

RESOLUTION NO. 40-2020

BY: **KRISTIN L. SABAN**
(By Request – Mayor)

A RESOLUTION APPROVING THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS UNDER OHIO REVISED CODE CHAPTER 1710 AND APPROVE THE NECESSITY OF ACQUIRING, INSTALLING, EQUIPPING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF PARMA, OHIO IN COOPERATION WITH THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT, AND DECLARING AN EMERGENCY

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

WHEREAS, Midtown Parma Acquisition LLC (the "Owner"), as the owner of certain real property located within the City of Parma, Ohio (the "City"), has identified certain real property located at 1650-1860 Snow Road, Parma, Ohio 44134 and address 1852-1942 Snow Road, Parma, Ohio 44134 (collectively, the "Property"), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Northeast Ohio Advanced Energy District (the "District") was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and is governed by the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan (together, and as amended and supplemented from time to time, the "Program 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 of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, City of South Euclid, Ohio, and the City of University Heights, Ohio 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 City Council of the City (the "Council"), a *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the "Petition"), the *Northeast Ohio Advanced Energy District Advanced Energy Special Improvement District (Advanced Energy District) Commercial-Industrial Program Project Plan* and the *Northeast Ohio Advanced Energy District Advanced Energy Special Improvement District (Advanced Energy District) Commercial-Industrial Services Plan* (together, the "Plan"), and the *Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc.* (the "Articles of Incorporation"), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of Council; and

WHEREAS, the Petition (Ex. "A"), which is on file with the Clerk of Council, has been signed by the Owner, as the owner of one hundred percent (100%) of the Property, and proposes the necessity of the Project and financing the Project through the cooperation of the District; and

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

WHEREAS, the Petition is 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 Project, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and

WHEREAS, by 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 \$577,474.92, including the costs identified in Section 5 of this Resolution, 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 furtherance of the future addition of any real property in any municipal corporation or township contiguous to the municipal corporations or townships in which a portion of the territory of the District is located, it is necessary, and this Council has determined, to approve the addition of such real property to the territory of the District, all in accordance with Ohio Revised Code Chapter 1710; and

WHEREAS, this Council, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement 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, this Council, as mandated by Ohio Revised Code Chapter 1710, must approve or disapprove the Petition within 60 days of the submission of the Petition; and

WHEREAS, this Council has determined to approve the Petition, the Program Plan, and the Articles of Incorporation.

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

Section 1. That 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. That this Council approves the Petition, the Plan, and the Articles of Incorporation now on file with the Clerk of Council.

Section 3. That this Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or township in which a portion of the territory of the District is located or any municipal corporation or township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize or effect such addition.

Section 4. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the Project 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 (the "Board") to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Property is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00).

Section 5. That this Council declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 1650-1860 Snow Road and 1852-1942 Snow Road in the City, by providing for the acquisition, installation, equipment, and improvement of the Project by the Owner, as set forth in the Petition, 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 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; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the Owner or otherwise 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 or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District as its conduit financing entity to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Project; together with all other necessary expenditures, all as more fully described in the Petition, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the City Auditor and open to the inspection of all persons interested.

Section 6. That this Council determines that the Project's elements are so situated in relation to each other that in order to complete the Project's elements in the most practical and economical manner, they should be acquired, installed, equipped, 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 District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 7. That the plans and specifications and total cost of the Project now on file in the office of the Clerk of Council 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 estimate of costs for the Project.

Section 8. That this Council determines 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 District, for the acquisition, installation, equipment, and improvement of the Project in the manner contemplated by the Petition. 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. That pursuant to and subject to the provisions of a valid Petition signed by the owners of one hundred percent (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 and the Program Plan 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 zero percent (0%). The City does not intend to issue securities in anticipation of the levy or the collection of the Special Assessments.

Section 10. That 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 the Program Plan.

Section 11. That 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 12. That the Special Assessments shall be levied and paid in 18 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition (which list is incorporated herein by reference), and the Owner has waived its option to pay the Special Assessment in cash within 30 days after the first publication of the notice of the assessing resolution or ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$577,474.92. Each semi-annual 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 Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds had notes or bonds been issued by the City or another issuer of notes or bonds to pay the costs of the Project. In addition to the Special Assessments, the County Fiscal Officer of Cuyahoga 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 County Fiscal Officer of Cuyahoga County, Ohio.

Section 13. That the City Auditor is authorized and directed to prepare and file in the office of the Clerk of Council the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 14. That the Owner has waived the requirement that notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the Owner of the Property to be assessed as provided in Ohio Revised Code Section 727.13 be delivered promptly following adoption of this Resolution.

Section 15. That the City Auditor 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 Project.

Section 16. That the Special Assessments will be used by the City to pay the costs 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 17. That 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 Parma, 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, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- (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 the Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the special assessment process.

Section 18. That the City is authorized to enter into agreements by and among the City, the District, and such other parties as the City may deem necessary or appropriate in order to carry out the Project, and that the Mayor, the Community Service and Economic Development Director, or either of them individually, is authorized to execute, on the City's behalf, such agreements.

Section 19. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council; and that all deliberations of this Council and any of its committees that resulted in such formal action were meetings open to the public in compliance with all legal requirements.

Section 20. That this Resolution 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 to allow the Owner and the District to access financing that is available for a limited time, and this Resolution 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: _____ CLERK OF COUNCIL APPROVED: _____

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