



City of Columbus

Office of City Clerk
90 West Broad Street
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Legislation Text

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This ordinance authorizes the issuance and sale of a special assessment bond in the amount of \$330,043.00 for the Hillock/Lewis Phase II Area Sanitary Sewer Project. The bond will be placed by The Huntington Investment Company. The bond proceeds will allow for the retirement of a previously issued special assessment note which is maturing on December 4, 2008.

To authorize the issuance and sale of special assessment bonds in the amount of \$330,043.00 for the Hillock/Lewis Roads Phase II Sanitary Sewer Assessment Project. (\$330,043.00) Section 55(b) of the City Charter

WHEREAS, pursuant to Ordinance 1010-2003 adopted June 16, 2003, this Council determined to proceed with the sanitary sewer project described below in accordance with Resolution 140X-95 adopted by this Council on July 31, 1995; and

WHEREAS, pursuant to Ordinance 0501-2007 adopted April 2, 2007, notes in the principal amount of \$500,000 (the "Outstanding Notes") were issued in anticipation of the issuance of bonds in anticipation of the levy and collection of special assessments for the purpose hereinafter stated; and

WHEREAS, the City Auditor has certified to this Council that the estimated life of the improvements to be constructed from the proceeds of the bonds and notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being forty (40) years; and

WHEREAS, it is deemed necessary to issue bonds in the amount of \$330,043.00 to provide for the payment of a portion of the principal of and interest on the Outstanding Notes;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. Bonds of the City of Columbus, Ohio (the "Municipality") shall be issued in the principal sum of Three Hundred Thirty Thousand Forty-three Dollars (\$330,043.00) (the "Bonds") in anticipation of the levy and collection of special assessments for the purpose of providing funds to pay the costs of constructing and installing sanitary sewer improvements along Hillock Road from private Avenue B to east of Avenue T which includes private Avenues B, C, E, F, R, S, and T, and doing such other things as may be necessary in the City of Columbus, Ohio, and to retire notes previously issued for such purpose.

Section 2. There shall be and is hereby levied annually on all the taxable property in the Municipality, in addition to all other taxes and inside the ten mill limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Bonds are outstanding, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Bonds as and when the same falls due and to provide a fund for the repayment of the principal of the Bonds at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution.

Section 3. The Debt Service Levy shall be and is hereby 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 such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of the premium, if any, and interest on and principal of the Bonds when and as the same falls

due. Notwithstanding the foregoing, if the Municipality determines that funds will be available from other sources for the payment of the Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which will be so available, and the Municipality shall appropriate such funds to the payment of the Bonds in accordance with law.

Section 4. The Bonds shall be designated "City of Columbus, Ohio Hillock/Lewis Roads Phase II Sanitary Sewer Assessment Bonds."

Section 5. The Bonds shall be issued only as fully registered bonds in book entry form only, in such denominations as shall be determined by the Director of Finance and Management, but not exceeding the principal amount of Bonds maturing on any one date; and shall be numbered consecutively from R-1 upward, as determined by the Director of Finance and Management. The Bonds shall be dated December 4, 2008 shall mature on December 4, 2018 and shall bear interest, payable annually on the 4th day of December of each year (the "Interest Payment Date") commencing December 4, 2009, at the rate, and shall be subject to mandatory sinking fund redemption on December 4th in the amounts and in the years set forth in the Certificate of Award hereinafter provided for. Interest shall be calculated on the basis of a 360 day year of twelve 30 day months.

The Bonds shall not be subject to optional redemption prior to maturity.

Section 6. The Bonds shall set forth the purposes for which they are issued and state that they are issued pursuant to the Bond Ordinance and shall be executed by the Mayor and the City Auditor of the Municipality, in their official capacities, provided that any of those signatures may be a facsimile. No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under the Bond Ordinance unless and until a certificate of authentication, as printed on the Bond, is signed by the Bond Registrar (as defined in Section 7 hereof) as authenticating agent. Before the Municipality or Bond Registrar (as defined in Section 7 hereof) shall be required to register the Bonds and deliver them to the Original Purchaser, the Bond Registrar and the Director of Finance and Management of the Municipality shall have received from the Original Purchaser an investor letter, in the form specified in the Certificate of Award, certifying that such Original Purchaser is an "accredited investor" within the meaning of Section 501(a) ("Section 501(a)") of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued and delivered under the Bond Ordinance and is entitled to the security and benefit of the Bond Ordinance.

