

City of Conway

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Doc#2014- 8848

ORDINANCE NO. O-14-48

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ON THE QUESTIONS OF (1) THE ISSUANCE OF NOT TO EXCEED \$7,500,000 OF REFUNDING BONDS BY THE CITY FOR THE PURPOSE OF REDEEMING THE CITY'S OUTSTANDING SALES AND USE TAX CAPITAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2012, AND (2) THE ISSUANCE OF NOT TO EXCEED \$21,000,000 OF CAPITAL IMPROVEMENT BONDS BY THE CITY FOR THE PURPOSE OF FINANCING CITY STREET IMPROVEMENTS; LEVYING A SPECIAL LOCAL SALES AND USE TAX AT THE RATE OF ONE-EIGHTH OF ONE PERCENT (0.125%) WITHIN THE CITY TO BE PLEDGED TO THE PAYMENT OF THE BONDS, WHICH TAX SHALL CEASE UPON RETIREMENT OF THE BONDS; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City") has previously issued and there are presently outstanding its Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2012, in the aggregate principal amount of \$8,525,000 (the "Prior Bonds"); and

WHEREAS, the City Council has determined that additional revenues can be obtained to finance critically needed City street improvements by restructuring existing City indebtedness secured by sales and use tax receipts through the refunding of the Prior Bonds; 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 of up to one percent (1.000%) in increments of one-eighth of one percent (0.125%); and

WHEREAS, pursuant to the Municipal General Sales and Use Tax Act, the City has previously levied a general citywide sales and use tax of one-eighth of one percent (0.125%) (the "General Sales and Use Tax"), which levy was approved by the electors of the City at a special election held February 14, 2012; and

WHEREAS, Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") authorize 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 a special citywide sales and use tax prescribed by the Local Government Bond Act; and

WHEREAS, if approved by the electors of the City, the City has determined to issue (i) its refunding bonds in principal amount not to exceed \$7,500,000 (the "Refunding Bonds") for the purpose of redeeming all of the outstanding Prior Bonds, and (ii) its capital improvement bonds in principal amount not to exceed \$21,000,000 for the purpose of financing the construction of City street improvements (the "Street Improvement Bonds"), which Refunding

Bonds and Street Improvement Bonds are to be secured by a pledge of and lien upon (a) all of the receipts of a one-eighth of one percent (0.125%) special citywide sales and use tax (the "Special Sales and Use Tax") and (b) all of the receipts of the existing one-eighth of one percent 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 Street Improvement Bonds and thereafter may be utilized at the direction of the City Council for any permitted municipal purpose; and

WHEREAS, the purpose of this Ordinance is to call a special election on the issuance by the City of the Refunding Bonds and the Street Improvement Bonds;

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

Section 1. That under the authority of the Local Government Bond Act and subject to approval by the electors of the City of both Question One and Question Two set forth in Section 6 below, there is hereby levied (i) a sales tax at the rate of one-eighth of one percent (0.125%) 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 (i) an excise (or use) tax at the rate of one-eighth of one percent (0.125%) 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.*), 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 the net collections received after deduction of the administrative charges of the State of Arkansas and required rebates shall be utilized only for the payment of debt service on those Bonds approved by the voters. The Special Sales and Use Tax shall be levied and collected only on the gross receipts, gross proceeds or sales price in the maximum amount allowed from time to time under Arkansas law, subject to rebates and limitation as required for certain "single transactions" as from time to time required by Arkansas statutes. The levy and collection of the Special Sales and Use Tax shall commence on and as of such date as provided in the Local Government Bond Act and shall cease upon retirement in full of those Bonds approved by the voters.

Section 2. Net collections of the existing General Sales and Use Tax received after deduction of the administrative charges of the State of Arkansas and required rebates shall be utilized for the payment of debt service on those Bonds approved by the voters, to the extent needed after application of the net collections of the Special Sales and Use Tax, and shall thereafter be distributed only to the City for use as directed by the City Council for any permitted municipal purpose.

Section 3. That under the authority of Amendment 62 and the Local Government Bond Act and subject to approval by the electors of the City of both Question One and Question

Two as provided in Section 6 below, there is hereby authorized the issuance of the City's refunding bonds in the aggregate principal amount of not to exceed \$7,500,000 (the "Refunding Bonds") for the purpose of redeeming the City's outstanding Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2012 (the "Prior Bonds"). If approved by the electors of the City and issued, the Refunding 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 under the authority of Amendment 62 and the Local Government Bond Act and subject to approval by the electors of the City of Question One and Question Two as provided in Section 6 below, there is hereby authorized the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$21,000,000 (the "Street Improvement Bonds") for the purpose of financing the construction of City street improvements (the "Street Project"). If approved by the electors of the City and issued, the Street 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 5. That there be, and there is hereby called, a special election to be held on Tuesday, September 9, 2014, at which election there shall be submitted to the electors of the City the questions of the issuance of the Refunding Bonds and the Street Improvement Bonds.

