

ORDINANCE NO. 149-2012

TITLE: NOTE ORDINANCE - FIFTH STREET IMPROVEMENT PROJECT

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$70,000 OF AGGREGATE PRINCIPAL AMOUNT OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE CITY'S PORTION OF THE COST OF IMPROVING FIFTH STREET, S.E. BETWEEN CERTAIN TERMINI BY WIDENING, CURBING, CONSTRUCTING SIDEWALKS AND DRIVEWAY APPROACHES, STREET RESURFACING, STORM SEWERS, ADDING STREET LIGHTING AND STREET TREES, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 128-2011 passed September 12, 2011, notes in anticipation of bonds in the amount of \$565,000 dated October 12, 2011, were issued in part (\$120,000) for the purpose stated in Section 1, which notes will mature on October 11, 2012 (the Outstanding Notes);

WHEREAS, Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 14 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the bonds, is December 20, 2021;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, County of Summit, Ohio, that:

SECTION 1. It is necessary to issue bonds of this City in an aggregate principal amount of \$70,000 (the Bonds) for the purpose of paying the City's portion of the cost of improving Fifth Street, S.E. between certain termini by widening, curbing, constructing sidewalks and driveway approaches, street resurfacing, storm sewers, adding street lighting and street trees, together with all necessary appurtenances thereto, in the manner provided in Resolution No. 227-2000 adopted December 18, 2000.

SECTION 2. The Bonds shall be dated approximately October 1, 2013, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and shall mature in ten annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are substantially equal. The first principal installment is estimated to be December 1, 2014, and the first interest payment is estimated to be June 1, 2014.

SECTION 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$70,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds, and to retire, together with other funds available to the City, the Outstanding Notes. The Notes shall bear interest at a rate or rates not to exceed 5.00% per year (computed on a 360-day per year basis), payable at maturity and until the principal amount is paid or payment is provided for. If requested by the original purchaser, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the debt charges on the Notes, the principal amount of the Notes shall bear interest at a different rate or rates not to exceed 9% per year from the maturity date until the City pays or makes provision to pay that principal amount. The principal amount of the Notes and the rate or rates of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this ordinance.

SECTION 4. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America if so requested by the original purchaser and shall be payable, without deduction for services of the City's paying agent, at the designated office of The Huntington National Bank, or at the office of a bank or trust company requested by the original purchaser of the Notes, provided that such request

shall be approved by the Director of Finance after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose (the Paying Agent). The Notes shall be dated the date of issuance and shall mature one year from the date of issuance, as determined by the Director of Finance in the certificate of award, provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to seven days less than one year, as applicable, from the date of issuance by setting forth that maturity date in the certificate of award. If agreed to by the original purchaser, the Notes shall be prepayable without penalty or premium at the option of the City at any time prior to maturity as provided in this ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Paying Agent, by certified or registered mail to the original purchaser of the Notes and the Paying Agent not less than seven days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Notes and the Paying Agent. If money for prepayment is on deposit with the Paying Agent on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Director of Finance the original purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation.

SECTION 5. The Notes shall be signed by the Mayor and Director of Finance in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, provided that the entire principal amount may be represented by a single note. In addition, the Notes may be issued in the denominations of \$100,000 each or in any denomination that is the sum of (i) \$100,000 and (ii) \$5,000 or any whole multiple thereof and will not be exchangeable for other Notes in denominations of less than \$100,000. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (a) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (b) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (c) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (d) 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 City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. The Notes shall be sold at not less than par to the original purchaser designated by the Director of Finance in the certificate of award in accordance with law and the provisions of this ordinance. The Director of Finance shall sign the certificate of award referred to in Section 3 evidencing that sale, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance. The Director of

Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

SECTION 7. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is 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 those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due.

SECTION 10. The City covenants that it will use, and will restrict the use and investment, of the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute arbitrage bonds, private activity bonds or hedge bonds under Sections 141, 148 or 149 of the Code or (ii) be treated other than as bonds to which Section 103 of the Code applies and (b) the interest on the Notes will not be treated as an item as tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The City hereby represents that the notes dated October 12, 2011 and maturing October 11, 2012 (the Refunded Obligations) were designated as “qualified tax-exempt obligations” pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligations from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the Notes as “qualified tax-exempt obligations” and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as “qualified tax-exempt obligations”, it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (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 the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or

protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, 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 one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

SECTION 11. The Clerk of Council is directed to deliver a certified copy of this ordinance to the County Fiscal Officer.

SECTION 12. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith, credit and general property taxing powers (as described in Section 9) of the City are pledged for the timely payment of the principal of and interest on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 13. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 14. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to enable the City to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2012

Clerk of Council

President of Council

Approved: _____, 2012

Mayor