



Legislation Text

File #: 1540-2020, **Version:** 1

BACKGROUND: The Council of the City of Columbus previously passed a resolution approving a petition for the addition of certain real property to the Columbus Regional Energy Special Improvement District (the “District”) and a supplemental plan for special energy improvement projects to be constructed upon such parcels once added to the District. Pursuant to that resolution, the real property has been added to the District. The supplemental plan previously approved by the Council provides that special assessments levied by the Council pursuant to Chapters 727 and 1710 of the Ohio Revised Code be used to pay the costs of “special energy improvement projects,” as that term is defined in Section 1710.01 of the Ohio Revised Code, to be constructed pursuant to the supplemental plan.

The Council, by resolution, has further determined the necessity of proceeding to levy special assessments for the purposes set forth in the supplemental plans. The Council, by ordinance, has further determined to proceed with the levying of the special assessments pursuant to Chapters 727 and 1710 of the Ohio Revised Code, and pursuant to the Charter of the City of Columbus. The Council, by ordinance, has further levied special assessments pursuant to Chapters 727 and 1710 of the Ohio Revised Code, and pursuant to the Charter of the City of Columbus and approved an Energy Project Cooperative Agreement and a Special Assessment Agreement facilitating the provision of the special energy improvement projects.

Hayden Columbus, LLC, as the owner of a certain parcel of real property within the City of Columbus (with the commonly used mailing addresses 16 E. Broad Street, Columbus, Ohio and 20 E. Broad Street, Columbus, Ohio) that was subject to the special assessments previously levied by the City, has submitted an amendment to the petition and an amendment to the supplemental plan to the Council, requesting that the Council approve the amendment to the petition and amendment to the supplemental plan and levy special assessments on such property to pay the costs of the special energy improvement projects to be provided on its property.

Hayden Columbus, LLC is working in cooperation with PACEWell 2 LLC, as the assignee of Greenworks Lending LLC, to obtain financing secured by the special assessments requested in the amendment to the petition and amendment to the supplemental plan, the proceeds of which financing will be used to pay the costs of the special energy improvement projects described in the amendment to the petition and amendment to the supplemental plan.

This legislation is to approve the amendment to the petition and the amendment to the supplemental plan, and to levy such special assessments, all pursuant to Chapters 727 and 1710 of the Ohio Revised Code, and pursuant to the Charter of the City of Columbus. This legislation also authorizes and approves an Amendment to the Energy Project Cooperative Agreement facilitating the provision of the special energy improvement projects.

Emergency action is requested on this legislation to allow the special assessment process to proceed in a timely manner and allow financing for the special energy improvement projects to be obtained by the District.

FISCAL IMPACT: No funding is required for this legislation.

To approve an amendment to the petition and an amendment to the supplemental plan for the authorization of the special energy improvement projects to be constructed upon real property within the Columbus Regional Energy Special Improvement District under Chapter 1710 of the Ohio Revised Code; to amend Ordinance No. 1728-2018, in order to correspondingly amend and restate the levying of special assessments associated with the project; to levy special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City in cooperation with the Columbus Regional Energy Special Improvement District; to approve a Second Amendment to the Energy Project Cooperative Agreement in connection with such improvements and special assessments; and to declare an

emergency.

WHEREAS, Hayden Columbus, LLC (the “Owner”) has submitted its *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”) in order to provide for the completion of a special energy improvement project on real property owned by the Owner in the City of Columbus, Ohio (the “City”); and

WHEREAS, this Council (the “Council”) of the City duly passed Resolution No. 0168X-2018 on June 18, 2018 (the “Resolution of Necessity”), which approved the Petition and added the Owner’s property, subject to the Petition, to the Columbus Regional Energy Special Improvement District (the “District”) and declared the necessity of acquiring, installing, equipping, and improving energy efficiency improvements, including, without limitation, LED lighting and electrical upgrades, HVAC and controls, domestic hot water upgrades and reduction, elevator upgrades, and related improvements (the “Project”), as described in the Resolution of Necessity and as set forth in the Petition requesting those improvements; and

WHEREAS, this Council duly adopted Ordinance 1663-2018 on June 18, 2018 and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Development Director or the Development Director’s designee pursuant to the Resolution of Necessity; and

WHEREAS, this Council duly adopted Ordinance 1728-2018 on June 18, 2018 and levied the Special Assessments (as defined in the Resolution of Necessity) filed with the Development Director or the Development Director’s designee pursuant to the Resolution of Necessity; and

WHEREAS, the City entered into an Energy Project Cooperative Agreement (the “Original Energy Project Cooperative Agreement”) with the District, the Owner, and Greenworks Lending LLC as amended by a First Amendment to Energy Project Cooperative Agreement (the “First Amendment” and, together with the Original Energy Project Cooperative Agreement, the “Energy Project Cooperative Agreement”) providing for, among other things, (i) the making of the Project Advance (as defined in the Energy Project Cooperative Agreement) to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the Project and the transfer of the Special Assessments by the City to the Investor to pay principal and interest and other costs relating to the Project Advance; and

