ORDINANCE NO. _____ - 2026

AN ORDINANCE CREATING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (PRIVILEGE FEES FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS), AS FOLLOWS: ADOPTING DEFINITIONS FOR PRIVILEGE FEE, PARTICIPATING OWNER, NON-PARTICIPATING OWNER, PUBLIC INFRASTRUCTURE, SHARED PUBLIC INFRASTRUCTURE, ACREAGE, AND INTEREST; AUTHORIZING THE ALLOCATION OF COSTS OF CONSTRUCTION OF SHARED PUBLIC IMPROVEMENTS TO NON-PARTICIPATING OWNERS IN THE FORM OF PRIVILEGE FEES; AUTHORIZING THE EXECUTION OF PRIVILEGE FEE AGREEMENTS BY THE MAYOR OR THE CHIEF ADMINISTRATIVE OFFICER AS MAYOR'S DESIGNEE FOR CONSTRUCTION OF SHARED PUBLIC INFRASTRUCTURE AND FOR REIMBURSEMENT OF COSTS ASSOCIATED THEREWITH FROM PRIVILEGE FEES REMITTED BY NON-PARTICIPATING OWNERS; REQUIRING COMPETITIVE BIDDING PROCEDURES FOR CONSTRUCTION OF SHARED PUBLIC INFRASTRUCTURE UNLESS WAIVED FOR GOOD CAUSE SHOWN; PROVIDING FOR NOTICE TO ALL NON-PARTICIPATING OWNERS AND A PUBLIC HEARING REGARDING PROPOSED CONSTRUCTION OF SHARED PUBLIC IMPROVEMENTS AND THE ALLOCATION OF COSTS TO NON-PARTICIPATING OWNERS BY WAY OF PRIVILEGE FEES; ESTABLISHING MINIMUM REQUIREMENTS FOR PRIVILEGE FEE AGREEMENTS; AUTHORIZING ADMINISTRATIVE FEES; AND AUTHORIZING THE COLLECTION OF INTEREST ON PRIVILEGE FEES.

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WHEREAS, Section 156b of the Kentucky Constitution is the enabling constitutional permission for the Kentucky General Assembly to afford local governments the power to pass laws which are "in furtherance of a public purpose" and the General Assembly has duly enacted KRS 82.082 (generally known as the "Home Rule" authority for cities) and KRS 67.083 (generally known as "Home Rule" authority for counties), in order to promote health, safety, morals, or general welfare of the people; and

WHEREAS, this authority is exercised by the Lexington-Fayette Urban County Government pursuant to KRS 67A.060, which provides that urban county governments may exercise the constitutional and statutory rights, powers, privileges, immunities, and responsibilities of counties and cities of the highest class within the county and/or which may be authorized for or imposed upon urban county governments, and pursuant to KRS 67A.070, which further provides that urban county governments may enact and enforce within their territorial limits such tax, licensing, police, sanitary, and other ordinances not in conflict with the Kentucky Constitution as they shall deem requisite for the health, education, safety, welfare, and convenience of the inhabitants of the county and for the effective administration of the Lexington-Fayette Urban County Government; and

WHEREAS, the Lexington-Fayette Urban County Government recognizes that encouraging new development and redevelopment projects by providing for the

construction of, and financing for, public infrastructure including but not limited to public sanitary sewers, safe public streets, public stormwater improvements, and public trails promotes the public health, public safety, and the general welfare of the residents of Lexington-Fayette County; and

WHEREAS, the Lexington-Fayette Urban County Government has adopted plans to govern urban growth management, including public infrastructure development relating thereto, including but not limited to the Expansion Area Master Plan (EAMP), the Urban Growth Master Plan (UGMP), and Lexington's Preservation and Growth Management Program (LPGMP), as well as ordinances, codes, procedures, and manuals to regulate the construction of public infrastructure, all in aid of property development and redevelopment in Lexington-Fayette County; and

