

ORDINANCE NO. O-07-54

AN ORDINANCE CALLING AND SETTING A DATE FOR A SPECIAL ELECTION ON THE QUESTIONS OF (1) THE ISSUANCE OF NOT TO EXCEED \$12,535,000 OF CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CITY PARK FACILITIES AND (2) THE ISSUANCE OF NOT TO EXCEED \$1,565,000 OF CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CITY TRAIL FACILITIES; EXTENDING THE LEVY OF THE ONE PERCENT (1.00%) TAX UPON GROSS RECEIPTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES ORIGINALLY LEVIED BY ORDINANCE NO. O-05-98; PLEDGING THE PROCEEDS FROM SAID ONE PERCENT (1.00%) TAX AND SEVENTY-FIVE PERCENT (75%) OF THE PROCEEDS FROM THE ONE PERCENT (1.00%) TAX UPON GROSS RECEIPTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES ORIGINALLY LEVIED BY ORDINANCE NO. O-05-97 TO THE PAYMENT OF THE CAPITAL IMPROVEMENT BONDS; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Conway, Arkansas (the "City") has determined that there is a critical need for a source of revenue to finance park and trail facilities within the City; and

WHEREAS, Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated (the "Advertising and Promotion Commission Act") authorizes the City to levy taxes upon the gross receipts from the sale of prepared food and beverages within the City; and

WHEREAS, pursuant to the provisions of Ordinance No. O-05-97 adopted on August 16, 2005, the City has levied a one percent (1.00%) tax ("A&P Tax No. 1") upon the gross receipts from the sale of prepared food and beverages within the City; and

WHEREAS, pursuant to the provisions of Ordinance No. O-05-97, 25% of the proceeds of A&P Tax No. 1 are to be utilized at the discretion of the City's Advertising and Promotion Commission (the "Commission") for any purpose authorized by the Advertising and Promotion Commission Act, and 75% of the proceeds of A&P Tax No. 1 are to be utilized by the Commission, at the direction of the Mayor and upon approval by the City Council, for the development, purchase and construction of parks and recreation facilities; and

WHEREAS, pursuant to the provisions of Ordinance No. O-05-98 adopted on August 16, 2005, the City has levied a second one percent (1.00%) tax ("A&P Tax No. 2") upon the gross receipts from the sale of prepared food and beverages within the City, which A&P Tax No. 2 is, by the terms of Ordinance No. O-05-98 (as clarified by Ordinance No. O-05-131 adopted on September 27, 2005), currently scheduled to expire on November 1, 2008; and

WHEREAS, pursuant to the provisions of Ordinance No. O-05-98, the proceeds of A&P Tax No. 2 are to be utilized by the Commission, at the direction of the Mayor and upon approval by the City Council, for the development, purchase and construction of City parks; and

WHEREAS, the Advertising and Promotion Commission Act 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 for the purpose of financing parks and recreation facilities, which bonds may be secured by the pledge of all or a portion of the receipts of taxes imposed under the Advertising and Promotion Commission Act, with the consent of the advertising and promotion commissions of such municipalities; and

WHEREAS, if approved by the electors of the City, the City has determined to issue (1) its capital improvement revenue bonds in principal amount not to exceed \$12,535,000 (the "Park Improvement Bonds") for the purpose of financing park facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the "Parks Project"), and (2) its capital improvement revenue bonds in principal amount not to exceed \$1,565,000 (the "Trail Improvement Bonds") for the purpose of financing trail facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the "Trails Project"), which Park Improvement Bonds and Trail Improvement Bonds are to be equally and ratably secured by a pledge of and lien upon (i) 75% of the receipts of A&P Tax No. 1 and (ii) all of the receipts of A&P Tax No. 2, all as authorized by the Advertising and Promotion Commission Act and the Local Government Bond Act; and

WHEREAS, in order to provide adequate security for the payment of the Park Improvement Bonds and the Trail Improvement Bonds, it is necessary that the temporary nature of A&P Tax No. 2 be eliminated and A&P Tax No. 2 extended to the date of final payment of any park improvement bonds or trail improvement bonds; and

WHEREAS, the purpose of this Ordinance is to call a special election on the issuance by the City of the Park Improvement Bonds and the Trail Improvement Bonds, and to extend the levy of A&P Tax No. 2 to the date of final payment of any park improvement bonds or trail 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 Advertising and Promotion Commission Act and the Local Government Bond Act, and subject to approval by the Commission and the electors of the City as provided in Section 2 below, there is hereby authorized (1) the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$12,535,000 (the "Park Improvement Bonds") for the purpose of financing park facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the "Parks Project"), and (2) the issuance of the City's capital improvement bonds in the aggregate principal amount of not to exceed \$1,565,000 (the "Trail Improvement

