

ORDINANCE NO. ____-2024

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 141-2022, RELATING TO THE PUBLIC INFRASTRUCTURE PROGRAM, IN ITS ENTIRETY, AND PROVIDING FOR ITS PURPOSE, PROGRAM FUND PROTECTIONS, PRIORITIES, LIMITATIONS, CRITERIA, AN APPLICATION PROCESS, ADMINISTRATION BY THE MAYOR'S CHIEF DEVELOPMENT OFFICER WITH OVERSIGHT BY THE ECONOMIC DEVELOPMENT INVESTMENT BOARD, AND A PROGRAM FUND AND THE ADOPTION OF NEW PROGRAM POLICIES AND GUIDELINES; ALL EFFECTIVE UPON DATE OF PASSAGE.

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

Section 1 - That Ordinance No. 141-2022, which Amended and Restated Ordinance No. 51-2017, which created the Public Infrastructure Program, is hereby amended and restated in its entirety to read as follows:

- A. That there is hereby established a local economic development and infill incentive program to be known as the “Lexington Public Infrastructure Program” (the “Program”).
- B. That the purpose of the Program is to provide certain qualified projects with local funding for public infrastructure improvements through interest-free loans with terms not to exceed ten (10) years in length in order to promote employment growth within Lexington-Fayette County and increase development within its Urban Service Boundary, with an emphasis on funding projects located within Infill and Redevelopment areas. The Program is focused on providing last dollar public infrastructure funding to incentivize viable projects that spur economic development or increase housing and provide public infrastructure benefits to multiple users.
- C. That the Economic Development Investment Board will oversee the Program and shall have the following powers, duties and responsibilities as well as those related thereto:
 - (1) Establish policies, procedures and guidelines for the Program’s operation and management; oversee and manage the Program’s financial and administrative actions; monitor and evaluate the Program’s performance;

and review, rank, prioritize, and approve funding proposals from eligible applicants.

(2) Submit an annual report on the Program's activities to the Mayor and the Urban County Council.

D. That the Program is designed to provide funds to assist with the cost of construction of necessary public infrastructure related to a project that meets the appropriate Program criteria, including, but not limited to, sanitary sewers that other users can connect to, storm water sewers that other users can connect to, shared/public parking, public transit improvements/enhancements, publicly accessible sidewalks, publicly accessible multi-use paths and public roads (including curb, gutter, and utility relocation as needed), infrastructure improvements that improve system capacity and provide a public benefit, and those expenses typically related to the hard construction costs. Program funds may not be used for project design, engineering, and other soft costs.

E. That in order to be eligible for funding a project must result in direct long term job creation. In order to qualify a project must ~~[A priority will be placed on these projects that]~~ provide both [one or more] of the following:

(1) Location ~~[Projects located]~~ within the Full Urban Services Tax District (with an emphasis on projects located within Infill and Redevelopment areas) that increase development of underutilized or vacant properties, or economic development opportunities; and [or]

(2) The direct creation of ~~[Projects that directly create]~~ long-term jobs in Lexington-Fayette County, Kentucky.

F. That all funds awarded pursuant to the Program shall be solely at the discretion of the Urban County Government and shall be in the form of an interest-free loan agreement with a term not to exceed ten (10) years, maximum. The maximum amount of any loan shall not exceed the lesser of \$500,000 or ten percent (10%) of the total project cost. Up to one hundred percent (100%) of the approved loan amount may be deemed forgivable by the Urban County Government upon the meeting of any required conditions. In the event of an exceptional project that creates significantly more long-term jobs, or results in

a significantly greater benefit to the general public, than a typical project, the Urban County Government may consider waiving some or all of the above limits or conditions. All loan agreements are subject to recommendation by the Board and final approval by the Urban County Council.

G. That in order to protect Program funds the following additional requirements must be met prior to the consideration of an application for Program funds by the Board:

- (1) The applicant must be in good standing as to the payment of all Urban County Government taxes, fees, penalties, or fines;
- (2) The applicant must be able to sufficiently explain how the funding is essential to the project;
- (3) The applicant must provide sufficient detailed evidence that the project has adequate external financing (including any necessary “gap” financing for the public infrastructure funded by the Program); and
- (4) The applicant must be able to show that the project complies with the Urban County Government’s Comprehensive Plan, any relevant small area plans, and all government land use or development regulations, ordinances, and policies.

H. That any person or entity interested in obtaining Program funding must submit an application to the Mayor’s Chief Development Officer for initial review.

- (1) The application shall contain the minimum requirements established by this ordinance and any additional Program guidelines and/or policies adopted by the Urban County Government.
- (2) If the application meets the minimum criteria, the Mayor’s Chief Development Officer will make a recommendation to the Board regarding the application.
- (3) The applicant will be provided the opportunity to present additional information to the Board regarding its application. The Board will consider and review the application and any other relevant information provided regarding the application.

- (4) The Board will make a recommendation to approve the application, amend the application, or deny the application.
 - (5) If the Board determines that the Program funding application should be partially or entirely funded, the appropriate administrative steps will be taken to present the recommendation and the appropriate Program funding agreement to the Urban County Council for consideration.
 - (6) Once an application is initially approved by the Board, the applicant will have sixty (60) days to reach a preliminary recommended loan agreement with the government which shall be presented to the Urban County Council for final approval, or the funding may be withdrawn. The Board may extend this deadline by an additional thirty (30) days upon the recommendation of the Chief Development Officer.
 - (7) If an applicant is provided Program funding and fails to meet the timeline for beginning construction of the project or for encumbering or fully spending the funds, the funding can be revoked or the funding agreement terminated. Construction of the project must normally begin within twelve (12) months of funds being approved, and once encumbered, funds must be completely spent within two (2) years.
- I. The Program shall primarily be administered by the Mayor's Chief Development Officer with appropriate assistance from other departments or division of the Urban Government as necessary.
 - J. That the Program's Policies and Guidelines, as amended, which are attached hereto as Appendix A, be and hereby are adopted.
 - K. That in order to provide funding to the Program, the Department of Finance and Division of Accounting will keep track of all designated funds which will be used to fund the Program. All loan payments or collections of funds made to the Urban County Government pursuant to any Program Fund agreement shall be placed into the above Program fund so that there will be a continual funding source for the Program.

Section 2 - 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 3 - That this ordinance shall become effective upon the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED: