

ORDINANCE NO. ____-2012

AN ORDINANCE AMENDING AND REENACTING ORDINANCE NO. 47-2010 TO EXPAND THE RED MILE DEVELOPMENT AREA WHICH WAS CREATED FOR TAX INCREMENT FINANCING PURPOSES TO INCLUDE ADDITIONAL PROPERTY WITHIN THE DEVELOPMENT AREA, WITHOUT CHANGING THE LIST OF APPROVED PUBLIC INFRASTRUCTURE IMPROVEMENTS OR THEIR COST, OR THE AMOUNT OF TAX REVENUE THAT HAS BEEN PREVIOUSLY APPROVED OR COMMITTED FOR REIMBURSEMENT BY THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AND THE COMMONWEALTH OF KENTUCKY IN REGARD TO THE RED MILE MIXED USE PROJECT; ADOPTING THE RED MILE DEVELOPMENT AREA AS AMENDED HEREIN; MAKING CERTAIN FINDINGS OF THE GOVERNMENT IN SUPPORT OF ITS DECISION; AND AUTHORIZING THE MAYOR AND OTHER APPROPRIATE OFFICIALS TO TAKE SUCH OTHER ACTIONS THAT ARE NECESSARY OR REQUIRED IN CONNECTION WITH MAKING IMPROVEMENTS WITHIN THE RED MILE DEVELOPMENT AREA IN CONFORMITY WITH TAX INCREMENT FINANCING REQUIREMENTS.

WHEREAS, Pursuant to Lexington-Fayette Urban County Government Ordinance No. 47-2010 the Lexington-Fayette Urban County Government (“LFUCG”) adopted the Red Mile Development Plan and established the Red Mile Development Area in 2010 pursuant to KRS 65.7041 to 65.7083 (the “Act”) to encourage reinvestment in an area of the community characterized by deterioration and inadequate public improvements as permitted under the Act to fund public infrastructure improvements through the use of state and local “incremental revenues, as defined in the Act and submitted the Red Mile Mixed-Use Project (“Project”) tax increment financing (“TIF”) application to the state, in conformity with the Act; and

WHEREAS, the Commonwealth of Kentucky, through the Kentucky Economic Development Authority (“KEDFA”) approved state participation in an amount not to exceed \$25.32 million for the Red Mile Project; and

WHEREAS, additional property (“Property”) adjoining the previously approved Red Mile Development Area is proposed to be included within the Red Mile Development Area; and

WHEREAS, adding the Property will not change the previously approved public infrastructure improvements or their cost, and will not increase the amount of incremental tax revenue that has been previously pledged by the LFUCG and by the State; and

WHEREAS, including the Property within the Red Mile Development Area will benefit the Red Mile Mixed Use Project because the development of a housing complex on the Property will provide the minimum \$20 million investment needed to trigger activation of the TIF and will also facilitate construction of a needed new public street that will ultimately connect Red Mile Road to Curry Avenue without the expenditure of public funds; and

WHEREAS, the LFUCG held a public hearing on January 26, 2012, after giving proper notice as required by the Act to receive public comment about the LFUCG's intention to consider expansion of the Red Mile Development Area; and

WHEREAS, expansion of the Red Mile Development Area serves a public purpose and will benefit the welfare of the LFUCG's citizens; and

WHEREAS, the LFUCG deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth herein and in the Act.

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

Section 1 –The above recitals are incorporated herein as if fully stated

Section 2 - That the capitalized terms set forth below when used herein shall have the following meanings:

“Act” means Kentucky Revised Statutes, Sections 65.7041 to 65.7083, KRS 154.30-010 to KRS 154.30-090 and KRS 139.515.

“Agency” means the Department of Finance and Administration of the LFUCG.

“Approved Public Infrastructure Costs” shall have the meaning as provided in the Act.

“Development Area” means the original Development Area created by Ord. No. 47-2010 and as amended to include the additional Property (further described in **Exhibit B** attached hereto), the entirety of this combined area being a contiguous geographic area of previously developed land, located within the geographical boundaries of the LFUCG, which is created for economic development purposes and as modified by this Ordinance in which one (1) or more Projects are proposed to be located and consisting of less than 3 square miles, the entire area to be known as the “Red Mile Development Area.”

