

# Ordinance No. 1265-2022

By Council Member Griffin and Mayor Bibb

## AN EMERGENCY ORDINANCE

Directing a portion of the City's Coronavirus Local Fiscal Recovery Fund payment to the City's COVID-19 response or other available funds of the City by authorizing the Director of Economic Development to enter into one or more loan agreements with the Cleveland Development Advisors Community Reinvestment Fund, Inc. and/or the Opportunity Cleveland Loan Fund to capitalize projects that respond to the economic impacts of the COVID-19 Pandemic, including through affordable housing, the renovation of vacant or abandoned properties, and the rehabilitation of commercial properties.

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WHEREAS, Cleveland Development Advisors, Inc. ("CDA"), an Ohio nonprofit corporation and an affiliate of the Greater Cleveland Partnership, invests in projects across the city, especially in neighborhoods that may not otherwise attract investment, and thereby helps to build wealth, and lead to additional private sector investment in those neighborhoods; and

WHEREAS, CDA manages the Cleveland Development Advisors Community Reinvestment Fund, Inc. ("CDACRF"), an Ohio nonprofit corporation and a certified community development financial institution ("CDFI"); and

WHEREAS, CDACRF is the manager of the Opportunity CLE Loan Fund, LLC, an Ohio limited liability company ("OCLF"); and

WHEREAS, OCLF was formed, in part, for the purpose of receiving capital from local government (as permitted by law), civic and business partners to be used to make investments that provide financing solutions to support projects located in low-income communities ("Program"), including investments being directed toward improving the social and economic conditions of underserved people and/or residents of economically distressed communities Qualified Census Tracts ("QCT") in the City of Cleveland; and

WHEREAS, the CDA has requested the City to loan a portion of its ARPA Fund to capitalize the OCLF; and

WHEREAS, the City is limited under the Article VIII, Sections 4, 6, 13, and 16, of the Ohio Constitution to the extent that it involves itself with private enterprises; and

WHEREAS, the City desires to enter into one or more loan agreements with CDACRF or OCLF to provide additional funds for the Program for projects in QCTs in the City that satisfy the Criteria and the Guidance (each as defined below) and, among other goals, (i) develop, repair, and operate affordable housing and services and

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programs to increase long-term housing security to existing residents; (ii) address vacant or abandoned properties, including the remediation of brownfields; and/or (iii) rehabilitate commercial properties, including storefront and façade improvements; and

WHEREAS, the City desires to fund the Program, to the extent eligible under the Guidance and in compliance with the Ohio Constitution, with the Fund Payment described below and/or other City funding; 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

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

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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 Criteria and Guidance describe such eligible uses of the Fund Payment to include responding to the public health emergency and its negative economic impacts, including providing assistance to households, small businesses, and nonprofit organizations; and for certain services to disproportionately impacted communities; 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

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safety in the timely authorization and the signing of the necessary agreements and documents to expend the Fund Payment and/or other City funds; now, therefore,

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

Section 1. That this Council hereby declares that its COVID-19 Response, defined herein, duly authorizes the Director of Economic Development to enter into one or more agreements with CDACRF or OCLF to capitalize by one or more loans of the City's ARPA Fund to extend loans for projects within QCTs in the City (i) involving acquisition, rehabilitation and other associated costs to renovate or construct affordable housing in the City, (ii) that address vacant or abandoned properties and/or (iii) rehabilitate commercial properties, including storefront and façade improvements (the "Approved Purposes"), all in accordance with the Ohio Constitution for the City's involvement with such private enterprise. In the event a Fund Payment is provided, this Council's decision that such expenditures are appropriate by virtue of charging to the City's Fund Payment is based on the consideration that the Program is an eligible use to the extent that a portion of the City's Fund Payment is directed to CDACRF or OCLF to respond to the negative economic impacts resulting from COVID-19 in the City (collectively "COVID-19 Response"). To the extent a Fund Payment is used, the agreements shall be consistent with the Guidance, the Criteria, the City's COVID-Response, and Ohio law.

Section 2. That the Director of Economic Development is further authorized to enter into such agreements with CDACRF or OCLF for the Program as to any costs that are not eligible under the Guidance and which will be funded by City funding other than the City's ARPA Fund.

Section 3. That the Director of Economic Development is authorized to accept any repayments on such loans under the programs and to utilize the repayments in strict compliance with the Guidance, including 4.9 of the U.S. Treasury's Frequently Asked Question Pertaining to Revolving Loan Funds, as it may be amended from time-to-time.

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Section 4. That all agreements authorized by this ordinance shall be approved by the Director of Law and contain such terms and conditions as necessary to protect the public interest consistent with the purposes of this ordinance.

Section 5. That the cost of all investments made by CDACRF or OCLF, and investments authorized by this ordinance shall not exceed \$7,500,000 and shall be paid from the Fund Payment, Fund No. 01-001-9997, Fund No. 15 SF 190, and from any other funds approved by the Director of Finance. (RQS 9501, RLA 2022-53)

Section 6. That the agreements authorized and to be paid from the Fund Payment shall be fully executed, with funds to be encumbered during the period beginning March 3, 2021 and ending December 31, 2024. Any such funds to be paid from the Fund Payment encumbered on or before December 31, 2024, shall be fully expended no later than December 31, 2026.

Section 7. That the Director of Economic Development shall provide a quarterly report on the Program and, upon written request from Council, make a presentation to Council on any such report.

Section 8. That, upon the initial loan of any funds under this ordinance from the City to CDACRF or OCLF, the City's Chief of Integrated Development and the Cleveland City Council President are each hereby authorized to vote on behalf of and represent the City's interest as an *ex officio* member of the CDA Board of Directors, and the Chairperson to City Council's Development, Planning & Sustainability Committee is hereby authorized to vote on behalf of and represent the City's interest as an *ex officio* member of the CDA Community Advisory Committee, each for a term ending upon CDACRF or OCLR making all investments funded by the City's ARPA Fund or other City funding provided under the authority of this ordinance.

Section 9. 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  
11-28-2022  
FOR: Mayor Bibb and Council President Griffin

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REPORT  
after second Reading

By Council Member Griffin and Mayor Bibb

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**READ FIRST TIME on NOVEMBER 28, 2022**

REPORTS

and referred to DIRECTORS of Economic Development, Finance, Law;  
COMMITTEES on Development Planning and Sustainability,  
Finance Diversity Equity and Inclusion

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CITY CLERK

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READ SECOND TIME

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CITY CLERK

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READ THIRD TIME

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PRESIDENT

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CITY CLERK

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APPROVED

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MAYOR

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PASSAGE RECOMMENDED BY  
COMMITTEE ON  
DEVELOPMENT, PLANNING AND  
SUSTAINABILITY

FILED WITH COMMITTEE

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