

AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF \$45,000 FIRST MORTGAGE WATERWORKS REVENUE BONDS OF THE VILLAGE OF CENTERVILLE, OHIO, UNDER SECTION 12 OF ARTICLE XVIII OF THE CONSTITUTION FOR THE PURPOSE OF EXTENDING AND IMPROVING THE EXISTING MUNICIPAL WATERWORKS PLANT AND SYSTEM OF SAID VILLAGE, INCLUDING THE REFINANCING AT A LOWER RATE OF INTEREST OF THE PRESENTLY OUTSTANDING WATERWORKS MORTGAGE BONDS; TO AUTHORIZE THE EXECUTION OF A MORTGAGE OF SAID SYSTEM, THE EXTENSIONS AND IMPROVEMENTS THERETO AND THE REVENUES THEREOF TO SECURE THE BONDS HEREIN AUTHORIZED; TO PROVIDE A FRANCHISE TO BECOME EFFECTIVE IN THE EVENT OF FORECLOSURE OF SAID MORTGAGE; TO PROVIDE IN THE EVENT OF DEFAULT FOR THE APPOINTMENT OF A RECEIVER OF SAID WATERWORKS PLANT AND SYSTEM; AND TO DECLARE AN EMERGENCY.

WHEREAS the Village of Centerville now owns and operates as a public utility a municipal waterworks plant and system, the property and revenues of which are now mortgaged and pledged for the payment of the principal and interest of an issue of the first mortgage waterworks revenue bonds of said Village outstanding in the amount of \$35,500; and

WHEREAS by reason of the continued growth of said Village council has determined it to be necessary to extend and improve the said existing waterworks system and has further determined that in order to effect such purpose it is necessary to issue additional mortgage revenue bonds under Section 12 of Article XVIII of the Constitution of Ohio, the payment of such bonds to be likewise secured by mortgage of said waterworks properties and the revenues thereof; and

WHEREAS in order to dispose of such additional bonds upon a favorable basis and also to obtain a rate of interest upon the existing mortgage indebtedness of said system lower than the existing rate it has been found necessary to refinance the outstanding first mortgage waterworks revenue bonds so that the existing indebtedness and the additional financing for improvements of said system will together enjoy a first lien upon the properties and revenues of said system, and council has accordingly by resolution heretofore adopted determined to call and redeem on June 1, 1942 all the first mortgage waterworks revenue bonds of said Village now outstanding;

NOW THEREFORE, BE IT ORDAINED BY the Council of the Village of Centerville, Montgomery County, Ohio:

Section 1. That for the purpose of extending and improving the existing municipal waterworks plant and system of said Village, including the refinancing at a lower rate of interest of the presently outstanding waterworks mortgage bonds it is deemed necessary by the Council of the Village of Centerville, Ohio, to issue and sell mortgage revenue bonds of said Village in the aggregate amount of \$45,000, said bonds to be sold in installments as hereinafter provided; that said Bonds shall be secured only, but equally and ratably, by a mortgage hereinafter provided for which shall constitute a first lien upon the property and revenues of said Utility and all extensions and improvements, replacements and alterations at any time made in respect thereto, after provision only for the reasonable operation and maintenance expense thereof, and including a franchise stating the terms upon which, in the event of foreclosure, the purchaser may operate said utility, and by the covenant of said Village to maintain certain rates and collect certain charges for the facilities and service offered by said Utility; provided, however, that nothing in this ordinance shall be construed as pledging the general credit of said Village to the payment of the Bonds herein authorized, or any part thereof or interest thereon.

