

ORDINANCE NO. 17 2019

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$12,500,000 SPECIAL OBLIGATION REVENUE REFUNDING BONDS OF THE CITY OF MONTGOMERY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A TRUST AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF AN ESCROW DEPOSIT AGREEMENT SECURING THE REFUNDED BONDS; AUTHORIZING OTHER NECESSARY AND APPROPRIATE DOCUMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS AND DECLARING AN EMERGENCY.

WHEREAS, Sections 5709.40 - 5709.43 of the Ohio Revised Code authorize the issuance by municipalities of tax increment bonds to pay the costs of constructing public improvements, as therein defined; and

WHEREAS, the City Council (the "Council") of the City of Montgomery (the "City"), Ohio pursuant to Ordinance No. 14-2006, as amended by Ordinance No. 28-2006, has determined to undertake public improvement projects consisting of the planning, design and construction of public street improvements including pavements, walkways, bike paths, traffic control devices and alterations to existing streets; the planning, design and construction of utilities including but not limited to water, sanitary sewers, communication facilities, storm water sewers and detention facilities; the planning, design and construction of parking facilities; the preparation of plans for land use in the area; the creation or enhancement of buffer areas, recreation facilities and open areas necessary for ensuring the compatibility of adjacent land uses; the creation and/or enhancement of public service facilities and operations; and, the purchase of property rights of way and easements or other rights in property necessary for the completion of the public improvements listed above; for the creation of jobs, increasing property values, and the provision of adequate public services in the City; and

WHEREAS, in order to provide funds for the construction of public infrastructure improvements, including the acquisition of real property and the construction of public parking facilities, streets, street lighting, landscaping and related improvements (the "Project"), the City previously issued and sold its \$13,265,000 Special Obligation Revenue Bonds, Series 2013 (Vintage Club Project) dated May 31, 2013 (the "2013 Bonds") of which \$12,215,000 is currently outstanding and

WHEREAS, this Council hereby determines that it is in the best interest of the City and its constituents to refund the 2013 Bonds in order to achieve interest cost savings; and

WHEREAS, as security for the bonds the City has, by ordinances duly adopted, required the payment of service payments in lieu of taxes (the "Service Payments") by the owners of certain

residential, and commercial real property directly benefitting from the public improvements which constitute the Project; and

WHEREAS, it is desired to refinance the costs of the Project and expenditures incident thereto and incident to such refinancing, by the issuance and sale of revenue refunding bonds to be designated "City of Montgomery, Ohio Special Obligation Revenue Refunding Bonds, Series 2019 (Vintage Club Project)", which bonds (hereinafter called the "Bonds") are to be secured by the Trust Agreement hereinafter provided for (hereinafter referred to as the "Trust Agreement");

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Montgomery, Ohio that:

Section 1. Rules of Construction. Any reference herein to the City or the Council, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Bond Legislation. Terms not defined herein shall have the meaning set forth in the Trust Agreement provided for herein.

Section 2. Authorization of Bonds. It is hereby determined to be necessary to, and the City shall, issue, sell and deliver, as provided herein and pursuant to the authority of Sections 5709.40-5709.43 of the Ohio Revised Code, revenue bonds of the City for the purpose of advance refunding the 2013 Bonds, originally issued for the purposes of paying the cost of acquiring and constructing public infrastructure improvements including, (i) the acquisition of real property and real property easements; and (ii) the construction of public parking facilities, streets, street lighting, landscaping and related improvements; and paying certain other costs related to the issuance of Bonds together with other permissible costs under the Uniform Public Securities Law, including the cost of printing the Bonds, expense of delivery of the Bonds, service charges of the paying agent and registrar, legal services and obtaining an approving legal opinion and all necessary costs in connection therewith. The Bonds shall be secured by (i) service payments in lieu of taxes to be paid by owners of benefitted properties, (ii) a pledge, subject to annual appropriation, of legally available and appropriated funds sufficient to make up the difference between the amount needed to pay debt service on the bonds, on any payment date, and the amount of available Service Payments plus amounts in the Bond Account, as established and defined in the Trust Agreement, and (iii) such funds established in the Trust Agreement (the "Pledged Revenues"). Nothing in this ordinance shall be construed as pledging the general credit of the City to the payment of said Bonds or any part thereof, or the interest thereon.

Section 3. Terms of the Bonds. The Bonds of the City shall be issued in the principal sum of not to exceed \$12,500,000, for the purposes aforesaid. The Bonds shall be designated "Special Obligation Revenue Refunding Bonds, Series 2019 (Vintage Club Project)" and may have other distinguishing series or name designations as determined by the Finance Director. The Bonds shall be dated the date of issuance if authenticated prior to the first interest payment date on the Bonds and otherwise will be dated as of the interest payment date next preceding the date the Bonds are authenticated, except that if the Bond is authenticated on an interest payment date, it will be dated

as of such date of authentication; provided that if at the time of authentication, interest hereon is in default, the Bond will be dated as of the date to which interest has been paid. The Bonds shall be issued as fully registered bonds in the denomination of \$5,000 each or any integral multiple thereof. However, temporary bonds may be issued pending delivery of bonds in definitive form. The Bonds shall bear interest at the rates, payable semi-annually on each June 1 and December 1, commencing June 1, 2020, or as otherwise set forth in the Bond Purchase Agreement, as hereinafter defined and authorized, until maturity, and shall mature on the 1st day of December, in such years and principal amounts as are agreed upon by the City and the Original Purchaser, as defined herein. Such principal amounts and interest rates, which shall not be in excess of a net aggregate interest rate of 4.875%, as are agreed upon shall be set forth in the Bond Purchase Agreement authorized in Section 5 hereof, and the City's approval shall be evidenced by the signatures of the City Manager and the Finance Director on the Bond Purchase Agreement, without further action by this Council.

The Bonds are subject to redemption prior to maturity at the option of the City in whole or in part, as set forth in the Bond Purchase Agreement.

Notice of the call for redemption of the Bonds, specifying the numbers of the Bonds to be redeemed, shall be sent by the Trustee, as defined herein, by first class mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon the Bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Trustee and the City shall direct the Trustee in writing to make any notice of call for redemption, except mandatory sinking fund redemption.

If less than all of the Bonds shall be called for redemption at the option of the City, those Bonds to be called shall be determined by the Trustee by lot, provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

The Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Bond, any new Bonds issued by the Trustee as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Bonds.

The principal of, and interest on, the Bonds shall be payable to the registered holders thereof by check or draft of the Trustee, as paying agent, and such payment shall be made without deduction for the services of such paying agent. At the written request of the registered owner of at least \$100,000 aggregate principal amount of the Bonds received by the Trustee at least one business day prior to the corresponding record date, interest accrued on the Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such owner specified in such request and entered by the Trustee on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such owner's Bonds.

Section 4. Execution of the Bonds. Upon the face of each of the Bonds shall be recited a reference to the statutory provision and the ordinance under which issued. Each of the Bonds shall express upon its face the purpose for which the same is issued; that the Bond is secured by and payable from the Pledged Revenues. The Bonds shall bear the manual or facsimile signature of the City Manager and the Finance Director, shall be authenticated manually by the Trustee, and may but shall not be required to bear manual or facsimile impression of the corporate seal of the City. The Bonds shall be prepared, issued, and delivered to the Original Purchaser, as defined in Section 5 hereof, under the direction of the City Manager as hereinafter provided.

Section 5. Sale of the Bonds. The Bonds are being purchased by Fifth Third Securities, Inc., Cincinnati, Ohio (the "Original Purchaser") and are hereby awarded upon payment therefore, at the purchase price set forth in the Bond Purchase Agreement, to the Original Purchaser. The appropriate officers of the City are authorized and directed to make on behalf of the City the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Bonds (or temporary Bonds delivered in lieu of definitive Bonds until their preparation and delivery can be effectuated) under the terms of this Bond Legislation.

Such award and sale shall be evidenced by the execution and delivery of the Bond Purchase Agreement by and between the City and the Original Purchaser, which is hereby authorized, setting forth such award and sale, the other matters referred to in this ordinance and such other matters as the City Manager and the Finance Director determine are consistent with this ordinance and the Trust Agreement securing the Bonds. The City Manager and the Finance Director are hereby authorized and directed in the name of and on behalf of the City to make, execute and deliver to the Original Purchaser the Bond Purchase Agreement, and other necessary documents pertaining to the Bonds, as are approved by bond counsel.

Section 6. Proceeds of the Sale. The proceeds of the sale of the Bonds, less the underwriting discount of Original Purchaser, plus other lawfully available funds of the City, as set forth in the Bond Purchase Agreement and/or the letter of instructions from the City to the Trustee, and except for accrued interest, shall be deposited with the Trustee and the City, as set forth in the Trust Agreement and the Letter of Instructions to the Trustee.

The funds derived from the sale of the Bonds authorized by this legislation become and they are hereby set aside and appropriated for the payment as described in this authorizing legislation, including for deposit into the bond retirement fund for the 2013 Bonds and to pay cost of issuance of the Bonds.

Sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered re-appropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

The Finance Director of the City be and is hereby authorized to draw her warrants on the City Treasury and Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the ordinances of the City.

Section 7. Appointment of Trustee, Registrar and Paying Agent. The Trustee, Registrar and Paying Agent for the Bonds shall be such bank or trust company as is agreed upon by the City and the Original Purchaser and named in the Bond Purchase Agreement.

Section 8. Authorization of Trust Agreement and All Other Documents to be Executed by the City. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the City Manager is authorized and directed to execute, acknowledge and deliver in the name and on behalf of the City, to the Trustee, in trust for the bondholders, a Trust Agreement, secured by and payable from the Pledged Revenues. Said Trust Agreement shall be in such form as is satisfactory to the City's counsel and to bond counsel, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the City as may be permitted by Sections 5709.40-5709.43 of the Ohio Revised Code and approved by the officers executing the same on behalf of the City. The approval of such changes by said officers, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Trust Agreement by such officers.

The Pledged Revenues shall be administered as set forth in the Trust Agreement and from and after the date of issuance and delivery of the Series 2019 Bonds the Pledged Revenues shall be set aside and deposited by the City in a special and separate fund designated as the "Revenue Fund", hereby created (hereinafter designated the "Revenue Fund"). The Revenue Fund shall be administered as set forth in the Trust Indenture.

It is hereby covenanted and agreed by the City with the holder or holders of the Series 2019 Bonds herein authorized and provided for, that the City and each and every officer thereof will satisfactorily and punctually perform all duties with reference to the Pledged Revenues required by the constitution and statutes of the State of Ohio, by this ordinance and by the Trust Agreement hereinafter provided for, all and each of which duties are hereby defined and established to be the duties specifically enjoined by law resulting from an office, trust and station within the meaning of Section 2731.01 of the Ohio Revised Code.

The Mayor, the City Manager, the Finance Director and any other city official are each hereby separately authorized to take any and all actions and to execute such other documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Dinsmore & Shohl LLP, as Bond Counsel, in order to effect the issuance of the Bonds and the intent of this Bond Legislation. The Clerk of Council, or other appropriate officer of the City, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the City as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 9. Approval of Official Statement. The Finance Director is directed to cause the distribution of a preliminary Official Statement similar in form to the form of preliminary Official Statement now on file in the office of the Finance Director. The form of preliminary Official Statement relating to the Bonds and the distribution thereof are hereby authorized, approved, ratified and confirmed. The preliminary Official Statement is hereby deemed "final" for purposes of Securities and Exchange Commission Rule 15c2-12, but is subject to completion or amendment in accordance with such Rule in a final Official Statement. The proposed form of Official Statement relating to the Bonds and distribution thereof by the Original Purchaser, are hereby

authorized and approved. The Finance Director is hereby authorized to execute and deliver the Official Statement on behalf of the Council, which shall be deemed to be “final” for purposes of Securities and Exchange Commission Rule 15c2-12, their execution thereof on behalf of the Council to be conclusive evidence of such authorization, approval and finality.

