

MUNICIPAL NEW COMMUNITY AUTHORITIES
(Chapter 349 of the Revised Code)

(Updated through 131 HB 64)

A. Introduction

This outline provides an overview of new community authorities (NCAs) formed pursuant to Chapter 349 of the Revised Code. NCAs are empowered with a variety of economic development tools such as the power to raise revenue via collection of a community development charge, the ability to issue tax-exempt bonds, and the power to construct, own and maintain public infrastructure improvements and other community facilities. NCAs are frequently used to help fund and manage challenges presented by urban redevelopment projects and larger greenfield development projects. Projects can include both residential and commercial uses.

Procedures for the creation of an NCA and the appointment of members of the NCA's board of trustees differ depending on the identity of the "organizational board of commissioners" for the NCA. For an NCA that is located entirely within the boundaries of a municipal corporation, or where more than half of the NCA is located within the boundaries of the most populous municipal corporation of a county, the legislative authority of the municipal corporation (referred to in this outline as "City Council"). This outline addresses only those NCAs where City Council serves as the "organizational board of commissioners".

B. Executive Summary

1. An NCA is a separate public body corporate and politic of the State of Ohio formed pursuant to Chapter 349 of the Revised Code (the "NCA Act").
2. An NCA is governed by a board of trustees. The Board is comprised of 7, 9, 11 or 13 members. A majority of the initial board is appointed by City Council. A private developer cannot appoint the majority of board members at any time.
3. An NCA can support development of its new community district by constructing, owning and maintaining infrastructure, levying and collecting community development charges and issuing bonds, including tax exempt bonds.
4. The geographic area of an NCA's new community district is defined in a petition by the developer(s) of the NCA submitted to and subject to approval by City Council.
5. An NCA has no power over zoning, provision of police or fire protection or, unless such services cannot be obtained from the City or another political subdivision, water supply or sewage treatment and disposal.

C. NCAs Can Construct and Own a Variety of Infrastructure Improvements

1. An NCA can engage in "land development" activities and construct and maintain "community facilities". An NCA can also acquire real property necessary for its community development program. In many cases, the building and construction materials used for infrastructure improvements owned or to be owned by an NCA are exempt from State and local sales taxes.

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2. “Land Development” is defined by the NCA Act to include: “the process of clearing and grading land, making, installing, or constructing water distribution systems, sewers, sewage collection systems, steam, gas, and electric lines, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, and other installations or work, whether within or without the new community district, and the construction of community facilities.”

3. “Community Facilities” are defined by the NCA Act to include: “all real property, buildings, structures, or other facilities, including related fixtures, equipment, and furnishings, to be owned, operated, financed, constructed, and maintained under this chapter or in furtherance of community activities, including public, community, village, neighborhood, or town buildings, centers and plazas, auditoriums, day care centers, recreation halls, educational facilities, health care facilities including hospital facilities as defined in section 140.01 of the Revised Code, telecommunications facilities, including all facilities necessary to provide telecommunications service as defined in section 4927.01 of the Revised Code, recreational facilities, natural resource facilities, including parks and other open space land, lakes and streams, cultural facilities, community streets and off-street parking facilities, pathway and bikeway systems, pedestrian underpasses and overpasses, lighting facilities, design amenities, or other community facilities, and buildings needed in connection with water supply or sewage disposal installations, or energy facilities including those for renewable or sustainable energy sources, and steam, gas, or electric lines or installation.”

D. NCAs Can Raise Money by Collecting a Community Development Charge

1. The NCA Act authorizes an NCA to levy and collect a community development charges (“Charges”) to fund its activities. There are a number of ways that Charges can be calculated and collected. One common element is that the affected property owner must agree to pay the Charges. This agreement is memorialized in a declaration of covenants recorded with the County Recorder. The agreement to pay Charges runs with the land by way of the declaration and binds subsequent property owners.

2. Charges may be calculated based on assessed valuation, the income of residents (for residential use property) or the profits, gross receipts (ie sales) or other revenues (ie lease revenue) of businesses in the NCA district, a uniform or other fee per parcel, or a combination of the foregoing.

a. If Charges are determined on the basis of lease rental income, improvements to any real property subject to those Charges may not be exempted from taxation under section 5709.40 or 5709.41, 5709.73, or 5709.78 of the Revised Code (i.e. tax increment financing statutes).

