

MUNICIPAL ORDER

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_____, **2021**

A MUNICIPAL ORDER CREATING AN ENERGY PROJECT ASSESSMENT DISTRICT (“EPAD”) WITHIN THE CITY PURSUANT TO THE PROVISIONS OF KRS 65.205-.209 AND ESTABLISHING A PROGRAM TO ADVANCE CONSERVATION AND EFFICIENT USE OF ENERGY AND WATER RESOURCES

WHEREAS, the Commonwealth of Kentucky, through Sections 65.205 to 65.209 of the Kentucky Revised Statutes (the “Act”), has authorized local governments to establish programs to advance the conservation and efficient use of energy and water resources within their jurisdictions, which programs are declared to be a valid exercise of the powers of local government and in the best interest of the people of the Commonwealth, by allowing for energy projects to be financed by assessments imposed upon the real property being improved through energy projects; and

WHEREAS, the City of Hopkinsville, Kentucky (the “City”) finds that the financing of energy and water efficiency projects through special assessments furthers essential City and community purposes, including, but not limited to, economic development, job growth, reduced energy costs, and conservation of water resources; and

WHEREAS, the City desires to enact and establish an Energy Project Assessment District (“EPAD”) and establish a program related thereto for the improvement of the health, safety and welfare of all citizens in the City, which program advances the conservation and efficient use of energy and water resources; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOPKINSVILLE, KENTUCKY:

Section 1. Findings and Determinations; Definitions. The recitals to this Municipal Order are incorporated herein as if set forth in this Section in their entirety and are hereby found and determined to be true and correct.

For purposes of this Municipal Order, capitalized words not otherwise defined herein shall have the meanings given them in the Act, and the following definitions shall apply:

“*City*” means the City of Hopkinsville, Kentucky.

“*EPAD Petition*” means a petition of an Owner to participate in the EPAD Program as provided in Section 5 of this Municipal Order.

“*EPAD Program*” means the EPAD program established by the City Council by this Municipal Order.

“*Owner*” means the owner or proposed owner of an interest in a real property in the EPAD.

“*Program Assessment*” means an assessment for payments to be imposed upon the real property located in an EPAD that is being improved by an Energy Project.

“*Project Financing Agreement*” means a contractual agreement between the Owner, the Program Administrator, if other than the Mayor or other City official, the City and an approved finance lender that provides for the financing of an Energy Project with all or a portion of the costs being repaid by a Program Assessment.

Section 2. Creation of Energy Project Assessment District. There is hereby established an Energy Project Assessment District within the entire jurisdictional boundaries of City in accordance with KRS 65.205 to 65.209. Through the EPAD, the City Council intends to operate the Program that utilizes assessments on relevant real property to support Energy Projects and Energy Improvements (as such terms are defined in the Act).

Section 3. Program. There is hereby established within the EPAD, an EPAD Program for the advancement of conservation and efficient use of energy and water resources. Under the EPAD Program, Owners may petition for inclusion in the EPAD Program whereby the Owner enters into a Project Financing Agreement to provide financing for an Energy Project with all or a portion of the costs being repaid by a Program Assessment paid in yearly increments and included on the Owner’s real property tax bill. Any payments related to a Project Financing Agreement or any other costs of the EPAD Program shall be payable solely and only from amounts collected as Assessment Payments and shall not be payable from the City’s general funds.

Section 4. Program Administration. The Mayor, his/her designee or a third-party entity pursuant to contractual agreement that the Mayor is hereby authorized to enter into, shall serve as Program Administrator (the “Program Administrator”). The Program Administrator shall be responsible for the general administration of the Program and the completion of the following functions:

- (a) review EPAD Petitions to determine compliance with applicable policies and procedures;
- (b) monitor proposed Energy Projects and timelines for completion;
- (c) approve written agreements between the City and Owners that submit EPAD Petitions and accepting Energy Projects pursuant to reasonable terms and conditions established for each Energy Project;
- (d) provide for the collection and distribution of Assessment Payments with respect to Assessment Payments established through the Program; and
- (e) provide for the filing of notices of assessment as required by the Act.

Section 5. EPAD Petition. Owners pursuing the development of an Energy Project shall complete an EPAD Petition and submit it to the Program Administrator. The EPAD Petition shall include and require the following:

- (a) the signature of the Owner;

- (b) the names and current addresses of all current owners of record of the real property;
- (c) the full legal description of the real property to which a proposed Assessment Payment is to be imposed, including reference to deed book and page number and property identification number;
- (d) a general description of the proposed Energy Project;
- (e) a proposed time schedule for undertaking and completing the proposed Energy Project;
- (f) the written consent to the proposed Assessment Payment by each and every holder of a recorded mortgage lien on the affected property;
- (g) the proposed scope of the work for the Energy Project;
- (h) the estimated construction, installation and equipping budget for the Energy Project; and
- (i) information setting forth the baseline energy or water usage conditions and the energy or water savings projected to be achieved with respect to the Project Property as a result of the Energy Project.

Section 6. Review of EPAD Petitions. The Program Administrator shall review each EPAD Petition and all associated materials supplied therewith to determine if the EPAD Petition complies with this Municipal Order and all other applicable rules and regulations of the Commonwealth and the City.

If the EPAD Petition complies, the Program Administrator shall approve a form of a Project Financing Agreement related to the financing of the costs of the Energy Project. The Project Financing Agreement shall have the customary and reasonable terms and conditions, including but not limited to, the imposition of a Program Assessment for a period of no more than thirty (30) years. The Program Administrator shall submit a form of the Project Financing Agreement, a recommendation as to approval, the application, and all supporting documentation for final approval by the City Council.

If approved by the City Council, the Program Administrator shall file a Notice of Assessment in the real property records of the County as required by KRS 65.207, which shall include the following:

- (a) the amount of the assessment;
- (b) the legal description of the real property;
- (c) the name of each owner of record of the real property; and
- (d) a reference to the statutory assessment lien provided under this section.

Section 7. Assessments. The Program Administrator shall review each EPAD Petition and all associated materials supplied therewith to determine if the EPAD Petition complies with this Municipal Order and all other applicable rules and regulations of the Commonwealth and the City.

(a) As enumerated in the Project Financing Agreement, the Program Administrator shall ensure the assessment is imposed and a statement as to the assessment payment due is included with the tax bill for the real property, in accordance with KRS 65.207(4)(a).

(b) Any Assessment shall, together with any collection fees, accrued interest and penalties, 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 until no Assessment Payments remain unpaid and the lien shall have the same priority as a lien for any other state or local ad valorem tax upon the Project Property.

(c) Any unpaid assessment payment shall bear the same interest rate and penalty as other delinquent taxes included in the Tax Bill.

(d) To offset the cost of administering the Program, including the cost of collection of Assessment Payments, in accordance with KRS 65.206(2)(c)2 fees may be imposed in amounts to be set forth in a Project Financing Agreement, to be collected as a part of the Assessment Payment; provided that such fee shall not exceed the cost of the services performed.

(e) The Program Administrator shall ensure that the assessment payments collected annually are paid to the City or the finance lender in accordance Project Financing Agreement.

Section 8. Amendments. Pursuant to KRS 65.206(2)(b), the City Council may amend the terms and conditions of the Program by municipal order, except that no amendments shall be adopted to retroactively change the conditions under which an existing Program Assessment was imposed, unless the Owner consents to the amendment in writing.

Section 9. Effective Date. This Municipal Order shall be in full force and effect from and after its adoption, approval and publication as is required by law.

Section 10. Conflicts. Any ordinance or municipal order or part of any ordinance or municipal order in conflict with this Municipal Order or any part of this Municipal Order is hereby repealed.

Section 11. Severability. Should any section, clause, line, paragraph, or part of this Municipal Order be held unconstitutional or invalid for any reason, the same shall not affect the validity of the remainder of this Municipal Order.

PASSED AND APPROVED THIS ____ DAY OF _____, 2021

Attest:

Christine M. Fletcher, MMC, City Clerk