

ORDINANCE NO. 131-2017 (MS),  
*Second Reading*

By Council Member Yasinow

An Ordinance authorizing the City Manager to execute a Natural Gas Program Agreement with the Northeast Ohio Public Energy Council (“NOPEC”); and declaring an emergency.

WHEREAS, in November 2001, the electors of the City approved the City’s authority to automatically aggregate in accordance with Revised Code Section 4929.26; and

WHEREAS, under Section 4929.26, the City is authorized to establish an opt-out natural gas aggregation program for the benefit of eligible natural gas consumers located within the City;

WHEREAS, under Section 4929.26, Ohio Revised Code, the City may exercise such authority jointly with other political subdivisions in the State of Ohio; and

WHEREAS, governmental aggregation provides an opportunity for natural gas consumers collectively to participate in the potential benefits of natural gas deregulation through lower gas rates which they would not otherwise be able to have individually.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby finds and determines that it is in the best interest of the City and its residents, including eligible natural gas consumers located within the City, to establish an opt-out natural gas aggregation program (the “Gas Aggregation Program”) in the City, and to enter into a Natural Gas Program Agreement with the Northeast Ohio Public Energy Council (“NOPEC”) in order to establish a Gas Aggregation Program through NOPEC.

SECTION 2. The City Manager is hereby authorized to execute and deliver the Natural Gas Program Agreement of NOPEC (the “Gas Program Agreement”). The Gas Program Agreement shall be substantially in the form attached as Exhibit A hereto, subject to such changes, insertions and omissions which are consistent with this Ordinance and are not substantially adverse to the City and as may be approved by the City Manager and approved by the Director of Law as to form, which approval shall be conclusively evidenced by execution of the Gas Program Agreement.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being to maximize the potential

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benefits of gas deregulation through the Gas Aggregation Program of NOPEC, as provided herein. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of Council

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LAURIE SABIN  
Clerk of Council

PASSED: January 2, 2018

# EXHIBIT A

**NATURAL GAS PROGRAM AGREEMENT  
OF  
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

This Natural Gas Program Agreement of the Northeast Ohio Public Energy Council (the “Agreement”) is entered into as of \_\_\_\_\_, 2017, by and among the Northeast Ohio Public Energy Council, a regional council of governments organized pursuant to Revised Code Chapter 167 (“NOPEC” or “Council”) and the municipal corporations, counties and townships of the State of Ohio (each a “Participant” and together, the “Participants”) that have executed this Agreement, listed on Exhibit A hereto.

**RECITALS:**

WHEREAS, each Participant entered into an Agreement Establishing the Northeast Ohio Public Energy Council pursuant to Revised Code Chapter 167, for the purpose of carrying out an electricity aggregation program (the “Council Agreement”) and any Additional Programs which the Participants may approve, from time to time, and which are authorized under the laws of the State;

WHEREAS, NOPEC has determined to undertake an opt-out natural gas program on a cooperative basis (the “Gas Aggregation Program”) by which eligible natural gas consumers located within a Member’s jurisdiction will purchase natural gas from the Supplier unless the consumer opts out of the Gas Aggregation Program;

WHEREAS, each Participant that is a signatory to this Agreement has adopted the necessary resolutions and/or ordinances to submit a ballot question to its electors and such electors have authorized each such Participant to undertake a natural gas opt-out program in such participating community, and each Participant has been authorized to participate in the Gas Aggregation Program and execute and deliver this Agreement; and

WHEREAS, it is necessary to create and adopt guidelines for the management and administration of the Gas Aggregation Program.

NOW, THEREFORE, it is agreed by and among NOPEC and the Participants whose representatives have executed this Agreement in accordance with the authorizing resolution(s) and/or ordinance(s) that:

Section 1.     Definitions.

As used in this Agreement, capitalized words and phrases shall have the meanings given to them in the Agreement Establishing the Northeast Ohio Public Energy Council, herein called the “Council Agreement,” and the Bylaws Governing the Northeast Ohio Public Energy Council, herein called the “Bylaws.” In addition, the following words shall have the following meanings:

“Agreement” means this Natural Gas Program Agreement of the Northeast Ohio Public Energy Council, as the same may be amended, modified or supplemented in accordance with Section 6 hereof.

“Customer(s)” means those natural gas customers located within the jurisdiction of a Participant that is participating in the Gas Aggregation Program and who is not a person described in Revised Code Section 4929.26(A)(2).

“Gas Aggregation Program” means the Natural Gas Program of NOPEC.

“Supplier” means any person, corporation, partnership or other entity with which NOPEC may contract for the purchase of natural gas.

Section 2. Arrangements for Aggregation of Natural Gas.

On behalf of the Participants, NOPEC may enter into one or more contracts with one or more Supplier(s) to supply Customers with natural gas. The selection of each Supplier shall be determined and approved at the sole and absolute discretion of the Board of Directors.

Section 3. Management and Operation of Program.

The Board of Directors of the Council, established pursuant to the Council Agreement, shall have, in addition to its powers and duties under the Council Agreement and the Bylaws adopted by the representatives to the Council, the power and authority to oversee and manage the operation of the Gas Aggregation Program in accordance with the NOPEC Natural Gas Aggregation Program Plan of Operation and Governance adopted pursuant to division (C) of Section 4929.26 of the Revised Code.

Section 4. Withdrawal of a Participant.

- (a) Any Participant wishing to withdraw from participation in the Gas Aggregation Program shall notify NOPEC at least nine (9) months prior to the end of any the NOPEC Gas Aggregation Program’s primary two (2) year opt-out period in such Member’s community in strict compliance with the procedure described in Section 4(b) hereof. Such withdrawal shall cause such Participant’s participation in the Gas Aggregation Program to be terminated which termination shall not be effective until (i) the end of any such two (2) year opt-out period in such Member’s community; and (ii) such withdrawing Participant has paid to NOPEC the Gas Withdrawal Fee (as defined in Section 4 (c) hereof).
- (b) Any notification of withdrawal of a Participant must include a (i) certified copy of duly adopted legislation of the governing body of the withdrawing Participant authorizing such withdrawal; and (ii) fiscal officer’s certificate executed by the appropriate fiscal officer of such withdrawing Participant evidencing that the

withdrawing Participant has appropriated funds sufficient to pay NOPEC the Gas Withdrawal Fee.

- (c) Provided that NOPEC does not charge its Participants a fee to be a member of NOPEC, any Participant seeking to withdraw from NOPEC's Gas Aggregation Program, prior to its withdrawal, shall pay NOPEC a withdrawal fee for withdrawing from the Gas Aggregation Program. Such withdrawal fee shall be calculated by NOPEC (whose calculation shall be final and presumed conclusively correct) and shall be the amount NOPEC would have received as an administrative fee from the Supplier to the Gas Aggregation Program with respect to the Customers served in the withdrawing Participant's community during a one (1) year period (the "Gas Withdrawal Fee").
- (d) After withdrawal, the withdrawing Participant may not become a Participant again until it has fully complied with the procedures contained in Section 5 hereof.

Section 5. Inclusion of Additional Participants.

Any Ohio municipal corporation, county or township may apply to the Board of Directors for inclusion in the Gas Aggregation Program by submitting an application in writing. In such case, such application shall be accompanied by a duly adopted ordinance or resolution of the applicant's governing body submitting a ballot question to its electors; certified election results showing passage of such ballot issue; and a duly adopted ordinance or resolution requesting inclusion in the NOPEC's Gas Aggregation Program and authorizing execution of this Agreement by the applicant. The applicant shall submit to the Board of Directors information concerning its natural gas requirements and any other documentation or other records requested by the Board of Directors or the Fiscal Agent. Thereafter, the Board of Directors shall determine whether and at what time the applicant should be included in the Gas Aggregation Program. The applicant shall be included in the Gas Aggregation Program and deemed a Participant on the date recommended by the Board of Directors if its participation is approved by the Board of Directors, the applicant executes this Agreement and adopts the NOPEC Plan of Operation and Governance.

Section 6. Amendments.

This Agreement may be modified, amended or supplemented in any respect not prohibited by law upon approval of the modification, amendment or supplement by the governing bodies of at least two-thirds (2/3) of the Participants.

Section 7. Term of the Agreement.

It is the express intention of the Participants that this Agreement shall continue for an indefinite term, but may be terminated as provided in Section 8.

Section 8. Termination.

In the event that two-thirds (2/3) of the governing bodies of the Participants, by duly adopted resolutions, determine that this Agreement shall be terminated, the Board of Directors shall meet, within thirty (30) days following receipt of certified copies of such resolutions, to determine the date upon which this Agreement and the activities and operations of the Program shall terminate and to make recommendations to the Participants with respect to matters which must be resolved upon termination of the Program which are not addressed by this Agreement.

Section 9. Miscellaneous.

This Agreement shall be construed under the laws of the State of Ohio. If the date on which any action or payment required to be taken or made under this Agreement is a Saturday, Sunday or legal holiday in the State of Ohio, that action shall be taken or that payment shall be made on the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 10. Effectiveness.

This Agreement shall be effective when executed by at least ten (10) of the Participants listed in Appendix A attached to this Agreement. Each Participant executing this Agreement shall deliver to the Fiscal Agent a certified copy of the resolution of its governing body authorizing execution of this Agreement.

Section 11. Notices: Reports: Miscellaneous.

Any notice to a Participant required to be in writing shall be deemed given if left at the office of the Assembly representative of such Participant or deposited in the United States mail, postage prepaid, by registered mail addressed to that representative. As to NOPEC, any notice required to be in writing shall be deemed given if deposited in the United States mail, postage prepaid, by certified mail addressed to:

Northeast Ohio Public Energy Council  
31320 Solon Road  
Suite 33  
Solon, OH 44139  
Attention: Chairman

IN WITNESS WHEREOF, the undersigned representatives of the respective Participants, pursuant to the duly adopted authorizing resolutions of their governing boards, have on behalf of their respective Participants signed this Agreement.

NORTHEAST OHIO PUBLIC ENERGY COUNCIL

By: \_\_\_\_\_  
Ron McVoy, Chairman

PARTICIPANT

CITY OF CLEVELAND HEIGHTS

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPENDIX A**

Participants

Village/City/Township of Boston Heights , Summit County