



## Legislation Details (With Text)

**File #:** 1402-2017      **Version:** 1

**Type:** Ordinance      **Status:** Passed

**File created:** 5/18/2017      **In control:** Finance Committee

**On agenda:** 6/5/2017      **Final action:** 6/8/2017

**Title:** To authorize the issuance of limited tax notes in an amount not to exceed \$8,500,000.00, to refund outstanding bond anticipation notes issued for the purpose of financing the costs of the transportation projects (\$8,500,000.00).

Section 44-1(b) of the City Charter.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. 1402-2017 DAX attachment

Date	Ver.	Action By	Action	Result
6/8/2017	1	CITY CLERK	Attest	
6/7/2017	1	MAYOR	Signed	
6/5/2017	1	COUNCIL PRESIDENT	Signed	
6/5/2017	1	Columbus City Council	Waive the 2nd Reading	Pass
6/5/2017	1	Columbus City Council	Approved	Pass

This ordinance authorizes the issuance of limited tax notes in an amount not to exceed \$8,500,000, to refund outstanding bond anticipation notes issued for the purpose of financing the costs of the transportation projects associated with the original construction of the Fourth & Elm Streets and the Front & Rich Streets Parking Garages. The original note was issued in 2009 in the amount of \$29,500,000 and since then has been paid down annually. Proceeds from the 2017 note sale will be used to provide for the payment of a portion of the 2016 notes that will mature on August 4, 2017 (\$8,500,000).

Section 44-1(b) of the City Charter.

To authorize the issuance of limited tax notes in an amount not to exceed \$8,500,000.00, to refund outstanding bond anticipation notes issued for the purpose of financing the costs of the transportation projects (\$8,500,000.00).

Section 44-1(b) of the City Charter.

**WHEREAS**, pursuant to Ordinance No. 1614-2016, duly adopted by the City Council (the “Council”) of the City of Columbus, Ohio (the “Municipality” or the “City”) on June 27, 2016, notes in the principal amount of \$11,800,000 (the “Outstanding Notes”), dated August 4, 2016, were issued in anticipation of the issuance of bonds for the purposes of:

widening, opening, extending, constructing, paving, repaving, improving and changing the line of expressways, freeways, roads, highways, bikeways, streets, alleys, bridges, viaducts, overpasses, underpasses, grade crossing eliminations, service and access roads, and sidewalks, including development of off-street parking facilities, the acquisition and installation of parking meters, traffic control systems, equipment and signs and related appurtenances thereto, the acquisition of real estate and interests in real estate and related equipment, and landscaping and making site improvements; and such notes mature on August 4, 2017; and

**WHEREAS**, it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds; and

**WHEREAS**, revenues due to the successful operations of the garages and the Downtown TIF distribution and certain assessments allow for the application of those revenues to pay a portion of the principal of the Outstanding Notes and permit the Municipality to issue the new notes authorized by this Ordinance in a lower principal amount; and

**WHEREAS**, it is now deemed necessary to issue and sell up to \$8,500,000 of notes in anticipation of the issuance of bonds under authority of the general laws of the State of Ohio, and in particular Section 133.23 of the Ohio Revised Code, to provide for the payment of a portion of the Outstanding Notes; and

**WHEREAS**, the City Auditor has certified to this Council that the estimated life of the improvement stated above which is to be financed from the proceeds of bonds and notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being twenty-five (25) years and notes being eleven (11) years;

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

**Section 1.** It is hereby declared necessary to issue bonds (the “Bonds”) of the Municipality, in the maximum principal sum of \$8,500,000, or such lesser amount as shall be determined by the Director of Finance and Management or City Auditor and certified to this Council, for the purpose of refunding a portion of the Outstanding Notes and providing for the cost of advertising, printing and legal services and other costs incidental thereto.

