ORDINANCE NO. 144-22

AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF AVON TO BE A PUBLIC PURPOSE; DECLARING THE IMPROVEMENT OF SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; COMPENSATING THE SCHOOL DISTRICT FOR REVENUE NOT REALIZED; DESIGNATING INFRASTRUCTURE IMPROVEMENTS MADE, TO BE MADE, OR IN THE PROCESS OF BEING MADE, THAT DIRECTLY BENEFIT, OR THAT ONCE MADE WILL DIRECTLY BENEFIT, SUCH PROPERTY FOR WHICH IMPROVEMENT IS DECLARED TO BE A PUBLIC PURPOSE; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AUTHORIZING EXECUTION OF ONE OR MORE TAX INCREMENT FINANCING AGREEMENTS; PROVIDING RELATED AUTHORIZATIONS; AND DECLARING AN EMERGENCY

WHEREAS, the development of commercial and industrial properties in the City of Avon will benefit the City and its residents by creating economic opportunities, enlarging the property tax base, enhancing income tax revenues, and stimulating collateral development in the City; and

WHEREAS, by providing Public Infrastructure Improvements (as that term is defined in Section 5709.40(A)(8) of the Ohio Revised Code) (the "Public Infrastructure Improvements"), including road construction and related improvements, the City may facilitate the development of commercial and industrial properties; and

WHEREAS, Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the "Act") provide that Council may describe Public Infrastructure Improvements to be made which benefit a parcel of real property, declare that Improvements (as defined in Ohio Revised Code Section 5709.40(a)(4)) with respect to such commercial and industrial properties are a public purpose, thereby exempting those Improvements from real property taxation for a period of time, and provide for the making of service payments in lieu of taxes by the owners of such Improvements, and establish a municipal public improvement tax increment equivalent fund into which such service payments shall be deposited; and

WHEREAS, the real property owners set forth in Exhibit A, attached hereto and made a part hereof (collectively with their successors in ownership, the "Property Owners"), have made or are in the process of making certain investments to improve the real property described in Exhibit A located in the City (the "Property"), with each parcel of the Property referred to herein as a "Parcel" (whether as presently appearing on county tax duplicates or as subdivided or combined and appearing on future tax duplicates);

WHEREAS, the increase in the assessed value of the Property that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance were it not for the exemption granted by this Ordinance is an "Improvement," as defined in Ohio Revised Code Section 5709.40; and

WHEREAS, the City has made, is in the process of making, or will make certain Public Infrastructure Improvements as more particularly described in Exhibit B, attached hereto and made a part hereof, that directly benefit or, once made, will directly benefit the Property; and

WHEREAS, pursuant to and in the manner prescribed by Ohio Revised Code Section 5709.83, the City delivered notice to the Avon Local School District and the Lorain County Joint Vocational School District (collectively, the "School Districts") on December 9th, 2022, stating the City's intent to declare the Improvements to be a public purpose under Ohio Revised Code Section 5709.40.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, THAT:

Section 1 - The Public Infrastructure Improvements described in Exhibit B hereto made, to be made, or in the process of being made by the City are hereby designated as public infrastructure improvements that directly benefit, or once made will directly benefit, the Property.

Section 2 - Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.40(B), Council hereby finds and determines the one hundred percent (100%) of the increase in the assessed value of the Property listed on Exhibit A that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (i.e., the "Improvement") is a public purpose, and shall be exempt from real property taxation commencing on a Parcel-by-Parcel basis the earlier of (i) when there is an increase in assessed value (i.e., 35% of fair market value) of $50,000 for that Parcel, or (ii) the first day of tax year 2030, and ending on a Parcel-by-Parcel basis the earlier of (1) thirty (30) years after such commencement, or (2) the date on which the City has collected into the Fund established in Section 4 hereof a total amount sufficient to pay those costs of the Public Infrastructure Improvements authorized in Section 3 hereof which are to be paid from that fund.

Section 3 – To the extent the City has not already done so, the City shall construct or cause to be constructed the Public Infrastructure Improvements identified on Exhibit B which will directly benefit the Property. The cost of such Public Infrastructure Improvements may be paid in part from the proceeds of bonds and/or notes to be issued by the City and secured in whole or in part from revenues received by the City from service payments made by the Property Owners in lieu of taxes, as set forth herein.

