

ORDINANCE NO. 31-21

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$3,600,000 BOND ANTICIPATION NOTES OF THE CITY OF AVON, OHIO IN ANTICIPATION OF THE ISSUANCE OF BONDS TO PAY THE PROPERTY OWNERS' PORTION AND THE CITY'S PORTION OF THE COSTS, IN ANTICIPATION OF THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS, RELATED TO THE IMPROVEMENT OF ELIZABETH AVENUE, JOSEPH STREET, PUTH DRIVE, AND DETROIT ROAD BETWEEN THE ADDRESSES OF 34008 AND 34901 BY THE CONSTRUCTION OF A SANITARY SEWER, TOGETHER WITH ALL NECESSARY APPURTENANCES AND RELATED IMPROVEMENTS THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, in accordance with Ordinance No. 39-20 passed by the Council (the "Council") of the City of Avon, Ohio (the "City") on May 11, 2020, the City issued its \$3,600,000 Tax-Exempt Street Improvement Special Assessment General Obligation (Limited Tax) Bond Anticipation Notes, Series 2020 (the "Outstanding Notes"), in anticipation of the issuance of bonds, to pay the property owners' portion and the City's portion of the costs of certain improvements to Elizabeth Street, Joseph Street, Puth Drive, and Detroit Road by the construction of an approximately 6,100-foot sanitary sewer system, together with all necessary appurtenances and related improvements thereto (the "Project"); and

WHEREAS, the Outstanding Notes mature on June 10, 2021; and

WHEREAS, the Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the notes described below in Section 3; and

WHEREAS, the Director of Finance of the City (the "Director of Finance") has certified to this Council that the estimated life of the Project is at least five years and has further certified that the maximum maturity of the bonds in anticipation of which the notes will be issued is 40 years and that the maximum maturity of notes issued in anticipation of those bonds is the last day of December of the fifth year following the year in which the first notes are issued for the Project.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Avon, Ohio that:

Section 1. It is declared necessary to issue bonds of the City in a principal amount not to exceed \$3,600,000 to pay the cost of the Project and financing costs of the Project.

Section 2. The bonds will be dated approximately June 1, 2022, will bear interest at the now estimated rate of 4% per annum, payable semi-annually until the principal sum is paid, and will mature as certified by the Director of Finance in his certificate as described above. The first interest payment and the first principal payment on the bonds are currently estimated to be due December 1, 2022.

Section 3. It is determined that notes (the "Notes") in a principal amount not to exceed \$3,600,000 shall be issued in anticipation of the issuance of bonds for the purpose of retiring the

Outstanding Notes and paying cost of issuance of the Notes. The Notes shall be sold at private sale as provided in Section 5 and shall be in the aggregate principal amount and shall bear interest at the rates fixed by the Director of Finance in the Certificate of Award authorized by Section 5, provided that such rate shall not exceed 5% per annum (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. 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. 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. In addition, the Notes shall be issued in the numbers and denominations requested by the Original Purchaser, provided that no denomination shall be less than \$100,000, and shall be payable as to both principal and interest in lawful money of the United States of America 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. 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.

If the Notes are subject to optional redemption before maturity, the redemption of the Notes must be made by deposit with the Paying Agent 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.

Section 4. The Notes shall be designated "Tax-Exempt Street Improvement Special Assessment General Obligation (Limited Tax) Bond Anticipation Notes, Series 2021," or as otherwise determined by the Director of Finance in the Certificate of Award. The Notes shall state the purpose for which they are issued and that they are issued pursuant to this ordinance; shall be issued in such numbers and denominations as may be requested by the Original Purchaser; and shall be executed by the Mayor and the Director of Finance of the City, provided that those signatures may be facsimile signatures. In the absence of the Mayor, the Notes must be executed by the President of Council and, in the absence of the Director of Finance, the Notes must be executed by the Assistant Director of Finance.

The Notes, pursuant to the terms set forth below, may also be issued to a Depository (as defined below) for use in a book-entry system (as 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 any such agreements will not endanger the funds or securities of the City, which determination shall be conclusively evidenced by the signing of any such agreement.

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 (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 have established 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 Notes, in book-entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“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 5. The Director of Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial market, consistent with the provisions of this ordinance, establish the terms of the Notes, to be specified in a Certificate of Award and sign the Certificate of Award referred to in

Section 3 evidencing the sale of the Notes. The Notes shall be sold in a manner determined by the Director of Finance to the Original Purchaser set forth in the Certificate of Award (the "Original Purchaser") at an interest rate determined by the Director of Finance to be in the best interest of the City and at not less than 97% of the principal amount of the Notes, together with premium and accrued interest on the Notes, if any. In the absence of the Director of Finance, the Certificate of Award may be signed by the Assistant Director of Finance. The Director of Finance may determine to sell the Notes 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. The Director of Finance is authorized to solicit those proposals through a notice of sale or any other method determined by the Director of Finance to be most advantageous to the City, and may award the Notes to the proposer that the Director of Finance determines to be in the best interest of the City. 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 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.

