Legislation Details (With Text)

File #:	0138X-2019 **Version:** 1		
Type:	Resolution	**Status:**	Passed
File created:	4/18/2019	**In control:**	Economic Development Committee
On agenda:	5/6/2019	**Final action:**	5/9/2019
Title:	To approve a petition and supplemental plan for the addition of certain real property located at 2400 Farmers Drive, 7400 Safelite Way, and 2500 Farmers Drive to the Columbus Regional Energy Special Improvement District under Chapter 1710 of the Ohio Revised Code; to authorize the special energy improvement projects to be constructed upon such real property; to declare the necessity of acquiring, constructing, and improving certain public improvements in the City in cooperation with the Columbus Regional Energy Special Improvement District; and to declare an emergency.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. RES0138X-2019 7400 Safelite Way Property Petition and Supplemental Plan (Executed), 2. RES0138X-2019 2400 Farmers Drive Property Petition and Supplemental Plan (Executed)		

Date	Ver.	Action By	Action	Result
5/9/2019	1	CITY CLERK	Attest	
5/8/2019	1	MAYOR	Signed	
5/6/2019	1	COUNCIL PRESIDENT	Signed	
5/6/2019	1	Columbus City Council	Adopted	Pass

BACKGROUND: Chapter 1710 of the Ohio Revised Code allows property owners to petition the municipal corporation within which their property is located to include the property in an energy special improvement district, the purpose of which is to provide "special energy improvement projects," as defined in Section 1710.01 of the Ohio Revised Code. Section 1710.02(F) of the Ohio Revised Code also allows such property owners to submit an initial plan of services for approval with the petition. Upon receipt of a petition and an initial plan submitted by the owners 100% of the properties requesting to be included in the energy special improvement district, the municipal corporation may approve the petition, cause the addition of the property to the energy special improvement district, and proceed to levy special assessments to pay the costs of the special energy improvement projects to be completed pursuant to the petition and the initial plan.

On November 23, 2015, the Council passed Resolution No. 0261X-2015, which approved a petition, program plan, and the articles of incorporation for the Columbus Regional Energy Special Improvement District (the "District"), and created the District.

Section 1710.02 of the Ohio Revised Code allows the owners of real property within a municipal corporation which has created an energy special improvement district to submit to the municipal corporation petitions and plans, which supplement the program plan. Upon its receipt of a petition and supplemental plan signed by the owners of 100% of the properties requesting to be added to the energy special improvement district, the municipal corporation may approve the petition and supplemental plan and proceed to levy special assessments to pay the costs of the special energy improvement projects to be completed pursuant to the petition and the supplemental plan.

Farmers Drive Portfolio LP is the owner of certain parcels of real property within the City of Columbus (located at 2400 Farmers Drive, 7400 Safelite Way, and 2500 Farmers Drive Columbus, Ohio), has submitted two petitions and supplemental plans to the Council, requesting that the Council approve the petitions and supplemental plans, cause the

addition of such parcels of real property to the Columbus Regional Energy Special Improvement District, and levy special assessments on such property to pay the costs of the special energy improvement projects to be provided on its property.

Farmers Drive Portfolio LP is working in cooperation with Greenworks Lending LLC to obtain financing secured by the special assessments requested in the petition and supplemental plan, the proceeds of which financing will be used to pay the costs of the special energy improvement projects described in the petition and supplemental plan.

This legislation is to approve the petition, the supplemental plan, and the addition of property to the district and to declare the necessity of levying special assessments to pay the costs of "special energy improvement projects" set forth in the supplemental plans, all pursuant to Chapters 727 and 1710 of the Ohio Revised Code.

Emergency action is requested on this legislation to allow the Columbus Regional Energy Special Improvement District to be expanded, the special assessments to be levied in a timely manner in order to facilitate financing for the project by the Greenworks Lending LLC, 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 a petition and supplemental plan for the addition of certain real property located at 2400 Farmers Drive, 7400 Safelite Way, and 2500 Farmers Drive to the Columbus Regional Energy Special Improvement District under Chapter 1710 of the Ohio Revised Code; to authorize the special energy improvement projects to be constructed upon such real property; to declare the necessity of acquiring, constructing, and improving certain public improvements in the City in cooperation with the Columbus Regional Energy Special Improvement District; and to declare an emergency.

