

ORDINANCE NO. 1422

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX BONDS FOR THE PURPOSE OF REFINANCING THE COST OF CAPITAL IMPROVEMENTS; PLEDGING A 1% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, there was submitted to the qualified electors of the City of Eureka Springs, Arkansas (the "City") the question of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), sales and use tax bonds in the maximum principal amount of \$450,000 for the purpose of financing the cost to the City of refunding the City's Sales and Use Tax Bonds, Series 1987 (the "1987 Bonds") which financed improvements to the City's sewer system (the "Improvements"); and

WHEREAS, at the special election held November 6, 1990, a majority of the electors voting on the question approved the issuance of the bonds and the pledge of a city-wide 1% sales and use tax to retire the bonds; and

WHEREAS, the City is prepared to proceed with the refunding of the 1987 Bonds (the "Refunding") at a lower interest rate to the City in order to remove the 1% sales and use tax levied for the payment of the 1987 Bonds (the "1987 Tax"); and

WHEREAS, the City has received an offer for the purchase of a \$350,000 principal amount bond bearing interest at the rate of 7% per annum from Bank of Eureka Springs (the "Bondholder") at a price of par plus accrued interest pursuant to a Letter of Offer and Representation (the "Offer") which has been presented to and is before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas:

Section 1. That the Refunding be accomplished. The Mayor and the City Clerk are hereby authorized to execute all agreements and instruments necessary to accomplish the same.

Section 2. That the sale to the Bondholder of a \$350,000 principal amount bond from the City bearing interest at the rate of 7% per annum at a price of par plus accrued interest and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby, approved and the bond is hereby

sold to the Bondholder. The Mayor is hereby authorized and directed to execute and deliver the Offer on behalf of the City.

Section 3. That under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, City of Eureka Springs, Arkansas Sales and Use Tax Bond, Series 1990 (the "bond") is hereby authorized and ordered issued in the principal amount of \$350,000 the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the Refunding, paying expenses incidental thereto and paying expenses of issuing the bond.

The bond shall bear interest at the rate of 7% per annum based upon a 360-day year of twelve consecutive thirty-day months. Principal of the bond shall be payable in four (4) installments on December 1 of each year as follows:

<u>Year</u> <u>(December 1)</u>	<u>Principal Amount</u>
1991	\$80,000
1992	85,000
1993	90,000
1994	95,000

The bond shall be dated December 1, 1990. Interest on the bond shall be payable on June 1, 1991 and on each June 1 and December 1 thereafter until the bond is paid in full.

The bond will be issued in the form of a single typewritten bond, registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered R-1.

Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bond has been fully paid, it shall be canceled and delivered to the City Clerk.

Section 4. That the bond shall be executed on behalf of the City by the manual signatures of the Mayor and City Clerk and shall have impressed thereon the seal of the City.

Section 5. That the bond shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(form of bond)  
(To be typewritten)

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF CARROLL  
CITY OF EUREKA SPRINGS  
7% SALES AND USE TAX BOND, SERIES 1990

No. R-1

\$350,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, Carroll County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to Bank of Eureka Springs, or registered assigns, solely from the special source as hereinafter provided, the principal sum of

THREE HUNDRED FIFTY THOUSAND DOLLARS

in installments on the dates hereinafter set forth with interest on the unpaid balance of the total principal amount at the rate of 7% per annum payable on June 1, 1991 and on each June 1 and December 1 thereafter until this bond is paid in full. The principal and interest shall be payable in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of debts due the United States of America.

Principal shall be payable in four (4) installments on December 1 of each year in the amounts as follows:

<u>Year (December 1)</u>	<u>Principal Amount</u>
1991	\$80,000
1992	85,000
1993	90,000
1994	95,000

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner or registered assigns at his address shown on the bond registration book of the City maintained by the City Clerk as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

This bond is issued for the purpose of providing financing of the costs of refunding the City's Sales and Use Tax Bonds, Series 1987, paying necessary expenses incidental thereto and paying expenses of authorizing and issuing this bond.

This bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. 1422 of the City duly adopted on November 13, 1990 (the "Authorizing Ordinance"), and an election duly held on November 6, 1990 at which the majority of the legal voters of the City voting on the question approved the issuance of this bond. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the registered owner of this bond. This bond is a special obligation of the City, payable from the proceeds derived by the City from the 1% sales and use tax (the "Tax") levied by Ordinance No. 1386 of the City duly adopted on March 20, 1990 under the authority of the laws of the State, including particularly Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated, and pursuant to an election duly held on May 1, 1990 at which the majority of the legal voters of the City voting on the question approved the levy of the Tax, and the City hereby pledges the first three monthly collections of the Tax, and thereafter the first \$9,100 of monthly collections of the Tax for the payment of this bond.

This bond may be assigned (except to bearer), and in order to effect such assignment the assignor shall promptly notify the City Clerk by registered mail and the assignee shall surrender this bond to the City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Clerk), prior to such surrender for transfer.

This bond may be prepaid at the option of the City from funds from any source, in whole at any time or in part on any interest payment date, at a prepayment price equal to the principal amount being prepaid, plus accrued interest to the prepayment date.

Prepayments of principal shall be applied in inverse chronological order of maturity. Such prepayments shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this bond does not exceed any constitutional or statutory limitation; and that a tax sufficient to pay this bond and interest hereon has been duly levied and made payable until all of this bond and interest hereon have been fully paid and discharged.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas has caused this bond to be executed by its Mayor and City Clerk, thereunto duly authorized and its corporate seal to be impressed on this bond, all as of December 1, 1990.

CITY OF EUREKA SPRINGS, ARKANSAS

ATTEST:

By \_\_\_\_\_

Mayor  
Richard Schoeninger

\_\_\_\_\_  
City Clerk  
Juanita Barner

(SEAL)

REGISTRATION CERTIFICATE

	:	:	
Date of Registration:	Name of Registered Owner:	Signature of	City Clerk
	:	:	
	:	:	
	:	:	
	:	:	
	:	:	
	:	:	

Section 6. That the City hereby expressly pledges and appropriates the first \$9,100 of monthly collections (the "Pledged Revenues") derived by the City from its 1% sales and use tax levied by Ordinance No. 1386 adopted on March 20, 1990 and approved by the voters at the special election held May 1, 1990 (the "Tax") to the payment of the principal of and interest on the bond when due. In order to provide for the first payment of principal and interest on the bond, the City hereby pledges its first three monthly Tax collections to such payment and such collections shall also be a part of the Pledged Revenues. The City covenants that the Tax shall never be repealed or reduced while the bond is outstanding. The City further covenants to use due diligence in collecting the Tax.

Section 7. (a) The City Treasurer shall deposit into a special fund of the City in Bank of Eureka Springs (the "Bank") which is hereby created and designated "Sales and Use Tax Bond Fund, Series 1990" (the "Bond Fund"), the sums in the amounts and at the times described below for the purpose of providing funds for the payment of the principal of and interest on the bond, as it matures. There shall be deposited into the Bond Fund on the fifteenth day of each month, commencing January 15, 1991, until the bond, with interest thereon, has been paid in full or provision made for such payment a sum equal to 1/6 of the next installment of the interest due on the bond and 1/12 of the next installment of the principal due on the bond; provided, however, that as of May 15, there shall have been deposited such additional amounts from Pledged Revenues into the Bond Fund so that the amount therein equals the interest due on the bond on June 1, 1991 plus 1/2 of the principal due on the bond on December 1, 1991. The City shall receive a credit against monthly payments to the extent of interest earnings on moneys in the Bond Fund.

(b) The amount required to be paid into the Bond Fund shall be paid before any of the Pledged Revenues are used for any other purpose. If the Pledged Revenues are insufficient to make the required payment on the fifteenth day of a month into the Bond Fund, the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the fifteenth day of the next month.

(c) When the moneys in the Bond Fund shall be and remain sufficient to pay (1) the principal of the bond then outstanding, and (2) interest on the bond until the next interest payment date, there shall be no obligation to make any further payments into the Bond Fund and any Pledged Revenues remaining in the Bond Fund after the principal of and interest on the bond have been paid may be used by the City for any lawful purpose.

(d) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bond, as the same become due.

(e) The City Treasurer is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the bond when due or upon prepayment.

(f) The bond shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the bond is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 8. That the City covenants that it will not issue any bonds, or incur any obligations, secured by a lien on or pledge of the Pledged Revenues unless such lien or pledge is subordinate to the lien and pledge in favor of the bond.

Section 9. That it is hereby covenanted and agreed by the City with the Bondholder that the City will faithfully and punctually perform all duties with reference to Tax and the bond required by the Constitution and laws of the State and by this Ordinance, including the collection of the Tax, as herein specified and covenanted and the applying of the Pledged Revenues as herein provided.

Section 10. That the City will keep or cause to be kept proper books of accounts and records (separate from all other accounts and records) in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and such books shall be available for inspection by the Bondholder at

reasonable times and under reasonable circumstances. The City shall annually furnish a report to the Bondholder of all receipts and disbursements of the Pledged Revenues received by the City.

Section 11. (a) That if there be any default in the payment of the principal of and interest on the bond, or if the City defaults in the performance of any covenant contained in this Ordinance, the Bondholder may by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State.