WHEREAS, the Lexington-Fayette Urban County Council has determined that it is essential to the health, safety, and welfare of the residents of Lexington-Fayette County that those property owners who most directly benefit from the construction of shared public infrastructure as part of new development and redevelopment projects should pay their share of the costs of acquiring, designing, and constructing public infrastructure necessary for those developments; and

WHEREAS, the construction and financing of shared public infrastructure requires the creation of a mechanism to allocate the costs of shared public infrastructure to property owners who will most directly benefit from the construction of said infrastructure; and

WHEREAS, the Urban County Government has previously utilized the privilege fee mechanism to allocate the costs of shared public sewer facilities and provide for reimbursement therefrom when the Urban County Government or a private developer has expended funds to construct shared public sewer facilities; and

WHEREAS, the Urban County Council has determined that privilege fees constitute the most equitable mechanism to allocate shared costs of public infrastructure improvements to those property owners who are not participating in the construction of the shared public infrastructure but who will nonetheless most directly benefit from the construction of those improvements, and that the most equitable method of apportioning costs to those owners is on the basis of acreage; and

WHEREAS, compensation received by the privilege fee(s) allocated hereunder shall be used to finance, defray, and/or reimburse all or a portion of the costs incurred by the Government or a developer for the construction of sewers, roads, and other public infrastructure improvements identified hereunder that serve new development and redevelopment projects.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTONFAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That a new Chapter of the Code of Ordinances (Chapter 28 – Privilege Fees for Public Infrastructure Improvements) be and hereby is created to read as follows:

CHAPTER 28 – PRIVILEGE FEES FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 28-1. – Definitions.

(a) *Acreage* means total gross acreage.

(b) *Interest* means an amount of money that accumulates on an unpaid principal amount at a particular rate without compounding, also known as simple interest.

(c) *Non-Participating Owner* means an owner or developer of real property whose property most directly benefits from the construction of shared public infrastructure, without which shared public infrastructure said property would not be subject to development, and who did not participate in the planning of public infrastructure construction but is nevertheless responsible for contributing to the cost of shared public infrastructure on an acreage basis by remitting privilege fees.

(d) *Participating Owner* means an owner or developer of real property who is constructing shared public infrastructure and who may be compensated in the form of reimbursement from privilege fees remitted by Non-Participating Owners. For purposes of this chapter, the Lexington-Fayette Urban County Government qualifies as a Participating Owner on projects where the Urban County Government expends funds for the construction of shared public infrastructure and may be compensated in the form of a privilege fee.

(e) *Privilege fee* means an amount that represents the allocated portion of the costs of constructing shared public infrastructure that will ultimately benefit real property owned by Non-Participating Owners, inclusive of administrative fees and interest; such

costs of construction shall be based upon all contemporaneously documented costs of construction, including engineering, permitting, inspection and testing costs and costs of acquisition of any property interests necessary.

(f) *Public infrastructure* means publicly owned and operated infrastructure improvements, including improvements to public sanitary sewer infrastructure, construction of collector streets, arterials and boulevards and connections to existing regional road network, improvements to the public stormwater system, and trails to be developed as part of approved development plans.

(g) *Shared public infrastructure* means public infrastructure which is designed to serve the greater public infrastructure system at large, as contrasted with infrastructure improvements which substantially or exclusively benefit only a single project. If public infrastructure to be constructed provides or will provide more than incidental service to properties other than a single development, the public infrastructure shall be considered shared public infrastructure.

Section 28-2. – Privilege fees.

A Participating Owner who expends funds on the construction of shared public infrastructure which will benefit real property owned by Non-Participating Owners and which property shall be served by the shared public infrastructure shall be compensated in the form of reimbursement from privilege fees established by and remitted to LFUCG by Non-Participating Owners. If LFUCG expends funds on the construction of shared public infrastructure which will benefit property owned by Non-Participating Owners, LFUCG shall be compensated in the form of reimbursement from privilege fees remitted by Non-Participating Owners.

Section 28-3. – Requests for privilege fees; determination of public interest; confirmation of costs; establishment of privilege fee; public bidding required unless waived for good cause shown.

(a) *Requests for privilege fees.* To establish the privilege fee, and to be eligible for compensation in the form of reimbursement from privilege fees remitted to the urban county government by Non-Participating Owners, the Participating Owner shall submit the following to the Chief Administrative Officer or their written designee as part of a request for privilege fees for shared public infrastructure development:

(1) A Privilege Fee Agreement to be executed by the Participating Owner(s) who participated in the planning of the construction of the shared public infrastructure improvements and LFUCG on behalf of itself and the Non-Participating Owners, in the form required by Section 28-4.

(2) A detailed project description, including engineering and construction cost estimates prepared by a licensed professional engineer.

(3) Property appraisals prepared by professional appraisers to determine the cost of any land acquisition or right-of-way dedication necessary for the construction of shared public infrastructure, unless such cost has been otherwise determined by agreement between the Participating Owner and the property owner(s) contributing said property interests.

(b) *Determination of public interest; confirmation of costs.* The detailed project description, including engineering and construction cost estimates, shall be timely referred to the Division of Water Quality, the Division of Engineering, the Division of Planning, the Division of Parks and Recreation, and/or such other urban county government departments or divisions as appropriate to review and determine whether it is in the public interest to facilitate development, expend funds, and/or collect privilege fees on behalf of the Participating Owner for the construction of the proposed shared public infrastructure improvements.

(c) *Establishment of privilege fee.* If, in the administration of all ordinances, policies, plans, procedures, and manuals applicable to public infrastructure development in Lexington-Fayette County, LFUCG determines that it is in the public interest for the proposed shared public infrastructure to be constructed and reimbursed by privilege fees, the privilege fee shall be established by LFUCG based upon the information provided by the Participating Owner, with the costs of the shared public infrastructure to be apportioned to Non-Participating Owners based upon the acreage of properties benefited by the infrastructure; provided, however, that in the construction of public sanitary sewer infrastructure, costs shall be apportioned to Non-Participating Owners based upon the acreage located within the sewer service area and in the construction of public stormwater infrastructure, costs shall be allocated based upon the acreage located within the stormwater service area. Costs and acreage shall be subject to reconciliation by the

Participating Owner to reflect final actual project costs and acreages; if the reconciliation results in an adjustment that increases the privilege fee to which Non-Participating Owners are subject, any Non-Participating Owner who has already remitted the privilege fee shall be responsible for remitting any additional sum. All public infrastructure shall be dedicated to LFUCG free of charge.

(d) *Competitive sealed bidding required; waiver upon good cause shown.* All contracts for construction of shared public infrastructure subject to reimbursement through privilege fees shall be procured by the Participating Owner through competitive sealed bids, and shall be carried out in accordance with applicable development and design standards; the Participating Owner may request a waiver of the requirement of competitive sealed bidding, which the Chief Administrative Officer, as Mayor's designee, may grant in their sole discretion upon good cause shown. Provided, however, that if the Participating Owner fails to competitively bid project construction and/or fails to provide documentation of compliance upon request of the Urban County Engineer, the Participating Owner shall be deemed to have waived any claim to privilege fees.

Section 28-4. – Privilege Fee Agreement.

(a) *Privilege Fee Agreement required.* Prior to commencement of the construction of shared public infrastructure improvements, the Participating Owner(s) and LFUCG, as represented by the Mayor or by the Chief Administrative Officer as the Mayor's designee, shall execute a Privilege Fee Agreement. In consideration of the benefit that the construction of the shared public infrastructure provides to the Non-Participating Owners, who would not otherwise be able to develop their property without the shared public infrastructure, and pursuant to its authority under the Kentucky Constitution and Chapter 67A of the Kentucky Revised Statutes to allocate the costs of shared public infrastructure to the Non-Participating Owners benefiting therefrom in furtherance of the health, safety, welfare, and convenience of the inhabitants of Lexington-Fayette County, LFUCG shall execute the Privilege Fee Agreement on behalf of all Non-Participating Owners. The Privilege Fee Agreement shall be recorded at the expense of the Participating Owner in the office of the Fayette County Clerk.

(b) *Requirements.* The Privilege Fee Agreement shall include provisions which establish the following minimum requirements:

(1) The specific nature and extent of the shared public infrastructure to be constructed and eligible for compensation in the form of privilege fees.

(2) That the Participating Owner shall be entitled to reimbursement for construction of the shared public infrastructure from privilege fees paid to LFUCG.

(3) The properties that are subject to the Privilege Fee Agreement and which are responsible for the payment of the privilege fee established.

(4) The privilege fee to be established, with the costs of the shared public infrastructure to be apportioned based upon the total acreage of each property benefited by the infrastructure, with acreages and per acre costs to be adjusted to reflect final actual project costs and acreages; the Privilege Fee Agreement shall include the exact percentage of the shared costs to be allocated against each property and the costs for the construction of shared public infrastructure subject to allocation shall be based upon all contemporaneously documented costs of construction, including engineering, permitting, inspection and testing costs, and costs of acquisition of any property interests necessary.

(5) The competitive bid process to be used for selection of the contractor and estimated cost for the construction of the shared public infrastructure.

(6) The procedures to be used to submit, evaluate and approve (if warranted) change orders to any contracted shared public infrastructure improvement.

(7) An agreement by the Participating Owner to comply with all applicable ordinances, codes, plans, procedures, and manuals governing the development of public infrastructure in Lexington-Fayette County, including but not limited to the Code of Ordinances, the Zoning Ordinance, the Expansion Area Master Plan (EAMP), Urban Growth Master Plan (UGMP), and the LFUCG engineering manuals, unless expressly waived by LFUCG to the extent permitted by law.

(8) A statement establishing that the actual costs of the shared public infrastructure constructed by the Participating Owner shall be basis of the privilege fee allocation to Non-Participating Owners, and providing for reconciliation of actual costs of the shared public infrastructure through documentation required of the Participating Owner by LFUCG, including, but not limited to, periodic submittal

of invoices, proof of payment, audits or other means determined necessary by the LFUCG to ensure validity of the actual costs of construction.

(9) A statement that infrastructure which is constructed solely for the benefit of the Participating Owner's development project shall not be eligible for reimbursement in the form of privilege fees.

(10) An agreement by the Participating Owner to hold LFUCG harmless from any and all liability arising from any failure to collect privilege fees from Non-Participating Owners, their heirs, successors, or assigns, or from any failure by Non-Participating Owners, their heirs, successors, and assigns to remit privilege fees for the construction of shared public infrastructure.

(11) An agreement by the Participating Owner to comply with all procedures required by LFUCG to reconcile the actual costs of construction of the shared public infrastructure and finalize the privilege fee, and to produce all documentation and information for reconciliation of actual costs to LFUCG's satisfaction not more than ninety (90) days following the dedication of public infrastructure so constructed to LFUCG.

(12) An agreement by the Participating Owner that any failure to comply with the Privilege Fee Agreement or with the provisions of this chapter constitutes an occurrence of default and that reimbursement from privilege fees to the Participating Owner shall be withheld unless or until such default is cured and/or may be withheld entirely, depending on the circumstances.

(c) *Form and content subject to approval.* The final form and content of the Privilege Fee Agreement shall comply with this chapter in all material respects and shall be subject to the approval of the LFUCG Department of Law.

Section 28-5. – Administrative fees; simple interest.

