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**ORDINANCE NO. O-05-147**

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ON THE QUESTIONS OF (1) THE LEVY OF A GENERAL LOCAL SALES AND USE TAX AT THE RATE OF ONE-QUARTER OF ONE PERCENT (0.25%) WITHIN THE CITY, (2) THE ISSUANCE OF NOT TO EXCEED \$11,565,000 OF REFUNDING BONDS BY THE CITY FOR THE PURPOSE OF REDEEMING THE CITY'S OUTSTANDING SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 1997A, AND (3) THE ISSUANCE OF NOT TO EXCEED \$7,525,000 OF CAPITAL IMPROVEMENT BONDS BY THE CITY FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF POLICE STATION FACILITIES; LEVYING THE GENERAL LOCAL SALES AND USE TAX AT THE RATE OF ONE-QUARTER OF ONE PERCENT (0.25%) WITHIN THE CITY; LEVYING A SPECIAL LOCAL SALES AND USE TAX AT THE RATE OF ONE-QUARTER OF ONE PERCENT (0.25%) WITHIN THE CITY, WHICH TAX SHALL CEASE UPON RETIREMENT OF THE BONDS; DEFINING THE TERM "SINGLE TRANSACTION"; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

**WHEREAS**, the City Council of the City of Conway, Arkansas (the "City") has determined that additional revenues can be obtained to fund City capital improvements by restructuring existing City indebtedness secured by sales and use tax receipts through the refunding of the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 1997A (the "Prior Bonds"); and

**WHEREAS**, the City Council has also determined that there is a critical need for a source of revenue to finance police station facilities within the City, including the acquisition of land and the construction and equipping of a building or buildings and related facilities thereon; and

**WHEREAS**, Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Municipal General Sales and Use Tax Act") authorizes the levy of general citywide sales and use taxes; and

**WHEREAS**, Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") authorizes the issuance of capital improvement bonds by municipalities, which bonds may be secured by the pledge of (i) all or a portion of the receipts of the general citywide sales and use tax prescribed by the Municipal General Sales and Use Tax Act and (ii) all of the receipts of the special citywide sales and use tax prescribed by the Local Government Bond Act; and

**WHEREAS**, said general and special citywide sales and use taxes are to be levied and collected only on the first \$2,500 of each single transaction; and

**WHEREAS**, if approved by the electors of the City, the City has determined to issue (1) its refunding bonds in principal amount not to exceed \$11,565,000 (the "Refunding Bonds") for the purpose of redeeming all of the outstanding Prior Bonds, and (2) its capital improvement bonds in principal amount not to exceed \$7,525,000 (the "Improvement Bonds") for the purpose of financing police station facilities within the City, including the acquisition of land and the construction and equipping of a building or buildings and related facilities thereon (the "Project"), which Refunding Bonds and Improvement Bonds are to be secured by a pledge of and lien upon (i) all of the receipts of a one-quarter of one percent (0.25%) special citywide sales and use tax (the "Special Sales and Use Tax") and (ii) all of the receipts of a one-quarter of one percent (0.25%) general citywide sales and use tax (the "General Sales and Use Tax"), all as authorized by the Local Government Bond Act; and

**WHEREAS**, receipts of the General Sales and Use Tax will be utilized to the extent needed, after application of the receipts of the Special Sales and Use Tax, for the payment of scheduled debt service on the Refunding Bonds and the Improvement Bonds, and thereafter may be utilized at the direction of the City Council to finance capital improvements within the City; and

**WHEREAS**, the purpose of this Ordinance is to call a special election on the levy by the City of the General Sales and Use Tax and the issuance by the City of the Refunding Bonds and the Improvement Bonds, and to define the term "single transaction";

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Conway, Arkansas:

**Section 1.** That under the authority of the Municipal General Sales and Use Tax Act and subject to approval by the electors of the City as provided in Section 4 below, there is hereby levied a sales tax at the rate of one-quarter of one percent (0.25%) on the gross receipts from the sale at retail within the City of all items and services which are subject to taxation under the Arkansas Gross Receipts Act of 1941, as amended (Arkansas Code of 1987 Annotated §26-52-101 *et seq.*), and an excise (or use) tax on the storage, use, distribution or other consumption within the City of tangible personal property or taxable services subject to taxation under the Arkansas Compensating Tax Act of 1949, as amended (Arkansas Code of 1987 Annotated §26-53-101 *et seq.*), at the rate of one-quarter of one percent (0.25%) on the sale price of the property or, in the case of leases or rentals, on the lease or rental price (collectively, the "General Sales and Use Tax"). The General Sales and Use Tax shall be levied and collected only on the first \$2,500 of each "single transaction" (as defined in Section 10 hereof). The levy and collection of the General Sales and Use Tax shall commence on and as of such date as provided in the Municipal General Sales and Use Tax Act. Revenues resulting from the collection of the General Sales and Use Tax shall be utilized to the extent needed (after application of receipts from the Special Sales and Use Tax described below) for the payment of scheduled debt service on the Refunding Bonds and the Improvement Bonds, and thereafter shall be applied as directed by the City Council to finance capital improvements within the City.

**Section 2.** That under the authority of the Local Government Bond Act and subject to approval of the issuance of either the Refunding Bonds or the Improvement Bonds by the electors of the City as provided in Section 4 below, there is hereby levied a sales tax at the rate of

one-quarter of one percent (0.25%) on the gross receipts from the sale at retail within the City of all items and services which are subject to taxation under the Arkansas Gross Receipts Act of 1941, as amended (Arkansas Code of 1987 Annotated §26-52-101 *et seq.*), and an excise (or use) tax on the storage, use, distribution or other consumption within the City of tangible personal property or taxable services subject to taxation under the Arkansas Compensating Tax Act of 1949, as amended (Arkansas Code of 1987 Annotated §26-53-101 *et seq.*), at the rate of one-quarter of one percent (0.25%) on the sale price of the property or, in the case of leases or rentals, on the lease or rental price (collectively, the "Special Sales and Use Tax"). The Special Sales and Use Tax shall be levied and collected only on the first \$2,500 of each "single transaction" (as defined in Section 10 hereof). The levy and collection of the Special Sales and Use Tax shall commence on and as of April 1, 2006, and shall cease upon retirement of the Refunding Bonds and the Improvement Bonds. Revenues resulting from the collection of the Special Sales and Use Tax shall be utilized solely for the payment of debt service on the Refunding Bonds and the Improvement Bonds.

**Section 3.** That under the authority of the Local Government Bond Act and subject to approval by the electors of the City as provided in Section 4 below, there is hereby authorized (1) the issuance of the City's refunding bonds in the aggregate principal amount of not to exceed \$11,565,000 (the "Refunding Bonds") for the purpose of redeeming the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 1997A (the "Prior Bonds"), and (2) the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$7,525,000 (the "Improvement Bonds") for the purpose of acquiring, constructing and equipping an integrated City police station facility (the "Project"). If the issuance of the Refunding Bonds and/or the Improvement Bonds is approved by the electors of the City, such bonds may thereafter be issued in one or more series from time to time in an aggregate principal amount not to exceed the respective principal amount(s) approved by the City's electors. If approved by the electors of the City and issued, the Refunding Bonds and the Improvement Bonds shall be secured by a pledge of and a lien upon all of the receipts of the Special Sales and Use Tax and the General Sales and Use Tax, as authorized by the Local Government Bond Act.

**Section 4.** That there be, and there is hereby called, a special election to be held on Tuesday, December 13, 2005, at which election there shall be submitted to the electors of the City the question of the levy of the General Sales and Use Tax and the questions of the issuance of the Refunding Bonds and the Improvement Bonds.

**Section 5.** That the questions shall be placed on the ballot for the special election in substantially the following forms:

Upon approval of both Questions 1 and 2 or all of Questions 1, 2 and 3 below, and the issuance of the Refunding Bonds (defined in Question 2), the City's existing levy of a one-half of one percent (0.50%) sales and use tax securing the Prior Bonds (defined in Question 2) shall cease and such tax will be replaced by the one-quarter of one percent (0.25%) General Sales and Use Tax (defined in Question 1) and the one-quarter of one percent (0.25%) Special Sales and Use Tax (defined in Question 2).

