

A RESOLUTION DECLARING THE NECESSITY OF AN ELECTION ON THE QUESTION OF APPROVING THE PASSAGE OF AN ORDINANCE AMENDING SECTIONS 886.01, 886.03, 886.04 AND 886.06 OF THE CITY'S CODIFIED ORDINANCES TO PROVIDE FOR THE LEVY OF AN ADDITIONAL ONE-QUARTER PERCENT (0.25%) INCOME TAX TO PROVIDE FUNDS FOR THE PURPOSE OF PAYING COSTS OF (i) CONSTRUCTING, FURNISHING AND EQUIPPING A NEW FIRE STATION AND CLEARING, IMPROVING AND EQUIPPING ITS SITE, REHABILITATING, REMODELING, RENOVATING, FURNISHING AND EQUIPPING THE EXISTING POLICE STATION AND IMPROVING AND EQUIPPING ITS SITE, AND OTHERWISE CONSTRUCTING, RECONSTRUCTING, REHABILITATING, REMODELING, RENOVATING, ENLARGING, FURNISHING, EQUIPPING AND IMPROVING CITY BUILDINGS AND FACILITIES AND ACQUIRING, CLEARING, IMPROVING AND EQUIPPING THEIR SITES, (ii) MAINTAINING, REPAIRING AND IMPROVING CITY STREETS BY CONSTRUCTING, RECONSTRUCTING, WIDENING, GRADING, DRAINING, CURBING, PAVING AND EXTENDING STREETS AND RELATED BRIDGES, CONSTRUCTING STORM SEWERS AND RELATED DRAINAGE IMPROVEMENTS, INSTALLING TRAFFIC SIGNALS AND SIGNALIZATION, AND ACQUIRING EQUIPMENT REQUIRED FOR SUCH MAINTENANCE, REPAIR AND IMPROVEMENTS AND (iii) DEBT CHARGES ON CITY NOTES, BONDS OR OTHER OBLIGATIONS ISSUED FOR THOSE PURPOSES, AND DECLARING AN EMERGENCY.

WHEREAS, Chapter 886 of the City's Codified Ordinances provides for, among other things, the levying of a one and one-half percent (1.50%) municipal income tax; and

WHEREAS, this Council desires and believes it necessary to pass an ordinance to provide for an additional one-quarter percent (0.25%) municipal income tax in order to provide funds for the purpose of paying costs of (i) constructing, furnishing and equipping a new fire station and clearing, improving and equipping its site, rehabilitating, remodeling, renovating, furnishing and equipping the existing police station and improving and equipping its site, and otherwise constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, furnishing, equipping and improving City buildings and facilities and acquiring, clearing, improving and equipping their sites, (ii) maintaining, repairing and improving City streets by constructing, reconstructing, widening, grading, draining, curbing, paving and extending streets and related bridges, constructing storm sewers and related drainage improvements, installing traffic signals and signalization, and acquiring equipment required for such maintenance, repair and improvements and (iii) debt charges on City notes, bonds or other obligations issued for those purposes; and

WHEREAS, the provisions of Chapter 718 of the Revised Code require that the passage of such an ordinance receive the approval of the electors of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF  
THE CITY OF AVON LAKE, STATE OF OHIO, THAT:

Section No. 1. Submission to the Electors of an Ordinance Amending Sections 886.01, 886.03, 886.04 and 886.06 of the City's Codified Ordinances. This Council hereby authorizes and directs that there be submitted to the electors of the City at an election to be held on November 8, 2022, the question of the approval of the passage of an ordinance amending Sections 886.01, 886.03, 886.04 and 886.06 of the City's Codified Ordinances to provide for the levy of an additional one quarter of one percent (0.25%) income tax to provide funds for the purpose of paying costs of (i) constructing, furnishing and equipping a new fire station and clearing, improving and equipping its site, rehabilitating, remodeling, renovating, furnishing and equipping the existing police station and improving and equipping its site, and otherwise constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, furnishing, equipping and improving City buildings and facilities and acquiring, clearing, improving and equipping their sites, (ii) maintaining, repairing and improving City streets by constructing, reconstructing, widening, grading, draining, curbing, paving and extending streets and related bridges, constructing storm sewers and related drainage improvements, installing traffic signals and signalization, and acquiring equipment required for such maintenance, repair and improvements and (iii) debt charges on City notes, bonds or other obligations issued for those purposes. The Lorain County Board of Elections is authorized and directed to conduct that election, which shall be held at the regular places of voting in the City, as established by the Board of Elections, within the times provided by law and shall be conducted, canvassed and certified in the manner provided by law.

Section No. 2. Proposed Ordinance. The proposed ordinance to be submitted to the electors of the City for their approval under this Resolution shall be as follows:

“ORDINANCE NO. 22-82

INTRODUCED BY: MR. O'DONNELL

AN ORDINANCE AMENDING SECTIONS 886.01, 886.03, 886.04 AND 886.06 OF THE CITY'S CODIFIED ORDINANCES TO PROVIDE FOR THE LEVY OF AN ADDITIONAL ONE-QUARTER PERCENT (0.25%) INCOME TAX TO PROVIDE FUNDS FOR THE PURPOSE OF PAYING COSTS OF (i) CONSTRUCTING, FURNISHING AND EQUIPPING A NEW FIRE STATION AND CLEARING, IMPROVING AND EQUIPPING ITS SITE, REHABILITATING, REMODELING, RENOVATING, FURNISHING AND EQUIPPING THE EXISTING POLICE STATION AND IMPROVING AND EQUIPPING ITS SITE, AND OTHERWISE CONSTRUCTING, RECONSTRUCTING, REHABILITATING, REMODELING, RENOVATING, ENLARGING, FURNISHING, EQUIPPING AND IMPROVING CITY BUILDINGS AND FACILITIES AND ACQUIRING, CLEARING, IMPROVING AND EQUIPPING THEIR SITES, (ii) MAINTAINING, REPAIRING AND IMPROVING CITY STREETS BY CONSTRUCTING,

RECONSTRUCTING, WIDENING, GRADING, DRAINING, CURBING, PAVING AND EXTENDING STREETS AND RELATED BRIDGES, CONSTRUCTING STORM SEWERS AND RELATED DRAINAGE IMPROVEMENTS, INSTALLING TRAFFIC SIGNALS AND SIGNALIZATION, AND ACQUIRING EQUIPMENT REQUIRED FOR SUCH MAINTENANCE, REPAIR AND IMPROVEMENTS AND (iii) DEBT CHARGES ON CITY NOTES, BONDS OR OTHER OBLIGATIONS ISSUED FOR THOSE PURPOSES, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF  
THE CITY OF AVON LAKE, STATE OF OHIO, THAT:

Section No. 1. Amendment of Section 886.01 of the City's Codified Ordinances. Unless otherwise provided in Section 5, Section 886.01 of the City's Codified Ordinances as established by Ordinance No. 163-2015, passed December 21, 2015, be and is hereby amended to read as follows effective January 1, 2023:

**“886.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.**

- (A) To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, the City of Avon Lake (the “City”) hereby levies an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided.
- (B)
  - (1) The annual tax is levied at a rate of one and three-quarters percent (1.75%). The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the City. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 886.03 of this chapter and other sections of this chapter as they may apply.
  - (2) The funds collected under the provisions of this Ordinance shall be applied for the following purposes, to wit:
    - (a) First, such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Ordinance and the cost of administering and enforcing the provisions thereof as authorized by Chapter 236 of the City of Avon Lake Codified Ordinances.
    - (b) Second, the amount produced by the one and one-half percent (1.50%) municipal income tax levied prior to January 1, 2023, shall, after providing for the allocation of funds set forth in paragraph (a) of this Section:
      - (i) Seventy-five percent (75%) to the General Fund.

- (ii) Twenty percent (20%) to the Capital Improvement Fund.
  - (iii) Five percent (5%) to the Sewer System Construction Fund.
- (c) Third, the amount produced by the one-quarter percent (0.25%) municipal income tax approved by the electors on November 8, 2022, shall, after providing for the allocation of funds set forth in paragraph (a) of this Section, be applied 100% for the purpose of paying costs of (i) constructing, furnishing and equipping a new fire station and clearing, improving and equipping its site, rehabilitating, remodeling, renovating, furnishing and equipping the existing police station and improving and equipping its site, and otherwise constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, furnishing, equipping and improving City buildings and facilities and acquiring, clearing, improving and equipping their sites, (ii) maintaining, repairing and improving City streets by constructing, reconstructing, widening, grading, draining, curbing, paving and extending streets and related bridges, constructing storm sewers and related drainage improvements, installing traffic signals and signalization, and acquiring equipment required for such maintenance, repair and improvements and (iii) debt charges on City notes, bonds or other obligations issued for those purposes.
- (C) The tax on income and the withholding tax established by this Chapter 886 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio Revised Code 718 (ORC 718). This ordinance is effective for tax years beginning on and after January 1, 2016. Municipal tax years beginning on or before December 31, 2015, are subject to the income tax ordinance and amendments thereto, and rules and regulations and amendments thereto, as the existed before January 1, 2016.”

Section No. 2. Amendment of Section 886.03 of the City’s Codified Ordinances. Unless otherwise provided in Section 5, Section 886.03 of the City’s Codified Ordinances as established by Ordinance No. 163-2015, passed December 21, 2015, be and is hereby amended to read as follows effective January 1, 2023:

**“886.03 IMPOSITION OF TAX.**

The income tax levied by the City at a rate of one and three-quarters percent (1.75%) is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City,

**Individuals.**

- (A) For residents of the City, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-

through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 886.02 (C)(16)).

- (B) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (C) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Section 886.02 (C)(21). Exemptions which may apply are specified in Section 886.02 (C)(12).

**Refundable credit for Nonqualified Deferred Compensation Plan.**

- (D) (1) As used in this division:
  - (a) “Nonqualified deferred compensation plan” means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
  - (b) “Qualifying loss” means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.
  - (c) (i) “Qualifying tax rate” means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the City with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.
  - (ii) If different tax rates applied for different taxable years, then the “qualifying tax rate” is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City each year with respect to the nonqualified deferred compensation plan.
  - (d) “Refundable credit” means the amount of City income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

- (2) If, in addition to the City, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.
- (3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the City for all taxable years with respect to the nonqualified deferred compensation plan.
- (4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:
  - (a) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or
  - (b) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

**Domicile.**

- (E) (1) (a) An individual is presumed to be domiciled in the City for all or part of a taxable year if the individual was domiciled in the City on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the City for all or part of the taxable year.
- (b) An individual may rebut the presumption of domicile described in division (E)(1)(a) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the City for all or part of the taxable year.
- (2) For the purpose of determining whether an individual is domiciled in the City for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:
  - (a) The individual's domicile in other taxable years;
  - (b) The location at which the individual is registered to vote;
  - (c) The address on the individual's driver's license;
  - (d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

- (e) The location and value of abodes owned or leased by the individual;
  - (f) Declarations, written or oral, made by the individual regarding the individual's residency;
  - (g) The primary location at which the individual is employed.
  - (h) The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;
  - (i) The number of contact periods the individual has with the City. For the purposes of this division, an individual has one "contact period" with the City if the individual is away overnight from the individual's abode located outside of the City and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the City.
- (3) All additional applicable factors are provided in these Rules and Regulations.

**Businesses.**

- (F) This division applies to any taxpayer engaged in a business or profession in the City, unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745. of the ORC.
- (1) Except as otherwise provided in division (F)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:
    - (a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

- (b) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 886.04 (C);
  - (c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (2) (a) If the apportionment factors described in division (F)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the taxpayer may request, or the Tax Administrator of the City may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
- (i) Separate accounting;
  - (ii) The exclusion of one or more of the factors;
  - (iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
  - (iv) A modification of one or more of the factors.
- (b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 886.12 (A).
  - (c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 886.12 (A).
  - (d) Nothing in division (F)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

- (3) As used in division (F)(1)(b) of this section, “wages, salaries, and other compensation” includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (a) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
    - (i) The employer;
    - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
    - (iii) A vendor, customer, client, or patient of a person described in (F)(3)(a)(ii) of this section, or a related member of such a vendor, customer, client, or patient.
  - (b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
  - (c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (F) (3)(a) or (b) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (4) For the purposes of division (F)(1)(e) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- (a) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the City if, regardless of where title passes, the property meets any of the following criteria:
    - (i) The property is shipped to or delivered within the City from a stock of goods located within the City.
    - (ii) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

- (iii) The property is shipped from a place within the City to purchasers outside the City, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
  - (b) Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
  - (c) To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
  - (d) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.
  - (e) Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.
- (5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City's tax only if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit is a resident of the City. The City shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.
- (6)
- (a) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
  - (b) An individual who is a resident of the City shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City's income tax ordinance.
- (7) When calculating the ratios described in division (F)(1) of this section for the purposes of that division or division (F)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

- (8) Intentionally left blank.
- (9) Intentionally left blank.”

Section No. 3. Amendment of Section 886.04 of the City’s Codified Ordinances. Unless otherwise provided in Section 5, Section 886.04 of the City’s Codified Ordinances as established by Ordinance No. 163-2015, passed December 21, 2015, be and is hereby amended to read as follows effective January 1, 2023:

**“886.04 COLLECTION AT SOURCE.**

**Withholding provisions.**

- (A) Each employer, agent of an employer, or other payer located or doing business in the City shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City. Except for qualifying wages for which withholding is not required under Section 886.03 or division (B)(4) or (6) of this section, the tax shall be withheld at the rate, specified in Section 886.03 of this chapter, of one and three-quarters percent (1.75%). An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.
- (B) (1) Except as provided in division (B)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:
  - (a) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the City in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City in any month of the preceding calendar quarter exceeded \$200.
 

