

ORDINANCE NO. 25, 2016 SERIES

AN ORDINANCE CREATING CHAPTER 94, SECTIONS 94.01 THROUGH 94.07 OF THE CITY OF FRANKFORT CODE OF ORDINANCES RELATING TO ENERGY PROJECTS TO CREATE AN ENERGY PROJECT ASSESSMENT DISTRICT PURSUANT TO K.R.S. §65.205-209.

WHEREAS, the Commonwealth of Kentucky, through the adoption of AN ACT relating to energy project assessment districts or EPAD (KRS §65.205-209), 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 Board of Commissioners wishes to amend, adopt and create Chapter 94 of the City of Frankfort Code of Ordinances to add Sections 94.01, 94.02, 94.03, 94.04, 94.05, 94.06 and 94.07 relating to the financing of energy projects; and

WHEREAS, the City of Frankfort (the "City") finds that the financing of energy efficiency and water efficiency projects through special assessments (hereinafter referred to as "EPAD" financing) 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, to establish the Energy Project Assessment District (EPAD) program, the City is required to adopt an ordinance providing the terms and conditions of the program including the designation of the EPAD, a description of the EPAD boundaries, and the procedure for the property owners located in the EPAD area to petition the City for participation in the program; and

WHEREAS, the City hereby states that it intends to use assessments on relevant real property to support private sector energy projects; and

WHEREAS, it is in the best interests of the City to adopt and create Chapter 94 of the City of Frankfort Code of Ordinances to incorporate the creation of the EPAD in the City.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FRANKFORT, FRANKLIN COUNTY, KENTUCKY:

Section 1

Chapter 94 is hereby created to read as follows:

§94.01. PROGRAM ESTABLISHED; DEFINITIONS; DESIGNATION OF EPAD PROGRAM AREA

(A) The City declares as a public purpose the establishment of an Energy Project Assessment District program so that owners of real property, as defined in K.R.S. 65.205(6), can finance energy saving improvements. The City adopts this program pursuant to the Energy Project Assessment District Act of 2011. ("EPAD Act") (KRS §65.205-209) and further declares that the City intends to use assessments on real property in the EPAD to support private sector energy projects.

(B) Definitions for interpreting this Chapter shall have the same meaning as the definitions set forth in the EPAD Act.

(C) The City hereby designates the entire area within the City's jurisdictional boundaries, including any future annexed area, as the EPAD.

§94.02. ADMINISTRATION OF THE EPAD PROGRAM

(A) The City shall designate a Department, Departments, and may also designate a third-party entity to administer the EPAD program through the performance of the following functions:

- i. Review petitions to determine if the petitions comply with applicable policies and procedures;
- ii. Develop proposed energy projects and timelines for completion;
- iii. Prepare and recommend written agreements between the City and the property owners accepting the energy project pursuant to reasonable terms and conditions established; and
- iv. Collect and distribute assessments created through the EPAD program.

(B) The City, by and through a designated Department, or a designated third party entity, must develop procedures for property owners of record to petition the City for participation in the EPAD program. At a minimum, such procedures shall require that:

- i. Any petition must be signed by all record owners of the property;
- ii. Any holder of a mortgage lien on the property must give written consent for the assessment and state that the lien holder does not object to the imposition of the EPAD Act assessment and lien; and
- iii. The record owner of the participating real property shall notify the City upon the completion of the energy project.

(C) In order to be considered for approval the contents of a petition must include the following:

- i. A legal description of the real property that includes a deed book and page number;
- ii. The real property's Property Identification Number (PIDN);
- iii. The names and addresses of all owners of the real property;

- iv. A general description of the proposed energy project; and
- v. A proposed time schedule for undertaking and completing the project.

(D) Any petition for a project requiring a total assessment of \$200,000 or more, shall include a review of (i) the proposed scope of work for the project; (2) the project budget; and (3) the estimated energy and/or water savings calculations for the project. The review shall be conducted by the following individuals:

- i. A Kentucky Licensed Professional Engineer; or
- ii. An Energy Service Professional; or
- iii. A Water Efficiency Professional, or other relevant professional.

§94.03. REVIEW OF PETITION FOR EPAD PROJECT

(A) An authorized official from the City or designated third-party shall review each petition for an EPAD project and all other materials presented with it to determine if the petition complies with the EPAD Act and other City rules.

(B) If a petition is approved, a designated City Department or a designated third-party entity shall prepare a written agreement between the City and the record owners of the real property accepting the energy project pursuant to reasonable terms and conditions, including the establishment of the necessary assessment to finance the costs of the project. The written contract shall set forth the total amount and term of the assessment.

(C) Once an assessment has been imposed, a designated City Department or a designated third-party entity shall file a written notice of the assessment in the real property records of the Franklin County Court Clerk's Office indicating:

- i. The amount of the assessment;
- ii. The legal description of the real property;
- iii. The name of each owner of record of the real property; and
- iv. The reference to the statutory assessment lien provided by the state statutes and this Chapter.

§94.04. COLLECTION OF THE ASSESSMENT

(A) The Finance Department is hereby designated as the City Department to collect and distribute any assessment imposed under this Chapter.

(B) Upon the imposition of an assessment, the Finance Department shall add the assessment to the property tax bill for the participating real property.

(C) The Finance Department shall collect any assessment imposed under this Chapter in same manner as the other taxes on the bill and any unpaid assessment shall bear the same interest rate and penalty as other delinquent ad valorem property taxes.

(D) The Finance Department may impose fees not to exceed one percent (1%) of the amount assessed per payment, on participating real property to offset the costs of administering the EPAD program, including costs of assessment and collection.

(E) The Finance Department shall collect the assessments annually and make the required payments to the entity financing the energy project.

§95.05. STATUS OF LIEN FOR DELINQUENT ASSESSMENT

(A) Any assessment shall, together with any 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 paid and this lien shall have the same priority as a lien for any other state or local ad valorem tax upon the property.

§94.06. EFFECT OF BONDS OR NOTES

(A) Any bonds or notes issued under the applicable state statutes or this Chapter and the Act for an EPAD project shall not be general obligations of the City, and its officials or officers shall have no liability to any persons for uncollected EPAD assessments and unpaid EPAD debt.

§94.07. SEVERABILITY AMENDMENTS: CONFLICTING PROVISIONS

(A) 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.

(B) The City may amend the terms and conditions of this Chapter except that no amendment shall be adopted to retroactively change the conditions under which an existing assessment was imposed, unless the owner of record of the affected real property consents to the amendment in writing.

(C) All prior Ordinances or parts of any Ordinance in conflict herewith are hereby repealed.

First Reading on the 24 day of October, 2016.

Final Adoption on the 28 day of November, 2016.

S/William I. May, Jr.
T/Mayor

Attest:

S/Chermie Maxwell
T/City Clerk

Summary: This ordinance creates and adopts Sections 94.01, 94.02, 94.03, 94.04, 94.05, 94.06 and 94.07 of the City of Frankfort Code of Ordinances relating to the creation of an Energy Project Assessment District (øEPADö), and designates the City of Frankfort as an EPAD. Based upon this designation, an owner of a commercial and industrial building in Frankfort determines the need for energy improvements in the ownerø building and also determines the cost of the improvement. The owner of the property then requests an assessment on the building equal to the cost of the improvements, and the amount of the assessment is placed on the tax bill for the property. The owner of the property also borrows funds from a financing institution in order to pay for the cost of the energy improvements. The funds gained through the assessment are then used to pay off the loan. An existing mortgage holder must consent to the EPAD project.

S/Robert C. Moore
T/City Solicitor

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