



# Louisville Metro Government

## Legislation Details (With Text)

**File #:** O-406-21      **Version:** 2      **Name:**

**Type:** Ordinance      **Status:** Passed

**File created:** 8/9/2021      **In control:** Metro Council

**On agenda:** 8/26/2021      **Final action:** 8/26/2021

**Title:** AN ORDINANCE ESTABLISHING A LOCAL DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE DUPIN DRIVE LOCAL DEVELOPMENT AREA, DESIGNATING THE METRO DEVELOPMENT AUTHORITY, INC. AS AN "AGENCY", APPROVING ENTERING INTO A LOCAL DEVELOPMENT AREA AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL DEVELOPMENT AREA 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 (AS AMENDED).

**Sponsors:** Mark Fox (D-13)

**Indexes:**

**Code sections:**

**Attachments:** 1. O-406-21 V.2 FAM 082621 Creates Dupin Dr. Development Area.pdf, 2. O-406-21 ATTACH EXHIBIT A Local Development Area.pdf, 3. O-406-21 ATTACH EXHIBIT B Local Development Area Agreement.pdf, 4. O-406-21 ATTACH EXHIBIT C - Memorandum of Understanding.pdf, 5. O-406-21 PROPOSED FAM 082621 Creates Dupin Dr. Development Area.pdf, 6. PROPOSED EXHIBIT C - Memorandum of Understanding - Storm Water Bank LLC Nicklies Company Inc. to Louisville Metro Government.pdf, 7. O-406-21 V.1 081221 Creates Dupin Dr. Development Area.pdf, 8. LAP\_Impact Analysis\_Local Net New\_8.6.21.pdf, 9. ORD 128 2021.pdf

Date	Ver.	Action By	Action	Result
8/26/2021	1	Metro Council	amended	
8/26/2021	1	Metro Council	passed	Pass
8/17/2021	1	Labor and Economic Development Committee	recommended for approval	Pass
8/12/2021	1	Metro Council	assigned	

### ORDINANCE NO. , SERIES 2021

AN ORDINANCE ESTABLISHING A LOCAL DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE DUPIN DRIVE LOCAL DEVELOPMENT AREA, DESIGNATING THE METRO DEVELOPMENT AUTHORITY, INC. AS AN "AGENCY", APPROVING ENTERING INTO A LOCAL DEVELOPMENT AREA AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL DEVELOPMENT AREA 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 (AS AMENDED).

**SPONSORED BY: COUNCIL MEMBER MARK FOX**

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

**WHEREAS**, Nicklies & Company, a Kentucky corporation, or an affiliate of same (the "Developer") plans to undertake a major project within the Dupin Drive Local Development Area (the "Local Development Area") to complete the Dupin Drive Project (the "Project"), as more particularly described in the Local Development Area Agreement;

**WHEREAS**, the Project, which qualifies as a local development area under the Act, will involve new capital investment of approximately \$49 million when fully developed, including approximately \$23 in public infrastructure improvements, including significant roadwork improvements that will benefit the area around the Project;

**WHEREAS**, in accordance with the provisions of the Act, a public hearing has been conducted to seek public comment on the Local Development Area and Project;

**WHEREAS**, Commonwealth Economics, LLC was engaged to analyze the data related to the Project and the Local Development Area and has prepared the economic impact report required pursuant to KRS 65.7047(2) (the "Economic Impact Report");

**WHEREAS**, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") finds that the Project to be undertaken in the Local Development Area by the Developer will further the public purposes identified in the Act by increasing the value of property located in the Local Development Area, increasing employment within the Local Development Area, Louisville and the region and increasing 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 development of the Local Development Area in a most efficient manner;

**WHEREAS**, the development of previously undeveloped 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 development area agreement with an agency in acknowledgement of benefits to be derived by Louisville Metro within a local 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 Development Area 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 (“COUNCIL”) AS FOLLOWS:**

**SECTION I:** 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 Local Development Area, as depicted in Exhibit A, is previously undeveloped land as required by KRS 65.7047(b), approximately 137.0368 acres in size, and is less than one thousand (1,000) acres as required by the Act.

C. The establishment of the Local Development Area shall not cause the assessed value of taxable real estate in all local development areas and 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 \$1.538 billion. This is the first local development area established by Louisville Metro. The taxable real property assessment of the Local Development Area for calendar year 2020 is approximately \$552,230, and that amount combined with the previous development areas established by Louisville Metro totals \$1.539 billion, while the total taxable real property assessment for Louisville exceeds \$65.6 billion, 20% of which is \$13.1 billion.