Bonds”) for the purpose of financing trail facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the “Trails Project”). If the issuance of either the Park Improvement Bonds or the Trail 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 Park Improvement Bonds and/or the Trail Improvement Bonds shall be secured by a pledge of and a lien upon (i) 75% of the receipts of A&P Tax No. 1 and (ii) all of the receipts of A&P Tax No. 2. Notwithstanding the aforementioned pledge and lien, the receipts of A&P Tax No. 2 will be utilized first, to the extent needed, for the purpose of paying scheduled debt service on the Park Improvement Bonds and the Trail Improvement Bonds, and the pledged receipts of A&P Tax No. 1 will be utilized for the payment of scheduled debt service on the Park Improvement Bonds and the Trail Improvement Bonds only after application of the pledged receipts of A&P Tax No. 2. The use of surplus collections of A&P Tax No. 1 and A&P Tax No. 2 will be controlled by the provisions of the Advertising and Promotion Commission Act, Ordinance No. O-05-97, Ordinance No. O-05-98 and the trust indenture governing the issuance of and security for the Park Improvement Bonds and the Trail Improvement Bonds.

Section 2. That there be, and there is hereby called, a special election to be held on Tuesday, June 12, 2007, at which election there shall be submitted to the electors of the City the questions of the issuance of the Park Improvement Bonds and the Trail Improvement Bonds.

Section 3. That the questions shall be placed on the ballot for the special election in substantially the following forms:

Question One:

There is 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 \$12,535,000 (the “Park Improvement Bonds”), pursuant to Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the “Local Government Bond Act”) and Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated (the “Advertising and Promotion Commission Act”), for the purpose of financing park facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the “Parks Project”). If the issuance of the Park Improvement Bonds is approved, the Park Improvement Bonds shall be secured by a pledge of and lien upon (i) 75% of the receipts of an existing one percent (1.00%) tax (“A&P Tax No. 1”) levied pursuant to Ordinance No. O-05-97 upon the gross receipts from the sale of prepared food and beverages within the City and (ii) all of the receipts of an existing one percent (1.00%) tax (“A&P Tax No. 2”) levied pursuant to Ordinance No. O-05-98 upon the gross receipts from the sale of prepared food and beverages within the City.

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 Improvement Bonds in principal amount not to exceed \$12,535,000 for the purpose of financing park facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City, which related facilities may include landscaping improvements, furniture, furnishings, fixtures, construction of parking facilities and sidewalks, any necessary road, drainage, utility, lighting and signage improvements, and other related improvements.....

AGAINST the issuance of Park Improvement Bonds in principal amount not to exceed \$12,535,000 for the purpose of financing park facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City, which related facilities may include landscaping improvements, furniture, furnishings, fixtures, construction of parking facilities and sidewalks, any necessary road, drainage, utility, lighting and signage improvements, and other related improvements.....

Question Two:

There is 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 \$1,565,000 (the "Trail Improvement Bonds"), pursuant to Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") and Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated (the "Advertising and Promotion Commission Act"), for the purpose of financing trail facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (the "Trails Project"). If the issuance of the Trail Improvement Bonds is approved, the Trail Improvement Bonds shall be secured by a pledge of and lien upon (i) 75% of the receipts of an existing one percent (1.00%) tax ("A&P Tax No. 1") levied pursuant to Ordinance No. O-05-97 upon the gross receipts from the sale of prepared food and beverages within the City and (ii) all of the receipts of an existing one percent (1.00%) tax ("A&P Tax No. 2") levied pursuant to Ordinance No. O-05-98 upon the gross receipts from the sale of prepared food and beverages within the City.

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

FOR the issuance of Trail Improvement Bonds in principal amount not to exceed \$1,565,000 for the purpose of financing trail facilities within the City, including the acquisition of land and interests in land and the construction and equipping of

structures and related facilities thereon and on existing land and interests in land owned by the City, which related facilities may include landscaping improvements, fixtures, construction of parking facilities and sidewalks, any necessary road, drainage, utility, lighting and signage improvements, and other related improvements.....□

AGAINST the issuance of Trail Improvement Bonds in principal amount not to exceed \$1,565,000 for the purpose of financing trail facilities within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City, which related facilities may include landscaping improvements, fixtures, construction of parking facilities and sidewalks, any necessary road, drainage, utility, lighting and signage improvements, and other related improvements.....□

Section 4. 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 5. 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.

Section 6. 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 7. Conditional upon the approval of Question One and/or Question Two set forth in Section 3 hereof at the June 12, 2007 special election, the levy of A&P Tax No. 2, previously limited to three years under the provisions of Section 1 of Ordinance No. O-05-98, shall be extended to the date of final payment of any park improvement bond or trail improvement bonds.

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 Park Improvement Bonds and/or the Trail Improvement Bonds are approved by the electors, to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 9. That all ordinances and parts thereof in conflict herewith, including particularly, certain provisions of Ordinance No. O-05-97 and Ordinance No. O-05-98, are hereby repealed to the extent of such conflict.

Section 10. That it is hereby ascertained and declared that there is a critical need to obtain an additional source of revenue to finance needed capital improvements, including the Parks Project and the Trail 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 8th day of May, 2007.

APPROVED:

By: 
Mayor

ATTEST:

By: 
City Clerk

(S E A L)