

ORDINANCE NO. 48-377

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 231 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF \$12,050,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and

WHEREAS, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 229 (Taxable Under Federal Law), dated February 19, 2009 ("Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

WHEREAS, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for \$12,050,000 of the City's General Obligation Renewal and Improvement Temporary Notes, Series 231 (Taxable Under Federal Law), for the purpose of renewing interim financing for the Original Improvements and providing interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

WHEREAS, the Governing Body, on July 14, 2009, adopted Ordinance No. __-_____ relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Definitions. All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Note Resolution herein referenced.

Section 2. Authorization of and Security for the Notes. It is hereby authorized, ordered and directed that in order to provide the necessary funds to renew the principal amount of the Original Notes and for the interim financing of the Improvement Costs all as further described on Schedule I to the Note Resolution, there shall be issued general obligation renewal and improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose. It is further anticipated that a portion of the Notes will be payable from tax increment revenues generated from certain tax increment districts within the City.

Section 3. Terms, Details and Conditions of the Notes. The Notes shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the “Note Resolution”) hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Notes, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants to provide for the payment of all or any portion of the principal of and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes.

Section 5. Designation of Paying Agent and Note Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain issued in book-entry-only form, the City shall act as Note Registrar, through the Office of the City Clerk and shall act as Paying Agent through the Department of Finance, and shall make payment directly to DTC, as the Owner, for the principal of and interest on the Notes, and DTC will remit such principal and interest to its Direct Participants for the distribution to the beneficial owners in the manner set forth in Section 2.04(A) of the Note Resolution and as governed by the terms of the Letter of Representation.

In the event the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the City hereby designates and appoints the Treasurer of the State of Kansas, Topeka, Kansas (herein sometimes referred to as the “Fiscal Agent”), as the initial Paying Agent and Note Registrar for the Notes, and the Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the Fiscal Agent to effectuate this designation. The Fiscal Agent shall maintain Registration Books on behalf of the City.

Section 6. Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may

designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

Section 7. **Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on _____, 2009.

(Seal)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law