

**ORDINANCE 2001-120**

**AN ORDINANCE AUTHORIZING THE LEASE-PURCHASE FINANCING OF A CITY ADMINISTRATION BUILDING, INCLUDING A GROUND LEASE AGREEMENT AND A LEASE AGREEMENT, AND MATTERS RELATED THERETO AND DECLARING AN EMERGENCY.**

WHEREAS, the City Council of the City of Mason, Warren County, Ohio (the "City"), is in need of a city administration building to be located on Mason-Montgomery Road (the "Project"); and

WHEREAS, in order to provide financing for the acquisition and construction of such facilities and pursuant to Ohio Revised Code Section 715.01.1 and the City Charter it is determined to be necessary and appropriate to undertake a lease-purchase financing program as described herein; and

WHEREAS, the estimated cost of such facilities shall not exceed \$21,031,135 and the amount to be financed, including the cost of municipal bond insurance, debt service reserve fund, and other costs of issuance, shall not exceed \$25,000,000;

NOW, THEREFORE, be it ordained by the City Council of the City of Mason, Warren County, Ohio:

**SECTION 1.** It is hereby determined to be necessary and in the best interest of the inhabitants and citizens of the City, and the City hereby agrees, to acquire and construct, or cause to be acquired and constructed, the Project, in accordance with the plan of lease financing described in this Ordinance. The Project shall be acquired and constructed on a parcel of land presently owned by the City (referred to as the "Site") located on Mason-Montgomery Road in the City, all as more particularly described on Exhibit A to the Ground Lease Agreement referred to herein.

**SECTION 2.** The City shall lease the Site, together with such related portions of the Site as may be required to comply with the requirements of Seasongood & Mayer, LLC, Cincinnati, Ohio, and the municipal bond insurer, if any, to such entity as the City Manager of the City shall designate (the "Ground Lessor") pursuant to a Ground Lease Agreement (the "Ground Lease") to be dated as determined by the City Manager, in substantially the form presently on file with this Council, which is hereby approved. The Mayor, the Finance Director and City Manager of the City, or any of them, are hereby authorized to execute and deliver the Ground Lease on behalf of the City with such changes not substantially adverse to the City as the official executing the same may approve; the approval of such changes and that the same are not substantially adverse to the City shall be conclusively evidenced by the execution of the Ground Lease by such official. The initial term of the Ground Lease shall be until December 31, 2001, provided that the Ground Lessor or its assignee shall have the right to renew for a total of not more than twenty-five (25) additional one-year renewal terms beginning on January 1, 2002 and continuing on January 1 of each year thereafter through and including the last renewal term which shall not be later than January 1, 2026 to the earlier of December 31, 2026 or the termination date of the last permitted renewal term of the Lease (as defined below), as determined by the Finance Director. The Ground Lease shall provide for the payment, in advance for all permitted renewal terms, of rent in the amount of One Dollar (\$1.00) per year.

**SECTION 3.** The City shall sublease the Site and related grounds and facilities, if any, back from the Ground Lessor pursuant to a Lease Agreement (the "Lease") dated of even date with the Ground Lease, in substantially the form presently on file with this Council, which is hereby approved. The Mayor, the Finance Director and the City Manager, or any of them, are hereby authorized to execute and deliver the Lease on behalf of the City with such changes not substantially adverse to the City as the official executing the same may approve; the approval of such changes and that the same are not substantially adverse to the City shall be conclusively evidenced by the execution of the Lease by such official. The Lease shall require the City, as agent for the Ground Lessor, to acquire and construct or cause to be acquired and constructed on the Site, the Project, and shall provide, among other things, for the payment of Base Rent from the City to the Ground Lessor or its assignee. Base Rent shall be payable in periodic installments over the term of the Lease, in such amounts and at such times as shall be determined by the City

Manager, provided that the actual Base Rent payments shall not exceed in any year the amounts that would be required if the applicable interest rate were seven and one-half percent (7-1/2 %) per annum applied on a principal amount of not to exceed \$25,000,000. The initial term of the Lease shall be until December 31, 2001, provided that the City shall have the right to renew for a total of not more than twenty-five (25) additional one-year renewal terms as determined by the City Manager, beginning on January 1, 2002 and continuing on January 1 of each year thereafter through and including the last renewal term which shall not be later than January 1, 2026 to December 31, 2026. The Lease shall provide for termination in the event the City fails to appropriate funds adequate to pay rent due with respect to any renewal term.

