

ORDINANCE NO. 28-24

By: Jessica Saad

**An Ordinance Approving the Necessity of Certain Public Improvements in the City of Bexley, Ohio; Determining to Proceed With Those Improvements; Levying Special Assessments for the Purpose of Paying the Costs of Those Improvements; Approving a Cooperative Agreement and a Special Assessment MOU with Respect to the Special Assessments; and Dispensing With Three Readings**

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, CAG Bexley Apts, LLC (“Owner”) has identified certain real property located at 2160-2184 E Main Street (the “Project Site”) in the City of Bexley, Ohio (the “City”), which real property is owned by the Owner, as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Bexley, Columbus, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, Whitehall, Worthington Regional Energy Special Improvement District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID and established pursuant to Resolution No. 0261X-2015 of the Council of the City of Columbus, Ohio approved on November 23, 2015 (the “Creation Resolution”); and

WHEREAS, pursuant to the Creation Resolution, the Columbus Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the “Program Plan”) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F), which plan allows for additional properties within the City of Columbus, Ohio and within any municipal corporation or township which is adjacent to any other municipal corporation or township in which a portion of the District’s territory is located to be added to the territory of the District; and

WHEREAS, the Owner submitted to the Mayor and the Council of the City (the “Council”), a *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”), together with a *Supplement to Plan for Bexley Gateway, Bexley, Ohio Project* (the “Supplemental Plan”), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of Council; and

WHEREAS, this Council approved the Petition and the Supplemental Plan on [\_\_\_\_\_, 2024] by its Resolution No. 06-24; and

WHEREAS, in the Petition, the Owner requests that a portion of the costs of acquiring, constructing, equipping, and improving the special energy improvement projects described in the Supplemental Plan (the “Project”) be paid for by special assessments assessed upon the Project Site (the “Special Assessments”) in an amount sufficient to pay a portion of the costs of the Project; and

WHEREAS, this Council has determined to levy the Special Assessments on the Project Site to pay a portion of the costs of the Project, all as requested and further described in the Petition and in the Supplemental Plan; and

WHEREAS, the claims for damages alleged to result from and objections to the Project have been waived 100% of the affected property owners and no claims for damages have been filed;

WHEREAS, the City intends to enter into a Cooperative Agreement (the “Cooperative Agreement”) with the District, the Owner, and the Columbus-Franklin County Finance Authority (together with its successors and assigns, the “Investor”) to provide for, among other things, (i) the Investor issuing the Investor’s Series 2024 Bonds in order to make a portion of the proceeds of the Series 2024 Bonds available to pay a portion of the costs of the Project and to finance the costs of the special energy improvement projects described in the Petition (such issuance, the “Project Advance”), (ii) the Owner acquiring, constructing, installing, equipping, and improving the Project, (iii) the Owner agreeing to pay special assessments in the maximum amount of the Special Assessments in an aggregate amount that will provide revenues sufficient to pay the Financing Payments (as defined in the Cooperative Agreement); and

WHEREAS, to provide for the security for the Project Advance and for the administration of payments on the Project Advance and related matters, the City intends to enter into a Memorandum of Understanding with respect to the Special Assessments with the County Treasurer of Franklin County, Ohio (the “County Treasurer”), the District, the Owner, and the Investor (the “Special Assessment MOU”);

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

**Section 1** That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Project Petition.

**Section 2** That this Council declares necessary, and a vital and essential public purpose of the City, to improve the Project Site by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition and the Supplemental Plan, and providing for the payment of a portion of the costs of the Project, which may include 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; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan 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, including any credit enhancement fees, trustee fees, and District administrative fees and expenses; together with any other necessary expenditures, all as more fully described in the Petition and the Supplemental Plan, all of which are on file with the Clerk of Council and open to the inspection of all persons interested.

**Section 3** That this Council determines that the Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the 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 Project’s elements shall be treated as a single

improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

**Section 4** That the Supplemental Plan, including the description of the Project and the total cost of the Project, now on file in the office of the Clerk of the Council is approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the Supplemental Plan.

**Section 5** That this Council declares that the Project 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); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition and the Supplemental Plan. This Council determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

**Section 6** That pursuant to and subject to the provisions of a valid Petition signed by the owners of 100% of the Project Site, the entire portion of the cost of the Project requested to be paid under the Petition and the Supplemental Plan shall be paid by the Special Assessments levied against the Project Site, which is the benefited property. The portion of the costs of the Project allocable to the City will be 0%, and the portion of the costs of the Project allocable to the Owner will be 100%. The City does not intend to issue securities in anticipation of the levy or collection of the Special Assessments.

