

ORDINANCE NO. 37-2018

**TITLE: NOTE ORDINANCE
9th STREET NE IMPROVEMENT PROGRAM**

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$985,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF IMPROVING 9TH STREET NE BY RECONSTRUCTING, RESURFACING, PAVING, GRADING, DRAINING, CONSTRUCTING CURBS, GUTTERS AND DRIVEWAY APRONS, INSTALLING STORM SEWERS, REALIGNING INTERSECTIONS AND MAKING OTHER IMPROVEMENTS AS DESIGNATED IN THE PLANS APPROVED OR TO BE APPROVED BY COUNCIL, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 27-2016, passed on March 28, 2016, there were issued \$1,715,000 Street Improvement Notes, Series 2016A in anticipation of bonds for the purpose stated in Section 1, which notes were retired at maturity with the proceeds of \$1,540,000 of notes (the Outstanding Notes), issued in anticipation of bonds pursuant to Ordinance No. 32-2017 passed on March 27, 2017, as part of a consolidated issue of \$2,040,000 Various Purpose Improvement Notes, Series 2017, which Outstanding Notes mature on April 20, 2018; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 15 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the bonds, is April 21, 2036;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, County of Summit, Ohio, that:

SECTION 1. Authorized Principal Amount of Anticipated Bonds; Purpose. It is necessary to issue bonds of the City in an aggregate principal amount not to exceed \$985,000 (the Bonds) for the purpose of paying costs of improving 9th Street NE by reconstructing, resurfacing, paving, grading, draining, constructing curbs, gutters and driveway aprons, installing storm sewers, realigning intersections and making other improvements as designated in the plans approved or to be approved by Council.

SECTION 2. Estimated Bond Terms. The Bonds shall be dated approximately April 1, 2019, shall bear interest at the now estimated rate of 5.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 15 annual principal installments on December 1 of each year that are substantially equal. The first principal installment is estimated to be December 1, 2020, and the first interest payment is estimated to be December 1, 2019.

SECTION 3. Authorized Principal Amount of Notes; Dating; Interest Rate. It is necessary to issue and this Council determines that notes in an aggregate principal amount not to exceed \$985,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes. The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date not later than one year from the date of issuance by setting forth that maturity date in the certificate awarding the Notes signed in accordance with Section 6 of this ordinance (the Certificate of Award). The Notes shall bear interest at a rate not to exceed 4.00% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity or at any date of earlier prepayment as provided for in Section 4 and until the principal amount is paid or payment is provided for. The principal amount of and rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

SECTION 4. Payment of Debt Charges; Paying Agent; Prepayment. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award and shall be payable, without deduction for services of the City's paying agent, at the designated corporate trust office of The Huntington National Bank, or at the designated corporate trust office or other office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser (as defined in Section 6) (the Paying Agent). If agreed to by the Original Purchaser, the Notes shall be prepayable without penalty or premium at the option of the City at any time prior to maturity (the Prepayment Date) as provided in this ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes together with interest accrued thereon to the Prepayment Date. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser and to the Paying Agent not less than seven days prior to the Prepayment Date, unless that notice is waived by the Original Purchaser and the Paying Agent. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the Prepayment Date, and upon the request of the Director of Finance the Original Purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation.

SECTION 5. Form and Execution of Notes; Book Entry System. The Notes shall be signed by the Mayor and the Director of Finance in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance in the Certificate of Award. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance. As used in this section and this ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes “immobilized” in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the 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.

The Notes may be issued to a Depository for use in a book-entry system and, if and as long as a book-entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book-entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book-entry form shall be shown by book-entry on the system maintained and operated by the Depository and its Participants, 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 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 establish 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 deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered 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 City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book-entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. Award and Sale of the Notes. The Notes shall be sold at not less than par plus accrued interest to the original purchaser designated by the Director of Finance in the Certificate of Award (the Original Purchaser) in accordance with law and the provisions of this ordinance. The Director of Finance shall sign the Certificate of Award referred to in Section 3 evidencing that 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 Mayor, the Director of Finance, the Director of Law, 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 Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

SECTION 7. Application of Note Proceeds. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. Application and Pledge of Bond or Renewal Note Proceeds or Excess Funds. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. Provisions for Tax Levy. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, 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 for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due. In each year to the extent money from the municipal income tax is available for the payment of the debt charges on the Notes or Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes or Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio and ordinances of the City, and the City covenants, subject and pursuant to such authority, including particularly Revised Code Sections 133.05(B)(7) and 5705.51(A)(5) and (D), to appropriate annually from those municipal income taxes such amount as is necessary to meet such annual debt charges. Nothing in this Section in any way diminishes the pledge of the full faith and credit and property taxing power of the City to the prompt payment of the debt charges on the Notes or Bonds.

SECTION 10. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment, of the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute arbitrage bonds, private activity bonds or hedge bonds under Sections 141, 148 or 149 of Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103 of the Code applies and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) 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, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation or treatment of the Notes as “qualified tax-exempt obligations”), choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates 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 the interest on and the tax status of the Notes.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

SECTION 11. Certification and Delivery of Ordinance. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this ordinance and a signed copy of the Certificate of Award to the Summit County Fiscal Officer.

SECTION 12. Satisfaction of Conditions for Note Issuance. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the principal of and interest on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 13. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

SECTION 14. Retention of Municipal Advisor. The City retains MAS Financial Advisory Services, LLC to provide financial advisory services as the City’s “municipal advisor” as that term is defined in Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) relating to the authorization, structuring, sale, issuance and delivery by the City of the Notes. Those municipal advisory services shall be rendered to the City by MAS Financial Advisory Services, LLC in compliance with the Dodd-Frank Act, the rules and regulations promulgated thereunder and in accordance with the form of agreement between the City and MAS Financial Advisory Services, LLC which form of agreement is currently on file with the Clerk of Council (the “Advisory Agreement”). The Mayor, the Director of Finance and/or the Director of Law are each hereby authorized to execute and deliver the agreement between the City and MAS Financial Advisory Services, LLC, with such changes to the form of agreement currently on file with the Clerk of Council that are not materially adverse to the City with the execution by such City officials being conclusive evidence that any such changes are not materially adverse to the City. MAS Financial Advisory Services, LLC shall provide those municipal advisory services as an independent contractor in accordance with the Dodd-Frank Act and the rules and regulations promulgated thereunder. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Advisory Agreement from the proceeds of the Notes to the extent available and then from other moneys lawfully available and appropriated or to be appropriated for that purpose.

SECTION 15. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 16. Captions and Headings. The captions and headings in this ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this ordinance unless otherwise indicated.

SECTION 17. Declaration of Emergency; Effective Date. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to enable the City to issue and sell the Notes at the earliest possible date, which is necessary to enable the City to retire the Outstanding Notes and thereby preserve its credit; wherefore this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed _____ 2018

Clerk of Council

President of Council

Approved _____ 2018

Mayor