

ORDINANCE NO. 2014-004

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY MAKING CERTAIN FINDINGS CONCERNING AND ESTABLISHING A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE CITY TO BE KNOWN AS THE CITY CENTER DEVELOPMENT AREA; APPROVING A LOCAL PARTICIPATION AGREEMENT BETWEEN CITY, THE COUNTY OF CAMPBELL, KENTUCKY (THE "COUNTY"), SPECIAL TAXING DISTRICTS, AND THE CITY OF NEWPORT FINANCE AND ADMINISTRATION DEPARTMENT; ESTABLISHING AN INCREMENTAL TAX SPECIAL FUND FOR PAYMENT OF PROJECT COSTS AND REDEVELOPMENT ASSISTANCE; DESIGNATING THE CITY OF NEWPORT FINANCE AND ADMINISTRATION DEPARTMENT AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION AND IMPLEMENTATION OF THE DEVELOPMENT AREA; AND AUTHORIZING THE MAYOR AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE DEVELOPMENT AREA.

WHEREAS, the City of Newport, Kentucky ("the City"), by virtue of the laws of the Commonwealth of Kentucky (the "State"), Kentucky Revised Statutes, specifically Sections 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a development area to encourage reinvestment in and development and reuse of areas of the City, (2) enter into agreements in connection with the establishment and development of a development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a development area, and (4) designate an agency to oversee, administer and implement projects within a development area; and,

WHEREAS, the City desires to establish a "development area" as defined in the Act to encourage reinvestment and development within such development area and to pledge a portion of the "incremental revenues" as defined in the Act generated from the development of such development area to provide redevelopment assistance and provide for the payment Project Costs. Redevelopment Assistance and/or Approved Public Infrastructure Costs (as defined herein) within such development area; and,

WHEREAS, the City has identified a contiguous tract of previously developed land consisting of not more than three (3) square miles within the City, specifically described in Exhibit A to this Ordinance, that is in need of being redeveloped and which is not reasonably expected to be developed without public assistance; and,

WHEREAS, there has been a substantial loss of residential, industrial or commercial activity within the Development Area, there is a high percentage of low income residents within the Development Area, more than half of the structures within the Development Area are deteriorated or deteriorating, there is a need for new public

infrastructure to support new development within the Development Area, and the conditions within the Development Area have negatively impacted the growth and development of the Development Area ; and,

WHEREAS, the City has determined to establish the Development Area as pursuant to the Act to encourage reinvestment and development within the Development Area; and,

WHEREAS, the City has agreed to support and encourage development within the Development Area by pledging certain Incremental Revenues (defined below) to the payment of Bonds, or to otherwise provide Redevelopment Assistance or pay for Project Costs if bonds are not issued, under a Local Participation Agreement (defined below); and,

WHEREAS, the City has prepared and presented a “Development Plan”, as defined in the Act, for the consideration and adoption of the City proposing the redevelopment of the Development Area; and,

WHEREAS, the City, as required by the Act, held a public hearing on January, 27, 2014, after giving proper notice concerning the City’s intention to consider the adoption of the Development Plan; and,

WHEREAS, the adoption of the Development Plan and the establishment of the Development Area are for a public purpose and that the establishment and creation of the Development Area within the City is for the benefit and welfare of the City’s citizens; and,

WHEREAS, the City deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, as follows:

SECTION I

Definitions.

1.1 The capitalized terms set forth below when used in this Ordinance shall have the following meanings.

“Act” means Kentucky Revised Statutes, Sections 65.7041 to 65.7083, KRS 154.30-010 to KRS 154.30-090 and KRS 139.515.

“Agency” means the City of Newport Finance and Administration Department.

“Approved Public Infrastructure Costs” shall have the meaning as provided in the Act.

“Bonds” means bonds or notes issued pursuant to the Act to pay for Project Costs, Redevelopment Assistance and/or Approved Public Infrastructure Costs, the payment of which Bonds shall be supported solely by Incremental Revenues pledged by the City, County, Special Districts and/or the State.

“Development Area” means a contiguous geographic area of previously developed land, located within the geographical boundaries of the City, which is created for economic development purposes by this Ordinance in which a Project is proposed to be located and consisting of less than three square miles in area, with the actual size being approximately 45.2 acres, as more specifically described in Exhibit A attached to this Ordinance, to be known as the “City Center Development Area”.

“Development Plan” means the Tax Increment Financing Development Plan for the City Center Development Area attached to this Ordinance as Exhibit C.

“Establishment Date” means the date that the Development Area is established pursuant to the Act and this Ordinance.

“Financing Costs” shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for Approved Public Infrastructure Costs. Project Costs or Redevelopment Assistance within the Development Area.

“Incremental Revenues” means the amount of revenues received by the City, County, Special Districts, with respect to the Development Area and the State with respect to a Footprint (as defined in the Act for projects within the Development Area that may be approved by the State) by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year.

“KEDFA” means the Kentucky Economic Development Finance Authority.

“Local Participation Agreement” shall mean the Local Participation Agreement between City, County, Special Districts and the Agency, attached to this Ordinance as Exhibit B.

“Pledged Revenues” means that portion of the Incremental Revenues which are pledged by the City, County, Special Districts or State, pursuant to the Local Participation Agreement or a Tax Incentive Agreement, to the pay for Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs (as defined in the Act) for the Development Area

“Project” means the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Plan, being undertaken by various developers or public agencies.

“Project Costs” means any capital investment (as defined in the Act) expended to construct the Project.

“Redevelopment Assistance” shall have the meaning as provided in the Act.

“Special Districts” shall mean any special taxing district in the County, except for the Newport Independent School District, that has agreed to pledge its Incremental Tax revenues from the Development Area from real property ad valorem taxes and be a party to the Local Participation Agreement.

“State” shall have the meaning given such term in the recitals.

“Tax Incentive Agreement” shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 and KRS 139.515 of the Act between the Kentucky Economic Development Finance Authority and the Agency relating projects eligible for a pledge of State Incremental Revenues under the Act within the Development Area.

1.2 All capitalized terms used in this Ordinance and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the City hereby makes the following findings and determinations with respect to the Development Area:

(a) The Development Area consists of a contiguous tract of land that is not more than three (3) square miles. The actual size of the Development Area is 45.2 acres.

(b) The Development Area constitutes previously developed land as required by KRS 65.7043.

(c) The establishment of the Development Area will not cause the assessed value of taxable real property within the Development Area and within all “development areas” and “local development areas” (as those terms are defined in the Act) established by the City to exceed twenty percent (20%) of the assessed value of all taxable real property within the City. The assessed value of taxable real property within the Development Area for calendar year 2012 is \$21,840,412. In addition, the City has established one other development area, the 4th Street/Central Avenue Tax Increment Finance Development Area, that when it was established had a real property taxable assessed valuation of \$10,686,400; and when the taxable real property assessed valuation of the Development Area is combined with the taxable real property assessed valuation of the 4th Street/Central Avenue Tax Increment Finance Development Area the total is \$ 32,526,812. The total assessed value of taxable real property within the City for the calendar year 2012 is approximately \$640,654,272. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within the City.

(d) There has been a substantial loss of residential, commercial or industrial activity within the Development Area. At one point in the past the Newport was the 3rd most populace city in Kentucky, and its downtown area was the center for

banking, retail and office development. The City's population peaked in 1950 with a population of 31,044, and since that time it has declined to an estimated population in 2010 of 15,273, with much of this population loss being from the Development Area, which previously had a substantial mix of residential and commercial uses. The retail uses that previously occupied blocks within the City's downtown are virtually gone having moved to regional shopping centers in suburban locations. In the past Newport was a center for banking for the Northern Kentucky region with number local banks and saving and loan associations being headquartered within Newport's downtown area. Today as a result of bank consolidations the number of financial institutions has been significantly reduced and the downtown banks have transitioned from headquarter locations to branch offices. As a result of the loss of retail, banking and professional office, the number of employees working within the Development Area has declined. A number of office and commercial buildings within the Development Area have been demolished, such as Campbell Towers and the Odd Fellows Hall, which has resulted in several blocks within the Development Area being vacant and in need of redevelopment. The residential structures and uses that at one time were interspersed with the commercial uses within the Development Area have either been demolished or are now vacant. This combined with the additional employment losses caused by the recent depression have negatively impacted business activity within the Development Area.

(e) More than fifty percent (50%) of the residential, commercial, or industrial structures are deteriorating or deteriorated. Based on the City's Property Maintenance Code, which sets forth minimum standards for the maintenance of existing properties, over 69% of the structures within the Development Area are in need of minor to major assistance.¹ In addition, the Development Area consists mostly of structures that are 75 years of age or older. Therefore, even those structures within the Development Area that are reasonably well maintain exhibit signs of age and deterioration. Furthermore, many of the buildings that meet code are in need of upgrades to meet what is expected for today's use, including upgraded electric and wiring needed for high speed computer use.

(f) There are inadequate improvements or substantial deterioration of public infrastructure to support the proposed new development within the Development Area. Besides the normal infrastructure improvements that will be needed (street improvements, storm water provisions, utilities, etc.), the development of the Project as proposed will require significant new infrastructure. Additional structured parking will be needed to provide for the significant new investment anticipated from the projects identified in this Development Plan. Developing a mechanism to fund the structured parking that will be needed to support the Project is critical to promoting redevelopment in urban areas like the Development Area. In addition, promotion of the Project requires attention to streetscape and other amenities within the Development Area to encourage and sustain the private investment that is critical the redevelopment of the Development Area.

(g) There is a combination of factors that substantially impairs the growth and economic development of the City and impedes the development of commercial or industrial property due to the Development Area's present condition and use. The challenges of encouraging the redevelopment of an older city's downtown, including the increased costs associated with redeveloping sites, building within the constraints of an established area, the infrastructure needed to support new development in a downtown setting, as well as the uncertainties from a construction and environmental standpoint, represent unique circumstances that impedes the development or redevelopment of the Development Area and arrests the development of the City.

(h) That the Development Area is not reasonably expected to be developed without public assistance. The extreme cost of the infrastructure that will be required to support the Project, the challenges to building within a downtown area, as well as other costs that will be required to encourage new development, especially in light of the challenges obtaining financing for commercial projects today, make the need for incentives and public subsidy critical to the development of the Development Area. As a practical matter no major development in City's downtown in the recent past has taken place without some type of public assistance.

(i) That the public benefits of redeveloping the Development Area justify the public costs proposed. The City finds that the public benefits of redeveloping the Development Area justify the public costs involved. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of significantly increasing new investment and creating new jobs within the Development Area. The work program of current or proposed projects within the Development Area set forth in Section 3 of this Development Plan includes projects with a combined capital investment of over \$100 million. These projects will encourage other projects and will raise property values within the entire Development Area. The resulting increases in new City, County and other taxes from these developments will more than offset the incentives recommended through the establishment of the Development Area. While the Development Plan recommends the City commit eighty percent (80%) of the incremental increase in real property ad valorem taxes and occupational taxes to pay for redevelopment assistance and projects costs within the Development Area, there will be still be a net benefit in new revenues to the City. First of all, the establishment of the Development Area will not impact the amount of any existing City tax revenues generated within the Development Area. Secondly, the City will retain 20% of the incremental increase in revenues from real property taxes and occupational taxes. Finally, the Project will generate other taxes to the City and other taxing districts, including personal property taxes, insurance premium taxes, etc., which will not be impacted by any pledge of incremental revenues through the establishment by the City of the Development Area.

(j) That the area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise. The area immediately surrounding the Development Area has been subject to some

investment by private enterprise, but only with a significant investment from the public through local, state and federal incentives.

SECTION 3. Establishment, Name, Boundaries. All that area described in Exhibit A to this Ordinance is located within the City and is hereby established and designated as the "City Center Development Area". At the time of the enactment of this Ordinance the Development Area is less than three (3) miles.

SECTION 4. Establishment Date, Commencement Date, Termination Date. The Establishment Date is the effective date of this Ordinance. The Commencement Date of the Development Area is the date of execution of the Local Participation Agreement and the Termination Date shall, in accordance with the term of the pledge in Incremental Revenues in the Local Participation Agreement, shall be exactly thirty (30) years from the Activation Date of the Local Participation Agreement. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The City hereby adopts the Development Plan attached to this Agreement as Exhibit C. The City's Board of Commissioners hereby finds and determines that a public hearing was duly held on January 27, 2014, to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with City Clerk, and with the Fiscal Court Clerk of the County prior to the notice of the public hearing being advertised.

