

**City Council Special Meeting
Agenda of Business
Friday, July 29, 2022 at 4:45 p.m.
Council Chambers**

A. Roll call

B. Ordinances for action

1. **Ordinance No. 2022-100**– Introduced by Council – An Ordinance authorizing the issuance of notes in the amount of not to exceed \$1,525,000 in anticipation of the issuance of bonds for the purpose of funding a portion of the cost of acquiring, constructing, installing, and equipping public infrastructure improvements necessary for the development of the national road business park, including an access road, waterline extension, and sewer line upgrades and extension, and all necessary appurtenances thereto, and declaring an emergency. (Emergency or First Reading)

The next regular meeting is scheduled for August 8, 2022.

This meeting is an open meeting and the public is invited to attend by telephonic means to join by phone below or see the coz.org website for other options to view the meeting:

+1-415-655-0001 U.S. Toll

1-844-621-3956 United States Toll Free

Access Code: 126 750 8098

Join from a video conferencing system or application. Open up a web browser and type: zanesvillecity.webex.com Then type in the meeting number where it says Join Meeting 126 750 8098

ORDINANCE NO. 2022-100
INTRODUCED BY COUNCIL

AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT OF NOT TO EXCEED \$1,525,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF FUNDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, INSTALLING, AND EQUIPPING PUBLIC INFRASTRUCTURE IMPROVEMENTS NECESSARY FOR THE DEVELOPMENT OF THE NATIONAL ROAD BUSINESS PARK, INCLUDING AN ACCESS ROAD, WATERLINE EXTENSION, AND SEWER LINE UPGRADES AND EXTENSION, AND ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council (the "Council") of City of Zanesville, Ohio (the "City") has issued notes dated July 30, 2021 in the amount of \$1,525,000 (the "Outstanding Notes") in anticipation of the issuance of the bonds herein described, which Outstanding Notes will mature on July 29, 2022; and

WHEREAS, it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds, and to retire all, or a portion of, the Outstanding Notes; and

WHEREAS, the Auditor of the City (the "Auditor") has certified to this Council that the estimated life of the improvements to be constructed from the proceeds of the bonds and the notes hereinafter referred to exceeds five years, the maximum maturity of bonds being 30 years and the maximum maturity of the notes being 18 years; and

WHEREAS, it is deemed necessary to issue notes in anticipation of the issuance of bonds to provide for the payment of the Outstanding Notes as described below;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ZANESVILLE, OHIO, THAT:

Section 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the maximum principal sum of not to exceed \$1,525,000 for the purpose of paying the costs of the Project.

Section 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined hereinbelow), shall bear interest at the maximum average annual interest rate presently estimated to be 5.50% per annum, payable semiannually until the principal sum is paid or provision has been duly made therefor, and shall mature in 30 annual installments.

Section 3. It is necessary to issue, and this Council hereby determines that there shall be issued, notes in anticipation of the issuance of the Bonds.

Section 4. Such anticipatory notes (the “Notes”) shall be in the amount of \$1,525,000, or such lesser amount as shall be determined by the Auditor and certified to this Council, which sum does not exceed the amount of the Bonds. The Notes shall be dated the date established by the Auditor and certified to this Council and shall mature on such date as shall be determined by the Auditor and certified to this Council. The Notes shall be issued as fully registered notes in book-entry form only in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. Coupons shall not be attached to the Notes. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission based on the sale of the Notes to a financial institution that has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and is not purchasing for more than one account or with a view to distributing the Notes.

Section 5. The Notes shall be the full general obligation 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 and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity and are hereby pledged for such purpose. The Notes shall be prepayable in whole at any time without penalty.

Section 6. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the ten mill limitation, a direct tax (the “Debt Service Levy”) for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution.

Section 7. The Debt Service Levy shall be and is hereby 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 such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payments of the premium, if any, and interest on and principal of the Notes and Bonds when and as the same falls due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources, including the special assessments, for the payment of the Notes and Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

Section 8. The Notes shall bear interest, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the Auditor and certified to this Council, provided that such rate shall not exceed 5.00% per annum. The Notes shall be sold to the purchaser or purchasers (the “Original Purchaser”) designated in the Certificate of Award. The Auditor is authorized and directed to execute on behalf of the City a Purchase Agreement or term sheet with the Original Purchaser, setting forth the conditions under which the Notes are to be sold and delivered, which document shall be in such form and shall contain such terms, covenants and conditions not inconsistent with this Ordinance and permitted by applicable law as shall be approved by the Auditor and approved as to form by the City Attorney.