Payment under division (B)(1)(a) of this section shall be made so that the payment is received by the Tax Administrator not later than 15 days after the last day of each month for which the tax was withheld.
  - (b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax

Administrator not later than the 15th day of the month following the end of each calendar quarter.

- (c) Intentionally left blank.
- (2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the City. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.
- (3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the City as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.
- (4) An employer, agent of an employer, or other payer is not required to withhold City income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (5)
  - (a) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
  - (b) The failure of an employer, agent of an employer, or other payer to remit to the City the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (6) Compensation deferred before June 26, 2003, is not subject to City income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such

taxes have been withheld, and such amount shall be deemed to be held in trust for the City until such time as the withheld amount is remitted to the Tax Administrator.

- (8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:
  - (a) The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City during the preceding calendar year;
  - (b) The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;
  - (c) The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;
  - (d) Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;
  - (e) Other information as may be required by the Tax Administrator.
- (9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.
- (10) An employer is required to deduct and withhold City income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
- (11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section.

**Occasional Entrant - Withholding.**

- (C) (1) As used in this division:
- (a) “Employer” includes a person that is a related member to or of an employer.
  - (b) “Fixed location” means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
  - (c) “Principal place of work” means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, “principal place of work” means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the “greatest number of days in a calendar year” performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (C)(2)(a)(i) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (C)(2)(b) of this section, except that “location” shall be substituted for "municipal corporation" wherever “municipal corporation” appears in that division.

- (d) “Professional athlete” means an athlete who performs services in a professional athletic event for wages or other remuneration.

- (e) “Professional entertainer” means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
  - (f) “Public figure” means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
  - (g) “Worksite location” means a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. “Worksite location” does not include the home of an employee.
- (2) (a) Subject to divisions (C)(3), (5), (6), and (7) of this section, an employer is not required to withhold City income tax on qualifying wages paid to an employee for the performance of personal services in the City if the employee performed such services in the City on 20 or fewer days in a calendar year, unless one of the following conditions applies:
- (i) The employee's principal place of work is located in the City.
  - (ii) The employee performed services at one or more presumed worksite locations in the City. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the City at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:
    - (a) The nature of the services are such that it will require more than 20 days of the services to complete the services;
    - (b) The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than 20 days.
  - (iii) The employee is a resident of the City and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 886.04.
  - (iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

- (b) For the purposes of division (C)(2)(a) of this section, an employee shall be considered to have spent a day performing services in the City only if the employee spent more time performing services for or on behalf of the employer in the City than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
- (i) Traveling to the location at which the employee will first perform services for the employer for the day;
  - (ii) Traveling from a location at which the employee was performing services for the employer to any other location;
  - (iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
  - (iv) Transporting or delivering property described in division (C)(2)(b)(iii) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
  - (v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (C)(2)(a) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (4) (a) Except as provided in division (C)(4)(b) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the City exceeds the 20-day threshold, the employer shall withhold and remit tax to the City for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City.

- (b) An employer required to begin withholding tax for the City under division (C)(4)(a) of this section may elect to withhold tax for the City for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in the City.
- (5) If an employer's fixed location is the City and the employer qualifies as a small employer as defined in Section 886.02, the employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City, regardless of the number of days which the employee worked outside the corporate boundaries of the City.

To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

- (6) Divisions (C)(2)(a) and (4) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 886.04.”

Section No. 4. Amendment of Section 886.06 of the City’s Codified Ordinances. Unless otherwise provided in Section 5, Section 886.06 of the City’s Codified Ordinances as established by Ordinance No. 163-2015, passed December 21, 2015, be and is hereby amended to read as follows effective January 1, 2023:

**“886.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.**

- (A) Every individual taxpayer domiciled in the City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (C) of this section, the credit shall not exceed the tax due the City under this chapter. If the tax rate of the other municipality is less than one and three-quarters percent (1.75%), the credit shall be limited to the tax due at the lower rate.
- (B) The City shall grant a credit against its tax on income to a resident of the City who works in a joint economic development zone created under Section 715.691 or a joint economic development district created under Section 715.70, 715.71, or 715.72 of the ORC to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.
- (C) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of division (A) of this section, “the income, qualifying wages, commissions, net profits or other compensation” subject to tax in the other municipality shall be limited to the amount

computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.”

