

LEXINGTON PUBLIC INFRASTRUCTURE PROGRAM POLICY AND GUIDELINES

I. General

The Lexington-Fayette Urban County Government (LFUCG) established a local infrastructure incentive program to provide funding for public infrastructure of infill and redevelopment assistance with privately funded projects within the Lexington Urban Service Boundary (the “Lexington Public Infrastructure Program” or the “Program”). This Policy explains the Program and sets forth the Guidelines that will be used by the Lexington Economic Development Investment Board (the “EDIB”) and Lexington-Fayette Urban County Council (the “Council”) for the purpose of eligible infrastructure-related development cost reimbursement under the Program. The Policy and Guidelines should be reviewed and updated, if necessary, annually.

II. Lexington Public Infrastructure Program Description

The purpose of the Program is to assist in the development of infill and redevelopment projects within the Lexington Urban Service Boundary that will ultimately lead to long-term job creation. The Program is a zero percent (0%) interest loan program for a term not to exceed ten (10) years. The maximum amount of individual project funding will not exceed the lesser of \$500,000 or 10% of total project costs including private and public costs. Priority will be given to projects involving underutilized, vacant, or mixed-use properties, or economic development opportunities; or projects that directly create long-term jobs.

The Program is designed to provide “last dollar in” funding. Program funds are meant to assist applicants to ensure the public infrastructure portion of the overall development project are completed for the public benefit and would not have occurred “but for” the Program funding. This means applicants are required to provide upfront capital in the form of private or other external (non-LFUCG) funds to cover project costs. Under the Program, funds will be awarded to assist applicants with the costs of constructing the public infrastructure necessary to complete their projects. For the purpose of this Program, public infrastructure may include sanitary sewer, storm water sewer, public parking, public transit improvements/enhancements, public sidewalks, public multi-use paths and public roads (curb, gutter, and utility relocation as needed). Public infrastructure projects must serve the public and not be solely utilized by the private portion of the project. Program funds must be used for actual construction costs. Project design, engineering, and other soft costs are not eligible for Program funding. Program funds shall be a reimbursement of approved actual eligible expenses.

The Chief Development Officer working with the Commissioner of Environmental Quality and Public Works and the EDIB will develop an appropriate standard application for the Lexington Public Infrastructure Program. The application will include the minimum information specified in Section IV below, as well as that information deemed by the Chief Development Officer and Commissioner of Environmental Quality and Public Works to be reasonably related to obtaining information necessary to make a funding recommendation to the EDIB. The application shall include project information, plans and budget information related to the overall infill or redevelopment project and the public infrastructure portion to which the overall project the application relates. The Chief Development Officer, EDIB, and/or Council may request supplemental information from the applicant as needed. The Chief Development Officer and Commissioner of Environmental Quality and Public Works may modify the application as necessary to ensure that all necessary information for awarding Program funds and compliance with

Program requirements. To the extent allowed by law, LFUCG will treat as confidential those items marked as proprietary or confidential.

Any applicant interested in obtaining funding under the Program shall submit an application to the Office of the Chief Development Officer, along with an application fee of \$500.00. The EDIB will review the application fee annually and may adjust the fee based on that review.

Once the Chief Development Officer receives an application, it will be reviewed internally to determine project eligibility, verification of project estimated expenses and cost, and private or external funds available to the project. The Chief Development Officer, working in conjunction with the Commissioner of Environmental Quality and Public Works, will evaluate applications for incentive funding and determine the amount of funding for which an applicant may qualify. The Chief Development Officer and the Commissioner of Environmental Quality and Public Works may assemble the appropriate internal staff to review applications for program funding. The review panel may also include a representative of the Department of Law, the Division of Planning, and the Commissioner Department of Finance and Administration, or others as recommended by the Chief Development Officer. The project review panel will determine whether:

- the Project complies the LFUCG Comprehensive Plan
- the Project complies with the LFUCG engineering manuals and related documents
- the Project's application contains an accurate and reasonable cost estimate (project cost estimate reviewed by LFUCG staff)
- the Project involves appropriate public infrastructure in terms of community need, scope, size, and general location.
- the Project's construction plans are feasible within the time frame required under the Program
- the applicant has private or external financing in place to allow the Project to start construction within one year
- the Project's application contains a strategy and reasonable estimate for new long-term job creation

If the internal review verifies these criteria, the application will be forwarded to the EDIB for review. The applicant will be provided the opportunity to present the project and any additional information to the EDIB related to the application.

The EDIB will make a recommendation to approve the project in full, in part, deny, or seek further review of the application. If the EDIB determines that the project should be partially or entirely funded, the appropriate administrative steps will be taken to present the recommendation and a loan agreement to the Council for consideration. The Council shall have the final authority to approve a project and no actions related to the application shall be considered fully approved or final until final action by the Council. Members of the EDIB and the Council will be required to recuse themselves from review and voting on applications if they are private investors in the company applying for incentives, investors in the project, or otherwise have a conflict. Members of the EDIB and the Council are also prohibited from investing in companies that have received incentives.

All funding awarded pursuant to the Program shall be solely at the discretion of LFUCG and shall be subject to a loan agreement with the applicant that demonstrates sufficient private funds are allocated to complete the entire proposed development project on a timeline agreed upon in the loan agreement.

Applicants may be eligible to receive funding from the Program, as well as other LFUCG funding programs, but decisions about the awarding of funds will be made independently for each program.

III. Qualifications of Applicants for Program Funding

To qualify for Program funding, an applicant must be willing to commit to the following criteria:

- Provide direct capital investment within the Lexington Urban Service Boundary
- Project will directly result in the creation of long-term jobs in Lexington-Fayette County, Kentucky

Additionally, applicants will be required to:

- Provide evidence of their ability to leverage private or other external (non-LFUCG) funds. This can be documented with a bank loan, bank term sheet outlining loan terms, or a checking account statement showing the full total project costs available to complete the project.
- Demonstrate their ability to begin construction within one (1) year of the award of funding from the Program. Projects that have not commenced construction by twelve (12) months following approval by the Council shall have their funds withdrawn.
- Provide a written statement or other evidence documenting the project's compatibility with the existing plans, studies, and surveys guiding growth and land use management in Lexington-Fayette County on file with the LFUCG Division of Planning.
- Provide the project's compatibility with LFUCG ordinances and policies regarding building permits, zoning, historic preservations, engineering, business licensing and taxes, and other applicable areas.
- Demonstrate how the project will lead to long-term job creation in Lexington-Fayette County.

IV. Program Application

Any applicant interested in obtaining funding under the Program shall submit an application to the Office of the Chief Development Officer. An application fee of \$500.00 will be required with the submission of the application.

The Program application may include the following:

- Project Description: Applicant should provide a complete description of the overall project, including the project name, location, size and scope.
- Infrastructure Proposed for Funding: Identify what type of infrastructure is to be funded and provide a description of how the funding is critical to the success of the overall project.
- Expected Impact of Public Infrastructure: Provide a description of the impact the construction of the public infrastructure will have on the surrounding area and existing infrastructure system.
- Cost Estimate: Provide a detailed cost estimate of the proposed infrastructure project.
- Eligible Expenses: Provide a detailed description of all eligible expenses for the project.
- Division of Planning Compliance: Provide a letter from the Division of Planning certifying the project meets the requirements of the Comprehensive Plan, small area plans, land use regulations or other policies and has met all Planning approvals needed to start the project

- Stamped Engineering Plans: Provide copies of stamped engineering plans suitable for review of the proposed infrastructure project. Plans will be reviewed for compliance with engineering manuals as well as for cost estimate purposes.
- Evidence of Project Financing: Provide detailed evidence of funding for the overall project. In addition, applicants should provide a detailed explanation of the “gap” in financing of the infrastructure that is needed.
- Other LFUCG Funds: Provide a detailed list of all LFUCG funds that will be applied for, have been applied for, or received as part of the project.
- Other Public Funds: Provide a detailed list of all other public funds that will be applied for, have been applied for, or received as part of the project.
- Project Timeline: Provide a detailed project timeline and work schedule showing how the program funding will be encumbered with twelve (12) months of approval.

If the project review panel determines that an application does not meet minimum program requirements, the applicant will be notified and the application will be considered denied. If the project review panel determines that the application meets Program requirements and criteria, the Chief Development Officer will forward the application to the EDIB for further review and discussion.

The EDIB will consider the Chief Development Officer’s, or their designee’s, recommendation related to the application. As part of its review of the application, the EDIB will also consider whether the applicant has received additional LFUCG funding for any component of the development project that has been approved or requested for the project. The EDIB will determine if the application for funding should be partially or entirely funded based on the requested information from the applicant.

If the EDIB recommends funding for the project, the applicant shall have 60 calendar days to reach an agreement with LFUCG based on the conditions determined by the EDIB. This agreement shall be documented in the loan agreement required under this Program. The LFUCG Department of Law will review all loan agreements, and the Mayor will be authorized to sign the agreement following the approval of the award by both the EDIB and the Council. If the applicant does not reach an agreement within 60 calendar days, they may request one additional 30-day extension. If no agreement is reached within this period, the application will be considered withdrawn.

Upon timely negotiation of the loan agreement, the EDIB will forward the application and loan agreement to the Council for final consideration. At this point in the application process, the applicant may move forward with construction at their risk. The Council shall have the final authority to approve an application, and no actions related to the application shall be considered fully approved or final until final action by the Council. No funds will be awarded for reimbursement of infrastructure purchased, constructed or paid for prior to approval by the EDIB and final action by the Council.

If the Council approves the application, the applicant will be awarded funding under the Program pursuant to the terms and conditions of the loan agreement. If the applicant is approved by Council and does not meet the timeline for encumbering the awarded funds, the funding may be revoked after review by the EDIB. Construction must commence within 12 months of funding approval by Council and must be fully utilized on the approved infrastructure within 24 months.

V. Protecting Public Dollars and Investments

All loan agreements entered into under this Program shall be structured in a manner that protects the public's investment and ensures compliance with all requirements of finalized agreements. Funds will only be provided through a formal loan agreement with LFUCG and actual disbursement will only occur after proof of expenditure of approved infrastructure. The EDIB will assist in the development of the loan agreement and any additional conditions for funding that are required as part of the agreement. Funds shall be disbursed as reimbursements for approved public infrastructure expenses incurred as part of the development project. Expenses not specifically agreed to as eligible expenses in the loan agreement shall not be eligible for reimbursement. In the event the applicant fails to begin construction of the project within 12 months of approval of the funding by the Council, the awarded Program funds shall be considered revoked after review by the EDIB.

The EDIB maintains the discretion to attach additional taxpayer protections as necessary in the loan agreements. The following or similar types of provisions shall be included in all loan agreements under this Program:

- Term: No loan agreement under the Program may exceed a ten (10) year repayment term duration
- Disbursement of Program Funds: No Program funds will be disbursed by LFUCG without appropriate receipts and proof of payment by the applicant seeking reimbursement. At no time shall reimbursement exceed the amount of the proof of payment. If it is in the best interest of LFUCG, the loan agreement may be structured in a manner in which the incentive funds are disbursed as different capital expenses are incurred during project construction. No funds will be awarded for reimbursement of infrastructure purchased, constructed or paid for prior to approval by the EDIB and final action of the Lexington-Fayette Urban County Council.
- Revocation of Program Funds: If project construction has not substantially started within 12 months of approval by the Council, the funding award shall be automatically considered revoked.
- Security Interests/Lien Priorities/Personal Guaranties: If feasible, all loans may be secured with the highest lien position available. LFUCG may also require personal guaranties of the developer(s)/owner(s) or other additional security.
- Best Efforts Clause: The agreements shall include a "best efforts" clause regarding the use of funds.
- Acceleration Clause: In the instance of a project shut down or other cessation of operation, the applicant or developer shall repay the full amount of the incentive plus interest as listed in the agreement.
- Letter of Credit/Loan Repayment: Repayment of the incentive will be secured by a letter of credit from a financial institution covering the period of the loan. Disbursement of the loan shall be contingent upon a letter of credit or other security.
- Annual Reporting: Applicant will provide LFUCG, via the Chief Development Officer, an annual update on the status of the project until project is fully complete.

VI. Accounting and Compliance

The Lexington Public Infrastructure Fund Program will be maintained as distinct within the LFUCG accounting system. Disbursements will be made from that account. Future appropriations, repayments,

loan proceeds, or clawbacks will be placed in that account. Disbursements will be made from the same account. Disbursement of the funds may be all at once, phased, or paid when the Government has received an invoice for reimbursement of approved capital actual eligible expenses. An invoice certifying a previously paid expense to be reimbursed will be the preferred method for distributing program funds. Loan payments will be made quarterly to the Lexington-Fayette Urban County Government beginning on the date established in the Public Incentive Agreement. Clawback payments that may be required related to compliance under the agreement will also be required to be paid quarterly.