

8/14/13
(Special Meeting)

L-190-13 vaz

ORDINANCE NO. 190-13

BY: **SCOTT TUMA**
(By Request – Mayor)

AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF PARMA, OHIO TO BE A PUBLIC PURPOSE IN CONNECTION WITH THE ESTABLISHMENT OF TAX INCREMENT FINANCING PROGRAM UNDER OHIO REVISED CODE SECTION 5709.41; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; DESIGNATING IMPROVEMENTS TO BE MADE THAT WILL BENEFIT SUCH PROPERTY; REQUIRING THE OWNERS THEREOF TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; AUTHORIZING A DEVELOPMENT AGREEMENT WITH THE DEVELOPER; AUTHORIZING A COOPERATIVE AGREEMENT AMONG THE DEVELOPER, THE CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY, THE DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY, AND, IF APPROPRIATE, THE TRUSTEE FOR BONDS TO BE ISSUED BY SUCH PORT AUTHORITIES; AUTHORIZING A COMPENSATION AGREEMENT WITH THE PARMA CITY SCHOOL DISTRICT; AND ESTABLISHING AN URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS, AND DECLARING AN EMERGENCY

WHEREAS, the development and redevelopment of commercial properties in the City of Parma, Ohio (the “City”) will benefit the City and its residents by creating jobs, enlarging the property tax base, enhancing income tax revenues and stimulating collateral development in the City; and,

WHEREAS, by providing financial assistance for certain development expenses (the “Development Expenses”), as further described in Exhibit A attached hereto and made a part hereof, the City may facilitate the development and redevelopment of commercial properties; and,

WHEREAS, Parmatown Station LLC (the “Developer”) intends to develop and redevelop certain parcels of real property located in the City, as further described in Exhibit B attached hereto and made a part hereof (the “Site,” with each parcel comprising the Site being referred to individually as a “Parcel”), provided that the costs of such Development Expenses are paid or provided for; and,

WHEREAS, pursuant to Ohio Revised Code Sections 5709.41 through 5709.43 (the “TIF Statutes”), specifically Section 5709.41, the City may utilize municipal tax increment financing to declare the increase in the assessed value of any parcel of property subsequent to the acquisition of such parcel by the City, as part of its urban redevelopment efforts, to be a public purpose and to exempt such increased value from real property taxation, in order to provide a mechanism to the finance the Development Expenses with respect to such real property, (provided the City has held fee title to such real property prior to adoption of the ordinance); and,

WHEREAS, the City has acquired fee title to the Site, pursuant to a Quitclaim Deed recorded with the Cuyahoga County Recorder’s Office, and, pursuant to a Quitclaim Deed recorded with the Cuyahoga County Recorder’s Office on the same date, conveyed said Site back to the prior owner; and,

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WHEREAS, this Council finds and determines that the notice of this Council's intention to grant an exemption from real property taxes pursuant to the TIF Statutes, and to pass this Ordinance, has been delivered to the affected School District (as defined hereinbelow) in accordance with Ohio Revised Code Sections 5709.41 and 5709.83; and,

WHEREAS, the Parma City School District (the "School District"), on _____, 2013, forwarded a certified copy of a resolution passed by the Board of Education of the School District to the City, which resolution waived the notice requirements of Ohio Revised Code Sections 5709.41 and 5709.83, and approved the exemption for the Improvements (as defined hereinbelow) on the condition that the City enter into School Compensation Agreement (as defined hereinbelow) with the School District to compensate such School District for a portion of the real property taxes that would have been received by the School District with respect to the Improvements, but for the exemption for the Improvements granted pursuant to this Ordinance, and waived its right to receive a portion of the income tax revenues generated by the City with respect to the Improvements;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARMA, STATE OF OHIO:

Section 1. Tax Exemption. Pursuant to and in accordance with Ohio Revised Code Section 5709.41, this Council hereby finds and determines that 100% of the increase in assessed value of each parcel comprising of the Site (which increase in assessed value is also hereinafter referred to as the "Improvement" as defined in the TIF Statutes), subsequent to the effective date of this Ordinance, is hereby declared to be a public purpose, and shall be exempt from taxation for a period: (i) commencing on the effective date of this Ordinance; and (ii) ending on the earlier of (A) thirty (30) years after such exemption commenced or (B) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes.

Section 2. Payment of Service Payments. As provided in Ohio Revised Code Section 5709.42, the owner of each Parcel is hereby required to, and shall make, service payments in lieu of taxes with respect to the Improvements allocable thereto to the County Treasurer of Cuyahoga County, Ohio (the "County Treasurer") on or before the final 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 that Parcel if an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Statutes. Any late payments shall be subject to penalty and bear interest at the then current rate established under Ohio Revised Code Sections 323.121(B)(1) and 5703.47, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the payment of penalties and interest are collectively referred to herein with the service payments in lieu of taxes as the "Service Payments"). The Service Payments shall be allocated and distributed in accordance with Section 3 of this Ordinance.

The Mayor and the Auditor of the City (the "City Auditor"), or either of them individually, are hereby authorized and directed to execute on behalf of the City a Development Agreement between the City and the Developer providing for, among other things, the payment and collection of such annual Service Payments, which agreement shall be in such form as is acceptable to such officials, approved by the City's legal officer, and not substantially inconsistent with the terms of this Ordinance.

