



Legislation Text

File #: R-034-19, Version: 1

All Council Members

Accepting the petition of the City School District of the City of Toledo, Lucas County, The Young Men’s Christian Association of Greater Toledo, and Northwest Ohio Advanced Energy Improvement District for special assessments for various special energy improvement projects in accordance with Chapters 1710 and 727 of the Ohio Revised Code; declaring the necessity of proceeding with the special energy improvement projects and approving the plans and specifications therefor; stating the method for making the special assessments against the benefitted properties and the amount of such special assessments; and declaring an emergency.

SUMMARY & BACKGROUND:

The City of Toledo, City of Oregon, City of Maumee, City of Northwood, Township of Springfield, Township of Sylvania, Township of Monclova, and Township of Swanton, Ohio and the Toledo-Lucas County Port Authority (“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 City School District of the City of Toledo, Lucas County (the “Owner”) is the owner of 100% of the property described on **Exhibit A** attached hereto (the “Property”). The Property is currently leased by The Young Men’s Christian Association of Greater Toledo, an Ohio non-profit corporation (“Lessee”) (jointly together, “Petitioners”). The Petitioners have executed an Energy Project Agreement (the “Agreement”) with the Corporation. A copy of the Agreement is attached to the Petitions as **Exhibit C**.

Pursuant to the Agreement, and upon Application to the Corporation for membership and financing of special energy improvement projects to the Properties; the Port Authority, the Corporation, and the Petitioners have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which the Petitioners have determined to proceed with implementation, and to pay by way of special assessments.

The Petitioners have submitted to this Council a petition (“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 West YMCA Energy Improvement Project (the “Project”) and requesting that those Project be undertaken by the District and that the costs thereof be specially assessed

against the properties of Petitioners specially benefited thereby.

A complete list and description of the Project is on file with the Council of Trustees and is attached as **Exhibit B** to this Resolution. **Exhibit B** provides the following information for Project:

1. Identification of the parcel number(s) and name of the property/building to be improved;
2. A description of the nature of the special energy improvement projects for the particular parcel;
3. The estimated amount of the special assessment to be levied against each parcel of property and the number of years the special assessment 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 Project, capitalized interest on the Port Authority's NW Ohio Bond Fund, reserve fund for the Port Authority's bonds, the cost of issuance of the Port Authority's revenue bonds, or the associated cost of issuance of the Northwest Ohio Advanced Energy Improvement District's bond fund (collectively, the "Project"), is estimated to be Two Hundred Sixty-Four Thousand Eighty-Three Dollars and Seventy-Six Cents (\$264,083.76). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority program administration fee, and the trustee fee due with respect to each semi-annual payment. The County Fiscal Officer of Lucas County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Lucas County, Ohio to each semi-annual assessment payment.

The Port Authority and the District are funding the cost of the Project through the NW Ohio Bond Fund. Ultimately, the loan will be repaid over time from the amounts the Lessee pays as special assessments. The Lessee, in turn, is expected to be able to pay special assessments from the energy savings estimated to be achieved as a result of the Project.

The annual special assessments are to be paid in semi-annual payments over nineteen (19) years. The plans and specifications for Project are on file with the Council of Trustees. The Petitioners' petition also waives 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, and Chapter 727 of the Revised Code. The Petitioners consent to the immediate imposition of the special assessments upon the various properties specially benefited by Special Energy Improvement Projects.

This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited properties. This resolution accepts and approves the petitions from the Petitioners to begin that special assessment process, and is accompanied by an ordinance to proceed with the Project. When Project are complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited properties will be presented to the Council. NOW, THEREFORE,

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

SECTION 1. That this Council accepts and approves the Petition of the Petitioners and the Port Authority for the creation of an Energy Special Improvement District ("ESID") pursuant to Chapter 1710 of the Ohio Revised Code, including the Project described herein and in **Exhibit B** to this Resolution, which is on file with the City Council of Toledo. All of the findings and determinations contained in the preceding Summary and Background section are incorporated herein and adopted as substantive findings and determinations of this Council.

SECTION 2. That this Council (i) accepts and confirms the inclusion of the properties listed in **Exhibit A** in the District, which, pursuant to Chapter 1710 of the Ohio Revised Code, is governed by the Corporation, and (ii) declares the necessity of the acquisition, installation and construction of Project, which shall be constructed on the properties of the Petitioners identified in **Exhibit A**.

SECTION 3. That this Council hereby confirms its approval of the plan for the District, including (and as supplemented and amended by and to include) the plans for Project, and the Corporation is authorized and directed to cause Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plan for the District, including (and as supplemented and amended by and to include) the plans for the Project.

SECTION 4. That the plans, specifications, estimates of costs, and profiles of the proposed Project identified in **Exhibit B** on file with the City Council of Toledo and open to inspection are hereby approved, and Project shall be acquired, installed and constructed in accordance with those plans and specifications.

SECTION 5. That this Council hereby finds and determines that (i) the Project are conducive to the public health, convenience and welfare of the City and its inhabitants and (ii) the properties of the Petitioners identified in **Exhibit A** are specially benefited by this Project.

SECTION 6. This Council hereby 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, and Chapter 727 of the Revised Code, and consents to the immediate imposition of the special assessments upon the properties as identified in **Exhibit A**. This waiver encompasses but is not limited to waivers of the following rights under the Revised Sections referred to below:

- The right to notice of the adoption of the Resolution of Necessity under Sections 727.13 and 727.14;
- The right to limit the amount of the special assessment under Sections 727.03 and 727.06;
- The right to file an objection to the special assessment under Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Council under Sections 727.16 and 727.17;
- The right to file any claim for damages under Sections 727.18 through 727.22 and Section 727.43;
- The right to notice that bids or quotations for Project may exceed estimates by 15%;
- The right to seek a deferral of payments of special assessments under Section 727.251; and
- The right to notice of the passage of the assessing ordinance under Section 727.26.
- Any and all procedural defects, errors or omissions in the special assessment process.

SECTION 7. That the total cost of Project shall be assessed against the properties of the Petitioners identified in **Exhibit A** in proportion to the benefits resulting from the Project.

SECTION 8. That the total cost of Project shall include any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs, the amount of any damages resulting from the Project and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing and otherwise acquiring any real estate or interests therein, expenses of legal services, costs of labor and material, trustee fees and other financing costs incurred in connection with the issuance, sale and servicing of securities issued by the Port Authority to provide a loan to the Corporation to pay costs of the Project in

anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities issued by the Port Authority, and the Port Authority program administration fee, together with all other necessary expenditures.

SECTION 9. That the estimated assessments for the Project heretofore prepared and now on file with the Clerk of Council and amounting in the aggregate to \$417,281.20 be and are hereby adopted. The special assessments to be levied shall be paid in 19 annual (38 semi-annual) installments, with interest thereon at the same rate or rates as shall be borne by the securities to be issued by the Port Authority and loaned to the Corporation for Project in anticipation of its receipt of the special assessments. Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority program administration fee, and the trustee fee due with respect to each semi-annual payment. The County Fiscal Officer of Lucas County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Lucas County, Ohio to each semi-annual assessment payment.

SECTION 10. That the Township does not intend to issue its own securities in anticipation of the levy or collection of the special assessments for the Project, which instead shall be paid for initially from proceeds of the securities issued by the Port Authority loaned to the Corporation for that purpose, and repaid through the special assessment process described herein.

SECTION 11. That this Council finds and determines that all formal actions of this City Council and any of its Committees concerning and relating to the adoption of this Resolution were taken, and all deliberations of this Council or any of its Committees that resulted in such formal actions were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Revised Code.

SECTION 12. That this Resolution is declared to be an emergency measure and shall take effect and be in force from and after its adoption. The reason for the emergency lies in the fact that this Resolution is necessary for the immediate preservation of the public peace, health, safety and property; and for the further reason that immediate action is necessary in order to conserve energy, protect the environment of the City, and undertake construction of necessary public improvements, as well as, provide and enable the timely levying, certification and collection of the special assessments for Project.

Vote on emergency clause: yeas _____, nays _____.

Adopted: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor