## ORDINANCE NO. 2016-038

**AUTHORIZING THE REPEAL OF SECTION 127.01 OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY AND APPROVING RELATED MATTERS; AND DECLARING AN EMERGENCY**

WHEREAS, Rule 15c2-12 (the "Rule") adopted by the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and codified at 17 C.F.R. 240.15c2-12 requires that issuers of municipal debt securities subject to the Rule provide certain disclosures (commonly referred to as "continuing disclosures") to the investors in the securities subject to the Rule; and

WHEREAS, for each issue of municipal securities that are subject to the continuing disclosure requirements of the Rule, the Rule requires that the issuer (or other obligated person) of such municipal securities enter into a continuing disclosure undertaking (each an "Undertaking") that obligates such issuer to provide continuing disclosures in compliance with the Rule; and

WHEREAS, the City of Findlay, Ohio (the "City") periodically issues securities that are subject to the Rule and is thus required to enter into an Undertaking for each such issue to provide continuing disclosures pursuant to the Rule; and

WHEREAS, this City Council (the "Council") of the City adopted Ordinance 1996-47 on May 21, 1996 to enact Section 127.01 of the City's Codified Ordinances ("Section 127.01"), which incorporated certain provisions of the Rule into the City's Codified Ordinances; and

WHEREAS, the Council adopted Ordinance 2011-069 on September 6, 2011 to amend Section 127.01 to conform to certain amendments to the Rule; and

WHEREAS, Section 127.01 provides for certain requirements of the City's Undertakings, although such requirements are more commonly found in separate agreements that comprise the Undertaking for each issue subject to the Rule; and

WHEREAS, the City's $8,200,000 Various Purpose Bonds, Series 2008, dated July 23, 2008 (the "Series 2008 Bonds"), are the City's only outstanding issue of municipal securities that are currently subject to the Rule, and the City entered into a Continuing Disclosure Certificate, dated July 23, 2008 (the "Series 2008 Undertaking"), that is the Undertaking for the Series 2008 Bonds and that satisfied the continuing disclosure requirements of the Rule with respect to the Series 2008 Bonds without relying on Section 127.01; and

WHEREAS, the City has authorized the issuance of bonds (the "Series 2016 Bonds") pursuant to Ordinance No. 2016-022 (the "Series 2016 Ordinance"), which was adopted by this Council on March 1, 2016, for the purpose of advance refunding a portion of the Series 2008 Bonds; and

WHEREAS, the Council now finds it advisable to repeal Section 127.01 so that each of the City's Undertakings are governed by a separate agreement, certificate, or other undertaking that is specific to each issue of the City's debt that is subject to the Rule, including the Series 2008 Bonds and the Series 2016 Bonds;
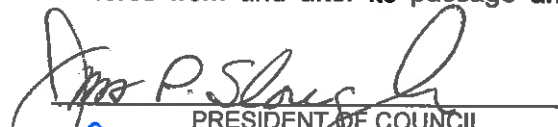
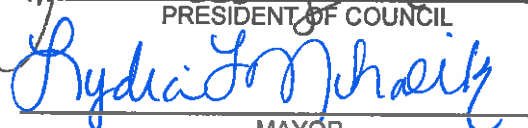NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Findlay, State of Ohio, that:

SECTION 1.   Section 127.01 of the City's Codified Ordinances is hereby repealed in its entirety. The Series 2016 Ordinance is hereby amended so that Section 20 therein and the references to Section 127.01 shall have no effect and are no longer in force.  Any prior ordinance or other legislation or action of this Council that refers to Section 127.01 or that is inconsistent with the terms of this Ordinance shall be interpreted without reference to Section 127.01 or any other such inconsistent terms.

SECTION 2.   It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

SECTION 3.   This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the City, and for the further reason it is immediately necessary to make immediate provision to ensure that the City is in compliance with federal securities law and the Rule while issuing the Series 2016 Bonds in order to take advantage of favorable interest rates.

