ordinance, the Certificate of Award, the Continuing Disclosure Agreement, the Registrar Agreement, any Escrow Agreement, and the other proceedings of the City, including the Series 2009 Bonds, that provide collectively for, among other things, the rights of Holders and beneficial owners of the Series 2009 Bonds.

“Capital Appreciation Bonds” means those Series 2009 Bonds designated as Capital Appreciation Bonds in the Certificate of Award and bearing interest compounded on each Interest Payment Date and payable at maturity.

“Certificate of Award” means the certificate authorized by Section 6 of this ordinance, setting forth the terms and other provisions of the Series 2009 Bonds required or authorized by this ordinance.

“Closing Date” means the date of delivery of and payment for the Series 2009 Bonds.

“Code” means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

“Compound Accreted Amount” means, for a Capital Appreciation Bond, the Original Principal Amount of the Capital Appreciation Bond, plus interest accrued and compounded on each Interest Payment Date or other date of determination. The Compound Accreted Amount of a Capital Appreciation Bond as of any date other than an Interest Payment Date is the sum of:

- (a) the Compound Accreted Amount for the most recent Interest Payment Date, plus
- (b) the product of (1) times (2) where
 - (1) is the difference between
 - (A) the Compound Accreted Amount of that Capital Appreciation Bond on the most recent Interest Payment Date, and
 - (B) the Compound Accreted Amount of that Capital Appreciation Bond on the next Interest Payment Date, and
 - (2) is the ratio of
 - (A) the number of days from the most recent Interest Payment Date to the date of calculation, to
 - (B) the total number of days from the most recent Interest Payment Date to the next Interest Payment Date.

In determining the Compound Accreted Amount of a Capital Appreciation Bond as of a determination date before the first Interest Payment Date, the Closing Date is treated as the most recent Interest Payment Date and the Original Principal Amount of that Capital Appreciation Bond is treated as the Compound Accreted Amount as of the Closing Date.

“Continuing Disclosure Agreement” means the continuing disclosure agreement made by the City for the benefit of Holders and beneficial owners of the Series 2009 Bonds in accordance with the SEC Rule. It consists of the covenants in Section 7(b) of this ordinance and the Continuing Disclosure Certificate.

“Continuing Disclosure Certificate” means the certificate authorized by Section 7(b).

“Current Interest Bonds” means those Series 2009 Bonds designated as Current Interest Bonds in the Certificate of Award and bearing interest payable on each Interest Payment Date.

“Debt Service” means all amounts due as principal, interest, and any premium on an issue of securities.

“Depository” means any securities depository that is a clearing agency under federal law, operating and maintaining a Book-Entry System to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities in Book-Entry Form.

“EMMA System” means the MSRB’s proposed Electronic Municipal Market Access System.

“Escrow Agent” means any escrow agent selected by the Director of Finance under Section 8(e).

“Escrow Agreement” means any agreement between the City and the Escrow Agent providing for the deposit of proceeds of the Series 2009 Bonds to refund the Refunded Prior Bonds.

“Escrow Fund” means an escrow fund established under the Escrow Agreement, or an escrow fund established as a separate account in the Bond Retirement Fund of the City.

“Federal Tax Status” means the status of the interest on the Series 2009 Bonds as excludable from gross income for federal tax income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

“Financing Costs” means any financing costs authorized to be paid by Section 133.01(K), Revised Code.

“Holder” means, as to any Series 2009 Bond, the person in whose name the Series 2009 Bond is registered on the Register.

“Interest Payment Dates” means June 1 and December 1 of each year, beginning on the first Interest Payment Date designated by the Director of Finance in the Certificate of Award.

“Mandatory Redemption Dates” means December 1 in each of the years designated in the Certificate of Award as Mandatory Redemption Dates.

“Mandatory Sinking Fund Redemption” means redemption in accordance with the mandatory redemption requirements, if any, for the Series 2009 Bonds as determined in the Certificate of Award and as described in Section 2(d).

“Maturity Amount” means, as to a Capital Appreciation Bond, the principal and interest due at stated maturity on that Capital Appreciation Bond.

