

ORDINANCE NO. 43-26

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000 FOR THE PURPOSE OF PAYING ADDITIONAL COSTS OF CONSTRUCTING, RECONSTRUCTING, WIDENING, GRADING, DRAINING, PAVING, AND OTHERWISE IMPROVING STATE ROUTES 254 AND 83 IN THE CITY, TOGETHER WITH ALL NECESSARY APPURTENANCES AND RELATED IMPROVEMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, this Council of the City of Avon, Ohio (the “City”) has determined that it is necessary to pay additional costs of improving State Routes 254 (Detroit Road) and 83 (Center Road), including the intersection of those two streets, by constructing, reconstructing, widening, grading, draining, paving and otherwise improving those two streets, together with all necessary appurtenances and related improvements (the “Project”); and

WHEREAS, this Council determines that it is necessary to issue notes of the City described in Section 3 (the “Notes”), in anticipation of the issuance of bonds, for the purpose of paying additional costs of the Project and paying financing costs of the Notes; and

WHEREAS, the Director of Finance of the City (the “Director of Finance”), as fiscal officer, has certified to this Council the estimated life of the Project is at least five years, the maximum maturity of the bonds in anticipation of which the notes will be issued for the Project, and the maximum maturity of notes issued in anticipation of those bonds is 20 years from the date of issuance of the Notes;

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

Section 1. Bonds Anticipated by the Notes. It is necessary to issue bonds of the City in an aggregate principal amount not to exceed \$3,000,000 (the “Bonds”) to pay the costs of the Project and the financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Bonds.

Section 2. Bond Terms. The Bonds shall be dated approximately June 1, 2027, shall bear interest at the now estimated rate of 5% per year, payable semiannually until the principal amount is paid, and are estimated to mature on December 1 of each year in 20 annual installments, in accordance with Section 133.21 of the Ohio Revised Code. The first interest payment on the Bonds is estimated to be December 1, 2027, and the first principal payment on the Bonds is estimated to be December 1, 2028.

Section 3. Note Terms. The Notes will have the following terms:

(a) Amount and Purpose. The Notes shall be issued in anticipation of the issuance of the Bonds in a principal amount not to exceed \$3,000,000 for purpose of paying the costs of the Project and paying financing costs of the Notes.

(b) Issuance and Maturity Date. The Notes shall be dated their date of issuance and shall mature on a date that is between three months and one year, inclusive, from their date of issuance, all as determined by the Director of Finance in the Certificate of Award described in Section 6.

(c) Interest. The Notes shall bear interest at the rate fixed by the Director of Finance in the Certificate of Award, provided that such rate shall not exceed 7% per year computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Notes shall be payable at maturity or earlier redemption.

(d) Redemption Before Stated Maturity. The Director of Finance may determine whether the Notes will be subject to optional redemption by the City before maturity in the Certificate of Award, provided that the redemption price of the Notes shall not be greater than 110% of the principal amount to be redeemed. If the Notes are subject to optional redemption before maturity, the redemption of the Notes must be made by deposit with the Paying Agent (defined below) of the principal amount of the Notes to be redeemed, together with interest accrued on those Notes to the redemption date. The City must exercise its optional redemption rights by mailing a notice of optional redemption, providing for the date of optional redemption and the name and address of the Paying Agent, by certified or registered mail to the holders of the Notes to be redeemed, as shown on the register at the close of business on the day before the mailing of the notice. The notice must be mailed at least 30 days before the optional redemption date, unless that notice is waived by the holders of the Notes. If money for the optional redemption is on deposit with the Paying Agent on the optional redemption date following the giving of the notice of redemption (unless the notice requirement is waived), interest on principal amount of the amount optionally redeemed will cease to accrue on the optional redemption date and, upon the request of the Director of Finance, the holder of the Notes being redeemed must arrange for the delivery of the Notes to the Paying Agent for redemption, surrender, and cancellation.

(e) Form, Numbering, Denomination and Designation. The Notes shall be issued in fully registered form. The Notes shall be issued in book-entry form unless the Director of Finance determines in the Certificate of Award that it would not be in the best interest of the City for the Notes to be in book-entry form. The Notes shall be issued in the numbers and amounts as requested by the Original Purchaser (defined below) and approved by the Director of Finance, provided that no Note shall be issued in a denomination less than \$100,000. The Notes shall express on their faces the purposes for which they are issued and that they are issued in accordance with this ordinance. The Notes shall be designated "Street Improvement General Obligation Bond Anticipation Notes, Series 2026" or as otherwise determined by the Director of Finance in the Certificate of Award.

