

**ORDINANCE NO. 2017-12**

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF \$1,995,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS, THE COSTS OF CONSTRUCTING CARDINAL AVENUE AND ADJOINING STREETS, TO BE LOCATED ON PROPERTY AT THE SOUTHEAST QUADRANT OF THE INTERSECTION OF PEARL ROAD AND WEST 130<sup>TH</sup> STREET, BY CONSTRUCTING AND INSTALLING PUBLIC SANITARY SEWERS; STORM SEWERS; WATER MAINS; STREET LIGHTING; CONCRETE CURBS; ASPHALT PAVEMENT; SIDEWALKS; TRAFFIC SIGNALS; AND OTHER UTILITY LINES; ALL TOGETHER WITH THE NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. 2016-16 passed June 27, 2016, notes in anticipation of bonds in the amount of \$2,245,000, dated July 19, 2016 (the "Outstanding Notes"), were issued for the purpose stated in Section 1, to mature on July 19, 2017; 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 has certified that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years and that the estimated maximum maturity of the bonds is 11 years and the maximum maturity of the Notes is to be determined following disposition of the pending litigation relating to the validity of the special assessments;

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

Section 1. It is hereby declared necessary to issue bonds of the City of Parma Heights in the aggregate principal amount of \$1,995,000 for the purpose of paying, in anticipation of the collection of special assessments, the costs of constructing Cardinal Avenue; Cardinal Avenue East; Cardinal Avenue West; Vineyard Avenue; Cabernet Court East; Cabernet Court West; Vintage Avenue and Concord Avenue, to be located on property at the southeast quadrant of the intersection of Pearl Road and West 130th Street, by constructing and installing public sanitary sewers; storm sewers; water mains; street lighting; concrete curbs; asphalt pavement; sidewalks; traffic signals; and other utility lines, all together with the necessary appurtenances thereto (the "Bonds"), in the manner provided in Resolution No. 2004-11, adopted May 24, 2004. The property owners' portion of that amount is 100%.

Section 2. The Bonds shall be dated approximately July 1, 2018; shall bear interest at the estimated rate of 5.5% per year, payable semi-annually, until the principal sum is paid; and shall mature in eleven annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than three times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be December 1, 2019 and the first interest payment on the Bonds is estimated to be December 1, 2018.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of \$1,995,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Notes. Those Notes shall bear interest at a rate not to exceed 5.0% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity, with such rate interest to be fixed by the Director of Finance in his Certificate of Award awarding the Notes at private sale in accordance with Sections 5 and 6 hereof. The Notes shall be dated as of their date of issuance, and shall mature on a date to be selected by the Director of Finance which shall be not less than ten months from their date and not more than twelve months from their date.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America, without deduction for services of the City's paying agent, at the office of one or more banks or trust companies designated by the purchaser, provided any such designation shall be approved by the Director of Finance after determining that sufficient safeguards exist to protect the funds of this City.

Section 5. The Notes shall be signed by the Mayor and 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, provided that the entire principal amount may be represented by a single note; provided that no Note shall be issued in a denomination less than \$100,000. 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 Revised Code Chapter 133, the Charter of the City and this Ordinance.

Notwithstanding any other provisions of this Ordinance, if it is determined by the Director of Finance to be advantageous to the City, the Notes may be issued in book entry form 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, fully registered typewritten Note and registered in the name of a depository or its nominee, as registered owner, and immobilized in the custody of a 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 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 subject to the terms of this Ordinance; 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. The Mayor is 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, including the execution of a Blanket Issuer Letter of Representations in the form utilized by The Depository Trust Company.

Section 6. The Notes shall be awarded and sold by the Director of Finance at private sale at not less than 97% of the par value thereof in accordance with law and the provisions of this Ordinance. 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 markets, determine the interest rate the Notes shall bear and their maturity consistent with this Ordinance, designate the purchaser, and make all other designations herein authorized, execute the Certificate of Award related thereto, and cause the Notes to be prepared, 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, 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.