Section No. 5. Continued Effect of Existing Codified Ordinances. Effective January 1, 2023, Sections 886.01, 886.03, 886.04 and 886.06 of the City’s Codified Ordinances, as they have heretofore existed and shall exist until that date, are hereby repealed; provided, however, that no provision of this Ordinance, including the repeal of Sections 886.01, 886.03, 886.04 and 886.06 of the City’s Codified Ordinances, as they have heretofore existed and shall exist until January 1, 2023, shall in any way affect any rights or obligations of the City, any taxpayer, or any other person, official or entity, with respect to the one and one-half percent (1.50%) municipal income tax authorized by Chapter 886 of the City’s Codified Ordinances as it has heretofore existed and shall remain in effect until January 1, 2023.

Section No. 6. 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 its 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, all in compliance with the law.

Section No. 7. 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 No. 8. Declaration of Emergency; Effective Date. This Ordinance is hereby 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 must be immediately effective in order to enable the City to timely commence collection of the City’s municipal income tax at the increased rate provided for in this Ordinance commencing January 1, 2023, and thereby to continue to provide services and improvements critical to the safety and well-being of the residents of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

1<sup>st</sup> Reading:

2<sup>nd</sup> Reading:

3<sup>rd</sup> Reading:

PASSED: \_\_\_\_\_, 2022

\_\_\_\_\_  
President of Council

POSTED: \_\_\_\_\_, 2022

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

I, Valerie Rosmarin, Clerk of Council of the City of Avon Lake, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance No. 22-82 passed on \_\_\_\_\_, 2022, by the Avon Lake City Council.

\_\_\_\_\_  
Clerk of Council  
City of Avon Lake, Ohio”

Section No. 3. Proposed Ballot Form. It is the desire of this Council that the ballot language presented to the electors of the City shall be in substantially the following form:

A majority affirmative vote is necessary for passage.

Shall the ordinance (Ordinance No. 22-82) providing for an increase in the municipal levy on income from one and one-half percent (1.50%) to one and three-quarters percent (1.75%) to provide funds for the purpose of paying costs of (i) constructing, furnishing and equipping a new fire station and clearing, improving and equipping its site, rehabilitating, remodeling, renovating, furnishing and equipping the existing police station and improving and equipping its site, and otherwise constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, furnishing, equipping and improving City buildings and facilities and acquiring, clearing, improving and equipping their sites, (ii) maintaining, repairing and improving City streets by constructing, reconstructing, widening, grading, draining, curbing, paving and extending streets and related bridges, constructing storm sewers and related drainage improvements, installing traffic signals and signalization, and acquiring equipment required for such maintenance, repair and improvements and (iii) debt charges on City notes, bonds or other obligations issued for those purposes, be passed?

	FOR THE INCOME TAX
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	AGAINST THE INCOME TAX
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The Mayor and the Director of Law, with the advice of the City's legal counsel, are each authorized to further or differently summarize the language of the proposed amendment for purposes of creating an appropriate ballot if requested or required by the Lorain County Board of Elections, the Ohio Secretary of State or others.

Section No. 4. Certification and Delivery of Resolution. The Clerk of Council is hereby directed to file or cause to be filed a certified copy of this Resolution with the Lorain County Board of Elections before the close of business on Wednesday, August 10, 2022.

Section No. 5. Continued Effect of Existing Codified Ordinances. If the electors should fail to approve the passage of Ordinance No. 22-82 at the election on November 8, 2022, such failure shall not in any way affect any rights or obligations of the City, any taxpayer, or any other person, official or entity, with respect to Chapter 886 of the City's Codified Ordinances.

Section No. 6. 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 adoption of this Resolution were taken in an open meeting of this Council or its 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, all in compliance with the law.

Section No. 7. Captions and Headings. The captions and headings in this Resolution 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 Resolution unless otherwise indicated.

Section No. 8. Declaration of Emergency; Effective Date. This Resolution is hereby 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 Resolution must be immediately effective in order to comply with the statutory deadline for submission of the question to the electors at the election to be held on November 8, 2022; wherefore, this Resolution shall be in full force and effect immediately upon its adoption and approval by the Mayor.

1<sup>st</sup> Reading: 05/23/2022  
 2<sup>nd</sup> Reading: 06/13/2022  
 3<sup>rd</sup> Reading:

ADOPTED: June 27, 2022

/s/ Martin E. O'Donnell

President of Council

POSTED: July 1, 2022

APPROVED: June 27, 2022

ATTEST: /s/Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor

I, Valerie Rosmarin, Clerk of Council of the City of Avon Lake, Ohio, do hereby certify that the foregoing is a true and accurate copy of Resolution No. 22-82 adopted on June 27, 2022, by the Avon Lake City Council.

/s/Valerie E. Rosmarin

Clerk of Council

City of Avon Lake, Ohio