



City of Columbus

Office of City Clerk
90 West Broad Street
Columbus OH 43215-9015
columbuscitycouncil.org

Legislation Text

File #: 0359-2015, Version: 1

This ordinance authorizes the issuance of special obligation bonds in an amount not to exceed \$185,000,000 for the purpose of providing funds to refund certain outstanding special obligation bonds of the City (\$185,000,000).

To authorize the issuance of special obligation bonds in an amount not to exceed \$185,000,000 for the purpose of providing funds to refund certain outstanding special obligation bonds of the City. (\$185,000,000.00). (Section 55(b) of the City Charter.) **(REPEALED BY ORD. 0846-2015 PASSED 04/20/2015)**

WHEREAS, the City of Columbus, Ohio (the “City” or the “Issuer”) owns and operates as a public utility a municipal sewerage system (the “Utility”), the services of which are, and are to be, supplied to persons and corporations within and without the corporate limits of the City; and

WHEREAS, pursuant to Ordinance No. 2092-2007 passed by City Council (the “Council” or the “Legislative Authority”) of the City on December 10, 2007 and a Master Trust Agreement, dated as of January 1, 2008 (the “Master Trust Agreement”), as supplemented by a First Supplemental Trust Agreement, dated as of January 1, 2008 (the “First Supplemental Trust Agreement”), and a Second Supplemental Trust Agreement, dated as of January 1, 2008 (the “Second Supplemental Trust Agreement”), each by and between the City and the Bank of New York Trust Company, N.A., as Trustee (the “Trustee”), the City issued and sold its \$390,000,000 Sewerage System Fixed Rate Revenue Bonds, Series 2008A, dated January 30, 2008 (the “Series 2008 Bonds”), in order to provide funds to expand and improve the Utility and to refund bonds previously issued for such purpose; and

WHEREAS, on December 1, 2014, and pursuant to Ordinance No. 2235-2014, the City issued its Sewerage System Revenue Refunding Bonds, Series 2014, in the principal amount of \$205,425,000 (the “Series 2014 Refunding Bonds”), to advance refund a portion of the Series 2008 Bonds, which Series 2014 Bonds are secured by a Third Supplemental Trust Agreement, dated as of December 1, 2014, between the City and the Trustee (the “Third Supplemental Trust Agreement”), and following the issuance of the Series 2014 Refunding Bonds and defeasance of a portion of the Series 2008 Bonds with the proceeds thereof, \$170,085,000 of the Series 2008 Bonds remains outstanding (the “Outstanding Bonds”); and

WHEREAS, the City can achieve a reduction in the debt service associated with the Outstanding Bonds by providing for the advance refunding of all or a portion of such Outstanding Bonds (the “Refunded Bonds”); and

WHEREAS, due to current market conditions, this Council believes that it is in the best interest of the City to refund the Refunded Bonds using the proceeds of special obligation bonds (the “Series 2015 Bonds”), to be issued and sold in one or more series and accordance with Article XVIII of the Constitution of Ohio, together with other moneys available for that purpose, if any;

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

Section 1. Series 2015 Bonds; Findings and Determinations. The City hereby finds and determines that it is necessary to issue, sell and deliver the Series 2015 Bonds, in one or more series, as provided and authorized herein and in a

supplemental trust agreement authorized herein, in an aggregate principal amount not to exceed \$185,000,000, or such lesser amount as shall be determined by the Director of Finance and Management or City Auditor and certified to this Council, which Series 2015 Bonds shall be designated "City of Columbus, Ohio Sewerage System Revenue Refunding Bonds, Series 2015" or as otherwise provided in the Certificate of Award, as hereinafter defined, in order to distinguish one series of bonds from another. The Series 2015 Bonds shall be issued for the purpose of providing funds, together with other available funds, to (i) advance refund the Refunded Bonds, (ii) fund the Series 2015 Bond Reserve Fund in the amount of the Reserve Requirement, if any, under the Trust Agreement (as defined herein); and (iii) pay costs and expenses incurred in connection with the issuance of the Series 2015 Bonds.

