

RESOLUTION NO. 67-2019

TITLE: AMENDMENTS TO ESID ARTICLES OF INCORPORATION

A RESOLUTION APPROVING AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., 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, 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, 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 under the registered trade name Akron-Summit County Energy Special Improvement District, Inc. (the “District”) has been duly created and is validly existing pursuant to the laws of the State of Ohio, and the City of Barberton, Ohio is a “participating political subdivision” of the District in accordance with Ohio Revised Code Section 1710.01(E); and

WHEREAS, in furtherance of the District’s public purposes, the District has determined to amend the *Articles of Incorporation of the Akron, Barberton Energy Special Improvement District, Inc.* (as amended and supplemented from time to time, the “Articles of Incorporation”) in order to better describe the public purposes of the District and the role of each of the participating political subdivisions in appointing directors to the board of directors of the District; and

WHEREAS, in order to amend the Articles of Incorporation, the Council of City of Barberton, Ohio, as the legislative authority of a participating political subdivision of the District, must approve, by resolution, the amendment to the Articles of Incorporation pursuant to Ohio Revised Code Section 1710.02(D)(3) and the Articles of Incorporation; and

WHEREAS, this Council has determined to approve the amendments to the Articles of Incorporation substantially as shown on **Exhibit A** attached to and incorporated into this Resolution; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BARBERTON, OHIO:

SECTION 1. That this Council hereby approves the amendments to the District’s Articles of Incorporation substantially as shown on **Exhibit A** attached to and incorporated into this Resolution.

SECTION 2. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this legislative 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 3. 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, for the reason that there are timeliness issues related to tax and legal timelines, 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

Amendments to District Articles of Incorporation

Replace Article Third with the following:

(A) To govern the Akron, Barberton, Bath Township, Copley, Coventry Township, Cuyahoga Falls, Fairlawn, New Franklin, Norton, Springfield Township, Tallmadge Energy Special Improvement District, a special improvement district (as the same shall from time to time be named in accordance with Article First of these Articles of Incorporation, the “District”) created pursuant to ORC Chapter 1710. ~~The District’s purpose is to enhance the value of properties within the District and improve the environment by developing and assisting in developing within the District special energy improvement projects.~~ - The District will be authorized to provide special energy improvement projects pursuant to ORC Chapter 1710 ~~that will benefit property and the environment~~ within the boundaries of the District, **including energy efficiency and clean and renewable energy project.** The Corporation will be conducive to and promote the public health, safety, peace, convenience, and general welfare by creating projects that conserve energy and create a cleaner environment, lead to energy independence, create jobs and economic growth and development, and promote the general welfare within the District and the participating political subdivisions.

(B) To engage in any lawful act, activity or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio. The District will be authorized to take any other actions pursuant to ORC Chapter 1710 that may be taken by a special improvement district organized for the purpose of developing and implementing plans for special energy improvement projects. The City of Akron, Ohio (“Akron”) and the City of Barberton, Ohio (“Barberton”) are each a “participating political subdivision,” as that term is defined in ORC Section 1710.01(E), that will be authorized to levy a special assessment on each property within their respective ~~territorial~~**territory** within the District to pay for such improvements, based on the benefits those special energy improvement projects confer.

~~(B) To engage in any lawful act, activity or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio.~~

(C) To have and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing, or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wheresoever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at any time and from time to time, deem advisable.

(D) The reasons for establishing the District include enhancing ~~the value of properties within the District and improving the environment.~~ The District will enhance the public health, safety peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory’s carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

Replace Article Fourth with the following:

In accordance with R.C. Chapter 1702, no part of the net earnings of the Corporation shall inure to the benefit of any private person, including any Director, officer, or member of the Corporation, except the Corporation shall be permitted to pay reasonable compensation for services actually rendered to the Corporation, or allowed by the Corporation as a reasonable allowance for authorized expenditures incurred on behalf of the Corporation.

Replace Article Sixth with the following:

The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least ~~five~~ **nine (95)** individuals (individually a “Director”).

(A) The municipal executive, as defined in ORC Section 1710.01(D), of each participating political subdivision of the District or an employee of each participating political subdivision who is involved with its planning or economic development functions and who shall be appointed by and serve at the pleasure of such participating political subdivision’s municipal executive each shall serve as a Director.

(B) A person appointed by and serving at the pleasure of the legislative authority of each participating political subdivision of the District each shall serve as a Director.

(C) ~~The remaining~~ **Three (3)** Directors shall be Members or executive representatives of Members elected, designated, or appointed by the Members as described in the Code of Regulations of the Corporation.

(D) The remaining Directors, if any, shall be elected by the political subdivisions of the district as described in the Code of Regulations of the Corporation.

The Board of Directors of the Corporation from time to time shall constitute the Board of Directors of the Corporation under ORC Chapter 1710.

Replace Article Ninth with the following:

The existence of the Corporation shall be perpetual, provided however, that the Corporation may be dissolved in accordance with the procedure proscribed under ORC Chapter 1710.13. No rights or obligations of any person under any contract, or in relation to any bonds, notes, or assessments made under this chapter, shall be affected by the dissolution of the Corporation or the repeal of a plan, except with the consent of that person or by order of a court with jurisdiction over the matter. Upon dissolution of the Corporation, any assets or rights of the Corporation, after payment of all bonds, notes, or other obligations of the Corporation, shall be deposited in a special account in the treasury of each participating political subdivision, prorated among all participating political subdivisions to reflect the percentage of the District’s territory within that political subdivision, to be used for the benefit of the territory that made up the District.

Notwithstanding anything herein to the contrary, no part of the Corporation’s income will be distributed to any entity other than a political subdivision of a state or an organization the income of which is excluded from gross income under Internal Revenue Code section 115(1).