

ORDINANCE NO. 143, SERIES 2016

AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE PHOENIX HILL DEVELOPMENT AREA, DESIGNATING THE METRO DEVELOPMENT AUTHORITY, INC. AS AN "AGENCY", ADOPTING A DEVELOPMENT PLAN, APPROVING ENTERING INTO A LOCAL PARTICIPATION AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL PARTICIPATION AGREEMENT, REQUIRING THE SUBMISSION OF REGULAR REPORTS TO LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES AUTHORIZED BY THIS ORDINANCE.

SPONSORED BY: Councilman David Tandy

WHEREAS, the Kentucky General Assembly enacted KRS 65.7041-65.7083 (the "Act") relating to tax increment financing and urban redevelopment, which Act establishes development areas to increase property values, increase employment opportunities, and increase economic activity;

WHEREAS, Louisville Baxter Apartments, LLC, an Ohio limited liability company, (the "Developer") plans to undertake a major project within the Phoenix Hill Development Area (the "Development Area") to complete the Phoenix Hill Redevelopment Project (the "Project"), as more particularly described in the Development Plan attached hereto as Exhibit A;

WHEREAS, the Project, which qualifies as a development area under the Act, will involve new capital investment of approximately \$50,000,000 when fully developed;

WHEREAS, in accordance with the provisions of the Act, a Development Plan for the Development Area has been prepared and a public hearing has been conducted to seek public comment on the Development Plan;

WHEREAS, the legislative council of the Louisville/Jefferson County Metro Government (the "Council") finds that the Project to be undertaken in the Development Area by the Developer will result in an increase in the value of property located in the Development Area, will result in increased employment within the Development Area, Louisville and the region and will increase the tax base of Louisville;

WHEREAS, it is therefore in the interest of Louisville/Jefferson County Metro Government ("Louisville Metro") and Metro Development Authority, Inc. (the "Authority") that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner;

WHEREAS, the redevelopment of previously developed land, within the meaning of the Act and as presented by the Developer and the Authority, enables Louisville Metro to use tax increment financing to encourage major economic development projects and is a worthy public purpose;

WHEREAS, Louisville Metro is authorized under the Act to execute a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville Metro within a development area in order to promote the public purpose of Louisville Metro;

WHEREAS, the Authority is organized and incorporated as a nonprofit, nonstock corporation pursuant to KRS Chapters 58 and 273 to act as an “Agency” under the Act; and

WHEREAS, Louisville Metro has determined that based on the benefits to be derived from the Project that it is in furtherance of its public purposes to assist Developer, through the Authority, with the costs of the Project and agrees to enter into the Local Participation Agreement in order to pay to the Authority the Released Amount (as hereinafter defined) for use solely for purposes of the Project.

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

Section 1. The Development Plan, attached hereto as Exhibit A, is hereby adopted.

Section 2. That the Council finds as follows:

- A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.
- B. The Development Area, as depicted in Exhibit B, is a contiguous parcel of property, approximately 4.13 acres in size, and is less than three (3) square miles in area as required by the Act.
- C. The Development Area constitutes previously developed land as required by KRS 65.7043(2).
- D. The establishment of the Development Area shall not cause the

assessed value of taxable real estate in all development areas located in Louisville Metro to exceed 20% of the assessed value of all taxable real property in Louisville. To date Louisville Metro has established several other development areas with a combined taxable real property assessment at the time they were established of approximately \$1.489 billion. The taxable real property assessment of the Development Area for calendar year 2015 is approximately \$2,602,520, and that amount combined with the previous development areas established by Louisville Metro totals \$1.492 billion, while the total taxable real property assessment for Louisville exceeds \$53 billion, 20% of which is \$10.6 billion.

E. The conditions within the Development Area meet more than two (2) of the seven (7) factors of blight as set forth in KRS 65.7049 and are as follows:

1. **A substantial loss of residential, commercial, and industrial activity or use has occurred within the Development Area.** The Development Area includes a former entertainment nightspot that was closed in 2015 and several other buildings that have been underutilized and under maintained for many years.
2. **A combination of factors substantially impairs or arrests the growth and economic development of the city or county and impedes the development of commercial or**

industrial property due to the Development Area's present condition and use. Development of the Project site without assistance as provided by the Act is not feasible due to the large scale costs associated with the redevelopment of the proposed Project. Potential revenue alone cannot underwrite the costs of the proposed improvements. No other adequate funding mechanism affords the proposed improvements absent the incentives provided under the Act. These improvements cannot be facilitated with private investment alone. The aesthetic improvement resulting from the development of the proposed Project will have a positive effect on the city and surrounding area, especially the impact on Baxter Avenue and East Broadway.

- F. The Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of site development expenses needed for the Project makes public incentives critical to the financing of the Project when compared with low potential revenue generated by these improvements.**
- G. The public benefits of redeveloping the Development Area justify the public costs proposed. The investment in the Development Area will result in significant returns through increased property**

valuations for the surrounding area, facilitate secondary and tertiary re-development within the area, and bring additional residents, diners and other visitors to Louisville. The Development Area has a 2015 taxable assessment of approximately \$2,602,520 and annually generates \$12,472 in ad valorem real property taxes to Louisville Metro. The Project will increase capital investment by approximately \$50,000,000, which will provide significant new taxes to Louisville Metro and the other taxing districts. While Louisville Metro will pledge 80% of the incremental increase of the local ad valorem real property taxes from the Development Area, up to a cap of \$4,908,093, to provide redevelopment assistance to the project, including public infrastructure improvements, it will retain 20% of the new incremental increase of the local ad valorem real property taxes from the Development Area. Notwithstanding the foregoing, if the parking structure should be owned by an entity that would result in an exemption from ad valorem real property taxes for the parking structure pursuant to Section 170 of the Kentucky Constitution, the cap shall be adjusted downwards to \$3,969,036. Further, the existing ad valorem real property taxes will be retained by Louisville Metro. Therefore, even when considering the requested incentives for the Project from Louisville Metro, the Project will be financially beneficial to Louisville Metro. The Project

will also serve as a catalyst for additional development in the area surrounding the Development Area.

In addition to the direct tax impact of the Project, the Project will provide unique and currently unavailable residential offerings and support to the surrounding neighborhood.

- H. The area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them. The area surrounding the Development Area is at a turning point. There remains a distinct lack of quality residential rental units, and underutilized structures now offer potential for re-development. There is the potential for attractive and desirable new multi-family housing and retail space within the surrounding area. This Project, at this time, is a catalyst project that can excite, and create the momentum needed to completely transform this area over the coming years.
- I. The pledge and use of a portion of Louisville Metro's incremental revenues, as defined in the Local Participation Agreement, derived from the Development Area to provide redevelopment assistance to the Project and the Development Area will increase capital

investment and employment in Louisville Metro, and therefore constitutes a public purpose.

Section 3. The Development Area as illustrated and described in Exhibit B is designated as a development area pursuant to the Act and shall be named the Phoenix Hill Development Area. The Development Area shall be established as of the effective date of this Ordinance and shall terminate on the earlier of (a) the termination of the Local Participation Agreement, attached hereto as Exhibit C, or (b) 25 years from the date hereof, provided that in no case the termination date will be more than twenty (20) years from the activation date.

Section 4. That the Metro Development Authority, Inc., a Kentucky nonprofit, nonstock corporation (the "Authority"), (a) is designated as the Agency, pursuant to the terms of the Act, (b) shall be the recipient of the Released Amount under the Local Participation Agreement and (c) shall be required to oversee and administer the implementation of the Project within the Development Area.

Section 5. That the Mayor is authorized to negotiate and enter into a Local Participation Agreement with the Authority for the release to the Authority of a portion of the new ad valorem real property taxes expected to be derived by Louisville Metro from the Project to be constructed in the Development Area ("Released Amount"), substantially in the form attached hereto as Exhibit C.

Section 6. That the Office of Management and Budget is designated as the department in Louisville Metro to oversee the payment of the Released Amount and to review all documentation concerning the Project, its progress, costs and development. The Office of Management and Budget shall annually submit to the

Council a report concerning the Development Area ("Report"). The Developer shall provide to the Office of Management and Budget, on a timely basis, all information required by the Office of Management and Budget to prepare the Report. The Report shall include but not be limited to:

- A. An accounting of all payments made to the Authority pursuant to the Local Participation Agreement;
- B. An analysis and review of development activity within the Development Area;
- C. The progress made toward meeting the stated goals of the Development Area;
- D. An accounting of the Approved Project Costs and other Project Costs incurred by the Developer.

