

5/6/19

ORDINANCE NO. 90-19

BY: **BRIAN BROCHETTI**
(By Request – Treasurer)

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF AN AMOUNT NOT TO EXCEED \$1,143,000 OF NOTES OF THE CITY OF PARMA IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING COSTS OF RECONSTRUCTING, IMPROVING AND PAVING A PORTION OF DAY DRIVE WITHIN THE CITY, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY

WHEREAS, this Council, pursuant to Ordinance No. 122-16, passed on July 11, 2016, authorized the City to issue bond anticipation notes for the purpose of providing funds with which to pay costs of reconstructing, improving and paving a portion of Day Drive within the City and all necessary appurtenances thereto and pay certain costs of issuance of the Notes (the “Original Notes”); and

WHEREAS, this Council, pursuant to Ordinance No. 97-17, passed on May 15, 2017, authorized the City to issue its new notes in the principal amount not to exceed \$1,400,000 in anticipation of the issuance of Bonds, the proceeds of which were used to retire the Original Notes and to pay certain costs of issuance of such notes (the “2017 Notes”); and

WHEREAS, this Council, pursuant to Ordinance 95-18, passed on June 4, 2018, authorized the City to issue its new notes in the principal amount not to exceed \$1,143,000 in anticipation of the issuance of Bonds, the proceeds of which were used to retire the 2017 Notes, and pay certain costs of issuance of such notes (the “2018 Notes”); and

WHEREAS, this Council has determined to authorize the City to issue new notes in the principal amount not to exceed \$1,143,000 in anticipation of the issuance of bonds, the proceeds of which will be used to retire all or a portion of the 2018 Notes, which may include the payment of accrued interest on all or a portion of the 2018 Notes, and pay certain costs of issuance of the new notes; and

WHEREAS, the Auditor, as fiscal officer of the City, has certified to this Council that the estimated life of the improvements hereinafter mentioned is at least five (5) years and has further verified that the maximum maturity of the bonds described in Section 1 is at least twenty (20) years and the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds, is twenty (20) years from the date of issuance of the notes;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma, Cuyahoga County, State of Ohio, that:

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of not to exceed \$1,143,000 (the “Bonds”) for the purpose of paying: (a) costs of reconstructing, improving and paving a portion of Day Drive within the City, and all necessary appurtenances thereto; and (b) certain costs of issuance of said Bonds.

Section 2. The Bonds shall be in registered form and shall be dated on or about July 1, 2020, shall bear interest at a rate or rates not to exceed 8% per year, payable semi-

ORDINANCE NO. 90-19 - DAY DRIVE IMPROVEMENT NOTES – 2019

annually until the principal amount is paid, and the principal of which shall be payable, and the Bonds shall mature, in twenty (20) annual installments after their issuance.

Section 3. It is determined that notes, in registered form, shall be issued in the aggregate principal amount of not to exceed \$1,143,000 (the “Notes”) in anticipation of the issuance of the Bonds for the above-described purpose. The Notes shall bear interest at a rate or rates not to exceed 5% per year (computed on a 360-day per year basis), and shall be payable as determined by the Treasurer in the certificate awarding the Notes in accordance with Section 6 of this Ordinance, or at any date of earlier prepayment as provided for in this Ordinance. If requested by the original purchaser, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the principal of and interest on the Notes, the principal amount of the Notes shall bear interest at a different rate or rates not to exceed 6% per year from the maturity date until the City pays or makes provisions to pay that principal amount. The rate or rates of interest on the Notes and the interest payment dates shall be determined by the Treasurer in the certificate awarding the Notes.

Section 4. The principal of and interest 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, if so requested by the original purchaser. The principal of and interest on the Notes shall be payable at the office of the Treasurer, or at the principal office of a bank or trust company as determined by the Treasurer (the “Paying Agent”), without deduction for exchange, collection or service charge. The Notes shall be dated as of their date of issuance, and shall mature not earlier than three (3) months from that date and not later than twelve (12) months from that date, as shall likewise be fixed by the Treasurer in the certificate awarding the Notes. 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 as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of prepayment. The City’s right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Paying Agent, by certified or registered mail to the original purchaser of the Notes not less than seven (7) days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Notes. If moneys for prepayment are on deposit with the Paying Agent on the specified 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 Treasurer, the original purchaser of the Notes shall arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment and surrender and cancellation.

Section 5. The Notes may be combined with other notes authorized for different permanent improvements into a single consolidated issue designated the “Various Purpose Improvement Notes, Series 2019”. Otherwise, the Notes shall be designated the “Day Drive Improvement Notes, Series 2019”. The Notes shall be signed by the Mayor and the Auditor, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile; shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Treasurer; shall not have coupons attached; shall be numbered as determined by the Treasurer; and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

Such Notes, pursuant to the terms set forth below, may also be issued to a Depository (as hereinafter defined) for use in a book-entry system (as hereinafter defined). The fiscal officer is hereby 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 thereof will not endanger the funds or securities of the City, which determination shall be conclusively evidenced by the signing of any such agreement.