**Section 2.** The Bonds shall be dated prior to the maturity date of the Notes (as defined herein), shall bear interest at the maximum average annual interest rate presently estimated to be five per centum (5.00%) per annum, payable semiannually until the principal sum is paid or provision has been duly made therefor and shall mature in twenty-five (25) annual installments.

**Section 3.** It is hereby declared necessary to issue and this Council hereby determines that notes shall be issued in anticipation of the issuance of the Bonds, which notes shall be designated as “City of Columbus, Ohio Various Purpose Limited Tax Notes, Series 2017” or as otherwise provided in the Certificate of Award (as defined herein) (the “Notes”).

**Section 4.** The Notes shall be in the amount of not to exceed \$8,500,000, which sum does not exceed the amount of the Bonds. The Notes shall bear interest at such rate per annum as shall be determined by the City Auditor and certified to this Council, provided that such rate shall not exceed five per centum (5.00%) per annum, based on a 360-day year of twelve 30-day months, payable at maturity, unless otherwise determined in the Certificate of Award (as defined hereinbelow). The Notes shall be issued as fully registered notes, in such denominations as shall be determined by the City Auditor and shall be numbered as determined by the City Auditor. Coupons shall not be attached to the Notes. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

**Section 5.** The City Auditor is hereby authorized to apply \$3,300,000 of Municipality funds toward payment of principal of the Outstanding Notes. Such principal payment will be made from the following sources:

<u>Fund</u>	<u>Amount</u>	<u>Authorizing Ordinance</u>
4453	\$1,150,000	0973-2008
6400	2,150,000	1277-2007

**Section 6.** The City Auditor is hereby authorized to expend \$206,500 to pay interest on the Outstanding Notes. The interest payment will be made from the Municipality’s Garages Enterprise Fund No. 6400:

<u>Fund</u>	<u>Amount</u>
6400	\$206,500

**Section 7.** There is hereby authorized the expenditure of a sum not to exceed \$100,000 from Parking Garage Fund, Fund 6400, and appropriated such amount to pay costs of issuance of the Notes, which costs of issuance shall include, but shall not be limited to, the fees and expenses of the Municipality’s bond counsel, the fees and expenses of the Municipality’s municipal advisor, any fees and expenses associated with the sale of the Notes, including fees and expenses of the Original Purchaser (as defined hereinbelow) that the Municipality may agree to pay, and printing fees. In the alternative, the City Auditor is hereby authorized to pay the costs of issuance of the Notes from the proceeds of the sale of the Notes.

**Section 8.** There is hereby authorized a transfer of a sum not to exceed \$1,000,000 from Special Income Tax Fund, Fund 4430 to Fund 6400, in order to carry out the purposes of this Ordinance.

**Section 9.** Funds are hereby deemed appropriated and expenditures and transfers authorized to carry out the purposes described in Sections 5, 6, 7 and 8 of this Ordinance.

**Section 10.** There shall be and is hereby levied annually on all the taxable property in the Municipality, in addition to all other taxes and within the ten mill limitation, a direct tax (the “Debt Service Levy”) for each year during which any of the Notes are

outstanding, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes 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 11.** 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 Notes and 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 Notes 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 Notes and Bonds in accordance with law.

**Section 12.** The Notes shall be the full general obligation of the Municipality, and the full faith, credit and revenue of the Municipality are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with interest thereon, and is hereby pledged for such purpose.

**Section 13.** The Notes shall be executed by the City Auditor and the Mayor of the Municipality, in their official capacities, provided that any of those signatures may be a facsimile, shall be payable as to both principal and interest upon presentation and surrender of the Notes at the principal office of the Note Registrar, and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance. No Note shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication, as printed on the Note, is signed by the Note Registrar (as defined in Section 14 hereof) as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued and delivered under this Ordinance and is entitled to the security and benefit of this Ordinance.

The principal of and interest on the Notes shall be payable in lawful money of the United States of America without deduction for the services of the Note Registrar as paying agent. The principal of and interest on the Notes shall be payable upon presentation and surrender of the Notes at their maturity at the principal office of the Note Registrar.

