

REQUESTED BY: CITY MANAGER, SCOTT BAUER

DATE OF FIRST READING: 9-6-22 WAIVE RULES? YES NO

FINAL ACTION DATE: 9-20-22 VOTE: YES NO

SUSPENSION OF TWO
READING RULE:

ADOPTION OF
ORDINANCE:

YES	NO		YES	NO
<u> </u>	<u> ✓ </u>	DENISE LINGO	<u> </u>	<u> </u>
<u> </u>	<u> </u>	ROBERT PARSONS	<u> ✓ </u>	<u> </u>
<u> </u>	<u> ✓ </u>	JOE ROETTING	<u> ✓ </u>	<u> </u>
<u> </u>	<u> </u>	KISHA DOSA	<u> ✓ </u>	<u> </u>
<u> </u>	<u> ✓ </u>	CORDEL GEORGE	<u> ✓ </u>	<u> </u>
<u> </u>	<u> ✓ </u>	DANIEL MUELLER II	<u> ✓ </u>	<u> </u>
<u> </u>	<u> ✓ </u>	PAUL YOUNG III	<u> ✓ </u>	<u> </u>
<u> 0 </u>	<u> 5 </u>	TOTALS	<u> 6 </u>	<u> 0 </u>

Mr. Roetting Made a motion to adopt this Resolution and

Mr. Parsons seconded the motion.

RESOLUTION NO. 22-1190

A RESOLUTION

A RESOLUTION APPROVING THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECT AND A PLAN FOR PUBLIC IMPROVEMENTS; DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, IMPROVING, INSTALLING, AND EQUIPPING CERTAIN PUBLIC IMPROVEMENTS DESCRIBED IN THE PLAN FOR PUBLIC IMPROVEMENTS IN COOPERATION WITH THE GREEN TOWNSHIP ENERGY SPECIAL IMPROVEMENT DISTRICT, INC. DOING BUSINESS AS THE WESTERN COMMUNITIES ENERGY SPECIAL IMPROVEMENT DISTRICT INC.

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts (“ESIDs”) 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, KSDD Properties, LLC (and together with all future owners of the Project Site, as defined below, the “Owner”), as the current owner of certain real property located within the City of Mount Healthy, County of Hamilton, Ohio (the “City”), has identified certain real property located at 8046-8050 Hamilton Avenue, Cincinnati, Ohio, 45231, within the City (the “Project Site”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Green Township Energy Special Improvement District, Inc. doing business as the Western Communities Energy Special Improvement District Inc. (the “District”) has certified to this Council that it was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID and established pursuant to Resolution #19-0724-D of the Board of Trustees of Green Township, Hamilton County, Ohio approved on July 24, 2019, as amended by Resolution #22-0725-E (together he “Creation Ordinance”); and

WHEREAS, the Owner has determined to submit to the Council a *Petition for Special Assessments for Special Energy Improvement Projects* (the “Petition”), together with an *Western Communities Energy Special Improvement District Plan Supplement to Plan for the 8046 Hamilton Avenue, Mt. Healthy, Ohio Project* (the “Supplemental Plan”), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of Council of the City; and

WHEREAS, the Petition and the Supplemental Plan request that the City add the Project Site to the territory of the District and levy special assessments on the Project Site to pay the costs of a special energy improvement project consisting of acquiring, constructing, improving, installing, and equipping alternative energy and energy efficiency improvements, including, without limitation, high-efficiency TPO roofing, and related improvements to be provided on the Project Site, all as described more particularly in the Petition and the Supplemental Plan (the “Project”) and as duly certified to constitute PACE eligible components; 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 2(o) of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Petition identifies the amount and duration of the special assessments to be imposed with respect to the Project; and

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

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) shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, in the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Project Site (the “Special Assessments”) in the aggregate amount of \$1,888,141.00, which is an amount sufficient to pay the costs of the Project, which are estimated to be \$978,000.00, together with 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, District administrative fees and expenses, and City 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;

BE IT THEREFORE RESOLVED, by the Council of City of Mount Healthy:

Section 1. Each capitalized term used in this Resolution where the rules of grammar would otherwise not require and 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 approves the Petition and the Supplemental Plan now on file with the Clerk of Council thereby adding the Project Site to the territory of the District pursuant to the Creation Resolution, Plan, and the Articles of Incorporation.