“Development Plan” means the original Tax Increment Financing Development Plan and as modified herein for the Red Mile Development Area. The Development Plan as modified is attached as **Exhibit A.**

“Establishment Date” means the date that the Development Area is established and as modified pursuant to the Act and this Ordinance.

“Financing Costs” shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for Redevelopment Assistance, Land Preparation, Demolition and Clearance Costs and Approved Public Infrastructure Costs.

“Increment Bonds” means bonds or notes issued pursuant to the Act to pay for Redevelopment Assistance, Land Preparation, Demolition and Clearance Costs, Approved Public Infrastructure Costs and Financing Costs, the payment of which Increment Bonds shall be supported solely by Incremental Revenues pledged by the LFUCG and the State.

“Incremental Revenues” means the amount of revenues received by LFUCG with respect to the Development Area and the State with respect to the Footprint (as defined in the Act) by subtracting Old Revenues (as defined in the Act) from New Revenues (as described in the Act) in a calendar year, less amounts designated by the LFUCG for the Lexington Public Library District.

“KEDFA” means the Kentucky Economic Development Finance Authority.

“Local Participation Agreement” shall mean the Local Participation Agreement between the LFUCG and the Agency.

“Mixed-Use Project or Program” means the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas as provided in the Act.

“Pledged Revenues” means that portion of the Incremental Revenues which are pledged by the LFUCG or State, pursuant to the Local Participation Agreement or the Tax Incentive Agreement, to pay for Redevelopment Assistance, Land Preparation, Demolition and Clearance Costs, and Approved Public Infrastructure Costs and Financing Costs (as those terms are defined in the Act) for the Development Area.

“Project” or “Red Mile Project” means the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Plan, being undertaken by the Developer, The Lexington Trots Breeders Association, LLC, its successors or assigns.

“Redevelopment Assistance” shall have the meaning as provided in the Act.

“State” means the Commonwealth of Kentucky.

“Tax Incentive Agreement” shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 and KRS 139.515 of the Act between the Kentucky Economic Development Finance Authority and the Agency or the LFUCG, relating to the Development Area.

All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

Section 3 - That Lexington-Fayette Urban County Government Ordinance No. 47-2010 be and hereby is amended and reenacted to adopt the Red Mile Development Area to include the Property within its boundary, which is more fully depicted in the map which is attached hereto and incorporated herein by reference as **Exhibit B**. The legal

description for the Red Mile Development Area which includes the Property is attached hereto and incorporated herein by reference as **Exhibit C**.

Section 4 – That amending the Red Mile Development Area to include the Property does not change the previously approved public infrastructure improvements or their cost, nor will it increase the amount of tax revenue that the Lexington-Fayette Urban County Government and the Commonwealth of Kentucky have previously approved and pledged for reimbursement of incremental tax revenues for the Red Mile Mixed Use Project.

Section 5 – In adopting the Red Mile Development Area, the Council of the LFUCG makes or incorporates the following findings:

a. The amendment does not increase the aggregate value of taxable real property included in all the redevelopment areas and the local development areas within the jurisdiction of the LFUCG to more than twenty percent (20%) of the total value of taxable real property within its jurisdiction to support the Red Mile Development Area. Attached hereto as **Exhibit D** is a summary of the 2011 property value for the Property being added to the Red Mile Development Area.

b. The findings adopted by enactment of Ordinance No. 47-2010 in support of the original Red Mile Development Plan support the Amended Red Mile Development Area and are hereby readopted and incorporated by reference as if fully set out herein.

c. The findings and certification for compliance with the Comprehensive Plan that the Planning Commission approved at its December 15, 2011 meeting are attached hereto as **Exhibit E**.

Section 6 - The provisions of this Ordinance are hereby declared to be severable, and if any section or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of the Ordinance.

Section 7 – That the Mayor and other appropriate LFUCG officials be, and hereby are, authorized to take such other appropriate actions that are necessary or required in connection with making improvements within the Red Mile Development Area in conformity with the Act..

Section 8 – That Ordinance No. 47-2010 remains effective and binding in every respect except as specifically modified herein.

Section 9 – That this Ordinance shall become effective after the date of its passage, attestation, recordation and publication of a summary, as provided in KRS Chapter 424.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

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