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each nationally recognized municipal securities information repository designated from time to time by the SEC in accordance with the SEC Rule.

“Original Principal Amount” means (a) as to a Current Interest Bond, the face amount, and (b) as to a Capital Appreciation Bond, the principal amount that, when added to the interest on that principal amount accrued and compounded to the Principal Payment Date for that Capital Appreciation Bond, results in the Maturity Amount for that Capital Appreciation Bond.

“Original Purchaser” means RBC Capital Markets Corporation.

“Projects” means various permanent improvements, including improvements to the municipal park system and constructing roadway and drainage improvements.

“Principal Payment Dates” means December 1 of the years set forth in the table in Section 2(c) of this ordinance or in the Certificate of Award.

“Purchase Agreement” means any Bond Purchase Agreement between the City and the Original Purchaser, entered into in accordance with Section 6.

“Refunded Prior Bonds” means the maturities of the Series 1997 Bonds being refunded by the Bonds, as selected by the Director of Finance under Section 9(b)(4).

“Redemption Date” means the redemption date for the Refunded Prior Bonds, established by the Director of Finance under Section 9(b)(4).

“Register” means all books and records necessary for the registration, exchange, and transfer of the Series 2009 Bonds.

“Registrar” means the entity selected by the Director of Finance in the Certificate of Award in accordance with Section 8(d) to serve as registrar for the Series 2009 Bonds.

“Registrar Agreement” means the agreement between the Registrar and the City for the provision of registration, authentication, paying agent, and transfer agent services in connection with the Series 2009 Bonds.

“SEC Rule” means SEC Rule 15c2-12.

“Serial Bonds” means Series 2009 Bonds designated as Serial Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and not subject to Mandatory Sinking Fund Redemption.

“Series 1997 Bonds” means the \$4,375,000 General Obligation (Limited Tax) Various Purpose Improvement Bonds, Series 1997 issued to pay the costs the Projects.

“Series 2009 Bonds” means the Various Purpose Improvement Limited Tax General Obligation Refunding Bonds, Series 2009, authorized by this ordinance.

“SID” means the state information depository with which filings are required to be made by the City in accordance with the SEC Rule.

“Specified Event” means any of the following events, with respect to the Series 2009 Bonds: principal and interest payment delinquencies; non-payment-related defaults; unscheduled draws on debt-service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the Series 2009 Bonds; modifications to rights of Holders or beneficial owners of the Series 2009 Bonds; bond calls; defeasances; release, substitution, or sale of property securing repayment of the Series 2009 Bonds; and rating changes.

“Term Bonds” means the Series 2009 Bonds designated as Term Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and subject to Mandatory Sinking Fund Redemption.

“Verification Agent” means a verification agent selected by the Director of Finance under Section 8(f).

“Verification Report” means the report delivered by the Verification Agent in accordance with Section 9(b)(3).

SECTION FIFTEEN:

Open Meetings. All formal actions of this Council relating to the enactment of this ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Revised Code.

SECTION SIXTEEN:

Emergency and Effective Date. This ordinance is hereby declared to be an emergency measure, necessary for the preservation of the public peace, health, and safety in the City, and for the further reason that this ordinance is required to be immediately effective in order to promptly issue and sell the Series 2009 Bonds, in order to take advantage of prevailing favorable interest rates and achieve the maximum interest savings; and provided it receives the affirmative vote of at least three-fourths of its members elected to Council, this ordinance shall take effect and be in force immediately upon

its passage by the Council and approval by the Mayor; otherwise it shall take effect and be in force after the earliest period allowed by law.

ADOPTED: June 9, 2009

Molly Stevens
Molly Stevens, Clerk

Dave France
Dave France, Council President

APPROVED: June 9, 2009

[Signature]
Richard G. Norton, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: June 9, 2009

ON ROLL CALL: Colopy - yea France - yea Ridgeway - yea Croce - yea
Reed - yea Manwaring - yea Smole - yea adopted 7-0

Suburbanite publication on June 14 and June 21, 2009

Molly Stevens
Molly Stevens, Clerk

5/21/2009 10:43 AM Approved as to form and content by Stephen J. Pruneski, Law Director _____