

CITY OF PARK HILLS, KY

ORDINANCE NO. 7, 2017

AN ORDINANCE APPROVING A LEASE WITH HERITAGE BANK, INC. FOR THE REFINANCING OF PUBLIC PROJECTS IN A MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$120,000; PROVIDING FOR THE PAYMENT AND SECURITY OF THE LEASE AND DEPOSITS TO A SINKING FUND; AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS RELATED TO SUCH LEASE; AND MAKING CERTAIN DESIGNATIONS REGARDING SUCH LEASE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Park Hills, Kentucky (the "City"), a municipal government and political subdivision of the Commonwealth of Kentucky (the "Commonwealth") heretofore entered into a Loan Agreement with Fifth Third Bank (the "Building Lease") relating to the acquisition of a building (the "Building Project"); and

WHEREAS, the City heretofore entered into a Loan Agreement with Fifth Third Bank (the "Fire Truck Lease," and together with the Building Lease, the "Original Leases") relating to the acquisition of a Fire Truck (the "Fire Truck Project," and together with the Building Project, the "Project"); and

WHEREAS, the City heretofore entered into a Lease Agreement (the "Prior Lease") with The Bank of Kentucky, Inc. to refinance the Project and achieve interest cost savings; and

WHEREAS, the City Council of the Lessee has previously determined, and hereby further determine, that the City is in need of the Project, which has been and will continue to be used for public purposes; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City to refinance the acquisition of the Project through a Lease Agreement (the "Lease") with Heritage Bank, Inc. (the "Lessor") in a maximum principal amount not to exceed \$120,000, pursuant to Section 65.940 et. seq. of the Kentucky Revised Statutes (the "Act").

WHEREAS, a balloon payment under the Prior Lease is scheduled to become due and payable prior to the date of the next regularly scheduled meeting of the City and the City has determined, in accordance with Section 66.078 of the Kentucky Revised Statutes, that in order to insure timely payment of amount due under the Prior Lease it is necessary at this time that the City adopt this Ordinance in emergency session.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK HILLS, KENTUCKY, AS FOLLOWS:

Section 1. Recitals and Authorization. The City, as lessee, hereby approves the Lease Agreement (the "Lease"), in substantially the form presented to this City Council. The recitals to this Ordinance are incorporated herein as if set forth in this Section in their entirety and are hereby found and determined to be true and correct. It is further found and determined that the

Project identified in the Lease is public property to be used for public purposes, that it is necessary and desirable and in the best interests of the City to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease and all representations, certifications and other matters contained in the closing memorandum with respect to the Lease, or as may be required by Dinsmore & Shohl LLP, as Bond Counsel, prior to delivery of the Lease, are hereby approved, ratified and confirmed. The Mayor and Clerk of the City are hereby authorized to execute the Lease, together with such other agreements or certifications which may be necessary to accomplish the transaction contemplated by the Lease.

Section 2. General Obligation Pledge. Pursuant to the Constitution of the Commonwealth and Chapter 66 of the Kentucky Revised Statutes, as amended (the "General Obligation Statutes"), the obligation of the City created by the Lease shall be a full general obligation of the City and, for the payment of the Lease Payments, the full faith, credit and revenue of the City are hereby pledged for the prompt payment thereof. During the period the Lease is outstanding, there shall be and there hereby is levied on all the taxable property in the City, in addition to all other taxes, without limitation as to rate, a direct tax annually in an amount sufficient to pay the Lease Payments on the Lease when and as due, it being hereby found and determined that current tax rates are within all applicable limitations. Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof provided, however, that in each year to the extent that the other taxes or revenues of the City are available for the payment of the Lease Payments and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in the City shall be reduced by the amount of such other taxes or revenues so available and appropriated.

There is hereby established, or it is acknowledged that there has heretofore been established, with the Lessee a sinking fund (the "Sinking Fund"), which is hereby ordered to be continued and maintained as long as the Lease shall remain outstanding. The funds derived from said tax levy hereby required or other available taxes shall be placed in the Sinking Fund and, together with interest collected on the same, are irrevocably pledged for the payment of all obligations issued under the General Obligation Statutes and all Tax Supported Leases, as defined in the General Obligation Statutes, including the Lease herein authorized, when and as the same fall due. Amounts shall be transferred from the Sinking Fund to the Lessor at the times and in the amounts required by the Lease.

Section 3. Expectation Regarding the Lease. The City, by the adoption of this Ordinance, certifies that it does not reasonably anticipate that less than 95% of the proceeds of the Lease will be used for "local government activities" of the City or that the aggregate face amount of all tax-exempt obligations issued by the City during calendar year 2017 will exceed \$5,000,000.

Section 4. Designation of the Lease as a Qualified Tax-Exempt Obligation. Pursuant to Section 265(b)(3)(B)(ii) of the Internal Revenue Code of 1986 (the "Code"), the City hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with the requirements of Section 265(b)(3)(D) of the

Code, the City hereby represents that the City (including all "subordinate entities" of the City within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates that it will not issue in calendar year 2017, tax-exempt obligations, in an amount greater than \$10,000,000.

Section 5. Declaration of an Emergency. This City Council hereby finds and determines that an emergency exists as a result of the amount due and payable under the Prior Lease prior to the date of the next regularly scheduled meeting of this City Council and that it is necessary that the second reading requirements of this Ordinance be suspended in accordance with Section 66.078 of the Kentucky Revised Statutes, as amended.

Section 6. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 7. Open Meetings Laws. This City Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Council, and that all deliberations of this City Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 8. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

Section 9. Effective Date. This Ordinance shall take effect from and after its passage and publication of a summary thereof, as provided by law.

INTRODUCED, SECONDED AND ADOPTED, at a duly convened emergency meeting of the City Council of the City of Park Hills, Kentucky, held on March 20, 2017, signed by the Mayor of the City, attested by the City Clerk, ordered published in summary form and filed and indexed as provided by law.


Mayor

Attest:



Clerk

CERTIFICATE

I, the undersigned Clerk of the City of Park Hills, certify that the foregoing is a true copy of an Ordinance adopted by the City Council of the City of Park Hills at an emergency meeting of the City Council held on March 20, 2017.

I further certify that all actions taken in connection with the Ordinance were in compliance with the requirements of KRS 61.810, 61.815, 61.820 and 61.823, and that said Ordinance is now in full force and effect, all as appears from the official records of the City in my custody and under my control.

Witness my hand as Clerk of the City of Park Hills this March 23rd, 2017.


Clerk

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