Section 9. The Auditor is authorized and directed to execute on behalf of the City a Certificate of Award setting forth the Original Purchaser for the Notes, the aggregate principal amount of the Notes to be issued, the dated date of the Notes, the purchase price for the Notes, and shall include such additional information as shall be required by the terms of this Ordinance.

Section 10. The Auditor is authorized and directed to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the delivery of the Notes to the Original Purchaser and is further directed to take all steps necessary to effect due execution, authentication and delivery of the Notes under the terms of this Ordinance and the Certificate of Award. The Auditor is hereby authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery. The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal and interest on the Notes, and other outstanding obligations of the City, in the manner provided by law. Any premium from the sale of the Notes shall be used to pay costs of issuance of the Notes or deposited into the bond retirement fund.

Section 11. The Notes shall be executed by the Auditor and the Mayor, provided that any and all of such signatures may be a facsimile, shall be designated "City of Zanesville, Ohio National Road Business Park Infrastructure Notes, Series 2022", or as otherwise designated by the Auditor, and shall be payable as to both principal and interest at the office of the Note Registrar (as defined hereinbelow). The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance. No Note shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this ordinance unless and until a certificate of authentication, as printed on the Note, is signed by the Note Registrar (as defined hereinbelow) as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Notes so authenticated have been duly issued and delivered under this ordinance and are entitled to the security and benefit of this ordinance. The certificate of authentication may be signed by any officer or officers of the Note Registrar or by such other person acting as an agent of the Note Registrar as shall be approved by the Auditor on behalf of the City. It shall not be necessary that the same authorized person sign the certificate of authentication on all of the Notes.

Section 12. The Auditor is authorized and directed to execute on behalf of the City a Note Registrar Agreement with such bank or other appropriate financial institution as shall be acceptable to the Auditor and the Original Purchaser, pursuant to which such bank or financial institution shall agree to serve as authenticating agent, note registrar, transfer agent, and paying agent (the "Note Registrar") for the Notes. If at any time the Note Registrar shall be unable or unwilling to serve as such, or the Auditor, in such officer's discretion, shall determine that it would be in the best interest of the City for such functions to be performed by another party, the Auditor may, and is hereby authorized and directed to, serve as Note Registrar or to enter into an agreement with a national banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar hereunder. Each such successor Note Registrar shall promptly advise all noteholders of the change in identity and new address of the Note Registrar. So long as any of the Notes remain outstanding, the City shall cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this section (the "Note Register"). Subject to the provisions of this ordinance, the person in whose name any Note shall be registered on the Note Register shall be regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person. Neither the City nor the Note Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Notes, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar, may be exchanged for Notes of the same form and of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the office of the Note Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

Section 13. In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed, and the Note Registrar shall authenticate and deliver, the Notes in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner; except that the Council and Note Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The Council or the Note Registrar may require that those charges, if any, be paid before it begins the procedure for the exchange or transfer of the Notes. All Notes issued upon any transfer or exchange shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this ordinance, as the Notes surrendered upon that transfer or exchange.

Section 14. For purposes of this ordinance, the following terms shall have the following meanings:

“Book entry form” or “book entry system” means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book entry and (ii) physical Notes in fully registered form are issued only to a depository or its nominee as registered 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 those Notes.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book entry system to record beneficial ownership of Notes, and to effect transfers of Notes, in book entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

All or any portion of the Notes may be initially issued to a Depository for use in a book entry system, and the provisions of this section shall apply, notwithstanding any other provision of this ordinance: (i) there shall be a single Note of each maturity; (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book entry form shall be shown by book entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book entry; and (v) 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. Debt service charges on Notes in book entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Notes as provided in this ordinance.

The Note Registrar for the Notes may enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Note Registrar for the Notes and this Council. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Note Registrar for the Notes will furnish a copy of each of those agreements, certified to be correct by the Note Registrar for the Notes, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this ordinance.

The Mayor, Auditor, Budget and Finance Director, Clerk of Council, or any other officer of this Council is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, if requested a letter agreement among the City, the Note Registrar for the Notes and The Depository Trust Company, as depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system in substantially the form submitted to this Council.

