

ORDINANCE NO. 2009 - 29

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO
A LEASE AGREEMENT TO PROVIDE FINANCING AND
COMMITTING THE CITY TO UTILIZE THE MASON PORT AUTHORITY
CAPITAL FUNDING REVENUE BONDS (LOCAL GOVERNMENT POOLED
FINANCING PROGRAM) FOR AN EXPANSION OF THE
COMMUNITY CENTER AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Mason, Ohio (the "City") intends to construct improvements to the Mason Community Center (the "Community Center") in the City consisting of new additions, renovations, upgrades, and equipment acquisition and installation and related improvements; and

WHEREAS, the City of Mason expects the Community Center improvements to cost a minimum of \$14,000,000; and

WHEREAS, the Mason Port Authority (the "Port Authority") and RBC Capital Markets Corporation, Cincinnati, Ohio, as Program Administrator (the "Program Administrator"), have proposed the Mason Port Authority Capital Funding Revenue Bonds Local Government Pooled Financing Program (the "Program") whereby participating political subdivisions, by entering into lease-purchase agreements, or notes and loan agreements, and taking other related actions, may be able to achieve overall cost savings in their acquisition, installation and financing of improvements when compared to other options available to political subdivisions financing such improvements separately; and

WHEREAS, pursuant to authority provided in Sections 4582.21 et seq. of the Revised Code, this Council has determined it to be appropriate to participate in the Program to finance improvements to the Community Center (the "Project") by entering into a lease-purchase agreement (the "Lease") with the Port Authority in accordance with the standard terms and provisions of the Program as presented to this Council by the Program Administrator, providing for the leasing and eventual acquisition of the Project as described therein; and

WHEREAS, the portion of the Program to be utilized by the City provides that each participating political subdivision will enter into a Lease or Loan Agreement and conveyance, and assignment agreements, if required, of the types authorized by this Ordinance, with the Port Authority, which Port Authority has entered into, or will enter into, an Indenture of Trust (the "Indenture") with U.S. Bank National Association, or other financial institution as is selected by the Port Authority, as trustee (together with any successors, the "Trustee") assigning certain payments to be received with respect to such lease-purchase agreements to the Trustee and authorizing the issuance and sale of revenue bonds (the "Program Bonds") constituting special obligations of the Port Authority payable solely from payments to be received with respect to the Program leases and loans; and

WHEREAS, the City Council of the City of Mason (the "Council") determines to finance the cost of the Project by participating in the Program; and

WHEREAS, the Lease will provide the estimated cost of the Project, which shall not exceed \$18,500,000, including certain costs of participating in the Program, and may be paid to the Port Authority over time, together with certain additional amounts set forth in the Lease, as rentals over a period not to exceed 30 years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, 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 Lease Agreement referred to herein. The Project is expected to cost not less than \$14,000,000 and not more than \$18,500,000, and the City hereby determines it is necessary and in the best interest of the inhabitants and citizens of the City to finance those improvements by participating in the Program.

SECTION 2. That the above commitment to participate in the Program does not obligate the City to participate in the Program with respect to any improvements made to the Community Center pursuant to a Lease by and between the City and Bethesda Hospital, Inc.

SECTION 3. The City shall lease the Site, together with such related portions of the Site as may be required to comply with the requirements of the Program to the Port Authority (the "Ground Lessor") pursuant to a Ground Lease Agreement or other documentation acceptable to bond counsel and the City Manager (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 City Manager of the City, is 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 City Manager 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, 2009, provided that the Ground Lessor or its assignee shall have the right to renew for a total of not more than twenty-nine (29) additional one-year renewal terms beginning on January 1, 2010 and continuing on January 1 of each year thereafter through and including the last renewal term which shall not be later than January 1, 2038 to the earlier of December 31, 2038 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 4. The City shall sublease the Site and related grounds and facilities, if any, back from 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 as required by the Program, which is hereby approved. The City Manager, is 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 of the Lease by such official. The Lease shall require the City, as agent for the Port Authority, 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") and certain additional Program Payments ("Additional Rent", and together with the Base Rent, "Rent") from the City to the Ground Lessor or its assignee. Rent shall be payable in periodic installments over the term of the Lease, in such times as shall be determined by the Finance Director and set forth in the Lease, provided that the actual Rent payments shall not exceed in any year the amounts that would be required if the applicable interest rate were six percent (6%) per annum applied in a principal amount of not to exceed \$18,500,000. The initial term of the Lease shall be until December 31, 2009, provided that the City shall have the right to renew for a total of not more than twenty-nine (29) additional one-year renewal terms as determined by the City Manager, beginning on January 1, 2010 and continuing on January 1 of each year thereafter through and including the last renewal term which shall not be later than January 1, 2038 to December 31, 2038. The Lease shall provide for termination in the event the City fails to appropriate funds to pay rent due with respect to any renewal term.

