

EMERGENCY

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Legislative Resolution

RESOLUTION 6 - 2021

DECLARING by legislative resolution the necessity of the special assessment project at 2347 Reading Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, Ohio Revised Code Section 1710.02(F) provides that a political subdivision that has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, pursuant to Resolution 28-2014 passed on April 9, 2014, Council approved the Petition for the Creation of the City of Cincinnati, Ohio Energy Special Improvement District, together with the Articles of Incorporation of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. and, following said approvals by Council, on July 23, 2014, the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (hereinafter, the "ESID") was formed as an ESID and is now duly authorized and operating pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, 2347 Reading Road, LLC (the "Owner"), as the owner of one hundred percent (100%) of the lots and lands, including air parcels, to be assessed for the improvement described in this Resolution, previously executed and filed with this Council a *Petition for Special Assessments for Special Energy Improvement Projects* dated as of October 8, 2018 (the "Original Petition"), including a *Supplement to Plan for the 2347 Reading Road Project* (the "Original Supplemental Plan"), proposing the necessity of special assessments to pay the costs of special energy improvement projects (as more fully identified in the Original Petition and Original Supplemental Plan, the "Authorized Improvements") to be located at 2347 Reading Road in Cincinnati (the "Assessed Property"); and

WHEREAS, the Original Petition and the Original Supplemental Plan are currently on file with the Clerk of Council; and

WHEREAS, in the Original Petition, the Owner requested that the Authorized Improvements be paid for by special assessments assessed upon the Assessed Property (the "Special Assessments") in an amount sufficient to pay the costs of the Authorized Improvements and other related costs of financing the Authorized Improvements, which include, without limitation, the payment of principal of, interest on, and financing, credit enhancement, and issuance expenses related to, any bonds, notes, loans, or other financing provided to pay the costs of the Authorized Improvements, and requests that the Authorized Improvements be undertaken cooperatively by the City, the ESID, and the Owner in accordance with the Standing Assignment

Agreement dated as of February 28, 2017 by and among the City, the Greater Cincinnati Redevelopment Authority, and the ESID (the “Standing Assignment Agreement”); and

WHEREAS, pursuant to and as authorized by (i) Resolution No. 58-2018, declaring the necessity of the special assessment project at 2347 Reading Road in Cincinnati; (ii) Ordinance No. 345-2018, determining to proceed with such special assessment project; and (iii) Ordinance No. 344-2018, levying the Special Assessments, each passed by Council on October 31, 2018, in order to provide for the assignment and transfer of the Special Assessments, the City executed and delivered an Addendum to the Standing Assignment Agreement on November 27, 2018 (the “Addendum”); and

WHEREAS, the Owner previously executed and filed with this Council an *Amendment to the Petition for Special Assessments for Special Energy Improvement Projects* (the “First Petition Amendment”), and an *Amendment to the City of Cincinnati, Ohio Energy Special Improvement District Program Plan Supplement to Plan for the 2347 Reading Road Project* (the “First Supplemental Plan Amendment”) each dated on or before November 12, 2019, proposing that the amount of the annual installments of the Special Assessments set forth in the Original Petition and the Original Supplemental Plan be amended as reflected in the First Petition Amendment and the First Supplemental Plan Amendment; and

WHEREAS, the City previously approved the First Petition Amendment and the First Supplemental Plan Amendment, modified the amounts and times for collection of the Special Assessments as requested in the First Petition Amendment and the First Supplemental Plan Amendment, and authorized an amendment to the Addendum by passing (i) Resolution No. 67-2019 declaring the necessity of the amended special assessment project at 2347 Reading Road in Cincinnati; (ii) Ordinance No. 442-2019, determining to proceed with the amended special assessment project; and (iii) Ordinance No. 443-2019, levying the amended Special Assessments, each passed by Council on November 14, 2019; and

WHEREAS, the Owner has executed and filed with this Council a *Second Amendment to the Petition for Special Assessments for Special Energy Improvement Projects* (the “Second Petition Amendment”; and the Original Petition, as amended by the First Petition Amendment and by the Second Petition Amendment, is the “Amended Petition”), and a *Second Amendment to the City of Cincinnati, Ohio Energy Special Improvement District Program Plan Supplement to Plan for the 2347 Reading Road Project* (the “Second Supplemental Plan Amendment”; and the Original Supplemental Plan, as amended by the First Supplemental Plan Amendment and by the Second Supplemental Plan Amendment, is the “Amended Supplemental Plan”) each dated on or before January [___], 2021, proposing that the amount of the semi-annual installments of the Special Assessments set forth in the Petition and the Supplemental Plan be amended as reflected in the Amended Petition and the Amended Supplemental Plan; and

WHEREAS, the Second Petition Amendment and the Second Supplemental Plan Amendment are on file with the Clerk of Council and copies of which are attached to this Resolution as Attachment A; and

WHEREAS, in connection with the adjustment to the amount of semi-annual installments of the Special Assessments stated in the Amended Petition and the Amended Supplemental Plan,

the ESID has requested that the City execute and deliver a second amendment to the Addendum, substantially in the form now on file with the Clerk of Council; and

WHEREAS, (i) the Special Assessments are conducive to the public health, convenience and welfare of this City and the inhabitants of the City; (ii) the Assessed Property is specially benefited by the Special Assessments; and (iii) the Special Assessments have been petitioned for by the owner of 100% of the area to be assessed; now, therefore,

BE IT RESOLVED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Amended Petition, which Amended Petition, together with the Amended Supplemental Plan, are hereby approved and accepted.