SECTION 6. Local Participation Agreement. The Mayor and the Chief Financial Officer of the City is hereby authorized and directed to execute, acknowledge and deliver on behalf of the City and Agency, respectively, the Local Participation Agreement which authorizes the pledge of a portion of the Incremental Revenues of the City from the Development Area to the payment of Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs and Financing Costs, the form of Local Participation Agreement to be signed by the Mayor on behalf of City, the County, Special Districts and by the Agency, shall be in substantially the form attached to this Ordinance, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the City. The approval of such changes by said officers, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of, as applicable, such Local Participation Agreement by such officials.

SECTION 7. Special Fund. There is hereby established a Special Fund of the City to be known as the City Center Development Area Tax Increment Fund, which will be maintained by the Agency, into which the City covenants to deposit, and into which City officials are hereby authorized and directed to deposit all Pledged Revenues. The Agency shall maintain the Special Fund unencumbered except for the purposes set forth in Section 8 of this Ordinance. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, the Local Participation

Agreement, and any applicable Tax Incentive Agreement, the Development Plan and related documents to pay for Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs and Financing Costs within the Development Area.

SECTION 8. Use of Pledged Revenues. Pledged Revenues shall be deposited by the City into the Special Fund created under Section 7 of this Ordinance and shall be used solely to: (a) pay directly for Redevelopment Assistance, Project Costs and Approved Public Infrastructure Costs (as defined in the Act) as determined from time to time by the City and Agency in accordance with the Local Participation Agreement and any Tax Incentive Agreement; (b) pay debt service and costs of issuance on the Bonds, including Financing Costs, which may be issued by the City to finance Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs; and (c) for such other purposes as may be determined by the City and Agency and that are appropriate and in compliance with the purposes set forth in this Ordinance, the Local Participation Agreement, any applicable Tax Incentive Agreement, the Development Plan and the Act, as the same may be amended from time to time.

SECTION 9. Periodic Accounting / Analysis. Any entity, other than the City that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the City in accordance with the Act and the documents controlling such grant, loan or loan guarantee. The governing body of the City shall be required to review and analyze the progress of the development activity in the Development Area on an annual basis. Such reports shall, at a minimum, include a review of the progress in meeting the stated goals of the Development Area. The City Manager and other officials of the City and the Agency shall report to the governing body of the City during such reviews and shall when necessary invite developers to participate in the review process to report on the progress of their developments within the Development Area. The review and documentation supporting the review shall be forwarded to KEDFA in accordance with the Act for any projects that have been provided assistance by KEDFA.

SECTION 10. Designation of Oversight Agency. Pursuant to the Act, the City hereby designates the Agency as the “agency” of the City for purposes of oversight, administration and review responsibility of this Ordinance, the Local Participation Agreement and the Development Area established by this Ordinance. The Agency shall act on behalf of the City in administering the Development Area, entering into development agreements, and other related agreements, with respect to the development of the Development Area and the financing of Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs within the Development Area, including making application(s) to KEDFA or other related State agencies for projects within the Development Area that may qualify for a pledge of State incremental revenues under the Act or other State assistance.

SECTION 11. Severability. 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 12. Repeal of Conflicting Orders and Ordinances. All prior Ordinances or any part thereof that may be in conflict herewith are hereby deemed as repealed.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

SECTION II

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon publication.

PASSED: First reading February 24, 2014
Second reading March 24, 2014

Jerry R. Peluso, Mayor

ATTEST:

Amy B. Able, City Clerk

PUBLISHED: In summary in the Campbell County Recorder on the 3rd day of April, 2014.

Exhibit A
to Ordinance No. _____ - _____

(Development Area Map)

Unofficial Copy

Exhibit B
to Ordinance No. _____ - _____
(Local Participation Agreement)

Unofficial Copy

Exhibit C
to Ordinance No. _____ - _____

(Development Plan)

Unofficial Copy