Section 10. Continuing Disclosure. The City Manager or the Finance Director are hereby further authorized to execute, on behalf of the City, a Continuing Disclosure Certificate in such form and containing such terms, covenants and conditions not inconsistent herewith, and to take such other actions as may be necessary to comply with the requirements of Securities and Exchange Commission Rule 15c2-12, as amended from time to time.

Section 11. Municipal Bond Ratings and Bond Insurance. The City Manager or the Finance Director are hereby authorized to apply, if he/she deems it appropriate, for a rating on the Bonds from either Standard & Poor's Corporation or Moody's Investors Service, and/or to purchase bond insurance, and to pay the fee or premium for said rating and/or insurance to the extent authorized by law and approved by bond counsel.

Any official having charge with respect to the issuance of the Bonds is hereby further authorized to take such actions as may be reasonably requested by the Original Purchaser in order to make the Bonds eligible for the services of the Depository Trust Company, New York, New York.

Section 12. Approval of Escrow Deposit Agreement. In connection with the issuance of the Bonds and to serve the rights of the holders of the 2013 Bonds that are refunded hereby, the Finance Director, on behalf of the Council, is hereby authorized and directed to execute and deliver an Escrow Deposit Agreement with the Escrow Trustee, which Escrow Deposit Agreement shall contain such terms as may be agreed upon by the City and the Escrow Trustee and as shall be approved by Bond Counsel.

Section 13. Subscription for United States Treasury Obligations. Dinsmore & Shohl LLP, Original Purchaser and Escrow Trustee are each hereby authorized to subscribe for United States Treasury obligations or other open market securities on behalf of the City to fund any required escrows.

Section 14. Purchase of Open Market Securities. The Original Purchaser, a verification agent or the Escrow Trustee are hereby authorized to take bids for and/or purchase open market securities on behalf of the City to fund any required escrows.

Section 15. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Legislation, or in any Bond, or in the Trust Agreement, or under any judgment obtained against the City or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the City, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the City upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to the

owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Trust Agreement and the issuance of the Bonds.

Section 16. No Debt or Tax Pledge. Anything in this Bond Legislation, the Trust Agreement, the Bonds or any other agreement or instrument to the contrary notwithstanding, neither this Bond Legislation, the Bonds, nor the Trust Agreement shall represent or constitute a debt or pledge of the faith and credit of the taxing power of the City, and each Bond shall contain on the face thereof a statement to that effect. Nothing herein shall be deemed to prohibit the City, of its own volition, from using, to the extent it may be lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Trust Agreement, this Bond Legislation or the Bonds.

Section 17. Bond Counsel. The firm of Dinsmore & Shohl LLP (“Dinsmore”) is hereby engaged as the City’s “bond counsel” the engagement letter of Dinsmore on file with the City.

Section 18. Severability. If any section, paragraph or provision of this Bond Legislation shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Bond Legislation.

Should it be judicially determined by a court having jurisdiction to pass upon the validity of this ordinance, the Trust Agreement or Series 2019 Bonds herein authorized, that any provision of the ordinance is beyond the powers of this Council or the City, or is otherwise invalid, then such decision shall in no way affect the validity of said Trust Agreement or the validity of the Series 2019 Bonds, or any proceeds related thereto, except as to the particular matters found by such decision to be invalid.

Section 19. Sunshine Law. This Council hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with the law, including Section 121.22, Ohio Revised Code.

Section 20. Effective Date. In order to timely issue the Bonds authorized herein to effect the anticipated savings in the current market, this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public health, safety and welfare, and shall take effect immediately upon passage.

PASSED: October 23, 2019

ATTEST: Connie M. Gaylor  
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozsi  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon  
Terrence M. Donnellon, Law Director