

Lexington Public Infrastructure Program Policies and Guidelines

I. General

In _____, 2017, The Lexington-Fayette Urban County Government established a local economic development and infill incentive program to provide local funding for public infrastructure construction to certain qualified projects. These are the policies and guidelines for the Program.

In order to qualify for incentive funding, an applicant must be either (1) willing to commit to creating and retaining a minimum number of jobs for a specific duration in Lexington-Fayette County, Kentucky or (2) commit to direct capital investment in Lexington-Fayette County, Kentucky for a project that meets one or more of the priorities of the Public Infrastructure Program. The priorities of the Public Infrastructure Program are limited to those expressly listed below:

- Increase affordable housing units (new or preserved) within the Urban Services Area,
- Increase development of underutilized or vacant properties within the Urban Services Area,
- Increase residential units within the Urban Core Area,
- Increase retail development within the Urban Core Area,
- Increase economic development opportunities within the Urban Services Area,
- Direct creation of jobs with an average salary greater than the current official median income for Lexington-Fayette County, Kentucky.

For purposes of funding priorities the Urban Core Area is defined as the area within New Circle Road. Only those projects within the Urban Core Area are eligible to be considered for priority funding associated with increased residential units or retail development.

Any applicant selected for participation must provide evidence of the leverage of private or external funds as well as compatibility with existing plans and policies of the Lexington-Fayette Urban County Government. Applicants that are selected for funding based on the direct job creation priority shall provide evidence of potential commercial success. The receipt of traditional financing or other qualified federal or state funding through a similar process in which the viability of the business has been substantially reviewed will be considered evidence of potential success; however, Program funding will not necessarily be limited to those businesses.

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 a loan agreement, grant agreement, or similar agreement. Each funding agreement shall be approved by the Urban County Council. Applicants are eligible to receive funding from the Public Infrastructure Program and other Lexington-Fayette Urban County Government programs, but decisions about the awarding of these funds will be made independently.

The typical maximum amount of any funding agreement will not exceed \$300,000 for a grant agreement and \$500,000 for a loan or other agreement. However, upon the recommendation of the Commissioner of Planning, Preservation and Development, the Chief Development Officer, the Public Infrastructure Program Board, and the final approval of the Urban County Council, the funding **may exceed** the above amounts.

All funding awarded based on direct job creation will be made subject to an agreement by the business that a minimum number of jobs and total payroll will be created and that those jobs will continue to exist for the period of time provided in the funding agreement. All funding awarded based on direct capital investment will be made subject to an agreement by the applicant that sufficient private funds are allocated to complete the entire proposed project on a timeline agreed upon in the funding agreement. All loans are to be repayable to the Urban County Government within ten (10) years. All grants or other agreements shall include provision(s) requiring the repayment of some or all of the funds in the event that the terms of the agreement are not fulfilled.

Any applicant interested in obtaining funding shall submit an Public Infrastructure Program funding application to the Office of the Commissioner of Planning, Preservation and Development for initial review. If the Public Infrastructure Program funding application meets the minimum criteria, the Commissioner of Planning, Preservation and Development will initiate a technical review of the public infrastructure request. The Commissioner and appropriate staff will assess the public infrastructure request to determine among other things, validity of cost estimate; appropriateness of public infrastructure requested; feasibility of construction plans; compliance with all LFUCG engineering manuals and compliance of request with the comprehensive plan. The Commissioner of Planning, Preservation and Development will make a recommendation to the Public Infrastructure Program Board regarding the application. 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. The Board will make a recommendation to approve the application in full, in part, or deny the application. 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. Only appointed members of the Board may vote to send recommendations and funding agreements to the Urban County Council.

II. Lexington Public Infrastructure Programs

There are two main public infrastructure programs to which applicants can apply for funding, a grant fund and a loan fund. Importantly, an applicant must first qualify for either the grant or loan funding based on direct jobs creation or direct capital investment criteria described below. The purpose and criteria for these two programs

(grant or loan) is identical, with the main differences being in the amount of money to be awarded and repayment schedule. These programs are intended to be flexible with those parameters which are in addition to those required Ordinance No. _____ (and which are listed in the below tables), operating as general guidance in making recommendations for funding. For example, if a sufficient business case is made in support of providing infrastructure funds in excess of the respective amounts listed in the below tables, the Public Infrastructure Program Board may propose that the LFUCG enter into an agreement to provide the higher amount. However, only the Urban County Council has the authority to authorize the issuance of incentive funds to an applicant under any of the programs.

