

ORDINANCE NO. _____-2018

AN ORDINANCE ESTABLISHING AN ENERGY PROJECT ASSESSMENT DISTRICT PROGRAM (EPAD) PURSUANT TO KRS 65.205 TO 65.209 TO SUPPORT PRIVATE SECTOR ENERGY PROJECTS; DESIGNATING THE EPAD DISTRICT BOUNDARIES; DETERMINING THAT ADMINISTRATION OF THE PROGRAM MAY BE BY CONTRACT WITH A THIRD-PARTY; DESIGNATING THE FAYETTE COUNTY SHERIFF AS COLLECTOR OF THE ASSESSMENT; SETTING ELIGIBLE IMPROVEMENT PROJECTS; AND CREATING THE PROCEDURES FOR ELIGIBLE PROPERTY OWNERS LOCATED IN THE EPAD AREA TO PARTICIPATE IN THE EPAD PROGRAM.

WHEREAS, KRS Sections 65.205 through 65.209 (the “EPAD Act”) authorizes local governments in Kentucky, including Urban County governments, to establish a program to advance the conservation and efficient use of energy and water resources by allowing for private sector energy projects to be paid through assessments imposed upon real property being improved through the energy project;

WHEREAS, to establish an Energy Project Assessment District (“EPAD”) Program, an ordinance or resolution shall be adopted providing the terms and conditions of the Program, including the designation of the EPAD, a description of the EPAD boundaries, and the procedure for eligible property owners located in the EPAD area to petition the Lexington-Fayette Urban County Government for participation in the program;

WHEREAS, nothing contained herein shall require public-funding of such private sector energy projects; and

WHEREAS, the Urban County Council determines it to be in the best interest of the citizens of Lexington-Fayette Urban County Council to establish an EPAD pursuant to

the EPAD Act to enable eligible property owners to finance energy saving improvements to their properties in Lexington-Fayette County.

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

Section 1 – That there is hereby established an Energy Project Assessment District (EPAD) Program pursuant to KRS 65.205 to 65.209 to advance the conservation and efficient use of energy and water resources within Lexington-Fayette County by allowing for private sector energy projects to be paid through assessments imposed upon real property being improved through the energy project.

Section 2 – That Lexington-Fayette Urban County Government intends to use said assessments to support private sector energy projects.

Section 3 – That the entirety of Lexington-Fayette County is hereby designated as an EPAD.

Section 4 – As used in this Ordinance:

“Eligible Property Owner” shall mean the owner of real property that excludes residential property consisting of fewer than five (5) units.

“Administrator of the EPAD program” shall mean the Lexington-Fayette Urban County Government’s [~~Department or Division of _____~~] **Department of Finance** **and**/or any third-party entity the Lexington-Fayette Urban County Government contracts with to administer the program.

All other terms used in this ordinance shall have the same meaning as given to those terms set forth in KRS 65.205.

Section 5 – That to qualify for the EPAD program, an Energy Project shall meet the following requirements:

(A) The property on which the Energy Project is constructed or installed shall be located in Lexington-Fayette County, but shall not include residential property consisting of fewer than five (5) units;

(B) The Energy Project shall have a minimum cost of \$20,000;

~~[(C) The Energy Project shall have a useful life of at least five (5) years, and the financing terms shall not exceed useful life of the proposed improvement. For projects that include multiple improvements, the average weighted useful life shall be used as the measurement;]~~

~~[(D)]~~ **[(C)]** The Energy Project shall be permanently affixed to the real property or building and shall be transferred with the real property upon transfer of title; and

~~[(E)]~~ **[(D)]** The Energy Project shall ~~[reduce energy or water usage or generate renewable power for the property.]~~ **constitute an “Energy Improvement” as defined in KRS 65.205.**

Section 6 – That the Lexington-Fayette Urban County Government may contract with a third-party entity to administer all or part of the EPAD program.

