Bill No. 5-2009 Ordinance No.1320-2009

EMERGENCY ORDINANCE

AN EMERGENCY ORDINANCE AUTHORIZING THE WITHDRAWAL AND USE OF PRINCIPAL OF A CITY RESERVE TRUST FUND

WHEREAS, the City of Coatesville (hereinafter "the City") is a Third Class City operating by means of a Home Rule Charter; and

WHEREAS, pursuant to Section 2-309 of the Home Rule Charter, City Council, in the event of substantial public emergency affecting the life, health, property and peace of the citizens of the City, may adopt an emergency ordinance; and

WHEREAS, the City created an Authority known as the City of Coatesville Authority ("CCA") in accordance with the Municipality Authorities Act of 1945 for purposes consistent with the said Act; and

WHEREAS, by Ordinance No. 620-81, the City authorized the sale of certain water system properties owned by the City to CCA; and

WHEREAS, by Ordinance No. 814-88, the City authorized the sale of certain sewer system properties to CCA; and

WHEREAS, pursuant to an Agreement ("Agreement") dated June 25, 1998, the City and CCA agreed that CCA's assets would be sold to a third party and that the City would receive and deposit into a City Reserve Trust Fund ("Fund") the net proceeds of such sale; and

WHEREAS, pursuant to an agreement dated as of February 15, 2000, substantially all of the CCA assets were sold to a third party; and

WHEREAS, it was intended that the net proceeds of the sale of the CCA assets would go to the City; and

WHEREAS, pursuant to Ordinance No. 1124-2000, the City created the Fund for the purpose of administering and investing any net proceeds it received from CCA as a result of the sale of CCA's assets subject to certain conditions including that the principal of such Fund could be used in the event of "emergency" financial circumstances requiring the need for funds, in which case any funds used would be replenished when practical; and

WHEREAS, approximately $38 million was initially deposited into the Fund from the sale of the CCA assets and approximately $21 million currently remains in the Fund; and

WHEREAS, at the time the Agreement was entered into and the Fund was established, the City was a distressed City which had experienced a decreasing tax base, unacceptable unemployment and poverty rates and otherwise was in critical need of revitalization; and

WHEREAS, since the establishment of the Fund, the City has taken significant steps to revitalize itself, increase employment, add new businesses, add recreational opportunities for its citizens, draw people to the City, increase housing and otherwise improve the quality of life for its citizens; and

WHEREAS, in furtherance of the City's revitalization, the City has entered into contracts, borrowed funds and incurred certain expenses; and

WHEREAS, revenues from the revitalization have materialized more slowly than expected; and

WHEREAS, the City is unable to pay any vendors and has substantial and unacceptable accounts payable; and

WHEREAS, the City is not currently able to meet its payroll obligations; and

WHEREAS, the City has declared the State of Emergency; and

WHEREAS, unless rectified immediately, the current emergency situation will adversely affect the City's ability to borrow in the future; and

WHEREAS, funds are needed to meet current and past due financial obligations; and

WHEREAS, as a result of the existence of the Fund, the City cannot borrow funds at tax-free rates and its borrowing costs are excessive and are greater than they would be if the Fund did not exist; and

WHEREAS, it is not in the best interests of the City and/or its taxpayers to pay excessive interest when other funds are available; and

WHEREAS, as a result of its emergency financial condition, there is a substantial public emergency affecting the life, health, property and peace of the citizens of Coatesville;

NOW THEREFORE, in accordance with the foregoing authority, which incorporates all rights and powers granted to the City of Coatesville under the Third Class City Code and those powers granted to the City under its Charter as well as all inherent powers and all rights deriving from any agreements between the City and CCA, the City does hereby enact and ordain as follows:

1. The City Council of the City of Coatesville does hereby declare and confirm that there exists a state of public emergency affecting the life, health, property and peace of the citizens of Coatesville;

2. Paragraph 5 of Ordinance No. 1124-2000 is hereby repealed for purposes of addressing the emergency identified herein;

3. The City Manager is authorized and directed to alleviate the emergency by withdrawing amounts of principal from the Fund in the amount of up to two hundred thousand ($200,000.00) Dollars for the purpose of paying current and future obligations of the City to the extent that funds are not otherwise available on a current basis for such purpose and are necessary to address the identified emergency; and

4. In furtherance of the authority and direction provided in the preceding paragraph, the City Manager is authorized and directed to (i) instruct the First National Bank of Chester County to sell investments in the Fund and to transfer the proceeds to such City account(s) as the City Manager shall direct, and (ii) take any other actions that may be necessary or desirable to facilitate the sale of investments in the Fund and to transfer the proceeds to one or more City accounts.

If any portion of this Ordinance shall be determined to be unconstitutional, illegal or unenforceable, then that portion and only that portion of this Ordinance which is deemed to be unconstitutional, illegal or unenforceable shall be severed from the remainder of this Ordinance and all other terms thereof shall remain in full force and effect.

This Ordinance shall be effective immediately and shall automatically terminate on the 31st day following adoption in accordance with the City Charter and the Third Class City Code and may be re-enacted if the emergency still exists.

ENACTED AND ORDAINED this 23rd day of February 2009.

Martin L. Eggleston
President, City Council

ATTEST:

Harry G. Walker III
City Manager

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance was introduced on the 23rd day of February, 2009 and was duly enacted by the Council of the City of Coatesville, Chester County, Pennsylvania, on 23rd day of February, 2009, that the vote upon the said Ordinance has been recorded in the Minutes of the City Council and that the Ordinance has been fully recorded.

Harry G. Walker III
City Manager