WHEREFORE, this Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

_____
PRESIDENT OF COUNCIL

_____
MAYOR

PASSED _April 5, 2016_

ATTEST _____
CLERK OF COUNCIL

APPROVED _April 5, 2016_

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March 23, 2016

<u>**VIA EMAIL**</u>

Donald J. Rasmussen, Esq., Director of Law
City of Findlay
318 Dorney Plaza, Room 310
Findlay, Ohio 45840

Re:     Repeal of Section 127.01 of the Codified Ordinances of the City of Findlay

Dear Don:

Per our phone conversation, please find attached an ordinance for the purpose of repealing Section 127.01 ("Section 127.01") of the City of Findlay's (the "City") Codified Ordinances. The attached ordinance is structured to be passed by City Council as an emergency measure at its April 5, 2016 meeting.

As discussed in the introductory "whereas" clauses of the attached ordinance, Section 127.01 was initially adopted in 1996 in response to the addition of continuing disclosure provisions to Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule"). Section 127.01 was subsequently amended in 2011 to address certain amendments that had been made to the Rule.

Since the continuing disclosure requirements of the Rule became effective in 1995, the procedures for complying with the Rule have undergone many changes. The creation of the Electronic Municipal Market Access ("EMMA") portal by the Municipal Securities Rulemaking Board ("MSRB") was one of the biggest changes, and it went into effect on July 1, 2009. All issuers, including the City, are now required to post all continuing disclosure filings on EMMA.

The Rule contemplates that a separate agreement, certificate, or other form of contractual undertaking (commonly referred to as "Undertakings" under the Rule) would be created for each specific municipal debt issue that is subject to the Rule. This is the standard practice in the municipal debt marketplace. It is thus very unusual for an issuer to circumvent this process by incorporating the basic provisions of an Undertaking into their local laws, which is essentially the function that Section 127.01 serves. Even so, the City still has to specify in the proceedings for each of its bond issues the "annual information" that the City is required to provide annually pursuant to the Rule and Section 127.01.

Another significant change that has occurred since Section 127.01 was adopted is increased enforcement of the Rule by the SEC. The foremost example of the SEC's heightened enforcement is the Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") that was announced in March 2014. The MCDC Initiative encouraged issuers to report themselves to the SEC if they failed to properly disclose any continuing disclosure failures made in an offering document

during the previous five years. The MCDC Initiative even incentivized underwriters to report their issuer clients for such failures.

In light of these changes and the City's current debt situation, it is recommended that Council adopt the attached ordinance to repeal Section 127.01 of the City's Codified Ordinances. Rationales for and benefits from adopting the attached ordinance include:

- Section 127.01 has set terms that deny the City the flexibility of adjusting the mechanics of its compliance with the Rule in the contractual agreement for each Undertaking. As the Rule changes or its interpretation and enforcement change, the inflexibility of Section 127.01 becomes a liability.

- Repealing Section 127.01 now as an emergency measure allows the City to avoid having to tie its upcoming issue of refunding bonds into Section 127.01. The City currently has only one issue of outstanding debt that is subject to the Rule and Section 127.01, which is the City's $8,200,000 Various Purpose Bonds, Series 2008, dated July 23, 2008. Because those 2008 Bonds already have an Undertaking associated with them, the removal of Section 127.01 also does not negatively impact the City's existing debt.

- Section 127.01 incorporates a 180-day deadline (the "Filing Date" as defined in Section 127.01) that is unnecessarily brief and that does not coordinate well with the City's typical fiscal calendar. Most issuers have a longer timeframe (typically around 270 days) to prepare and file their annual continuing disclosure reports.

- Section 127.01 is inconvenient for Council and the City in that every time the SEC modifies the Rule, Council would need to modify Section 127.01 in response. That process opens the possibility to securities law liability for the City if the proper amendments and adjustments are not made in a timely manner and reflected in the City's continuing disclosure compliance procedures and filings.

- The existence of Section 127.01 adds a layer of complexity to each of the City's debt issuances, and that complexity does not come with any compensating benefits.

- It is very unusual for an issuer to have legislation such as Section 127.01 that attempts to incorporate compliance with the Rule into the issuer's codified ordinances. Standard market practice is to use contracts to handle the compliance with the Rule, and the SEC's standard expectations for compliance are also based on contract law.

In summary, it is easy to find reasons to repeal Section 127.01, but it is difficult to come up with any benefits that justify retaining it.

If you have any questions regarding these matters, please do not hesitate to call me at (614) 227-2372. After the ordinance has been passed, please email me a signed copy of the ordinance.

Very truly yours,

Paul S. Rutter, Esq.

Enclosures

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