Section 7 – The ~~[a]~~**[A]** administrator of the EPAD program shall:

(A) Develop and publish policies and procedures for promoting and implementing the EPAD program that are consistent with the requirements of this Ordinance;

(B) Develop and publish an [~~application~~] **petition** consistent with this Ordinance;

(C) Charge a one-time [~~application~~] **petition** fee as further provided in Section 10 of this Ordinance;

(D) Develop an annual reporting format for the oversight and monitoring of the effectiveness of the EPAD program in meeting energy efficiency goals and financial requirements and report findings at least annually to the Lexington-Fayette Urban County Council. The reporting requirements shall be included in the contracts for Eligible Property Owners;

(E) Provide a list of program participants and annual assessment payment amounts to the Fayette County Sheriff's Office (the "Sheriff") annually by no later than January 31 of each year. The Sheriff may require additional information as is necessary for billing and collecting the EPAD assessment;

(F) Once a [~~n-application~~] **petition** is approved, provide the written agreement for that Energy Project, which must be signed by all property owners and the lender of the financing of the funds for that project, to the Urban County Council for approval and signature by the Mayor, and record notice of the assessment in the real property records of the Fayette County Clerk's Office, which shall include the amount of the assessment, the legal description of the real property, the name of each owner of record of the real

property, and a reference to the statutory assessment lien provided by KRS 65.205 to 65.209 and this Ordinance; and

(G) Charge an annual fee based upon the actual costs incurred in administering the particular Energy Project in relation to the overall program.

Section 8 – The annual fee to be charged the owner(s) for administering the EPAD program[, and the commission for the collection of the assessment by the Sheriff,] shall ~~be based on~~**[not exceed]** the actual costs incurred[.] ~~[but shall not exceed 1% of the total amount of the annual assessment. The commission to be paid to the Sheriff for the collection of the assessment shall be based on actual costs incurred but shall not exceed 1% of the total amount of the annual assessment.]~~ [Any] fee and commission shall be collected concurrently with the annual property assessment and paid to the Sheriff.

Section 9 – That upon receipt of the assessment, administrative fee, and commission amount, the Sheriff shall remit those funds not attributable to the Sheriff by this Ordinance to the Lexington-Fayette Urban County Government[~~, or at its direction, the contracted administrator of the EPAD program.~~] **[or as otherwise agreed to by the Lexington-Fayette Urban County Government.]**

Section 10 – That the EPAD ~~[application]~~ **[petition]** process shall be as follows:

(A) The ~~[application]~~ **[petition]** shall include a legal description of the real property being improved, including a deed book and page number, the parcel ID number, and the

names and addresses of all owners of record and include a non-refundable ~~[application]~~ **[petition]** fee in the amount of \$500 ~~[or 1% of the application fee, whichever is less].~~

(B) The ~~[application]~~ **[petition]** submittal shall also include the following:

(1) A general description of the proposed Energy Project, including the property's baseline energy and water usage conditions and the energy and water savings projected to be achieved as a result of the energy project, expected life of the improvement(s), and a proposed time schedule for undertaking and completing the project;

~~[(2) A signed bid for the project from a licensed contractor who will construct and install the improvements;]~~

~~[(3) [(2)]~~ Written consent of the holder of each existing mortgage lien on the property stating that the lien holder does not object to the imposition of the statutory EPAD assessment lien;

~~[(4) [(3)]~~ The **[estimated]** payment terms of the program financing agreement, including the total amount financed and annual assessment payment;

~~[(5) [(4)]~~ The ~~[application]~~ **[petition]** shall include a certification by the property owner(s) and its members, affiliates, shareholders, and/or all other related persons or entities as the ~~[a]~~**[A]**dministrator of the EPAD program deems appropriate, of the following:

a. That they are solvent and that no proceedings are pending or threatened in which the property owner (or such other person or entity) may be adjudicated as bankrupt, becoming the debtor in a bankruptcy proceeding, be discharged from all of the

property owner's debt's or obligations, be granted an extension of time to pay the property owner's debts or be subjected to a reorganization or readjustment of the property owner's debts;

b. That they have not filed for or been subject to bankruptcy protection in the past three years;

c. That they are current in the payment of all obligations secured by the real property upon which the Energy Project will be located, including property taxes, assessments, and tax liens and have had no delinquencies within the past three years or since acquiring title to the subject property if it has been less than three years;

d. That they have no involuntary liens, defaults, or judgments applicable to the subject property; and

e. That they are not party to any litigation related to the property for which ~~application~~ **petition** is being made.

(C) The ~~a~~**A** Administrator of the EPAD program is authorized to require the ~~applicant~~ **petitioner** to submit a current title examination, opinion letter, or other documentation to verify compliance with the requirements set out in this Ordinance.

(D) The Eligible Property Owner shall agree to participate in annual surveys and EPAD program evaluations as requested by the ~~a~~**A** Administrator of the EPAD program or the Lexington-Fayette Urban County Government.

(E) The property owner shall be in compliance with any and all other applicable state and local orders, requirements, laws, and regulations.

(F) In addition to the above ~~[application]~~ **[petition]** requirements, the ~~[a]~~**[A]** administrator of the EPAD program is authorized to require additional information to certify that the ~~[applicant]~~ **[petitioner]** qualifies for the EPAD program in accordance with the EPAD Act.

Section 11 – The procedures for approved projects shall be as follows:

(A) The ~~[a]~~**[A]** administrator of the EPAD program shall review the ~~[application]~~ **[petition]** to determine whether the ~~[applicant]~~ **[petitioner]** qualifies for the program. If the ~~[a]~~**[A]** administrator of the EPAD program determines that the ~~[applicant]~~ **[petitioner]** qualifies, he or she shall forward the contract, including the signatures of all property owners and financiers, to the Lexington-Fayette Urban County Government in order to enter into an agreement with the property owner accepting the Energy Project pursuant to the terms and conditions as established by this Ordinance and the ~~[a]~~**[A]** administrator of the EPAD program, which may include a surety bond or other guarantee if deemed appropriate. The written contract shall set forth the total amount of the assessment, the interest rate established for the assessment, and the annual amount of the assessment. The contract will also designate the licensed contractor that will construct and install the Energy Project.

(B) Once the ~~[application]~~ **[petition]** is approved and a contract is executed, the Lexington-Fayette Urban County Government shall impose an assessment upon the property, and it or the ~~[a]~~**[A]** administrator of the EPAD program shall file a written notice of the assessment in the real property records of the Fayette County Clerk's Office

indicating the amount of the assessment, the legal description of the real property, the name of each owner of record of the real property, and a reference to the statutory assessment lien provided by KRS 65.205 to 65.209. ~~[If the contract includes these requirements, it may serve as the written notice of the assessment that shall be filed with the Fayette County Clerk's Office to ensure priority.]~~

(C) Upon recording of the written notice of the assessment, the Sheriff shall collect the assessments annually, including any applicable administration fee and commission amount and is authorized to prepare and issue a bill for the annual assessment payment amount for the relevant property. Any unpaid assessment shall bear ~~[interest at the rate of one percent (1%) per month on the total amount due. The annual assessment payment amount will be due within sixty (60) days of the billing date. A five percent (5%) penalty will be added to the total amount due after the sixty (60) day period unless contrary to state law, in which case the statutory rate shall apply. The penalty will increase to ten percent (10%) of the total amount due the following month if not paid unless contrary to state law, in which case the statutory rate shall apply. If unpaid after four months from the billing date, the unpaid bills will be transferred from the Sheriff to the Fayette County Attorney's Office for collection. The Fayette County Attorney's Office shall receive a fee of twenty percent (20%) of the unpaid annual assessment amount for their collection duties.]~~ **[the same penalty as general state and local ad valorem taxes.]**

(D) The assessment, including administration fees~~[,]~~ **[and]** commission amounts~~[,]~~ ~~[and collection fees,]~~ together with any interest and penalties, shall constitute a first and

prior lien against the real property on which the assessment is imposed from the date on which the notice of assessment is recorded pursuant to this Ordinance until paid. This lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the property. The Fayette County Attorney's Office is authorized to pursue collection actions for unpaid assessments in the same manner as unpaid property taxes.

(E) Neither the Lexington-Fayette Urban County Government, the [a][A]dministrator of the EPAD program, the Sheriff, or the Fayette County Attorney's Office nor their officers, officials, or officers shall have any liability to any persons or entities for uncollected EPAD assessments and unpaid EPAD debt.

Section 12 – That Lexington-Fayette Urban County Government may amend or change the terms and conditions of the EPAD program. However, any amendment or change in the terms or conditions shall not retroactively affect the terms and conditions of an existing EPAD program participant, unless such participant consents in writing to the new terms and conditions.

Section 13 – This Ordinance does not obligate the Lexington-Fayette Urban County Government to issue financing related to any Energy Project and any fees provided in this Ordinance are exclusive of any costs that may be related to the issuance of such financing.

Section 14 – That if any provision of this Ordinance as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 15 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

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