

CITY OF TWINSBURG

ORDINANCE 35-2008

AN ORDINANCE AUTHORIZING THE ISSUANCE OF REFUNDING BONDS IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$7,910,000 TO ADVANCE REFUND CERTAIN OUTSTANDING BONDS ISSUED IN 2001 AND 2002

BE IT ORDAINED by the City Council of Twinsburg, Ohio:

Section I. Findings and Determinations. This Council finds and determines the following matters (capitalized terms are defined in Section XIV):

- (a) This Council has previously authorized and issued (1) the Golf Course Bonds to retire certain outstanding notes, which were issued to pay the costs of acquiring a municipal golf course, constructing a maintenance building thereon, improving the parking area, and acquiring equipment in connection therewith; (2) the Senior Center Bonds to pay the costs of constructing an addition to and renovating an existing building and acquiring equipment and furniture to use as a senior citizens center; and (3) the Darrow Road Park Bonds to retire certain outstanding notes which were issued to acquire land on Darrow Road for conservation and a public park.
- (b) It is necessary for the City to issue the Series 2008B Refunding Bonds for the purpose of (1) advance refunding certain maturities of the Golf Course Bonds, the Senior Center Bonds, and the Darrow Road Park Bonds to achieve debt service savings, and (2) paying Financing Costs of the Series 2008B Refunding Bonds. The issuance of the Series 2008B Refunding Bonds for these purposes is in the best interest of the City.
- (c) All acts and conditions necessary to be performed by the City or to have been met for the issuance of the Series 2008B Refunding Bonds in order to make them legal, valid, and binding general obligations of the City, have been performed and met, or will have been performed and met at the time of delivery of the Series 2008B Refunding Bonds, as required by law.
- (d) No statutory or constitutional limitation of indebtedness or taxation will be exceeded by the issuance of the Series 2008B Refunding Bonds.
- (e) The Director of Finance has previously certified the maximum maturity of the Golf Course Bonds, the Senior Center Bonds, and the Darrow Road Park Bonds.

- (f) All formal actions of this Council relating to the enactment of this ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Revised Code.

Section II. Terms of the Series 2008B Refunding Bonds. The Series 2008B Refunding Bonds will have the following terms:

- (a) **Amount.** The Series 2008B Refunding Bonds must be issued in the maximum original principal amount of \$7,910,000. The original principal amount must be the amount necessary to refund the Refunded Prior Bonds and to pay Financing Costs of the Series 2008B Refunding Bonds. The principal amounts of the Series 2008B Refunding Bonds to be issued as Serial Bonds and as Term Bonds will be determined by the Mayor in the Certificate of Award.
- (b) **Date.** The Series 2008B Refunding Bonds must be dated March 1, 2008, or any later date, not more than 31 days before the Closing Date, as determined by the Mayor in the Certificate of Award.
- (c) **Maturity.** The Series 2008B Refunding Bonds must mature or be payable by Mandatory Sinking Fund Redemption in the amounts and on the Principal Payment Dates as follows:

Year	Amount	Year	Amount
2009	\$435,000	2019	430,000
2010	435,000	2020	430,000
2011	435,000	2021	430,000
2012	435,000	2022	430,000
2013	435,000	2023	430,000
2014	430,000	2024	425,000
2015	430,000	2025	425,000
2016	430,000	2026	425,000
2017	430,000	2027	160,000
2018	430,000		

The Mayor may adjust the principal payment schedule shown above, by (1) increasing or decreasing the principal amounts of the Series 2008B Refunding Bonds maturing or payable by Mandatory Sinking Fund Redemption on any one or more of the Principal Payment Dates, or (2) by shortening the schedule so that the Series 2008B Refunding Bonds will mature over a lesser number of years. The Mayor must set forth any adjustment of the principal payment schedule in the Certificate of Award.

(d) **Redemption Before Stated Maturity.** The Series 2008B Refunding Bonds will be subject to redemption before their stated maturity as described in this Section II(d), unless otherwise determined by the Mayor in the Certificate of Award.

(1) ***Mandatory Sinking Fund Redemption.*** If any of the Series 2008B Refunding Bonds are issued as Term Bonds, the Term Bonds will be subject to Mandatory Sinking Fund Redemption, in part, on the Mandatory Redemption Dates, at a redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date. The principal amounts to be paid by Mandatory Sinking Fund Redemption will be those in the principal payment schedule in Section II(c) above, unless otherwise determined in the Certificate of Award.

The City will have the option to deliver Term Bonds in any principal amount to the Registrar for cancellation. The City will be entitled to a credit against its obligation to pay Debt Service by Mandatory Sinking Fund Redemption on any future Mandatory Redemption Date for Term Bonds that (A) are delivered by the City to the Registrar, (B) have previously been redeemed other than by Mandatory Sinking Fund Redemption, or (C) have been purchased and canceled by the Registrar as provided in the Registrar Agreement.

(2) ***Optional Redemption.*** Unless otherwise determined by the Mayor in the Certificate of Award, the Series 2008B Refunding Bonds maturing on or after December 1, 2016 will be subject to redemption, at the option of the City, on or after June 1, 2016, in whole or in part on any date, in integral multiples of \$5,000, at the redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date.