In recognition of the additional administrative burden associated with the construction of shared public infrastructure by Participating Owner(s) for the benefit of Non-Participating Owners, an Infrastructure Development Administrative Fee for the benefit of Participating Owners shall be included in the privilege fee, which shall not exceed 5.0% of the total documented construction cost. Separately, and in recognition of the additional administrative costs associated with LFUCG's administration of Privilege

Fee Agreements, an additional administrative fee shall be included in the privilege fee, which shall be no more than 0.5% of the total project cost, and which shall be withheld from reimbursements made to Participating Owners from privilege fees remitted by Non-Participating Owners and retained by LFUCG. In addition, privilege fees shall bear interest at the U.S. 10 Year Treasury Note Yield as published in the Wall Street Journal, plus one percent (1%), as of the date of execution of the agreement. The interest calculation shall be simple interest solely on the principal of the privilege fee amount, without compounding, and interest shall accrue per annum beginning thirty (30) days from the date of dedication and shall continue to accrue until the privilege fee is paid in full, or until twenty (20) years have elapsed, whichever occurs first; provided, however, that cessation of the accrual of interest after twenty (20) years have elapsed shall have no effect on the underlying privilege fee obligation, including previously accrued interest. Under no circumstances shall interest accrue on previously accrued but unpaid interest.

Section 28-6. – Notice to Non-Participating Owners; Public Hearing.

Prior to execution of a Privilege Fee Agreement, LFUCG shall provide written notice by certified mail to all owners of property to be ultimately benefitted by the shared public infrastructure at least fourteen (14) days in advance of a public hearing to be held at a meeting of the Urban County Council. Said notice shall, at a minimum, provide a description of the proposed project, the estimated amount of the privilege fee, the share of costs to be borne by each property, and the date and time of the public hearing related to the allocation of costs as part of the Privilege Fee Agreement.

Section 28-7. – When privilege fees are due.

Privilege fees shall be due and payable by Non-Participating Owners immediately prior to the signing of a final subdivision plan by the Urban County Engineer or their designee. In the event a final subdivision plan is not required, the payment of the privilege fee shall be due prior to the approval of infrastructure development plans by the Division of Engineering. Any development that proceeds without an appropriate reconciliation of, and remittance to, LFUCG of any outstanding privilege fees shall have all permits withheld until such time as privilege fees are paid.

Section 28-8. – Reimbursements to Participating Owners.

(a) *Participating Owners.* LFUCG will remit reimbursements to the

Participating Owner from privilege fee amounts paid to LFUCG by Non-Participating Owners, their heirs, successors, and assigns, not more than ninety (90) days following receipt of privilege fees associated with the Privilege Fee Agreement, but no reimbursement shall be made to Participating Owner for their proportionate part of the shared public infrastructure cost. The Participating Owner shall submit, within five (5) business days following receipt of such reimbursement, a written acknowledgment that the privilege fee for the subject property has been paid in full and a written waiver of any further claim for reimbursement for the subject property, expressly acknowledging that said property is no longer subject to the privilege fee and partially releasing the Privilege Fee Agreement as to the subject property; the Participating Owner's failure to do so within five (5) business days constitutes acceptance of the reimbursement in satisfaction of all privilege fees owing for that property and Participating Owner shall be deemed to have waived any further claim relating thereto.

(b) *LFUCG*. Where LFUCG expends funds for the construction of shared public infrastructure, LFUCG shall be eligible for and may retain privilege fees.

Section 2 – That, should any section or part of any section or any provision of this Ordinance be declared invalid by a Court of competent jurisdiction, for any reason, such declaration shall not invalidate, or adversely affect, the remainder of this Ordinance.

Section 3 – That this Ordinance shall be effective upon the date of its passage, and that any ordinances, resolutions, or executive orders in conflict with any section of this ordinance be and hereby are repealed or rescinded.

PASSED URBAN COUNTY COUNCIL:

_____
MAYOR

ATTEST:

_____
CLERK OF THE URBAN COUNTY COUNCIL
PUBLISHED: xxx-26:MSC: 4913-7558-2635, v. 1