

RESOLUTION NO. R-01-22

A RESOLUTION SUBMITTING TO THE ELECTORS OF THE CITY, PURSUANT TO ARTICLE IV, SECTION 17 OF THE AVON CITY CHARTER AND CHAPTER 718 OF THE OHIO REVISED CODE, THE QUESTION OF AMENDING SECTIONS 881.01, 881.03, AND 881.04 OF THE CODIFIED ORDINANCES OF THE CITY TO INCREASE THE CITY'S MUNICIPAL INCOME TAX RATE FROM 1.75% TO 1.90% FOR A PERIOD OF TEN (10) YEARS FOR THE PURPOSES OF PROVIDING FUNDS FOR THE ACQUISITION OF RESIDENTIALLY ZONED LAND IN THE CITY AND RELATED ACQUISITION COSTS FOR THE PURPOSE OF DEVELOPING PUBLIC PARKS, AND TO AMEND SECTION 881.06 OF THE CODIFIED ORDINANCES OF THE CITY TO INCREASE THE CREDIT FOR MUNICIPAL INCOME TAXES PAID BY RESIDENTS OF THE CITY TO ANOTHER MUNICIPALITY FROM 1.50% TO 1.60% FOR A PERIOD OF TEN (10) YEARS; AND DECLARING AN EMERGENCY

WHEREAS, the City of Avon, Ohio (the "City") currently levies a municipal income tax at the rate of 1.75% on all persons residing in, or earning or receiving income in, the City; and

WHEREAS, the City has experienced significant growth over approximately the past 20 years, including increases in population and the rapid expansion of residential, industrial, and commercial development within the City; and

WHEREAS, notwithstanding the significant growth in the City, there are several large parcels of residential property within the City that are either available for purchase or may be available for purchase at a future date; and

WHEREAS, the City estimates that there are approximately 5,590 acres of residentially-zoned undeveloped parcels of property in the City; and

WHEREAS, the sale of those parcels and the future development of those parcels into residential subdivisions will increase vehicular traffic and cause additional strain on City services and City infrastructure, including street, sewer and water improvements, police, fire and other emergency personnel, as well as increase the need for additional parkland to provide sufficient recreational areas and opportunities; and

WHEREAS, considering the dramatic increase in population and growth in residential, development within the City the past 20 years, this Council desires to place on the ballot a proposed increase in the City's municipal income tax rate from 1.75% to 1.90% for a period of ten (10) years, with such 0.15% increase in the municipal income tax rate being used for the sole purpose of acquiring residentially-zoned real property or other rights in such property within the City to develop parkland, as more fully described below; and

WHEREAS, in tandem with the proposed municipal income tax increase, this Council desires to increase the credit for income taxes paid by residents of the City to other municipalities from 1.50% to 1.60% for a period of ten (10) years;

WHEREAS, Article IV, Section 17 of the City Charter provides that Council may not adopt any ordinance or resolution that changes the municipal income tax rate for persons having income taxable within the City, or changing the percentage of credit allowable to residents of the City having income taxable in another municipality, unless such ordinance or resolution has first been submitted to the electors of the City and approved by a majority of the electors voting thereon at any general, regular, or special election; and

WHEREAS, Section 718.04(C)(2), Ohio Revised Code, provides that no municipal corporation shall levy a tax on income at a rate in excess of one percent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election;

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

Section 1. There shall be submitted to the electors of the City, pursuant to Article IV, Section 17 of the Charter of the City and Chapter 718 of the Ohio Revised Code, at the next special election to be held May 3, 2022 at the regular places of voting between the hours of 6:30 A.M. and 7:30 P.M., the question of approving the passage of an ordinance to amend Chapter 881 of the City's Codified Ordinances to:

- (a) provide for an increase in the City's municipal income tax rate from 1.75% to 1.90% for the period from January 1, 2023 through December 31, 2032 for the purpose of acquiring by the City, acting alone or in cooperation with any land trust, conservancy, park district, person, or other political subdivision in the State of Ohio, residentially zoned land within the City, including but not limited to the acquisition of undeveloped, partially developed, or fully developed residentially-zoned land, property interests, easements and other access or conservation rights within the City for the purpose of developing public parks, parkways, recreation, wildlife or waterfowl refuge, forest reservations and other reservations (collectively, "Parkland"), and property adjacent to any of the foregoing to provide for the ingress and egress to Parkland, together with acquisition, engineering, and legal costs, and the payment of the principal of, and interest and any premium on, any bonds, notes, or other obligations issued for any of those purposes; and
- (b) increase the tax credit provided to residents of the City on income tax paid to other municipalities from 1.50% to 1.60% of the taxable income earned attributable to the municipality of employment or business activity for the period from January 1, 2023 through December 31, 2032.