(c) No delay or omission of the Bondholder to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

(d) The Bondholder may waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 12. That when the bond has been executed by the Mayor and City Clerk and the seal of the City impressed as herein provided, it shall be delivered to the Bondholder upon payment of the purchase price ("total sale proceeds"). The accrued interest shall be deposited in the Bond Fund. The amount of total sale proceeds, along with the other moneys appropriated hereby, necessary to pay in full the principal of and interest on the 1987 Bonds shall be deposited in escrow with First National Bank in Stuttgart, as trustee for the owners of the 1987 Bonds (the "Trustee").

The balance of the total sale proceeds shall be deposited in a special account of the City in the Bank hereby created and designated the "Cost of Issuance Fund". The moneys in the Cost of Issuance Fund shall be used for paying the expenses of issuing the bond, with any unexpended balance to be deposited in the Bond Fund.

Disbursement shall be made from the Cost of Issuance Fund on the basis of checks which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; and the purpose of the payment. Each check must be signed by the Mayor and the City Treasurer.

When all required expenses have been paid in connection with the issuance of the bond, this fact shall be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, that all obligations payable from the Cost of Issuance Fund have been discharged. A copy of the certificate shall be filed with the Bank, and upon receipt thereof the Trustee shall transfer any remaining balance to the Bond Fund for the purpose of redeeming the bond on the first available date.

Section 13. (a) Moneys held for the credit of the Cost of Issuance Fund and the Bond Fund may be invested and reinvested by the City in direct or fully guaranteed obligations of the United States of America ("Government Securities"), in time deposits or certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation (the "FDIC"), or other investments as may, from time to time, be permitted by law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(b) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(c) Moneys so invested in Government Securities or in certificates of deposit of banks to the extent insured by FDIC need not be secured by the Bank. Otherwise, the Bank shall be required to provide security as provided by law.

Section 14. That the terms of this Ordinance shall constitute a contract between the City and the Bondholder and no variation or change in the undertaking herein set forth shall be made while the bond is outstanding unless consented to in writing by the Bondholder.

Section 15. (a) That the City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bond to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the bond and the Pledged Revenues will not be used directly or indirectly in such

manner as to cause the bond to be treated as an "arbitrage bond" within the meaning of Section 148 of the Code.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of, the Improvements or the proceeds of the bond, in such manner as to cause the bond to be a "private activity bond" within the meaning of Section 141 of the Code. In this regard, the City covenants that the Improvements will be owned and operated by the City so long as the bond is outstanding and the Improvements will only be used by persons on a basis as members of the general public.

(c) The bond is hereby designated as a "qualified tax-exempt obligation" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 1990 will not exceed \$10,000,000. The City further represents that it does not reasonably expect that it and all subordinate entities will issue tax-exempt obligations (not including "private activity bonds" within the meaning of Section 141 of the Code) in amounts exceeding \$5,000,000 in calendar year 1990. The City covenants that at least 95% of the proceeds of the bond will be used to accomplish the Refunding.

Section 16. That the City covenants that it will take no action which would cause the bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section 16 shall prohibit investments in bonds issued by the United States Treasury.

Section 17. That the City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the bond is issued, a statement concerning the bond which contains the information required by Section 149(e) of the Code.

Section 18. All moneys in the Bond Fund (and the Debt Service Reserve Account therein) and the Construction Fund created by and maintained pursuant to Ordinance No. 1294 adopted November 2, 1987 on the date the bond is issued necessary to accomplish the Refunding shall be deposited with the Trustee for the purpose of accomplishing the Refunding. The balance on the date the bond is issued shall be transferred to the Bond Fund created hereby. The Mayor is authorized and directed to take the necessary steps to cause the 1987 Tax to be terminated on the earliest date.

Section 19. That reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

Section 20. That the provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

Section 21. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 22. That this Ordinance shall not create any right of any character and no right of any character shall arise under or pursuant hereto until the bond shall be issued and delivered.

Section 23. That it is hereby ascertained and declared that the Refunding must be accomplished in order to eliminate the 1987 Tax and to lower the City's interest payments that are both immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Refunding cannot be accomplished without the issuance of the bonds, and therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: November 13, 1990.

ATTEST:

Juanita Barner  
City Clerk  
Juanita Barner  
(SEAL)

APPROVED:

Richard Schoeninger  
Mayor  
Richard Schoeninger

CERTIFICATE

The undersigned, City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 1422, passed at a special session of the City Council of the City, held at the regular meeting place of the Council at 7:00 o'clock p.m on the 13th day of November, 1990, and that the Ordinance is of record in Ordinance Record Book No. 5 at Page 132A, now in my possession.

GIVEN under my hand and seal this 13<sup>th</sup> day of November, 1990.

Joanta Barner  
City Clerk

(SEAL)