Section 6. That the questions shall be placed on the ballot for the special election in substantially the following forms:

SPECIAL ELECTION ON BOND ISSUANCE

Upon approval of both Questions One and Two, and upon the issuance of the Refunding Bonds (defined in Question One), the City's existing levy of a one-eighth of one percent (0.125%) special sales and use tax (the "Existing Sales and Use Tax") securing the Prior Bonds (defined in Question One) shall cease and such tax will be replaced by the one-eighth of one percent (0.125%) Special Sales and Use Tax (defined in Question One). *Unless both Question One and Question Two are approved, none of the Bonds will be issued, the Special Sales and Use Tax will not be levied, and the Existing Sales and Use Tax will remain in place.*

Question One:

There is 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 \$7,500,000 (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 and Refunding Bonds, Series 2012 (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-eighth of one percent (0.125%) (the "Special Sales and Use Tax") levied pursuant to the Local Government Bond Act and (ii) all of the receipts of an existing general citywide sales and use tax at the rate of

one-eighth of one percent (0.125%) (the "General Sales and Use Tax") levied pursuant to Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Municipal General Sales and Use Tax Act"). 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 such date as provided by Arkansas law, and shall cease upon retirement of the Refunding Bonds and the Street Improvement Bonds (defined in Question Two below). Upon the issuance of the Refunding Bonds, the City's existing levy of a one-eighth of one percent (0.125%) sales and use tax securing the Prior Bonds shall cease as provided in the Local Government Bond Act.

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 \$7,500,000.....□

AGAINST the issuance of Refunding Bonds in principal amount not to exceed \$7,500,000.....□

Question Two:

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 \$21,000,000 (the "Street Improvement Bonds") pursuant to the Local Government Bond Act (defined in Question One above) for the purpose of financing the construction, extension and improving of City streets and improvements relating thereto. If the issuance of the Street Improvement Bonds is approved, the Street Improvement Bonds shall be secured by a pledge of and lien upon (i) all of the receipts of the Special Sales and Use Tax (defined in Question One above) and (ii) all of the receipts of the General Sales and Use Tax (defined in Question One above). If the issuance of the Street Improvement Bonds is approved, the levy and collection of the Special Sales and Use Tax shall commence on and as of such date as provided by Arkansas law, and shall cease upon retirement of the Refunding Bonds (defined in Question One above) and the Street Improvement Bonds.

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

FOR the issuance of Street Improvement Bonds in principal amount not to exceed \$21,000,000 for the purpose of financing the construction, extension and improving of City streets, which may include related bridge, sidewalk, lighting, traffic signal, utility adjustment, curbing, guttering and drainage improvements□

AGAINST the issuance of Street Improvement Bonds in principal amount not to exceed \$21,000,000 for the purpose of financing the construction, extension and

improving of City streets, which may include related bridge, sidewalk, lighting, traffic signal, utility adjustment, curbing, guttering and drainage improvements.....□

Section 7. 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 8. That a copy of this Ordinance shall be given to the Faulkner County Clerk and Board of Election Commissioners at least seventy (70) days prior to the date of the special election 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 and the Treasurer of the State of Arkansas as soon as practical.

Section 9. 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 10. 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 both the issuance of the Refunding Bonds and the Street Improvement Bonds are approved by the electors, to cause the Special Sales and Use Tax to be collected in accordance with the Local Government Bond Act, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 11. That the City considers this Ordinance to be its declaration of official intent to issue the Street Improvement Bonds and to make reimbursement with a portion of the proceeds thereof for all original expenditures incurred in the construction of the Street Project between the date that is sixty (60) days prior to the date of this Ordinance and the date a series of Street Improvement Bonds is issued for such purposes, plus a *de minimis* amount and preliminary expenditures, as such terms are defined in Section 1.150-2(f) of the Federal Income Tax Regulations.

Section 12. That Kutak Rock LLP is hereby engaged as Bond Counsel and Stephens Inc. and Crews & Associates, Inc. are hereby engaged as Underwriters with respect to the issuance of the Bonds. The fees and expenses of Bond Counsel and the Underwriters shall be a cost of issuance of the Bonds to be paid with Bond proceeds.


Section 13. That all ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 14. 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 critical City street improvements, 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.

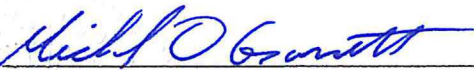
PASSED AND APPROVED this 10th day of June, 2014.

APPROVED:

By: 

Mayor Tab Townsell

ATTEST:

By: 


Michael O. Garrett
City Clerk/Treasurer

(S E A L)

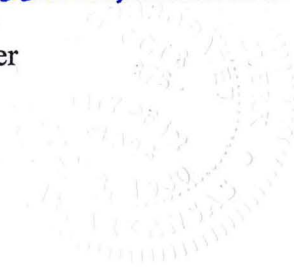
CERTIFICATE

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 June 10, 2014.

DATED: June 10, 2014



Michael O. Garrett
City Clerk/Treasurer



Doc#2014- 8848
Date 06/27/2014
08:02:13 AM
Filed & Recorded in *400849*
Official Records of
Faulkner County
RHONDA WHARTON
FAULKNER COUNTY CIRCUIT CLERK
Fees \$45.00
by *clm* _____ D. C.

CERTIFICATE OF RECORD
Doc#2014- 8848
06/27/2014
08:02:13 AM
Filed and Recorded in Official Records of
FAULKNER COUNTY
RHONDA WHARTON
FAULKNER COUNTY CIRCUIT CLERK
by *RW* _____ D. C.