Section 2. Said Bonds shall be issued in the sum of \$45,00 as aforesaid, shall be dated June 1, 1942; shall bear interest at the rate or rates hereinafter provided, payable semi-annually on June first and December first of each year; shall be numbered from 1 to 45, both inclusive, shall be in the denomination of \$1000 each, and shall mature serially in the following amounts,

\$1000	on June 1	from 1943	to 1952,	inclusive
2000	on June 1	from 1943	to 1964,	inclusive
3000	on June 1	in 1965	and 1966,	"
2000	on June 1	1967		
3000	on June 1	1968		

The principal and interest on said Bonds shall be payable in lawful money of the United States of America at the office of The Winters National Bank & Trust Company, Dayton, Ohio. Bonds numbered 1 to 42, inclusive which are to be immediately issued as hereinafter provided, shall bear interest at the rate of three and one-half per centum per annum; and the balance of the bonds herein authorized, being bonds numbered from 43 to 45, inclusive, maturing on June, 1968, shall bear such rate of interest as shall be provided in the resolution of council awarding the same, provided, however, that the interest cost to the village of the funds representing the proceeds of sale thereof shall not exceed six per centum per annum as computed by standard tables of bond values.

Said Bonds shall be subject to call for redemption in whole or in part, in inverse serial number sequence of Bonds at such time outstanding on June 1, 1945 or on any interest paying date thereafter at a redemption price of the par value thereof plus a premium of five per cent if redeemed on or before June 1, 1946, or if redeemed thereafter, plus a premium decreasing from five per cent by one-quarter of one percent during each succeeding twelve month period. Such right of redemption shall be exercised by resolution or ordinance of council and notice of intention to redeem shall be given to the paying agent for and to the trustee of said Bonds, such ordinance or resolution to be passed and such notices to be given at least thirty (30) days prior to the date of call. Notice of such call shall also be published in a newspaper of general circulation in the County of Montgomery once a week for four consecutive weeks, the first insertion to be at least thirty (30) days prior to such date of call.

Section 3. Said Bonds shall be entitled "First Mortgage Waterworks Revenue Bonds" and upon the face of each of said bonds there shall be recited the constitutional provisions and the ordinance under which said bonds are authorized and issued. Each of said bonds shall express upon its face the purpose for which the same is issued and that said bond is payable only out of the gross revenues of the Utility and extensions and improvements thereof after provision only for operation and maintenance thereof, and is secured only by a mortgage upon the property and revenues of said Utility and extensions thereof, which mortgage includes a franchise stating the terms on which, in the event of foreclosure, the purchaser may operate said Utility for a period of twenty years after the date of sale thereof. Said Bonds shall be signed by the Mayor and fiscal officer of the Village, sealed with the corporate seal of the Village, and each of the interest coupons attached thereto shall bear the facsimile signature of said fiscal officer. Said Bonds shall be prepared, issued and delivered under the direction of the Mayor and said fiscal officer. Each of said Bonds shall contain the following provisions:

"This bond is subject to the conditions and every holder hereof by accepting the same agrees with the obligor and every subsequent holder hereof, that (a) the delivery of this bond to any transferee if not registered, or if it be registered if the last registered transfer to be to the bearer,

shall vest title to this bond and the interest represented thereby in such transferee to the same extent for all purposes as would the delivery under like circumstances of any negotiable instrument payable to bearer: (b) the obligor and any agent of the obligor may treat the bearer of this bond, or if it be registered in the name of a holder, the registered holder of this bond, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary; (c) the principal of and the interest on this bond will be paid, and this bond and each of the coupons appertaining thereto are transferable, free from and without regard to any equities between the obligor and the original or any intermediate holder or to any set-offs or counter-claims; and (d) the surrender to the obligor or any agent of the obligor, of each of the coupons or of this bond if not registered, or if it be registered if the last registered transfer be to bearer, or the receipt of the registered holder for the principal hereof if this bond be registered in the name of a holder shall be a good discharge to the obligor for the same."

Section 4. Said Bonds shall be sold and delivered as follows:

(a) Bonds numbered from 1 to 40, inclusive, aggregating \$40,000 in principal amount, being all bonds maturing in the years 1943 to 1966, inclusive, are hereby sold and awarded to Merrill, Turben & Company pursuant to their written offer therefor dated April 20, 1942 for an aggregate sale price of \$38,400 plus accrued interest to date of delivery.

(b) Bonds numbered 41 and 42 aggregating \$2,000 in principal amount and maturing in the year 1967 shall be sold as promptly as possible at private sale at a price to be determined by council by resolution duly adopted and certified to the trustee for the bonds; provided, that said bonds shall be issued only for revenue producing extensions and only in the event that the net operating revenues of said system for the last fiscal year preceding the issuance thereof shall have been sufficient to enable the Village to comply with sub-paragraph (1) of Section 6 hereof.

(c) Bonds numbered from 43 to 45, inclusive, aggregating \$3000 in principal amount and maturing in the year 1968 shall be sold hereafter when and as council, by resolution duly adopted, shall determine such sale or sales to be necessary or advisable, said resolution to specify the rate of interest to be borne by said bonds and the terms of such sale and thereupon to be certified to the trustee for the bonds; provided that said bonds shall be issued only for the purpose of constructing revenue producing extensions to the municipal waterworks system and only in the event that the net operating revenues of said system for the last fiscal year preceding the issuance of any of said bonds shall have been sufficient to have enabled the village to comply with the requirements of sub-paragraph (2) of Section 6 hereof, if said bonds had then been outstanding.

Section 5. The proceeds from the sale of said Bonds, except premium, if any and accrued interest thereon, shall be placed in the Village Treasury to the credit of the proper fund, to be used only for the purpose of first redeeming the \$35,500 of mortgage revenue bonds aforesaid called for payment on June 1, 1942 and then extending and improving said waterworks system, and all things necessary and incidental thereto, for which purpose said proceeds are hereby appropriated. Premium, if any, and accrued interest received from the sale of said Bonds shall be transferred to the officer in charge of the Bond Retirement Fund of the Village, to be by him placed in a separate fund known and designated as the "Waterworks Mortgage Bond Retirement Fund" and herein sometimes referred to as the "Bond Account", which fund shall be applied only to the payment of the principal and interest of the Bonds.

Section 6. From and after the delivery of any part of said Bonds the gross revenues derived by the Village from the operation of said public utility as improved or extended shall be set aside and deposited by the treasurer of the Village in a separate and special fund hereby identified as the "Water Fund". Said fund shall be used, first, for the payment of reasonable and proper cost of operation and maintenance of said public utility, including reasonable repairs, replacements and depreciation; second, for the payment of the sums in this section provided to be paid into the Bond Account for debt charges and debt reserve upon said Bonds; and third, for any lawful purpose. The payments to be made out of said Revenue Fund into said Bond Account, after provision only for the reasonable and necessary expenses of operation and maintenance of said public utility, shall be as follows:

1. Promptly following the first water billing date after June 1, 1942 and quarterly thereafter a sum equivalent to one-fourth (1/4) of \$2650.
2. In the event of the issuance of bonds Nos. 43 to 45 or any thereof, the sum to be paid into the Bond Account quarterly after such issuance shall be such that the annual bond account payment therefor shall aggregate not less than \$2650 plus \$50 for each of said bonds so issued or such larger additional sum per bond as shall be required in order to pay the interest thereon and to amortize the principal thereof over the then remaining life of such bond;

Provided that no further payments need be made into said Bond Account after the amount held therein equals the entire amount of interest and principal that will be payable up to and including their maturity on all the Bonds then or thereafter outstanding. Should the revenues in any one year be insufficient to meet the charges herein provided to be paid into the Bond Account, or should any surplus theretofore created be impaired for any reason, the amount of any such deficiency or impairment shall (unless previously

made up out of other funds of the Village available for the purpose) be paid into the Bond Account from the first available revenues in the following year or years and shall be in addition to the other requirements of the Bond Account.

Section 7. The officer in charge of the Bond Retirement Fund of the Village and his successors in office shall have charge of the Waterworks Mortgage Bond Retirement fund, and said fund shall be used only for the purpose of paying the principal of and interest on said Bonds.

Section 8. The rates for service rendered by said waterworks system of the Village, or to its inhabitants or other consumers, shall be reasonable and just but, in any event, shall at all times be sufficient to produce gross revenues adequate (a) to pay the reasonable and proper expenses of operation and maintenance of the utility, including necessary replacements and depreciation, and (b) to pay, when due, the principal of and interest on said Bonds, including all charges and excess fund required for the Bond Fund under Section 6 hereof.

