



Legislation Text

File #: O-510-18, **Version:** 1

Overland Park TIF 2
Law
E. Granata (x1034)
Revised

Declaring the improvement to certain real property to be a public purpose; declaring such improvement to be exempt from real property taxation; authorizing necessary agreements; requiring the owners thereof to make service payments in lieu of taxes; designating the public infrastructure improvements to be made that will directly benefit the real property; and establishing a municipal public improvement tax increment equivalent fund for the deposit of service payments; and declaring an emergency.

SUMMARY & BACKGROUND:

Sections 5709.40 through 5709.43 of the Ohio Revised Code (“ORC”) authorize municipalities to identify parcels to be improved and to declare to be a public purpose any infrastructure improvements made that are necessary for the development of such parcels, exempting any improvements to such parcels from real property taxation for established time periods and percentages, with such mechanism commonly referred to as tax increment financing (“TIF”).

The City of Toledo, Ohio (the “City”) desires to use the authority granted pursuant to such sections of the ORC to establish a TIF exemption in an area located within the territorial boundaries of the City and within an area known as the “Overland Industrial Park,” consisting of one or more separate parcels of real property (as depicted and described in Exhibit A attached hereto and incorporated herein by this reference, the “Site”).

City Council has previously approved by Ord. 499-17 a TIF exemption for another portion of the Overland Industrial Park. This ordinance authorizes the exemption of additional parcels within the Overland Industrial Park (“Overland TIF2”).

The development of commercial properties in the City will benefit the City and its residents by creating economic opportunities, enlarging the property tax base, stimulating collateral development in the City, and providing revenue for the City to undertake public infrastructure improvements. Further, by providing public infrastructure improvements, as that term is defined in ORC §5709.40(A)(7) (as more fully described in Exhibit B attached hereto and incorporated herein by this reference, the “Public Infrastructure Improvements”), the City may facilitate the development of commercial properties for the benefit of the Site, including, without limitation, by facilitating the financing, acquisition, and construction of the Public Infrastructure Improvements.

The ORC provides for the use of TIF to pay the costs of Public Infrastructure Improvements, which costs may include, without limitation: (i) the payment for or reimbursement of costs of the Public Infrastructure Improvements incurred by the Port Authority, as defined below, or the City, or any other public or private party in cooperation with the City, and (ii) payment of debt service on, and administrative and any other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure

Improvements (the “Debt Service”).

The aforementioned ORC sections provide that this City Council (“Council”) may, among other things, (a) declare the improvement to real property located in the City to be a public purpose, thereby exempting such improvement from real property taxation for a period of time (the “TIF Exemption”), (b) specify public infrastructure improvements to be made to directly benefit those parcels, (c) require the owner or owners of those parcels to make service payments in lieu of taxes, and (d) establish a municipal public improvement tax increment equivalent fund into which such service payments shall be deposited.

The Toledo-Lucas County Port Authority (the “Port Authority”) desires to cause the construction on the Site of a commercial and industrial development (the “Project”); and, the City desires to grant the TIF Exemption in the amount of one hundred percent (100%) of the value of each improvement to the Site (as defined herein, the “Improvement”) for a period of thirty (30) years (the “TIF Exemption”), subject to an exemption under the Community Reinvestment Area (“CRA”) in effect with respect to the Site as authorized under Ord. 826-85 as amended by Ord. 738-81 and Ord. 841-98. The CRA provides for an 100%, 15-year exemption (the “CRA Exemption”) for building improvements constructed on the Site.

Moreover, the City has determined that it is necessary and appropriate and in the best interests of the City to require the Port Authority, as current owner, and future owners of the parcels included in the Site and their successors and assigns (collectively, with their successors and assigns, as owners of the Site, the “Owners”) to make service payments in lieu of taxes (the “Service Payments”) with respect to the Improvement pursuant to ORC §5709.42. The City and the Port Authority desire to execute a tax increment service payment agreement (the “TIF Agreement”) whereby the Owners commit to make service payments in amounts equal to the property tax amounts that would have been payable had the TIF not been created. Additionally, The Port Authority and the tenants on the Site are willing to make payments in lieu of taxes with respect to a portion of the taxes that would have been payable, but for the CRA Exemption.

The Toledo City School District by Resolution No. 106-2018, authorized the negotiation and execution of agreements between the Port Authority and City of Toledo regarding payments to the School District relating to Overland Industrial Park (“Compensation Agreements”). The Res. 106-2018 established agreed percentages the TIF Service Payments that would be paid to the School District as payments in lieu of taxes. The intention of the Council to grant an exemption from real property taxes pursuant to the TIF Statutes, and to pass this Ordinance, has been delivered to the Board of Education of the Toledo City School District (the “School District”) in accordance with ORC §5709.40 and §5709.83 of the Ohio Revised Code.

It is necessary to enact this ordinance in order to make the TIF Exemption for the Parcels effective for tax year 2018 and in order to facilitate the development of the Project.

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

SECTION 1. Authorization of TIF Exemption. That, pursuant to and in accordance with the provisions of ORC §§5709.40 through 5709.43, one hundred percent (100%) of the increase in assessed value of each parcel comprising the Site (the “Exempted Property”) subsequent to the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the “Improvement,” as defined in ORC §5709.40(A)(4)) is declared to be a public purpose, and shall be exempt from real property taxation (the “TIF Exemption”) for a period commencing with the tax year in which the Exempted Property first appears on the tax list and duplicate of real and public utility property and that begins after the effective date of this Ordinance (the “Commencement Date”) and ending on the thirtieth (30th) anniversary of such Commencement Date or the date the Public Infrastructure Improvements are paid in full, whichever occurs first (the “Exemption Period”). After the TIF Exemption becomes effective, such TIF Exemption shall commence with respect to any parcel when the Improvement to

such parcel is made and an exemption therefor is claimed in the manner provided by this ordinance and applicable law. The TIF Exemption shall be subject to the CRA Exemption for building improvements to the Site.

SECTION 2. School Compensation Agreement. That the authorization of the TIF Exemption in Section 1 is subject to the execution of Compensation Agreement(s) with the Toledo City School District (“School District”) providing for payments in lieu of taxes in accordance with School District Resolution No. 106-2018, adopted on October 24, 2017, which authorized agreements with the City of Toledo and the Toledo-Lucas County Port Authority relating to the Overland Industrial Park.

SECTION 3. Payment of Service Payments. That, as provided in ORC §5709.42, but only after the TIF Exemption is effective, the Owner of a parcel comprising Exempted Property shall be required to, and shall make, service payments in lieu of taxes with respect to the Improvement allocable thereto to the County Treasurer on or before the final due dates for payment of real property taxes. Each service payment in lieu of taxes shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against such parcel as if it were not exempt from taxation pursuant to Section 1 hereof. If any reduction in the levies otherwise applicable to such parcel is made by the County budget commission under ORC §5705.31, the amount of the service payment in lieu of taxes shall be calculated as if the reduction in levies had not been made. Any late payments of service payments in lieu of taxes shall be subject to penalty and bear interest at the then current rate established under ORC §§323.121(B)(1) and 5703.47 or any successor provisions thereto, as the same may be amended from time to time, or any successor provisions thereto (the “Penalties and Interest”). Each Owner shall make any other payments in respect of such parcel which are received by the County Treasurer in connection with any reduction required by ORC §319.302, as the same may be amended from time to time, or any successor provisions thereto (the “Property Tax Rollback Payments,” together with the service payments in lieu of taxes and the “Penalties and Interest,” are collectively referred to as the “Service Payments”). The Service Payments shall be allocated and distributed in accordance with Section 5.

SECTION 4. That the Mayor is authorized to execute on behalf of the City one or more TIF Agreements, among the City, the Port Authority and the tenants, providing for, among other things, the payment and collection of the Service Payments, which TIF Agreement shall be in such form as is acceptable to such official or officials executing the agreement, approved by the Director of Law, and not substantially inconsistent with the terms of this Ordinance. The TIF Agreement shall also provide for certain payments in lieu of taxes with respect to a portion of the real property taxes exempted pursuant to the CRA Exemption. The Mayor is further authorized to enter into the Compensation Agreement with the Port Authority and, if appropriate, any tenants and the School District. Any agreement with the Schools shall acknowledge that the Schools are waiving any income tax sharing to which they may, arguably, have otherwise been entitled.

SECTION 5. Creation of TIF Fund; Application of Service Payments. That, pursuant to and in accordance with the provisions of ORC §5709.43, a municipal public improvement tax increment equivalent fund (the “Tax Increment Fund”) is established within the City Treasury, which may, at the option of the officials responsible for creating such fund, be established as an account within an existing tax increment equivalent fund of the City, into which shall be deposited the Service Payments made in respect of the Improvements which are distributed to the City by the County Treasurer in accordance with this Ordinance. Such Fund may be combined with other funds created by ordinances of this Council authorizing other such projects.

Money in the Tax Increment Fund shall be used first to compensate the School District pursuant to the Compensation Agreement and then to finance the Public Infrastructure Improvements, and shall, to the extent provided in further ordinances of this Council, be pledged to the payment of debt service on any bonds, notes or other obligations issued to finance such Public Infrastructure Improvements as well as any reimbursement payments to the Port Authority for reimbursement of any costs of the Public Infrastructure Improvements. The Tax Increment Fund shall be maintained in the custody of the City and shall receive all distributions of Service Payments required to be made to the City. Those Service Payments received by the City with respect to the Exempted Property, shall be used solely for the purposes authorized in ORC §§5709.40 through 5709.43, including, but not limited to, school compensation and paying any costs of the Public Infrastructure Improvements. For purposes of this Ordinance, “costs” of the Public Infrastructure Improvements payable from the Tax Increment Fund shall also include the items of “costs of permanent improvements” set forth in ORC §133.15(B), and incurred with respect to the Public Infrastructure Improvements, which “costs” specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements, and Debt Service on, and any Administrative or other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure Improvements.

The Tax Increment Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid

purposes, after which time the Tax Increment Fund shall be dissolved and any surplus funds remaining therein shall be transferred to the City’s General Fund, all in accordance with ORC §5709.43(D).

SECTION 6. Public Infrastructure Improvements. That the Public Infrastructure Improvements described in Exhibit B attached hereto are designated as “public infrastructure improvements” (as such term is defined in ORC §5709.40 (A)(7)) made, to be made, or in the process of being made, and that, once made, will directly benefit the Site.

SECTION 7. Application for Real Property Tax Exemption and Remission. That the Mayor or the Mayor’s designees are authorized to sign and execute all documents and make such arrangements as are necessary and proper for collection of said Service Payments from the Owners of real property located in the Site, which are to be deposited into the Tax Increment Fund.

SECTION 8. Further Authorizations. That the Mayor or the Mayor’s designees are authorized to take such action and to execute and deliver, on behalf of the City, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

SECTION 9. Non-Discriminatory Hiring Policy. That, in accordance with ORC §5709.832, the City determines that no employer located in the Site shall deny any individual employment based on considerations of race, religion, sex, disability, color, national origin or ancestry.

SECTION 10. Tax Incentive Review Council. That the Toledo Tax Incentive Review Council (the “TIRC”) has been established in accordance with ORC §5709.85. The TIRC shall review annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before the TIRC.

SECTION 11. Notification of Adoption; Reporting. Pursuant to Ohio Revised Code Section 5709.40(H), the Clerk is directed to deliver a copy of this Ordinance to the Director of the Development Services Agency of the State of Ohio within fifteen days after its adoption. On or before March 31 of each year that the exemption set forth in Section 2 hereof remains in effect, the Clerk or other authorized officer of this City shall prepare and submit to the Director of the Development Services Agency of the State of Ohio the status report required under Section 5709.40(H) of the Ohio Revised Code.

SECTION 12. Open Meeting. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 13. That this Ordinance is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety, and property and that it is necessary that this Ordinance become effective in 2018 so that the public benefits sought herein can be most effectively finalized.

Vote on emergency clause: yeas _____, nays _____.

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

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor