

TEMPORARY ORDINANCE NO. _____ 19-21

PERMANENT ORDINANCE NO. 19-21

AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF LANCASTER, FAIRFIELD COUNTY, OHIO TO BE A PUBLIC PURPOSE; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; DESIGNATING SPECIFIC PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT, ONCE MADE, WILL DIRECTLY BENEFIT THE PARCELS FOR WHICH THE IMPROVEMENT IS DECLARED TO BE A PUBLIC PURPOSE; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; REQUIRING MINIMUM SERVICE PAYMENTS; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AUTHORIZING THE EXECUTION OF A TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT; AUTHORIZING THE EXECUTION OF A REVENUE SHARING AGREEMENT; PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(B), 5709.42, 5709.43, 5709.832 AND 5709.85; AND DECLARING AN EMERGENCY

WHEREAS, Ohio Revised Code (“R.C.”) Section 5709.40(B) provides that this Council may, under certain circumstances, (i) declare improvement to parcels of real property located in the City of Lancaster (the “City”) to be a public purpose, thereby granting to that improvement an exemption from real property taxation, and (ii) designate specific public infrastructure improvements made, to be made, or in the process of being made that directly benefit, or that once made will directly benefit, the parcels for which improvement is declared to be a public purpose; and

WHEREAS, pursuant to R.C. Section 5709.40(D)(1), said exemption may be for up to one hundred percent (100%) of such improvement for up to thirty (30) years with the consent of the board of education of the city, local or exempted village school district within the territory of which the improvement is or will be located; and

WHEREAS, the real property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”) is located in the State of Ohio (the “State”), County of Fairfield (the “County”), and the City, with each parcel of the Property referred to herein as a “Parcel” (whether as presently appearing on County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and

WHEREAS, the current and future owners of the Property (each an “Owner” and collectively the “Owners”) wish to develop the Property by constructing a development, including but not limited to senior living facilities and commercial residential facilities together with related site improvements (the “Project”), provided that the appropriate development incentives are available to support this development; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for service payments in lieu of real property taxes (“Service Payments,” as further defined below) with respect to the Property pursuant to R.C. Section 5709.42; and

WHEREAS, the City desires to facilitate the construction of the public infrastructure improvements described in Exhibit B attached hereto and incorporated herein by this reference (the “Public Infrastructure Improvements”); and

WHEREAS, this Council has determined to provide for the execution and delivery of a Tax Increment Financing and Cooperative Agreement in order to provide the Public Infrastructure Improvements; and

WHEREAS, pursuant to R.C. Section 5709.91 and the Tax Increment Financing and Cooperative Agreement, the City intends to require the owner or owners of each Parcel to make minimum service payments on or before the final dates for payment of real property taxes, in the minimum amounts set forth in the Tax Increment Financing and Cooperative Agreement; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Lancaster City School District (the “School District”) in accordance with R.C. Sections 5709.40 and 5709.83; and

WHEREAS, the Board of Education of the School District has consented to the exemption from real property taxation to be granted under this Ordinance, waived the statutory notice requirements and periods in R.C. Sections 5709.40, 5709.83, and related sections, and approved a Revenue Sharing Agreement with the City in order to provide compensation to the School District with respect to a portion of the real property taxes to be exempted under this Ordinance out of Service Payments collected from the Owners of the Property as more fully described in the Revenue Sharing Agreement; and

WHEREAS, this Council has determined to provide for the execution and delivery of the Revenue Sharing Agreement in order to provide compensation to the School District; and

WHEREAS, an emergency exists in the usual daily operations of the City in that it is immediately necessary to approve this Ordinance for the preservation of the public peace, property, health, safety and welfare, that preservation being related to the need to proceed with the Public Infrastructure Improvements that directly benefit the Property immediately;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. The Public Infrastructure Improvements described in Exhibit B attached hereto intended to be made or caused to be made by the City are hereby designated as public infrastructure improvements that, once made, will directly benefit the Property.