Section 7. That the Council authorizes Louisville Metro to pay annually to the Authority, the Released Amount which shall be calculated as provided in the Local Participation Agreement, not to exceed a sum equal to (i) for the first ten (10) years of the term of the Local Participation Agreement, 100% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement, and (ii) for the next ten (10) years of the term of the Local Participation Agreement, 65% of the Louisville Metro Ad Valorem Real Property Tax Increment (which averages 80% over the total term of the Local Participation Agreement) subject to the following condition: in no event shall the total of the Released Amount paid to the Authority over the term

of the Local Participation Agreement exceed \$4,908,093, or \$3,969,036 (if certain conditions are met) as set forth in the Local Participation Agreement.

Section 8. That the Authority shall establish a Special Fund pursuant to the Act for the Development Area as set forth in the Local Participation Agreement.

Section 9. That the Mayor and other appropriate Louisville Metro officials, and each of them, for and on behalf of Louisville Metro, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville Metro under and pursuant to the Local Participation Agreement and related documents, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville Metro officials, and each of them, are hereby further authorized, empowered and directed for and on behalf of Louisville Metro to execute all papers, letter, documents, undertakings, certificates, assignments, forms, instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Ordinance and the Local Participation Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of Louisville Metro under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville Metro under the Local Participation Agreement and related documents.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.


Section 11. This Ordinance shall take effect upon its passage and approval.

This Ordinance was given first reading at a duly convened meeting of the Metro Council held on July 14, 2016, and given second reading and adopted at a duly convened meeting of the Metro Council held on August 11, 2016.




Stephen Ott
Metro Council Clerk

PRO - TEM



Greg Fischer
Mayor



David Yates
President of the Council

8/16/16

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: 

**LOUISVILLE METRO COUNCIL
READ AND PASSED
August 11, 2016**

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the Louisville/Jefferson County Metro Council (the "Metro Council"), and as such Clerk I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Metro Council upon second reading at a duly convened meeting held on August 11, 2016, signed by the Mayor, approved by me as Clerk and in full force and effect as therein stated, all as shown by the official records of the Metro Council in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this 18th day of August, 2016.



H. Stephen Ott, Metro Council Clerk PRO - TEM

Exhibits

- A. Development Plan
- B. Map of Development Area
- C. Local Participation Agreement

