

ORDINANCE NO. 21-866

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ON THE QUESTIONS OF THE ISSUANCE OF SALES AND USE TAX REFUNDING (REFINANCING) BONDS AND SALES AND USE TAX CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING VARIOUS PARK AND RECREATION FACILITIES AND IMPROVEMENTS; LEVYING A REPLACEMENT TEMPORARY LOCAL SALES AND USE TAX AT THE RATE OF THREE-QUARTERS OF ONE PERCENT (0.750%) TO PAY DEBT SERVICE ON SUCH BONDS, WHICH TAX SHALL CEASE UPON RETIREMENT OF THE BONDS; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Municipal Sales and Use Tax Act") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") each authorize 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, Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and the Local Government Bond Act authorize the issuance of bonds by cities to finance capital improvements of a public nature, 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 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, pursuant to Amendment 62, the Municipal Sales and Use Tax Act and the Local Government Bond Act, the City of Clarksville, Arkansas (the "City") has previously issued and there are presently outstanding (i) its Sales and Use Tax Capital Improvement Bonds, Series 2011, in the aggregate principal amount of \$3,475,000 (the "Series 2011 Bonds"), and (ii) its Sales and Use Tax Capital Improvement Bonds, Series 2012, in the aggregate principal amount of \$4,130,000 (the "Series 2012 Bonds," and together with the Series 2011 Bonds, the "Prior Bonds"); and

WHEREAS, the Prior Bonds are secured by and payable from (a) all of the receipts of a temporary three-quarters of one percent (0.750%) citywide sales and use tax (the "Prior Tax") levied pursuant to the Local Government Bond Act, and (b) all of the receipts of a permanent one-quarter of one percent (0.250%) citywide sales and use tax (the "0.250% Permanent Sales and Use Tax") levied pursuant to the Municipal Sales and Use Tax Act; and

WHEREAS, the City Council has determined that there is a critical need for a source of revenue to finance the acquisition, design, construction, equipping and furnishing of various park and recreation facilities and improvements related thereto or in support thereof, including, but not limited to, the repair, renovation and expansion of the Marvin L. Vinson Multi-Purpose Building, a multi-field baseball complex, lighting and other improvements to the Clarksville Soccer Complex, various bike and walking trails, and an all-inclusive playground (the "Park and Recreation Improvements"); and

WHEREAS, the City Council finds that a temporary source of revenue will be needed in order to provide for the financing of the Park and Recreation Improvements; 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 \$4,950,000 for the purpose of refunding and redeeming the Prior Bonds (the "Refunding Bonds"), and (ii) its capital improvement bonds in principal amount not to exceed \$8,500,000 for the purpose of financing the acquisition, design, construction and equipping of the Park and Recreation Improvements (the "Park and Recreation Improvements Bonds"), which Refunding Bonds and Park and Recreation Improvements Bonds are to be equally and ratably secured by a pledge of and lien upon (a) all of the receipts of a temporary three-quarters of one percent (0.750%) citywide sales and use tax (the "0.750% Temporary Sales and Use Tax"), which 0.75% Temporary Sales and Use Tax shall replace the existing Prior Tax securing the Prior Bonds, and (b) all of the receipts of an existing permanent one-quarter of one percent (0.250%) citywide sales and use tax (the "0.250% Permanent Sales and Use Tax"), all as authorized by Amendment 62, the Local Government Bond Act and the Municipal Sales and Use Tax Act; and

WHEREAS, the net receipts of the 0.250% Permanent Sales and Use Tax will be utilized by the City for the payment of scheduled debt service on the Refunding Bonds and the Park and Recreation Improvements Bonds, if their issuance is approved by the electors, to the extent needed after application of the net receipts of the 0.750% Temporary Sales and Use Tax for such purpose; and

WHEREAS, the purpose of this Ordinance is to call a special election on the issuance of the Refunding Bonds and the Park and Recreation Improvements Bonds (collectively, the "Bonds") by the City and for related purposes;

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

Section 1. That under the authority of the Amendment 62 and the Local Government Bond Act, and subject to approval by the electors of the City of Question One and Question Two, all as set forth in Section 4 below, there is hereby levied (i) a sales tax at the rate of three-quarters of one percent (0.750%) 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 three-quarters of one percent (0.750%) 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 "0.750% Temporary Sales and Use Tax"). The 0.750% Temporary 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 approved by the voters. The 0.750% Temporary 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 law. The levy and collection of the 0.750% Temporary 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 approved by the voters. Any collections of the Prior Tax received after the issuance of the Refunding Bonds (or any other excess collections of the Prior Tax) shall be used to provide for the payment of debt service on those Bonds approved by the voters.

Section 2. 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 in Section 4 below, there is hereby authorized (i) the issuance of the City's refunding bonds in the aggregate principal amount of not to exceed \$4,950,000 (the "Refunding Bonds") for the purpose of refunding and redeeming the Prior Bonds, and (ii) the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$8,500,000 (the "Park and Recreation Improvements Bonds") for the purpose of financing all or a portion of the costs of acquisition, design, construction and equipping of the Park and Recreation Improvements described in Question Two under Section 4 below. If approved by the electors of the City and issued, the aforementioned Refunding Bonds and Park and Recreation Improvements Bonds (collectively, the "Bonds") may be issued in one or more series from time to time in an aggregate principal amount not to exceed the respective principal amounts approved by the City's electors. Any Bonds so issued shall be secured by a pledge of and a lien upon all of the receipts of the 0.750% Temporary Sales and Use Tax and all of the receipts of the 0.250% Permanent Sales and Use Tax, as authorized by the Local Government Bond Act.