3. Charges are not considered property taxes, but an NCA may certify Charges to the County Auditor, who will enter the Charges as a lien against the property and collect the Charges on property tax bills.

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4. Proceeds of Charges may be used to pay:
 - a. Debt service on bonds issued to pay costs of land acquisition, land development, and community facilities; and
 - b. Costs of the acquisition, construction, operation and maintenance of land, land development and community facilities, and any other cost incurred by the NCA in the exercise of its powers.

E. NCAs Can Issue Bonds, Including Tax-Exempt Bonds, to Fund Infrastructure Improvements

1. Like Charges, NCA bond proceeds may be used for NCA purposes, including land acquisition and development, or the acquisition or construction of community facilities.
2. NCA bonds are payable from Charges or other “income sources.” These other income sources commonly include tax increment financing revenues assigned to the NCA by a municipality.
3. Interest on NCA bonds can be exempt from federal income taxation, allowing for more favorable financing terms. Tax analysis is required to determine whether a particular issue of NCA bonds qualifies for the tax exemption.
4. NCA bonds are not a debt of the developer or the municipality that forms the NCA, and are not a debt of the State of Ohio or any of its subdivisions.

F. NCAs are Created by Property Developers and Approved by City Council

1. To form and NCA, a developer (or combination of developers) that “owns and controls” the land to be included in the NCA and its new community district must prepare and file a petition to create the NCA. “Control” can be demonstrated via fee ownership, long-term leases (75+ years) or purchase options. “Developer” may also mean a person, municipal corporation, county, or port authority that controls land within a new community district through leases of at least seventy-five years' duration.
2. The petition is filed with the “Organizational Board of Commissioners”. For a new community district that is located entirely within the boundaries of a municipal corporation or for a new community district where more than half of the new community district is located within the boundaries of the most populous municipal corporation of a county, the legislative authority of the municipal corporation (“City Council”).
3. City Council determines whether the form of the petition is sufficient, in accordance with the Revised Code, and if so, accepts the petition and sets a date for a public hearing on the creation of the NCA.

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4. Following the public hearing, City Council must determine whether the NCA will be conducive to the public health, safety, convenience, or welfare and will result in the intended development.

5. The formation process generally takes 30-60 days from the date the petition is submitted to City Council.

6. A similar process must be followed for the subsequent expansion or contraction of the NCA following its creation. A petition to expand or contract the NCA district must be filed with City Council.

7. See **NCA Formation Procedures** and **NCA Petition Items** below for further description of the procedures for the creation of an NCA and the required contents for the petition.

G. Powers of a New Community Authority

1. NCAs have no power over zoning, provision of police or fire protection or, unless such services cannot be obtained from another political subdivision, water supply or sewage treatment and disposal.

2. An NCA has the power to:

- a. Acquire real and personal property.
- b. Improve and sell, lease or otherwise dispose of real and personal property.
- c. Landscape and otherwise aesthetically improve areas within its new community district.
- d. Provide, engage in, or sponsor recreational, educational, health, social, cultural, beautification, and amusement activities primarily for residents of, visitors to, employees working within, or employers operating in the district, or any combination thereof.
- e. Collect service fees to cover new community development program costs.
- f. Adopt and enforce reasonable rules and regulations governing the use of community facilities.
- g. Employ staff, hire contractors and retain professional service providers.
- h. Sue and be sued.
- i. Enter into contracts, including with private parties and other public bodies, relating to the new community development program.

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- j. Apply for and accept grants, loans, guarantees, or bond insurance from the Federal Government, the state, or any other public body.
- k. Procure insurance.
- l. Maintain reserves.
- m. Enter into agreements with neighboring school districts whereby the NCA acquires, constructs, equips, sells, leases, or dedicates lands, schools, classrooms, or other facilities for the school district.
- n. Prepare plans for the acquisition of land and for development of land and facilities and enter into agreements with city, county or regional planning commissions to provide planning services.
- o. Engage in development planning for the new community district and engage in land acquisition and land development in accordance with those plans.
- p. Issue debt to fund land acquisition, land development activities and the construction of community facilities.
- q. Enforce covenants running with the land that benefit the NCA, including covenants pertaining to the collection of Charges, and waive, reduce or terminate Charges to the extent not prohibited by covenants of the NCA.
- r. Appropriate land, easements, or rights within the new community district needed for community facilities.
- s. Enter into any agreements as may be necessary, appropriate, or useful to support a new community development program, including, but not limited to, cooperative agreements or other agreements with political subdivisions for services, materials, or products; for the administration, calculation, or collection of community development charges; or for sharing of revenue derived from community development charges, community facilities, or other sources. The agreements may be made with or without consideration as the parties determine.

