

CITY OF POWELL, OHIO

ORDINANCE NO. 2002-43

This ordinance or resolution has been posted in
three (3) public places as defined in ordinance
94-11 dated 4-2-94
on this date 10/10/02
Bauman
Clerk of Council

AUTHORIZING THE ISSUANCE OF BOND ANTICIPATION NOTES IN THE AMOUNT OF NOT TO EXCEED \$22,255,000 FOR THE PURPOSE OF ACQUIRING STREETS, UTILITY LINES, DRAINAGE FACILITIES AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS FROM THE LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY.

WHEREAS, the Finance Director (the "Finance Director") of the City of Powell, Ohio (the "City") has certified to this Council that the estimated life of the improvement stated in the title of this ordinance (the "Project") which is to be financed with the proceeds of bonds and notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being thirty (30) years and notes being twenty (20) years;

BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF POWELL, OHIO, WITH AT LEAST FOUR MEMBERS CONCURRING, THAT:

Section 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the maximum principal sum of Twenty-Two Million Two Hundred Fifty-Five Thousand Dollars (\$22,255,000), for the purpose of paying the cost of the Project.

Section 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined hereinbelow), 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, and shall mature in thirty (30) annual instalments.

Section 3. It is necessary to issue, and this Council hereby determines that there shall be issued, notes in anticipation of the issuance of the Bonds.

Section 4. Such anticipatory notes (the "Notes") shall be in the principal amount of not to exceed Twenty-Two Million Two Hundred Fifty-Five Thousand Dollars (\$22,255,000) which sum does not exceed the amount of the Bonds. The City shall be authorized to issue the Notes in a maximum principal sum of not to exceed \$22,255,000, or the Bonds in a maximum principal sum of not to exceed \$22,255,000, provided, however, that the combined aggregate principal amount of both the Notes and the Bonds collectively issued shall not exceed \$22,255,000.

Section 5. The Notes shall be dated the date established by the Finance Director and certified to this Council and shall mature on such date as shall be determined by the Finance Director and certified to this Council, provided that such date shall not be later than one year after the date of issuance of the Notes. The Finance Director is authorized and directed to execute a Certificate setting forth the final terms of the Notes, consistent with the requirements of this Ordinance, and to present the same to council after closing.

Section 6. The Notes shall be issued as fully registered notes in book-entry only form in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. 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. The exemption requires that, (i) the

Notes be issued only in authorized denominations of \$100,000 or more and with restrictions that prevent the sale or transfer of Notes in principal amounts of less than \$100,000 and (ii) the Notes have a maturity of nine months or less. Based upon the foregoing, beneficial interests in the Notes are not to be sold or transferred in principal amounts of less than \$100,000.

Section 7. The Notes shall be the full general obligation 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 to be received from the sale of the Bonds 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 and are hereby pledged for such purpose.

Section 8. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the City's ten mill limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, 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. 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 9. 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 payments 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 City determines that funds will be available from other sources for the payment of the Notes and Bonds 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 City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

Section 10. The Notes shall bear interest, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the Finance Director and certified to this Council, provided that such rate shall not exceed five per centum (5.00%) per annum. The Notes shall be, and hereby are, awarded and sold at private sale by the Finance Director to Banc One Capital Markets, Inc., Columbus, Ohio (the "Original Purchaser"), at not less than 100% of the face value thereof. The Finance Director 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 of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest or premium shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal and interest on the Notes, or other outstanding obligations of the City, in the manner provided by law.

Section 11. The Notes shall be executed by the Finance Director and the Mayor, provided that any and all of such signatures may be a facsimile, shall be designated "City of Powell, Ohio Various Purpose Notes, Series 2002" or as otherwise determined by the Finance Director. The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

Section 12. The Notes shall be payable as to both principal and interest at such bank as shall be acceptable to the Finance Director and the Original Purchaser and such bank will serve as authenticating agent, note registrar, transfer agent, and paying agent (collectively, the "Note Registrar") for the Notes. If at any time the Note Registrar shall be unable or unwilling to serve as such, or the Finance Director in such officer's discretion shall determine that it would be in the best interest of the City for such

functions to be performed by another party, the Finance Director may, and is hereby authorized and directed to, enter into an agreement with a national banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar hereunder. Each such successor Note Registrar shall promptly advise all noteholders of the change in identity and new address of the Note Registrar. So long as any of the Notes remain outstanding, the City shall cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this section (the "Note Register"). Subject to the provisions of this ordinance, 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 interest on any Note shall be made only to or upon the order of that person. Neither the City 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 Notes, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed 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, may be exchanged for Notes of the same form and of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the 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 Notes surrendered, and bearing interest at the same rate and maturing on the same date.

The City and the Note Registrar shall not be required to transfer or exchange (i) any Note during a period beginning at the opening of business fifteen (15) days before the day of mailing of a notice of redemption of Notes, and ending at the close of business on the day of such mailing, or (ii) any Notes selected for redemption, in whole or in part, following the date of such mailing.

Section 13. In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed, and the Note Registrar shall authenticate and deliver, the Notes in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner; except that the Council and 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 Council 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 the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this ordinance, as the Notes surrendered upon that transfer or exchange.