WHEREAS, as set forth in Chapter 1710 of the Ohio Revised Code, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts (each, an "ESID") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and

WHEREAS, Farmers Drive Portfolio LP (the "Owner"), as the owner of certain real property located within the City of Columbus, Ohio (the "City"), has identified the property located at 2400 Farmers Drive, 7400 Safelite Way (the "Safelite Way Property"), and 2500 Farmers Drive (the "Farmers Drive Property) in Columbus, Ohio (the Safelite Way Property and the Farmers Drive Property are together hereinafter referred to as the "Property"), as an appropriate property for a special energy improvement project; and

WHEREAS, the Bexley, Columbus, Dublin, Grove City, Hilliard, Perry Township, Whitehall, Worthington Regional Energy Special Improvement District (the "District") was created under Chapters 1702 and 1710 of the Ohio Revised Code as an ESID and established pursuant to Resolution No. 0261X-2015 of the Council (the "Council") of the City approved on November 23, 2015 (the "Creation Resolution"); and

WHEREAS, pursuant to the Creation Resolution, the Columbus Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the "Plan") was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F), which plan allows for additional properties within the City and within any municipal corporation or township which is adjacent to any other municipal corporation or township in which a portion of the District's territory is located to be added to the territory of the District; and

WHEREAS, the Owner has determined to submit to the Mayor and the Council, a *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* relating to the property located at 2400 Farmers Drive and 7400 Safelite Way (the "Safelite Way Petition"), and a *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* relating to the property located at 2500 Farmers Drive (the "Farmers Drive Petition" and, together with the Safelite Way Petition, the "Petitions"), together with a *Columbus Regional Energy Special Improvement District Program Plan - Supplement to Plan for 2400 Farmers Drive and 7400 Safelite Way, Columbus, Ohio Project* (the

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"Safelite Way Supplemental Plan") and a *Columbus Regional Energy Special Improvement District Program Plan - Supplement to Plan for 2500 Farmers Drive, Columbus, Ohio Project* (the "Farmers Drive Supplemental Plan" and, together with the Safelite Way Supplemental Plan, the "Supplemental Plans"), all in accordance with Section 1710.02 of the Ohio Revised Code, each of which are now on file with the Director of the Department of Development or the Director of the Department of Development's designee; and

WHEREAS, the Safelite Way Petition and Safelite Way Supplemental Plan request that the Safelite Way Property be added to the District and that the City levy special assessments on the Safelite Way Property to pay the costs of a special energy improvement project to be provided on the Safelite Way Property, all as described more particularly in the Safelite Way Petition and the Safelite Way Supplemental Plan (the "Safelite Way Project"); and

WHEREAS, the Farmers Drive Petition and Farmers Drive Supplemental Plans request that the Farmers Drive Property be added to the District and that the City levy special assessments on the Farmers Drive Property to pay the costs of a special energy improvement project to be provided on the Farmers Drive Property, all as described more particularly in the Farmers Drive Petition and the Farmers Drive Supplemental Plan (the "Farmers Drive Project" and, together with the Safelite Way Project, the "Project"); and

WHEREAS, said Petitions and Supplemental Plans are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, the special energy improvement project to be located at the Property; and

WHEREAS, the Supplemental Plans define the Project to be completed at the Property and identifies the amount and length of special assessments for the Project, and such special assessments shall require formal authorization from this Council pursuant to Chapters 727 and 1710 of the Ohio Revised Code; and

WHEREAS, Section 1710.06(C) of the Ohio Revised Code provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and an initial plan pursuant to Section 1710.02(F) of the Ohio Revised Code shall levy the requested special assessments pursuant to Chapter 727 of the Ohio Revised Code; and

