

ORDINANCE NO. 68-2019

TITLE: RESIDENTIAL PACE PROGRAM

AN ORDINANCE APPROVING THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT RESIDENTIAL PROGRAM PLAN; AUTHORIZING AND APPROVING THE EXECUTION, DELIVERY, AND PERFORMANCE OF A CITY RESIDENTIAL PACE COOPERATIVE AGREEMENT WITH RESPECT TO PROPERTY ASSESSED CLEAN ENERGY TRANSACTIONS IN COOPERATION WITH THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE TOLEDO-LUCAS COUNTY PORT AUTHORITY; AUTHORIZING THE TOLEDO-LUCAS COUNTY PORT AUTHORITY TO APPROVE PETITIONS AND PLANS FOR PUBLIC IMPROVEMENTS OR PUBLIC SERVICES SUBMITTED BY THE OWNERS OF REAL PROPERTY WITHIN THE CITY REQUESTING THAT THEIR PROPERTY BE ADDED TO THE TERRITORY OF THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT AND ASSESSED FOR THE COSTS OF SUCH PLANS ON BEHALF OF THE COUNCIL OF THE CITY, AND DECLARING AN EMERGENCY.

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; and

WHEREAS, ESIDs are voluntary organizations of municipal corporations, townships, and property owners who undertake special energy improvement projects that benefit real property and finance those special energy improvement projects through voluntary special assessments; and

WHEREAS, the Akron, Barberton, Bath Township, Copley Township, Coventry Township, Cuyahoga Falls, Fairlawn, Green, Lakemore, New Franklin, Norton, Richfield, Springfield Township, Tallmadge Energy Special Improvement District, Inc., doing business as Akron-Summit County Energy Special Improvement District, Inc. (the District) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID and established pursuant to Resolution No. 390-2016 of the Council of the City of Akron, Ohio on December 5, 2016; and

WHEREAS, the City has determined to develop the *Akron-Summit County Energy Special Improvement District Residential Program Plan* as a proposed plan for public improvements and public services under Ohio Revised Code Chapter 1710, substantially in the form attached to and incorporated into this ordinance as **Exhibit A** (the Residential PACE Plan), and any petitions by the owners of residential real property located within the boundaries of the City for special assessments to finance the costs of special energy improvement projects on their properties shall be considered, and, if approved, implemented, under and subject to the terms and conditions of the Residential PACE Plan; and

WHEREAS, the Residential PACE Plan sets forth the terms and conditions under which the City and the District will facilitate the financing of special energy improvement projects on residential real property located within the City and the District; and

WHEREAS, in order to provide for the efficient implementation of the Residential PACE Plan, the Development Finance Authority of Summit County and the Toledo-Lucas County Port Authority, a port authority and political subdivision of the State of Ohio (the Program Port Authority), have entered into an Ohio Residential PACE Cooperative Agreement to establish acceptable program parameters and consumer protections for residential PACE financing programs in Ohio; and

WHEREAS, in order to provide for the efficient implementation of the Residential PACE Plan, the City has determined to enter into a City Residential PACE Cooperative Agreement as a cooperative agreement with the Program Port Authority (the Cooperative Agreement); and

WHEREAS, under the Cooperative Agreement the City and the Program Port Authority will cooperatively agree to cause the Program Port Authority to exercise certain powers, perform certain functions, and render certain services on behalf of the City, all as authorized under this Ordinance, the Cooperative Agreement, and Ohio Revised Code Sections 4582.17(B) and 9.482; 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 Residential PACE Plan and to authorize and approve the Cooperative Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BARBERTON, SUMMIT COUNTY, OHIO, THAT:

SECTION 1. Each capitalized term not otherwise defined in this ordinance or by reference to another document shall have the meaning assigned to it in the Residential PACE Plan.

SECTION 2. This Council hereby approves the Residential PACE Plan now on file with the Clerk of Council. Any petitions by the owners of residential real property located within the boundaries of the City for special assessments to finance the costs of special energy improvement projects on their properties shall be considered, and, if approved, implemented, under and subject to the terms and conditions of the Residential PACE Plan.

SECTION 3. This Council hereby approves the Cooperative Agreement, substantially in the form now on file with the Clerk of Council with any amendments or modifications to it as are not materially adverse to the City, are consistent with this Ordinance, and are approved by the officer or officers of the City signing the Cooperative Agreement, all of which shall be conclusively demonstrated by the signature of the duly authorized officer or officers of the City on the Cooperative Agreement. The Mayor, or his designee, together or individually, are hereby authorized, for and on behalf of the City, to execute and deliver the Cooperative Agreement, including any amendments or modifications to the Cooperative Agreement as are not materially adverse to the City, are consistent with this Ordinance, and are approved by the officer or officers of the City signing the Cooperative Agreement, all of which shall be conclusively demonstrated by the signature of the duly authorized officer or officers of the City on the Cooperative Agreement. The City is hereby authorized to perform the terms and conditions of the Cooperative Agreement, as it may be amended and in effect at any time. The Mayor, or his designee, together or individually, are hereby authorized, for and on behalf of the City, to execute and deliver any additional amendments, agreements, certificates, or instruments, including any additional agreements by or among the City, the County Auditor, the County Treasurer, the Program Port Authority, any other port authority, the District, and any other energy special improvement district, as may be reasonably necessary to carry out the purposes of the Cooperative Agreement, and the City is hereby authorized to perform the terms and conditions of any of those amendments, agreements, certificates, or instruments.

SECTION 4. Under the Cooperative Agreement, the City shall, pursuant to Ohio Revised Code Sections 4582.17(B) and 9.482, authorize and request the Program Port Authority to act on behalf of the City during the term of the Cooperative Agreement to receive and approve or disapprove Petitions and Plans (as defined in the Residential PACE Plan and the Cooperative Agreement) in its reasonable discretion and subject to certain terms and conditions stated in the Residential PACE Plan, the Cooperative Agreement, and this Ordinance. Upon the execution and delivery of the Cooperative Agreement by all of the parties to it, this Council hereby appoints the Program Port Authority as its delegate to, for, and on behalf of this Council, receive and approve or disapprove Petitions and Plans in its discretion and subject to certain terms and conditions stated in the Residential PACE Plan, the Cooperative Agreement, and this Ordinance. The approval or disapproval of any Petitions and shall constitute the legislative approval or disapproval of this Council for all purposes of law, including, without limitation, Ohio Revised Code Chapter 1710, and all legal consequences appertaining to a legislative authority's legislative approval or disapproval of petitions and plans for public improvements or public services under Ohio Revised Code Chapter 1710 shall appertain to the Program Port Authority's approval or disapproval of Petitions and Plans for and on behalf of this Council.

The Program Port Authority shall not approve any Petitions and Plans unless the Petitions and Plans and the information regarding the properties, special energy improvement projects, financing terms, and other facts and terms certified within the Petitions and Plans conform and comply in all material respects with the terms and conditions of the Residential PACE Plan, which is are attached to, and incorporated into, this ordinance by this reference.

SECTION 5. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance 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 6. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, in order for residents of the City or Barberton to take advantage of options to finance the costs of special energy improvement projects available to them for a limited time, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2019

Clerk of Council

President of Council

Approved _____ 2019

Mayor

EXHIBIT A

AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT PROGRAM PLAN

RESIDENTIAL PLAN

The Akron-Summit County Energy Special Improvement District (the *District*) is a special improvement district under Chapter 1710 of the Ohio Revised Code organized for the purpose of facilitating the financing of special energy improvement projects (an *Energy Special Improvement District*). The District currently administers a property assessed clean energy (*PACE*) program for commercial properties (the *Commercial Program*). The Commercial Program is described in the Akron-Summit County Energy Special Improvement District Project Plan (the *Commercial Plan*). Under the Commercial Program, the District facilitates financing for commercial real property secured by special assessments on real property for special energy improvement projects.

Under this Residential Plan (the *Plan*), the District will facilitate the financing of certain special energy improvement projects on residential real property as more fully described in this Plan (the *Residential Program*). This Plan refers to Chapter 1710 and any and all future amendments to the Energy Special Improvement District provisions of Chapter 1710 as the “*Act*.” Any specific reference to the Act or to any other law in this Plan also refers to any succeeding or amending provision of law.

Participation in the District’s Residential Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Residential Program’s terms and conditions. Those terms and conditions are described in this Plan, and include, without limitation, a petition, a supplemental plan, a schedule of assessments to be levied against property (*Assessment Schedule*), a description of the special energy improvement projects to be installed on the property (*Project Description*), the governing documents forming the District, and the financing documents associated with the special assessment financing undertaken through the Residential Program.