Section 4 - As provided in Section 5709.42 of the Ohio Revised Code, the Property Owners are hereby required to, and shall make, payments in lieu of taxes to the Lorain County Treasurer semiannually, on or before the date on which real property taxes would otherwise be due and payable for the Improvements. Any late payments shall be subject to penalty and bear interest at the then current rate established under Ohio Revised Code Sections 323.121(B)(1) and 5703.47, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the payment of penalties and interest are collectively referred to herein with the payments in lieu of taxes as the "Service Payments"). Each semiannual payment shall be in the same amount as the real property taxes that would have been charged and payable against the Improvements (after credit for any other available payments received by the City under Ohio Revised Code Section 319.302 as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time) had an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the Ohio Revised Code. In accordance with Section 5709.42 of the Ohio Revised Code, the County Treasurer shall distribute a portion of the Service Payments directly to the School Districts in an amount equal to the property tax payments the School Districts would have received had the Improvements not been exempted under this Ordinance. The Service Payments when distributed to the City by the Lorain County Treasurer shall be deposited in the Municipal Public Improvement Tax Increment Equivalent Fund described in Section 6 hereof. If determined to be necessary or appropriate by the Director of Law of the City, the Mayor and the Finance Director may sign and deliver, in the name of and on behalf of the City, a Tax Increment Financing Agreement between the City and one or more Property Owners, providing for, among other things, the construction of the Public Infrastructure Improvements and payment of such Service Payments. Council further hereby authorizes and directs the Mayor, Finance Director, Law Director, and other appropriate officers of the City, to provide such information and certifications, to sign and deliver any necessary property tax exemption applications and execute and deliver or accept delivery of such instruments, as are necessary and incidental to carrying out any such agreement, and to make such arrangements as are necessary and proper for payment of said Service Payments.

Section 5 - Pursuant to Ohio Revised Code Section 5709.42, the County Treasurer shall pay to the School Districts, from a portion of the Service Payments, the amount of the taxes that would have been payable to the School Districts if the Improvements had not been exempted pursuant to this Ordinance.

Section 6 - Pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, there has been previously established within the City Treasury the Municipal Public Improvement Tax Increment Fund (the "Fund") into which shall be deposited service payments in lieu of taxes received from the Property Owners and distributed to the City by the Lorain County Treasurer. Such Fund may be combined with other funds created by ordinances of this Council authorizing other such projects. Money in the Fund shall be used

(i) to finance the direct and indirect costs of the Public Infrastructure Improvements, including to reimburse the City or any Property Owner for any such costs incurred; and

(ii) to pay the interest on and principal of bonds or notes, including refunding bonds or notes, or other loans, issued by the City to finance those costs of the Public Infrastructure Improvements provided in clause (i) above until such notes or bonds are paid in full.

The Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which said Fund shall be dissolved in accordance with said Section 5709.43 of the Ohio Revised Code.

Section 7 - The City's Tax Incentive Review Council (the "TIRC") shall review annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other matters as may properly come before that TIRC, all in accordance with Section 5709.85 of the Ohio Revised Code.

Section 8 - The Clerk of this Council or its designee, the Finance Director, is hereby directed to deliver, not later than fifteen (15) days after the adoption of this Ordinance, a copy thereof to the Director of the Development Services Agency of the State of Ohio, and to further deliver to such Director, not later than March 31 of each year during which the tax exemption remains in effect, a status report outlining the progress of the project herein described as required by Section 5709.40 of the Ohio Revised Code.

Section 9 - It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption 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 action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 10 - 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 its residents, and for the further reason that the establishment of the exemption hereunder and the creation of the Fund herein described is necessary to provide funding for the Public Infrastructure Improvements so that such Public Infrastructure Improvements be constructed, thereby providing immediately necessary public road and other improvements; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: ______________________ DATE SIGNED: ____________________________

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Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: ______________________

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Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

____
John A. Gasior, Law Director

ATTEST:

____
Barbara Brooks, Clerk of Council

POSTED: ___________________________
Electronically and at City Hall
As Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director