WHEREAS, in the Safelite Way Petition, the Owner requests that the elite Way Project be paid for by special assessments assessed upon the elite Way Property (the "elite Way Special Assessments") in an amount sufficient to pay the costs of the elite Way Project, which is estimated to be $5,041,941.60, including the related costs of financing the Safelite Way Project, which include, without limitation, the costs identified in Section 4 and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the Safelite Way Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate; and

WHEREAS, in the Farmers Drive Petition, the Owner requests that the Farmers Drive Project be paid for by special assessments assessed upon the Farmers Drive Property (the "Farmers Drive Special Assessments" and, together with the Safelite Way Special Assessments, the "Special Assessments") in an amount sufficient to pay the costs of the Farmers Drive Project, which is estimated to be $3,879,674.40, including the related costs of financing the Farmers Drive Project, which include, without limitation, the costs identified in Section 5 and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the Farmers Drive Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate; and

WHEREAS, this Council, as mandated by Section 1710.02 of the Ohio Revised Code, must approve or disapprove the Petitions and the Supplemental Plans within 60 days of the submission of the Petitions and the Supplemental Plans; and

WHEREAS, this Council has determined to approve the Petitions and the Supplemental Plans and thereby add the Property to the territory of the District; and

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WHEREAS, this Council, pursuant to Section 1710.02(G)(4) of the Ohio Revised Code, has determined 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 the City; to improve the quality of life and the general and economic well-being of the people of 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; and

WHEREAS, an emergency exists in the usual daily operation of the Department of Development in that it is necessary that this Resolution take effect at the earliest possible date in order to allow the Owner to begin work on the special energy improvement projects 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 RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. Each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petitions.

Section 2. This Council approves the Petitions and the Supplemental Plans, each in substantially the forms now on file with the Director of the Department of Development or the Director of the Department of Development's designee.

Section 3. 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 4. This Council declares necessary, and a vital and essential public purpose of the City, to improve the Safelite Way Property, which is located at 2400 Farmers Drive, 7400 Safelite Way in the City, by providing for the acquisition, construction, and improvement of the Safelite Way Project by the Owner, as set forth in the Safelite Way Petition and the Safelite Way Supplemental Plan, and providing for the payment of the costs of the Safelite Way Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Safelite Way Project and the interest on such damages; 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 in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner, or otherwise to pay costs of the Safelite Way Project in anticipation of the receipt of the Safelite Way 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; together with all other necessary expenditures, all as more fully described in the Safelite Way Petition, the Safelite Way Supplemental Plan, and the plans, profiles, specifications, and estimates of cost of the Safelite Way Project, all of which are on file with the Director of the Department of Development or the Director of the Department of Development's designee and open to the inspection of all persons interested.

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Section 5. This Council declares necessary, and a vital and essential public purpose of the City, to improve the Farmers Drive Property, which is located at 2500 Farmers Drive in the City, by providing for the acquisition, construction, and improvement of the Farmers Drive Project by the Owner, as set forth in the Farmers Drive Petition and the Farmers Drive Supplemental Plan, and providing for the payment of the costs of the Farmers Drive Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Farmers Drive Project and the interest on such damages; 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 in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner, or otherwise to pay costs of the Farmers Drive Project in anticipation of the receipt of the Farmers Drive 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; together with all other necessary expenditures, all as more fully described in the Farmers Drive Petition, the Farmers Drive Supplemental Plan, and the plans, profiles, specifications, and estimates of cost of the Farmers Drive Project, all of which are on file with the Director of the Department of Development or the Director of the Department of Development's designee and open to the inspection of all persons interested.

Section 6. This Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Section 727.09 of the Ohio Revised Code, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 7. The plans and specifications and total costs of the Project now on file in the office of the Director of the Department of Development or the Director of the Department of Development's designee are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

Section 8. This Council determines and declares that the Project is an essential and vital public, governmental purposes of the City as Special Energy Improvement Projects, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petitions and the Supplemental Plans. This Council determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

Section 9. Pursuant to and subject to the provisions of valid Petitions 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, as specified in the Petitions and Supplemental Plans, is the benefited property. The provisions of the Petitions are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. 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 of the Special Assessments.