Section 3. This Council approves and consents to (i) any additional of real property to the territory of the District within the boundaries of any municipal corporation or township which may duly become a participating political subdivision of the District, including, without limitation, any municipal corporation or township within Hamilton County or any county that adjoins Hamilton County; (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 and effect such addition.

Section 4. This Council declares necessary, and a vital and essential public purpose of the City, to improve the Project Site, which is located at 8046-8050 Hamilton Avenue, Cincinnati, Ohio, 45231, within the City, by providing for the acquisition, construction, improvement, installation, and equipping 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; 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 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, including any credit enhancement fees, trustee fees, District administrative fees and expenses, and City expenses; 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 Clerk of Council of the City (the "Clerk of Council") and open to the inspection of all persons interested.

Section 5. This Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition, construction, improvement, installation, and equipping of the Project's elements in the most practical and economical manner, they should be acquired, constructed, improved, installed, and equipped 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. Pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the special energy improvement project to be acquired, constructed, improved, installed, and equipped at the Project Site is not required to be owned exclusively by the City. This Council accordingly hereby authorizes the Board of Directors to act as its agent to sell, transfer, lease, or convey the special energy improvement project to be acquired, constructed, improved, installed, and equipped at the Project Site. The Board of Directors must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project at the Project Site consideration greater than or equal to \$1.00.

Section 6. The plans and specifications and total cost of the Project now on file with the Clerk of Council are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be acquired, constructed, improved, installed, and equipped in accordance with the plans, specifications, profiles, and estimates for the Project.

Section 7. This Council 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, construction, improvement, installation, and equipping 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 8. Pursuant to, and subject to, the provisions of the Petition signed by the owners of 100% of the Project Site, the entire cost of the Project shall be paid by the Special Assessments levied against the Project Site, 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 or collection of the Special Assessments.

Section 9. The method of levying the Special Assessments shall be in proportion to the benefits received, levied on the parcel constituting the Project Site as set forth in the Petition.

Section 10. The lot or parcel of land to be assessed for the Project shall be the Project Site, described in Exhibit "A" to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

Section 11. The Special Assessments shall be levied in 25 annual installments and paid in 50 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the passage of the assessing Resolution. The period over which the services and improvements provided pursuant to the Plan are useful is determined to exceed 25 years.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project and related eligible expenses is \$1,888,141.00. Each payment of an installment of Special Assessments 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 County Auditor of Hamilton County, Ohio (the "County Auditor") may impose a special assessment collection fee with respect to any annual amount certified to the County Auditor for collection, which amount, if any, will be added to the Special Assessments by the County Auditor.

Section 12. The Clerk of Council or the Clerk of Council's designee is authorized and directed to prepare and file in the office of the Council the estimated Special Assessments for the cost of the Project and related eligible expenses 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 13. That pursuant to the Petition, the Owner has waived notice of the passage of this Resolution and the filing of the estimated Special Assessments, as provided in Ohio Revised Code Section 727.13, and this Council hereby accepts and relies upon that waiver.

Section 14. The Clerk of Council or the Clerk of Council'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, construction, improvement, installation, and equipping of the Project.

Section 15. 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 party which the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 16. This Council accepts and approves the Owner's 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 and Ohio Revised Code Chapter 1710 and consents to the immediate imposition of the Special Assessments upon the Project Site. 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 Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 17. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Resolution were taken in an open meeting of this Council or its committees and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including Section 121.22 of the Ohio Revised Code, except as otherwise permitted thereby.

Section 18. For the reasons stated in the preamble, this ordinance, if approved by the votes of five or more members of Council, shall take effect immediately, otherwise 30 days thereafter.

ADOPTED BY THE COUNCIL SEPTEMBER 20, 2022

SIGNED BY THE MAYOR SEPTEMBER 20, 2022


MAYOR OF THE CITY OF MOUNT HEALTHY, OHIO

ATTEST:


Clerk of the Council

APPROVED AS TO FORM:

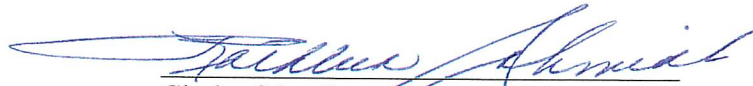


City Attorney

CERTIFICATE

The undersigned Clerk of the Council hereby certifies that the foregoing is a true copy of Resolution No. 22-1170 duly adopted by the Council of the City of Mount Healthy, Ohio on September 8, 2022.

20


Clerk of the Council
City of Mount Healthy, Ohio