The Mayor may determine to change the optional redemption provisions relating to the Series 2008B Refunding Bonds set forth above by (A) changing the earliest optional redemption date, which may be any date before the final maturity of the Series 2008B Refunding Bonds, and (B) changing the redemption prices for the Series 2008B Refunding Bonds, which may not exceed 110% in any year in which the Series 2008B Refunding Bonds are subject to optional redemption. The Mayor must set forth any change to the optional redemption provisions in the Certificate of Award.

The City's option to redeem the Series 2008B Refunding Bonds must be exercised by a notice from the Mayor to the Registrar as provided in the Registrar Agreement.

(3) **Terms of Redemption.** The procedures for partial redemption, for notice of redemption, and for payment of redeemed Series 2008B Refunding Bonds must be set forth in the Registrar Agreement.

(e) **Interest Rates.** The Series 2008B Refunding Bonds will bear interest at the rate or rates determined in the Certificate of Award. The weighted average of the rates of interest on the Series 2008B Refunding Bonds, determined by taking into account the principal amounts of the Series 2008B Refunding Bonds and the terms to maturity or Mandatory Redemption Dates of those principal amounts, may not exceed 9% per annum. Interest will be calculated on a 360-day year of twelve, 30-day months.

The Series 2008B Refunding Bonds will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date. Interest on the Series 2008B Refunding Bonds will be payable on the Interest Payment Dates until the principal amount has been paid or provided for. The Mayor must designate the first Interest Payment Date in the Certificate of Award, which must be either June 1 or December 1 following the date of the Series 2008B Refunding Bonds, as determined by the Mayor.

(f) **Form, Numbering, and Denominations.** The Series 2008B Refunding Bonds must be issued in fully registered form. They must be issued in Authorized Denominations and in such numbers as requested by the Original Purchaser and approved by the Mayor. They must be numbered as determined by the Registrar. They must express on their faces the purpose for which they are issued and that they are issued in accordance with this ordinance. The Series 2008B Refunding Bonds will be designated "Various Purpose Refunding Bonds, Series 2008B," unless otherwise designated in the Certificate of Award.

Section III. Payment. The Debt Service on the Series 2008B Refunding Bonds will be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal and any premium on the Series 2008B Refunding Bonds will be payable when due upon presentation and surrender of the Series 2008B Refunding Bonds at the office of the Registrar. Interest on the Series 2008B Refunding Bonds will be paid on each Interest Payment Date by check or draft mailed on the Interest Payment Date to the Holder as shown on the Register at the close of business on the 15th day of the month preceding the Interest Payment Date. Notwithstanding the foregoing, so long as the Series 2008B Refunding Bonds are issued in book-entry form in a book-entry system, Debt Service on the Series 2008B Refunding Bonds will be payable as provided in any agreement entered into by the City in connection with the book-entry system. Payment of Debt Service on any Bond will be made only to or upon the order of the Holder. All such payments will be valid and effectual to satisfy and discharge the City's liability upon that Bond to the extent of the amount or amounts so paid.

Section IV. Signing and Authentication of Series 2008B Refunding Bonds. The Series 2008B Refunding Bonds will be signed on behalf of the City by the Mayor and the Director of

Finance. In the absence of the Mayor, the Series 2008B Refunding Bonds will be signed by the President of Council, and in the absence of the Director of Finance, the Series 2008B Refunding Bonds will be signed by any deputy Director of Finance. Both signatures on the Series 2008B Refunding Bonds may be facsimiles.

No Bond will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the Bond is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Bond so authenticated has been duly issued, signed, and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the Registrar and approved by the Mayor on behalf of the City. The same person need not sign the certificate of authentication on all of the Series 2008B Refunding Bonds.

Section V. Registration; Transfer and Exchange; Book-Entry System.

- (a) **Registration.** So long as any of the Series 2008B Refunding Bonds remain outstanding, the City must cause the Registrar to maintain the Register. The person in whose name a Bond is registered on the Register will be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Neither the City nor the Registrar will be affected by any notice to the contrary, but the registration may be changed as provided in this Section and in the Registrar Agreement.
- (b) **Transfer and Exchange.** Any Series 2008B Refunding Bond may be exchanged for Series 2008B Refunding Bonds of any Authorized Denomination, as provided in the Registrar Agreement.

All Series 2008B Refunding Bonds issued and authenticated upon any exchange or transfer will be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Series 2008B Refunding Bonds surrendered upon that exchange or transfer.

- (c) **Book-Entry System.** The Series 2008B Refunding Bonds must be originally issued in book-entry form to a Depository, initially The Depository Trust Company, for use in a book-entry system upon the terms provided in the Registrar Agreement. Under the book-entry system, the Series 2008B Refunding Bonds will be registered in the name of a Depository or its nominee, the bond certificates in fully registered form will be deposited with and retained in the custody of the Depository or its agent, and the ownership of interests in the Series 2008B Refunding Bonds may be transferred only through a book entry on the records of the Depository.

Subject to the provisions of this ordinance relating to the City's Continuing Disclosure Agreement, the City and the Registrar must recognize and treat the Depository as the Holder of the Series 2008B Refunding Bonds for all purposes,

including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Series 2008B Refunding Bonds for use in a book-entry system or if the City determines to discontinue the book-entry system, the Mayor may attempt to establish a securities depository/book-entry relationship with another qualified Depository. If the Mayor does not or is unable to do so, the Mayor must direct the Registrar to make provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Series 2008B Refunding Bonds from the book-entry system.

Section VI. Sale of the Series 2008B Refunding Bonds. This Council authorizes and directs the Mayor to sell the Series 2008B Refunding Bonds in either a private sale or in a competitive bid on the best bid. The purchase price of the Series 2008B Refunding Bonds must not be less than 97% of the aggregate principal amount of the Series 2008B Refunding Bonds, plus any accrued interest on the Series 2008B Refunding Bonds from their date to the date of delivery and payment. The Mayor may sell the Series 2008B Refunding Bonds at the same time, in the same manner, and in the same offering with other bonds of the City, whether or not those other bonds have been consolidated with the Series 2008B Refunding Bonds in accordance with (c) below.

- (a) **Private Sale.** If the Mayor determines to sell the Series 2008B Refunding Bonds in a private sale, she may either sell the Series 2008B Refunding Bonds to an investment banker, acting as an underwriter, or to a financial institution or other entity or person, in a private placement. The Mayor may enter into a Purchase Agreement with the Original Purchaser in that private sale, or may sell the Series 2008B Refunding Bonds without a Purchase Agreement.
- (b) **Competitive Bid.** If the Mayor determines to sell the Series 2008B Refunding Bonds in a competitive bid on the best bid, this Council authorizes and directs the Mayor to sell the Series 2008B Refunding Bonds upon the following additional terms:
 - (1) The Mayor is authorized to determine whether the advertisement for bids will be in a newspaper of general circulation in Summit County, in a financial journal, by distribution of a request for bids, or otherwise, or any combination of those methods. The Mayor is further authorized to determine the manner and time or times of making that advertisement.
 - (2) The advertisement for bids must contain the information required by Section 133.30(C)(1), Revised Code. This Council determines that no bid security will be required in connection with a bid.
 - (3) The best bid must be determined based on net interest cost, determined by computing the interest payable to the stated maturity date or dates, plus any discount or minus any premium bid.

- (4) The Mayor may determine to permit bidders to bid for less than all the Series 2008B Refunding Bonds. If so, the best bid will be the bid or combination of bids that produces the lowest net interest cost determined as provided in (b)(3) above.
 - (5) Mayor is authorized to accept the best bid, presented by a responsible bidder, in accordance with this ordinance and the terms set forth in the advertisement.
 - (6) The Mayor may determine to reject any or all bids received and to waive any informality, irregularity, or defect.
- (c) **Consolidation.** If the Director of Finance determines it to be in the best interest of the City, she may combine the Series 2008B Refunding Bonds with one or more other general obligation bond issues of the City, payable from taxes subject to the seven-mill Charter tax limitation of the City. The Director of Finance must advise the Mayor of any such consolidation before the sale of the Series 2008B Refunding Bonds.
- (d) **Certificate of Award.** The Mayor must deliver a Certificate of Award to the Original Purchaser in connection with the sale of the Series 2008B Refunding Bonds. The Mayor must state in the Certificate of Award the original principal amount of the Series 2008B Refunding Bonds, the principal amounts to be issued as Serial Bonds or Term Bonds, the interest rates on the Series 2008B Refunding Bonds, the purchase price for the Series 2008B Refunding Bonds, and any other terms required by this ordinance. The Mayor may state in the Certificate of Award any changes in the date of the Series 2008B Refunding Bonds, any changes in the principal payment schedule, any changes in the redemption provisions, whether the Series 2008B Refunding Bonds will be issued in book-entry form, whether the Series 2008B Refunding Bonds are to be consolidated with other bond issues, and any other terms authorized by this ordinance.
- (e) **Delivery.** The Mayor must cause the Series 2008B Refunding Bonds to be prepared, signed, and delivered to the Original Purchaser. This Council authorizes and directs the Clerk of Council to deliver a true transcript of proceedings of the issuance of the Series 2008B Refunding Bonds to the Original Purchaser upon payment of the purchase price. This Council authorizes and directs the Director of Finance to provide to the Clerk of Council, for inclusion in the transcript, a statement of the indebtedness of the City and the other information required by Section 133.33, Revised Code.

Section VII. Disclosure.

- (a) **Primary Offering Disclosure—Official Statement.** This Council authorizes and directs the Mayor to (1) prepare or cause to be prepared, and to make or authorize modifications, completions, or changes of or supplements to, a disclosure document

in the form of an official statement, (2) determine, and certify or otherwise represent, when the official statement is to be “deemed final” (except for permitted omissions) or is a final official statement for purposes of the SEC Rule, (3) use and distribute, or authorize the use and distribution of, that official statement and any supplements in connection with the original issuance of the Series 2008B Refunding Bonds, and (4) complete and sign the final official statement together with certificates, statements, or other documents in connection with the finality, accuracy, and completeness of that official statement.

