

ORDINANCE NO. 3 , 2022

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$7,500,000 OF NOTES BY THE CITY OF MONTGOMERY, OHIO, FOR THE PURPOSE OF MAKING PUBLIC INFRASTRUCTURE IMPROVEMENTS WITHIN THE CITY AND DECLARING AN EMERGENCY

WHEREAS, this Council has previously issued bond anticipation notes in the amount of \$7,500,000, which notes are about to mature and should be refinanced in a like or reduced principal amount; and

WHEREAS, the Finance Director, the fiscal officer of the City of Montgomery has heretofore estimated that the life of the project hereinafter described is at least five (5) years, and certified that the maximum maturity of the bonds issued therefor is twenty-five (25) years, and of the notes to be issued in anticipation thereof is eighteen (18) years; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Montgomery, (hereinafter called the "City"), County of Hamilton, Ohio, that:

SECTION 1. It is necessary to issue bonds of the City in the principal amount of not to exceed \$7,500,000, to refinance outstanding notes originally issued for the purposes of making public infrastructure improvements, including road improvements consisting of constructing new roads, curbs and sidewalks; installing water mains, sewers and storm sewers; and all related improvements, including site development and engineering in the City of Montgomery. Said bonds shall be dated approximately March 1, 2023, shall bear interest at the estimated rate of five per centum (5%) per annum and shall mature in substantially equal annual or semiannual installments over a period not exceeding twenty-five (25) years after their issuance.

SECTION 2. It is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$7,500,000 shall be issued in anticipation of the issuance of said bonds.

SECTION 3. The Notes shall be dated the date of their issuance, shall bear interest at a rate not to exceed four per centum (4.00%) per annum, payable at maturity, shall mature not more than one year from the date of their issuance, and shall be of such number and denomination as may be requested by the purchaser, however the Notes shall be issued only in authorized denominations of \$100,000 or integral multiples of \$5,000 in excess of \$100,000. This Council hereby covenants that it will not exchange or reissue the Notes in less than authorized denominations other than through a "primary offering", as that term is defined in SEC Rule 15c2-12. Interest on the Notes shall be calculated on an actual days elapsed, 360-day year basis.

Final terms of the Notes, which shall be consistent with this ordinance, shall be set forth in the certificate of award ("Certificate of Award") which is hereby authorized and which shall be executed by the Finance Director without further action of this Council.

SECTION 4. The Notes shall be executed by the City Manager and Finance Director and shall bear the seal of the corporation. The Notes shall be designated "Public Infrastructure Improvements Limited Tax General Obligation Bond Anticipation Notes, Series 2020, 2022 Renewal" or as otherwise

designated in the Certificate of Award, and shall be payable in Federal Reserve funds by the paying agent and registrar for the Notes as determined by the Finance Director, and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

SECTION 5. Said Notes shall be sold by the Finance Director at public or private sale, at the discretion of such officer and awarded by such officer without further action by this Council, at not less than the par value of such Notes together with interest thereon, if any, as specified in Section 3 of this Ordinance. The proceeds from such sale, except any premium or accrued interest thereon, shall be paid into the proper fund and used for the purpose aforesaid and for no other reason, and for which purpose said money is hereby appropriated. Accrued interest and premium, if any, received on the sale of said Notes, shall be transferred to the bond retirement fund to be applied to the payment of principal and interest of said Notes in the manner provided by law.

Notwithstanding the above, the Finance Director is hereby directed to withhold delivery of the Notes, and to refuse to accept payment therefor, unless and until the original purchaser delivers to the City a certificate acknowledging that the original purchaser will sell the notes to no more than 35 persons, each of whom the original purchaser reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the Notes.

SECTION 6. The Notes shall be the full general obligations of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value received from the sale of bonds anticipated by the Notes, and any excess fund resulting from the issue 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 7. During the period while the Notes run there shall be levied upon all of the taxable property in the City within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if bonds had been issued without the prior issue of the Notes; said tax 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 said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof.

The funds derived from said tax levy hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal and interest of the Notes, or the bonds in anticipation of which they are issued, when and as the same fall due; provided, however, to the extent that debt service on said obligations is appropriated and paid from other municipal sources said tax shall not be collected for the purposes thereof.

SECTION 8. This Council, for and on behalf of the City, hereby covenants that it will restrict the use of the proceeds of the Notes hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Section 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of the Notes is

authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of Sections 103(b)(2) and 148 of the regulations thereunder.

These Notes are hereby designated “qualified tax-exempt obligations” for the purposes set forth in Section 265(b)(3) of the Code. The City does not anticipate issuing more than \$10,000,000 of “qualified tax-exempt obligations” during this year.

SECTION 9. The Clerk of Council is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

SECTION 10. The firm of Dinsmore & Shohl LLP, is hereby engaged as the City’s “Bond Counsel” pursuant to the engagement letter on file with the City.

SECTION 11. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such financing statements, closing certificates and other instruments or agreements as are, in the opinion of Bond Counsel, necessary to carry out the purposes of this Ordinance.

SECTION 12. This City Council hereby authorizes and directs the Finance Director to take any and all actions which may be necessary to issue the Notes in book-entry-only form without further action by this Council including execution of all documents necessary therefor.

SECTION 13. The Finance Director is hereby authorized to apply, if she deems it appropriate, for a rating on the Notes from either Standard & Poor’s Corporation or Moody’s Investors Service, and to pay the fee or premium for said rating to the extent authorized by law and approved by Bond Counsel.

SECTION 14. It is 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 the law.

SECTION 15. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City in order to provide for the orderly financing of the infrastructure improvements to which it relates as herein provided, and it shall take effect immediately upon its adoption.

PASSED: May 4, 2022

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

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director