Program	Direct Job Creation	Direct Capital Investment
Funding Type	Grant or loan	Grant or loan
Amount	Grant: Up to \$300,000 Loan: Up to \$500,000	Grant: Up to \$300,000 Loan: Up to \$500,000
Interest	<i>Penalties (10-year Note plus risk and overhead adjustment)</i>	<i>10-year Note plus risk and overhead adjustment</i>
Term	Loan: Up to 10 years	Loan: Up to 10 years
Eligibility	-High Growth Company -Shall be a business located in or planning to move to Lexington -Job creation requirement -Shall be current with all federal, state, and local taxes -Shall produce a tradable good or provide a tradable service (whether pre- or post-commercialization) -Average wages for job creation are greater than or equal to the county median income.	-Increase affordable housing units (new or preserved) within the Urban Area, -Increase development of underutilized or vacant properties within the Urban Service Area, -Increase residential units within the Infill area, -Increase retail development within the Infill area, Increase economic development opportunities within the Urban Services Area
Performance Indicators	-Dollars Leveraged -Patents Filed -Additional Grant Funding -Jobs Created	-Private dollars leveraged -Evidence of plan compatibility -Project timeline and readiness
Additional Notes	-Consideration will be given to companies that have received SBIR/STTR Phase I or Phase II grants and Kentucky SBIR/STTR Matching Funds. -Funds may only be spent on public infrastructure needs as outlined in the application.	-Priority will be given to projects that improve the overall performance of public infrastructure in the vicinity of the project -Funds may only be spent on public infrastructure needs as outlined in the application.

Public Infrastructure and Eligible Expenses

The public infrastructure program is designed to provide funds that assist applicants with the cost of construction of public infrastructure necessary for their project. As such, public infrastructure projects are narrowly defined as 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). Other eligible expenses covered by these funds are those costs generally associated with public infrastructure costs, such as design and construction engineering.

III. Protecting Public Dollars and Investments

All funding incentives shall be structured in a manner that protects the public's investment and ensures that all requirements of the finalized agreements are complied with. Funds will only be provided through a formal agreement with LFUCG. The Board will assist in the development of appropriate agreements. The preference of the LFUCG is to disburse funds as reimbursements for expenses. At the discretion of the board, the funds may be disbursed in a different manner. In the event that an applicant fails to fulfill the minimum requirements, penalties will apply in addition to any required repayment of funds under the agreement. However, in no event will LFUCG penalize an applicant which fails to create or retain jobs which were in excess of those required by the incentive fund loan or grant agreement. The board maintains the discretion to attach additional taxpayer protections as necessary in incentive agreements. The following or similar types of provisions may be included in all funding agreements:

- No loan agreement may exceed ten (10) years in duration.
- In the case where direct job creation incentives are awarded, the business shall provide LFUCG with regular annual reports and updates as requested confirming the number of jobs above the minimum jobs baseline and criteria established in the agreement.
- The agreements shall include a "but for" clause that indicates but for these incentives this project would not be completed.
- If feasible, all loans may be secured with the highest lien position available. Depending upon the circumstances, the LFUCG may require personal guaranties of the owner(s) or other additional security.