(b) **Secondary Market Disclosure—Continuing Disclosure Agreement.** For the benefit of the Holders of the Series 2008B Refunding Bonds and the beneficial owners of book-entry interests in the Series 2008B Refunding Bonds, the City agrees, as the only obligated person with respect to the Series 2008B Refunding Bonds under the SEC Rule, to provide financial information and operating data, financial statements, and notices, in the manner required for purposes of paragraph (b)(5)(i) of the SEC Rule.

(1) **Information Filing.** The City further agrees, in particular, to provide:

(A) to each NRMSIR and to the SID, (i) Annual Information for each City fiscal year, not later than the end of the ninth month following the end of the fiscal year, and (ii) when and if available, audited City financial statements for each of those fiscal years; and

(B) to each NRMSIR or to the MSRB, and to the SID, in a timely manner, notice of (i) any Specified Event if that Specified Event is material, (ii) the City’s failure to provide the Annual Information within the time specified above, and (iii) any change in the accounting principles applied in the preparation of its annual financial statements, any change in its fiscal year, its failure to appropriate funds to meet costs to be incurred to perform the Continuing Disclosure Agreement, and the termination of the Continuing Disclosure Agreement.

(2) **Continuing Disclosure Certificate.** To further describe and specify certain terms of the Continuing Disclosure Agreement, this Council authorizes and directs the Mayor to (A) complete, sign, and deliver the Continuing Disclosure Certificate, in the name and on behalf of the City, and (B) to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the SEC Rule), whether the City has obtained any credit enhancement for the Series 2008B Refunding Bonds, and the City’s expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and

whether they will be available together with, or separately from, the Annual Information.

- (3) **Disclosure Procedures.** This Council further authorizes and directs the Mayor to establish procedures to ensure compliance by the City with the Continuing Disclosure Agreement, including timely provision of information and notices as described above. Before making any filing in accordance with (b)(2) above or providing notice of the occurrence of any other events, the Mayor may consult with and obtain legal advice from bond counsel or other qualified independent special counsel selected by the City. The Mayor may rely upon that legal advice in determining whether a filing should be made.
- (4) **Amendments.** The City reserves the right to amend the Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency, formal defect, or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted by the City. Any amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account that waiver) would have complied with the requirements of the SEC Rule at the time of the primary offering of the Series 2008B Refunding Bonds, after taking into account any applicable amendments to or official interpretations of the SEC Rule, as well as any change in circumstances, and until the City has received either (A) a written opinion of bond counsel or other qualified independent special counsel selected by the City that the amendment or waiver would not materially impair the interests of Holders or beneficial owners of book-entry interests in the Series 2008B Refunding Bonds, or (B) the written consent to the amendment or waiver by the Holders of at least a majority of the principal amount of the Series 2008B Refunding Bonds then outstanding. Annual Information containing any revised operating data or financial information must explain, in narrative form, the reasons for any amendment or waiver and the impact of the change on the type of operating data or financial information being provided.
- (5) **Enforcement.** The Continuing Disclosure Agreement will be solely for the benefit of the Holders of, and beneficial owners of book-entry interests in, the Series 2008B Refunding Bonds. The exclusive remedy for any breach of the Continuing Disclosure Agreement by the City will be limited, to the extent permitted by law, to a right of Holders and beneficial owners to institute and maintain proceedings authorized at law or in equity to obtain the specific performance by the City of its obligations under the Continuing

Disclosure Agreement. Any individual Holder or beneficial owner may institute and maintain those proceedings to require the City to provide a filing if the filing is due and has not been made. Any proceedings to require the City to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any filing) may be instituted and maintained only (A) by a trustee appointed by the Holders and beneficial owners of not less than 25% in principal amount of the Series 2008B Refunding Bonds then outstanding, or (B) by Holders and beneficial owners of not less than 10% in principal amount of the Series 2008B Refunding Bonds then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1), Revised Code, as applicable, or any comparable successor provisions.

- (6) **Appropriation.** The performance by the City of the Continuing Disclosure Agreement will be subject to the annual appropriation of any funds that may be necessary to perform it.
- (7) **Term.** The Continuing Disclosure Agreement will remain in effect only for the period that the Series 2008B Refunding Bonds are outstanding in accordance with their terms and the City remains an obligated person with respect to the Series 2008B Refunding Bonds within the meaning of the SEC Rule. The obligation of the City to provide the Annual Information, audited financial statements, and notices of the events described above will terminate if and when the City no longer remains an obligated person with regard to the Series 2008B Refunding Bonds.

Section VIII. Financing Costs. The City retains the professional services and authorizes the payment of the Financing Costs for the Series 2008B Refunding Bonds, as provided in this Section VIII.

- (a) **Bond Counsel.** The City retains the legal services of Vorys, Sater, Seymour and Pease LLP, as bond counsel for the Series 2008B Refunding Bonds. The legal services will be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Series 2008B Refunding Bonds and rendering legal opinions upon the delivery of the Series 2008B Refunding Bonds. Bond Counsel will render those services to the City in an attorney-client relationship. Bond Counsel will be paid just and reasonable compensation for those legal services and will be reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services.
- (b) **Original Purchaser.** If the Mayor determines to sell the Series 2008B Refunding Bonds in a private sale, this Council authorizes and directs the Mayor to select the Original Purchaser, either as an underwriter or as a purchaser in a private placement. If the Mayor selects the Original Purchaser to act as an underwriter of the Series 2008B Refunding Bonds, the City retains the services of the Original Purchaser as

senior manager for the Series 2008B Refunding Bonds. The senior manager may designate additional members of the underwriting syndicate. The Original Purchaser will be paid for services in accordance with any Purchase Agreement.

- (c) **Ratings and Insurance.** If, in the judgment of the Mayor, the filing of an application for (1) a rating on the Series 2008B Refunding Bonds by one or more nationally recognized statistical rating organizations, or (2) a policy of insurance, from one or more bond insurance providers, to better assure the payment of Debt Service on the Series 2008B Refunding Bonds, is in the best interest of and financially advantageous to the City, this Council authorizes and directs the Mayor to prepare and submit those applications and to provide to those rating agencies or insurance providers the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under (i) below.
- (d) **Registrar.** This Council authorizes and directs the Mayor to appoint a Registrar for the Series 2008B Refunding Bonds. The Registrar must be a financial institution able to complete transfer and exchange functions for the Series 2008B Refunding Bonds in accordance with standards and conditions applicable to registered corporate securities. The City retains the services of the Registrar for the Series 2008B Refunding Bonds. The Registrar will perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Series 2008B Refunding Bonds as provided in this ordinance. The Registrar will be paid for those services in accordance with the Registrar Agreement.
- (e) **Financial Adviser.** This Council retains the services of Sudsina & Associates, LLC, as financial adviser for the Series 2008B Refunding Bonds. The Financial Adviser will be paid for those services in accordance with its letter of engagement. This Council authorizes the fees for the Financial Adviser's services to be included in the Financing Costs authorized under (i) below.
- (f) **Escrow Agent.** This Council authorizes and directs the Mayor to select an Escrow Agent for the Refunded Prior Bonds. The Escrow Agent must be a bank or trust company authorized to exercise corporate trust powers in Ohio. The Escrow Agent must be paid for its services in accordance with the Escrow Agreement or its letter of engagement. This Council authorizes the fees for the Escrow Agent's services to be included in the Financing Costs authorized under (i) below.
- (g) **Verification Agent.** This Council authorizes and directs the Mayor to select a Verification Agent. The Verification Agent must be an independent public accounting firm. The Verification Agent must be paid for its services in accordance with its letter of engagement.
- (h) **Limits on Authority of Service Providers.** In rendering the services described above, as independent contractors, those service providers must not exercise any

administrative discretion on behalf of the City in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State, the City, or any other political subdivision; or the execution of public trusts.

- (i) **Payment of Financing Costs.** This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Series 2008B Refunding Bonds. Those Financing Costs may be paid by the Original Purchaser in accordance with the Purchase Agreement. To the extent they are not paid by the Original Purchaser, this Council authorizes and directs the Mayor to provide for the payment of those Financing Costs from the proceeds of the Series 2008B Refunding Bonds to the extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

Section IX. Use of Proceeds and Refunding. The proceeds from the sale of the Series 2008B Refunding Bonds must be deposited and used and the Refunded Prior Bonds must be paid as provided in this Section IX.

- (a) This Council appropriates those proceeds for the following purposes, and those proceeds must be used for those purposes.
 - (1) Any accrued interest or premium received on the sale of the Series 2008B Refunding Bonds must be deposited in the Bond Retirement Fund of the City and used for the payment of interest on the Series 2008B Refunding Bonds on the first Interest Payment Date.
 - (2) An amount necessary to pay the Financing Costs of the Series 2008B Refunding Bonds, to the extent not paid by the Original Purchaser in accordance with the Purchase Agreement and to the extent that the Mayor determines to pay those Financing Costs from the proceeds of the Series 2008B Refunding Bonds, must be deposited in a separate fund and used for the payment of those Financing Costs.
 - (3) The remainder of the proceeds must be paid to the Escrow Agent for deposit into the Escrow Fund. If the proceeds of the Series 2008B Refunding Bonds in the Escrow Fund are not needed to pay the outstanding principal amount of, any redemption premium on, and any interest on, the Refunded Prior Bonds, as determined in the Verification Report, those excess proceeds must be transferred to the Bond Retirement Fund.
- (b) The money in the Escrow Fund is pledged for the purpose of refunding the Refunded Prior Bonds.
 - (1) The money in the Escrow Fund to be invested must be invested in direct obligations of or obligations guaranteed as to payment by the United States. Any money not so invested must remain uninvested.