The Director of Finance, if he determines it to be in the best interest of and financial advantages to the City, is hereby authorized to retain the financial advisory services of a person or entity in connection with the sale and issuance of the Notes. In rendering those financial advisory services, as an independent contractor and in a financial advisor-client relationship, that person or entity shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county, municipality or other political subdivision, or of this City, or the execution of public trusts.

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. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 8. 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. 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 10.0 mill limitation imposed by the Charter of the City, 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. All special assessments collected for the improvement described in Section 1 and any unexpended balance remaining in the improvement fund after the cost and expenses of the improvement have been paid shall be used for the payment of the debt charges on the Notes until paid in full. In each year to the extent money from the levy of the special assessments for the improvement is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the tax shall be reduced by the amount of money so available and appropriated.

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 (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1996, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be treated as an item of tax preference 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, and (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 City hereby represents that the Outstanding Notes (the Refunded Obligation) were designated or deemed designated, and qualified, as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligation from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the amount of the Notes not in excess of the principal amount of the Refunded Obligation outstanding immediately prior to the redemption of the Refunded Obligation as "qualified tax-exempt obligations" without necessity for further designation and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code pursuant to subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The amount of the Notes (such amount being the issue price of the Notes less accrued interest, if any, as determined under the Code) in excess of the principal amount of the Refunded Obligation that is outstanding immediately prior to the redemption of the Refunded Obligation, if any, is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the aforesaid amount of the Notes, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations".

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 benefitted 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.

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.

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, 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, 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

## FISCAL OFFICER'S CERTIFICATE

TO THE COUNCIL OF THE CITY OF PARMA HEIGHTS, OHIO:

The undersigned, as fiscal officer of the City of Parma Heights, Ohio, hereby certifies in connection with your proposed issue of notes, in anticipation of the issuance of bonds, for the purpose of paying, in anticipation of the collection of special assessments, the costs of constructing Cardinal Avenue; Cardinal Avenue East; Cardinal Avenue West; Vineyard Avenue; Cabernet Court East; Cabernet Court West; Vintage Avenue and Concord Avenue, to be located on property at the southeast quadrant of the intersection of Pearl Road and West 130<sup>th</sup> Street, by constructing and installing public sanitary sewers; storm sewers; water mains; street lighting; concrete curbs; asphalt pavement; sidewalks; traffic signals; electric service lines; telephone service lines; natural gas service mains; and cable televisions service lines, all together with the necessary appurtenances thereto, as follows:

1. The estimated life of those improvements is hereby certified to be at least five years;
2. The maximum maturity of bonds to be issued for such purpose, calculated in accordance with the provisions of Section 133.20 of the Revised Code, is at least 20 years, and because the special assessments will be payable over a period of 20 years, and the Bonds are to be issued in anticipation of the collection of those special assessments, the maximum maturity of the Bonds is 20 years, less the nine years the notes will have been outstanding in excess of the applicable five year period; and
3. Although the maximum maturity of any notes issued in anticipation of those bonds would have been December 31, 2009 (with the original note for this purpose issued on September 23, 2004), which would be the last day of the fifth year following the year of issuance of the Notes, that date is extended pursuant to Revised Code Section 133.17 pending the final disposition of existing litigation relating to the validity of the special assessments.

Dated: May 8, 2017

  
Director of Finance  
City of Parma Heights, Ohio

expense of such compliance, reducing the rebate amount or payments or 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.

Section 11. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the Fiscal Officer of Cuyahoga County.

Section 12. 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 of Parma Heights 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 debt charges 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. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 14. This Ordinance is declared to be an emergency measure necessary for the immediately preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be effective immediately in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

Passed: June 12, 2017

  
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President of Council

Attest: Florence G. Bohdan  
Clerk of Council

Approved: June 12, 2017

Filed with  
the Mayor: June 12, 2017

  
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Mayor