(f) Book-Entry System. The Notes, pursuant to the terms set forth below, may also be issued to a Depository (defined below) for use in a book-entry system (defined below). The Director of Finance is authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the authentication, immobilization, and transfer of Notes, including arrangements for the payment of principal and interest by wire transfer, after determining that the execution of those agreements will not endanger the funds or securities of the City, which determination shall be conclusively evidenced by the signing of any of those agreements.

If and as long as a book-entry system is utilized, (i) the Notes shall be issued in the form of one note in the name of the Depository or its nominee, as owner, and immobilized in the custody of the Depository; (ii) the beneficial owners in book-entry form shall have no right to receive Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book-entry form shall be shown by a book entry on the system maintained and operated by the Depository and its Participants (as defined below), and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Council of the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book-entry system, the Director of Finance may attempt to establish a securities depository/book-entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements he deems necessary, shall permit withdrawal of the Notes from the Depository, and authenticate and deliver note certificates in bearer or registered form, as the Director of Finance determines, to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of Council action or inaction, of those persons requesting such issuance.

As used in this Section and this ordinance:

“Book-entry form” or “book-entry system” means a form or system under which (i) the beneficial right to principal and interest may be transferred only through a book entry and (ii) physical notes are issued only to a Depository or its nominee as owner, with the Notes “immobilized” to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining a book-entry system to record beneficial ownership of the right to principal and interest, and to effect transfers of the Notes, in book-entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company).

“Participant” means any participant contracting with a Depository under a book-entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

Section 4. Payment. The Notes shall be payable as to both principal and interest at the office of the Director of Finance, or at a bank or trust company designated by the Director of Finance (individually or collectively the “Paying Agent”), without deduction for exchange, collection or service charge, in lawful money of the United States of America.

Section 5. Signing of Notes. The Notes shall be executed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that those signatures may be facsimile signatures. In the absence of the Mayor, the Notes shall be executed by the President of Council, and in the absence of the Director of Finance, the Notes shall be executed by the Assistant Director of Finance.

Section 6. Sale of the Notes.

(a) Sale to Original Purchaser. The Director of Finance may determine to sell the Notes to the original purchaser set forth in the Certificate of Award (the "Original Purchaser") (a) in a private sale to an underwriter or to a financial institution or other entity or person in a private placement, and may solicit one or more proposals to purchase the Notes, or (b) by a competitive bid on the best bid. If the Director of Finance determines to sell the Notes in a competitive bid, the Director of Finance is authorized to take the actions described in Section 133.30 of the Ohio Revised Code, including determining the manner and times of advertisement, including by a notice of sale, accepting the best bid based on net interest cost, rejecting any or all bids received and waiving any informality, irregularity, or defect. The purchase price of the Notes must not be less than 97% of the aggregate principal amount of the Notes, plus any accrued interest on the Notes from their date to the date of delivery and payment. If the Director of Finance sells the Notes in a private placement, this Council authorizes the Director of Finance to select a placement agent for that private placement. The Director of Finance or the Mayor may enter into (a) a note purchase agreement with the Original Purchaser, or (b) a note placement agreement with the placement agent for the private placement of the Notes.

(b) Consolidation. If the Director of Finance determines it to be in the best interest of the City, the Director of Finance may combine the Notes with one or more other general obligation bond anticipation notes of the City, payable from taxes subject to the ten-mill tax limitation.

(c) Certificate of Award. The Director of Finance shall sign and deliver a certificate setting forth and determining the terms and other matters in connection with the Notes and their issuance, sale and delivery (the "Certificate of Award"). The Certificate of Award shall state: (i) the principal amount of the Notes; (ii) the interest rate on the Notes; (iii) the purchase price for the Notes; and (iv) any other terms required by this ordinance. The Director of Finance may state in the Certificate of Award any changes in the date, the maturity date, the redemption provisions, and the designation of the Notes; whether the Notes are to be consolidated with other note issues; and any other terms authorized by this ordinance, subject to the limitations stated in this ordinance.