**Section 7** That the method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Project Site, as set forth in the Petition and the Supplemental Plan, and that the Special Assessments are in proportion to the special benefits received by the Project Site as set forth in the Petition and are not in excess of any applicable statutory limitation.

**Section 8** That the lots or parcels of land to be assessed for the Project shall be the Project Site, described in the Supplemental Plan, all of which lots and lands are determined to be specially benefited by the Project.

**Section 9** That the list of maximum Special Assessments to be levied and assessed on the Project Site in an amount sufficient to pay a portion of the costs of the Project, which is \$[\_\_\_\_\_], which costs were set forth in the Supplemental Plan and previously reported to this Council and are now on file in the offices of the City Auditor, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Project Site. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the County Auditor of Franklin County, Ohio (the "County Auditor") may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor.

As requested in the Petition, the final aggregate amount of the Special Assessments may be in an amount equal to or less than the aggregate maximum amount of \$[\_\_\_\_\_] if the final rate of interest for the financing for the Project is equal to or less than the assumed maximum rate of interest such that the

aggregate amount of Special Assessments necessary to repay the financing for the Project is equal to or less than the aggregate amount of \$[\_\_\_\_\_]; the Owner and the provider of the financing shall certify a final schedule of Special Assessments to the City, which final schedule shall be certified to the County Auditor for collection.

The Special Assessments are assessed against the Project Site in tax year [\_\_\_\_\_] for collection in [\_\_\_\_\_]. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to or less than the maximum semi-annual amounts of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

The Special Assessments shall be allocated among the parcels constituting the Project Site as set forth in the Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

The period over which the services and improvements provided pursuant to the Supplemental Plan are useful is determined to be in excess of one year.

The Special Assessments will be used by the City to provide for the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

**Section 10** That the City Auditor or the City Auditor's 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 Project.

**Section 11** That this Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of the Owner 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 Bexley, Ohio, and consents to the immediate imposition of the Special Assessments upon the Project Site.

**Section 12** That the Owner has waived its right to pay the Special Assessments in cash within 30 days after the passage of this Ordinance, and all Special Assessments and installments of the Special Assessments shall be certified by the County Auditor as provided by the Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

**Section 13** That the City Auditor shall keep the Special Assessments on file in the Office of the City Auditor.

**Section 14** That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Council is directed to deliver a certified copy of this Ordinance to the County Auditor within 15 days after its passage.

**Section 15** That this Council hereby approves the Cooperative Agreement, a copy of which is on file with the Clerk of Council. The Mayor, the City Auditor, the Law Director, or their designees, shall sign and deliver, in the name and on behalf of the City, the Cooperative Agreement, in substantially the form as is

now on file with the Clerk of Council. The Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor, the City Auditor, the Law Director, or their designees, in the name and on behalf of the City, all of which shall be conclusively evidenced by the signing of the Cooperative Agreement or amendments to the Cooperative Agreement.

**Section 16** That this Council hereby approves the Special Assessment MOU, a copy of which is on file in the office of the Clerk of Council. The Mayor, the City Auditor, the Law Director, or their designees, shall sign and deliver, in the name and on behalf of the City, the Special Assessment MOU, in substantially the form as are now on file with the Clerk of Council. The Special Assessment MOU is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor, the City Auditor, the Law Director, or their designees, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Special Assessment MOU or amendments to the Special Assessment MOU.

**Section 17** That the Mayor, the City Auditor, the Law Director, or their designees are hereby authorized to enter into such other agreements that are not inconsistent with this Ordinance and that are approved by the Mayor, the City Auditor, the Law Director, or their designees, on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

**Section 18** 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 19** That this Ordinance shall go into effect and be in full force from and after the earliest period allowed by law.

