

ORDINANCE NO. **BG2015 - 18**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 11 (FINANCE, TAXATION AND ECONOMIC DEVELOPMENT) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO ADD A NEW SUBCHAPTER RELATED TO THE CREATION OF AN ENERGY PROJECT ASSESSMENT DISTRICT

WHEREAS, the 2015 session of the Kentucky General Assembly approved and the Governor signed HB 100 creating new sections in Kentucky Revised Statutes Chapter 65, designated the EPAD Act of 2015, which authorized cities in Kentucky to establish an Energy Project Assessment District (“EPAD”); and,

WHEREAS; pursuant to this legislation, Kentucky cities are authorized to establish a program to advance the conservation and efficient use of energy and water resources in the City by allowing energy projects to be financed by assessments imposed on the real property being improved through the energy project; and,

WHEREAS, to establish the EPAD program, the City of Bowling Green is required to adopt a resolution or 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 of Bowling Green 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 amend Chapter 11 (Finance, Taxation and Economic Development) and to create a new Subchapter to incorporate the creation of the EPAD in the City of Bowling Green.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 11 (Finance, Taxation and Economic Development) is hereby amended to add a

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new Subchapter to read as follows:

11-14 ENERGY PROJECT ASSESSMENT DISTRICT.

11-14.01 Preamble.

The City of Bowling Green declares as a public purpose the establishment of a municipal program to enable its citizens to participate in an Energy Project Assessment District (EPAD) program so that owners of property can finance energy saving improvements to their properties in the City. The City adopts this program pursuant to HB 100 approved by the 2015 session of the Kentucky General Assembly and signed by the Governor with the legislation cited as the “EPAD Act of 2015.”

11-14.02 Definitions.

All of the terms of this Subchapter shall have the same meaning as the terms set out in House Bill 100, the EPAD Act of 2015.

11-14.03 Adoption of EPAD Program and Designation of EPAD Program Area.

a. An “EPAD” or “Energy Project Assessment District” program for existing properties in the City of Bowling Green for the purposes of encouraging the efficiency of energy use or decrease water or energy consumption or demand is hereby adopted and established under the Kentucky EPAD Act of 2015 and the City of Bowling Green intends to use assessments on real property in the EPAD to support private sector energy projects.

b. In order to permit participation by property owners in the EPAD Act of 2015, the City hereby designates the entire city limits, including any future annexed area, as its EPAD, making all City property owners eligible for participation in the program.

11-14.04 Operation of the EPAD Program.

a. The provisions and operation of the EPAD program in the City of Bowling Green shall be subject to the requirements and procedures set out in the EPAD Act of 2015.

b. The City’s Department of Finance is designated as the official office for the City to

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administer the EPAD program and is delegated the responsibility of administering the program pursuant to the provisions of the applicable state statutes and this Subchapter, including working with the Warren County Property Valuation Administrator (PVA), the Warren County Court Clerk and all applicable City departments in the operation of the program, assessment of properties and collection of the assessments. The Department of Finance is authorized to impose fees on participating property owners to offset the costs of administering the program, including assessments and collection functions of Warren County and City offices, except that these fees shall not exceed one percent (1%) of the amount assessed per payment with the fees to be divided among the applicable agencies as agreed by the agencies. The Department of Finance is further authorized to engage financing for the purpose of administering the EPAD program from financial institutions with a physical presence in Kentucky whose deposits are insured by the Federal Deposit Insurance Corporation. In addition, the Department of Finance may contract with a third-party entity to administer the EPAD program.

c. The Department of Finance is authorized to develop the necessary application and procedures for property owners of record to apply for the EPAD program. To qualify for the program, the property owner of record shall file the application with the Department of Finance no later than thirty (30) days prior to commencing the installation of the energy project. The application shall be submitted in compliance with the procedures set out in the EPAD Act of 2015 and as established by the Department of Finance. The application shall include a legal description of the real property being improved including a deed book and page number, the PVA Code and the names and addresses of all owners of the property. The application shall also include a general description of the proposed energy project and a proposed time schedule for undertaking and completing the project. The application shall be signed by all owners of the property and shall include the 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 EPAD Act lien.

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d. The Department of Finance staff, in cooperation with any other City department staff, shall review each application for compliance with the applicable State statutes and the Department of Finance procedures, including a review of the energy project being proposed, an examination of the property's baseline energy or water usage conditions and the energy or water savings projected to be achieved as a result of the energy project. For any energy project requiring a total assessment of \$250,000 or more, that review shall include evidence that the energy project has been examined by a Kentucky Licensed Professional Engineer who has attested that: (1) the scope of work is in compliance with all applicable building codes; (2) the scope of work and the project budget are consistent with completed projects of a similar nature; and (3) the estimated energy savings calculations are accurate and achievable.

e. The Department of Finance shall review the application and all other materials presented with it and shall determine if the application and energy study, if applicable, comply with the EPAD Act of 2015. If the application is approved, the Department of Finance, in conjunction with the City Department of Law, shall prepare and enter into a written contract between the City and the property owners accepting the energy project pursuant to reasonable terms and conditions established by the City, including the establishment of the necessary assessment to finance the costs of the project. The written contract 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 may also designate the qualified contractor that will construct and install the energy project. The City Manager is hereby designated to execute these contracts on behalf of the City.

f. Once the application is approved, the Department of Finance shall file a written notice of the assessment in the real property records of the Warren County Court 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 the State statutes and

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this Subchapter.

g. Upon the recording of the written notice and the imposition of the assessment, the Department of Finance is authorized to add the assessment to the City property tax bill for the relevant property. The assessment shall be imposed and collected in the same manner as other City property taxes and any unpaid assessment shall bear the same interest rate and penalty as other City property taxes. The 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 status as a lien for any other State or local ad valorem tax upon the property. The Department of Finance is authorized to pursue collection actions for unpaid assessments in the same manner it pursues collections of unpaid property taxes. The Department of Finance shall collect the assessments annually and make the required payments to the entity financing the energy project. Any bonds or notes issued under the applicable State statutes or this Subchapter for an EPAD project shall not be general obligations of the City and the City of Bowling Green and its officers, officials or officers shall have no liability to any persons for uncollected EPAD assessments and unpaid EPAD debt.

h. The owner shall notify the City Department of Finance upon completion of the energy project and, in the event the total assessment for the energy project is \$250,000 or greater, provide the Department of Finance a certification from a Kentucky Licensed Professional Engineer that an on-site inspection verifies the actual construction and installation was in compliance with the application and contract.

2. 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.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in

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conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on June 2, 2015, and given final reading on June 16, 2015, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: June 16, 2015

APPROVED: Bruce Wilkerson
Mayor, Chairman of Board of Commissioners

ATTEST: Kate ShaOles
City Clerk

SPONSORED BY: Bruce Wilkerson, Mayor, 05/21/2015, 9:30 a.m.