

ORDINANCE NO. 105-19

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF MUNICIPAL INCOME TAX AND/OR REVENUE NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS OF THE CITY OF AVON, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000 FOR THE PURPOSE OF MAKING VARIOUS IMPROVEMENTS TO THE CITY’S WATER SYSTEM, AND DECLARING AN EMERGENCY.

WHEREAS, in accordance with Ordinance No. 12-14, passed January 21, 2014, the Council of the City (the “Council”) authorized and the City issued its Water System Improvement Bond Anticipation Notes, Series 2014 in anticipation of bonds, and pursuant thereto, the City issued bond anticipation notes consisting of (i) \$3,500,000 Tax-Exempt Water System Improvement Bond Anticipation Notes, Series 2014A (the “Series 2014A Tax-Exempt Notes”) and (ii) \$6,300,000 Taxable Water System Improvement Bond Anticipation Notes, Series 2014B (the “Series 2014B Taxable Notes” and together with the Series 2014A Tax-Exempt Notes, the “Series 2014 Notes”) in anticipation of bonds in the aggregate principal amount of \$9,800,000, each issued to pay (a) the costs of acquisition, construction, and installation of certain improvements to the City’s water system, including the acquisition and construction of an elevated water storage tank with a capacity of approximately 3,000,000 gallons and all necessary appurtenances thereto (the “Water System Improvement”), and (b) financing costs of the Series 2014 Notes; and

WHEREAS, the City retired the Series 2014 Notes and each subsequent issuance of notes, together with other available money of the City, issued to refinance costs of the Water System Improvement as follows:

<u>Principal Amount</u>	<u>Ordinance No.</u>	<u>Series</u>
\$9,300,000	4-15	Series 2015 Notes
7,950,000	158-15	Series 2016 Notes
7,950,000	125-16	Series 2017 Notes
7,250,000	107-17	Series 2018 Notes
4,250,000	99-18	Series 2019 Notes

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

WHEREAS, the Director of Finance of the City of Avon, Ohio, as fiscal officer, has certified to this Council that the estimated life of the Water System Improvement 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, Ohio that:

Section 1. It is necessary to issue municipal income tax or revenue bonds of the City (the

“Bonds”) in a principal amount not to exceed \$3,500,000 to (a) pay costs of the Water System Improvement, and (b) pay financing costs of the Bonds.

Section 2. The Bonds shall be dated approximately January 1, 2021, shall bear interest at the now estimated rate of 4% per annum, payable semi-annually until the principal sum is paid until the principal sum is paid, and shall 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 June 1, 2021.

Section 3. It is determined that notes (the “Notes”) in a principal amount not to exceed \$3,500,000 shall be issued in anticipation of the issuance of the Bonds for the above-described purposes. 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 authorized by Section 5, 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). The Director of Finance shall determine in the Certificate of Award the security for the Notes, as further described in this Ordinance. 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 (defined below) requests that the Notes provide for such redemption, in which case provision shall be made for calling the Notes for redemption upon 10 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, 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 said Notes.

Section 4. The Notes may be issued in one or more separate issues of tax-exempt notes and shall be designated “Tax-Exempt Water System Improvement Bond Anticipation Notes, Series 2020,” with appropriate subseries designations as necessary, and shall further identify the security for the Notes as 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 one or both of such 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 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 the 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 by the Director of Finance at private sale to the Original Purchaser (the "Original Purchaser") set forth in the Certificate of Award 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 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 therefor. The Director of Finance of the City is authorized and directed to deliver the Notes, when executed, to the Original Purchaser thereof 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. While the Notes are outstanding, the City covenants to appropriate annually, to the extent required, sufficient amounts either from municipal income tax revenues or from revenues of the water system, including fees and charges and tap-in fees, to pay principal and interest on the Notes when the same fall due. The Director of Finance shall certify in the Certificate of Award the security for the Notes and whether the Notes are to be secured by a pledge of municipal income tax revenues or a pledge of revenues from the water system or both. If the Director of Finance determines that the Notes are to be secured by a pledge of municipal income tax revenues, the City covenants to continue to levy and collect the municipal income tax in an amount necessary to meet debt charges on the Notes. If the Director of Finance determines that the Notes are to be secured by a pledge of revenues from the water system, the City covenants to collect such rates and charges from the use of the water system as are 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 municipal income tax funds or from water system revenues 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. The City has not pledged any other funds of the City to pay the debt charges on the Notes. The Notes shall be special obligations and not general obligations of the City and shall not be secured by the full faith and credit or taxing power of the City nor shall the Notes be payable from any of the general funds or assets of the City, or any other governmental entity or political subdivision.

Section 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 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: _____
Craig Witherspoon, 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
December __, 2019

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 \$3,500,000 of municipal income tax or revenue notes in anticipation of the issuance of bonds to pay the costs of the construction of certain water system improvements, including a 3,000,000 gallon elevated water storage tank, all necessary appurtenances thereto (the “Improvement”), and paying 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, Ohio Revised Code, is 40 years, provided that if notes in anticipation of such bonds will be outstanding later than the last day of December of the fifth year following the year of issuance of the original notes, the period thereof in excess of five years shall be deducted from such maximum maturity of the bonds.
3. That the maximum maturity of notes issued in anticipation of such bonds is February 5, 2034, which is 20 years from the date of the notes originally issued for such purpose.

Director of Finance
City of Avon, Ohio