- (2) The investments in the Escrow Fund must mature or be subject to redemption by and at the option of the holder of those investments not later than the date or dates when the money, together with interest or other investment income accrued on that money, will be required for that use.
- (3) The Verification Agent must deliver its Verification Report to the Escrow Agent and the City on the Closing Date. The Verification Report must establish that the investments in the Escrow Fund, together with the interest or other investment income on those investments and any uninvested money in the Escrow Fund, will be sufficient, without further reinvestment for the payment of principal of and interest on the Refunded Prior Bonds to the Redemption Date, and the payment of the principal, any premium, and interest on the Refunded Prior Bonds on the Redemption Date. The Verification Report must also determine the yield on the investments in the Escrow Fund and the yield on the Series 2008B Refunding Bonds and the Refunded Prior Bonds.
- (4) This Council authorizes and directs the Mayor to select the maturities of the Golf Course Bonds, Senior Center Bonds, and Darrow Road Park Bonds to be refunded, to establish the Redemption Date of the Refunded Prior Bonds, and to give any required notices of redemption of the Refunded Prior Bonds. The Redemption Date must be the earliest date on which the Refunded Prior Bonds are subject to redemption at par, or any earlier date that will achieve quarter interest cost savings to the City, or any later date that will achieve greater interest cost savings to the City and that is permitted by the Code.

Section X. Security and Source of Payment. The Series 2008B Refunding Bonds will be general obligations of the City.

- (a) This Council pledges to the payment of Debt Service on the Series 2008B Refunding Bonds the full faith and credit of the City including, without limitation:
 - (1) The general taxing power of the City, including the power to levy taxes within the seven-mill limitation of the City's Charter.
 - (2) Any money remaining from the sale of the Series 2008B Refunding Bonds after the payment of accrued interest or premium, and the Financing Costs of the Series 2008B Refunding Bonds and not required to refund the Refunded Prior Bonds.
- (b) During the years while the Series 2008B Refunding Bonds are outstanding, there will be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually, in an amount sufficient to pay Debt Service on the Series 2008B Refunding Bonds when due. The tax will not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax will be and is ordered to be computed, certified, levied, and extended upon the tax list

and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are computed, certified, levied, extended, and collected. The tax will be placed before and in preference to all other items and for its full amount. The money derived from that tax levy must be placed in the Bond Retirement Fund of the City and is irrevocably pledged for the payment of Debt Service on the Series 2008B Refunding Bonds, when and as that Debt Service falls due.

- (c) The tax provided in (b) and (c) above will be reduced in each year the Series 2008B Refunding Bonds are outstanding by the sum of the following items, if available to pay Debt Service on the Series 2008B Refunding Bonds and appropriated for that purpose:
- (1) Any surplus in the Bond Retirement Fund.
 - (2) Any proceeds of bonds issued to refund the Series 2008B Refunding Bonds.
 - (3) Any other money lawfully available to the City.

Section XI. Federal Tax Matters. The City covenants that it will take those actions required to maintain the Federal Tax Status of the Series 2008B Refunding Bonds and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status. Without limiting these covenants, the City specifically covenants as follows:

- (a) **Private Activity Bonds.** The City will apply the proceeds received from the sale of the Series 2008B Refunding Bonds to the uses described in Section IX. The City will not permit the use of the Projects by any person, will not secure or derive the money for payment of Debt Service on the Series 2008B Refunding Bonds by any property or payments, and will not loan the proceeds of the Series 2008B Refunding Bonds to any person, all in the manner as to cause the Series 2008B Refunding Bonds to be “private activity bonds” within the meaning of Code Section 141(a).
- (b) **Arbitrage.** The City will restrict the use of proceeds of the Series 2008B Refunding Bonds in the manner and to the extent as may be necessary, after taking into account reasonable expectations on the Closing Date of the Series 2008B Refunding Bonds, so that the Series 2008B Refunding Bonds will not constitute “arbitrage bonds” within the meaning of Code Section 148. The Mayor or any other official having responsibility for issuing the Series 2008B Refunding Bonds, is authorized and directed, alone or in conjunction with any other official, employee, or consultant of the City, to sign and deliver a certificate of the City, for inclusion in the transcript of proceedings for the Series 2008B Refunding Bonds. That certificate must set forth the reasonable expectations of the City on the Closing Date, regarding the amount and use of the proceeds of the Series 2008B Refunding Bonds in accordance with Code Section 148. If required, the City will limit the yield on any “investment property” (as defined in Code Section 148(b)(2)) acquired with the proceeds of the Series 2008B Refunding Bonds.

- (c) **Arbitrage Rebate.** Unless the gross proceeds of the Series 2008B Refunding Bonds are expended in accordance with one of the spending period exceptions set forth in Treas. Reg. §1.148-7, the City will pay the amounts required by Code Section 148(f)(2) to the United States at the times required by Code Section 148(f)(3). The City will maintain the books and records and make calculations and reports as are required to comply with the Code's arbitrage rebate requirements.
- (d) **Federal Guarantee.** The City will not permit the use of the Projects, or make loans of the proceeds of the Series 2008B Refunding Bonds, or invest the proceeds of the Series 2008B Refunding Bonds in a manner as to cause the Series 2008B Refunding Bonds to be "federally guaranteed" within the meaning of Code Section 149(b).
- (e) **Information Reporting.** This Council authorizes and directs the Mayor or any other official of the City having responsibility for issuing the Series 2008B Refunding Bonds to sign and file Form 8038-G for the Series 2008B Refunding Bonds with the Internal Revenue Service.
- (f) **Bank Qualified.** This Council designates the Series 2008B Refunding Bonds as "qualified tax-exempt obligations" if the Series 2008B Refunding Bonds meet the criteria of Code Section 265(b)(3) upon issuance.

