

ORDINANCE NO. 21-18
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE 19th
DAY OF November, 2018.

AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, INSTALLATION, EQUIPMENT, AND IMPROVEMENT OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF CENTERVILLE, OHIO IN COOPERATION WITH THE DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT; AND DECLARING AN EMERGENCY

PREAMBLE AND PURPOSE

WHEREAS, the Council (“Council”) of the City of Centerville, Ohio (the “City”) duly adopted Resolution No. 62-18 on November 5, 2018 (the “Resolution of Necessity”), (i) declaring the necessity of acquiring, installing, equipping, and improving energy efficiency improvements, including, without limitation, high efficiency lighting, an energy efficient HVAC system, an energy efficient building envelope, an energy efficient roof, energy efficient doors and windows, and related improvements (the “Project,” as more fully described in the Petition referenced in this Ordinance) located on real property owned by Gateway Lofts Centerville, LLC (the “Owner”) within the City (the “Property”, as more fully described in Exhibit A to the Petition); (ii) providing for the acquisition, installation, equipment, and improvement of the Project by the Owner, as set forth in the Owner’s *Petition for Special Assessments for Special Energy Improvement Projects* (the “Petition”), including by levying and collecting special assessments to be assessed upon the Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be \$12,960,229.80 in the Petition, including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Dayton Regional Energy Special Improvement District (“District”) administrative fees and expenses; and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

WHEREAS, the claims for damages alleged to result from, and objections to, the Project have been waived by one hundred percent (100%) of the Owners; and following notice of the adoption of the Resolution of Necessity which was personally delivered by the Clerk of Council to the Owner on November 5, 2018, and no claims for damages alleged to result from, or objections to, the Project have been filed within the times prescribed by Ohio Revised Code Sections 727.15 and 727.18; and

NOW, THEREFORE, the Municipality of Centerville hereby ordains:

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 Petition and/or the Resolution of Necessity.

Section 2: This Council declares that its intention is to proceed or to cooperate with the District to proceed with the acquisition, installation, equipment, and improvement of the Project described in the Petition and the Resolution of Necessity. The Project shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Director of Finance and the Clerk of Council.

Section 3: This Council hereby appoints Holly Christmann to serve on the Board of Directors of the District as provided in Ohio Revised Code Section 1710.04(A).

Section 4: The Special Assessments to pay costs of the Project, which are estimated to be \$12,960,229.80 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 or the Dayton-Montgomery County Port Authority 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, the Dayton-Montgomery County Port Authority, or another issuer of notes or bonds to pay the costs of the Project; together with all other necessary expenditures, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the Project. The Special Assessments shall be assessed against the Property commencing in tax year 2019 for collection in 2020 and shall continue through tax year 2048 for collection in 2049; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Auditor of Montgomery County, Ohio determines that collections shall not commence in 2020, then the collection schedule may be deferred by one year. In addition to the Special Assessments, the County Auditor of Montgomery County, Ohio may impose a special assessment

collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Auditor of Montgomery County, Ohio.

Section 5: The estimated Special Assessments for costs of the Project prepared and filed in the office of the Clerk of Council and in the office of the Director of Finance, in accordance with the Resolution of Necessity, are adopted.

Section 6: In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor of Montgomery County, Ohio within 15 days after the date of its passage.

Section 7: All contracts for the construction of the Project will be let in accordance with the Petition, the Program Plan, and the Supplemental Plan, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

Section 8: Council hereby finds and determines that all formal actions taken relative to the adoption of this Ordinance were taken in an open meeting of Council, and that all deliberations of Council and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with all applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 9: Under Section 5.05 of the Charter of the City, this Ordinance is an Ordinance for improvements petitioned for by the Owner of the requisite majority (100%) of the property benefited and to be assessed, and declared to be an emergency measure for it is necessary for the immediate preservation of public peace, property, health and safety, that this Ordinance take effect at the earliest possible date in order to allow the Owner to begin work on the special energy improvement project on the Property, and the ESID to take advantage of financing available to it for a limited time. Therefore, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its adoption.

PASSED THIS 19th day of November, 2018.



Mayor of the City of Centerville, Ohio

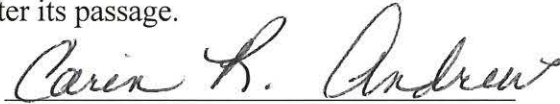
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 21-18, passed by the Council of the City of Centerville, Ohio on the 19th day of November, 2018 and that a true copy of such Ordinance was certified to the County Auditor of Montgomery County, Ohio within 15 days after its passage.



Clerk of Council
City of Centerville, Ohio

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, INSTALLATION,
EQUIPMENT, AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF CENTERVILLE, OHIO
IN COOPERATION WITH THE DAYTON REGIONAL
ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Karl Keith, the duly elected, qualified, and acting Auditor in and for Montgomery County, Ohio hereby certify that a certified copy of Ordinance _____ duly passed by the Council of the City of Centerville, Ohio on November 19, 2018, determining to proceed with the acquisition, installation, equipment, and improvement of certain public improvements in the City of Centerville, Ohio in cooperation with the Dayton Regional Energy Special Improvement District, was filed in this office on _____, 2018.

WITNESS my hand and official seal at Dayton, Ohio on _____, 2018.

[SEAL]

Auditor
Montgomery County, Ohio