



Legislation Text

File #: O-197-23, **Version:** 1

All Council Members

Approving a Petition For Special Assessments for Special Energy Improvement Projects and a Supplemental Plan for the Northwest Ohio Advanced Energy Improvement District under Chapter 1710 of the Ohio Revised Code; to authorize and levy special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Toledo in cooperation with the Northwest Ohio Advanced Energy Improvement District; to re-approve a Cooperative Agreement and Special Assessment Agreement in connection with such improvements and special assessments; and to repeal Ordinance O-617-21; and declaring an emergency.

SUMMARY & BACKGROUND:

The City of Toledo, the City of Oregon, the City of Maumee, the City of Northwood, the City of Perrysburg, the City of Sylvania, the Village of Whitehouse, the Township of Monclova, the Township of Springfield, the Township of Swanton, the Township of Sylvania, and the Toledo-Lucas County Port Authority have partnered to create an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District (“Corporation”), to govern the District. Property owners within the District are permitted to make certain “energy efficiency improvements” to their properties, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

The Toledo Hospital (the “Petitioner”) is the current owner of 100% of the property described on **Exhibit A** attached hereto (the “Property”). Toledo Colony Apartments, LLC (the “Co-Petitioner”) is the anticipated owner of the Property. The Co-Petitioner has caused the completion of an energy assessment of the Property.

The energy assessment has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which, following its acquisition of the property, Co-Petitioner has determined to proceed with implementing in conjunction with financing to be secured by and repaid through special assessments. Petitioner has acknowledged and consented to Co-Petitioner’s planned implementation and financing.

Petitioner and Co-Petitioner have submitted to this Council the Petition for Special Assessments for Special Energy Improvement Projects (the “Petition”) seeking (i) the addition of certain of its property to the District and (ii) approval of an amendment to the District’s comprehensive plan for special energy improvement projects to include the Colony Lofts, Toledo, Ohio Special Energy Improvement Project (the “Special Energy Improvement Project”) and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the Property specially benefited thereby.

A complete list and description of the Special Energy Improvement Project is on file with the Clerk of Toledo City Council and is attached as **Exhibit B** to this Resolution. **Exhibit B** provides the following information for the Special Energy Improvement Project:

1. Identification of the parcel number and name of the Property/building to be improved;
2. A description of the nature of the Special Energy Improvement Project for the particular parcel;
3. The estimated amount of the special assessment to be levied against the Property (the “Special Assessments”) and the number of years the Special Assessments will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The total dollar cost of the Special Energy Improvement Project, including accrued interest and the associated closing costs, is estimated to be five million six hundred sixty-five thousand dollars and no cents (\$5,675,000.00). Each semi-annual payment represents the payment of a portion of the principal of and interest, the program administration fee, and the Lucas County, Ohio special assessment collection fee due with respect to each semi-annual payment. The total amount to be assessed against the property pursuant to this Ordinance will not exceed twenty million five hundred forty thousand twelve dollars and eight cents (\$20,540,012.08).

The cost of the Project will be funded through a loan from The Toledo-Lucas County Port Authority (“Port Authority”). Ultimately, the loan will be repaid over time from the Special Assessments paid by Petitioner. Petitioner, in turn, is expected to be able to pay a portion of the Special Assessments from the energy savings estimated to be achieved as a result of the Special Energy Improvement Project.

The Special Assessments for the Special Energy Improvement Project are to be paid in semi-annual payments over twenty-eight (28) years. The plans and specifications for the Special Energy Improvement Project are on file with the Clerk of Council. The Petitioner and the Co-Petitioner also waive all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Toledo City Charter and the Toledo Municipal Code. Petitioner consents to the immediate imposition of the Special Assessments upon the Property specially benefited by Special Energy Improvement Project.

This special assessment process is a voluntary process with one hundred percent of the cost of the Special Energy Improvement Project being assigned to the specially benefited Property. This Ordinance accepts and approves the petition from Petitioner, determines to proceed with the Special Energy Improvement Project, and levies the final costs of the Special Energy Improvement Project, as certified by the Petitioner and Co-Petitioner, against the benefited Property.