WHEREAS, to provide for the security for the Project Advance and for the administration of payments on the Project Advance and related matters, the City entered into the Special Assessment Agreement (the “Special Assessment Agreement”) with the County Treasurer of Franklin County, Ohio, the District, the Owner, and Greenworks Lending LLC; and

WHEREAS, Greenworks Lending LLC assigned its interest in the Energy Project Cooperative Agreement and the Special Assessment Agreement to PACEWell 2 LLC; and

WHEREAS, the Owner has executed and filed with this Council an *Amendment to the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition Amendment”; and the Petition, as amended by the Petition Amendment, is the “Amended Petition”), and an *Amendment to the Columbus Regional Energy Special Improvement District Program Plan Supplement to Plan for the 16 and 20 E. Broad Street, Columbus, Ohio Project* (the “Supplemental Plan Amendment”; and the Supplemental Plan, as amended by the Supplemental Plan Amendment, is the “Amended Supplemental Plan”), proposing that the amount of the annual installments of the Special Assessments set forth in the Petition and the Supplemental Plan be amended as reflected in the Amended Petition and the Amended Supplemental Plan; and

WHEREAS, the Petition Amendment and the Supplemental Plan Amendment are on file with the City Clerk; and

WHEREAS, in connection with the adjustment to the amount of annual installments of the Special Assessments stated in the Amended Petition and the Amended Supplemental Plan, the ESID has requested that the City execute and deliver an

amendment to the Energy Project Cooperative Agreement, a copy of which is on file with the City Clerk and is further attached to this Ordinance as **Exhibit A**; and

WHEREAS, the actual costs of the Project have been ascertained and have been certified to the City in the Amended Petition and the Amended Supplemental Plan for the Project; and

WHEREAS, an emergency exists in the usual daily operation of the Department of Development in that it is immediately necessary that this Ordinance take effect at the earliest possible date in order to allow the Owner to begin work on the special energy improvement project on the Property, and the District to take advantage of financing available to it for a limited time and for the immediate preservation of public peace, property, health and safety; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

Section 2. That this Council approves the Petition Amendment and the Supplemental Plan Amendment, each in substantially the forms now on file with the Development Director or the Development Director's designee.

Section 3. That the list of Special Assessments to be levied and assessed on the Property (as further described in Exhibit A to the Petition) in an amount sufficient to pay the costs of the Project, which is \$10,645,364.50, 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 Amended Petition and previously reported to this Council and are now on file in the offices of the Development Director or the Development Director's designee, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property in place of the special assessments levied by the City pursuant to the Petition and Ordinance 1728-2018. The interest portion of the Special Assessments, which shall accrue at the annual rate of 6.75%, 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 had notes or bonds been issued by the District.

The Special Assessments are assessed against the Property commencing in tax year 2020 for collection in 2021 and shall continue through tax year 2044 for collection in 2045; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Auditor of Franklin County, Ohio determines that collections shall not commence in 2021, then the collection schedule may be deferred by one year. The semi-annual installment of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in **Exhibit B**, attached hereto and incorporated into this Ordinance.

All Special Assessments shall be certified by the Development Director or the Development Director's designee to the County Auditor pursuant to the Amended Petition and Chapter 727.33 of the Ohio Revised Code to be placed 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 Amended Petition.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Amended Petition and the List of Special Assessments attached hereto as **Exhibit B** and incorporated herein.

Section 4. That 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 Amended Petition and are not in excess of any applicable statutory limitation.

Section 5. That 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 Development Director or the Development Director's designee to the County Auditor of Franklin County, Ohio as provided by the Amended 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 Amended Petition.

Section 6. That 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.

Section 7. That the Development Director or the Development Director's designee shall keep the Special Assessments on file in the Office of the Development Director or the Development Director's designee.

Section 8. That Ordinance No. 1728-2018, passed by Council on June 18, 2018, is hereby amended to amend and restate the Special Assessments.

Section 9. That this Council hereby approves the Second Amendment to the Energy Project Cooperative Agreement, a copy of which is on file with the City Clerk and is further attached to this Ordinance as **Exhibit A**. The Mayor, the Development Director, or either of them, or either of their designees, shall sign and deliver, in the name and on behalf of the City, the Second Amendment to the Energy Project Cooperative Agreement, in substantially the form as is now on file with the City Clerk. The Second Amendment to the Energy Project 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 by the Mayor, the Development Director, 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 Second Amendment to the Energy Project Cooperative Agreement or amendments to the Second Amendment to the Energy Project Cooperative Agreement.

Section 10. That 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, Development Director, 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 11. That, in compliance with Section 319.61 of the Ohio Revised Code, the Development Director or the Development Director's designee is directed to deliver a certified copy of this Ordinance to the County Auditor of Franklin County, Ohio within 20 days after its passage.

Section 12. That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its adoption and approval by the Mayor or ten days after adoption if the Mayor neither approves nor vetoes the same.