The Mayor, the Director of Finance, the Law Director and the Clerk of Council, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents, agreements, representations and instruments, and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance. The services of Calfee, Halter & Griswold LLP, Bond Attorneys, Cleveland, Ohio, as Bond Counsel for the Notes are retained, and the Director of Finance shall cause the Notes to be prepared, and shall have the Notes signed and delivered, together with a true transcript of proceedings with respect to the issuance of the Notes, to the Original Purchaser of the Notes upon payment of the purchase price of the Notes. The Director of Finance of the City is authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price. The proceeds of such sale shall be paid into the proper fund and used for the purpose for which the Notes are being issued under the provisions of this ordinance and to pay those costs set forth in Section 133.15, Ohio Revised Code, and any such costs which are future financing costs may be paid from the same sources from which the principal of and interest on the Notes are paid. Any premium and accrued interest received by the City shall be transferred to the City's Bond Retirement Fund to be applied to the payment of the principal of and interest on the Notes in the manner provided by law.

If, in the judgment of the Director of Finance, a preliminary official statement of the City relating to the original issuance of the Notes, is in the best interest of the City, such a preliminary official statement is authorized to be distributed. The Mayor and the Director of Finance, and either one of them, are authorized and directed to complete and sign, on behalf of the City and in their official capacities, an official statement, with such modifications, changes and supplements from the preliminary official statement as those officers or any one of them shall approve or authorize. Those officers are authorized, on behalf of the City and in their official capacities, to (i) determine, and to certify or otherwise represent, when the official statement is "deemed final" (except for permitted omissions) by the City as of its date or is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (ii) use and distribute, or authorize the use and distribution of, those official statements and any supplements thereto in connection with the original issuance of the Note, and (iii) complete and sign those official statements as so approved

together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements.

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 rating agencies is in the best interest of and financially advantageous to the City, the Director of Finance is authorized to prepare and submit those applications, to provide to each such agency such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

Section 6. 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, 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.

The City covenants that (a) 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 (b) 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, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) 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.

Section 7. If requested by the Original Purchaser, the Director of Finance is authorized and directed to execute a continuing disclosure certificate (the "Disclosure Certificate") dated the date of delivery of the Notes and delivered to the Original Purchaser for the benefit of the holders of the Notes (the "Noteholders") and to assist the Original Purchaser in complying with S.E.C. Rule 15c2-12(b)(5), which Disclosure Certificate shall set forth the City's undertaking to provide annual reports and notices of certain events as may be required. The City covenants and agrees that it will comply with and carry out all of the provisions of the Disclosure Certificate. Failure of the City to comply with the Disclosure Certificate shall not be considered an event of default; however, any Noteholder may take such actions as may be necessary and appropriate to cause the City to comply with its obligations under this Section.

Section 8. The Notes shall be full general obligations of the City and the full faith and credit of the City are pledged for the prompt payment of the same. The par value to be received

from the sale of the bonds anticipated by the Notes 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.

Section 9. 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. The 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 those 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 required tax levies 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; provided, however, that in each year to the extent that revenues and special assessments levied to pay costs of the Project are available from other sources for the payment of the Notes and bonds and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in the City shall be reduced by the amount of the revenues so available and appropriated.

Section 10. 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 11. It is determined 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, have been done or 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 be exceeded in the issuance of the Notes.

Section 12. The City represents that all conditions are met for treating the Notes as “qualified tax-exempt obligations” and that the Notes are not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code and to the extent any portion of the notes is not so deemed designated, the Director of Finance may so designate such portion in the Certificate of Award. 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 13. The Clerk of Council is directed to forward a certified copy of this ordinance to the County Auditor of Lorain County and to secure a receipt for the delivery of this ordinance.

Section 14. The Mayor, Director of Finance, Law Director and the Clerk of Council, 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 are necessary or appropriate to consummate the issuance of the Notes as provided in this ordinance.

Section 15. 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, Ohio Revised Code.

Section 16. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City, and for the further reason that the immediate issuance and sale of the Notes authorized by this ordinance is necessary to retire the Outstanding Notes are preserve the credit of 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

Ordinance No. 31-21 (Con't.)

Posted: _____

In Five Places as

Provided by Council

Prepared By:

John A. Gasior, Esq.

Law Director

FISCAL OFFICER'S CERTIFICATE

City of Avon, Ohio
_____, 2021

TO THE COUNCIL OF THE CITY OF AVON, OHIO

The undersigned, Director of Finance of the City of Avon, Ohio (the "City"), as fiscal officer of the City as defined by Revised Code Section 133.01, certifies as follows in connection with your proposed issue of not to exceed \$3,600,000 of bonds and notes in anticipation of bonds, to pay the property owners' portion and the City's portion of the costs, in anticipation of the levy and collection of special assessments, related to the improvement of Elizabeth Avenue, Joseph Street, Puth Drive, and Detroit Road between addresses of 34008 and 34901 by the construction of an approximately 6,100-foot sanitary sewer system, together with all necessary appurtenances and related improvements (the "Improvements") and paying financing costs therefor:

1. That the estimated life or period of usefulness of the Improvements is certified to be at least five years.
2. That the maximum maturity of the bonds, calculated in accordance with the provisions of Section 133.20 of the Revised Code of Ohio is 40 years, as specified in Section 133.20(B)(2)(b). If, however, the special assessments are levied over a shorter period of time, the maximum maturity will be the period of the special assessments.
3. That the maximum maturity of notes issued in anticipation of such bonds is the last day of December of the fifth year following the year in which the first notes are issued. Accordingly, with the first notes being issued in 2020, the maximum maturity of those notes would be December 31, 2025.

Director of Finance
City of Avon, Ohio