Section 3. That there be, and there is hereby called, a special election to be held on Tuesday, August 10, 2021, at which election there shall be submitted to the electors of the City the questions of the issuance of the Bonds.

Section 4. That the questions shall be placed on the ballot for the special election in substantially the following forms:

SPECIAL ELECTION ON BOND ISSUANCE

Upon the approval and issuance of the Refunding Bonds (defined in Question One below) and the Park and Recreation Improvements Bonds (defined in Question Two below) (collectively, the "Bonds"), the City's existing levy of a three-quarters of one percent (0.750%) citywide sales and use tax (the "Prior Tax") securing the Prior Bonds (defined in Question One) shall cease and such tax will be replaced by a temporary three-quarters of one percent (0.750%) citywide sales and use tax (the "0.750% Temporary 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 0.750% Temporary 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 net collections of an existing permanent one-quarter of one percent (0.250%) citywide sales and use tax (the "0.250% Permanent Sales and Use Tax") remaining after the State of Arkansas deducts its administrative charges and after required rebates will be utilized for the payment of debt service on any Bonds approved by the electors in

Questions One and Two to the extent needed after application of the net collections of the 0.750% Temporary Sales and Use Tax. *Unless Question One and Question Two described below are approved, none of the Bonds will be issued, the 0.750% Temporary Sales and Use Tax will not be levied, and the Prior Tax will remain in place until payment in full of the Prior Bonds.*

Question One (Refunding Bonds):

There is submitted to the qualified electors of the City of Clarksville, Arkansas, the question of the issuance of refunding (refinancing) bonds in principal amount not to exceed \$4,950,000 (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 (i) Sales and Use Tax Capital Improvement Bonds, Series 2011, and (ii) Sales and Use Tax Capital Improvement Bonds, Series 2012 (collectively, the "Prior Bonds"). If the issuance of the Refunding Bonds is approved, the Refunding Bonds will be secured by a pledge of and lien upon all of the receipts of the 0.750% Temporary Sales and Use Tax and all of the receipts of the 0.250% Permanent 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 Refunding Bonds in principal amount not to exceed \$4,950,000.....

AGAINST the issuance of Refunding Bonds in principal amount not to exceed \$4,950,000.....

Question Two (Park and Recreation Improvements Bonds):

There is submitted to the qualified electors of the City of Clarksville, Arkansas, the question of the issuance of capital improvement bonds in principal amount not to exceed \$8,500,000 (the "Park and Recreation Improvements 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 the acquisition, design, construction and equipping of various park and recreation facilities and improvements, which may include land acquisition and the repair, renovation and expansion of the Marvin L. Vinson Multi-Purpose Building, a multi-field baseball complex, lighting and other improvements to the Clarksville Soccer Complex, various bike and walking trails, and all-inclusive playground, and any necessary utility, landscaping, road and parking improvements related thereto. If the issuance of the Park and Recreation Improvements Bonds is approved, the Park and Recreation Improvements Bonds will be secured by a pledge of and lien upon all of the receipts of the 0.750% Temporary Sales and Use Tax and all of the receipts of the 0.250% Permanent 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 Park and Recreation Improvements Bonds in principal amount not to exceed \$8,500,000

AGAINST the issuance of Park and Recreation Improvements Bonds in principal amount not to exceed \$8,500,000

Section 5. 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 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 6. That a copy of this Ordinance shall be given to the Johnson 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 to the Treasurer of the State of Arkansas as soon as practical.

Section 7. 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 Johnson County within thirty (30) days after the date of publication of the proclamation.

Section 8. 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 issuance of the Refunding Bonds and the Park and Recreation Improvements Bonds described herein is approved by the electors, to cause the 0.750% Temporary 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 9. That the City considers this Ordinance to be its declaration of official intent to issue the Park and Recreation Improvements Bonds and to make reimbursement with a portion of the proceeds thereof for all original expenditures incurred in the acquisition, design, construction, equipping and furnishing of the Park and Recreation Improvements 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 10. That Kutak Rock LLP is hereby engaged as Bond Counsel and Crews & Associates, Inc. is hereby engaged as Underwriter with respect to the issuance of the Bonds. The fees and expenses of Bond Counsel and the Underwriter shall be a cost of issuance of the Bonds to be paid with Bond proceeds.

Section 11. 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 12. That all ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 13. That it is hereby ascertained and declared that there is a critical need for a continuing source of revenue to finance the Park and Recreation 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 May, 2021.

APPROVED:

By: *David Rieder*
Mayor

ATTEST:


By: *Barbara Blackwood*
City Clerk



CERTIFICATE

The undersigned, City Clerk of Clarksville, 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 Clarksville, Arkansas, held at 6 p.m. on May 10, 2021.

DATED: May 10, 2021


City Clerk