Section 9. Service rendered to the Village by said utility for water for public purposes, including a reasonable rental for fire hydrants, shall be charged against the Village and shall be paid for by it in quarterly installments, as the service accrues, out of the current revenues of the Village collected or in the process of collection, and the tax levy of said Village made by it for its necessary current expenses; provided, however, that so long as operating revenues of the system derived from other sources shall prove sufficient to meet the requirements of Section 6 hereof, the Village shall not be obligated to make any such payments. The revenue from such service shall be paid into the Water Fund hereinbefore referred to.

Section 10. It is hereby covenanted and agreed by the Village with the holder or holders of the Bonds and with each of them, and with the trustee for said holders hereinafter provided for, that the Village and each and every officer thereof will satisfactorily and punctually perform all duties with reference to said utility required by the Constitution and statutes of the State of Ohio, by this ordinance and by the mortgage hereinafter provided for, all and each of which duties are hereby defined and established to be duties especially enjoined by law resulting from an office, trust and station within the meaning of Section 12283 of the General Code of Ohio; and said Village hereby irrevocably covenants, obligates and binds itself so long as any of the Bonds to be secured by the indenture of mortgage herein authorized are outstanding, not to issue additional bonds pledging any portion of the revenues of the system except for revenue producing extensions, replacements and additions, provided, however, that no such additional bonds shall be issued for such purposes unless the earnings of such waterworks system for the fiscal, operating or calendar year immediately preceding such issuance of additional bonds shall have been equal, after deduction of operating, maintenance and reasonable repair, replacement and depreciation charges, to the Bond Account requirements provided in Section 6 hereof, plus the amounts necessary to pay the principal and interest requirements for the next ensuing fiscal year on the proposed issue (such requirements as to principal to be determined by dividing the amount of the new issue by the number of years to the final maturity date of such issue).

Section 11. Until the Bonds shall have been fully paid, the Village shall operate the utility and maintain the same and all parts thereof in constant good order and repair, and maintain insurance upon the same of such kind as would normally be carried by private companies engaged in a similar type of business in a minimum amount of the full insurable value of the utility, and shall furnish to the purchaser of the Bonds or to the trustee under the mortgage securing the Bonds full and satisfactory reports, audits, statements and other information from time to time in such form and detail as may be requested by either of them, and shall permit the authorized representative of any holder or holders of twenty-five per centum of the Bonds at the time outstanding to inspect the utility and all records, accounts and data of the utility at all reasonable times.

Section 12. In order to secure the payment of the principal and interest on the Bonds as the same shall become due and payable, the Mayor and Clerk of the Village and President and Clerk of the Board of Trustees of Public Affairs are hereby authorized and directed, in the name and on behalf of the Village, to make, execute, acknowledge and deliver to The Winters National Bank & Trust Company, Dayton, Ohio, in trust for the purchaser and the subsequent holders of said Bonds, a good and sufficient mortgage upon all the property of said Public Utility now owned or hereafter acquired during the time any of said Bonds shall remain outstanding and unpaid, in such form and containing such terms, covenants and conditions as shall be approved by the purchaser of said Bonds and the solicitor of the Village. Provision shall be made therein that in case the Village shall make default in the payment of any of the Bonds, or the interest thereon, or in any of the terms of said mortgage or of this ordinance, the owners or holders of twenty-five per cent in amount of the Bonds then remaining unpaid, or the Trustee for said bondholders, on his or its own initiative, may elect to declare the entire amount of said Bonds due and payable, and that upon default in the payment thereof said mortgage may be foreclosed. Provision shall also be made that the Village shall carry full insurance which normally would be carried by a private company engaged in a similar type of business in a minimum amount of the full insurable value of the utility, payable to the trustee thereof as its interest may appear.