Question One:

There is submitted to the qualified electors of the City of Conway, Arkansas, the question of the levy of a general citywide sales and use tax at the rate of one-quarter of one percent (0.25%) (the "General Sales and Use Tax") pursuant to Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Municipal General Sales and Use Tax Act"). If approved by the electors of the City, receipts of the General Sales and Use Tax will be utilized to the extent needed, after application of the receipts of the Special Sales and Use Tax (defined in Question 2 below), for the payment of scheduled debt service on the Refunding Bonds (defined in Question 2 below) and the Improvement Bonds (defined in Question 3 below), and thereafter may be utilized at the direction of the City Council to finance capital improvements within the City. If approved, the levy and collection of the General Sales and Use Tax shall commence on and as of such date as provided in the Municipal General Sales and Use Tax Act. If the issuance of the Refunding Bonds (defined in Question 2 below) is not approved, the General Sales and Use Tax will not be levied.

Vote on the question by placing an "X" in one of the squares following the question, either for or against:

FOR adoption of a one-quarter of one percent (0.25%) local sales and use tax within the City of Conway, Arkansas.....

AGAINST adoption of a one-quarter of one percent (0.25%) local sales and use tax within the City of Conway, Arkansas.....

Question Two:

There is also submitted to the qualified electors of the City of Conway, Arkansas, the question of the issuance of refunding bonds in principal amount not to exceed \$11,565,000 (the "Refunding Bonds") pursuant to Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") for the purpose of refunding the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 1997A (the "Prior Bonds"). If the issuance of the Refunding Bonds is approved, the Refunding Bonds shall be secured by a pledge of and lien upon (i) all of the receipts of a special citywide sales and use tax at the rate of one-quarter of one percent (0.25%) levied pursuant to the Local Government Bond Act (the "Special Sales and Use Tax") and (ii) all of the receipts of the General Sales and Use Tax (defined in Question 1 above). If the issuance of the Refunding Bonds is approved, the levy and collection of the Special Sales and Use Tax shall commence on and as of April 1, 2006, and shall cease upon retirement of the Refunding Bonds and the Improvement Bonds (defined in Question 3 below). Upon the issuance of the Refunding Bonds, the City's existing levy of the half percent (0.50%) sales and use tax securing the Prior Bonds shall cease as provided in the Local Government Bond Act. If the

levy of the General Sales and Use Tax is not approved, the Refunding Bonds will not be issued and the Special Sales and Use Tax will not be levied.

Vote on the question by placing an "X" in one of the squares following the question, either for or against:

FOR the issuance of Refunding Bonds in principal amount not to exceed \$11,565,000 .....

AGAINST the issuance of Refunding Bonds in principal amount not to exceed \$11,565,000 .....

Question Three:

There is also submitted to the qualified electors of the City of Conway, Arkansas, the question of the issuance of capital improvement bonds in principal amount not to exceed \$7,525,000 (the "Improvement Bonds") pursuant to Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") for the purpose of financing an integrated City police station facility to be comprised of the acquisition of land and the construction and equipping of a building or buildings and related facilities thereon (the "Project"). If the issuance of the Improvement Bonds is approved, the Improvement Bonds shall be secured by a pledge of and lien upon (i) all of the receipts of a special citywide sales and use tax at the rate of one-quarter of one percent (0.25%) levied pursuant to the Local Government Bond Act (the "Special Sales and Use Tax") and (ii) all of the receipts of the General Sales and Use Tax (defined in Question 1 above). If the issuance of the Improvement Bonds is approved, the levy and collection of the Special Sales and Use Tax shall commence on and as of April 1, 2006, and shall cease upon retirement of the Improvement Bonds and the Refunding Bonds (defined in Question 2 above). If both the levy of General Sales and Use Tax and the issuance of the Refunding Bonds are not approved, the Improvement Bonds will not be issued.

Vote on the question by placing an "X" in one of the squares following the question, either for or against:

FOR the issuance of Improvement Bonds in principal amount not to exceed \$7,525,000 for the purpose of acquiring, constructing and equipping an integrated City police station facility to be comprised of land, a building or buildings and related facilities, which may include landscaping improvements, furniture, furnishings, fixtures, computers and related equipment and software, construction of parking facilities and sidewalks, any necessary road, drainage and utility improvements, and other related improvements.....