H. Appointment of the Board of Trustees

- 1. Board members should be appointed by City Council and the developer within ten days after City Council approves the formation of the NCA.
- 2. City Council appoints three (not more than six) initial citizen members. The developer appoints an equal number of initial developer members to serve as its representatives. City Council also appoints one representative of local government.
- 3. Once the population of the NCA's new community district reaches certain thresholds set forth in the NCA Act, replacement members of the Board of Trustees are elected

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by residents of the district on a rolling basis. City Council may, however, eliminate elections and establish alternative methods of selecting replacement members (such as continuing to appoint members).

4. Board members may be removed by City Council for malfeasance or nonfeasance. Developer appointees may be removed by the developer at any time without cause.

5. Board members must post a bond in the amount set by City Council. The amount of the bond must be at least \$10,000.

6. The NCA Act provides exemptions from certain ethics laws for developer appointees. These exemptions do not apply to City Council appointees or elected members.

I. Dissolution of an NCA

1. Dissolution of an NCA generally requires filing of a petition for dissolution with the NCA board of trustees signed by qualified electors equal to at least 8% total of votes cast at most recent gubernatorial election within new community district. The NCA board of trustees then calls an election of residents. The NCA is dissolved if a majority approves.

2. An NCA may not be dissolved if NCA debt is outstanding or if the NCA board of trustees determines mission of the NCA is not complete.

3. City Council can proscribe different criteria and procedures for dissolution.

4. Upon dissolution, any NCA property of the vests with the City or with the developer or the developer's designee, all as provided in City Council legislation.

J. NCA Formation Procedures

The following is an overview of the chronology of events which occur in the formation of an NCA:

1. The petition for organization of an NCA is prepared by or on behalf of the developer(s) of the real property to be included in the NCA's new community district. Items to be included in the petition are discussed below under **NCA Petition Items** below.

2. The petition is filed by the developer in the office of the clerk of City Council.

3. Upon the filing of the petition, City Council determines whether the petition contains all of the required materials.

4. If City Council determines that the petition is sufficient, it fixes the time and place of a hearing on the petition. Generally, the hearing must be held not less than 30 nor more than 45 days after the petition filing date. However, if the NCA's new community district is located within more than one municipality and all municipalities have not consented to the petition, the hearing is to be held not less than 95 nor more than 115 days after the petition filing date.

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5. The clerk of City Council gives notice of the hearing by publication once each week for three consecutive weeks in a newspaper of general circulation in any county where a portion of the proposed NCA new community district is located.

6. The clerk also gives written notice of the date, time, and place of the hearing and furnishes a certified copy of the petition to the clerk of the legislative authority of any proximate city that did not sign the petition. This step is not required if the NCA district is wholly contained in one municipality.

7. If the NCA district is not wholly contained in one municipality and the legislative authority of any proximate city that did not sign the petition fails to approve the establishment of the proposed NCA within 90 days after the date of the first publication of the notice of the hearing, City Council must cancel the hearing and terminate the proceedings for the establishment of the NCA.

8. Upon the hearing, if City Council finds that the establishment of the new community district will not be conducive to the public health, safety, convenience, or welfare, or is not intended to result in the development of a new community, it must reject the petition, thereby terminating the proceedings for the establishment of the NCA.

9. If City Council determines that the proposed new community district will be conducive to the public health, safety, convenience, and welfare, and is intended to result in the development of a new community, then City Council shall declare the NCA to be organized and a body politic and corporate. The name of the NCA and the boundaries of the new community district must be designated in the legislation approving the petition. The legislation must also provide the method of selecting the board of trustees of the NCA and fix the surety of their bonds (the bonds must be in an amount of not less than \$10,000).

10. Within 10 days after the NCA has been established, an initial board of trustees must be appointed. City Council appoints at least three, but not more than six, citizen members. City Council also appoints one member to serve as a representative of local government. The developer appoints a number of members equal to the number of citizen members appointed by City Council.

11. The members of the board of trustees must take and subscribe to an oath to honestly and faithfully perform the duties of their offices. The board of trustees then elects a chairman and vice-chairman and appoints a secretary and a treasurer. The secretary and treasurer need not be members of the board. The board must adopt by-laws governing the administration of the affairs of the NCA. Each member of the board of trustees must post a surety bond.

12. Within one year after appointing the initial board of trustees, City Council must adopt legislation providing for a method for selecting successor members of the board of trustees. The method must comply with the provisions of Section 349.04 of the Revised Code.

K. NCA Petition Items

Pursuant to Section 349.03 of the Revised Code, proceedings for the organization of a new community authority are initiated by filing a petition with the clerk of City Council. The following items are required for the petition:

1. The name of the proposed NCA.
2. The address of the principal office of the NCA or the manner in which the location will be selected.
3. A map and a full and accurate description of the boundaries of the new community district together with a description of the properties within such boundaries, if any, which will not be included in the new community district. All property to be included in the district must be owned or controlled by the developer. (If controlled by lease, then such lease must be at least seventy-five years' duration.)
4. A statement setting forth the zoning regulations proposed for zoning the area within the boundaries of the new community district for comprehensive development as a new community, and if the area has been zoned for such development, a certified copy of the applicable zoning regulations.
5. The petition must also contain a current plan indicating:
 - a. the proposed development program for the new community district,
 - b. the (i) land acquisition and land development activities, (ii) community facilities, and (iii) services which it is proposed the new community authority will undertake under the proposed development program,
 - c. the proposed method of financing such activities and services, including a description of the bases, timing, and manner of collecting any proposed community development charges, and
 - d. the projected total population of and employment within the new community district.
6. A suggested number of members for the NCA board of trustees. The number must be an odd number ranging from 7 to 13. Not less than three, nor more than six, of the members are citizen members appointed by City Council. The developer appoints an equal number of members. Lastly, City Council appoints one member to serve as a representative of local government.
7. The petition must contain a preliminary economic feasibility analysis, including the area development pattern and demand, location and proposed new community district size, present and future socio-economic conditions, public services provision, financial plan, and the developer's management capability.

8. Finally, the petition must contain a statement that the development will comply with all applicable environmental laws and regulations.

L. Representative List of New Community Authorities

New Albany Community Authority. The New Albany Community Authority consists of much of the New Albany area. The Authority has provided more than \$35 million of bond financing for a new high school, roadway improvements and a new fire truck. Bond repayment is funded by a uniform community development charge levied on a millage basis. This charged commenced in 1995 at 9.75 mills and has since been reduced to approximately 4.75 mills.

RiverSouth Authority. The RiverSouth Authority consists of the former Lazarus building in downtown Columbus as well as several parcels to the southwest of that building. The Authority has issued approximately \$81 million worth of bonds that have provided funding for the renovation of the former Lazarus building. Bond repayment is funded by lease-rental payments made by the City of Columbus.

Columbus Pay-As-We-Grow Community Authorities. Columbus has created two new community authorities—Hayden Run and Central College—to support its Pay-As-We-Grow initiative. Hayden Run is located in the northwest development corridor of the City, whereas Central College is located in the northeast. Both authorities are supported by a uniform community development charge of 4 mills lasting for 20 years on each parcel. The proceeds of this charge will support various public services and facilities.

Jeffrey Place NCA. The Jeffrey Place New Community Authority includes approximately 40 acres just north of Columbus' downtown. The Authority imposes a community development charge equal to approximately 50% of the abated taxes for new structures built on the site and utilizes those revenues, together with tax increment financing revenues from within the Authority's district and the neighboring Italian Village Neighborhood, to finance road, sidewalk, water, sewer and storm sewer improvements, as well as park and community center improvements.

Newark/Granville Community Authority. The Newark/Granville Community Authority is a 280-acre district located in the City of Newark. The Authority levies an annual uniform community development charge in the amount of the greater of \$455 or 5.2 mills on each parcel for 20 years. The proceeds of the charge are paid to the Granville School District.

Liberty Community Authority. Formed by Butler County in 2013, the Liberty Community Authority encompasses approximately 65 acres of property on which the Liberty Center development is located. The Liberty Community Authority imposes a 10 mill assessed valuation charge and a 0.5% sales charge. Together with TIF contributions by Butler County and Liberty Township, the charge revenue supports \$43 million of debt issued to fund roadway, storm water and parking garage improvements.

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