The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District (the *District Board*), the applicable resolutions and ordinances of the participating political subdivisions of the District, and the applicable agreements of the participating political subdivisions of the District entered into with respect to this Residential Program (collectively, the *Governing Documents*). Each participating political subdivision of the District that has authorized the Residential Program has agreed in one or more Governing Documents that the Toledo-Lucas County Port Authority (the *Program Port Authority*) will serve as its designee and as designee of the legislative authority of the participating political subdivision (the *Legislative Authority*), and that the Program Port Authority is authorized to take certain actions on behalf of each participating political subdivision with respect to the Residential Program. Certain consumer protection policies (the *Consumer Protection Policies*) have been authorized by the Program Port Authority with respect to special energy improvement projects authorized under this Plan. The Consumer Protection Policies may be modified from time to time in accordance with the Governing Documents. Property owners may be required to agree to, and sign, an agreement to impose special assessments as a condition to receiving financing of special energy improvement projects facilitated by the District, and property owners that participate in the District’s Residential Program may have one or more financing agreements with program administrators or third parties associated with the special assessment financing undertaken as part of the Residential Program (such agreements, and any related documents, instruments, or certificates, are collectively the *Financing Documents*). This Plan refers to this Plan, the Governing Documents, agreements between the Program Port Authority and each participating political subdivision, the Consumer Protection Policies, the Financing Documents, the petitions, the supplemental plans, the Assessment Schedules, and the Project Descriptions as the “*District Documents*.”

The District Documents establish the terms and conditions of the Residential Program. The Residential Program terms and conditions may be amended from time to time as described in this Plan.

ARTICLE 1. PURPOSE OF THE RESIDENTIAL PROGRAM

The Residential Program is intended to assist property owners who own residential real property within the participating political subdivisions of the District to obtain financing for certain special energy improvement projects.

Projects eligible for participation in the Residential Program (*Projects*) described in this Plan and other District Documents each must qualify as “special energy improvement projects” under Ohio Revised Code Section 1710.01(I), as such provision may be amended from the time to time by any successor or replacement provision. Projects eligible for participation in the Residential Program include the items identified from time to time by the Program Port Authority at the following: [insert link to Residential Program project handbook or list of eligible measures, as the same may be amended, supplemented, or updated from time to time]. The definition of Projects eligible for participation in the Residential Program may be amended, supplemented or updated from time to time upon approval by the Program Port Authority of any additional, supplemental, or updated definition of Projects.

Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, and other evidences of indebtedness (collectively, the *Program Obligations*) may be issued by the District or on behalf of the District by the Program Port Authority. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Projects located on properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. The participating political subdivisions of the District shall levy special assessments on real property included in the District. The payment of those special assessments may pay the Program Obligations and any costs of administering the Program.

Special assessment payments levied to finance Projects will be due and payable by property owners at the same time real property taxes are due. Alternatively, certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that those property owners fail to pay an obligation of the property owner secured by special assessments. In that case special assessments will only be due and payable by property owners if actually levied.

There may be other types of financing available for projects that are eligible to be financed under this Plan. None of any of the participating political subdivisions of the District, the District, the District Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or the District Board represent that the Residential Program is the best financing option available. The District and each of its participating political subdivisions shall not be responsible or liable for the installation, operation, financing, refinancing, or maintenance of Projects, and the District and each of its participating political subdivisions do not guarantee the performance of any Project financed as part of the Residential Program. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of their Projects.

ARTICLE 2. ELIGIBILITY AND APPROVAL

To be eligible for participation in the Residential Program, a property owner must file a petition, a Supplemental Plan (as defined below), an Assessment Schedule, and a Project Description (collectively, the *Application Documents*) with the Program Port Authority. The Application Documents submitted under this Plan with respect to a Project shall constitute a petition submitted under Section 1710.02 of the Act. The petition will request that the participating political subdivision of the District in which the real property subject to the petition is located to add the property described in the petition to the District. The petition will further request that the participating political subdivision of the District in which the real property subject to the petition is located levy special assessments to be used to pay or secure Program Obligations issued or used to finance the Projects described in the Application Documents. The petition may contain conditions that must be satisfied prior to the levy of special assessments, such as availability of Project financing or execution of the Financing Documents.

By submitting Application Documents to the Program Port Authority, a property owner is submitting a petition under Section 1710.02 of the Act requesting and authorizing the levying of special assessments as an additional charge against real property, subject to any conditions contained in the petition or any reasonable conditions of the Program Port Authority necessary to cause the funding of the Project or as a result of funding the Project.

This Plan may be amended and supplemented from time to time, including, specifically, by supplements to this Plan. To be eligible for participation in the Residential Program, each property owner must file a supplement to this Plan (each a *Supplemental Plan*) with the Program Port Authority as part of the Application Documents. Each Supplemental Plan will supplement this Plan by identifying the Project to be undertaken for the real property described in the Supplemental Plan. Supplemental Plans shall include any other information as may be required by the Program Port Authority. Supplemental Plans shall conform to the requirements of the Act and any requirements in this Plan.

Each parcel of real property added to the District must have at least one Project. A property owner may file more than one set of Application Documents and may amend or withdraw any Application Documents filed at any time before the Application Documents are approved or disapproved by the Program Port Authority. Application Documents shall conform to the requirements of the Act and any requirements in this Plan.