Section 13. In the event of any litigation commenced or pending in any court having jurisdiction, in which the said Village is a party involving the said utility, the operation of the same; the revenue from the same, or wrongful performance or failure to perform any of the terms and conditions of this ordinance, and there is at such time any default in the payment of any of such bonds or interest when and as the same fall due; the court, having jurisdiction of such cause, may appoint a receiver to administer and operate said utility, on behalf of the Village of Centerville, Ohio, with full power to pay and to provide for the payment of such mortgage bonds outstanding against said utility, and for the payment of the operating expenses, and to apply the income and revenues to the payment of such bonds and interest thereon in accordance

with this ordinance and the provisions of the mortgage securing such indebtedness. The power of such receiver to provide for the payment of bonds that are due and outstanding shall not be construed as pledging the general credit of said Village to the payment of said bonds, or any part thereof or interest thereon. Such receiver shall have such power, under the direction of the court, as receivers in general equity cases.

Section 14. In the event of the foreclosure of the mortgage provided for in Section 12 hereof, the purchaser or purchasers at such foreclosure sale shall be entitled to operate said waterworks system as improved or extended under the terms of the following franchise, which is hereby ordained and established to take effect immediately upon the confirmation of such foreclosure sale, to wit:

FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A PUBLIC UTILITY KNOWN AS THE WATERWORKS SYSTEM IN AND FOR THE VILLAGE OF CENTERVILLE, OHIO, UPON, ALONG AND UNDER THE STREETS, LANES, ALLEYS, AVENUES AND OTHER PUBLIC THOROUGHFARES OF THE VILLAGE OF CENTERVILLE, AND TO FIX AND PRESCRIBE THE TERMS AND CONDITIONS UPON WHICH SAID OPERATION SHALL BE CONDUCTED.

Section A. Hereafter when the word "grantee" appears in this franchise, it shall be held to mean and include the purchaser or purchasers at judicial sale upon foreclosure of the mortgage on the waterworks system of the Village of Centerville and any person, association of persons, partnership or corporation who shall, upon such foreclosure, become the owner of said public utility, and this franchise shall inure to the benefit of such person, association, partnership or corporation and their heirs, executors, administrators, successors and assigns.

Section B. In the event that any judicial foreclosure shall be had of the mortgage hereinbefore described and referred to in this ordinance and the mortgaged property shall be sold under such proceedings, the grantee, as hereinbefore defined, is hereby granted the right for the full period of twenty years from the date of such foreclosure sale or the final confirmation thereof, if such confirmation be then required under Ohio procedure, to construct, maintain, operate and extend, upon, along and under the streets, lanes, alleys, avenues and other public thoroughfares and public property of the Village of Centerville, in the County of Montgomery and State of Ohio, with the full and necessary privileges for the use of the streets, lanes, alleys, avenues and other public thoroughfares or property for the purpose of constructing, erecting, maintaining, operating and extending water mains, valves, meters, fire hydrants, manholes and all other apparatus necessary for the production and distribution of water for all purposes.

Section C. This franchise shall be held to apply to and to give the exclusive right to administer, own and operate all the property rights and interest theretofore owned or operated by the Village of Centerville as its public utility, known as its waterworks system, including the distribution mains with all extensions, betterments, replacements and new equipment which have been made or added thereto by said village prior to the taking effect of this franchise, together with the extensions and betterments which may thereafter be made from time to time by the grantee during the life of this franchise.

Section D. The grantee, in the construction, maintenance, extension and repair of said public utility, shall not unnecessarily interrupt or obstruct the passage upon any street, lane, alley, avenue or other public thoroughfare or property, and whenever it shall in any way open any of said thoroughfares or property for the construction or maintenance of any underground construction, it shall replace such thoroughfares and property in as good a condition as before undertaking such work. The grantee shall hold the village harmless from any liability, cost, damage or expense which shall arise or be caused by the occupancy or use of the streets, lanes, alleys, avenues or other public thoroughfares or property by said grantee.

Section E. The grantee, in the operation of said public utility, shall be subject at all times to such reasonable regulation of the council of the Village of Centerville or its corporate successor as shall not interfere with the ability of such grantee to earn a fair return upon the reproduction cost of said utility, less depreciation, after proper allowances for operation and depreciation or replacement.

Section F. For a period of ten years after the taking effect of this franchise, the grantee may charge the following rates for supplying water to the corporation and inhabitants thereof:

1. Minimum charge up to and including 7,500 gallons, \$4.50 per quarter.
2. Next 20,000 gallons per quarter \$0.25 per 1,000 gallons.
3. All over 27,500 gallons per quarter \$0.20 per 1,000 gallons.
4. Private Fire Hydrants, \$15.00 per year.
5. Public Fire Hydrants, \$15.00 per year.

The payments to be made by said Village to said grantee for water to be furnished to the village shall be paid to the grantee quarterly on or before the tenth days of March, June, September and December in each year during the term of this contract; and, in order to provide means for the payment of all amounts to be paid by said village under this contract the said village in its annual budget and taxation and appropriation ordinances each year during the term of this contract, obligates itself to include and to levy a sufficient sum on all the taxable property in said village to pay for the water so to be consumed as aforesaid, and hydrant rentals, the proceeds of which levy shall be placed in a fund to be designated as the "Waterworks Fund" and which taxes, when collected, shall be held inviolate for that purpose.

Section G. In the event that the above rates which are minimum rates - not maximum rates, shall prove insufficient to enable said grantee to earn, after payment of operating expenses, maintenance and reasonable allowance for depreciation, a net return of 6% upon the reproduction cost of said utility after making reasonable allowances for depreciation of said utility since the time of its installation, and after taking into consideration the adequacy of the maintenance thereof, the village, by appropriate ordinance, shall raise such rates sufficiently to produce such return, as provided in Section 614-44 of the General Code of Ohio, except that it shall not be necessary for said Village to wait until one year before the expiration of said period, but the duty to increase shall arise upon request of the grantee forthwith, whereupon, in the event that such action by the village is not taken, complaint may be filed in the Public Utilities Commission or its successors in office, and proceedings had before said commission as provided in Section 614-44 et seq. of the General Code of Ohio. The grantee's right to complain to said commission shall be cumulative to its right to enforce the performance of the above imposed duty on the village under the provisions of Section 12283 of the General Code of Ohio.

Section H. For the second ten year period of this franchise, the rates to be charged by said grantee shall be fixed by the council of said village by and with the consent of the grantee or by the Public Utilities Commission or its successors in office in the event of the inability of the village and grantee to agree but, in any event, the rates shall be such as to enable the grantee to earn a minimum of 6% upon the reproduction cost of said plant, less depreciation, as hereinbefore provided, as determined by the Public Utilities Commission after payment of operating expenses, maintenance and a proper allowance for depreciation or replacement.

Section I. This franchise shall take effect immediately upon the confirmation by the court of the foreclosure sale of the property covered by the mortgage of the Village of Centerville to the purchaser of the bonds secured by said mortgage and the trustee designated therein.

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Section 15. Each section of this ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this ordinance.

Section 16. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare in said Village and for the further reason that the immediate acquisition and installation of the improvements to be provided from the proceeds of the bonds herein authorized is required in order to provide an adequate water supply to the Village of Centerville and the inhabitants thereof; wherefore this ordinance shall be in full force and effect from and immediately after its passage.

Passed: May 15, 1942
(signed) George E. Howe
Clerk

(signed) Emory W. Bradstreet
Mayor

ORDINANCE NO. 3 - 1942

AN ORDINANCE TO CHANGE THE NAME OF THE STREET, EXTENDING WESTWARDLY FROM THE ENTRANCE TO THE CEMETERY TO MAIN STREET, FROM CEMETERY DRIVE TO LINWOOD DRIVE.

BE IT ORDAINED by the Council of the Village of Centerville, in the County of Montgomery and the State of Ohio, three-fourths of the members elected thereto concurring:

Section 1: That the name of the street, extending westwardly from the entrance to the cemetery to Main Street, be changed from Cemetery Drive to Linwood Drive.

Section 2: That this ordinance shall take effect from and after the earliest period allowed by law.

Passed by the Council this 30th day of December, 1942.

Approved: (signed) Emory W. Bradstreet
Mayor

Attest: (signed) Luella Brown
Village Clerk