



Legislation Text

File #: 0269X-2015, **Version:** 1

BACKGROUND: The Council of the City of Columbus previously adopted Resolution 0261X-2015 approving a petition for the creation of the Columbus Regional Energy Special Improvement District, Inc. (the “District”), articles of incorporation for the nonprofit corporation, the board of directors of which governs the District, and an initial plan for the District. Pursuant to that resolution, the District has been formed. The initial 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 initial plan.

This legislation is to declare the necessity of levying special assessments to pay the costs of “special energy improvement projects” set forth in the initial plan, all pursuant to Chapters 727 and 1710 of the Ohio Revised Code.

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 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, Ohio Revised Code Section 1710.06(C) 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 Ohio Revised Code Section 1710.02(F) shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, NC Plaza LLC (the “Owner”) petitioned for the creation of the Columbus Regional Energy Special Improvement District (the “ESID”) pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of its project, which consists, without limitation, of lighting retrofits, roofing improvements, domestic water supply pump acquisition and installation, AHU controls and RCx Lite acquisition and installation, and DHW fuel switch acquisition and installation, and related improvements (the “Project”); and

WHEREAS, the Council (“Council”) of the City of Columbus, Ohio (the “City”) has, by Resolution No. 0261-2015, adopted on November 23, 2015, approved the *Petition for the Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the “Petition”), the *Columbus Regional Energy Special Improvement District Program Plan* (the “Plan”), and the *Articles of Incorporation of the Columbus Regional Energy Special Improvement District, Inc.* (the “Articles of Incorporation”) and approved the creation of the ESID in accordance with Ohio Revised Code Section 1710.02; and

WHEREAS, the Petition, which is attached to and incorporated into this Resolution as Exhibit A, has been signed by the Owner, as the owner of one hundred percent (100%) of the real property affected by the Petition (as further described in Exhibit A to the Petition, the “Property”), and proposes the necessity of acquiring, constructing, and improving the Project and financing the Project through the cooperation of the ESID; and

WHEREAS, in the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,817,197.00, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and ESID administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and such other parties as the City may deem necessary or appropriate; 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 NC Plaza LLC to begin work on the special energy improvement project on the Property, and the ESID 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 Petition.

SECTION 2. This Council declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 155 East Broad Street and 20 South Third Street in the City, by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition and the Plan, and providing for the payment of the costs of the 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 Authorized Improvements 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 NC Plaza LLC or otherwise to pay costs of the Authorized Improvements 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 ESID administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Petition, the Plan, and the plans, profiles, specifications, and estimates of cost of the Project, all of which are on file with the City Clerk and open to the inspection of all persons interested.

SECTION 3. 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 Ohio Revised Code Section 727.09, and the Project’s elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the ESID pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

SECTION 4. The Plans and Specifications and total cost of the Project now on file in the office of the City Clerk 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 5. This Council has previously determined and by this Resolution ratifies and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, 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 ESID, for the acquisition, construction, and improvement of the

Project in the manner contemplated by the Petition, and the Plan. 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 6. Pursuant to and subject to the provisions of a valid Petition signed by the owners of 100% of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The provisions of the Petition 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 7. 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 Petition, and Plan.

SECTION 8. The lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

SECTION 9. The Special Assessments shall be levied and paid in 30 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the owner of the Property has waived its option to pay the Special Assessment in cash within 30 days after the first publication of the notice of the assessing Ordinance.

The capital cost of the Project is estimated to be \$2,817,197.00. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. The interest portion of the 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 Special Assessments if such securities had been issued by the City. In addition to the 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 Special Assessments by the Auditor of Franklin County, Ohio.

SECTION 10. 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 Petition, the Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION 11. Upon the filing of the estimated Special Assessments with the City Clerk, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

SECTION 12. The Director of the Department of Development or the Director of the Department of Development's designee is authorized, pursuant to Ohio Revised Code Section 727.12, 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 13. The Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION 14. 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, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, 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 Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (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 Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Ordinance under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 15. The City is authorized to enter into agreements by and among the City, the ESID, and such other parties as the City may deem necessary or appropriate in order to provide the Authorized Improvements, and that the Director of the Department of Development is authorized to execute, on the City's behalf, such agreements.

SECTION 16. 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.