SECTION 2. One hundred percent (100%) of the increase in the assessed value of each Parcel within the Property after the effective date of this Ordinance (each of which increase in assessed value is an “Improvement” as defined in R.C. Section 5709.40) is hereby declared to be a public purpose and shall be exempt from real property taxation commencing for each Parcel the earlier of the first day of the tax year in which there is an Improvement with respect to the Parcel (as it may be subdivided or combined in connection with the acquisition of the Parcel by Lancaster Development Company, LLC. or its affiliates (collectively, the “Developer”) or otherwise) and ending for each Parcel on the earlier of (a) thirty (30) years after such commencement, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of R.C. Sections 5709.40, 5709.42 and 5709.43.

SECTION 3. As provided in R.C. Section 5709.42, the Owner of any Parcel with an Improvement is hereby required to make annual service payments in lieu of taxes to the Fairfield County Treasurer (the "County Treasurer") on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvements if it were not exempt from taxation (with the payments in lieu of tax, including any penalties and interest, being the "Service Payments"). The County Treasurer shall remit all Service Payments to the City for deposit in the Timbertop Public Improvement Tax Increment Equivalent Fund established in Section 4 hereof. This Council hereby authorizes the Mayor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those Service Payments and to make such arrangements as are necessary and proper for payment of the Service Payments. Any late payments shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. The Service Payments shall be allocated and deposited in accordance with Sections 4 and 5 of this Ordinance.

SECTION 4. Pursuant to R.C. Section 5709.91 and the TIF Agreement (as defined in Section 7 below), in order to ensure sufficient funds to finance the Public Infrastructure Improvements during the period when the exemption granted by this Ordinance is in effect for each parcel, the Owner or Owners of each Parcel are hereby required to make, and shall make, minimum service payments with respect to the Improvements on each such Parcel to or as directed by the City on or before the dates for such payments directed in the TIF Agreement. Each minimum service payment shall be in the amounts specified in the TIF Agreement and memorialized in a recorded instrument recorded on each Parcel.

SECTION 5. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. Section 5709.43, the Timbertop Public Improvement Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited (i) all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. Section 5709.42, (ii) any minimum service payments actually received by the City, and (iii) any amounts returned to the City as provided in the TIF Agreement (as defined below), and hereby appropriates all of the moneys deposited in the Fund from time to time to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, compensation payments to be made to the School District under the Revenue Sharing Agreement and the "costs of permanent improvements" described in R.C. Section 133.15(B).

The Fund shall remain in existence so long as Service Payments and minimum service payments are collected and used for the aforesaid purposes, subject to the limits set forth in Section 2 hereof, after which said Fund shall be dissolved in accordance with R.C. Section 5709.43(D). Upon dissolution, any incidental surplus money remaining in the Fund shall be transferred to the City general fund as provided in R.C. Section 5709.43(D). The City shall distribute amounts in the Fund after each semi-annual settlement of real property taxes and in the following order of priority:

- (a) First, to the School District, the amount to be paid to the School District under and as provided in the Revenue Sharing Agreement and this Ordinance;

(b) Second, to pay the costs of the Public Infrastructure Improvements, including the costs of financing the Public Infrastructure Improvements, which payment will be accomplished by paying the amount of Service payments actually received into the Fund, less the amounts paid under paragraph (a) above, to or at the direction of the Columbus-Franklin County Finance Authority as provided in the TIF Agreement (as defined below);

(c) Third, to pay any additional costs of the Public Infrastructure Improvements, including costs of financing the Public Infrastructure Improvements; and

(d) Fourth, for any other lawful purpose.

SECTION 6. As provided in the Revenue Sharing Agreement, the City shall make annual payments to the School District, solely from the Service Payments actually received to or to the credit of the Fund, collectively in the amount equal to 75% of the property tax payments that the School District would otherwise have received from the Improvements had the Improvements not been exempted pursuant to this Ordinance. All payments to the School District shall be made under and as provided in the Revenue Sharing Agreement.