- If it is in the best interest of LFUCG, the loan or grant agreement may be structured in a manner in which the incentive funds are disbursed over a period of time, or as reimbursement for a capital expense instead of as a lump-sum disbursement.
- The agreements shall include a best efforts clause regarding the use of funds.
- In the instance of a shut down or other cessation of operations, the company shall repay the full amount of the incentive plus any accrued interest.
- 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 may be contingent upon a letter of credit or other security.
- Businesses receiving incentives will be required to sign an affidavit certifying proper use of the funds for capital expenses outlined in their application and contract.
 - Businesses that are found to have improperly utilized funds will be subject to financial penalties, in addition to other penalties at the discretion of the LFUCG.
- If an applicant is provided a loan or grant and does not meet the timeline for encumbering the funds, the funding can be revoked. As a general rule construction must begin within 6 months of funds being approved and once encumbered funds must be completely spent within 2 years.
- If an applicant is provided a loan or grant and does not meet the timeline agreed to within the formal agreement for the construction of the public infrastructure, funding will be reduced and/or penalties will apply.
- If the business is provided a loan and does not meet its job creation/retention target benchmarks, the incentive funding will be reduced and/or penalties will apply. Examples include, but are not limited to:
 - The elimination of any incentive fund payments to the business that have yet to be disbursed.
 - The acceleration of any required repayments during period(s) of nonperformance by the business.
 - Additional interest penalties tied to non-performance by the business.
- If the business is provided a grant and does not meet its job creation/retention target benchmarks, the incentive funding will be reduced and/or penalties will apply. Examples include, but are not limited to:

- The elimination of any incentive fund payments to the business which has not been disbursed.
- The grant incentive funds that the business has received would be required to be repaid to LFUCG. All grants agreements will include an assigned market interest rate which would apply in this event.
- Additional interest penalties tied to non-performance by the business.
- Penalties as defined by amount and term of the grant or loan which would be paid monthly and cease if job creation goals were met.

IV. Funding Form/Criteria Evaluation

The LFUCG's Commissioner of Planning, Preservation and Development, working in conjunction with the Chief Development Officer and Public Infrastructure Board will develop appropriate criteria for reviewing the strength of an application for incentive funding and determining the amount and type of funding for which an applicant may qualify. Infrastructure funding should be deal closing investments.

For the purposes of direct job creation applications, the board shall establish an average wage benchmark annually. The benchmark must be for an individual and not a household. This benchmark shall be sourced from federal data and shall be either the mean or the median.

V. Application Process

LFUCG's Commissioner of Planning, Preservation and Development working in conjunction with the Public Infrastructure Program Board and Chief Development Officer will develop an appropriate standard application(s) for the Program funds which will include the minimum information specified herein as well as that information deemed by the Commissioner of Planning, Preservation and Development or the Board to be reasonably related to obtaining the information necessary to make an infrastructure funding recommendation. The application shall include the information specified in Section IV, above, along with sufficient supporting documentation. The Commissioner of Planning, Preservation and Development, LFUCG, Board, or Urban County Council may request supplemental information from the applicant as needed. The Commissioner of Planning, Preservation and Development, in conjunction with the Chief Development Officer and Public Infrastructure Program Board, may modify the application as necessary to ensure that all of the information necessary for awarding incentives and compliance is available. To the extent required by law, LFUCG will treat as confidential those items marked as proprietary or confidential. The respective application for the Program funding may also include the following:

Application Materials

- **Project description:** Provide a complete description of the project, including the project name, location, size and scope.
- **Infrastructure proposed:** Identify what type of infrastructure is to be funded and provide a description of how its funding is critical to the success of the 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.
- **Stamped engineering Drawings:** Provide copies of stamped engineering drawings suitable for review of the proposed infrastructure project. Drawings 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 have been applied for or received as part of the project. Examples include but are not limited to Affordable Housing Funds, Jobs Fund, Tax Increment Financing, etc..
- **Evidence of Plan Compatibility:** Provide detailed evidence of the compatibility of the proposed project with the comprehensive plan and all other relevant small area plans, land use regulations or other LFUCG policies. This should include, but is not limited to, all necessary approvals from the Division of Planning, Division of Building Inspection, Division of Engineering and Division of Water Quality.
- **Project Timeline:** Provide a detailed project timeline and work schedule showing how the money will be encumbered within 6 months of approval. Once funds have been encumbered they must be spent within 18 months.

Any applicant interested in obtaining funding shall submit a Public Infrastructure Program funding application to the Office of the Commissioner of Planning, Preservation of Development for initial review. An application fee may be required. The board will establish the fee annually and it will not exceed \$1000. Initial review of all submitted materials will be conducted by a panel to include the Chief Development Officer, or his or her designee, a representative from the Department of Law, and a representative from the Department of Finance and Administration and a representative from the Department of Planning, Preservation and Development.

