

Ordinance No. 595-2023

By Council Member Kazy

AN EMERGENCY ORDINANCE

Directing a portion of the City's Coronavirus Local Fiscal Recovery Fund payment to respond to the public health emergency or its negative economic impacts by providing assistance to impacted households; and authorizing the Director of Public Utilities to establish the Utilities Amnesty Program for eligible households of the City of Cleveland, for an amount not to exceed \$2,000,000, to be encumbered beginning March 3, 2021, and ending December 31, 2024.

WHEREAS, the City of Cleveland desires to establish a program for households of the City of Cleveland who have outstanding balances on their Cleveland Water and/or Cleveland Public Power residential customer accounts (the "Utilities Amnesty Program"); and

WHEREAS, under this program, eligible households will receive a credit to reduce or eliminate their outstanding balances; and

WHEREAS, Title IX, Subtitle M, Section 9901 of the American Rescue Plan Act, Pub. L. 117-2 [H.R. 1319], signed into law March 11, 2021 ("ARPA"), appropriated Coronavirus Local Fiscal Recovery Fund ("Fund") payments from the U.S. Treasury Secretary to metropolitan cities, nonentitlement units of local government, and counties; and

WHEREAS, the ARPA continues many of the programs started by the CARES Act (2020) and Consolidated Appropriations Act (2021) by adding new phases, new allocations, and new guidance to address issues related to the continuation of the COVID-19 pandemic; and

WHEREAS, pursuant to the ARPA's Fund methodology, the City has been allocated the amount of \$511,721,590.00 ("Fund Payment") to "mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID-19)"; and

WHEREAS, in response to this economic crisis, the Department of the Treasury ("Treasury Department") is providing such relief to state, local, and Tribal governments to enable them to continue to support the public health response and lay the foundation for a strong and equitable economic recovery; and

Ordinance No. 595-2023

WHEREAS, the ARPA and its supporting guidance issued by the Treasury Department provide that the Fund Payment may only be used by the City to finance costs that (a) respond to the COVID-19 public health emergency or its negative economic impacts; (b) respond to workers performing essential work; (c) provide government services to the extent of reduction in revenue; and (d) make necessary investments in water, sewer, or broadband infrastructure (collectively, “Criteria”); and

WHEREAS, so long as the City duly directs its Fund Payment to finance those costs in compliance with the Criteria, the City may use the Fund Payment to offset the City’s various fiscal effects from COVID-19 during the period beginning March 3, 2021, and ending December 31, 2024 (“Covered Period”); and

WHEREAS, the City received some or all of the Fund Payment directly from the Treasury Department under the authority of Ordinance No. 303-2021, passed by this Council on May 10, 2021 and which affirms said Fund Payment is to cover only those expenditures consistent with ARPA, including the Criteria, and applicable regulations, and such Fund Payment has been or will be deposited into an appropriate special revenue fund created and maintained by the City; and

WHEREAS, the Treasury Department has published an Interim Final Rule and a Final Rule with an effective date of April 1, 2022 (collectively, 31 CFR 35.1 et seq.), its regularly updated Coronavirus State and Local Fiscal Recovery Funds’ Frequently Asked Questions, and its Coronavirus State and Local Fiscal Recovery Funds: Overview of the Final Rule (collectively, “Guidance”), further explaining the Criteria and the proper use of the Fund Payment during the Covered Period; and

WHEREAS, the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act, enacted December 23, 2022, expanded the use of the Fund to include: (a) emergency relief from natural disasters or negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance, or other immediate needs; and (2) certain infrastructure projects; and

Ordinance No. 595-2023

WHEREAS, the Criteria and Guidance describe such eligible uses of the Fund Payment to include providing assistance to eligible households to address financial hardship resulting from the public health emergency; and

WHEREAS, this Council intends to take action and use the Fund Payment as described herein in a manner consistent with the Final Rule released by the Treasury Department on January 6, 2022, as authorized under said Department's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and constitutes an emergency measure providing for the immediate preservation of the public peace, property, health and safety in the timely authorization to expend the Fund Payment; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That this Council hereby declares that it is a response to the public health emergency or its negative economic impacts to provide utility assistance to households who experienced unemployed, experienced food or housing insecurity, or are low or moderate income ("ARPA Eligible Beneficiaries"). That this Council's decision that costs under the Utilities Amnesty Program are appropriate by virtue of charging to the City's Fund Payment is based on the consideration that such costs satisfy the Two-Part Framework required by the Guidance such that (i) the City has identified a negative public health or economic impact resulting from or exacerbated by COVID-19 and (ii) the City's response is designed to address the identified health or economic impact in a reasonably proportional manner (the "Two-Part Framework"). In addition, this Council finds that the Utilities Amnesty Program meets the Two-Part Framework required by the Guidance with providing assistance to the ARPA Eligible Beneficiaries to respond to the pandemic's impacts, including the enumerated eligible uses such as emergency housing assistance, pursuant to 31 CFR 35.6(b)(3)(ii)(A)(1), and services for utility costs and arrears pursuant to the U.S. Treasury, Final Rule, Supplementary Information at page 82.

Ordinance No. 595-2023

Section 2. That the Director of Public Utilities is authorized to establish the Utilities Amnesty Program for households of the City of Cleveland who are ARPA Eligible Beneficiaries, have outstanding balances for utility costs that date back no later than March of 2020 on their Cleveland Water and/or Cleveland Public Power residential customer accounts, and are on an active payment arrangement as of the effective date of this ordinance. The program will credit to the outstanding balances of Cleveland Water and/or Cleveland Public Power's customer's residential account balances. The program shall terminate upon exhaustion of the funds appropriated by this ordinance.

Section 3. That, to the extent that any funds appropriated by this ordinance for the Utilities Amnesty Program are not exhausted within 120 days of the effective date of this ordinance due to lack of demand, the Director of Public Utilities may use such funding to provide assistance to residential customers who are ARPA Eligible Beneficiaries and who are facing immediate threat of disconnection of Cleveland Water or Cleveland Public Power service for utility costs that date back no later than March of 2020, under rules established by the Director.

Section 4. That, notwithstanding any ordinance to the contrary, the Director of Finance shall transfer the amount of \$2,000,000 from Fund No. 15 SF 190 to Fund Nos. 52 SF 001, 54 SF 001, 55 SF 001 and 58 SF 001 for the Utilities Amnesty Program.

Section 5. That the cost of this ordinance shall not exceed \$2,000,000; and that all assistance for the Utilities Amnesty Program to be paid from the Fund Payment shall be encumbered during the period beginning March 3, 2021, and ending December 31, 2024, and shall be fully expended on later than December 31, 2026. (RQS 8006, RL 2023-58)

Section 6. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM:nl
5-8-2023
FOR: Council Member Kazy

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REPORT
after second Reading

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READ FIRST TIME on MAY 8, 2023

REPORTS

**and referred to DIRECTORS of Public Utilities, Finance, Law;
COMMITTEES on Utilities, Finance Diversity Equity and Inclusion**

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. **110** Page _____

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COMMITTEE ON
UTILITIES**

FILED WITH COMMITTEE

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COMMITTEE ON
FINANCE, DIVERSITY, EQUITY
and INCLUSION**

FILED WITH COMMITTEE
