

ORDINANCE NO. 2011-12-382

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ON THE QUESTION OF THE ISSUANCE BY THE CITY OF TONTITOWN, ARKANSAS (THE "CITY") OF NOT TO EXCEED \$6,000,000 OF CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING CITY STREET IMPROVEMENTS; LEVYING A TEMPORARY SPECIAL LOCAL SALES AND USE TAX AT THE RATE OF ONE PERCENT (1.000%), WHICH TAX SHALL CEASE UPON RETIREMENT OF THE BONDS; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Tontitown, Arkansas (the "City") has determined that there is a critical need for a source of revenue to finance the construction of various City street and related improvements (the "Street Project"); and

WHEREAS, the City Council finds that a temporary source of revenue will be needed in order to provide for the financing of the Street Project; 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 bonds by cities to finance capital improvements such as the Street Project, which bonds may be secured by the pledge of all of the receipts of the 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 its capital improvement bonds in principal amount not to exceed \$6,000,000 (the "Bonds") for the purpose of financing the Street Project, which Bonds are to be secured by a pledge of and lien upon all of the receipts of a temporary one percent (1.000%) citywide sales and use tax (the "Sales and Use Tax"), as authorized by the Local Government Bond Act; and

WHEREAS, the purpose of this Ordinance is to call a special election on the issuance of the Bonds by the City, and for related purposes;

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

Section 1. That under the authority of the Local Government Bond Act, and subject to approval by the electors of the City of the issuance of the Bonds described in Section 5 below, there is hereby levied (i) a sales tax at the rate of one percent (1.000%) 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 (ii) an excise (or use) tax at the rate of one percent (1.000%) 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 "Sales and Use Tax").

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Betty Stamps Circuit Clerk
File 2011-00034411

The 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 the Bonds. The 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 limitations as required for certain "single transactions" as from time to time required by Arkansas statutes. The levy and collection of the 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 all of the Bonds.

Section 2. That under the authority of Amendment 62, the Local Government Bond Act, and subject to approval by the electors of the City of the question set forth in Section 5 below, there is hereby authorized the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$6,000,000 (the "Bonds") for the purpose of financing the costs of construction of the Street Project. If approved by the electors of the City and issued, the Bonds shall be secured by a pledge of and a lien upon all of the receipts of the Sales and Use Tax, as authorized by the Local Government Bond Act.

Section 3. That the Bonds may be issued in one or more series from time to time in an aggregate principal amount not to exceed the principal amount approved by the City's electors.

Section 4. That there be, and there is hereby called, a special election to be held on Tuesday, March 13, 2012, at which election there shall be submitted to the electors of the City the question of the issuance of the Bonds.

Section 5. That the question shall be placed on the ballot for the special election in substantially the following form:

SPECIAL ELECTION ON BOND ISSUANCE

Upon the approval and issuance of the Bonds (defined below), there will be levied a temporary one percent (1.000%) citywide sales and use tax (the "Sales and Use Tax"), the net collections of which remaining after the State of Arkansas deducts its administrative charges and after required rebates will be utilized solely for the payment of debt service on the Bonds approved and issued. The levy and collection of the Sales and Use Tax will commence on and as of such date as provided by Arkansas law and will cease upon retirement in full of all of the Bonds approved and issued. *The Sales and Use Tax will be levied only if the question described below is approved.*

There is submitted to the qualified electors of the City of Tontitown, Arkansas, the question of the issuance of capital improvement bonds in principal amount not to exceed \$6,000,000 (the "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 all or a portion of the costs of certain streets and improvements related thereto. If the issuance of the Bonds is approved, the Bonds will be secured by a pledge of and lien upon all of the receipts of the Sales and Use Tax described above.

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

FOR the issuance of Bonds in principal amount not to exceed \$6,000,000 for the purpose of financing the costs of constructing, paving, widening, resurfacing, repairing and straightening of City streets, which may include related bridge, sidewalk, lighting, traffic signal, utility adjustment, curbing, guttering and drainage improvements

AGAINST the issuance of Bonds in principal amount not to exceed \$6,000,000 for the purpose of financing the costs of constructing, paving, widening, resurfacing, repairing and straightening of City streets, which may include related bridge, sidewalk, lighting, traffic signal, utility adjustment, curbing, guttering and drainage 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 Recorder is hereby directed to give notice of the special election by one advertisement in a newspaper of general circulation within the City, 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 Washington County Board of Election Commissioners at least sixty (60) 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 8. That the results of the special election shall be proclaimed by the Mayor, and his proclamation shall be published one time in a newspaper of general circulation within the City. The proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the Circuit Court of Washington County within thirty (30) days after the date of publication of the proclamation.

Section 9. That the Mayor and the City Recorder, 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 issuance of the Bonds is approved by the electors, to cause the 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 10. That the City considers this Ordinance to be its declaration of official intent to issue the 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 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 11. 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 12. That the provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

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 for a continuing source of revenue to finance the Street Project 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 6 day of Dec, 2011.

APPROVED:

By: 

Mayor

ATTEST:

By: 

City Recorder

(S E A L)

CERTIFICATE

The undersigned, City Recorder of Tontitown, 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 Tontitown, Arkansas, held at 7:00 p.m. on 12-6-, 2011.

DATED: 12-6-, 2011


City Recorder