

# Ordinance No. 936-17

**Council Members McCormack, Brancatelli  
and Kelley (by departmental request)**

## **AN EMERGENCY ORDINANCE**

Approving the addition of certain property to the Northeast Ohio Advanced Energy District; accepting a petition and plan from a lessee in the District identifying a special energy improvement project, and approving the petition and plan as owner of property in the District; declaring it necessary to conduct the special energy improvement project; providing for the assessment of the cost and expense of such special energy improvement project; and authorizing the Director of Economic Development to enter into a Cooperative Agreement and a Special Assessment Agreement to implement the project; and declaring an emergency.

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WHEREAS, this Council adopted Resolution No. 1078-10 and passed Ordinance No. 1551-13, adopting a petition and authorizing the City of Cleveland to establish and participate in the Northeast Ohio Advanced Energy District (the "District") through the adoption of a petition designating a parcel within the City for the implementation of an eligible special improvement project; and

WHEREAS, the District is a special improvement district formed under Chapter 1710 of the Ohio Revised Code (the "Revised Code") and is authorized to levy assessment to pay costs for developing and implementing plans for public improvements and public services that benefit the special improvement district, including special energy improvement projects as defined within Chapter 1710 of the Revised Code; and

WHEREAS, Chapter 1710 of the Revised Code authorizes the District to levy an assessment in support of a special energy improvement project including a solar photovoltaic project, a solar thermal energy project, a geothermal energy project, a customer-generated energy project, or an energy efficiency improvement, defined as including energy efficiency technologies, products, and activities that reduce and support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy; and

WHEREAS, Chapter 1710 of the Revised Code authorizes property owners to petition the District to add their property to the District and request the imposition of a special assessment on their property to support a special energy improvement project; and

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WHEREAS, Cumberland TCC, LLC ("Cumberland") is the lessee under a Lease between the City, as lessor, and Cumberland, as lessee, dated July 20, 2015 (the "Lease") of Permanent Parcel No. 101-03-028, located at 900 East 9<sup>th</sup> Street (the "Property"), which constitutes one hundred percent of the property proposed to be added to the District, Cumberland is authorized as lessee to act on behalf of the City to pay real property taxes and special assessments with respect to the Property, and Cumberland has proposed to conduct a special energy improvement project and has submitted a petition (the "Cumberland Project Petition") to the District requesting that the Property be added to the District and that a special assessment be placed upon the Property to secure revenue bonds to be issued by the Cleveland-Cuyahoga County Port Authority to fund the special energy improvements for the development project further described in the plans and specifications (the "Cumberland Project Plan") attached to the Cumberland Project Petition; and

WHEREAS, Cumberland has provided within the Cumberland Project Petition a certificate consenting to the inclusion of the property in multiple special assessment districts in accordance with Section 1710.02 of the Revised Code; and

WHEREAS, the District has reviewed and approved the Cumberland Project Petition and the Cumberland Project Plan and submitted it to the City and this Council in accordance with Section 1710.06(B) of the Revised Code; and

WHEREAS, the District has reviewed the Cumberland Plan and determined that the proposed special energy improvement project described in the Cumberland Plan is intended to result in the construction and installation of solar photovoltaic improvements and energy efficiency improvements consisting of energy efficiency technologies, products, and activities that reduce and support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy; and

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WHEREAS, under Section 1710.06(B) of the Revised Code, the Cumberland Project Petition and the Cumberland Project Plan are to be approved or disapproved by ordinance of this Council within sixty days of filing of the Cumberland Project Petition with the City; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Cumberland Project Petition and the Cumberland Project Plan referred to in the preambles of this Ordinance on file in File No. 936-17-A are approved, and this Council consents to the Cumberland Project Petition and the Cumberland Project Plan on behalf of the City as property owner. A final copy of the Petition will be placed in the file after its adoption by the District on or about August 22, 2017.

Section 2. That under Chapter 1710 of the Revised Code and the Cumberland Project Petition, this Council consents to the addition of the Property to the District and this Council consents to the inclusion of the Property in multiple special assessment districts in accordance with Section 1710.02 of the Revised Code.