The participating political subdivisions of the District each have authorized the Program Port Authority to approve or disapprove, on behalf of the Legislative Authority, the Application Documents submitted under this Plan. If Application Documents submitted under this Plan comply with this Plan's terms and conditions, the Program Port Authority shall approve the Application Documents on behalf of the Legislative Authority. If Application Documents do not comply with this Plan, the Program Port Authority shall not approve the Application Documents on behalf of the Legislative Authority. The Program Port Authority's approval or disapproval of the Application Documents shall constitute the Legislative Authority's approval or disapproval of the Application Documents for all purposes of the Act.

The Legislative Authority shall levy the special assessments described in the Assessment Schedule upon approval of the Application Documents by the Program Port Authority.

ARTICLE 3. ELIGIBLE PROJECTS

In order to be eligible to participate in the Residential Program, Application Documents submitted to the Program Port Authority must identify Projects to be undertaken on the subject property in the Project Description submitted with the Application Documents. The Program Port Authority shall review the Application Documents submitted to it, and shall determine, in its reasonable discretion, whether each of the improvements described in the Application Documents constitute eligible Projects. Only Application Documents that describe eligible Projects will be approved by the Program Port Authority. No improvements other than the Projects are eligible for participation in the Residential Program.

ARTICLE 4. ELIGIBLE FINANCING TERMS

In order to be eligible to participate in the Residential Program, Application Documents submitted to the Program Port Authority must meet certain financing criteria described in the Consumer Protection Policies for the Residential Program in effect from time to time and other applicable Residential Program eligibility requirements. The Program Port Authority shall review the Application Documents submitted to it, and shall determine, in its reasonable discretion, whether all applicable eligibility requirements have been met.

ARTICLE 5. FEES

The participating political subdivisions of the District and the District Board are each authorized to charge to property owners, as costs of administering the Residential Program, any costs permitted by the Act. Program costs included as part of the cost of a Project shall be identified in one or more District Documents applicable to the Project, and such program costs may be included in the amount of special assessments levied on real property within the District.

ARTICLE 6. RENEWABLE ENERGY REGULATIONS AND ENERGY REQUIREMENTS

The District Board is hereby authorized to adopt rules governing renewable energy credits associated with renewable energy Projects financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with District Board requirements related to renewable energy credits.

The District Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Projects financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with District Board requirements in furtherance of the monetization of such attributes.

The District Board is hereby authorized to adopt rules governing reporting of any energy efficiency attributes of any Projects financed with Program Obligations or the proceeds of Program Obligations if such reporting is requested by an electric distribution utility pursuant to the Act. Property owners shall comply with District Board requirements in furtherance of such reporting.

ARTICLE 7. REQUIREMENTS UNDER THE ACT AND OTHER APPLICABLE LAW

As provided in the District Documents:

(A) Additional territory may be added to the District under the Act, this Plan, and the rules established by the District Board.

(B) The District Documents may be amended or supplemented in accordance with their terms.

(C) As described in this Plan, the District Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Projects, public improvements, and public services, all in accordance with the Act; provided that any changes to this Plan, Supplemental Plan or other requirements effecting the Residential Program shall not apply to any property owner's whose Application Document(s) have already been approved and the District shall give the Program Port Authority reasonable prior notice of any such changes.

(D) The public improvements to be provided by the District are the Projects identified by the Program Port Authority in this Plan and each Supplemental Plan. The area where the Projects will be undertaken will be the area identified in each petition submitted under this Plan. The method of assessment shall be in proportion to the special benefits received by each property within the District as a result of Projects.

(E) Except as provided in any applicable collection agreement to which the District or the Program Port Authority, on behalf of the District, is a party, for the purpose of levying an assessment, the District Board may combine levies for Projects, public improvements, and public services into one special assessment to be levied against each specially benefited property within the District.

ARTICLE 8. CHANGES IN STATE AND FEDERAL LAW

The ability to issue or use Program Obligations to finance Projects and to have special assessments levied for that purpose is subject to a variety of state and federal laws. The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law.

ARTICLE 9. CHANGES IN THE RESIDENTIAL PROGRAM'S TERMS; SEVERABILITY

Participation in the Residential Program is subject to the District Documents' terms and conditions in effect from time to time during participation. Changes to the District Documents authorized in this Plan or in the District Documents themselves may result in modifications to the terms of the Residential Program or to property owner obligations, but no change to any District Documents may materially modify the payment obligations to which a property owner is subject for a Project that has already been funded as part of the Residential Program. If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from the District Documents and shall not affect the validity and enforceability of any remaining provisions.

ARTICLE 10. DISCLOSURE OF INFORMATION

The District and all District Documents are subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.*, and certain information may be exempt from disclosure based on exemptions available under those laws. The District and all District Documents may be subject to federal laws that prevent disclosure of certain information.