Section 14. For purposes of this ordinance, the following terms shall have the following meanings:

"Book entry form" or "book entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book entry, and (ii) physical Notes in fully registered form are issued only to the Depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in those Notes.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book entry system to record beneficial ownership of

Notes, and to effect transfers of Notes, in book entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

All or any portion of the Notes may be initially issued to a Depository for use in a book entry system, and the provisions of this section shall apply, notwithstanding any other provision of this ordinance: (i) there shall be a single Note of each maturity; (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book entry form shall be shown by book entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book entry; and (v) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Council. Debt service charges on Notes in book entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Notes as provided in this ordinance.

The paying agent for the Notes may, with the approval of this Council, enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the paying agent for the Notes and this Council. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The paying agent for the Notes shall furnish a copy of each of those agreements, certified to be correct by the paying agent for the Notes, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this ordinance.

The Mayor, Finance Director, Clerk of Council, or any other officer of this Council, is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, the letter agreement among the City, the paying agent for the Notes and The Depository Trust Company, as depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system in substantially the form submitted to this Council.

Section 15. If any Depository determines not to continue to act as a depository for the Notes for use in a book entry system, the City and the paying agent for the Notes may attempt to establish a securities depository/book entry relationship with another qualified Depository under this ordinance. If the City and the paying agent for the Notes do not or are unable to do so, the City and the paying agent for the Notes, after the paying agent for the Notes has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver note certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Notes), if the event is not the result of action or inaction by the City or the paying agent for the Notes, of those persons requesting such issuance.

Section 16. 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 Notes 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 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 City further covenants that it will 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 debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder (the "Regulations").

The Finance Director, or any other officer of the City, including the Mayor, 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 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 Finance Director, which action shall be in writing and signed by the Finance Director, or any other officer of the City, including the Mayor, 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 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 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 Finance Director 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 City 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 on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The Finance Director of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits 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.

Section 17. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the Clerk of Council and a no-litigation certificate of the Mayor and the Finance Director, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

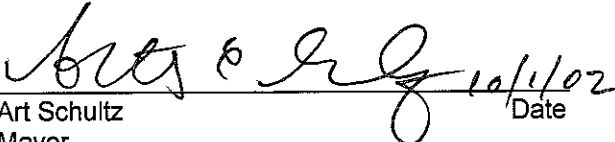
Section 18. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 19. It is hereby 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 City 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 City 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 20. The Clerk of Council is hereby directed to forward a certified copy of this ordinance to the County Auditor of Delaware County, Ohio.

Signed:

1st reading: August 20, 2002
2nd reading: September 3, 2002
3rd reading: September 17, 2002




Art Schultz Date
Mayor

Attest:

Adopted: September 17, 2002

Effective: October 17, 2002



Dawn Nauman Date
Clerk of Council

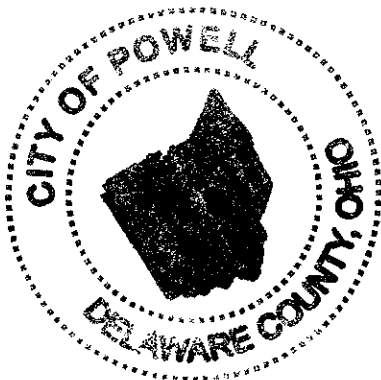
Approved as to form:

Legal Officer

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. _____ duly adopted by the City Council of the City of Powell, Ohio on _____, 2002 and that a true copy thereof was certified to the County Auditor of Delaware County, Ohio, on _____, 2002.

Clerk of Council
City of Powell, Ohio



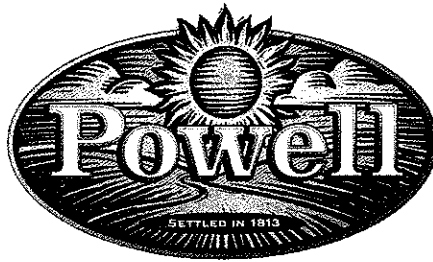
RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION PROVIDING
FOR THE ISSUANCE OF
GENERAL OBLIGATION NOTES

I, David A. Yost, the duly qualified and acting County Auditor in and for Delaware County, Ohio hereby certify that a certified copy of the ordinance duly adopted by the City Council of the City of Powell, Ohio on August 20, 2002, providing for the issuance of general obligation notes designated City of Powell, Ohio Various Purpose Notes, Series 2002, in the amount of not to exceed \$22,255,000 were filed in this office on _____, 2002.

WITNESS my hand and official seal at Delaware, Ohio on the ____ day of _____, 2002.

[SEAL]

County Auditor
Delaware County, Ohio



CERTIFICATE OF ESTIMATED LIFE AND MAXIMUM MATURITY

To: The City Council of the
City of Powell, Ohio

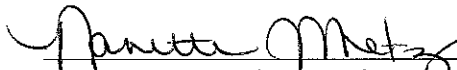
The undersigned Finance Director of the City of Powell, Ohio as the fiscal officer of said City, hereby certifies as follows:

1. The estimated life of the improvements described as follows (the "Improvements") exceeds five years:

ACQUIRING STREETS, UTILITY LINES, DRAINAGE FACILITIES
AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS FROM
THE LIBERTY COMMUNITY INFRASTRUCTURE FINANCING
AUTHORITY

2. The average number of years of life or period of usefulness of the various classifications of permanent improvements comprising the Improvements is thirty (30) years, therefore the maximum maturity of the bonds proposed to be issued to pay the cost of the Improvements, calculated in accordance with Section 133.20, Ohio Revised Code, is thirty (30) years, provided that if notes are issued in anticipation of the issuance of such bonds, the maximum maturity of such notes is twenty (20) years.

Dated: August 20, 2002


Nanette J. Metz, Finance Director
City of Powell, Ohio