Section 2. That this Council hereby approves and authorizes the City Manager to execute the form of the second amendment to the Addendum on file with the Clerk of Council, together with any modifications as may be necessary to effectuate the purpose of the Amended Petition and Ohio Revised Code Chapter 1710, provided that any such modifications shall not, in the judgment of the City Manager, be adverse to the City.

Section 3. That it is hereby declared necessary, and a vital and essential public purpose of the City, to improve the real property located at 2347 Reading Road, Cincinnati, Ohio 45202 (the "Assessed Property"), by providing for special energy improvement projects as more fully identified in the Amended Petition and the Amended Supplemental Plan (the "Authorized Improvements") on the Assessed Property, including any and all costs and expenses in connection with or otherwise related thereto as described in the Amended Petition (collectively, the "Assessment Project"), which Assessment Project is described in the plans, specifications, profiles, and estimates of costs included in the Amended Petition and on file in the office of the Clerk of Council.

Section 4. That the plans and specifications and total cost of the Assessment Project now on file in the office of the Clerk of Council are approved, subject to changes as provided for in the Standing Assignment Agreement among the City, the Greater Cincinnati Redevelopment Authority, and the ESID, and as permitted by Ohio Revised Code Chapter 727. The Assessment Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Assessment Project.

Section 5. That this Council finds and determines that: (i) the Assessment Project is conducive to the public health, convenience, and welfare of this City and the inhabitants thereof, and that it 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); (ii) the Assessed Property is specially benefited by the Assessment Project; and (iii) the Assessment Project has been petitioned for by the owner of 100% of the area to be assessed for the Assessment Project. It is hereby determined that the Assessment Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Assessment 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 Assessment Project's elements shall be treated as a single improvement pursuant to Ohio Revised Code Section 727.09.

Section 6. That pursuant to Ohio Revised Code Section 1710.02(G)(4), Council hereby determines that the energy special improvement project to be constructed and implemented at the Assessed Property is not required to be owned exclusively by the City. Council accordingly hereby authorizes the board of directors of the ESID to act as its agent to sell, transfer, lease, or convey the special energy improvement project to be constructed and implemented at the

Assessed Property. The board of directors of the ESID must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project at the Assessed Property any consideration greater than or equal to \$1.00.

Section 7. That the costs of the Assessment Project, as set forth in the Amended Petition and the Amended Supplemental Plan, shall be assessed in proportion to the benefits upon the Assessed Property, and the assessment for such purpose (the "Special Assessments") shall be assessed and paid as specified in the Amended Petition and the Amended Supplemental Plan. The portion of the costs of the Assessment Project 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 8. That the City's Finance Director and/or her designee is authorized to cause to be prepared and filed in the office of the Clerk of Council the estimated Special Assessments and the cost of the Assessment Project in accordance with the method of assessment set forth in the Amended Petition, the Amended Supplemental Plan, and this Resolution.

Section 9. That the Special Assessments shall be levied and paid in fifty-six (56) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Amended Petition and the Amended Supplemental Plan. The Owner has waived the right to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

Section 10. That the Owner has waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the filing of the estimated Special Assessments with the Clerk of Council under Ohio Revised Code Section 727.13.

Section 11. That pursuant to and subject to the provisions of a valid Amended Petition signed by the Owner as one hundred percent (100%) of the owners of the Assessed Property,

which Amended Petition is hereby accepted, the entire cost of the Assessment Project shall be paid by the Special Assessments levied against the Assessed Property, which is the benefited property.

Section 12. That this Council hereby accepts and approves the waivers contained in the Amended Petition 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 Cincinnati, Ohio, and consents to the immediate imposition of the Special Assessments upon the Assessed Property.

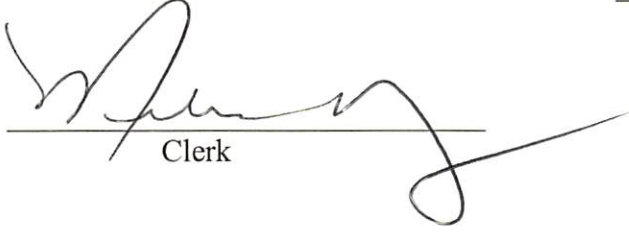
Section 13. That the City's Finance Director and/or her designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Assessment Project.

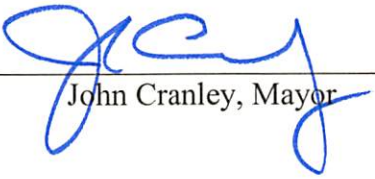
Section 14. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 15. That this Resolution shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the Board of the City of Cincinnati, Ohio Energy Special

Improvement District may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue.

Passed January 21, 2021

Attest: 
Clerk


John Cranley, Mayor