

ORDINANCE NO. 72-20

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF MUNICIPAL RECREATION FACILITY NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS OF THE CITY OF AVON, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$6,750,000 FOR THE PURPOSE OF PAYING THE COST OF CONSTRUCTING, RENOVATING, FURNISHING AND EQUIPPING MUNICIPAL RECREATION FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 98-14 passed August 4, 2014, the Council (“Council”) of the City of Avon, Ohio (the “City”) authorized, and on September 10, 2014 the City issued, its Municipal Recreational Facility General Obligation Bond Anticipation Notes, Series 2014 in the principal amount of \$7,500,000 (the “2014 Notes”) in anticipation of the issuance of bonds, for the purpose of making certain improvements to municipal recreation facilities including (i) constructing, renovating, furnishing and equipping a municipal swimming pool near the intersection of State Route 83 and Detroit Road, including constructing roadways and utilities and other related improvements, together with all necessary appurtenances thereto, and (ii) constructing additional entrances in and to Schwartz Park and Veterans Memorial Park (together, the “Recreation Facility Project”), and paying the financing costs associated therewith; and

WHEREAS, the City has retired the 2014 Notes and each subsequent note issued to refinance or pay additional costs of the Recreation Facility Project as follows:

<u>Principal Amount</u>	<u>Issue Date</u>	<u>Maturity Date</u>	<u>Series</u>
\$8,500,000	September 8, 2015	September 8, 2016	2015 Notes
8,000,000	September 7, 2016	September 7, 2017	2016 Notes
7,500,000	September 6, 2017	September 6, 2018	2017 Notes
7,500,000	September 5, 2018	September 5, 2019	2018 Notes
6,750,000	September 4, 2019	September 3, 2020	2019 Notes

WHEREAS, this Council determines that the City should retire the 2019 Notes with the proceeds of notes described in Section 3 below, together with other funds of the City (the “Notes”); and

WHEREAS, the Director of Finance of the City (the “Director of Finance”), as fiscal officer, has certified to this Council that the estimated life of the improvements described below 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 30 years and that the maximum maturity of notes issued in anticipation of those bonds is 20 years from the date of issuance of the notes originally issued for the improvements;

NOW, THEREFORE, BE IT ORDAINED by the Council that:

Section 1. It is declared necessary to issue bonds of the City in an aggregate principal amount not to exceed \$6,750,000 to pay the costs of the Recreation Facility Project and the financing costs associated therewith.

Section 2. The bonds shall be dated approximately September 1, 2021, shall bear interest at the now estimated rate of 4% per annum as determined by the Director of Finance to be in the best interest of the City, payable semi-annually until the principal sum is paid, and shall mature in 30 annual installments after their issuance.

Section 3. It is determined that notes (the “Notes”) in a principal amount not to exceed \$6,750,000 shall be issued in anticipation of the issuance of bonds for the Recreation Facility Project. The Notes shall be sold at private sale or in a competitive bid on the best bid 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 authorized by Section 5, provided that such rate shall not exceed 4% per annum. 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 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 Notes shall not be subject to redemption by the City at any time prior to maturity, unless the Original Purchaser requests that the Notes provide for such redemption, in which case provision shall be made for calling the Notes for redemption upon ten days’ 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, unless otherwise determined by the Director of Finance in the Certificate of Award, the Notes shall be issued in denominations of \$100,000 or any whole multiple of \$1,000 in excess of \$100,000, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. 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; 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 of the City 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 shall be issued in one or more separate issues of tax-exempt notes and shall be designated “Municipal Recreation Facility General Obligation Bond Anticipation Notes, Series 2020” with appropriate subseries designations as necessary. 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 (as defined below); and shall be executed by the Mayor and the Director of Finance of the City, provided that such 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.

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 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 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 Notes shall be sold in a manner determined by the Director of Finance and shall be awarded by the Director of Finance to the entity noted in the Certificate of Award (the “Original Purchaser”) at a purchase price not less than 97% of their principal amount, at an interest rate and for a purchase price determined by the Director of Finance to be in the best interest of the City and as designated by the Director of Finance in the Certificate of Award in accordance with law and the provisions of this ordinance. The Director of Finance shall sign the Certificate of Award evidencing the sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Director of Finance may determine to sell the Notes in a private sale or 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, accepting the best bid based on net interest cost, rejecting any or all bids received and waiving any informality, irregularity, or defect. 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 sign any transcript certificates, financial statements and other documents 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. 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.

The Director of Finance is authorized, if the Director of Finance determines it to be in the best interests of the City, to retain the services of a qualified financial advisor in connection with the issuance of the Notes.

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 SEC 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. This tax 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 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.

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. The Notes are designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City covenants that the City, having no “subordinate entities” with authority to issue obligations within the meaning of that Section of the Code, in or during the calendar year in which the Notes are issued, (i) will not designate as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code tax-exempt obligations, including the Notes, in an aggregate principal amount in excess of \$10,000,000 and (ii) will not issue tax-exempt obligations within the meaning of Section 265(b)(4) of the Code, including the Notes (but excluding any qualified 501(c)(3) bonds as defined in Section 145 of the Code, bonds or notes issued to refund obligations as described in Section 265(b)(3)(C)(ii)(III) of the Code, and any obligations that are private activity bonds as defined in Section 141 of the Code), in an aggregate principal amount exceeding \$10,000,000, unless the City receives an opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not cause the Notes to cease to be “qualified tax-exempt obligations.”

Section 12. 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 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 therefor.

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 of the Ohio Revised Code.

Section 16. 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 retire the 2019 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 J. 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
_____, 2020

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 in Section 133.01 of the Ohio Revised Code, certifies in connection with your proposed issue of general obligation bonds and bond anticipation notes in a principal amount not to exceed \$6,750,000 for the purposes of paying (a) a portion of the cost of constructing, renovating, furnishing and equipping municipal recreation facilities, and all necessary appurtenances thereto (the “Improvement”), and (b) financing costs therefor:

1. That the estimated life or period of usefulness of the Improvement is at least five years.
2. That the maximum maturity of the bonds, calculated in accordance with the provisions of Section 133.20 of the Ohio Revised Code is at least 30 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. That the maximum maturity of notes issued in anticipation of such bonds is 20 years from the date of the notes originally issued for such purpose, which will be September 10, 2034.

Director of Finance
City of Avon, Ohio