

ORDINANCE NO. 94-21

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$2,000,000 BOND ANTICIPATION NOTES OF THE CITY OF AVON, OHIO IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSES OF PAYING THE COSTS OF (I) THE CITY'S PORTION OF THE CONSTRUCTION RELATED TO THE WIDENING AND RESURFACING OF A PORTION OF CHESTER ROAD, AND (II) ISSUANCE COSTS IN CONNECTION THEREWITH, AND DECLARING AN EMERGENCY.

WHEREAS, in accordance with Ordinance Nos. 157-15 and 159-15, each passed January 4, 2016, the Council of the City (the "Council") authorized, and the City issued, its \$4,000,000 Tax-Exempt Various Purpose General Obligation (Limited Tax) Bond Anticipation Notes, Series 2016A (the "Series 2016A Notes") in anticipation of bonds, to (a) acquire certain real property to be used as natural parkland, and all necessary appurtenances thereto (\$2,000,000) (the "Parkland Project"), (b) pay the property owners' portion, in anticipation of the levy and collection of special assessments, as well as the City's portion of the costs related to the widening and resurfacing of a portion of Chester Road (\$2,000,000) (the "Chester Road Project"), and (c) pay financing costs of the Series 2016A Notes; and

WHEREAS, the Series 2016A Notes were issued on January 27, 2016 and matured on January 26, 2017; and

WHEREAS, the City has retired the Series 2016A Notes and each subsequent note issued to refinance the costs of the Chester Road Project and the Parkland Project, and to pay additional costs of the Chester Road Project, as follows:

<u>Principal Amount</u>	<u>Issue Date</u>	<u>Maturity Date</u>	<u>Series</u>
\$2,025,000	March 17, 2016	January 26, 2017	2016B Notes
6,230,000	April 27, 2016	January 26, 2017	2016C Notes
5,075,000	January 24, 2017	January 24, 2018	2017 Notes
7,000,000	January 24, 2017	September 21, 2017	2017A Notes
6,330,000	September 19, 2017	December 1, 2037	2017 Bonds
4,400,000	January 23, 2018	January 23, 2019	2018 Notes
3,900,000	January 22, 2019	January 22, 2020	2019 Notes
3,250,000	January 21, 2020	January 21, 2021	2020 Notes
2,500,000	January 20, 2021	January 20, 2022	2021 Notes

WHEREAS, the City retired the portion of the Series 2020 Notes originally issued to pay costs of the Parkland Project with available money of the City; and

WHEREAS, the City's Series 2017 Bonds described above retired outstanding notes issued to finance the property owners' portion, in anticipation of the levy and collection of special assessments, of the costs of the Chester Road Project and, accordingly, only the City's portion of the costs of the Chester Road Project were financed with the proceeds of the Series 2021 Notes;

WHEREAS, the Council finds and determines that the City should retire the Series 2021 Notes with the proceeds of notes described below in Section 3 and other available money of the City; and

WHEREAS, the Director of Finance of the City, as fiscal officer, has certified to this Council that the estimated life of the Chester Road Project is at least five years and has further certified the maximum maturity of the bonds described in Section 1 and notes issued in anticipation of the bonds;

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

Section 1. It is necessary to issue bonds in an aggregate principal amount not to exceed \$2,000,000 (the “Bonds”) to (a) pay the costs of the Chester Road Project, and (b) pay financing costs of the Bonds.

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

Section 3. It is determined that notes (the “Notes”) in a principal amount not to exceed \$2,000,000 shall be issued in anticipation of the issuance of the Bonds for the purpose of retiring the Series 2021 Notes, together with other available money of the City. 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 rate fixed by the Director of Finance in the certificate of award providing for the award of the Notes (the “Certificate of Award”), provided that such rate shall not exceed 4% 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. The Notes shall be dated their date of issuance and shall mature on a date that is between one month and one year, inclusive, from their date of issuance, all as determined by the Director of Finance in the Certificate of Award. The Notes shall be subject to redemption by the City at any time prior to maturity, upon not less than 10 days’ prior written notice to the Paying Agent (as defined below) for the Notes or to the Original Purchaser if the Director of Finance is the Paying Agent. 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 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; and shall be payable in lawful money of the United States of America. 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 shall pass legislation authorizing the issuance of notes or bonds, the proceeds of which shall be used to retire the Notes.

Section 4. The Notes may be issued in one or more separate series of tax-exempt notes, to be designated “Tax-Exempt Street Improvement General Obligation (Limited Tax) Bond Anticipation Notes, Series 2022,” unless otherwise designated 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 and shall be executed by the Mayor and the Director of Finance of the City, provided that one or both of those signatures may be a facsimile signature. In the absence of the Mayor, the Notes must be signed by the President of Council and, in the absence of the Director of Finance, the Notes must be signed 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 (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.

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 he 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 the Director of Finance’s 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 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, political subdivision, 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, if required, 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 (i) Calfee, Halter & Griswold LLP, Bond Attorneys, Cleveland, Ohio, as Bond Counsel for the Notes, and (ii) MAS Financial Advisory Services LLC, as the City’s municipal advisor for the Notes, are each retained. 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 therefor. 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.

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. 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 8. 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 law, and shall be 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 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 voluntary special assessments, 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 is necessary to enable the City to retire the Series 2021 Notes at maturity and thereby preserve the City's credit, 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 Brooks
Clerk of Council

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 Section 133.01, Ohio Revised Code, certifies as follows in connection with your proposed issue of not to exceed \$2,000,000 of bonds, and notes in anticipation of the issuance of bonds, to pay the City's portion of costs of the construction related to the widening and resurfacing of a portion of Chester Road, and all necessary appurtenances thereto (the "Chester Road Project"), and to pay financing costs therefor:

1. The estimated life or period of usefulness of the Chester Road Project is at least five years.
2. The maximum maturity of the bonds, calculated in accordance with the provisions of Section 133.20, Ohio Revised Code, is 20 years, since by my estimate if and to the extent a portion of the proceeds of such bonds may be determined to be allocated to a class or classes or improvement having a maximum maturity of less than 20 years but in excess of five years, then the maximum maturity of such bonds would still be at least 20 years by reason of a sufficient portion of the proceeds of such bonds allocated to a class or classes having a maximum maturity in excess of 20 years; provided that if notes in anticipation of such bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of such bonds.
3. The maximum maturity of notes issued in anticipation of such bonds is January 27, 2036, which is 20 years from the date of the notes originally issued for such purpose.

Director of Finance
City of Avon, Ohio