The City further finds, determines and confirms that (a) the refunding of the Refunded Bonds promotes the purposes of the Issuer and the Utility; (b) the City will be duly benefited by the issuance of the Series 2015 Bonds; and (c) it is in the best interests of the residents of the City that the Series 2015 Bonds be issued under the terms set forth herein.

Section 2. Terms and Provisions of Series 2015 Bonds.

(a) Trust Agreement. The Series 2015 Bonds shall be issued and secured under the terms of the Master Trust Agreement, as supplemented and amended by the First Supplemental Trust Agreement, the Second Supplemental Trust Agreement, the Third Supplemental Trust Agreement, and a supplemental trust agreement for each series of bonds issued pursuant to this Ordinance (the "2015 Supplemental Trust Agreement," and together with the Master Trust Agreement, the First Supplemental Trust Agreement, the Second Supplemental Trust Agreement, and the Third Supplemental Trust Agreement, the "Trust Agreement"), between the City and The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), as authorized herein.

(b) Bond Terms. The Series 2015 Bonds (i) shall consist of one or more series; (ii) shall be issuable only in fully registered form and substantially as set forth in Exhibit B to the 2015 Supplemental Trust Agreement; (iii) shall be exchangeable only for Series 2015 Bonds of the same series, and only in Authorized Denominations, as provided in the Trust Agreement; (iv) shall be numbered in a manner determined by the Trustee which will distinguish each Series 2015 Bond from each other Series 2015 Bond; (v) shall be dated as set forth in the applicable Certificate of Award for such series of Series 2015 Bonds; (vi) shall mature on such dates as set forth in the applicable Certificate of Award for such series of Series 2015 Bonds, provided no such date shall be later than the year of the last maturity permitted by law for the Refunded Bonds; (vii) shall bear interest at the rates, as set forth in the applicable Certificate of Award for such series of Series 2015 Bonds, provided the true interest cost of the Series 2015 Bonds shall not exceed five and one half per centum (5.50%) per annum; and (vi) shall bear interest payable semi-annually on the dates specified in the applicable Certificate of Award, until the principal sum is paid; and shall be subject to mandatory redemption in the amounts and on the dates, and shall be subject to optional redemption in the years and at the redemption prices, as shall be set forth in the applicable Certificate of Award and the Trust Agreement.

(c) Method of Payment; Paying Agents. The Debt Service Charges on the Series 2015 Bonds shall be payable as provided in the Trust Agreement and the Series 2015 Bonds without deduction for the services of any paying agent. The Trustee shall be paying agent for the Series 2015 Bonds and may designate additional paying agents as provided in the Trust Agreement.

(d) Execution. The Series 2015 Bonds shall be signed by the Mayor and the City Auditor (provided that any or both of such signatures may be facsimiles). In case any officer whose signature or a facsimile thereof shall appear on the Series 2015 Bonds shall cease to be such officer before the issuance or delivery of the Series 2015 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(e) Book-Entry System. The Series 2015 Bonds are permitted, but not required, to be issued to The Depository Trust Company (the "Depository") for holding in a book-entry system as provided in the Trust Agreement, as the official or officials executing and delivering such agreement shall approve in the manner described in and under authority of Section 6 hereof.

Section 3. Sale of the Series 2015 Bonds; Official Statement. The sale and award of the Series 2015 Bonds shall be evidenced by a Certificate of Award for each series of bonds issued pursuant to this Ordinance (each, a “Certificate of Award”) signed by the Director of Finance and Management or the City Auditor. The Certificate of Award shall identify the original purchasers of the Series 2015 Bonds (collectively, the “Original Purchasers”), the senior manager for the Original Purchasers (the “Senior Manager”), provide, determine and state the principal amount of the applicable series of Series 2015 Bonds to be issued (provided that the aggregate principal amount of all series of Series 2015 Bonds shall not exceed \$185,000,000.00), the series designation, the dated date of the Series 2015 Bonds, the purchase price of the Series 2015 Bonds (not less than 97% of the par amount, plus accrues interest, if any, from their date to the date of their delivery to, and payment by, the Original Purchasers), the specified interest rates, principal retirement dates, any term bonds, the mandatory redemption dates for any term bonds, and the optional redemption provisions for the Series 2015 Bonds, if any.

