

ORDINANCE NO. 38 (22-23)

An Ordinance to declare the existence of a real and present emergency under ORC 735.051 and a public exigency under 2 C.F.R. § 200.320(c)(3) arising in connection with the need to replace and relocate the electrical service, the main building distribution switchboard and standby generator, at the City building at 304 Putnam Street, above the flood plain to prevent the potential loss of COVID vaccines and booster shots due to the temporary loss of electric power and/or flooding; and, due to an emergency under Ohio Revised Code Section 735.051 and public exigency under 2 C.F.R. § 200.320(c)(3), to authorize and direct the Director of Public Safety and Service to enter into a contract without formal bidding or advertising, with Pro 1 Electric, Parkersburg, West Virginia, for the City of Marietta 304 Putnam Street Generator & Switchgear Renovations Project, at a price not to exceed \$93,489.96; and appropriating a portion of the City of Marietta, Ohio, American Rescue Plan Act Funds for the Project, and declaring an EMERGENCY.

WHEREAS, the City has COVID vaccines and booster shots for public distribution stored in refrigeration units that are located in the City Building at 304 Putnam Street (the "Project Site"); and

WHEREAS, the COVID vaccines and booster shots are required to be refrigerated until they are used; and

WHEREAS, continuous electrical power to the Project Site is required to keep the refrigeration units operational to properly store the COVID vaccines and booster shots; and

WHEREAS, the Project Site has an existing standby generator to provide temporary power to the Project Site in the event of the loss of electric service to the Project Site; and

WHEREAS, the existing standby generator and the electrical service, and main building distribution switchboard for existing standby generator for the Project Site are currently located in the floodplain; and

WHEREAS, a flood event could render the existing electrical service, main building distribution switchboard and standby generator non-operational in its current location; and

WHEREAS, an emergency under ORC 735.051 and a public exigency under 2 C.F.R. § 200.320(c)(3) exists to relocate the electrical service, and main building distribution switchboard out of the floodplain to prevent it from being damaged by flood events and to prevent the loss of COVID vaccines and booster shots; and

WHEREAS, the nature of the emergency and public exigency requires prompt action which would be unnecessarily delayed by compliance with the terms of the Ohio Revised Code Section 735.05, regarding the competitive bidding process; and

WHEREAS, the City has solicited proposals from three companies for the Project in accordance with 2 C.F.R. § 200.320; and

WHEREAS, Pro 1 Electric, Parkersburg, West Virginia submitted a proposal for the Project in the amount of \$93,489.96, which is the lowest of the three proposals received for the Project;

WHEREAS, the City has received a distribution of monies (the "ARPA Funds") from the American Rescue Plan Act of 2021 ("ARPA" or the "Act"); and

WHEREAS, Congress passed the Act effective March 11, 2021; and

WHEREAS, Section 603 created the Coronavirus Local Fiscal Recovery Fund which, among other things, appropriated money to cities, nonentitlement units of local government, and counties to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID-19); and

WHEREAS, Section 603(c) generally provides that:

(1) USE OF FUNDS. Subject to paragraph (2), and except as provided in paragraphs (3) and (4), a metropolitan city, nonentitlement unit of local government, or county shall only use the funds provided under a payment made under this section to cover costs incurred by the metropolitan city, nonentitlement unit of local government, or county, by December 31, 2024 -

(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(B) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or

(D) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, Department of Treasury Final Rule, published on January 6, 2022, and effective April 1, 2022, provides in part that:

Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund "government services." [The "standard allowance"].

WHEREAS, the Rule further observes that:

The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss particularly for Coronavirus State and Local Fiscal Recovery Fund's smallest recipients. This change is intended to promote administrative efficiency and simplify revenue loss calculation for smaller recipients.

WHEREAS, the Rule further clarifies that recipients can use:

SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the [Final Rule four-step process]. Government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise.

WHEREAS, some common examples of "government services" expressly recognized by Treasury are as follows:

- Road building and maintenance, and other infrastructure
- Health services
- General government administration, staff, and administrative facilities
- Environmental remediation
- Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)
- Maintenance or pay-go funded building infrastructure
- Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure

WHEREAS, "Government services is [deemed by Treasury] the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements;" and

WHEREAS, funds utilized pursuant to the standard revenue loss allowance continue to have certain restrictions, including:

- Deposit into pension funds
- Satisfaction of settlements or judgments
- Contributions to financial reserves or "rainy day" funds

WHEREAS, the City has determined, within its judgment, that the 304 Putnam Street Generator & Switchboard Renovations Project qualifies as a permitted use of the ARPA Funds in direct support of governmental services.

WHEREAS, the Marietta City Engineer, Joe Tucker; the Director of Public Safety and Service, Steve Wetz; and the Mayor of the City of Marietta, Ohio, Josh Schlicher recommend immediate action be taken due to the real and present emergency and public exigency that now exists related to the location of the existing electrical service, main building distribution switchboard and standby generator located in the floodplain and the risk of loss of COVID vaccines and booster shots; and

WHEREAS, the Council for the City of Marietta, Ohio deems it necessary to preserve the health, safety and welfare of the citizens of Marietta, Ohio, that it authorizes said contract with Pro 1 Electric, Parkersburg, West Virginia, without advertising for competitive bids, pursuant to an emergency under O.R.C. §735.051 and a public exigency under 2 C.F.R. § 200.320(c)(3); now therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARIETTA, OHIO:

- Section 1: That the Council for the City of Marietta, Ohio hereby declares that a real and present emergency O.R.C. §735.051 and a public exigency under 2 C.F.R. § 200.320(c)(3) exist in connection with risk of losing COVID vaccines and booster shots in the event of a loss of power at the City Building located at 304 Putnam Street during a flood event.
- Section 2: The City elected to use the standard allowance by way of Ordinance No. 21 (22-23) and its presumption of revenue loss due to the public health emergency and to use the amount authorized herein to fund government services.
- Section 3: The Project described herein serves the objectives of the Act by providing services traditionally provided by a government, namely public infrastructure support and general government administration and administrative facilities.
- Section 4: The Project is hereby authorized and shall be paid for from the ARPA Funds in the amount of/an amount not to exceed \$93,489.96.
- Section 5: That the Director of Public Safety and Service shall be and is hereby authorized and directed, without formal bidding or advertising, which requirements are hereby specifically waived, to enter into a contract with Pro 1 Electric, Parkersburg, West Virginia, for the City of Marietta 304 Putnam Street Generator & Switchboard Renovations Project at a cost not to exceed \$93,489.96.
- Section 6: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted 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 actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.
- Section 7: That this Ordinance is hereby declared to be an EMERGENCY measure and PUBLIC EXIGENCY necessary for the immediate preservation of the public peace, health and safety of the City of Marietta, Ohio and for the further reason of the risk of loss of COVID vaccines and booster shots, thereby creating a real and present emergency and public exigency to the City of Marietta, Ohio and its citizens.

WHEREFORE, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Introduced by the Public Lands and Buildings Committee, William Farnsworth, Chairman.

William Farnsworth
Chairman

Passed this 17 day of March, 2022.

[Signature]
President of Council Pro-tem

ATTEST:

Jennifer Thorman
Clerk of Council

Approved this 17 day of March, 2022.

Acting [Signature]
Mayor

First Reading March 17, 2022

Second Reading Suspended

Third Reading Suspended