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Section 3. Creation of TIF Fund; Cooperative Agreement. Pursuant to the TIF Statutes, there is hereby established within the City Treasury an urban redevelopment tax increment equivalent fund (the "Fund") into which shall be deposited Service Payments distributed by the County Treasurer, and accounts therein (the "Accounts") described in this Section.

The Fund and Accounts shall be maintained in the custody of the City. The Accounts shall receive all distributions required to be made to the City from the Service Payments, and any other payments with respect of each Parcel which are received by the County Treasurer in connection with the reduction required by Ohio Revised Sections 319.302, 321.24, 323.152, and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the "Property Tax Rollback Payments"), which shall be deposited into the Accounts as provided in this Section. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvements on the Site and so deposited pursuant to law, shall be used solely for the purposes provided in or pursuant to the this Ordinance, as amended or supplemented from time to time.

Service Payments and Property Tax Rollback Payments received from time to time by the City with respect to the Parcels shall be deposited as follows:

(i) so much of the Service Payments and Property Tax Rollback Payments received by the City (other than the portion deposited into the School District Account), if necessary, to pay principal, interest, and related fees and costs of bonds (the "Bonds") to be issued by the Cleveland-Cuyahoga County Port Authority and the Development Finance Authority of Summit County (collectively, the "Issuers") for the purpose of paying part of the cost of the Development Expenses shall be deposited, upon receipt by the City, into a second such Account (the "Special Account") and shall, within seven days of receipt of Service Payments by the City from the County Treasurer, be paid to the trustee under the trust indenture (the "Indenture") securing the Bonds (the "Trustee") to pay, as further described below in this Section, principal or redemption price and interest due on the Bonds, the fees of the Trustee, the Issuers, the Developer, any administrator retained by the Issuers or the Trustee, and any deposits into a debt service reserve or other fund pursuant to the Indenture or other documents supporting the Bonds; and, in no case, shall the payment by the City to the Trustee pursuant to this subparagraph (ii) exceed the amount of the Service Payments and Property Tax Rollback Payments received by the City; and

(ii) all remaining Service Payments and Property Tax Rollback Payments shall be deemed "Excess Service Payments" and shall be retained by the City and shall be deposited into such Account (the "Excess Account") that may, at the City's discretion, be used to finance costs related to the construction of additional infrastructure improvements.

For purposes of this Ordinance, the "costs" payable from the Fund shall also include the items of "costs of permanent improvements" set forth in Section 133.15(B) of the Ohio Revised Code, and incurred with respect to the infrastructure improvements. The Fund and the Accounts created within it shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which time said Accounts (and the Fund if no other Accounts exist therein) shall be dissolved and any incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with Ohio Revised Code Section 5709.43.

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The Mayor and the City Auditor, or either of them individually, are hereby authorized and directed to execute on behalf of the City a Cooperative Agreement (the "Cooperative Agreement") among the City, the Developer, the Issuers, and, if appropriate, the Trustee, for cooperation among the parties in connection with the property tax exemption pursuant to the TIF Statutes, and the issuance of the Bonds by the Issuers to finance the Development Expenses. Such Cooperative Agreement shall be in such form as is acceptable to such officials, approved by the City's legal officer, and not substantially inconsistent with the terms of this Ordinance.

Section 4. Distribution of Payments to City; School Compensation; School Compensation Agreement. Pursuant to Ohio Revised Code Section 5709.42, the County Treasurer shall remit to the City all Service Payments and Property Tax Rollback Payments paid in respect of the Improvements and received by the County Treasurer for further deposit into the Fund. The City will disburse monies on deposit in the Fund in the amounts and order of priority as is consistent with this Ordinance and the Cooperative Agreement.

The Mayor and City Auditor, or either of them individually, are hereby authorized and directed to execute on behalf of the City a School Compensation Agreement (the "School Compensation Agreement"), between the City and the School District, which shall be in such form as is acceptable to such officials, approved by the City's legal officer, and not substantially inconsistent with the terms of this Ordinance

Section 5. Development Agreement. The Mayor and City Auditor, or either of them individually, are hereby authorized and directed to execute on behalf of the City one or more Development Agreements between the City and the Developer providing for, among other things, completion of the development and funding of the Development Expenses from the Service Payments, which agreement shall be in such form as is acceptable to such officials, approved by the City's legal officer, and not substantially inconsistent with the terms of this Ordinance.

Section 6. Further Authorizations. This Council further hereby authorizes and directs the Mayor or his designees to take such action and to execute and deliver, on behalf of the Council, 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 7. Notification of Adoption. Pursuant to Ohio Revised Code Section 5709.41(E), the Clerk is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development 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 Department of Development of the State of Ohio the status report required under Section 5709.41(E) of the Ohio Revised Code.

Section 8. Open Meeting. It is hereby 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.

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Section 9. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the City of Parma, and for the further reason that this measure is necessary in order for the developer to move forward in a timely fashion, and this Ordinance shall become immediately effective upon receiving the affirmative vote of two-thirds of all members elected to Council and approval of the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: _____
PRESIDENT OF COUNCIL

ATTEST: _____ APPROVED: _____
CLERK OF COUNCIL

FILED WITH
THE MAYOR: _____
MAYOR, CITY OF PARMA, OHIO

EXHIBIT A

DESCRIPTION OF THE DEVELOPMENT EXPENSES

EXHIBIT B

DESCRIPTION OF THE SITES