The principal of and interest on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. The principal of the Bonds shall be payable upon presentation and surrender of the Bonds at the principal office of the Bond Registrar. Each Bond shall bear interest from the later of the date thereof, or the most recent Interest Payment Date to which interest has been paid or duly provided for, unless the date of authentication of any Bond is less than 15 days prior to an Interest Payment Date, in which case interest shall accrue from such Interest Payment Date. Interest on any Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond is registered, at the close of business on the 15th day next preceding that Interest Payment Date (the "Record Date") (unless such date falls on a non-business day, in which case the Record Date shall be the preceding business day), on the Bond Register (as defined in Section 7 hereof) at the address appearing therein.

Any interest on the Bonds which is payable, but is not punctually paid or provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered owner on the relevant Record Date by virtue of having been such owner and such Defaulted Interest shall be paid to the registered owner in whose name the Bonds are registered at the close of business on a date (the "Special Record Date") to be fixed by the Bond Registrar, such Special Record Date to be not more than 15 nor less than 10 days prior to the date of proposed payment. The Bond Registrar shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder, at his address as it appears in the Bond Register, not less than 10 days prior to such Special Record Date, and may, in its discretion, cause a similar notice to be published once in a newspaper in each place where Bonds are payable, but such publication shall not be a condition precedent to the establishment of such Special Record Date.

Subject to the foregoing provisions of this Section 6, each Bond delivered by the Bond Registrar upon transfer of or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 7. The Trustees of the Sinking Fund of the City of Columbus is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent (collectively, the "Bond Registrar") for the Bonds. So long as the Bonds remain outstanding, the Municipality will cause to be maintained and kept by the Bond Registrar, at the office of the Bond Registrar, all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the "Bond Register").

Subject to the provisions of Section 6 hereof, the person in whose name the Bonds shall be registered on the Bond Register shall be regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on the Bonds shall be made only to or upon the order of that person. Neither the Municipality nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Bonds, including the interest thereon, to the extent of the amount or amounts so paid.

The Bonds may be transferred only on the Bond Register upon presentation and surrender thereof at the principal office of the Bond Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Bond Registrar. Before the Municipality or Bond Registrar shall be required to register any transfer or exchange of the Bond, the Bond Registrar and the Director of Finance and Management of the Municipality shall have received from the transferee an investor letter, in the form specified in the Certificate of Award, certifying that such transferee is an "accredited investor" within the meaning of Section 501(a) of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended. Upon that transfer, the Bond Registrar shall complete, authenticate and deliver a new Bond equal in the aggregate to the unmatured principal amount of the Bonds surrendered, and bearing interest at the same rate and maturing on the same date.

The Municipality and the Bond Registrar shall not be required to transfer or exchange the Bonds for a period of fifteen days next preceding an Interest Payment Date or the date of maturity.

In all cases in which Bonds are transferred hereunder, the Municipality shall cause to be executed and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The transfer shall be without charge to the owner; except that the Municipality and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the transfer. The Municipality or the Bond Registrar may require that those charges, if any, be paid before it begins the procedure for transfer of the Bonds. All Bonds issued upon any transfer shall be the valid obligations of the Municipality, evidencing the same debt, and entitled to the same benefits under this Ordinance, as the Bonds surrendered upon that transfer.

Section 8. For purposes of this ordinance, the following terms shall have the following meanings:

"Book entry form" or "book entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Bonds may be transferred only through a book entry and (ii) physical Bonds in fully registered form are issued only to the Depository or its nominee as registered owner, with the Bonds "immobilized" to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in those Bonds.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book entry system to record beneficial ownership of Bonds and to effect transfers of Bonds, in book entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

All or any portion of the Bonds may be initially issued to a Depository for use in a book entry system, and the provisions of this section shall apply, notwithstanding any other provision of this ordinance; (i) there shall be a single Bond of each maturity, (ii) those Bonds shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Bonds in book entry form shall be shown by book entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book entry; and (v) the Bonds 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. Bond service charges on Bonds in book entry form registered in the name of a Depository or its nominee shall be payable in next day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Bonds as provided in this ordinance.

