

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE AMENDING LOUISVILLE METRO CODE OF ORDINANCES CHAPTER 165: ENERGY PROJECT ASSESSMENT DISTRICT PROGRAM.

SPONSORED BY: COUNCIL MEMBER GEORGE

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: Louisville Metro Code of Ordinances ("LMCO") Chapter 165 is hereby amended as follows:

§ 165.01 PROGRAM ESTABLISHED.

There is hereby established an Energy Project Assessment District ("EPAD") program pursuant to KRS 65.205 - 65.209 to advance the conservation and efficient use of energy and water resources within Louisville ~~Metro~~/Jefferson County Metro Government ("Louisville Metro Government") by allowing for energy projects to be financed through voluntary special assessments imposed upon the real property being improved through the energy project. ~~Louisville/Jefferson County Metro Government~~ ("~~Louisville Metro Government~~") intends to use said assessments to support private sector energy projects.

§ 165.02 DEFINITIONS.

For this chapter, the following terms shall apply. All other terms used in this chapter shall have the same meaning as given to those terms set forth in KRS 65.205.

ELIGIBLE PROPERTY OWNER shall mean the owner of real property, located within the jurisdictional boundaries defined by §165.03, that excludes residential property consisting of fewer than five units.

~~***OFFICE OF MANAGEMENT AND BUDGET***~~ shall mean the ~~Louisville Metro Office of Management and Budget~~ or such other successor agency.

OFFICE OF MANAGEMENT AND BUDGET shall mean the Louisville Metro Office of Management and Budget or such other successor agency.

OFFICE OF ADVANCED PLANNING AND SUSTAINABILITY shall mean the Louisville Metro Government Office of Advanced Planning and Sustainability or such other successor agency.

PROGRAM ADMINISTRATOR shall mean the Office of Advanced Planning and Sustainability together with any third-party program administrator with which the Office of Advanced Planning and Sustainability may agree to perform the duties or provide the services of the Program Administrator as permitted by KRS 54.206(2)(c).

PROGRAM FINANCING AGREEMENT shall mean a contractual agreement between the designated property owner, the Program Administrator, Louisville Metro Government and an approved finance lender that provides for the financing of an Energy Project, the costs of which are to be repaid through an annual assessment on the affected real property.

§ 165.03 DESIGNATION OF EPAD PROGRAM AREA.

The entirety of Louisville Metro is hereby designated as an EPAD.

§ 165.04 ADMINISTRATION OF EPAD PROGRAM

(A) The ~~Office of Sustainability~~ Program Administrator shall coordinate and administer the EPAD program. ~~In its role as administrator, the Office of Sustainability~~

The Program Administrator shall:

- (1) Develop and publish policies and procedures for promoting and implementing the EPAD program.

(2) Develop and publish an application and fee based on the actual cost of reviewing the applications and the Program Financing Agreements, including the ~~costs~~ fees of any third-party administrator ~~that aids in administering the program, which fee shall not exceed 1% of total amount of the project~~ aiding in the review of applications and Program Financing Agreements. The application fee shall be due at the time the application is submitted and is shall be non-refundable.

(3) Develop an ~~annual~~ a reporting format ~~for the oversight and monitoring of~~ that evaluates the effectiveness of the EPAD program in meeting energy efficiency goals and financial requirements. ~~The reporting requirements shall be included in the contracts for the eligible property owners.~~

(4) Provide a list of program participants and annual assessment payment amounts to the Jefferson County Sheriff's Office (the "Sheriff") annually no later than ~~January 31~~ May 1 of each year. The Sheriff may require additional information as is necessary ~~for billing and collecting the EPAD assessment.~~

(5) Once an application is approved, record written notice of the assessment in the real property records of the Jefferson County Clerk's Office, which includes 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 - 65.209 and this chapter.

(B) The ~~Office of Sustainability~~ Program Administrator may hire program staff, or contract with a third-party entity ~~to administer or aid in administering~~ the administration of the EPAD program: collecting assessments and complying with any statutory or ordinal duties. If the Office of Advanced Planning and Sustainability contracts with any third-party

entity for any program administration or billing and collection services, any fees of such third party shall be annually reviewed by the Office of Advanced Planning and Sustainability.

§ 165.05 ADMINISTRATION FEES AND SHERIFF COMMISSION.

In addition to the non-refundable application fee, an annual administration fee in an amount not to exceed 1% of the total amount of the annual assessment or \$200, whichever is less, shall be paid to Louisville Metro Government and, if the assessments are to be billed and collected by the Sheriff, an annual commission not to exceed 1% of the total amount of the annual assessment shall be paid to the Sheriff for the Sheriff's billing and collection duties. These annual fees and commission shall be collected concurrently with the annual property assessment and paid to the Sheriff. Upon receipt of the assessment, administrative fee, and commission amounts, the Sheriff shall remit funds less the Sheriff's commission amount to the Office of Management and Budget.