ORDINANCE NO. 90-19 - DAY DRIVE IMPROVEMENT NOTES – 2019

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 interest in book-entry form shall be shown by a book-entry on the system maintained and operated by the Depository and its Participants (as hereinafter defined), 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 fiscal officer may attempt to have established a securities depository/book-entry relationship with another qualified Depository. If the fiscal officer does not or is unable to do so, the fiscal officer, 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 transfer 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 6. The Notes shall be sold at not less than par and accrued interest, if any, at private sale in such principal amount as determined by the Treasurer and in accordance with the law and this Ordinance. The Treasurer 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, consistently with the provisions of Sections 3 and 4, establish the interest rates to be borne by the Notes and their maturity, sign the certificate of award referred to in Sections 3 and 4 evidencing the sale, obtain the services of Climaco, Wilcox, Peca & Garofoli Co., L.P.A., Bond Counsel, 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.

If the Treasurer determines in the certificate of award for it to be in the best interest of and financially advantageous to the City, the City shall participate in the Treasurer of State’s Ohio Market Access Program.

The Standby Note Purchase Agreement (the “Standby Note Purchase Agreement”) and Paying Agent Agreement (the “Paying Agent Agreement”) are hereby authorized in the forms presented to this Council with such changes not materially adverse to the City as may be

ORDINANCE NO. 90-19 - DAY DRIVE IMPROVEMENT NOTES – 2019

approved by the officers of the City executing the Standby Note Purchase Agreement and Paying Agent Agreement. The City acknowledges the agreement of the Treasurer of State in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (A) to purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (B) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at the Renewal Note Rate (as defined in the Standby Note Purchase Agreement), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes, within the 10 mill limitation provided by the Charter of the City, on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code, as amended, to the same extent that interest on the Notes is so excluded.

The officers signing the Notes are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the holders or beneficial owners of the existence of the Standby Note Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer of State at stated maturity.

Section 7. 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 and to pay financing costs (as defined in Section 133.01 of the Ohio Revised Code); any such costs may also be paid from any other lawfully available moneys of the City, 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 portion of those proceeds representing net premium (to the extent not used to pay financing costs) and accrued interest shall be paid into the City's Bond Retirement Fund to be applied to the payment of the principal and interest on the Notes in the manner provided by law.

Section 8. The Notes shall be the full general obligations of the City and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. 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 only to pay the principal of and interest on the Notes at maturity and are pledged for that purpose.

Section 9. 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 principal of and interest on the Notes or the Bonds when and as the same fall due; provided, however, that in each year to the extent other revenues are available for the payment of the debt charges on the Notes and Bonds and are appropriated for their purpose, the amount of the tax shall be reduced by the amount of such revenues so available and appropriated.

ORDINANCE NO. 90-19 - DAY DRIVE IMPROVEMENT NOTES – 2019

Section 10. 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 the Notes will not: (a) constitute arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the “Code”); or (b) be treated other than as obligations to which Section 103 of the Code applies. The Auditor, as the fiscal officer, or any other officer of the City 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 the interest on the Notes.

The City further covenants that it (a) 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) will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) 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 and adequate rebate 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 Auditor and other appropriate officers are authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

The Notes are hereby designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby 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 (expected to be in 2019), (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 and any qualified 501(c)(3) bonds as defined in Section 145 of the Code (but excluding obligations, other than qualified 501(c)(3) bonds, 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 11. The Mayor and Auditor, or either of them, are authorized to prepare, execute and deliver to the original purchaser of the Notes, if requested, a preliminary official statement and final official statement or any other appropriate disclosure document in connection with the sale and delivery of the Notes. Except as otherwise provided herein or required by applicable law, the signatures of the Mayor, Auditor and Treasurer on any document relating to the award, sale and delivery of the Notes may be a facsimile.

Section 12. The Clerk of Council is directed to forward a certified copy of this Ordinance to the Fiscal Officer of Cuyahoga County and to secure receipt therefor.

Section 13. 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 done, or will at the time of delivery of the Notes have been performed and have been done, in regular and due form as required by law; that the full faith, credit and general property taxing power of the City shall be and hereby 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.

ORDINANCE NO. 90-19 - DAY DRIVE IMPROVEMENT NOTES – 2019

Section 14. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in open meetings of this Council, and that all deliberations of the Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law, including the City’s Codified Ordinance and Section 121.22 of the Ohio Revised Code.

Section 15. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City and for the further reason that this Ordinance must be immediately effective so that the Notes herein authorized can be issued as soon as possible to enable the City to timely complete the improvements to be financed by the Notes; provided this Ordinance shall take effect and be in full force and effect from and immediately after its passage and approval by the Mayor; otherwise it shall take effect and be in full force after the earlier period allowed by law.

PASSED: _____
PRESIDENT OF COUNCIL

ATTEST: _____ APPROVED: _____
CLERK OF COUNCIL

FILED WITH
THE MAYOR: _____
MAYOR, CITY OF PARMA, OHIO

FISCAL OFFICER'S CERTIFICATE

Parma, Ohio

_____, 2019

TO THE COUNCIL OF THE CITY OF PARMA, OHIO:

As fiscal officer of the City of Parma, I certify in connection with the proposed issue of notes not to exceed \$1,143,000 (the "Notes") to be issued in anticipation of the issuance of bonds (the "Bonds") for the purpose of paying the costs of reconstructing, improving and paving a portion of Day Drive within the City and all necessary appurtenances thereto, that:

1. The estimated life or period of usefulness of the improvements from the proceeds of such issue is certified to be at least five (5) years.

2. The maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is twenty (20) years, provided that if notes in anticipation of those bonds are 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 must be deducted from the maximum maturity of those bonds.

3. The maximum maturity of the Notes issued in anticipation of bonds is twenty (20) years from the date the original notes are issued for such purpose.

Auditor
City of Parma, Ohio