

ORDINANCE NO. 32 - 2020

AN ORDINANCE RE-ESTABLISHING AND CONTINUING, PURSUANT TO KRS 91.750, *ET SEQ.*, THE "DOWNTOWN LEXINGTON MANAGEMENT DISTRICT", PREVIOUSLY CREATED AND ESTABLISHED PURSUANT TO ORDINANCE NO. 52-2015, AND PROVIDING FOR ITS BOUNDARIES; A FIFTEEN MEMBER BOARD, THE REQUIREMENTS AND APPOINTING PROCESS FOR BOARD MEMBERS, AND THEIR TERM LIMITS; THE POWERS OF THE BOARD; A FISCAL YEAR COMMENCING ON JULY 1<sup>ST</sup>, THE UNDERTAKING OF ECONOMIC IMPROVEMENTS BY THE BOARD; A BUDGET AND AUDIT PROCESS; AN AFFIRMATIVE ACTION PLAN; PUBLIC INFORMATION; AN ASSESSMENT NOT TO EXCEED \$.10 OF \$100 OF THE ASSESSED PROPERTY VALUE FOR EACH ASSESSED PROPERTY WITHIN THE DISTRICT; A CONTESTING AND APPEAL PROCESS; LIENS; AN ANNUAL REPORT TO PROPERTY OWNERS; ETHICAL REQUIREMENTS ON BOARD MEMBERS; TERMINATION OF THE DISTRICT ON JULY 1, 2025 UNLESS RE-ESTABLISHED BY THE URBAN COUNTY COUNCIL IN ACCORDANCE WITH STATE STATUTE; BOARD GUIDELINES; CONTRACTING REQUIREMENTS; MANAGEMENT, MARKETING, AND ADMINISTRATION; REPORTING REQUIREMENTS; AN ADVISORY COUNCIL TO THE BOARD; SEVERABILITY; ALL EFFECTIVE UPON DATE OF PASSAGE.

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WHEREAS, on or about December 17, 2019, the Mayor received a formal request and petition to re-establish the management district previously created and established in a portion of downtown Lexington, Kentucky, pursuant to Lexington-Fayette Urban County Government Ordinance No. 52-2015; and

WHEREAS, the petition satisfies the minimum requirements for the re-establishment and continuation of a management district pursuant to KRS 91.754, and the Mayor has forwarded the petition to the Urban Council for further consideration; and

WHEREAS, the Urban County Council desires to create the requested management district as further provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That an official copy of the petition requesting the re-establishment and continuation of the district shall be maintained by the Council Clerk and is incorporated herein by reference.

Section 2 – That it is the intent of the Urban County Council that the Downtown Lexington Management District previously created and established by Lexington-Fayette Urban County Government Ordinance No. 52-2015, be and hereby is re-established and continued in full effect in all respects except for any changes as further provided herein.

Section 3 - That the Urban County Council accepts the determination of the Office of the Mayor that the petition satisfies the minimum requirements of KRS 91.754, and

hereby re-creates and re-establishes a management district pursuant to applicable state statute as follows:

Section 1. Downtown Lexington Management District.

This Ordinance shall be referred to hereinafter as the revised "Downtown Lexington Management District Ordinance" or the "Ordinance".

Section 2. General Provisions.

A. District Established. There is re-established and continued pursuant to KRS 91.750 through 91.762 a management district to be known as the "Downtown Lexington Management District" (hereinafter referred to as "District"), which was originally established and created pursuant to Ordinance No. 52-2015, for the purpose of providing and financing economic improvements that specially benefit property within the District. The boundaries of the District are designated by the map in Attachment A which is incorporated by reference hereto and made a part of this Ordinance as if set out fully herein. The Urban County Council may only decrease the level of publicly funded services within the District in accordance with KRS 91.756(5).

B. Board of Directors. The District shall constitute a body corporate, with the power to contract and be contracted with. The affairs of the District shall be managed and controlled by a Board of Directors composed of not more than fifteen (15) members, who shall be appointed for four (4) year terms, and who shall be eligible for reappointment to one (1) additional four (4) year term (referred to hereinafter as the "Board"). At least ten (10) of the total number of Board members shall either be property owners or tenants within the District or representatives of property owners within the District as further provided by statute and below. An ex officio member shall not count towards the above requirement even if he or she owns property within the District. Members of the Board shall be appointed as follows:

- (1) The Mayor, with approval of the Urban County Council, shall appoint the members of the Board. The makeup of the Board shall be comprised as follows:
  - (a) At least one (1) Board member shall be an owner or designee of a retail business within the District;
  - (b) At least one (1) Board member shall be an owner of a residential property within the District or their permanent designee;
  - (c) At least three (3) Board members shall be owners of an office building(s) within the District or their permanent designees;
  - (d) At least one (1) Board member shall be a parking facility owner within the District or his permanent designee; and
  - (e) At least two (2) Board members shall be owners or their designees from the hospitality/entertainment sector within the District (e.g., an owner or an owner's designee whose property houses a restaurant, food service or hotel/lodging facility; and
  - (f) At least two (2) Board members shall be tenants representing the owners of properties within the District.
  - (g) At least two (2) Board members shall be at-large representatives who either reside in or work within the district.
- (2) Ex officio members of the Board shall be as follows:
  - (a) The Mayor, or his or her permanent designee; and
  - (b) The Urban County Council member representing the area comprising the Management District and an At-Large Urban County Council member designated by the Mayor.

- (3) All members of the Board of Directors, including ex-officio members, shall have the right to vote.
- (4) Appointed Board members shall serve four (4) year terms.
- (5) Any member of the Board appointed by the Mayor may be removed by the Mayor for cause. Any member of the Board may be removed by the Mayor for violation of the rules, regulations or operating procedures adopted by the Board of Directors if the removal is recommended by a majority of the members of the Board.
- (6) A vacancy on the Board shall be filled in the same manner as the original appointment for the unexpired term.
- (7) An officer of the Downtown Lexington Partnership, the Downtown Lexington Corporation or the Lexington Downtown Development Authority shall be prohibited from serving as the Chairperson or Vice-Chairperson of the District.

C. Powers of Board.

- (1) The Board shall have the right to transact business on behalf of the District immediately after the appointment of its members.
- (2) The Board shall have full powers to name its organization and to make bylaws and rules for the regulation and management of the affairs of the District not inconsistent with the provisions of this Ordinance.
- (3) The Board shall have all powers necessary and proper to conduct the affairs of the District not inconsistent with the provisions of this Section, including but not limited to:
  - (a) Preparing annually an Economic Improvement Plan (defined below) and budget;
  - (b) Implementing the Economic Improvement Plan;
  - (c) Making policy for operation of the District;
  - (d) Managing the fiscal affairs of the District;
  - (e) Incurring, in the aggregate, short-term and long-term debt in an amount not to exceed \$500,000; and
  - (f) Such other powers as provided in KRS 91.750 through 91.762.
- (4) The Board may contract with any person or entity determined by it to have the needed expertise to manage and administer the day-to-day operations of the affairs of the District or any portion thereof. A competitive process such as a formal Request for Proposal shall be utilized in selecting these services and the selection committee shall avoid any conflicts of interest.
- (5) The Board may undertake the following economic improvements within the District:
  - (a) The promotion of commercial activity or public events;
  - (b) The planning, administration, and management of development or improvement activities;
  - (c) Landscaping, beautification, maintenance, and cleaning, of public ways and spaces;
  - (d) The conduct of activities in support of business recruitment and development;
  - (e) The provision of security for public areas;
  - (f) The construction and maintenance of capital improvements to public ways and spaces; and

- (g) Any other economic improvement activity that specially benefits property within the District.
- (6) The District will operate on a fiscal year basis as further provided herein. No later than two (2) months prior to the beginning of each year, the Board shall prepare and submit an annual budget for the District to the Urban County Council for its approval. The Board shall also deliver a copy of the annual Economic Improvement Plan to the Urban County Council. The Economic Improvement Plan shall describe the current and projected economic improvements to be undertaken during that year (the "Economic Improvement Plan"). The annual budget shall be presented in such form as shall be required by the Urban County Government's Department of Finance or that Department's successor. The Board shall not take any action or expend any money pursuant to the proposed budget until such time as it is approved by the Urban County Council. If the Urban County Council has not approved the proposed budget as of the first day of the new calendar or fiscal year, the budget of the previous year shall have full force and effect as if readopted until such time as a new budget is approved.
- (7) Prior to adopting the budget, the Urban County Council shall hold a public hearing for the purpose of soliciting comments upon the proposed budget. Upon approval of the annual budget by the Urban County Council, the Board shall then publish both it and the Economic Improvement Plan pursuant to KRS Chapter 424 and shall mail by first class mail to each property owner a description of the Economic Improvement Plan, the fair basis of assessment to be utilized, the estimated cost to the property owner, and the ratio that the cost to each property owner bears to the total cost of the economic improvements.
- (8) The Board shall have an affirmative action plan consistent with those required by the Lexington-Fayette Urban County Government for the hiring of consultants or employees. The Board shall not discriminate on the basis of race, sex, sexual orientation and gender identity, marital status, religion, age 40 and over, color, national origin, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, in any of its operations and shall include such prohibition in all of its contracts.
- (9) The District shall submit a yearly audit pertaining to the expenditure of funds to the Mayor and the Urban County Council. The Chair of the Board or his or her designee shall make an annual presentation to the Council regarding the operations of the District and any proposed projects, and shall otherwise appear at meetings as reasonably requested by the Urban County Government.
- (10) The District shall make information regarding its general operations and finances (including revenue and expenditures) publicly available through the District's website and other reasonable means.
- (11) The District and the Board shall be subject to the provisions of Kentucky's Open meetings and Open Records laws.

D. Assessments.

- (1) The Board shall provide in the annual budget for the imposition of a rate of assessment on all benefited properties within the District. Such rate shall be sufficient to provide sufficient revenues to finance the current and projected economic improvements to be undertaken pursuant to the annual Economic Improvement Plan.

- (2) The assessment shall be based upon assessed value basis as further provided in KRS 91A.210(5), and is in the form of an additional ad valorem assessment on real property within the District as further provided herein. Assessments for the current and projected economic improvements shall be ratably apportioned among the assessed properties within the District based upon the assessed values of such properties as determined by the Fayette County Property Valuation Administrator, as related to the total assessed value of all benefited property within the District. Properties owned and used by the federal government, Commonwealth of Kentucky or any political subdivision of the state are not benefitted by the economic improvements and shall not be assessed. The District may contract with the owners of any property exempt from property taxation or assessment for the provision of District services to such properties.
- (3) The Board may enter into an agreement with the Lexington-Fayette Urban County Government or the Fayette County Sherriff's Office for the collection of the assessments or otherwise provide for the collection of such assessments. The penalties and interest applicable to delinquent taxes shall be applied to delinquent assessments.
- (4) Any owner of a benefited property may contest the assessment, provided that the assessment made by the PVA shall be conclusive as to the value of the property unless the property owner has successfully protested the amount of the assessment pursuant to KRS 133.120. All contests shall be in writing and shall be filed with the Board no later than thirty (30) days after receiving notice of the assessment.
- (5) A contesting property owner shall have the right to appear before the Board and present evidence. A record shall be made of the proceedings and the Board shall render a written decision. The decision of the Board may be appealed to Fayette Circuit Court.
- (6) The amount of any outstanding assessment on any property, and accrued interest and other charges, shall constitute a lien on the property. The lien shall be superior to all other liens, whether created prior to or subsequent to the assessment, except a lien for the Commonwealth of Kentucky and Urban County Government taxes, and prior improvement assessments, and shall not be defeated or postponed by any private or judicial sale, by any mortgage, or by any error or mistake in the description of the property or in the names of the owners. No error in the proceedings of the Urban County Council shall exempt any property from the lien for the economic improvement assessment, or from payment thereof, or from the penalties or interest thereon, as herein provided.
- (7) The Board is authorized, but is not required, to impose an annual rate of assessment which shall not exceed \$0.10 per \$100 of assessed value, adjusted by the Board, in its discretion, either each year by the change from the preceding year in the Consumer Price Index (All Urban Consumers) or in the manner set forth in the final sentence of this subsection. In determining the rate of assessment to be established for any given year or years, the Board shall take into consideration, without limitation, the following: (a) the current operations of the District and the revenue needed (taking into consideration the costs of operation for the immediately preceding and current year and the reasonably projected cumulative increase or decrease in such costs for the forthcoming calendar or fiscal year)

to maintain such existing operations; (b) whether the District intends to expand its operations in the forthcoming calendar or fiscal year into one or more areas of operation permitted under this Section, and if so, the revenue reasonably forecasted to be needed to adequately fund such expanded area or areas of operation; and (c) the change in the Consumer Price Index (All Urban Consumers) between the effective date of the most recent adjustment in the rate of assessment and the date on which the new proposed rate of assessment will become effective.

- (8) The Board shall, within ninety (90) days following the end of the calendar or fiscal year, contract with a certified public accountant to prepare an audit or review of all funds controlled by the Board. A copy of the report shall be furnished to the Urban County Council and the Department of Policy and Division of Budgeting.
- (9) The Board shall prepare an annual report to the owners of benefited properties within the District evaluating the District's effectiveness and describing its accomplishments during the preceding fiscal year. The report shall be sent to the owner of each such property at such time that the annual economic plan and budget is sent pursuant to this Section. A copy shall also be provided to the Urban County Council.
- (10) Members of the Board shall adhere to the ethical rules and requirements of Article 16 of the Urban County Charter and Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances (the "Ethics Act") and any violation of any provision thereof shall be cause for removal by the Mayor pursuant to section 2(B)(5).

E. Termination of District.

- (1) The District shall automatically dissolve and be terminated on July 1, 2025, absent additional appropriate legislative action by the Urban County Council.
- (2) The District may be dissolved at any time as provided in KRS 91.762(2), which requires the presentation of a sufficient petition to the Urban County Council.

Section 3. Guidelines for Board of Directors.

A. Boundaries.

It is the intent of the Urban County Council that the economic improvements provided by the District may be extended to other areas of downtown as the need for economic improvements arises in such areas. The Board may identify additional areas in downtown which would benefit from the economic improvements provided by the District, if any, and actively solicit and assist the property owners in the identified areas to petition the Mayor and the Urban County Council pursuant to KRS 91.750 through 91.762 to expand the boundaries of the District to include properties of these identified property owners.

B. Procurement Process; Contracts.

All procurement of goods and services, including contracts, must be competitively bid in a manner that is generally consistent with the Lexington-Fayette Urban County Government's Procurement regulations. All contracts to be awarded by the Board shall include a complete description of the services to be provided and duration, method of compensation, records to be maintained and

submitted, and hold harmless agreements and limits of liability insurance requirements.

C. Management, Marketing and Administration.

The Board shall provide for the District's day-to-day management and administration through a contract or otherwise as the Board deems appropriate. Management and administrative support services shall include:

- (1) Procurement of marketing, beautification and security services from vendors, administration of related contracts and supervision related to contract compliance and quality assurance;
- (2) Training activities to support services delivery;
- (3) Annual development of an Economic Improvement Plan as required by state statute and the above referenced ordinance, including evaluation of program effectiveness and monitoring level of urban marketing, beautification, and security services;
- (4) Provision of administrative support to the Board;
- (5) Maintenance of all financial and administrative records, and yearly audit or review of expenses and revenues;
- (6) Provision of liability insurance as needed to cover all operations; and
- (7) Provision of other necessary and appropriate business services for the District.
- (8) Lend expertise, as requested or needed, with issues related to the District.

D. Report.

The Board is directed to submit a report to the Mayor and Urban County Council after the end of each year of the District's operation, detailing how it has addressed the directives and principles enumerated in this Ordinance. Such report shall be separate from and in addition to any other report required by this Ordinance.

E. Advisory Council.

The Board may establish, pursuant to the bylaws adopted for the District, an Advisory Council to the Board. The membership of the Advisory Council shall encompass a broad range of benefited property owners and tenants and should also include persons with technical knowledge of aspects of property beautification, security, or other economic improvements provided by the District.

Section 3 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: March 17, 2020

*Linda Gorton*

MAYOR

ATTEST:

*Alla*

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: March 26, 2020 - 1t

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**MOTION TO WALK ON**

I move to remove item No. 4 under second reading of ordinances, which pertains to the re-establishment of the Downtown Lexington Management District, and to place it on the docket for the regularly scheduled Council meeting at 6 p.m. on March 19, 2020, in order to correspond with the previously scheduled public hearing on this matter.

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COUNCILMEMBER

Motion to be made at the March 17, 2020 Special Council Meeting

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