The Certificate of Award shall further identify the firm that will deliver reports on the arithmetical accuracy of certain computations contained in schedules provided to them by the Original Purchasers on behalf of the City relating to the refunding purposes of the Series 2015 Bonds and shall set forth and determine such additional terms and other matters pertaining to the Series 2015 Bonds, their issuance, sale or delivery, as are authorized and directed to be determined therein by this Ordinance, the Certificate of Award, and the Bond Purchase Agreement between the City and the Senior Manager, on behalf of itself and as representative of the other Original Purchasers (the “Bond Purchase Agreement”). It is hereby determined that the purchase price and the manner of sale and the terms of the Series 2015 Bonds, as provided in this Ordinance, each Bond Purchase Agreement, and the Trust Agreement, are consistent with all legal requirements.

The City Auditor and the Director of Finance and Management are authorized and directed, alone or together, to make the necessary arrangements with the Original Purchaser to establish the date, location, procedures and conditions for the delivery of the Series 2015 Bonds to the Original Purchaser and to take all steps necessary to effect due execution, authentication and delivery of the Series 2015 Bonds to the Original Purchaser under the terms of this Ordinance. Those officers are further directed to take all steps necessary to effect due execution, authentication and delivery of the Series 2015 Bonds under the terms of this Ordinance and the Certificate of Award. Further, such officers are hereby authorized and directed to take such action and to execute and deliver, on behalf of the Council, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

The distribution of an Official Statement of the City, in preliminary and final form, relating to the original issuance of each series of Series 2015 Bonds is hereby authorized, and the Director of Finance and Management and the City Auditor, or either of them acting alone, is hereby authorized and directed to negotiate, prepare and execute, on behalf of the City and in his official capacity, the Official Statement and any supplements thereto as so executed in connection with the original issuance of the Series 2015 Bonds, and he is authorized and directed to advise the Original Purchaser in writing regarding limitations on the use of the Official Statement and any supplements thereto for purposes of marketing or reoffering the Series 2015 Bonds as he deems necessary or appropriate to protect the interests of the City. The Director of Finance and Management, the City Auditor, the City Attorney and any other official of the City are each authorized to execute and deliver, on behalf of the City and in their official capacities, such certificates in connection with the accuracy of the Official Statement, in either preliminary or final form, and any supplements thereto as may, in their judgment, be necessary or appropriate.

Section 4. Allocation of Proceeds of Series 2015 Bonds. The proceeds of sale of the Series 2015 Bonds (including without limitation, premium, if any, and interest accrued thereon) shall be allocated and deposited in accordance with this Ordinance, the Trust Agreement and the Certificate of Award and are hereby appropriated for the purposes specified therein. All funds, accounts and subaccounts contemplated in the Trust Agreement to be created are authorized and directed hereby to be created and shall be used without further legislative action for the purposes specified in the Trust Agreement.

The City shall deposit with the Trustee proceeds of the Series 2015 Bonds, except accrued interest and any proceeds applied toward costs of issuance, paid to the City pursuant to the Bond Purchase Agreement, and such other amounts available to the City for such purpose, to be applied toward the defeasance of the Refunded Bonds, and such monies shall be applied in accordance with the terms of the 2015 Supplemental Trust Agreement. Any accrued interest received from the sale of the Series 2015 Bonds shall be transferred to the Bond Fund to be applied to the payment of the principal of and interest on any Outstanding Obligations as defined in and in accordance with the Trust Agreement.

All moneys necessary to carry out the purpose of this Ordinance, including all principal of and interest on the Series 2015 Bonds, are hereby deemed appropriated.

The City Auditor is hereby authorized to pay the costs of issuance of the Series 2015 Bonds, which shall include, but shall not be limited to, the fees and expenses of the City's bond counsel, the fees and expenses of the City's municipal advisor, rating agency fees, and printing fees, from the proceeds of the sale of the Series 2015 Bonds as determined in the Bond Purchase Agreement.