D. The Local Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of site development expenses, including public infrastructure costs that would benefit both the site and the surrounding area, needed for the Project makes public incentives critical to the financing of the Project when compared with low potential revenue generated by these improvements.

E. The estimated net positive fiscal impact of the Project, as calculated in the Economic Impact Report, is \$38,074,409.

F. The public benefits of developing the Local 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 with the addition of significant public infrastructure bring additional jobs to Louisville. The Local Development Area has (i) a 2020 taxable assessment of approximately \$522,230 but currently generates \$0 in ad valorem real property taxes to Louisville Metro because its owner qualified for the property tax exemption pursuant to Section 170 of the Kentucky Constitution, and (i) currently generates no (\$0) local occupational withholding fees to Louisville Metro. The Project will increase capital investment by approximately \$49 million, which will provide significant new taxes to Louisville Metro and the other taxing districts. While Louisville Metro will pledge 80% of the (i) incremental increase of the local ad valorem real property taxes from the Local Development Area, up to a cap of \$1,237,151, and (ii) incremental increase of the local occupational withholding fees from the Local Development Area, up to a cap of \$5,760,449, to provide development assistance to the project, including public infrastructure improvements, it will retain 20% of the new incremental increase from both the local ad valorem real property taxes and the local occupational withholding fees from the Local Development Area. 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 Local Development Area. The Developer has also committed to a community benefits agreement, which will be memorialized in a Memorandum of Understanding ("MOU") substantially similar to the draft MOU attached as Exhibit C.

G. The pledge and use of a portion of Louisville Metro's incremental revenues, as defined in the Local Development Area Agreement, derived from the Local Development Area to provide redevelopment assistance to the Project and the Local Development Area will increase capital investment and employment in Louisville Metro, and therefore constitutes a public purpose.

**SECTION II:** The Local Development Area as illustrated and described in Exhibit A is designated as a local development area pursuant to the Act and shall be named the Dupin Drive Local Development Area. The Local 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 Development Area Agreement, attached hereto as Exhibit B, 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 III:** 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 Development Area Agreement and (c) shall be required to oversee and administer the implementation of the Project within the Local Development Area.

**SECTION IV:** That the Mayor is authorized to negotiate and enter into a Local Development Area Agreement with the Authority for the release to the Authority of a portion of the new ad valorem real property taxes and new occupational withholding license fees expected to be derived by Louisville Metro from the Project to be constructed in the Local Development Area ("Released Amount"), substantially in the form attached hereto as Exhibit B.

**SECTION V:** 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 Local 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 Development Area Agreement;
- B. An analysis and review of development activity within the Local Development Area; and
- C. The progress made toward meeting the stated goals of the Local Development Area.

**SECTION VI:** That the Council authorizes Louisville Metro to pay annually to the Authority, the Released Amount which shall be calculated as provided in the Local Development Area Agreement, not to exceed a sum equal to 80% of the Real Estate Tax Increment and Withholding Tax Increment, as those terms are defined in the Local Development Area

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 Development Area Agreement exceed (i) \$1,237,151 with respect to the Louisville Metro Ad Valorem Real Property Tax Increment, and (ii) \$5,760,449 with respect to the Louisville Metro Withholding Tax Increment as set forth in the Local Development Area Agreement.

**SECTION VII:** That the Authority shall establish a Special Fund pursuant to the Act for the Local Development Area as set forth in the Local Development Area Agreement.

**SECTION VIII:** 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 Development Area Agreement, the performance of all obligations of Louisville Metro under and pursuant to the Local Development Area 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 Development Area 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 Development Area 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 Development Area Agreement and related documents and to perform all of the obligations of Louisville Metro under the Local Development Area Agreement and related documents.

**SECTION IX:** 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 X:** This Ordinance shall take effect upon its passage and approval.

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Sonya Harward  
Metro Council Clerk

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David James  
President of the Council

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Greg Fischer  
Mayor

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Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_

O-406-21 Ordinance Establishing the Dupin Drive TIF (as amended) (If)

**Exhibits**

- A. Map of Local Development Area
- B. Local Development Area Agreement
- C. Memorandum of Understanding

**EXHIBIT A**

**MAP OF LOCAL DEVELOPMENT AREA**

**LEGAL DESCRIPTION**

Being Tracts 2A, 2B and 2C as shown on the Minor Subdivision Plat approved by Louisville Metro Planning Commission on July 10, 2020 as Case No. 20-MPLAT-0077, which plat is of record in Plat Book 60, Page 14, in the Office of the Clerk of Jefferson County , Kentucky.

**EXHIBIT B**

**LOCAL DEVELOPMENT AREA AGREEMENT**

**EXHIBIT C**

**MEMORANDUM OF UNDERSTANDING**