

**ORDINANCE NO. 62-24**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN  
AGREEMENT WITH THE BOARD OF EDUCATION OF THE AVON LOCAL  
SCHOOL DISTRICT REGARDING THE DISTRIBUTION OF PAYMENTS  
IN LIEU OF TAXES (PILOTS) IN TIF NO. 3 (ORD. NO. 156-06)  
AND TIF NO. 10 (ORD. NO. 171-08)  
AND DECLARING AN EMERGENCY**

**WHEREAS**, Avon City Council determined that the development of industrial properties in the City of Avon will benefit the City and its residents by creating economic opportunities, enlarging the property tax base, enhancing income tax revenues, and stimulating collateral development in the City; and

**WHEREAS**, by providing Public Infrastructure Improvements (as that term is defined in Section 5709.40(A)(7) of the Ohio Revised Code) including road construction and related improvements, the City will facilitate the future development of the industrial properties which will benefit both parties to this Agreement and the residents of Avon; and

**WHEREAS**, the City has adopted Ordinance Nos. 156-06 (TIF No. 3) and Ordinance No. 171-08 (TIF No. 10) with the stated purpose being to increase revenue available for construction of Public Improvements and thereby encourage industrial development in the areas described in these ordinances; and

**WHEREAS**, the City and the Board of Education seek to enter into an agreement to modify the division of the Payments in Lieu of Taxes (Pilots) payable to the Schools on certain industrial projects under very specific sets of circumstances outlined in that agreement that both parties believe will be beneficial to all the tax payers of the City of Avon and promote the health, safety and welfare of all members of the community.

**WHEREAS**, Council deems it to be in the best interests of the health, safety and welfare of the citizens of Avon to pass this Ordinance and thereby authorize the Mayor to execute and finalize the TIF Distribution Agreement with the Avon Local School District on behalf of the City of Avon.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:**

Section 1 - That this Council hereby approves the TIF Distribution Agreement in substantially the form as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference. Furthermore, Council authorizes the Mayor to execute the final Agreement on behalf of the City.

Section 2 - That this Council hereby authorizes the Mayor, the Finance Director or other appropriate officer(s) of the City to take such actions as are necessary or appropriate to implement the transactions contemplated by the Agreement adopted by through this Ordinance including the establishment of the Special Revenue Fund referred to therein.

Section 3 - That it is hereby 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 any decision-making bodies of the City which 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 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of City residents, that purpose being to enter into the TIF Distribution Agreement with the Avon Local School District and to begin sharing the revenues generated by TIF Nos. 3 and 10 for the purpose of financing construction of public improvements that, among other things, will further economic development on certain industrial property and increase the overall prosperity of all citizens of Avon; therefore, this Ordinance is hereby declared to be an emergency and shall take effect and be in full force immediately upon its passage and approval by the Mayor.

PASSED: May 28, 2024

DATE SIGNED: May 28, 2024

By: Brian Fischer  
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR May 29, 2024

[Signature]  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior  
John A. Gasior, Law Director

ATTEST:

Barbara J. Brooks  
Barbara J. Brooks  
Clerk of Council

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 62-24, passed by the Council of said City on May 28, 2024.

POSTED: May 31, 2024  
In Five Places as  
Provided by Council

IN WITNESS WHEREOF, I have on this 29th day of May 2024, affixed my signature and official seal.

Barbara J. Brooks  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio

Prepared By:  
John A. Gasior, Esq.  
Law Director

**TAX INCREMENT FINANCING / PAYMENT IN LIEU OF TAXES AGREEMENT  
FOR PUBLIC IMPROVEMENTS**

This Tax Increment Financing / Payment in Lieu of Taxes Agreement for Public Improvements (the "Agreement") is entered into this 16<sup>th</sup> day of May, 2024 by and between the Avon Local School District Board of Education, a local school district organized and existing under the laws of the State of Ohio with a principal office located at 36600 Detroit Road, Avon, Ohio 44011 (the "Board") and the City of Avon, Ohio, a municipal corporation duly organized and validly existing under the laws of the State of Ohio with a principal office located at 36080 Chester Road, Avon, Ohio 44011 (the "City")(the Board and City collectively the "Parties").

**WHEREAS**, the Parties are bodies politic and corporate, capable of exercising all of the usual powers pertaining thereto, including the power to acquire, possess, develop, and improve real property; and

**WHEREAS**, the Parties have a long history of working cooperatively on projects for the mutual benefit of the families within the school district and city; and

**WHEREAS**, pursuant to Ohio Revised Code Chapter 5709 *et seq.*, the City has the authority to approve tax increment financing ("TIF") for qualifying development projects with city limits, and require qualifying developers to make annual service payments in lieu of taxes ("PILOT"), a portion of which would be received by the Board; and

**WHEREAS**, in continuation of their cooperative relationship, the Parties desire to, and have been duly authorized to, enter into an agreement wherein, when a TIF is or has been approved for certain development of certain parcels in the City, Fifty Percent (50%) of the portion of certain PILOT payments distributed to the Board will be deposited into a Special Reserve Fund for future public infrastructure improvements, including but not limited to any and all public infrastructure improvements reasonably necessary in furtherance of Board development projects.

**NOW THEREFORE** in consideration of the foregoing and of the mutual promises, covenants, ad agreements hereinafter set forth, the Board and City agree as follows:

1. **Territory.** This Agreement shall apply only to industrial parcels north of Interstate-90 within City limits zoned M-1 or M-2 as of May 16, 2024, as identified on the Zoning Map attached hereto and incorporated herein as Exhibit A (the "Territory").
2. **Creation of a Special Reserve Fund.** Where the City approves or has approved a TIF for an industrial development project in the Territory and requires a PILOT, Fifty Percent (50%) of the portion of the PILOT distributed to the Board will be deposited into a Special Reserve Fund, subject to the limitation set forth in Section 3. The remaining Fifty Percent (50%) of the portion of the PILOT distributed to the Board will remain with the Board to be utilized as the Board sees fit, at its sole discretion and not subject to this Agreement.

