



Legislation Text

File #: 0050X-2017, **Version:** 1

BACKGROUND: The Council of the City of Columbus previously passed a resolution approving two petitions for the addition of certain real property to the Columbus Regional Energy Special Improvement District (the “District”) and two supplemental plans 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 plans previously approved by the Council provide 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 plans.

This legislation is 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 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 improvement projects at 1103 Shrock Road and 7965 North High Street 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, 1103 Schrock Road LP petitioned for the addition of certain real property owned by it and located at the commonly used mailing address 1103 Schrock Road, Columbus, Ohio to the Columbus Regional Energy Special Improvement District (the “District”) pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of its project, which consists, without limitation, of LED lighting, DDC Controls, water conservation measures resulting in electricity and other energy savings, roof upgrades, and related improvements (the “1103 Schrock Road Project”); and

WHEREAS, Northwoods One LP petitioned for the addition of certain real property owned by it and located at the commonly used mailing address 7965 North High Street, Columbus, Ohio to the Columbus Regional Energy Special Improvement District (the “District”) pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of its project, which consists, without limitation, of LED lighting, DDC Controls, water conservation measures resulting in electricity and other energy savings, rooftop unit upgrades, envelope upgrades, roof upgrades, and related improvements (the “7965 North High Project,” and together with the 1103 Schrock Road Project, the “Projects”); and

WHEREAS, the Council (“Council”) of the City of Columbus, Ohio (the “City”) has, by Resolution No. 0049X-2017, adopted on February 27, 2017, approved 1103 Schrock Road LP’s *Petition for Special Assessments for Special Energy Improvement Projects* (the “1103 Schrock Road Petition”), Northwood One LP’s *Petition for Special Assessments for Special Energy Improvement Projects* (the “7965 North High Petition,” and together with the 1103 Schrock Road Petition, the “Petitions”), 1103 Schrock Road LP’s *Columbus Regional Energy Special Improvement District Program Plan - Supplement to Plan for 1103 Schrock Road, Columbus, Ohio* (the “1103 Schrock Road Supplemental Plan”), and Northwood One LP’s *Columbus Regional Energy Special Improvement District Program Plan - Supplement to Plan for*

1103 Schrock Road, Columbus, Ohio (the “7965 North High Supplemental Plan,” and together with the 1103 Schrock Road Supplemental Plan, the “Supplemental Plans”), all in accordance with Ohio Revised Code Section 1710.06; and

WHEREAS, the 1103 Schrock Road Petition, which is on file with the Clerk of Council, has been signed by 1103 Schrock Road LP, as the owner of one hundred percent (100%) of the real property affected by the 1103 Schrock Road Petition (as further described in Exhibit A to the 1103 Schrock Road Petition, the “1103 Schrock Road Property”), and proposes the necessity of acquiring, constructing, and improving the 1103 Schrock Road Project and financing the 1103 Schrock Road Project through the cooperation of the District; and

WHEREAS, the 7965 North High Petition, which is on file with the Clerk of Council, has been signed by Northwoods One LP, as the owner of one hundred percent (100%) of the real property affected by the 7965 North High Petition (as further described in Exhibit A to the 7965 North High Petition, the “7965 North High Property,” and together with the 1103 Schrock Road Petition, the “Properties”), and proposes the necessity of acquiring, constructing, and improving the 7965 North High Project and financing the 7965 North High Project through the cooperation of the District; and