The Bond Registrar may, with the approval of the City, enter into an agreement with the beneficial owner or registered owner of any Bond in the custody of a Depository providing for making all payments to that owner of principal and interest on that Bond or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this ordinance, without prior presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Bond Registrar and to the City. That payment in any event shall be made to the person who is the registered owner of that Bond on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Bond Registrar shall furnish a copy of each of those agreements, certified to be

correct by the Bond Registrar, to other paying agents for Bonds and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this ordinance.

The Mayor, Director of Finance and Management, or any other officer of this Council, is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, the letter agreement among the City, the Bond Registrar and The Depository Trust Company, as depository, to be delivered in connection with the issuance of the Bonds to the Depository for use in a book entry system in substantially the form submitted to this Council.

If any Depository determines not to continue to act as a depository for the Bonds for use in a book entry system, the City and the Bond Registrar may attempt to establish a securities depository/book entry relationship with another qualified Depository under this ordinance. If the City and the Bond Registrar do not or are unable to do so, the City and the Bond Registrar, after the Bond Registrar has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Bonds from the Depository and authenticate and deliver bond certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Bonds), if the event is not the result of action or inaction by the City or the Bond Registrar, of those persons requesting such issuance.

Section 9. The sale and award of the Bonds shall be evidenced by the Certificate of Award signed by the Director of the Finance and Management or the City Auditor. The Certificate of Award shall identify the original purchaser of the Bonds (the "Original Purchaser") and shall state the Purchase Price, the Specified Interest Rate and the Mandatory Sinking Fund Requirements (all as hereinafter defined) and shall include such additional information as shall be required by the terms of this Ordinance. Huntington Capital Corp. is hereby appointed the Municipality's placement agent (the "Placement Agent") for the private placement of the Bonds.

As used in this Section 9 and Section 5 hereof:

"Certificate of Award" means the certificate authorized by this Section 9 to be executed by the Director of Finance and Management or the City Auditor setting forth and determining such terms and other matters pertaining to the Bonds, their issuance, sale or delivery, as are authorized and directed to be determined therein by this Ordinance.

"Mandatory Redemption Dates" means the 4th day of December in the years to be specified in the Certificate of Award in which the Bonds are to be redeemed pursuant to Mandatory Sinking Fund Requirements.

"Mandatory Sinking Fund Requirements" means, as to Bonds, amounts sufficient to redeem such Bonds (less the amount of credit as provided in the Certificate of Award) on each Mandatory Redemption Date, as are to be set forth in the Certificate of Award.

"Purchase Price" means that amount which is to be determined in the Certificate of Award, but such amount is to be no less than 100% of the aggregate principal amount of the Bonds, together with accrued interest on the Bonds from their date to the date of their delivery and payment therefor.

"Specified Interest Rate" means the interest rate at which the Bonds bear interest, which rate shall not exceed seven per centum (7.00%) per annum.

The Director of Finance and Management, the City Auditor and the Clerk are authorized and directed to make the necessary arrangements on behalf of the Municipality to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. Those officers are further directed to take all steps necessary to effect due execution, authentication and delivery of the Bonds under the terms of the Bond Ordinance.

The proceeds from the sale of the Bonds shall be deposited in the City Treasury and shall be credited to the proper Bond Retirement Fund to be applied to the payment of the principal of and interest on the Outstanding Notes, which shall be redeemed on the date of delivery of the Bonds.

Any accrued interest or premium received from such sale shall be deposited in the City Treasury and shall be credited to the proper Bond Retirement Fund to be applied to the payment of the principal and interest of the Bonds in the manner provided by law. All moneys necessary to carry out the purposes of this Ordinance are hereby deemed appropriated for expenditure by the City Auditor.

To provide for the payment of the costs of issuance of the Bonds, which shall include, but shall not be limited, to the fees and expenses of the Municipality's bond counsel and the fees and expenses of the Placement Agent, the City Auditor is hereby authorized

to expend from the Sewer Operating Fund (Fund 650) a sum not to exceed Seventy Five Hundred Dollars (\$7,500), and such amount is hereby deemed appropriated.

Section 10. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 11. The City Clerk is hereby directed to forward certified copies of this Ordinance to the County Auditors of Franklin, Fairfield and Delaware Counties, Ohio.

Section 12. In accordance with Section 55(b) of the Charter of the City of Columbus, Ohio, this Ordinance shall take effect and be in force from and immediately after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.