(d) Delivery. The Director of Finance shall cause the Notes to be prepared, signed and delivered to the Original Purchaser. This Council authorizes and directs the Clerk of Council to deliver a true transcript of proceedings for the issuance of the Notes to the Original Purchaser upon payment of the purchase price. This Council authorizes and directs the Director of Finance to provide to the Clerk of Council, for inclusion in the transcript, a statement of indebtedness of the City and the other information required by Section 133.33 of the Ohio Revised Code.

Section 7. Use of Note Proceeds. The proceeds from the sale of the Notes shall be deposited and are hereby appropriated to be used as follows:

(a) Any accrued interest or premium received by the City on the sale of the Notes must be deposited in the Bond Retirement Fund of the City and be used for the payment of interest on the Notes at their maturity.

(b) An amount necessary to pay the financing costs of the Notes, to the extent not paid by the Original Purchaser and to the extent that the Director of Finance determines to pay those costs from the proceeds of the Notes, must be deposited in a separate fund and used for the payment of those financing costs.

(c) The remainder of the proceeds must be paid into the proper fund or funds and be used for the payment of the costs of the Project.

Section 8. Security and Sources of Payment.

(a) General Obligations; Full Faith and Credit. The Notes shall be full general obligations of the City and this Council pledges the full faith and credit of the City for the prompt payment of debt service on the Notes. The par value to be received from the sale of the Bonds and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with the interest thereon, and is pledged for such purpose. To the extent that at the maturity of the Notes funds of the City are not available in an amount sufficient to retire the Notes, the Council of the City shall pass legislation authorizing the issuance of notes or Bonds, the proceeds of which shall be used to retire the Notes.

(b) Provisions for Tax Levy. During the years that the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually at the rate not less than that which would have been levied if bonds had been issued without the prior issuance of the Notes. This tax shall be within the ten-mill limitation imposed by Ohio law, and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes of each of said years are certified, extended or collected. In addition, this tax shall be placed before and in preference to all items and for the full amount thereof. The funds derived from the tax levies required by this ordinance shall be placed in a separate and distinct fund which, together with the interest collected on the same, shall be irrevocably pledged for the payment of the principal of and interest on the Notes or the bonds in anticipation of which they are issued, when and as the same fall due.

(c) Municipal Income Tax Covenant. While the Notes are outstanding, the City covenants to appropriate annually, to the extent required, sufficient amounts from municipal income tax revenues to pay principal and interest on the Notes when the same fall due, and to continue to levy and collect the municipal income tax in an amount necessary to meet debt charges on the Notes. On or before the maturity date of the Notes, the City covenants to deposit into the Bond Retirement Fund, from available funds appropriated for the purpose, an amount necessary to meet any shortfall that may exist between the amount then available in the Bond Retirement Fund and the amount of principal and interest due at maturity of the Notes.

Section 9. Federal Tax Considerations.

(a) Arbitrage. The City covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary so that the Notes will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Director of Finance of the City, as the fiscal officer, or any other officer of the City, including the Clerk of Council, having responsibility for the issuance of the Notes shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances, and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Notes.

(b) Tax Compliance; Arbitrage Rebate. The City covenants that (i) it will take or cause to be taken such actions which may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, and (ii) it will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (A) apply the proceeds of the Notes to the governmental purpose of the borrowing, (B) restrict the yield on investment property acquired with those proceeds, (C) make timely rebate payments to the federal government, (D) maintain books and records and make calculations and reports, and (E) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Director of Finance and other appropriate officers of the City are authorized and directed to take any and all actions, make calculations and rebate payments, and take or give reports and certifications as may be appropriate to assure such exclusion of that interest.

(c) Qualified Tax-Exempt Obligations. The Notes are designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations," it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Section 10. Ohio Market Access Program. The City may participate in the Ohio Market Access Program (the "Program") which is offered through the Treasurer of the State of Ohio (the "Treasurer of State"), provided that the Director of Finance (a) determines in the Certificate of Award that participation in the Program is in the best interest of the City, and (b) elects in the Certificate of Award to participate in the Program.

Section 11. Standby Note Purchase Agreement. The Standby Note Purchase Agreement, required as part of the Program, is authorized in the form presented to this Council with such changes not materially adverse to the City as may be approved by the officers of the City executing the Standby Note Purchase Agreement. The City acknowledges the agreement of the Treasurer of State in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through

its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (a) to purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (b) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at a rate of the lower of the maximum interest rate provided by law or the 1-year MMD (Municipal Market Data) Index for "AAA"-rated obligations plus 400 basis points (or such other rate methodology in effect as part of the Program), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes within the ten-mill limitation imposed by law on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Code to the same extent that interest on the Notes is so excluded.

The Mayor and the Director of Finance or, in their absence, the officers provided in Section 5 as the officers signing the Notes, are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the holders or beneficial owners of the existence of the Standby Note Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Notes for purchase by the Treasurer of State at stated maturity.

In addition, the City acknowledges that the Treasurer of State will establish an "After Maturity Interest Rate," as generally provided for as part of the Program and as specifically provided for within the Standby Note Purchase Agreement.

Section 12. Financing Costs. The City retains the professional services and authorizes the payment of the financing costs of the Notes, as provided in this Section 12.

(a) Bond Counsel. This Council retains the legal services of Calfee, Halter & Griswold LLP, as Bond Counsel to the City, in connection with the authorization, sale, issuance and delivery of the Notes. In providing those legal services, as an independent contractor and in an attorney-client relationship, Bond Counsel shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City, or of any other political subdivision of the State, or the execution of public trusts.

(b) Original Purchaser. This Council authorizes and directs the Director of Finance to select the Original Purchaser of the Notes. The Original Purchaser will be compensated for its services in accordance with any note purchaser agreement or proposal provided by the Original Purchaser.

(c) Municipal Advisor. This Council retains the services of MAS Financial Advisory Services LLC, as municipal advisor for the Notes. The municipal advisor will be paid for those

services in accordance with its letter of engagement. This Council authorizes the fees for the financial advisor's services to be included in the financing costs of the Notes.

(d) Paying Agent. This Council authorizes and directs the Director of Finance to appoint a Paying Agent for the Notes. The Paying Agent must be paid for those services in accordance with any paying agent agreement or its proposal.

(e) Ratings. If, in the judgment of the Director of Finance, the filing of an application for a rating on the Notes by one or more nationally recognized statistical rating organizations is in the best interest of and financially advantageous to the City, the Director of Finance shall prepare and submit those applications and provide to each of those organizations the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be including in the financing costs of the Notes.

(f) Limits on Authority of Service Providers. In rendering the services described above, as independent contractors, those service providers shall not exercise any administrative discretion on behalf of the City in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision; or the execution of public trusts.

(g) Payment of Financing Costs. This Council authorizes and approves the expenditure of the amounts necessary to pay the financing costs specifically described above and all other necessary financing costs in connection with the issuance and sale of the Notes. Those financing costs may be paid by the Original Purchaser. To the extent that they are not paid by the Original Purchaser, this Council authorizes and directs the Director of Finance to provide for the payment of those financing costs from the proceeds of the Notes to extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

Section 13. Council Determinations. It is determined and recited that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes in order to make them legal, valid and binding obligations of the City, will have been done and performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, will have been exceeded in the issuance of the Notes.

Section 14. Certification to County Auditor. The Clerk of Council is directed to forward a certified copy of this ordinance and a copy of the Certificate of Award to the County Auditor of Lorain County and to secure a receipt for the delivery of those documents.

Section 15. Additional Documents and Certificates. The Mayor, the Director of Finance, the Law Director, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to prepare, execute and deliver any transcript certificates, financial statements and other documents, agreements, representations and instruments and to take such actions as necessary or appropriate to consummate the issuance of the Notes as provided in this ordinance.

Section 16. Open Meetings. 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 such deliberations of this Council and any of its committees that

resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including the City's Charter, Codified Ordinances and any applicable provisions of Section 121.22 of the Ohio Revised Code.

Section 17. Emergency and Effective Date. This ordinance is declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the City, the immediate emergency being the necessity for the issuance and sale of the Notes to enable the City to promptly continue to construct the Project, which will improve the safety of vehicular and pedestrian travel in the City; therefore, this ordinance shall be in full force and effect immediately upon passage of Council by the required three-fourths majority and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Barbara J. Brooks, Clerk of Council

Posted: _____
Electronically and at City Hall as
Provided by Council

Prepared By:
Calfee, Halter & Griswold LLP, Bond Counsel