3. **Limitation on Adjoining Industrial Development Projects.** Once a development project is designated by the City and Board for PILOT deposits as set forth in Section 2, no other development project on that parcel or on any adjoining parcel (as they exist on May 16, 2024) will be eligible for a PILOT deposit into the Special Reserve Fund. For the avoidance of doubt, the Board will keep One Hundred Percent (100%) of all PILOT payments from any development project on an adjacent parcel.
4. **Use of Special Reserve Funds.** The City will have the authority to draw down from that Special Reserve Fund only to:
  - a. Fund public infrastructure improvements required by development projects qualifying for Special Reserve Fund deposits pursuant to this Agreement in the M-1/M-2 zone north of Interstate-90;
  - b. Fund any public infrastructure improvements within City limits that the Board would otherwise be responsible for as part of new Board development;
  - c. Fund the real estate acquisition or public improvement costs of any joint City-Board projects; and
  - d. Pay debt service related to (4)(a)-(c).
5. **Public Infrastructure Improvements Related to Board Development Projects.** In consideration of the PILOT deposits described in Section 2, the City will pay the full cost of any public infrastructure improvements reasonably necessary as part of any Board development within the City and which would otherwise be the financial responsibility of the Board, whether or not sufficient monies exist within the Special Reserve Fund to fund the same. The City will commence and complete any such public infrastructure improvements as soon as reasonably practicable in the ordinary course, without delay.
6. **Special Reserve Fund Cap.** The Special Reserve Fund will have a cap of Ten Million Dollars and No Cents (\$10,000,000.00) after which no additional PILOT deposits from the Board will be required, unless and until the balance of the Special Reserve Fund drops back below Ten Million Dollars and No Cents (\$10,000,000.00).
7. **Term and Termination.** The agreement will have an initial term of fifteen (15) years from the effective date of this Agreement and shall be renewable for subsequent five (5) year terms should the Board and the City so agree. Any public infrastructure improvements related to Board development projects begun during any term of this Agreement will continue to be done at the City's full cost until completion of the public infrastructure improvements. Any PILOT deposits begun during any term of this Agreement will continue until the shorter of the expiration of the PILOT distribution to the Board or the end of the then-current term of this Agreement. Either Party may terminate this Agreement: (i) immediately upon express written consent of the other Party; or (ii) upon breach of this Agreement by the other party which remains uncured for a period of thirty (30) days.

8. **Dispute.** During the term of this Agreement, the City will give the Board prompt notice, as soon as reasonably possible, of any project it believes qualifies for a PILOT deposit into the Special Reserve Funds as described in Section 2. Should the Board dispute the City's designation, it will notify the city within ten (10) business days. Should the Parties be unable to informally resolve their differences within thirty (30) days therefrom, either Party may pursue resolution in the Lorain County Court of Common Pleas, or the U.S. District Court for the Northern District of Ohio. Any other dispute between the Parties related to this Agreement or the duties and obligations herein, will be resolved in the same manner.
9. **Notice.** All disclosures, reports, or other notices which are required to be given or may be given pursuant to this Agreement shall be sent by regular mail, postage prepaid, and electronic mail to the following addresses, and shall be deemed to have been given or delivered within three (3) days of delivery in the case of regular mail and on the day of delivery in the case of electronic mail:

- a. If to the Board to:

Avon Local School District  
Attn: Superintendent  
3660 Detroit Road  
Avon Ohio 44011  
[hodgeb@avoneagles.org](mailto:hodgeb@avoneagles.org)

with a copy to:

Ryan M. Gembala, Esq.  
Dooley Gembala McLaughlin Pecora  
5455 Detroit Road  
Sheffield Village, OH 44054  
[rgembala@dooleygembala.com](mailto:rgembala@dooleygembala.com)

- b. If to the City to:

City of Avon  
Attn: Mayor  
36080 Chester Road  
Avon, OH 44011  
[bjensen@cityofavon.com](mailto:bjensen@cityofavon.com)

with a copy to:

John Gasior Esq., Law Director  
36080 Chester Road  
Avon, OH 44011  
[jgasior@ssgavonlaw.com](mailto:jgasior@ssgavonlaw.com)

Either Party may change its contact or address for receiving notices by giving written notice of such change to the other Party.

10. **Amendment and Waiver.** None of the terms or provisions of this Agreement may be altered, modified or amended except by an instrument in writing, duly executed by the Parties. A waiver by either Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which that Party would otherwise have on any future occasion. No failure to exercise nor any delay in exercising any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.
11. **Descriptive Headings.** The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to any rules, principles or provisions of choice of law or conflict of laws.
13. **Business Days.** If any time period for giving notice or taking action expires on a day which is a Saturday, Sunday or legal holiday in the State of Ohio, then the time period will automatically be extended to, the next business day immediately following such Saturday, Sunday or legal holiday.
14. **Severability.** If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, void, or unenforceable, such provision will be of no force and effect, but such holding shall have no effect upon the enforceability of any other provision.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed on this 29<sup>th</sup> day of May, 2024.

**CITY OF AVON, OHIO**

**AVON LOCAL SCHOOL DISTRICT  
BOARD OF EDUCATION**

By: 

By: 

Its : Mayor, Bryan K. Jensen

Its : President, Board of Education