**Section 14.** The City Auditor is hereby appointed to act as the authenticating agent, note registrar, transfer agent and paying agent (collectively, the "Note Registrar") for the Notes. So long as any of the Notes remain outstanding, the Municipality will cause to be maintained and kept by the Note Registrar, at the principal office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of the Notes as provided in this Section (the "Note Register"). Subject to the provisions hereof, the person in whose name any Note shall be registered on the Note Register shall be regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and premium, if any, and interest on any Notes shall be made only to or upon the order of that person. Neither the Municipality nor the Note 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 Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Note may be transferred only on the Note Register upon presentation and surrender thereof at the principal office of the Note 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 Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Note surrendered, and bearing interest at the same rate and maturing on the same date.

The Municipality and the Note Registrar shall not be required to transfer or exchange any Note for a period of fifteen (15) days next preceding the date of its maturity.

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

If at any time the City Auditor determines that it is in the best interests of the Municipality that a bank or other appropriate financial institution experienced in providing the services of authenticating agent, note registrar, transfer agent and paying agent should serve as Note Registrar, or co-Note Registrar in addition to the Note Registrar, then the Director of Finance and Management or the City Auditor shall, and each is hereby authorized to, execute on behalf of the Municipality a Note Registrar Agreement with such entity, pursuant to which such bank or financial institution shall agree to serve as Note Registrar or co-Note Registrar for the Notes. If at any time such bank or financial institution shall be unable or unwilling to serve as Note Registrar or co-Note Registrar, or the City Auditor or the Director of Finance and Management, in such officers' discretion, shall determine that it would be in the best interest of the Municipality for such functions to be performed by another party, the City Auditor or the Director of Finance and Management may, and each is hereby authorized and directed to, enter into an agreement with another banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar or co-Note Registrar hereunder. Each such successor Note Registrar (or co-Note Registrar) shall promptly advise all noteholders of the change in identity and its address.

**Section 15.** The Notes shall be sold at private sale to such purchaser or purchasers as the City Auditor and the Director of Finance and Management, or either of them individually, shall designate in the Certificate of Award (collectively, the "Original Purchaser"), at the purchase price set forth in the Certificate of Award, plus interest accrued, if any, to the date of delivery of the Notes to the Original Purchaser. The City Auditor and the Director of Finance and Management, or either of them individually, are authorized and directed to execute on behalf of the Municipality a note purchase agreement, term sheet or similar document with the Original Purchaser setting forth the conditions under which the Notes are to be sold and delivered, which documents shall be in such form and shall contain such terms, covenants and conditions not inconsistent with the terms of this Ordinance and permitted by applicable law as shall be approved by the City Auditor or the Director of Finance and Management and approved as to form by the City Attorney. The City Auditor or the Director of Finance and Management is hereby authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery.

The proceeds from the sale of the Notes, except accrued interest, if any, allocable to the Notes (to wit: \$8,500,000) shall be deposited in the City Treasury and allocated to the payment of the Outstanding Notes. Any accrued interest received from the sale of the Notes shall be deposited in the City Treasury and shall be credited to such funds and used for such purposes as shall be specified in the Certificate of Award. All moneys necessary to carry out the purpose of this Ordinance, including all principal of and interest on the Notes and the Outstanding Notes, are hereby deemed appropriated and authorized for expenditure by the City Auditor.

**Section 16.** The Municipality hereby covenants, pursuant to Ohio Revised Code Section 133.05(B)(7), to appropriate annually from lawfully available municipal income taxes, and to continue to levy and collect municipal income taxes, adequate to produce amounts necessary to meet the debt charges on the Notes and Bonds in each year until full payment is made.