SECTION 5. The City hereby consents to and approve the assignment of the Ground Lease and the Lease from the Ground Lessor to a bank to be selected by the Port Authority, as Trustee. The determinations of the final terms of Lease including interest rate, financed amount, term, and authorization schedule, and any other matters required by this Ordinance to be determined or approved by the City manager, shall be set forth in the Lease and other Program documents and shall be conclusively evidenced by the execution and delivery of the Lease and the Program documents.

SECTION 6. 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 Finance Director or the City Manager, or any of them, in their discretion, necessary or appropriate in connection with the financing herein described.

SECTION 7. 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 8. Nothing in the Ground Lease, the Lease, the Indenture, or any agreements or documents relating thereto shall continue or be constructed 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, or any other related agreement or document.

SECTION 9. The City hereby covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease, hereby authorized, in such manner and to the extent, if any, as may be necessary after taking into account reasonable expectations at the time the obligation is incurred, so that (a) the Program Bonds will not constitute "arbitrage bonds" or "hedge bonds" under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code") or be treated as bonds to which Section 103 of the Code applies and (b) the interest on the Program Bonds will not be an item of 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 Program Bonds 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 Lease to the governmental purposes 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, or property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

SECTION 10. There is hereby appropriated from the net proceeds of the Lease, to the extent the same are available for the payment of costs of the project, a sum not to exceed \$295,000, to be used for the payment of such costs, as outlined herein. There is further appropriated, from unappropriated funds currently on deposit in the General Fund of the City, the sum of \$736,463.07 to pay the cost of lease payments due or coming due under the Lease for the initial term ending December 31, 2009.

SECTION 11. That Council hereby appropriates \$500 for a commitment fee for participation in the Program and hereby authorizes and directs the City Finance Director to complete any applications or commitment forms deemed necessary by the Program's bond counsel and to pay the \$500 commitment fee to the Mason Port Authority.

SECTION 12. That the Council of the City of Mason, Ohio, hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of the council of the City and that all deliberations of the council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION 13. 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 require the immediate commitment to the Program to provide for the timely and efficient financing of the projects to which this Ordinance relates including obtaining a favorable interest rate, and shall take effect immediately upon its adoption.

PASSED: April 27, 2009.

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. 2009-29 passed by the Council of the City of Mason, Ohio, on April 27, 2009.



Clerk of Council

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 27th day of April, 2009, at 6000 Mason Montgomery Road, with the following members present: ALL PRESENT

There was presented and read to Council Ordinance No.2009-29, entitled:

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO
A LEASE AGREEMENT TO PROVIDE FINANCING AND
COMMITTING THE CITY TO UTILIZE THE MASON PORT AUTHORITY
CAPITAL FUNDING REVENUE BONDS (LOCAL GOVERNMENT POOLED
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M. _____ moved to suspend the rule requiring each ordinance or resolution to be read on three different days. M. _____ Seconded the motion and, the roll being called upon the question, the vote resulted as follows:

Prince Ms. Shimrock then moved that Ordinance No. 2009-29 be adopted. Mr. _____ Seconded the motion and, the roll being called upon the question, the vote resulted as follows: *All Yeas*

The ordinance was declared passed April 27, 2009.

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 27th day of April, 2009, to the extent pertinent to consideration and adoption of the above-entitled legislation.



Clerk of Council