WHEREAS, in the 1103 Schrock Road Petition, 1103 Schrock Road LP requests that the 1103 Schrock Road Project be paid for by special assessments assessed upon the 1103 Schrock Road Property (the “1103 Schrock Road Special Assessments”) in an amount sufficient to pay the costs of the 1103 Schrock Road Project, which is estimated to be \$780,468.83, together with related costs of financing the 1103 Schrock Road Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the 1103 Schrock Road Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the 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 7965 North High Petition, Northwoods One LP requests that the 7965 North High Project be paid for by special assessments assessed upon the 7965 North High Property (the “7965 North High Special Assessments,” and together with the 1103 Schrock Road Special Assessments, the “Special Assessments”) in an amount sufficient to pay the costs of the 7965 North High Project, which is estimated to be \$1,057,139.22, together with related costs of financing the 7965 North High Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the 7965 North High Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the District, 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 1103 Schrock Road LP and Northwoods One LP to begin work on the special energy improvement projects on the Properties, 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 declares necessary, and a vital and essential public purpose of the City, to improve the Properties, which are located at 1103 Schrock Road and 7965 North High Street in the City, by providing for the acquisition, construction, and improvement of the Projects by the 1103 Schrock Road LP and Northwoods One LP, respectively, as set forth in the Petitions and the Plans, and providing for the payment of the costs of the Projects, 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 Projects 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 each of 1103 Schrock Road LP and Northwoods One LP or otherwise to pay costs of the Projects 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; together with all other necessary expenditures, all as more fully described in the Petitions, the Supplemental Plans, and the plans, profiles, specifications, and estimates of cost of the Projects, 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 3. This Council determines that the 1103 Schrock Road Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the 1103 Schrock Road 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 1103 Schrock Road Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the 1103 Schrock Road 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. This Council further determines that the 7965 North High Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the 7965 North High 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 7965 North High Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the 7965 North High 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 4. The plans and specifications and total costs of the Projects 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 Projects shall be made in accordance with the plans, specifications, profiles, and estimates for the Projects.

Section 5. This Council has previously determined and by this Resolution ratifies and declares that the Projects are 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 Projects in the manner contemplated by the Petitions and the Supplemental Plans. This Council determines and declares that the Projects are 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 valid Petitions signed by the owners of 100% of the Properties, the entire cost of the Projects shall be paid by the Special Assessments levied against the Properties, which are the benefited properties. 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 Projects 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 Properties as set forth in the Petitions and the Supplemental Plans.

Section 8. The lots or parcels of land to be assessed for the 1103 Schrock Road Project shall be the 1103 Schrock Road Property, described in Exhibit A to the 1103 Schrock Road Petition, all of which lots and lands are determined to be specially benefited by the 1103 Schrock Road Project. The lots or parcels of land to be assessed for the 7965 North High Project shall be the 7965 North High Property, described in Exhibit A to the 7965 North High Petition, all of which lots and lands are determined to be specially benefited by the 7965 North High Project.

Section 9. The 1103 Schrock Road Special Assessments shall be levied and paid in 19 annual installments pursuant to the list of estimated 1103 Schrock Road Special Assessments set forth in the 1103 Schrock Road Petition, and the owner of the 1103 Schrock Road Property has waived its option to pay the 1103 Schrock Road Special Assessment in cash within 30 days after the first publication of the notice of the assessing ordinance.

The capital cost of the 1103 Schrock Road Project is estimated to be \$780,468.83. Each annual 1103 Schrock Road Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the 1103 Schrock Road Project and of administrative expenses. The interest portion of the 1103 Schrock Road 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 1103 Schrock Road Special Assessments if such securities had been issued by the City. In addition to the 1103 Schrock Road Special Assessments, the Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each annual payment, which amount will be added to the 1103 Schrock Road Special Assessments by the Auditor of Franklin County, Ohio.

The 7965 North High Special Assessments shall be levied and paid in 20 annual installments pursuant to the list of estimated 7965 North High Special Assessments set forth in the 7965 North High Petition, and the owner of the 7965 North High Property has waived its option to pay the 7965 North High Special Assessment in cash within 30 days after the first publication of the notice of the assessing ordinance.

The capital cost of the 7965 North High Project is estimated to be \$1,057,139.22. Each annual 7965 North High Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the 7965 North High Project and of administrative expenses. The interest portion of the 7965 North High 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 7965 North High Special Assessments if such securities had been issued by the City. In addition to the 7965 North High Special Assessments, the Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each annual payment, which amount will be added to the 7965 North High 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 Projects 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 11. Each of 1103 Schrock Road LP and Northwoods One LP have, 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 1103 Schrock Road LP and Northwoods One LP, as the owners of the Properties, as provided in Ohio Revised Code Section 727.13. To the extent each of 1103 Schrock Road LP and Northwoods One LP have not waived the applicable procedural requirements of Ohio Revised Code Chapter 727, 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 Projects.

Section 13. The Special Assessments will be used by the City to provide the Projects in cooperation with the Districts 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 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 Properties. This waiver encompasses, but is not limited to, waivers by each of 1103 Schrock Road LP and Northwoods One LP 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 District, 1103 Schrock Road LP, Northwoods One LP, 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 Projects, 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.