This Council hereby declares that the Series 2015 Bonds are "obligations" within the meaning of Section 323.07 (a) of the Columbus City Codes. The Certificate of Award shall identify the annual financial information and operating data that will constitute the "annual information" for purposes of said Section 323.07. Further, the City Auditor and Director of Finance and Management, or either of them individually, are hereby authorized and directed to execute and deliver, for the benefit of the bondholders, a Continuing Disclosure Certificate in such form as is approved by the officer executing such certificate, as necessary to assist the Original Purchaser in complying with Rule 15c2-12(b)(5) adopted by the Securities Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time. The Continuing Disclosure Certificate shall identify the annual financial information and operating data that will constitute the "annual information" for purposes of said Section 323.07. The approval of such Continuing Disclosure Certificate shall be conclusively evidenced by the execution of such certificate by the City Auditor or Director of Finance and Management.

Section 5. Covenants and Agreements of City. In addition to the other covenants of the City herein, the City further covenants and agrees as follows:

(a) Authority and Actions. The City is, and upon delivery of the Series 2015 Bonds will be, duly authorized by the Constitution and the laws of the State of Ohio, particularly Article XVIII of the Constitution of Ohio, and by its Charter, to issue the Series 2015 Bonds, to execute and deliver the Bond Purchase Agreement and all other instruments and documents related to such issuance to which it is a party, to provide the security for payment of the Debt Service Charges on the Series 2015 Bonds in the manner and to the extent set forth herein and in the Trust Agreement, all as authorized by the Legislative Authority. All actions on the part of the City for the issuance of the Series 2015 Bonds, and the execution and delivery of the instruments and documents related to such issuance, have been or will be duly and effectively taken. The Series 2015 Bonds will be valid and enforceable special obligations of the City according to the terms thereof.

(b) Payment of Debt Service Charges. The City will, solely from the sources herein or in the Trust Agreement provided, pay or cause to be paid the Debt Service Charges on each and all Series 2015 Bonds on the dates, at the places and in the manner provided herein and the Certificate of Award, in the Trust Agreement and in the Series 2015 Bonds.

(c) Performance of Covenants. The City will faithfully observe and perform at all times all agreements, covenants, undertakings, stipulations and provisions contained in this Ordinance, the Trust Agreement and the Series 2015 Bonds, and in all proceedings of the Legislative Authority pertaining to the Series 2015 Bonds or the Utility. The City represents and warrants that it is duly authorized by the Constitution and the laws of the State of Ohio, particularly Article XVIII of the Constitution of Ohio, to issue the Series 2015 Bonds authorized hereby, to execute the 2015 Supplemental Trust Agreement and to pledge the Pledged Revenues and the Special Funds (each as defined in the Trust Agreement) in the manner and to the extent herein and in the Trust Agreement set forth; that all actions on its part for the

issuance of the Series 2015 Bonds and the execution and delivery of the Trust Agreement have been duly and effectively taken and, if Additional Bonds are issued pursuant hereto, will be duly taken as provided herein and in the Trust Agreement, and that the Series 2015 Bonds in the hands of the holders thereof are and will be legal, valid, and binding special obligations of the City enforceable according to the terms thereof. Each provision of this Ordinance, each Series 2015 Bond and all other documents to be executed by the City in connection with the issuance of the Series 2015 Bonds, is binding upon each officer of the City as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision. Each duty of the City and of its officers and employees undertaken pursuant to the Series 2015 Bonds is established as a duty of the City and of each such officer and employee having authority to perform such duty, specifically enjoined by law, upon the City and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(d) Tax-Exempt Bond Provisions. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Series 2015 Bonds is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Series 2015 Bonds so that the Series 2015 Bonds will not constitute “private activity bonds” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”). The City further covenants that it will restrict the use of the proceeds of the Series 2015 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder or (the “Regulations”).

The City Auditor or the Director of Finance and Management is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Series 2015 Bonds as permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Series 2015 Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the City Auditor or the Director of Finance and Management, which action shall be in writing and signed by the City Auditor or the Director of Finance and Management, or any other officer, including the City Clerk, on behalf of the City; (b) to take any and all actions, make or obtain calculations, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure such exclusion of interest from gross income and the intended tax status of the Series 2015 Bonds; and (c) to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with Sections 141 through 150 of the Code and the Regulations.