The Petitioner and the Co-Petitioner previously submitted a Petition for Special Assessment for Special Energy Improvement Projects (the “Previous Petition”) and a Supplemental Plan (the “Previous Supplemental Plan”) attached to it, and the City, by its Ordinance O-617-21, adopted on December 12, 2021 (the “Previous Ordinance”), approved the Previous Petition and the Previous Supplemental Plan. Since the date of the Previous Petition and the Previous Supplemental Plan and their approval by the City, intervening facts have caused the Petitioner and the Co-Petitioner to re-structure the plan of finance described in the Previous Petition and the Previous Supplemental Plan. By submitting the Petition, the Petitioner and the Co-Petitioner hereby request that the City repeal the Previous Ordinance and cause any special assessments levied under the Previous Ordinance to be removed from the Property, NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. Each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Petition.

SECTION 2. This Council approves the Petition and the Supplemental Plan attached to the Petition as Exhibit B thereto, both of which are now on file with the Clerk of Council.

SECTION 3. It is hereby declared necessary, and a vital and essential public purpose of the City, to improve the Property by providing for special energy improvement projects on the Property in the form of the Project, including any and all costs and expenses in connection with or otherwise related thereto as described in the Petition, all of which is described in the plans, specifications, profiles, and estimates of costs included in the Petition and on file in the office of the Clerk of the Council.

SECTION 4. The plans and specifications and total cost of the Project, as included in the Petition, and now on file in the office of the Clerk of the Council are approved. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project included in the Petition.

SECTION 5. This Council declares that its intention is to proceed or to cooperate with the District to proceed with the acquisition, installation, equipment, and improvement of the Project described in the Petition. The Project shall be made in accordance with the provisions of the plans, specifications, profiles, and estimates of cost approved by Section 4 of this Ordinance.

SECTION 6. Pursuant to Section 1710.02(G)(4) of the Ohio Revised Code, this Council determines that the Project to be constructed and implemented on the Property is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the board of directors of the District to act as its agent to sell, transfer, lease, or convey the Project to be constructed and implemented on the Property. The consideration the board of directors of the District must obtain from any sale, transfer, lease, or conveyance of the Project on the Property is any consideration greater than or equal to \$1.00.

SECTION 7. Pursuant to and subject to the provisions of the valid Petition signed by the owner of 100% of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The provisions of the Petition are ratified, adopted, approved and incorporated into this Ordinance as if set forth in full in this Ordinance. The portion of the costs of the Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy or collection of the Special Assessments.

SECTION 8. The Director of Finance of the City (the "Finance Director") or the Finance Director's designee has caused to be prepared and filed in the office of the Clerk of the Council the estimated Special Assessments and the cost of the Project in accordance with the method of assessment set forth in the Petition. The estimated Special Assessments and cost of the Project are hereby adopted.

SECTION 9. This Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those

specified in the Ohio Constitution, Chapter 727 of the Ohio Revised Code, Chapter 1710 of the Ohio Revised Code, and the Charter of the City of Toledo, Ohio, and consents to the immediate imposition of the Special Assessments upon the Properties. This waiver encompasses, but is not limited to, waivers by the Owners of the following rights:

- (i) The right to notice of the adoption of a resolution of necessity under Sections 727.13 and 727.14 of the Ohio Revised Code;
- (ii) The right to limit the amount of the Special Assessments under Sections 727.03 and 727.06 of the Ohio Revised Code;
- (iii) The right to file an objection to the Special Assessments under Section 727.15 of the Ohio Revised Code;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Sections 727.16 and 727.17 of the Ohio Revised Code;
- (v) The right to file any claim for damages under Sections 727.18 through 727.22 of the Ohio Revised Code and Section 727.43 of the Ohio Revised Code;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Section 727.251 of the Ohio Revised Code;
- (viii) The right to notice of the passage of the assessing ordinance under Section 727.26 of the Ohio Revised Code; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 10. The list of Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, which will not exceed \$20,540,012.08, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file in the offices of the Clerk of Council, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, which shall accrue at the maximum annual rate of 6.00%, together with amounts used to pay administrative expenses, has been determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds been issued by the District.

The Special Assessments are assessed against the Property commencing in tax year 2024 for collection in 2025 and shall continue through tax year 2051 for collection in 2052; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Auditor of Lucas County, Ohio (the "County Auditor") determines that collections shall not commence in 2025, then the collection schedule may be deferred by one year. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to a semi-annual amount of Special Assessments as shown in **Exhibit C**, attached hereto and incorporated into this Ordinance. The Special Assessments may be levied and collected before the Project is commenced.

The Special Assessments shall be allocated in proportion to the benefits which may result from the Project among the parcels constituting the Property as set forth in the Petition and the List of Special Assessments attached hereto as **Exhibit C** and incorporated herein.

As described and requested in the Petition, the maximum amount of Special Assessments approved by this Ordinance is expected to exceed the final amount of Special Assessments necessary to pay the costs of the Project. The Petitioner and the Co-Petitioner have requested that, following the adoption of this Ordinance, the Port Authority and the Co-Petitioner notify the City of the final Special Assessments, the aggregate amount of which shall not be in excess of the aggregate amount Special Assessments approved by this Ordinance, and that the City certify such amounts for collection. The City is hereby authorized to accept the notification from the Port Authority and Co-Petitioner and to certify an amount of Special Assessments not to exceed the aggregate amount of Special Assessments approved in this Ordinance for collection.

SECTION 11. This Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property as set forth in the Petition and are not in excess of any applicable statutory limitation.

SECTION 12. The Owner has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Clerk of Council to the County Auditor as provided by the Petition and Section 727.33 of the Ohio Revised Code to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

SECTION 13. The Special Assessments will be used by the City to pay the cost of the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes. The Finance Director or the Finance Director's designee shall keep the Special Assessments on file in the office of the Finance Director.

SECTION 14. This Council hereby approves the Cooperative Agreement by and among the City, the District, the Owner, and the Port Authority (the "Cooperative Agreement"), a copy of which is on file with the Clerk of Council. The Mayor, the Commissioner of the Department of Economic Development (the "ED Commissioner"), or either of them, or either of their designees, shall sign and deliver, in the name and on behalf of the City, the Cooperative Agreement, in substantially the form as is now on file with the Clerk of this Council. The Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved the Mayor, the ED Commissioner, or either of them, or either of their designees, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Cooperative Agreement or amendments to the Cooperative Agreement.

SECTION 15. This Council hereby approves the Special Assessment Agreement by and among City, the District, the Owner, the Port Authority, the Bank of New York Mellon Trust Company, N.A., as trustee, and the County Treasurer of Lucas County, Ohio, a copy of which is on file in the office of the Clerk of Council. The Mayor, the ED Commissioner, or either of them, or either of their designees, shall sign and deliver, in the name and on behalf of the City, the Special Assessment Agreement, in substantially the form as is now on file with the Clerk of this Council. The Special Assessment Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor, the ED Commissioner, or either of them, or either of their designees, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreement or amendments to the Special Assessment Agreement.

SECTION 16. The City is hereby authorized to enter into such other agreements that are not

inconsistent with this Ordinance and that are approved by the Mayor, the ED Commissioner, or either of them, or either of their designees, on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

SECTION 17. In compliance with Section 319.61 of the Ohio Revised Code, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor within 15 days after its passage.

SECTION 18. That as requested in the Petition, Ordinance O-617-21, adopted on December 12, 2021, is hereby repealed, and any special assessments approved and levied under that ordinance are hereby released. The Clerk of Council and the Department of Finance of the City, together or separately, are hereby authorized and directed to take any action necessary to cause the special assessments levied under Ordinance O-617-21 to be removed from the Property.

SECTION 19. That 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, and that all deliberations of this Council and any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 20. That this Ordinance is declared to be an emergency measure and shall take effect and be enforced from and after its passage. The reason for the emergency lies in the fact that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and property and for the further reason that the immediate action is necessary in order to conserve energy and protect the environment of the City, as well as, undertake the construction of the public improvements and enable and provide for the timely levying, certification and collection of the Special Assessments for the Special Energy Improvement Project.

Vote on emergency clause: yeas 11, nays 0.

Passed: April 18, 2023, as an emergency measure: yeas 11, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

April 18, 2023
Wade Kapszukiewicz
Mayor