If any Depository determines not to continue to act as a depository for the Notes for use in a book entry system, the City and the Note Registrar for the Notes may attempt to have established a securities depository/book entry relationship with another qualified Depository under this ordinance. If the City and the Note Registrar for the Notes do not or are unable to do so, the City and the Note Registrar for the Notes, after the Note Registrar for the Notes has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver note certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Notes), if the event is not the result of action or inaction by the City or the Note Registrar for the Notes, of those persons requesting such issuance.

Section 15. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further 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, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder (the "Regulations").

The Auditor, or any other officer of the City, including the Mayor, is hereby authorized and directed (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 permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the Auditor, which action shall be in writing and signed by the Auditor, or any other officer of the City, including the Mayor, on behalf of the City; (b) to take any and all actions, make or obtain calculations, 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 an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances,

and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with sections 141 through 150 of the Code and the Regulations.

The Auditor shall keep and maintain adequate records pertaining to investment of all proceeds of the Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Notes which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The Auditor of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Notes requires any such reports or rebates.

Section 16. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the Clerk of Council and a no-litigation certificate of the Mayor and the Auditor, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

Section 17. The Mayor, Auditor, Budget and Finance Director, Law Director, and Clerk, or any of them individually, are hereby authorized and directed to take such action and to execute and deliver, on behalf of the Council, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

Section 18. The law firm of Bricker & Eckler LLP is hereby appointed to serve as Bond Counsel with respect to this financing.

Section 19. 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 20. It is hereby 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 happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

Section 21. The Clerk of Council is hereby directed to forward a certified copy of this ordinance to the Auditor of Muskingum County, Ohio.

Section 22. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that the Outstanding Notes issued are about to mature and it is necessary to make immediate provision for their

repayment in order to preserve the credit of the City; wherefore this ordinance shall take effect and be in force from and immediately after its passage and approval by the Mayor.

Passed: _____, 2022

Attest: _____
Susan Culbertson, Clerk of Council

Daniel M. Vincent, President of Council

Approved: _____, 2022

Donald L. Mason, Mayor

Approved as to form:

David Tarbert, Law Director

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. _____ duly adopted by the City Council of City of Zanesville, Ohio on _____, 2022 and that a true copy thereof was certified to the County Auditor of Muskingum County, Ohio, on _____, 2022.

Clerk of Council
City of Zanesville
Muskingum County, Ohio

CERTIFICATE OF ESTIMATED LIFE AND MAXIMUM MATURITY

To: The City Council of the
City of Zanesville, Ohio

The undersigned Auditor of the City of Zanesville, Ohio as the fiscal officer of said City, hereby certifies as follows:

1. The estimated life of the improvements described as follows (the "Improvements") exceeds five years:

ACQUIRING, CONSTRUCTING, INSTALLING, AND EQUIPPING
PUBLIC INFRASTRUCTURE IMPROVEMENTS NECESSARY FOR
THE DEVELOPMENT OF THE NATIONAL ROAD BUSINESS
PARK, INCLUDING AN ACCESS ROAD, WATERLINE
EXTENSION, AND SEWER LINE UPGRADES AND EXTENSION,
AND ALL NECESSARY APPURTENANCES THERETO

2. The maximum maturity of the bonds proposed to be issued to pay the cost of the Improvements, calculated in accordance with Section 133.20, Ohio Revised Code, is 30 years, provided that if notes are issued in anticipation of the issuance of such bonds, the maximum maturity of such notes is 18 years.

Dated: July __, 2022

Auditor
City of Zanesville, Ohio

RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION PROVIDING
FOR THE ISSUANCE OF
GENERAL OBLIGATION NOTES

I, Debra J. Nye, the duly elected, qualified, and acting County Auditor in and for Muskingum County, Ohio hereby certify that a certified copy of an ordinance duly adopted by the City Council of the City of Zanesville, on July ____, 2022, providing for the issuance of general obligation notes designated City of Zanesville, Ohio National Road Business Park Infrastructure Notes, Series 2022, in the amount of not to exceed \$1,525,000 was filed in this office on _____, 2022.

WITNESS my hand and official seal at Zanesville, Ohio this ____ day of _____, 2022.

[SEAL]

County Auditor
Muskingum County, Ohio