The City Auditor shall keep and maintain adequate records pertaining to investment of all proceeds of the Series 2015 Bonds sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Series 2015 Bonds which limits the amount of Bond proceeds which may be invested at an unrestricted yield or requires the City to rebate arbitrage profits (or penalties in lieu thereof) to the United States Department of the Treasury. The City Auditor is hereby authorized and directed to file such reports with, and rebate arbitrage profits (or penalties in lieu thereof) to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Series 2015 Bonds requires any such reports or rebates, and moneys necessary to make such rebates are hereby appropriated for such purpose. The payment of any rebate arbitrage profits (or penalties in lieu thereof) made to the United States Department of the Treasury shall be authorized and paid from such fund or funds as determined by the City Auditor.

(e) Transcript. The City Auditor or the Director of Finance and Management, or any other officer, including the City Clerk, and each of them acting alone, or any other officer of the City shall furnish to the Original Purchaser a true

transcript of proceedings, certified by such officer, of all proceedings had with reference to the issuance of the Series 2015 Bonds, together with such information from the records as is necessary to determine the regularity and validity of the issuance of the Series 2015 Bonds.

(f) Further Assurances. The City shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Bond Purchase Agreement and all other instruments and documents related to the issuance of the Series 2015 Bonds to which it is a party. Nothing in this Ordinance, the Bond Purchase Agreement or any instrument and document related to the issuance of the Series 2015 Bonds shall be construed as requiring the City to use any moneys from any source other than Pledged Revenues.

Section 6. 2015 Supplemental Trust Agreement; Other Documents. In order to further provide for the issuance of and to secure the payment of the principal of and premium, if any, and interest on the Series 2015 Bonds and the performance of the City as provided in this Ordinance, the Series 2015 Bonds and the Trust Agreement, the Director of Finance and Management and the City Auditor, and either of them alone, are authorized and directed to execute, acknowledge and deliver, as may be appropriate, in the name and on behalf of the City, the 2015 Supplemental Trust Agreement, substantially in the form on file with the City Clerk and containing such terms, covenants and conditions not inconsistent with this Ordinance as shall be approved by the City Attorney. The 2015 Supplemental Trust Agreement shall further provide for the defeasance of the Refunded Bonds by the deposit of the proceeds of the Series 2015 Bonds and other moneys into an escrow fund to be created and held by the Trustee pursuant to the terms of the 2015 Supplemental Trust Agreement. The Mayor, the Director of Finance and Management, and the City Auditor, and any of them, are hereby authorized to execute on behalf of the City such other documents as shall be in their judgment necessary or appropriate in connection with issuance of the Series 2015 Bonds.

The Director of Finance and Management and the City Auditor, and any other appropriate officer of the City, alone or in conjunction with any of the foregoing, are authorized to execute, deliver and, if applicable, file, for and in the name and on behalf of the City, any certifications, financing statements, assignments and other instruments and documents which are necessary or appropriate to perfect the assignments contemplated in the Trust Agreement, to consummate the transactions contemplated in the Series 2015 Bonds, and to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

Section 7. Lien of Pledge Hereunder. The Pledged Revenues are subject to the lien of the pledge hereunder and under the Trust Agreement without any physical delivery of the Pledged Revenues or further act, and the lien of that pledge is valid and binding against all parties having claims of any kind against the City (irrespective of whether those parties have notice of such pledge), and creates a perfected security interest for all purposes of Chapter 1309, Ohio Revised Code, without the necessity for separation or delivery of the Pledged Revenues or for the filing or recording of the Trust Agreement or any other ordinance, resolution or instrument by which that pledge is created or any certificate, statement or other document with respect to that pledge. The pledge of and lien on the Pledged Revenues under the Trust Agreement shall be effective and the money therefrom and thereof may be applied to the purposes for which pledged without necessity for any further act of appropriation.

Section 8. Compliance with Open Meeting Requirements. 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 9. Effective Date. 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.