SECTION 7. This Council hereby approves the Tax Increment Financing and Cooperative Agreement with the Columbus-Franklin County Finance Authority, Lancaster Senior Living, LLC, Vision Lancaster Newco, LLC, Lancaster Development Company, LLC, Timbertop Owners' Association, Inc., and The Huntington National Bank, as trustee (the "TIF Agreement") and authorizes the City to execute, deliver, and perform the TIF Agreement. The Mayor is hereby authorized and directed, for and on behalf and in the name of the City, to execute and deliver the TIF Agreement, substantially in the form now on file with this Council, with such modifications to the form of the TIF Agreement as shall be approved by the Mayor, shall not be materially adverse to the City, and shall be consistent with this Ordinance, all of which shall be conclusively evidenced by the Mayor's signature on the TIF Agreement.

This Council further hereby approves the Revenue Sharing Agreement with the School District (the "Revenue Sharing Agreement") and authorizes the City to execute, deliver, and perform the Revenue Sharing Agreement. The Mayor is hereby authorized and directed, for and on behalf and in the name of the City, to execute and deliver the Revenue Sharing Agreement, substantially in the form now on file with this Council, with such modifications to the form of the Revenue Sharing Agreement as shall be approved by the Mayor, shall not be materially adverse to the City, and shall be consistent with this Ordinance, all of which shall be conclusively evidenced by the Mayor's signature on the Revenue Sharing Agreement.

The Mayor is further hereby authorized to execute and deliver any additional agreements or instruments as the Mayor shall deem necessary to carry out the purposes of this Ordinance, the TIF Agreement, and the Revenue Sharing Agreement, and the City is hereby authorized to perform its obligations under any of those agreements or instruments.

SECTION 8. This Council hereby authorizes the Mayor or other appropriate officers of the City to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance, including the filing of one or more applications for exemption and any related forms in accordance with R.C. Section 5709.911.

SECTION 9. This Council hereby designates the tax incentive review council (the "TIRC") established in Permanent Resolution No. 75-21, as the TIRC that shall annually review the exemptions provided pursuant to this Ordinance as required by R.C. Section 5709.85.

SECTION 10. The City hereby incorporates by reference the nondiscriminatory hiring policies for recipients of exemptions described in Permanent Resolution No. 75-21, and hereby provides that such nondiscriminatory hiring policies shall apply to the exemptions granted pursuant to this Ordinance.

SECTION 11. The Mayor, or any other official, as appropriate, are each authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the actions described herein or contemplated by this Ordinance.

SECTION 12. Pursuant to R.C. Section 5709.40(I), the Mayor is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Development Services Agency ("DSA") within fifteen (15) days after its passage. On or before March 31 of each year that the exemption set forth in Section 2 hereof remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director of DSA the status report required under R.C. Section 5709.40(I).

SECTION 13. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

SECTION 14. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of this City and for the other reasons set forth in the preamble to this Ordinance is required to be immediately effective to allow for the construction of the Public Infrastructure Improvements, which are necessary to provide for economic development in the City, wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 6/14/21 after 1st reading. Vote: Yeas 9 Nays 0

Approved: 6/14/21

Clerk: Jeresa Lee Sandy

Offered by: Don H. McLean

Second by: Kurt M. Ault

Requested by Economic Development Committee

David A. Cole
President of Council
Robert H. Schepfle
Mayor

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2021 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

EXHIBIT A to TIF Ordinance

DESCRIPTION OF PARCELS AFFECTED BY THE IMPROVEMENT

The Property is the real estate described as follows:

Situated in the City of Lancaster, Fairfield County, Ohio:

Known as and being Lots 1 and 2 and Block A in Timbertop Subdivision (Phase One), the Plat of which was recorded February 26, 2021 in Document No. 20210005300/Plat Cabinet 3, Page 76 of the Fairfield County Records.

Parcel Numbers: 053-23277-00
 053-23278-00
 053-23279-00

The Property is further depicted on the following page:

EXHIBIT B to TIF Ordinance

DESCRIPTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements may include, but are not limited to, the following:

Sanitary, storm, roadways and turning lane, erosion control, water vales and improvements, site clearance, street lighting, utility relocation, landscaping, utilities, and other related improvements and all permitted costs of such improvements, including, without limitation, permitted costs of permanent improvements under Ohio Revised Code Section 133.15(B).