[Signature Page Follows]

Passed \_\_\_\_\_, 2024

\_\_\_\_\_  
Monique Lampke, President of Council

Attest: \_\_\_\_\_, 2024  
Matt McPeck, Clerk of Council

Approved: \_\_\_\_\_, 2024

\_\_\_\_\_  
Benjamin Kessler, Mayor

First Reading:  
Second Reading:  
Third Reading:

**EXHIBIT A**

**LIST OF SPECIAL ASSESSMENTS AND  
SCHEDULE OF SPECIAL ASSESSMENTS**

LIST OF SPECIAL ASSESSMENTS

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Maximum Amount of Special Assessments</u>
CAG Bexley Apts, LLC	020-000350	100.00%	\$_[_____]

SCHEDULE OF MAXIMUM SPECIAL ASSESSMENTS  
FOR FRANKLIN COUNTY PARCEL NOS.:

020-000350\*

The following schedule of maximum Special Assessment charges shall be certified for collection in two semi-annual installments to be collected with real property taxes in calendar years [2027 through 2053], as follows:

Special Assessment Date**	Maximum Special Assessment Amount***
[June 1, 2027	\$[ ]
December 1, 2027	[ ]
June 1, 2028	[ ]
December 1, 2028	[ ]
June 1, 2029	[ ]
December 1, 2029	[ ]
June 1, 2030	[ ]
December 1, 2030	[ ]
June 1, 2031	[ ]
December 1, 2031	[ ]
June 1, 2032	[ ]
December 1, 2032	[ ]
June 1, 2033	[ ]
December 1, 2033	[ ]
June 1, 2034	[ ]
December 1, 2034	[ ]
June 1, 2035	[ ]
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December 1, 2038	[ ]
June 1, 2039	[ ]
December 1, 2039	[ ]
June 1, 2040	[ ]
December 1, 2040	[ ]
June 1, 2041	[ ]
December 1, 2041	[ ]
June 1, 2042	[ ]
December 1, 2042	[ ]
June 1, 2043	[ ]
December 1, 2043	[ ]
June 1, 2044	[ ]
December 1, 2044	[ ]

June 1, 2045	<input type="checkbox"/>
December 1, 2045	<input type="checkbox"/>
June 1, 2046	<input type="checkbox"/>
December 1, 2046	<input type="checkbox"/>
June 1, 2047	<input type="checkbox"/>
December 1, 2047	<input type="checkbox"/>
June 1, 2048	<input type="checkbox"/>
December 1, 2048	<input type="checkbox"/>
June 1, 2049	<input type="checkbox"/>
December 1, 2049	<input type="checkbox"/>
June 1, 2050	<input type="checkbox"/>
December 1, 2050	<input type="checkbox"/>
June 1, 2051	<input type="checkbox"/>
December 1, 2051	<input type="checkbox"/>
June 1, 2052	<input type="checkbox"/>
December 1, 2052	<input type="checkbox"/>
June 1, 2053	<input type="checkbox"/>
December 1, 2053]	<input type="checkbox"/>

\* As identified in the records of the County Auditor of Franklin County, Ohio as of August 27, 2024.

\*\* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the County Auditor of Franklin County, Ohio under certain conditions.

\*\*\* The County Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the County Auditor of Franklin County, Ohio to each semi-annual Special Assessment payment.

CERTIFICATE

The undersigned Clerk of the Council hereby certifies that the foregoing is a true copy of Ordinance No. \_\_\_\_-24 duly adopted by the Council of the City of Bexley, Ohio on \_\_\_\_\_, 2024 and that a true copy thereof, together with the Schedule of Special Assessments attached thereto, was certified to the County Auditor of Franklin County, Ohio within 15 days of its adoption.

\_\_\_\_\_  
Clerk of the Council  
City of Bexley, Ohio

RECEIPT OF COUNTY AUDITOR FOR  
ORDINANCE APPROVING THE NECESSITY OF CERTAIN  
PUBLIC IMPROVEMENTS IN THE CITY OF BEXLEY, OHIO;  
DETERMINING TO PROCEED WITH THOSE  
IMPROVEMENTS; LEVYING SPECIAL ASSESSMENTS FOR  
THE PURPOSE OF PAYING THE COSTS OF THOSE  
IMPROVEMENTS; APPROVING A COOPERATIVE  
AGREEMENT AND A SPECIAL ASSESSMENT MOU WITH  
RESPECT TO THE SPECIAL ASSESSMENTS; AND  
DISPENSING WITH THREE READINGS

I, Michael Stinziano, the duly elected, qualified, and acting Auditor in and for Franklin County, Ohio hereby certify that a certified copy of Ordinance \_\_-24, duly adopted by the Council of the City of Bexley, Ohio on \_\_\_\_\_, 2024, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges shall be certified for collection in two semi-annual installments to be collected with first-half and second-half real property taxes in calendar years [2027 through 2053], was filed in this office on \_\_\_\_\_, 2024.

WITNESS my hand and official seal at Columbus, Ohio on \_\_\_\_\_, 2024.

[SEAL]

\_\_\_\_\_  
Auditor  
Franklin County, Ohio