Section XII. Signing and Delivery of Series 2008B Refunding Bonds and Documents.

This Council authorizes and directs the Mayor and the Director of Finance, or the person designated to sign in their absence, to sign and deliver the Series 2008B Refunding Bonds in accordance with Section IV of this ordinance. This Council authorizes and directs the Mayor to sign and approve a preliminary official statement, a final official statement, and supplements and amendments to both in accordance with Section VII of this ordinance. In the absence of the Mayor, those documents may be signed by the Director of Finance.

- (a) This Council authorizes and directs the Mayor to sign and deliver, on behalf of the City:
 - (1) The Certificate of Award.
 - (2) Any Purchase Agreement.
 - (3) The Registrar Agreement.
 - (4) The Continuing Disclosure Certificate.
 - (5) The Escrow Agreement.
 - (6) Any agreements or letters of representation in connection with a book-entry system for the Series 2008B Refunding Bonds.

- (7) Applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Series 2008B Refunding Bonds.
- (8) Applications for and agreements in connection with obtaining one or more ratings for the Series 2008B Refunding Bonds.

In the absence of the Mayor, this Council authorizes and directs the Director of Finance to sign and deliver any of those documents and certificates.

- (b) This Council authorizes and directs the Director of Finance to sign and deliver, on behalf of the City, in her capacity as fiscal officer of the City:
 - (1) Any certificates in accordance with Section 5705.41, Revised Code, required for any of the agreements in connection with the Series 2008B Refunding Bonds.
 - (2) The statements of indebtedness provided for in Section 133.33(B), Revised Code.

In the absence of the Director of Finance, this Council authorizes and directs any deputy Director of Finance to sign and deliver any of those documents and certificates and statements.

- (c) This Council authorizes and directs the Mayor, the Director of Finance, the Law Director, the Clerk of Council, and any other City officials:
 - (1) to sign and deliver any agreements, certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the issuance and sale of the Series 2008B Refunding Bonds, and that are not inconsistent with this ordinance; and
 - (2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

Section XIII. Certification to County Fiscal Officer. This Council directs the Clerk of Council to forward a certified copy of this ordinance and a copy of the Certificate of Award to the County Fiscal Officer.

Section XIV. Definitions. Words and terms are used in this ordinance with the following meanings:

“Annual Information” means the annual financial information and operating data of the type to be specified in the Continuing Disclosure Certificate in accordance with the SEC Rule.

“Authorized Denominations” means the denomination of \$5,000 or any integral multiple of \$5,000.

“Bond Proceedings” means, collectively, this ordinance, the Certificate of Award, the Continuing Disclosure Agreement, the Registrar Agreement, the Escrow Agreement, and the other proceedings of the City, including the Series 2008B Refunding Bonds, that provide collectively for, among other things, the rights of Holders and beneficial owners of the Series 2008B Refunding Bonds.

“Certificate of Award” means the certificate authorized by Section VI of this ordinance, setting forth the terms and other provisions of the Series 2008B Refunding Bonds required or authorized by this ordinance.

“Closing Date” means the date of delivery of and payment for the Series 2008B Refunding Bonds.

“Code” means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

“Continuing Disclosure Agreement” means the continuing disclosure agreement made by the City for the benefit of Holders and beneficial owners of the Series 2008B Refunding Bonds in accordance with the SEC Rule. It consists of the covenants in Section VII(b) of this ordinance and the Continuing Disclosure Certificate.

“Continuing Disclosure Certificate” means the certificate authorized by Section VII(b).

“Darrow Road Park Bonds” means the Darrow Road Land Acquisition Refunding Bonds, Series 2002 issued in the principal amount of \$3,065,000 to retire certain outstanding notes which were issued to acquire land on Darrow Road for conservation and a public park.

“Debt Service” means all amounts due as principal, interest, and any premium on an issue of securities.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book-entry system to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities in book-entry form.

“Escrow Agent” means the escrow agent selected by the Mayor under Section VIII(f).

“Escrow Agreement” means the agreement between the City and the Escrow Agent providing for the deposit of proceeds of the Series 2008B Refunding Bonds to refund the Refunded Prior Bonds.

“Federal Tax Status” means the status of the interest on the Series 2008B Refunding Bonds as excludable from gross income for federal tax income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

“Financial Adviser” means Sudsina & Associates, LLC.

“Financing Costs” means any financing costs authorized to be paid by Section 133.01(K), Revised Code.

“Golf Course Bonds” means the Golf Course Refunding Bonds, Series 2001 issued in the principal amount of \$2,444,997 to retire certain outstanding notes which were issued to pay the costs of acquiring a municipal golf course, constructing a maintenance building thereon, improving the parking area, and acquiring equipment in connection therewith.

“Holder” means, as to any Bond, the person in whose name the Bond is registered on the Register.