EXHIBIT A
DEVELOPMENT PLAN

EXHIBIT B
MAP OF DEVELOPMENT AREA

LEGAL DESCRIPTION

BEING LAND LOCATED IN LOUISVILLE, JEFFERSON COUNTY, KENTUCKY, ON THE NORTH SIDE OF EAST BROADWAY AND THE WEST SIDE OF BAXTER AVENUE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A MAG NAIL AND WASHER STAMPED "GEHLHAUSEN PLS-3005" (MAG & WASHER) AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY (R/W) LINE OF EAST BROADWAY (60' R/W) AND THE WEST R/W LINE OF BAXTER AVENUE (60' R/W), ALSO THE EAST CORNER OF A TRACT OF LAND CONVEYED TO BAXTER AVENUE REALTY, LLC (BAXTER) IN DEED BOOK 8886 PAGE 104 OF RECORD IN THE CLERK'S OFFICE OF JEFFERSON COUNTY, KENTUCKY, THENCE WITH SAID R/W LINE OF EAST BROADWAY NORTH 83 DEGREES, 34 MINUTES, 34 SECONDS WEST, 619.67 FEET TO A MAG & WASHER ON A STONE WALL AT THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO TRIANGLE REALTY, LLC (TRIANGLE) IN DEED BOOK 8886 PAGE 101 OF RECORD IN THE CLERK'S OFFICE AFORESAID AND ALSO BEING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO MILLER IN DEED BOOK 8514 PAGE 191 OF RECORD AFORESAID; THENCE LEAVING SAID R/W LINE AND WITH TRIANGLE AND MILLER AFORESAID NORTH 6 DEGREES, 10 MINUTES, 41 SECONDS EAST, 150.00 FEET TO A MAG & WASHER AT THE NORTHWEST CORNER OF TRIANGLE AND THE NORTHEAST CORNER OF MILLER BOTH AFORESAID AND IN THE SOUTH R/W LINE OF A 20 FOOT ALLEY; THENCE WITH SAID R/W LINE AND WITH TRACTS OF LAND CONVEYED TO TRIANGLE IN DEED BOOK 8886 PAGE 101 OF RECORD AFORESAID SOUTH 83 DEGREES, 34 MINUTES, 34 SECONDS EAST, 83.42 FEET TO AN UNMARKED POINT; THENCE LEAVING SAID R/W LINE NORTH 6 DEGREES, 25 MINUTES, 26 SECONDS EAST, 20.00 FEET TO A MAG & WASHER IN A WOOD POST AT THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO BAXTER IN DEED BOOK 8886 PAGE 104 AND THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO PRIEST IN DEED BOOK 10294 PAGE 218 OF RECORD IN THE CLERK'S OFFICE AFORESAID; THENCE LEAVING SAID ALLEY AND WITH BAXTER AND PRIEST NORTH 30 DEGREES, 43 MINUTES, 42 SECONDS WEST, 158.69 FEET TO AN IRON PIN AND CAP STAMPED "GEHLHAUSEN PLS-3005" (IPC) AT THE NORTHWEST CORNER OF BAXTER AND THE NORTHEAST CORNER OF PRIEST IN THE SOUTH R/W LINE OF ROGERS STREET (60' R/W); THENCE WITH SAID R/W LINE OF ROGERS STREET AND TRACTS OF LAND CONVEYED TO BAXTER AND TRIANGLE NORTH 59 DEGREES, 19 MINUTES, 21 SECONDS EAST, 155.00 FEET TO A PK NAIL IN BRICK WALL AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF ROGERS STREET AND THE WEST R/W LINE OF A 20 FOOT ALLEY AND ALSO BEING THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO TRIANGLE IN DEED BOOK 8886 PAGE 101 OF RECORD IN THE CLERK'S OFFICE AFORESAID; THENCE WITH TRIANGLE AND THE

WEST RW LINE OF SAID ALLEY SOUTH 30 DEGREES, 43 MINUTES, 42 SECONDS EAST, 25.02 FEET TO AN UNMARKED POINT; THENCE LEAVING SAID RW LINE NORTH 59 DEGREES, 16 MINUTES, 18 SECONDS EAST, 20.00 FEET TO A MAG & WASHER IN THE EAST LINE OF SAID ALLEY AND THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO DOWNING IN DEED BOOK 5765 PAGE 576 AND THE NORTHWEST CORNER OF BAXTER IN DEED BOOK 8886 PAGE 104 OF RECORD IN THE CLERK'S OFFICE AFORESAID; THENCE LEAVING SAID ALLEY AND WITH DOWNING AND BAXTER NORTH 59 DEGREES, 19 MINUTES, 21 SECONDS EAST 149.87 FEET TO A MAG & WASHER AT THE NORTHEAST CORNER OF BAXTER AND IN THE WEST RW LINE OF BAXTER AVENUE; THENCE WITH SAID RW LINE AND WITH BAXTER, TRIANGLE AND TRACTS OF LAND CONVEYED TO ROPPEL INDUSTRIES INC IN DEED BOOK 5107 PAGE 323 AND RICHE PROPERTIES IN DEED BOOK 8032 PAGE 475 OF RECORD IN THE CLERK'S OFFICE AFORESAID SOUTH 30 DEGREES, 45 MINUTES, 56 SECONDS EAST, 593.15 FEET TO THE POINT OF BEGINNING CONTAINING 4.13 ACRES AND BEING THE SAME PROPERTY CONVEYED TO BAXTER AVENUE REALTY, LLC IN DEED BOOK 8886 PAGE 104, TRIANGLE REALTY IN DEED BOOK 8886 PAGE 101, ROPPEL INDUSTRIES INC IN DEED BOOK 5107 PAGE 323 AND RICHE PROPERTIES, LLC IN DEED BOOK 8032 PAGE 475 OF RECORD IN THE CLERK'S OFFICE AFORESAID.

EXHIBIT C
LOCAL PARTICIPATION AGREEMENT