If a private, third-party servicer is selected by the Office of Advanced Planning and Sustainability, that servicer shall perform the duties required to bill, collect and remit the annual assessment. Any such servicer shall remit the annual assessments collected less any fee of the servicer for performing those duties as agreed upon in a written agreement between the servicer and the Office of Advanced Planning and Sustainability to the Office of Management and Budget. If a third-party servicer is selected, an application fee is not required.

§ 165.06 ELIGIBLE IMPROVEMENT PROJECTS.

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 ~~Louisville Metro~~ the jurisdiction of the EPAD as defined by §165.03 but shall not include residential property consisting of fewer than five 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 years, and the financing terms shall not exceed the expected useful life of the proposed improvement. For projects that include multiple improvements, the average weighted useful life shall be used as the measurement.

(D) 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.

(E) The energy project shall reduce energy or water usage or generate renewable power for the property.

§ 165.07 EPAD APPLICATION PROCESS.

(A) The application 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.

(B) The application 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 the licensed, qualified contractor who will construct and install the improvements;

(3) 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; and

(4) The payment terms of the program financing agreement, including the total amount financed and annual assessment payment.

(5) The application shall include a certification by the property owner(s), and its members, affiliates, shareholders, and/or all other related persons or entities as the Office of Advanced Planning and Sustainability 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 debts 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 secured property, 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 is being made.

(C) Louisville Metro Government may require the applicant to submit a current title examination, opinion letter, or other documentation to verify compliance with the requirements set out in § 165.07(B)(5).

(D) The property owner shall ~~agree to~~ participate in annual surveys and EPAD program evaluations ~~as requested by the Office of Sustainability upon request.~~

(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 requirements, ~~the Office of Sustainability may~~ Louisville Metro Government reserves the right to require additional information to certify that the applicant qualifies for the EPAD program in accordance with the EPAD Act.

(G) The Director of the Office of Advanced Planning and Sustainability may waive any of the requirements of this section that the Director determines to be appropriate in his or her sole discretion.

§ 165.08 PROCEDURES FOR APPROVED PROJECTS.

(A) The ~~Office of Sustainability~~ Program Administrator and the Office of Management and Budget shall review ~~the~~ applications to determine whether or not the applicant qualifies for the EPAD program. If both the ~~Office of Sustainability~~ Program Administrator and the Office of Management and Budget approve the application, the ~~Office of~~ Program Administrator will submit the proposed Program Financing Agreement to the County Attorney's Office for review and approval of the form and content of the Program Financing Agreement. Once approved, the Office of Advanced Planning and Sustainability will enter into ~~a contract~~ the Program Financing Agreement with the property owner accepting the energy project pursuant to terms and conditions as

established by Louisville Metro Government, which may include a surety bond or other guarantee if deemed appropriate by Louisville Metro Government. The ~~written contract~~ Program Financing Agreement shall set forth the total amount of the assessment, the term of the assessment, the interest rate established for the assessment, and the annual amount of the assessment. The ~~contract~~ Program Financing Agreement may also designate the qualified contractor that will construct and install the energy project.

(B) Once the application is approved and a ~~contract~~ Program Financing Agreement is executed, the Office of Advanced Planning and Sustainability, in coordination with the Program Administrator, shall impose an assessment upon the property and file a written notice of the assessment in the real property records of the Jefferson 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 - 65.209.

(C) Upon recording of the written notice of the assessment, and unless a third-party has been hired to bill and collect assessments, 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, plus the applicable administration fee and commission amount, for the relevant property. If a third-party has been hired to bill and collect assessments, such servicer shall collect the assessments annually, including any servicing fee agreed upon in the agreement between such servicer and the Office of Advanced Planning and Sustainability, and shall be authorized to prepare and issue a bill for the annual assessment payment amount plus any such fee for the relevant property. Any unpaid assessment shall bear interest at the

rate of 1% per month on the total amount due. The annual assessment payment amount will be due within 60 days of the billing date. A 5% penalty will be added to the total amount due after the 60-day period. The penalty will increase to 10% of the total amount due the following month if not paid. If unpaid after four months from the billing date the unpaid bills will be transferred from the Sheriff to the Jefferson County Attorney's Office for collection. The Jefferson County Attorney's Office shall receive a fee of 20% of the unpaid annual assessment amount for their collection duties.

(D) The assessment, including administration fees, 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 section 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 Jefferson County Attorney's Office is authorized to pursue collection actions for unpaid assessments in the same manner as unpaid property taxes.

(E) Neither Louisville Metro Government, the Sheriff or the Jefferson 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.

§ 165.09 AMENDMENTS TO EPAD PROGRAM.

Louisville Metro Government may, from time to time, 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.

§ 165.10 SEVERABILITY.

If any provision of this chapter 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 II: This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:
Michael J. O'Connell
Jefferson County Attorney

BY: _____
O-044-21 EPAD Amendments NJ 2-8-21