**Section 17.** The City Auditor and the Director of Finance and Management, or either of them individually, are authorized and directed to execute on behalf of the Municipality a Certificate of Award (the "Certificate of Award") setting forth the Original Purchaser for the Notes, the aggregate principal amount of the Notes to be issued, the dated date of the Notes, the Purchase Price, the Specified Interest Rate, the Maturity Date, (all as hereinafter defined) and shall include such additional information as shall be required by the terms of this Ordinance.

As used in this Section 17 hereof:

"Certificate of Award" means the Certificate of Award authorized by this Section 17 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 Notes, their issuance, sale or delivery, as are authorized and directed to be determined therein by this Ordinance.

"Maturity Date" means the maturity date for the Notes as set forth in the Certificate of Award.

"Original Purchaser" means such purchaser or purchasers as are identified 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 Notes, together with accrued interest on the Notes from their date to the date of their delivery and payment therefor.

"Specified Interest Rate" means the interest rate at which the Notes bear interest, which rate is to be determined in the Certificate of Award.

The Mayor, the City Auditor and the Clerk of Council 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 Notes to the Original Purchaser. Those officers are further directed to take all steps necessary to effect due execution, authentication and delivery of the Notes under the terms of this Ordinance and the Certificate of Award.

**Section 18.** The Municipality hereby covenants that it shall comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, under applicable provisions of the Code, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute “private activity bonds” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”). The Municipality further covenants that it shall restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Notes are issued, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder (the “Regulations”).

The City Auditor and the Director of Finance and Management, or any other officer of the Municipality, including the Clerk of Council, and each of them acting alone, is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the Municipality with respect to the Notes 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 Notes 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, the Deputy Auditor or the Director of Finance and Management, which action shall be in writing and signed by the City Auditor, the Deputy Auditor or the Director of Finance and Management, or any other officer of the Municipality, including the Clerk of Council, on behalf of the Municipality; (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 Municipality, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes; and (c) to give an appropriate certificate on behalf of the Municipality, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the Municipality pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the Municipality regarding compliance by the Municipality 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 Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the Municipality to comply with any federal law or regulation now or hereafter having applicability to the Notes which limits the amount of Note proceeds which may be invested at an unrestricted yield or requires the Municipality to rebate arbitrage profits (or penalties in lieu thereof) to the United States Department of the Treasury. The City Auditor of the Municipality 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 Notes requires any such reports or rebates. Moneys necessary to make such rebates are hereby appropriated for such purpose.

**Section 19.** The Mayor, City Auditor, the Director of Finance and Management, and Clerk of Council, or any of them individually, are hereby authorized and directed to take such action (including, but not limited to, hiring bond counsel, a municipal advisor, and such other professionals or consultants as may be needed to facilitate the issuance of the Notes) and to execute and deliver, on behalf of the Municipality, 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.

**Section 20.** The appointment of the law firm of Bricker & Eckler LLP to serve as bond counsel with respect to the issuance of the Notes is hereby approved. The fees to be paid to such firm shall be subject to review and approval of the City Auditor, shall not exceed the fees customarily charged for such services, and shall be paid upon closing with cash from Parking Garage Fund, Fund 6400, pursuant to Section 7 .

**Section 21.** The appointment of H.J. Umbaugh & Associates, Certified Public Accountants, LLP to serve as municipal advisor to the Municipality with respect to the issuance of the Notes is hereby approved. The fees to be paid to such firm shall be subject to review and approval of the City Auditor, shall not exceed the fees customarily charged for such services, and shall be paid upon closing with cash from Parking Garage Fund, Fund 6400, pursuant to Section 7.

**Section 22.** It is hereby found and determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes in order to make them legal, valid and binding obligations of the Municipality have happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the Municipality are hereby

irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

**Section 23.** 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 24.** The Clerk of Council is hereby directed to forward certified copies of this ordinance to the Auditors of Franklin, Fairfield and Delaware Counties, Ohio.

**Section 25.** In accordance with Section 44-1(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 (10) days after passage if the Mayor neither approves nor vetoes the same.