Section 10. The method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Property as set forth in the Petitions and the Supplemental Plans.

Section 11. The lots or parcels of land to be assessed for the Safelite Way Project shall be the Safelite Way Property, described in Exhibit A to the Safelite Way Petition, all of which lots and lands are determined to be specially benefited by the Safelite Way Project.

Section 12. The lots or parcels of land to be assessed for the Farmers Drive Project shall be the Farmers Drive Property, described in Exhibit A to the Farmers Drive Petition, all of which lots and lands are determined to be specially

benefited by the Farmers Drive Project.

Section 13. The Safelite Way Special Assessments shall be levied and paid in 40 semi-annual installments pursuant to the list of estimated Safelite Way Special Assessments set forth in the Safelite Way Petition, and the Owner, as the owner of the Safelite Way Property, has waived its option to pay the Safelite Way Special Assessment in cash within 30 days after the first publication of the notice of the assessing ordinance.

The aggregate amount of Safelite Way Special Assessments estimated to be necessary to pay the costs of the Safelite Way Project is $5,041,941.60. Each semi-annual Safelite Way Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued or incurred to pay the costs of the Safelite Way Project and of administrative expenses. The interest portion of the Safelite Way Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Safelite Way Special Assessments if such securities had been issued by the City or another issuer of notes or bonds to pay the costs of the Safelite Way Project. In addition to the Safelite Way Special Assessments, the Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Safelite Way Special Assessments by the Auditor of Franklin County, Ohio.

Section 14. The Farmers Drive Special Assessments shall be levied and paid in 40 semi-annual installments pursuant to the list of estimated Farmers Drive Special Assessments set forth in the Farmers Drive Petition, and the owner of the Farmers Drive Property has waived its option to pay the Farmers Drive Special Assessment in cash within 30 days after the first publication of the notice of the assessing ordinance.

The aggregate amount of Farmers Drive Special Assessments estimated to be necessary to pay the costs of the Farmers Drive Project is $3,879,674.40. Each semi-annual Farmers Drive Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued or incurred to pay the costs of the Farmers Drive Project and of administrative expenses. The interest portion of the Farmers Drive Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Farmers Drive Special Assessments if such securities had been issued by the City or another issuer of notes or bonds to pay the costs of the Farmers Drive Project. In addition to the Farmers Drive Special Assessments, the Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Farmers Drive Special Assessments by the Auditor of Franklin County, Ohio.

Section 15. The Director of the Department of Development or the Director of the Department of Development's designee is authorized and directed to prepare and file in the office of the City Clerk the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petitions, the Supplemental Plans, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 16. The Owner has, in the Petitions, waived the requirement for the City to, upon the filing of the estimated Special Assessments with the City Clerk, serve notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the Owner, as the owners of the Property, as provided in Section 727.13 Ohio Revised Code. To the extent the Owner has not waived the applicable procedural requirements of Chapter 727 of the Ohio Revised Code, the appropriate officials of the City shall also comply with the applicable procedural requirements of Chapter 727 of the Ohio Revised Code.

Section 17. The Director of the Department of Development or the Director of the Department of Development's designee is authorized, pursuant to Section 727.12 of the Ohio Revised Code, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

Section 18. The Special Assessments will be used by the City to provide 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

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party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 19. 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 Columbus, Ohio, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

(i) The right to notice of the adoption of the 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 20. The City is authorized to enter into agreements by and among the City, the District, the Owner, Greenworks Lending LLC, the County Treasurer of Franklin County, Ohio, and such other parties as the City may deem necessary or appropriate in order to provide the Project, and that the Mayor, the Director of the Department of Development, or either of them, or either of their designees, is authorized to execute, on the City's behalf, such agreements.

Section 21. That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Resolution 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.

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