If the Program funding application meets the minimum criteria, the Commissioner of Planning, Preservation and Development will initiate a technical review of the application. If the plans are deemed to be in compliance with all LFUCG engineering manual requirements and in compliance with the comprehensive plan and the “not to exceed” cost estimate is within the allowable funding limits of the program, the Commissioner of Planning, Preservation and Development and Chief Development Officer will make a recommendation to the Public Infrastructure Program Board regarding the application. If the application does not meet the minimum criteria, it will not be considered by the Board. If the Board votes to preliminarily fund the infrastructure request the applicant will be awarded a “not to exceed” amount that must be further approved by the LFUCG council. After preliminary approval, the applicant will have a maximum of 90 days to submit full construction drawings to the Commissioner of Planning, Preservation and Development for review and final approval of the plans and final approval of the infrastructure funds. Only after final approval of all construction drawings will funds be available for the construction of infrastructure associated with the application.

The Public Infrastructure Program Board will meet on a regular monthly schedule and as otherwise necessary to review any applications. In all instances the applicant or an authorized representative shall attend the Board meeting(s) at which the applicant is to be considered.

The Board will be provided sufficient copies of the relevant application documents in advance of the meetings. The Board will make a recommendation to approve the application, amend the application, or deny the application, or may request that additional information be provided prior to making a final decision. The Board will also make a recommendation as to the type and amount of funding and whether additional requirements should be placed in any funding agreement. The Board will also establish the interest rate for loans and penalty rate for grant funds. The interest accrual will not be applied to funds that are yet to be disbursed.

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.

If the Board determines that the Program funding application should be partially or entirely funded the applicant will have 60 days to reach an agreement with the Board on the incentive contract or funding can be withdrawn. Upon approval of the Board the applicant may be granted an additional 30 days to reach an agreement on the incentive funding.

If an applicant is provided a loan or grant and does not meet the timeline for encumbering the funds, the funding can be revoked. As a general rule construction must begin within 6 months of funds being approved and once encumbered funds must be completely spent within 2 years.

All incentive agreements will be reviewed by the Department of Law and the Mayor will be authorized to sign the agreement following the approval of the awarding of the incentive by the Public Infrastructure Program Board and the Urban County Council.

Members of the Board and the Urban County Council will be required to recuse themselves if they are private investors in the company applying for incentives or otherwise have a conflict and are prohibited from investing in companies that have received incentives.

VI. Accounting and Compliance

The Public Infrastructure Program will be maintained as distinct within the LFUCG accounting system. Disbursements will be made from that account. Future appropriations, repayment of loan proceeds, or clawbacks will be placed in that account. Disbursements will be made from the same account. Disbursements of the funds may be all at once, scheduled, or paid when an invoice for approved capital expenses is received. An invoice certifying a previously paid expense to be reimbursed will be the preferred method for distributing grant funds. Loan payments of principal and interest will be made monthly to LFUCG beginning on the date established in the contract. Grant repayments will not be made except in the instance of noncompliance using the clawback formulas in section III.

In their initial application, those applying under the direct job creation track will establish their baseline of jobs and revenue from which compliance will be measured. The business will also establish a schedule that outlines the anticipated dates of job creation related to the project. The business will be required to submit reports annually and as requested outlining job creation and average wages for the jobs created at the end of the year that jobs are scheduled to be created. Information obtained from the business' tax identification numbers will be used to supplement this information and confirm compliance submissions from the companies.

In the event that a business is found to be noncompliant with job creation or wage targets, the Board will provide a notice of noncompliance and indicate the time period in which the business shall become compliant. Alternative options may accompany a notice of noncompliance at the discretion of the Board. If the business fails to become compliant, then the clawbacks specified in the incentive agreement will go into effect until compliance is verified.

Proper usage of the incentive funds will also be viewed as key to compliance with the program. The quarter following each disbursement, each fund recipient shall submit a Certificate of Proper Use along with documentation of expenses equaling the incentive. If planned expenses are less than the incentive provided, the business may propose additional expenses to the Board for the use of those funds, or the funds may be returned to LFUCG at no penalty.