

Ordinance No. 902-2022

**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 by authorizing the Director of Economic Development to enter into one or more grant agreements with one or more financial institutions to providing financing for affordable housing, to address vacant or abandoned properties, and to provide assistance to certain small businesses, to be encumbered beginning March 3, 2021, and ending December 31, 2024; to enter into other similar agreements; and to apply for and accept grants and gifts.

WHEREAS, the Director of Economic Development desires to create a Minority Business Credit Enhancement Fund to capitalize, with a portion of its Fund Payment described below, a revolving loan fund ("RLF") targeting construction firms owned and controlled by individuals from historically un-or under-represented and whose annual revenues are less than \$3 million dollars ("Project"); and

WHEREAS, the City desires to fund the Project, to the extent eligible under the Guidance, with the Fund Payment described below and use other City funding that is now available because the City paid certain government expenses and services from the Fund Payment; and

WHEREAS, to the extent the Project may be funded in part with money raised by taxation for housing projects, the Housing Advisory Board of the City of Cleveland has been provided a description of the Project; 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" or "LFRF") 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

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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

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

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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 include as a response to the negative economic impacts of the COVID-19 pandemic (i) affordable housing programs that satisfy one or more federal affordable housing programs identified in the Guidance (“Federal Affordable Housing Programs”); (ii) addressing vacant or abandoned properties; (iii) providing assistance to small businesses that experienced negative economic impacts resulting from the COVID-19 pandemic; and (iv) assisting contractors undertaking real estate projects in, or otherwise operating in Qualified Census Tracts in the City, with commercial property rehabilitation, storefront and façade improvements, business incubation, and micro-business support; and

WHEREAS, the Treasury Department has provided certain flexibilities and requirements for long-term loans for affordable housing so that the City may use the Fund Payment to make loans to finance affordable housing projects, funding the full principal amount of the loan, if the loan and project meet the following requirements:

1. The loan has a term of not less than 20 years;
2. The affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy after having received the LFRF investment; and
3. To protect affordability, the project owners of any properties receiving LFRF loans which also receive Low-Income Housing Tax Credit (LIHTC) financing must agree to waive their right to request a qualified contract as defined in Section 42(h)(6)(F) of the Internal Revenue Code and repay any loaned funds if the property becomes noncompliant; 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

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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 and the signing of the necessary agreements and documents 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 its COVID-19 Response, defined herein, duly authorizes the Director of Economic Development to enter into grants agreements with one or more financial institutions to provide backstopped loans to construction companies participating in the Project: (i) for ARPA-eligible acquisition, construction, rehabilitation and other associated costs to renovate or construct affordable housing; (ii) for ARPA-eligible costs to renovate certain vacant and abandoned properties; (iii) for ARPA-eligible costs to support certain rehabilitations and improvements to commercial properties within a QCT and micro-business operations of contractors operating within a QCT; and to provide financial assistance and/or costs of technical assistance to the extent that the construction companies experienced financial hardship as a result of the COVID-19 pandemic.

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 such project is an eligible use to the extent that a portion of the City's Fund Payment is directed to alleviate the immediate economic impacts of COVID-19 pandemic by extending backstopped loans (i) to increase the supply of affordable and high-quality units on housing security by renovating and/or constructing specific living units that will be rented to tenants or sold to homeowners who otherwise satisfy one or more of the Federal Affordable Housing Programs; (ii) to renovate vacant and abandoned properties that are located in QCTs within the City; (iii) to support rehabilitating commercial properties within QCTs within the City, making storefront and façade improvements

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within QCTs, and micro-business operations of construction companies operating within QCTs within the City; and (iv) to respond to small businesses' negative economic impacts and/or disproportionate impacts of the pandemic (collectively "COVID-19 Response").

Section 2. That the Director of Economic Development is authorized to employ by contract or contracts one or more financial institutions for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to create a revolving loan fund that will provide flexible lines of credit targeting construction firms owned and controlled by individuals from groups with historical under-representation in the construction industry and whose annual revenues are less than \$3 million dollars. This fund will be called the Minority Business Credit Enhancement Fund.

The selection of the consultant or consultants for the services shall be made by the Board of Control on the nomination of the Director of Economic Development from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Economic Development for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Economic Development, and certified by the Director of Finance.

Section 3. That the Director of Economic Development is further authorized to enter into agreements with financial institutions under the Project selected in accordance with Section 2 above for the Project for any costs that are not eligible under the Guidance to be paid from other City funding.

Section 4. That all agreements entered into with selected financial institutions shall authorize said financial institutions to provide flexible lines of credit to qualifying construction firms and shall authorize said financial institutions to create loan loss

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reserves, and offer bonding and technical assistance to help contractors increase capacity. Said grant agreements will provide that selected financial institutions create a revolving loan fund to make additional loans to qualifying construction firms and for administrative expenses.

Section 5. That all agreements shall provide for a procedure in which the selected financial institutions stop making loans at the end of a given period and return any unused loan funds at the end of that period, and in which remaining loan funds shall be returned to the City by no later than a specified period. The Director of Community Development shall assess the effectiveness of the agreement once every 18 months and, at the discretion of that Director and based on the effectiveness of that agreement, choose whether to initiative the aforementioned procedure to stop making loans. The returned loan funds shall be deposited into the fund to be determined by the Director of Finance.

Section 6. 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 7. That the cost of all agreements authorized by this ordinance shall not exceed \$5,000,000 and shall be paid from the Fund Payment, Fund No. 01-001-9997, Fund No. 15 SF 190, from the fund or funds to which are credited any gifts or grants accepted under this ordinance, and from any other funds approved by the Director of Finance. (RQS 9501, RLA 2022-55)

Section 8. That all grant 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.

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Section 9. That the Director of Economic Development is authorized to apply for and accept any gifts or grants for the Project from any public or private entity; and that the Director is authorized to file all papers and execute all documents necessary to receive the funds under the grant; and that the funds are appropriated for the purposes described in this ordinance.

Section 10. That the Director of Economic Development shall provide a quarterly report on the Project and, upon written request from Council, make a presentation to Council on any such report.

Section 11. That any contract or grant over \$50,000 to be entered into under this ordinance shall require additional legislative authority.

Section 12. 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
9-12-2022
FOR: Mayor Bibb

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REPORT
after second Reading

By Council Member Griffin and Mayor Bibb

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READ FIRST TIME on SEPTEMBER 12, 2022
and referred to DIRECTORS of Finance, Law;
COMMITTEE on Finance Diversity Equity and Inclusion

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record _____

PASSAGE RECOMMENDED BY
COMMITTEE ON
**FINANCE, DIVERSITY, EQUITY
and INCLUSION**

FILED WITH COMMITTEE