Section 2. The proposed Ordinance No. XX-22 to be submitted to the electors of the City for their approval under this Resolution is attached as *Exhibit A* (the "Income Tax Ordinance"), which is incorporated in this Resolution by reference and shall be a part of this Resolution.

Section 3. Notwithstanding the funds being directed pursuant to Ordinance No. 114-01 and Resolution No. R-27-07, the increased income tax revenue received by the City generated by the approval of the Income Tax Ordinance by the electors shall be paid into a Special Revenue Fund (to be created should the levy pass) and placed into a special account to provide funds for the purposes of

acquiring, by the City, acting alone or in cooperation with any land trust, conservancy, park district, person, or other political subdivision in the State of Ohio, residentially zoned land within the City, including but not limited to the acquisition of undeveloped, partially developed, or fully developed residentially-zoned land, property interests, easements and other access or conservation rights within the City for the purpose of developing public parks, and property adjacent to such parks to provide for the ingress and egress therefrom and thereto together with acquisition, engineering, and legal costs, and the payment of the principal of, and interest and any premium on, any bonds, notes, or other obligations issued for any of those purposes.

Section 4. The ballot for the May 3, 2022 election shall be entitled “Amendments of Ordinances Relating to Taxable Income” and the question to be submitted on the ballot shall be:

Shall the Ordinance providing for an increase in the municipal income tax rate from the rate of 1.75% to 1.90% for the period from January 1, 2023 through December 31, 2032 for the purpose of providing funds to pay the cost of acquiring by the City, acting alone or in cooperation with others, residentially zoned land and other property rights related to such land for the purpose of developing public parks, together with any financing and acquisition costs, and amending the tax credit allowed to residents on income tax paid to other municipalities to be set at 1.60% for the period from January 1, 2023 through December 31, 2032, be passed?

FOR THE INCOME TAX	
AGAINST THE INCOME TAX	

The Mayor and the Director of Law, with the advice of the City’s outside legal counsel, are each authorized to further or differently summarize the language of the proposed amendment for purposes of creating an appropriate ballot if requested or required by the Lorain County Board of Elections, the Ohio Secretary of State, or others.

Section 5. That the Clerk of Council is directed to certify a copy of this Resolution and the Income Tax Ordinance to the Board of Elections of Lorain County before the close of business on February 2, 2022. The Clerk of Council is further directed to take all other action required by law relative to the submission of said Issue at that election.

Section 6. If the electors should fail to approve the passage of the Income Tax Ordinance at the election on May 3, 2022, such failure shall not in any way affect any rights or obligations of the City, any taxpayer, or any other person, official, or entity with respect to the existing 1.75% municipal income tax or the 1.50% credit for income taxes paid by City residents to other municipalities authorized by Chapter 881 of the City’s Codified Ordinances.

Section 7. If the electors should approve the passage of the Income Tax Ordinance at the election on May 3, 2022, City Council shall forthwith pass legislation to provide for the non-renewal or replacement of the 0.45-mill Park and Recreation property tax levy.

Section 8. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and

that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 9. That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City, and for the further reason that this Resolution must be immediately effective so that this Resolution can be timely filed with the Lorain County Board of Elections by February 2, 2022 in order that this issue be submitted to the electors of the City at the May 3, 2022 election; therefore, this Resolution shall be in full force and effect immediately upon its adoption 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

ORDINANCE NO. XX-22

AN ORDINANCE AMENDING SECTIONS 881.01, 881.03, AND 881.04 OF THE CITY'S CODIFIED ORDINANCES TO PROVIDE FOR THE INCREASE OF THE CITY'S MUNICIPAL INCOME TAX RATE FROM THE CURRENT RATE OF 1.75% TO A RATE OF 1.90% FOR A PERIOD OF TEN (10) YEARS COMMENCING JANUARY 1 2023 FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION OF RESIDENTIALLY ZONED LAND IN THE CITY FOR THE DEVELOPMENT OF PUBLIC PARKS, AND RELATED COSTS, AND AMENDING SECTION 881.06 OF THE CITY'S CODIFIED ORDINANCES TO INCREASE THE CREDIT FOR MUNICIPAL INCOME TAXES PAID TO ANOTHER MUNICIPALITY FROM 1.50% TO 1.60% FOR A PERIOD OF TEN (10) YEARS COMMENCING JANUARY 1, 2023; AND DECLARING AN EMERGENCY.

WHEREAS, this Council finds that it is necessary to (a) increase the City's municipal income tax from 1.75% to 1.90% for a period of ten years for the purpose of acquiring parkland in the City, and related costs, all as more fully described below, and (b) increase the credit for municipal income taxes paid by residents of the City to another municipality from 1.50% to 1.60% for a period of ten (10) years; and

WHEREAS, it is necessary to amend Sections 881.01, 881.03, 881.04, and 881.06 to provide for the increased income tax and the increase in the municipal income tax credit provided to residents in the City that pay income taxes to another municipality;

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

Section 1. Section 881.01 of the Codified Ordinances of the City which presently reads as follows:

881.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.

(a) To provide funds for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements, City hereby levies an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as provided in this chapter.

(b) (1) The annual tax is levied at a rate of 1.75% (one and seventy-five hundredths percent). The tax is levied at a uniform rate on all persons residing in or earning or receiving income in City. The tax is levied on income, qualifying wages, commissions and other compensation and on net profits as hereinafter provided in Section 881.03 of this chapter and other sections as they may apply.

(2) The funds collected under the provisions of this chapter shall be applied for the following purposes:

A. Such part thereof as is necessary to defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions of this chapter shall first be paid.

B. After providing for the allocation of funds set forth in subsection (a) hereof, 100 percent of the funds collected after April 1, 1978, shall be set aside and used for the purposes of meeting current expenses and other expenditures of the General Fund, and for such other purposes as may be determined by Council, with the exception of:

1. Construction of a fire station and operation of a full-time fire department, capital improvements for and operations of the fire department and police department, which makes up 0.50% of the 1.75%.

2. Construction and/or acquisition of a recreational facility, including but not limited to, a swimming facility, baseball diamonds, soccer fields and all appurtenances thereto, land acquisition within the City of Avon, services to the area of the recreation complex, installation, relocation and/or acquisition of utilities, sidewalks, bike paths, landscaping and other public infrastructure improvements which will serve the proposed development together with engineering and legal costs, operating costs, maintenance, the purchase of new and/or used equipment, extending and/or enlarging new or existing services and facilities and such other capital improvements related thereto, which makes up 0.25% of the 1.75%. See above.

(c) The tax on income and the withholding tax established by this Chapter 881 are authorized by Article XVIII, Section 880.03 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio R.C. Chapter 718.

is hereby amended to read as follows: (New text in bold and underlined.)

881.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX

(a) To provide funds for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements, City hereby levies an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as provided in this chapter.

(b) (1) The annual tax is levied at a rate of **1.90%** (one and **ninety** hundredths percent) **for the period beginning on January 1, 2023 and ending on December 31, 2032, and at the rate of 1.75% (one and seventy-five hundredths percent) for the periods prior to January 1, 2023 and after December 1, 2032.** The tax is levied at a uniform rate on all persons residing in or earning or receiving income in City. The tax is levied on income, qualifying wages, commissions and other compensation and on net profits as hereinafter provided in Section 881.03 of this chapter and other sections as they may apply.

(2) The funds collected under the provisions of this chapter shall be applied for the following purposes:

A. Such part thereof as is necessary to defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions of this chapter shall first be paid.

B. After providing for the allocation of funds set forth in subsection (a) hereof, 100 percent of the funds collected after April 1, 1978, shall be set aside and used for the purposes of meeting current expenses and other expenditures of the General Fund, and for such other purposes as may be determined by Council, with the exception of:

1. Construction of a fire station and operation of a full-time fire department, capital improvements for and operations of the fire department and police department, which makes up 0.50% of the **1.90% for the period beginning on January 1, 2023 and ending on December 31, 2032, and 0.50% of the 1.75% for the periods prior to January 1, 2023 and after December 1, 2032.**

2. Construction and/or acquisition of a recreational facility, including but not limited to, a swimming facility, baseball diamonds, soccer fields and all appurtenances thereto, land acquisition within the City of Avon, services to the area of the recreation complex, installation, relocation and/or acquisition of utilities, sidewalks, bike paths, landscaping and other public infrastructure improvements which will serve the proposed development together with engineering and legal costs, operating costs, maintenance, the purchase of new and/or used equipment, extending and/or enlarging new or existing services and facilities and such other capital improvements related thereto, which makes up 0.25% of the **1.90% for the period beginning on January 1, 2023 and ending on December 31, 2032, and 0.50% of the 1.75% for the periods prior to January 1, 2023 and after December 1, 2032.** See above.

3. **Acquiring by the City, acting alone or in cooperation with any land trust, conservancy, park district, person, or other political subdivision in the State of Ohio, residentially zoned land within the City, including but not limited to the acquisition of undeveloped, partially developed, or fully developed residentially-owned land, property interests, easements and other access or conservation rights within the City for the purpose of developing public parks, parkways, recreation, wildlife or waterfowl refuge, forest reservations and other reservations (collectively, "Parkland"), and property adjacent to any of the foregoing to provide for the ingress and egress to Parkland, together with acquisition, engineering, and legal costs, and the payment of the principal of, and interest and any premium on, any bonds, notes, or other obligations issued for any of those purposes, which makes up 0.15% of the 1.90% for the period beginning on January 1, 2023 and ending on December 31, 2032, and 0.00% of the 1.75% for the periods prior to January 1, 2023 and after December 1, 2032. See above.**

(c) The tax on income and the withholding tax established by this Chapter 881 are authorized by Article XVIII, Section 880.03 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio R.C. Chapter 718.

Section 2. Section 881.03 of the Codified Ordinances of the City of Avon which presently reads as follows:

881.03 IMPOSITION OF TAX.

The income tax levied by City at a rate of 1.75 percent [1.75%] is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in City...

Is hereby amended to read as follows: (New text in bold and underlined.)

881.03 IMPOSITION OF TAX.

The income tax levied by City at a rate of **1.90** percent [**1.90%**] is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in **the City for the period beginning on January 1, 2023 and ending on December 31, 2032, and at the rate of 1.75% [1.75%] for the periods prior to January 1, 2023 and after December 1, 2032** ...

Section 3. Section 881.04(a)(1) of the Codified Ordinances of the City of Avon which presently reads as follows:

881.04 COLLECTION AT SOURCE.

(a) Withholding Provisions.

(1) Each employer, agent of an employer, or other payer located or doing business in City shall withhold an income tax from the qualifying wages earned and/or received by each employee in City. Except for qualifying wages for which withholding is not required under Section 881.03 or division (a)(2)D. or F. of this section, the tax shall be withheld at the rate, specified in Section 881.01 of this chapter, of 1.75%. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

Is hereby amended to read as follows: (New text in bold and underlined.)

881.04 COLLECTION AT SOURCE.

(a) Withholding Provisions.

(1) Each employer, agent of an employer, or other payer located or doing business in City shall withhold an income tax from the qualifying wages earned and/or received by each employee in City. Except for qualifying wages for which withholding is not required under Section 881.03 or division (a)(2)D. or F. of this section, the tax shall be withheld at the rate, specified in Section 881.01 of this chapter, of **1.90% for the period beginning on January 1, 2023 and ending on December 31, 2032, and at the rate of 1.75% for the periods prior to January 1, 2023 and after December 1, 2032**. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

Section 4. Section 881.06(a) of the Codified Ordinances of the City of Avon which presently reads as follows:

881.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

(a) Every individual taxpayer domiciled in City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall not exceed 100% of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the lower of the tax rate in such other municipality or the rate of 1.50%.

Is hereby amended to read as follows: (New text in bold and underlined.)

(a) Every individual taxpayer domiciled in City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall not exceed 100% of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the lower of the tax rate in such other municipality or the rate of **1.60% for the period beginning on January 1, 2023 and ending on December 31, 2032, and at the rate of 1.50% for the periods prior to January 1, 2023 and after December 1, 2032.**

Section 5. That 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 deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 6. This Ordinance is hereby 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 this Ordinance must be immediately effective to enable the City to levy and collect the municipal income tax at the rate provided in this Ordinance to provide funds to acquire, maintain, protect, improve, and equip parklands in the City; therefore, this Ordinance shall be in full force and effect immediately upon passage of Council 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