“Interest Payment Dates” means June 1 and December 1 of each year, beginning on the first Interest Payment Date designated by the Mayor in the Certificate of Award.

“Mandatory Redemption Dates” means December 1 in each of the years designated in the Certificate of Award as Mandatory Redemption Dates.

“Mandatory Sinking Fund Redemption” means redemption in accordance with the mandatory redemption requirements, if any, for the Series 2008B Refunding Bonds as determined in the Certificate of Award and as described in Section II(d).

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each nationally recognized municipal securities information repository designated from time to time by the SEC in accordance with the SEC Rule.

“Original Purchaser” means the entity selected by the Mayor under Section VIII(a) as the purchaser of the Series 2008B Refunding Bonds.

“Participant” means any participant contracting with a Depository under a book-entry system and includes securities brokers and dealers, banks and trust companies, and clearing corporations.

“Projects” means the following:

- (1) acquiring a municipal golf course, constructing a maintenance building thereon, improving the parking area, and acquiring equipment in connection therewith;
- (2) constructing an addition to and renovating an existing building and acquiring equipment and furniture to use as a senior citizens center; and
- (3) acquiring land on Darrow Road for conservation and a public park.

“Principal Payment Dates” means December 1 of the years set forth in the table in Section II(c) of this ordinance or in the Certificate of Award.

“Purchase Agreement” means any Bond Purchase Agreement between the City and the Original Purchaser, entered into in accordance with Section VI.

“Refunded Prior Bonds” means the maturities of the Senior Center Bonds, the Golf Course Bonds and the Darrow Road Park Bonds being refunded by the Series 2008B Refunding Bonds, as selected by the Mayor under Section IX(b)(4).

“Redemption Date” means the redemption date for the Refunded Prior Bonds, established by the Mayor under Section IX(b)(4).

“Register” means all books and records necessary for the registration, exchange, and transfer of the Series 2008B Refunding Bonds.

“Registrar” means the entity selected by the Mayor in the Certificate of Award in accordance with Section VIII(d) to serve as registrar for the Series 2008B Refunding Bonds.

“Registrar Agreement” means the agreement between the Registrar and the City for the provision of registration, authentication, paying agent, and transfer agent services in connection with the Series 2008B Refunding Bonds.

“SEC Rule” means SEC Rule 15c2-12.

“Senior Center Bonds” means the Senior Citizens Center Bonds, Series 2001 issued in the principal amount of \$2,399,997 to pay the costs of constructing an addition to and renovating an existing building and acquiring equipment and furniture to use as a senior citizens center.

“Serial Bonds” means Series 2008B Refunding Bonds designated as Serial Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and not subject to Mandatory Sinking Fund Redemption.

“Series 2008B Refunding Bonds” means the Various Purpose Refunding Bonds, Series 2008B, authorized by this ordinance.

“SID” means the state information depository with which filings are required to be made by the City in accordance with the SEC Rule.

“Specified Events” means any of the following events, with respect to the Series 2008B Refunding Bonds: principal and interest payment delinquencies; non-payment-related defaults; unscheduled draws on debt-service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the Series 2008B Refunding Bonds; modifications to rights of Holders or beneficial owners of the Series 2008B Refunding Bonds; bond calls; defeasances; release, substitution, or sale of property securing repayment of the Series 2008B Refunding Bonds; and rating changes.

“Term Bonds” means the Series 2008B Refunding Bonds designated as Term Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and subject to Mandatory Sinking Fund Redemption.

“Verification Agent” means the verification agent selected by the Mayor under Section VIII(g).

“Verification Report” means the report delivered by the Verification Agent in accordance with Section IX(b)(3).

Section XV. Emergency and Effective Date. This ordinance is hereby declared to be an emergency measure, necessary for the preservation of the public peace, health, safety, convenience, and welfare of the City of Twinsburg and its inhabitants, and for the further reason that this ordinance is required to be immediately effective in order to promptly issue and sell the Series 2008B Refunding Bonds, in order to take advantage of prevailing favorable interest rates and so achieve the maximum interest savings. If this ordinance receives the affirmative vote of five or more members of Council, it shall take effect and be in force immediately upon its enactment and approval of the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

APPROVED: _____

Robert McDermott, President of Council

Submitted to the Mayor for approval this

_____ day of _____, 2008

Approved by the Mayor _____, 2008

Katherine A. Procop, Mayor

Ordinance 35-2008

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ATTEST:

Marie K. Weaver, Clerk of Council

1st Rdg. _____

2nd Rdg. _____

3rd Rdg. _____

Passed: _____

Yes _____ No _____

PROPOSED

CERTIFICATE OF POSTING

I, Marie K. Weaver, Clerk of Council, of the City of Twinsburg, State of Ohio, do hereby certify that publication of the foregoing ordinances, resolutions was duly made by posting true copies thereof at five of the most public places in said City as determined by Section 113.02 of the Codified Ordinances of the City of Twinsburg; each for a period of fifteen days commencing on the _____

day of _____, 2008

Marie K. Weaver, Clerk of Council

City of Twinsburg

Approved as to legal form by:

David Maistros, Law Director

PROPOSED