**SECTION 4.** The City hereby consents to and approves the assignment of the Ground Lease and the Lease from the Ground Lessor to a bank to be selected by the Finance Director without further action of this Council, which bank shall be set forth in the Certificate of Award, as Trustee, and the execution of a Trust Indenture (the "Indenture") relating to the collection and distribution of rental payments and the issuance of Certificates of Participation (City of Mason Municipal Building Project) (the "Certificates") evidencing proportionate interests in the Base Rent to be paid by the City under the Lease. The form of the Indenture and of the Certificates in substantially the forms presently on file with this Council, and the issuance of the Certificates, are hereby approved. The Mayor, the Finance Director and the City Manager, or any of them, are hereby authorized to execute and deliver the Indenture on behalf of the City with such changes not substantially adverse to the City as the official executing the same may approve; the approval of such changes and that the same are not substantially adverse to the City shall be conclusively evidenced by the execution of the Indenture by such official. The City hereby authorizes and directs that the Certificates shall be sold to Seansonood and Mayer, LLC, Cincinnati, Ohio, at a price not less than the par value thereof, and resold at a price or prices approved by the City Manager. The City Manager is authorized and directed to arrange for the purchase of municipal bond insurance in connection with issuance of the Certificates, if in the City Manager's judgment, such insurance would result in a cost savings to the City. The determinations of the final terms of sale of the Certificates, and the resulting Lease terms, including the interest rate, financed amount, term, and amortization schedule, together with the terms of municipal bond insurance, if any, and any other matters required by this Ordinance to be determined or approved by the City Manager, shall be set forth by the City Manager in the Certificate of Award.

**SECTION 5.** The City agrees to execute and perform the Ground Lease and the Lease in accordance with the terms thereof. The City agrees to comply with the terms and conditions of the Indenture insofar as they relate to the City, and further agrees to comply with the terms and conditions of such additional documents and agreements relating thereto as shall be deemed, by the Mayor, the Finance Director or the City Manager, or any of them, in their discretion, necessary or appropriate in connection with the financing herein described.

**SECTION 6.** The Mayor, the Finance Director and the City Manager, or any of them, are hereby authorized and directed to execute and deliver, on behalf of the City, such additional instruments, documents, agreements, certificates, and other papers as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance in such forms as the official executing the same may approve.

**SECTION 7.** Nothing in the Ground Lease, the Lease, the Indenture, the Certificates, or any agreements or documents relating thereto shall constitute or be construed or deemed to constitute a debt or bonded indebtedness or a general obligation of this Council, the City or any agency of the City. Neither the taxing power nor the full faith and credit of this Council or the City are pledged or shall be pledged for the payment or security of the Ground Lease, the Lease, the Indenture, the Certificates, or any other related agreement or document.

**SECTION 8.** The City hereby covenants that it will restrict the use of the proceeds of the Lease and the Certificates hereby authorized 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 Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder and will, to the extent possible, comply with all other applicable provisions of the Code and the regulations thereunder to retain the Federal income tax exemption for interest on the Lease and the Certificates, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. The City Manager or any other officer having responsibility with respect to the issuance of the Certificates is authorized and directed 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 pertaining to said Section 148 and the Regulations.

The Lease has not been designated as a "qualified tax-exempt obligation" for the purposes set forth in Section 265(b)(3) of the Code.

**SECTION 9.** There is hereby appropriated from the net proceeds of the Certificates, to the extent the same are available for the payment of costs of the Project, a sum not to exceed \$3,968,865, to be used for the payment of such costs, as outlined herein, and funding a reserve fund for the Lease and the Certificates. There is further appropriated, from unappropriated funds currently on deposit in the General Fund of the City, the sum of \$810,000 to pay the cost of lease payments due or coming due under the Lease for the initial term ending December 31, 2001.

**SECTION 10.** The Mayor, the Finance Director and the City Manager, or any of them, are each hereby separately authorized, alone or with others, to prepare and distribute to prospective purchasers of the Certificates and other interested parties, a preliminary official statement or offering circular with respect to the Certificates on behalf of the City, which shall be in substantially the form presently on file with the Council, which is hereby approved, with such changes not substantially adverse to the City as such official may approve, and which shall be deemed final for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1) except for certain information excluded therefrom in accordance with such Rule. Such officials, or any of them, are hereby authorized to prepare, execute and deliver a final official statement or offering circular with respect to the Certificates on behalf of the City, which shall be in such form and with such changes from the preliminary official statement or offering circular as the official executing the same may approve, and which shall be deemed to be final for purposes of Securities and Exchange Commission Rule 15c2-12(b)(3). Execution or delivery thereof on behalf of the City by such official shall be conclusive evidence of such authorization and approval and that any such changes are not substantially adverse to the City, and copies thereof are hereby authorized to be prepared and furnished to the purchaser of the Certificates for distribution to prospective purchasers of the Certificates and other interested persons.