AGAINST the issuance of Improvement Bonds in principal amount not to exceed \$7,525,000 for the purpose of acquiring, constructing and equipping an integrated City police station facility to be comprised of land, a building or buildings and related facilities, which may include landscaping improvements, furniture,

furnishings, fixtures, computers and related equipment and software, construction of parking facilities and sidewalks, any necessary road, drainage and utility improvements, and other related improvements .....□

**Section 6.** That the election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for Arkansas municipal elections unless otherwise provided in the Local Government Bond Act, and only qualified voters of the City shall have the right to vote at the election. The City Clerk is hereby directed to give notice of the special election by one advertisement in *The Log Cabin Democrat*, the publication to be not less than ten (10) days prior to the date of the election.

**Section 7.** That a copy of this Ordinance shall be given to the Faulkner County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A **certified copy** of this Ordinance shall also be provided to the Director of the Department of Finance and Administration of the State of Arkansas as soon as practical, and at least forty-five (45) days prior to the date of the special election.

**Section 8.** That the results of the special election shall be proclaimed by the Mayor, and his proclamation shall be published one time in *The Log Cabin Democrat*. The proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the Circuit Court of Faulkner County within thirty (30) days after the date of publication of the proclamation.

**Section 9.** That the Mayor and the City Clerk, for and on behalf of the City, be, and they hereby are authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the levy of the General Sales and Use Tax and the issuance of the Refunding Bonds and/or the Improvement Bonds are approved by the electors, to cause the General Sales and Use Tax and the Special Sales and Use Tax to be collected in accordance with the Municipal General Sales and Use Tax Act and the Local Government Bond Act, respectively, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

**Section 10.** That, for purposes of the General Sales and Use Tax and the Special Sales and Use Tax, the term "single transaction" is defined according to the nature of the goods purchased as follows:

A. When two (2) or more devices in which, upon which or by which any person or property is, or may be, transported or drawn, including, but not limited to, on-road vehicles, off-road vehicles or farm vehicles, whether required to be licensed or not, airplanes, water vessels, motor vehicles, non-motorized vehicles or mobile homes, are sold to a person by a seller, each individual unit, whether part of a "fleet" sale or not, shall be treated as a single transaction for the purposes of the General Sales and Use Tax and the Special Sales and Use Tax;

B. Charges for utility services which are subject to the General Sales and Use Tax and the Special Sales and Use Tax, and which are furnished on a continuous service basis, whether such services are paid for daily, weekly, monthly or annually, shall be computed in daily increments, and each such daily

charge increment shall be considered to be a single transaction for the purposes of the General Sales and Use Tax and the Special Sales and Use Tax.

C. For sales of building materials and supplies to contractors, builders or other persons, a single transaction, for the purposes of the General Sales and Use Tax and the Special Sales and Use Tax, shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales or use tax figure has been reported and remitted to the State of Arkansas;

D. When two (2) or more items of major household appliances, major equipment or machinery are sold, each individual unit shall be treated as a single transaction for the purposes of the General Sales and Use Tax and the Special Sales and Use Tax.

E. For groceries, drug items, dry goods and other tangible personal property and/or services not expressly covered in this Section 10, a single transaction, for the purposes of the General Sales and Use Tax and the Special Sales and Use Tax, shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales tax figure has been reported and remitted to the State of Arkansas.

Section 2 of Ordinance No. O-81-42 and Section 7 of Ordinance No. O-01-76 are hereby amended to conform to the language in this Section 10.

**Section 11.** That all ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 12.** That it is hereby ascertained and declared that there is a critical need to restructure the City's outstanding indebtedness through the refunding of the Prior Bonds and to obtain an additional source of revenue to finance needed capital improvements, including the Project, all in order to promote and protect the health, safety and welfare of the inhabitants of the City. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health and safety shall be in force and effect immediately from and after its passage.

PASSED AND APPROVED this 25<sup>th</sup> day of October, 2005.

APPROVED:

By:   
Mayor

ATTEST:

By:   
City Clerk


(SEAL)



**CERTIFICATE**

The undersigned, City Clerk of the City of Conway, Arkansas, hereby certifies that the foregoing is a true and perfect copy of an Ordinance adopted at a regular meeting of the City Council of the City of Conway, Arkansas, held at 6:30 p.m. on October 25, 2005.

DATED: 10-28, 2005

  
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City Clerk