



Legislation Text

File #: O-310-18, Version: 1

All Council Members

Levying special assessments for the Barone Brothers Energy Improvement Project; and declaring an emergency.

SUMMARY & BACKGROUND:

The City of Toledo, City of Oregon, City of Maumee, City of Northwood, Township of Monclova, Township of Springfield, Township of Swanton, Township of Sylvania, 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.

Barone Brothers, LLC. (the “Petitioner”) is the owner of 100% of the property described on **Exhibit A** attached hereto (the “Property”). The Petitioner has executed an Agreement to Impose Special Assessments (the “Agreement”) which appoints the Chairperson of the Corporation, as the attorney-in-fact and agent for the Petitioner with the authority to act on behalf of the Petitioner in the special assessment process. A copy of the Agreement to Impose Special Assessments is attached to the Petition as **Exhibit C**.

Pursuant to the Agreement, and upon Application to the Northwest Ohio Advanced Energy Improvement District for membership and financing of special energy improvement project to the Property; the Port Authority, Corporation, and Barone Brothers, LLC. 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 Barone Brothers, LLC. has determined to proceed with implementation, and to pay by way of special assessments.

Barone Brothers, LLC. has submitted to this Council a petition (“Petition”) seeking (i) the addition 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 Barone Brothers Energy Improvement Project (the “Project” or the “Barone Brothers Energy Improvement Project”) and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the property of Barone Brothers, LLC. specially benefited thereby.

A complete list and description of the Barone Brothers 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 Barone Brothers Energy Improvement Project:

1. Identification of the parcels numbers 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 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).

Barone Brothers, LLC. expressly waives the right to pay the assessments in cash within 30 days after passage of the assessing ordinance.

The annual special assessments for the Project are to be paid in semi-annual payments over fifteen (15) years. The plans and specifications for the Barone Brothers Energy Improvement Project are on file with the Clerk of Council. The Barone Brothers, LLC. 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, Chapter 727 of the Revised Code, the Toledo City Charter and the Toledo Municipal Code. Barone Brothers, LLC. consents to the immediate imposition of the special assessments upon the Property specially benefited by the Barone Brothers Energy Improvement Project. 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 property. Final costs for the Barone Brothers Energy Improvement Project are now known and this assessing ordinance completes the assessing process, which included the adoption of a Resolution of Necessity (Resolution No. 308-18) and an Ordinance to Proceed (Ordinance No. 309-18) by levying the assessments against the benefitted Property.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That the special assessments for the cost of providing the Barone Brothers Energy Improvement Project in the District pursuant to Resolution No. 308-18 adopted by this Council on August 14, 2018 (the Resolution of Necessity), which were filed and are on file in the office of the Clerk of Council are adopted and confirmed; provided that the cost of providing such Project is reduced to the aggregate amount of Two Million Seven Hundred Thirty-Eight Thousand Six Hundred Seventy Dollars and Sixty-Six Cents (\$2,738,670.66) which reduction is adopted and confirmed. Those special assessments are levied and assessed upon the Property in the respective amounts set forth in the schedule attached as Exhibit B and on file with the Clerk of Council, which special assessments have been calculated in a manner provided for in the Resolution of Necessity and are not in excess of the special benefits or any statutory limitation. The special assessments are levied and assessed in accordance with the payment schedule attached hereto as Exhibit B in the amounts sufficient to pay the principal of and interest and the scheduled amounts payable as the Authority administrative fee, the Authority program administration fee, the Trustee fee, and the Lucas County, Ohio special assessment collection fee due with respect to each semi-annual period identified in such payment schedule.

SECTION 2. That Barone Brothers, LLC. waives the right to pay the special assessments in cash within thirty days after the passage of this ordinance, and shall pay the assessments in Fifteen (15) annual installments (thirty [30] semi-annual installments) in accordance with the schedules attached hereto as Exhibit B. All special assessments shall be certified by the Clerk of Council to the County Auditor as provided by law to be placed on the tax duplicate and collected as taxes are collected. All payments shall be made to the County Treasurer of Lucas County, Ohio and shall be subject to the same delinquency procedures, penalties, and interest as the payment of real property taxes in accordance with Ohio Revised Code Chapter 323.

Notwithstanding the foregoing, pursuant to the Agreement to Impose Special Assessments between Barone Brothers, LLC and the Northwest Ohio Advanced Energy Improvement District (“the Corporation”), attached to the petition as Exhibit C and providing that Barone Brothers, LLC grants the Corporation the authority to determine, in its sole discretion, the amount of the special assessments, the Corporation, acting through its Chairman or other authorized representative, may annually, on or before August 15th, deliver to the City assessment officer or other appropriate official, a certificate signed by the Chairman reflecting a reduction, in whole or in part, in the amount of the special assessment to be certified by the City’s assessment officer to the County Auditor in that year for placement onto the tax duplicate the following year and collected as other taxes and assessments are collected. The Corporation’s certificate shall reflect payments made by or on behalf of Barone Brothers, LLC, or its successors, directly to the Corporation or to the Corporation’s designee for some or all of the cost of the special energy improvement project thereby resulting in a reduction in the required annual special assessment. The City’s assessment officer and all officials with authority to certify special assessments to the County Auditor shall, without any further action by this Council, rely upon the Corporation’s certificate and take all actions necessary to implement the annual reduction of the special assessment, if any, evidenced by the certificate. In the event the City’s assessment officer does not receive such a certificate in any given year on or before August 15th, the assessment officer shall certify the full amount of the annual special assessment as provided herein to the County Auditor.

SECTION 3. The Council finds and determines that it has previously waived notice of the passage of this assessing Ordinance and therefore no notice need be published in a newspaper of general circulation in the City.

SECTION 4. That the Clerk of Council shall deliver a certified copy of this Ordinance to the County Auditor within twenty days after its passage, but in no event later than the second Monday in September, 2018 (or by such other date as may be specified in the Ohio Revised Code or acceptable to the County Auditor of Lucas County, Ohio for the certification of assessments in connection with the preparation of the general tax list for tax year 2018).

SECTION 5. That the proceeds of the special assessments levied by this Ordinance that are received by the City shall be applied as provided in Section 1710.12 of the Revised Code and are hereby appropriated for that purpose. This Council covenants and agrees that it will give effect to the appropriation in the ordinances it hereafter adopts appropriating money for expenditure or encumbrance. The Director of Finance is authorized and directed to make appropriate accounting entries and adjustments to reflect the City's receipt and disbursement of those proceeds.

SECTION 6. 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 7. 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 Barone Brothers Energy Improvement Project.

Vote on emergency clause: yeas _____, nays _____.

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

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council