The City hereby covenants and agrees that it will execute, comply with and carry out all of the provisions of a continuing disclosure certificate dated the date of issuance and delivery of the Certificates (the "Continuing Disclosure Certificate") in connection with the issuance of the Certificates. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Certificates; however, any holder of the Certificates may take such action as may be necessary and appropriate, including seeking specific performance, to cause the City to comply with its obligations under this paragraph and the Continuing Disclosure Certificate.

**SECTION 11.** 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.

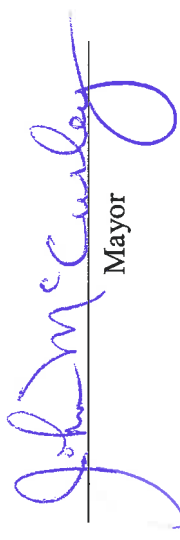
**SECTION 12.** That this ordinance is hereby declared to be an emergency measure for the reason that the public peace, health, safety and welfare of the inhabitants of the City of Mason require the immediate undertaking of a lease-purchase financing program to provide funds for the acquisition and construction of an administration building in the City, and this ordinance shall take effect immediately upon its adoption.

PASSED: June 25, 2001.

Attest:




Clerk of Council

  
\_\_\_\_\_  
Mayor

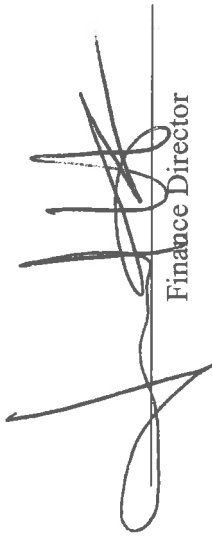
CERTIFICATE

The undersigned, Clerk of Council of the City of Mason, Warren County, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2001-126 passed by the Council of the City of Mason, Ohio, on July 9, 2001.

  
\_\_\_\_\_  
Clerk of Council

CERTIFICATE

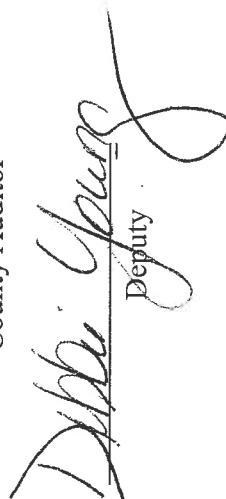
The undersigned, Finance Director of the City of Mason, County of Warren, Ohio, hereby certifies that a copy of the foregoing Ordinance No. \_\_\_\_\_ passed by the Council of the City of Mason, County of Warren, Ohio, on \_\_\_\_\_, 2001, was certified this day to the County Auditor of the County of Warren, Ohio.

  
\_\_\_\_\_  
Finance Director

RECEIPT

The undersigned, County Auditor of the County of Warren, Ohio, hereby acknowledges receipt this day of the foregoing Ordinance No. 120 passed by the Council of the City of Mason, County of Warren, Ohio, on July 9, 2001.

  
\_\_\_\_\_  
County Auditor

By:   
\_\_\_\_\_  
Deputy

July 17, 2001

**EXTRACT FROM MINUTES OF MEETING**

The Council of the City of Mason, County of Warren, Ohio, met in regular session, at 7:00 p.m., on the 9<sup>th</sup> day of July, 2001, at 302 W. Main St., Mason, Ohio, with the following members present:

*All present except Councilmember P. Dwyer.*

There was presented and read to Council Ordinance No. 2001-120, entitled:

**AN ORDINANCE AUTHORIZING THE LEASE-PURCHASE FINANCING OF A CITY ADMINISTRATION BUILDING, INCLUDING A GROUND LEASE AGREEMENT AND A LEASE AGREEMENT, AND MATTERS RELATED THERETO.**

Mr. Muenich moved to suspend the rule requiring each ordinance or resolution to be read on three different days. Mr. Staten seconded the motion and, the roll being called upon the question, the vote resulted as follows:

*All members of Council present voted Yes. (6)  
1 member was absent. (Councilmember P. Dwyer)*

Mr. Fox then moved that Ordinance No. 2001-120 be adopted. Mr. Muenich seconded the motion and, the roll being called upon the question, the vote resulted as follows:

*All members of Council present voted Yes. (6)  
1 member was absent. (Councilmember P. Dwyer)*

The ordinance was declared passed July 9, 2001.

**CERTIFICATE**

The undersigned, clerk of council of said municipality, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the council of said municipality, held on the 9<sup>th</sup> day of July, 2001, to the extent pertinent to consideration and adoption of the above-entitled legislation.

*Jessie Schuster*  
Clerk of Council