

ORDINANCE NO.: 122-2007 (As Amended 11/13/07)
INTRODUCED BY: Alexander

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,185,000 OF GENERAL OBLIGATION BONDS FOR THE CITY OF RICHMOND HEIGHTS, OHIO, AUTHORIZING PARTICIPATION IN THE OHIO CAPITAL ASSET FINANCING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Richmond Heights has previously adopted two separate ordinances which authorized two separate bond issues numbered Ordinance No. 120-2007, and Ordinance No. 121-2007 in an aggregate amount of not to exceed \$4,185,000 for the purposes of paying the costs of: (i) constructing, renovating, and otherwise improving municipal buildings to house legislative administrative, safety and other municipal functions; (ii) acquiring real estate for recreation and conservation purposes; (iii) improving streets by resurfacing and making other improvements as designated in the plans; (iv) purchasing capital equipment and to pay costs of issuance of the bonds and to pay capitalized interest on the Bonds; and

WHEREAS, the City Council of the City of Richmond Heights desires to consolidate the two issues into a single issue to achieve certain costs savings; and

WHEREAS, the fiscal officer of the City has heretofore estimated that the life of the hereinafter described improvement is at least five (5) years, and certified that the weighted average maximum maturity of the bonds is twenty-six (26) years; and

WHEREAS, the City Council of the City of Richmond Heights has determined to issue Bonds and said Council intends to pay the principal and interest on such obligations from its existing revenues (the "Revenues"); and

WHEREAS, The Ohio Capital Asset Financing program ("OhioCAF") provides that participating subdivisions by simultaneously issuing their general obligation bonds and coordinating the determination of interest rate and purchase price, investment of funds and other related actions as provided in this ordinance, may be able to achieve debt service and issuance cost savings when compared to that which could be the case if such bonds were issued and sold separately; and

WHEREAS, OhioCAF provides that each participating subdivision will sell its bonds of a similar type authorized by this ordinance and issued by participating subdivision to Robert W. Baird & Co. Incorporated (the "Underwriter") and that the Underwriter will enter into a purchase contract with The Huntington National Bank, Cincinnati, Ohio ("Huntington"), selling such bonds to Huntington and authorizing the issuance and sale of fractionalized interests (the "Fractionalized Interests") constituting direct and proportionate interests in payments of the principal of and interest on such bonds;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: This Council hereby declares it necessary to issue bonds of the City in the principal sum of not to exceed \$4,185,000 (the "Bonds") for the purpose of (i) constructing, renovating, and otherwise improving municipal buildings to house legislative administrative, safety and other municipal functions; (ii) acquiring real estate for recreation and conservation purposes; (iii) improving streets by resurfacing and making other improvements as designated in the plans; (iv) purchasing capital equipment and to pay certain costs related to the issuance of the Bonds and to pay capitalized interest on the Bonds, together with other permissible costs under the Chapter 133 of the Ohio Revised Code, 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.

Section 2: The Bonds shall be issued in the principal sum of not to exceed \$4,185,000, for the purpose aforesaid. That the Bonds shall be dated the date of issuance as set forth in the Certificate of Award, as hereinafter authorized. Interest on the Bonds shall be payable as set forth in the Certificate of Award, until the entire principal sum of the Bonds has been paid. The Bonds shall be issued in the denomination of \$5,000 or any integral multiple thereof, shall mature, shall bear interest, and shall be subject to optional and mandatory redemption as set forth in the Certificate of Award, as hereinafter authorized. The final maturity of the Bonds shall be not later than December 31, 2032. The average interest rate on the Bonds shall not exceed six percent (6.00%) per annum. The final terms of the Bonds shall be set forth in a Certificate of Award, which is hereby authorized and which shall be executed by the Mayor or the Director of Finance without further action of this Council; provided that the maturity dates and times so determined shall be in compliance with the requirements contained in Chapter 133 of the Ohio Revised Code.

If the Mayor and the Director of Finance determine, in the Certificate of Award, that it is desirable and expedient for the City to participate in OhioCAF and, simultaneously with the issuance of bonds by the other subdivisions so participating, the City may issue the Bonds upon the terms set forth in this ordinance, and the City's obligation represented by the Bonds may be evidenced by the Fractionalized Interests as part of OhioCAF. The Fractionalized Interests will also evidence the similar several bond obligations of other subdivisions participating in OhioCAF. The proportionate obligation of the City evidenced by a single Fractionalized Interest of a particular maturity shall be equal to the aggregate principal amount of Bonds of that maturity divided by the aggregate principal amount of bonds of that maturity issued by all subdivisions participating in OhioCAF (including the Bonds) multiplied by the face amount of such Fractionalized Interests. If the City elects to participate in OhioCAF, this Council acknowledges that the City will be directly obligated to the registered holder of a Fractionalized Interest in the Bonds, and that such holder may proceed directly against the City to enforce the City's obligation to pay the principal of and interest on the Bonds as though such holder was a registered holder of a Bond.

The Mayor and the Director of Finance are hereby authorized to execute the Certificate of Award and to take all other action required in connection with the issuance and sale of the Bonds. Any official having charge with respect to the issuance of the Bonds is hereby further

authorized to execute on behalf of the City all documents and closing certificates as may be reasonably required by bond counsel or underwriter's counsel to effectuate the sale, issuance and delivery of the Bonds or the Fractionalized Interests including, but not limited to, a Bond Purchase Agreement, a Paying Agency Agreement, an Acceptance of the Bond Purchase Contract for the Fractionalized Interest to be executed by and between the Underwriter and the Trustee, and an Acceptance of the Continuing Disclosure Certificate for the Fractionalized Interests, 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 3: The consolidated Bonds shall be designated "Various Purpose General Obligation Capital Asset Bonds, Series 2007" and shall express upon their faces the purpose for which they are issued and that they are issued in pursuance of Chapter 133 of the Ohio Revised Code and this ordinance. The Bonds shall be executed by the Mayor and the Director of Finance, provided that the execution by any or all of said officials may be by facsimile. The Bonds may but shall not be required to bear the seal of the municipality, or a facsimile thereof, and shall bear the manual authenticating signature of an authorized representative of the Paying Agent and Registrar, or such bank or trust company as is selected by the Director of Finance to act, as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Bonds as set forth in the Certificate of Award. The principal amount of each Bond shall be payable at the office of the Paying Agent and Registrar, and interest thereon shall be paid on each interest payment date to the person whose name appears on the record date (which shall be 15 days prior to each interest payment date) on the bond registration records as the registered holder thereof, by check or draft mailed to such registered holder at the address that appears on such registration records.

The Bonds shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. The City and the Paying Agent and Registrar shall not be required to transfer any Bond during the 15-day period preceding any interest payment date, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Upon such transfer, a new Bond or Bonds of authorized denominations of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefor.

The City and the Paying Agent and Registrar may deem and treat the registered holder of the Bonds as the absolute owner thereof for all purposes, and neither the City nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

Section 4: The Bonds shall be sold to such bank or other financial institution or the Underwriter as designated in the Certificate of Award at the price set forth in the Certificate of Award. That the matters contained in the Certificate of Award are consistent with this ordinance shall be conclusively evidenced by the execution of the Certificate of Award. The Director of Finance or her designee is directed to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the delivery of the Bonds and to take all steps necessary to effect due authentication, delivery and perfection for the security of the Bonds under the terms hereof. It is hereby determined that the purchase price and the interest rates for

the Bonds set forth in the Certificate of Award, and the manner of sale and the terms of the Bonds as provided in this ordinance and the Certificate of Award, are consistent with all legal requirements and will carry out the public purposes of the City, in accordance with Chapter 133, Ohio Revised Code. The Mayor and Director of Finance are hereby authorized and directed to execute and deliver a Purchase Agreement by and between the City and the purchaser or the Underwriter setting forth the terms and conditions of the sale of the Bonds to the purchaser or the Underwriter and any other agreement deemed necessary by the purchaser of the Bonds which agreement is approved by Peck, Shaffer & Williams LLP, as bond counsel to the City.

Section 5: The proceeds from the sale of the Bonds, except any premium or accrued interest thereon, shall be apportioned, deposited and credited in accordance with Section 133.32 of the Revised Code to the respective purposes and funds in accordance with this ordinance. Premium, if any, shall be used to pay issuance costs of the Bonds or shall be transferred to the bond retirement fund to be applied to the payment of the principal of and interest on said Bonds in the manner provided by law. Accrued interest, if any, shall be transferred to the bond retirement fund to be applied to the payment of interest on said Bonds in the manner provided by law.

All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such financing statements and other instruments or agreements as are, in the opinion of bond counsel, necessary to carry out the purposes of this ordinance.

Section 6: The Bonds 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. That during the period the Bonds are to run, there shall be and is hereby levied on all the taxable property in the City, in addition to all other taxes, but within applicable limitations, a direct tax annually in an amount sufficient to pay the principal of and interest on the Bonds when and as the same fall due.

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 levies hereby required shall be placed in a separate and distinct fund, which together with all interest collected on the same, shall be irrevocably pledged for the payment of the interest and principal of said Bonds when and as the same fall due; provided, however, to the extent that other revenues are certified, collected and appropriated for payment of debt service, said tax need not be levied.

Section 7: This Council, for and on behalf of the City, hereby covenants that it will restrict the use of the proceeds, if any, of the Bonds hereby authorized in such manner and to such extent, if any, and take such other actions 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 Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. The Director of Finance or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed to give an

appropriate certificate on behalf of the City, on the date of delivery of the Bonds 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 said Sections 103(b)(2) and 148 and regulations thereunder.

These Bonds are hereby designated “qualified tax-exempt obligations” for the purposes set forth in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The City does not anticipate issuing more than \$10,000,000 of “qualified tax-exempt obligations” during this calendar year.

Section 8: 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 in order to make the Bonds eligible for the services of the Depository Trust Company, New York, New York.

Section 9: The Clerk of Council is hereby directed to forward a certified copy of this ordinance to the County Auditor.

Section 10: 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 all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 11: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the inhabitants of the City and the immediate issuance of the Bonds is required to provide for the timely financing of the projects to which this financing relates. Therefore, provided this Ordinance receives the affirmative vote of five members of Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of Ordinance No. ____ and that a copy of the foregoing ordinance was certified this day to the County Auditor.

Clerk of Council

Dated: _____, 2007

RECEIPT

The Undersigned hereby acknowledges receipt of a certified copy of the foregoing ordinance.

County Auditor

Dated: _____, 2007