Section 3. That it is determined and declared necessary and conducive to the public health, convenience, and welfare of the City to conduct the special energy improvements as defined in the Cumberland Project Plan for a 15-year period commencing after passage of the Ordinance to proceed in this manner.

Section 4. That it is determined that the Property will be specifically benefited by the above described special energy improvements and shall be assessed to pay for the costs of the special energy improvements, calculated based on a Cooperative Agreement between the City, the Cleveland-Cuyahoga County Port Authority, the District, and the Owner (the "Cooperative Agreement").

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Section 5. That the Cumberland Project Plan placed in the above-mentioned file is approved at an estimated total cost of \$12,291,500.

Section 6. That the entire cost of the Cumberland Project Plan in the District be specially assessed as defined in the above-mentioned Cooperative Agreement. The cost of the Cumberland Project Plan shall include the cost of printing, serving, and publishing notices, resolutions, and ordinances, the costs incurred in connection with the preparation, levy, and collection of the special assessments, expenses of legal services, the cost of all labor and materials and all other necessary expenditures allowed by law.

Section 7. That the special assessments to be levied shall be paid when levied as described in the above-mentioned Cooperative Agreement. All special assessments and installments which have not been paid shall be certified by the Clerk of Council to the County Fiscal Officer on or before the second Monday in September each year to be placed by him on the tax duplicate and collected the same as other taxes, as provided by law.

Section 8. That no notes or bonds of the City of Cleveland shall be issued in anticipation of the levy or collection of the special assessments.

Section 9. That the Commissioner of Assessments and Licenses is authorized to prepare and file in the Office of the Clerk of Council an estimated list of special assessments under the provisions of this Ordinance showing the amount of the special assessments against each lot or parcel of land to be assessed. Such estimated list of special assessments shall be based on the estimated cost of the Cumberland Project Plan which is now on file in the Office of the Clerk of Council. When the estimated special assessments have been filed, the Clerk of Council shall cause notice of the adoption of this Ordinance and the filing of the estimated special assessments to be served in the manner provided by law on the owners of all lots and parcels to be assessed.

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Section 10. That the Director of Economic Development is authorized, on the behalf of the City, to negotiate and enter into the Cooperative Agreement, a Special Assessment Agreement by and among the City, the County Treasurer of Cuyahoga County, the Cleveland-Cuyahoga County Port Authority, the District, and Cumberland, and any other documents required to effectuate the assistance authorized by the Ordinance, with the Cleveland-Cuyahoga County Port Authority, the District, or Cumberland to provide for the calculation, imposition, and payment of the special assessments.

Section 11. That any such agreements shall be prepared by the Director of Law.

Section 12. That the Director of Economic Development is authorized to charge and accept fees in an amount not to exceed the maximum allowable fees under federal regulations and the fees are appropriated to cover costs incurred in the preparation of the loan application, closing, and servicing of the special assessment. The fees shall be deposited to and expended from 17 SF 305, Loan Fees Fund.

Section 13. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage 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 those formal actions were in meeting open to the public in compliance with the law.

Section 14. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

RB:nl  
8-16-17

FOR: Interim Director Ebersole

**Council Members McCormack, Brancatelli and Kelley (by departmental request)**

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**READ FIRST TIME on AUGUST 16, 2017**

**REPORTS**

**and referred to DIRECTORS of Economic Development,  
City Planning Commission, Finance, Law;  
COMMITTEES on Development Planning and Sustainability, Finance**

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**CITY CLERK**

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**READ SECOND TIME**

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**CITY CLERK**

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**READ THIRD TIME**

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**PRESIDENT**

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**CITY CLERK**

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**APPROVED**

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**MAYOR**

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**PASSAGE RECOMMENDED BY  
COMMITTEE ON  
DEVELOPMENT, PLANNING AND  
SUSTAINABILITY**

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**PASSAGE RECOMMENDED BY  
COMMITTEE ON  
FINANCE**

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