

Ordinance No. 898-2022

**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 Community Development to enter into one or more ~~loan and grant agreements with various individuals and entities to finance affordable housing agreements with one or more financial institutions and private nonprofit organizations to provide financing,~~ and to address vacant or abandoned properties, 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 Community Development desires to ~~establish a revolving loan fund and provide grants to assist third parties~~ cause the establishment of a revolving loan fund to renovate approximately 100 vacant and abandoned properties that have been forfeited to the State of Ohio and held by Cuyahoga County ("Project"); and

WHEREAS, the City desires to fund the Project, to the extent eligible under the Guidance, with the Fund Payment which are 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, 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 to include alleviating the immediate economic impacts of the COVID-19 pandemic for affordable housing programs that satisfy National Housing Trust Fund (“HTF”), Home Investment Partnership Program (“HOME”), or Community Development Block Grant (“CDBG”) homeownership assistance requirements; the rehabilitation, renovation, maintenance costs to secure vacant or abandoned properties to reduce their negative impact; and the conversion of vacant or abandoned properties to affordable housing; 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

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and constitutes an emergency measure

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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 Community Development to enter into ~~one or more loan, forgivable loan, or grant agreements with various contractors, community development corporations, individuals, and other entities to finance~~ agreements with one or more financial institutions and private nonprofit organizations to provide financing for ARPA- eligible acquisition, rehabilitation and other associated costs to rehabilitate vacant and abandoned properties in the City of Cleveland that have been forfeited to the State of Ohio. 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 program 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 on housing security by rehabbing houses that (i) will be sold to homeowners who satisfy HTF, HOME, or CDBG homeownership assistance requirements and/or (ii) are located within Qualified Census Tracts within the City and are deemed vacant and abandoned properties (“COVID-19 Response”).

Section 2. That the Director of Community Development is further authorized ~~to enter into the loans and grant agreements with the individuals and entities to rehabilitate into~~ agreements with one or more financial institutions and private non-profit organizations to provide financing for the rehabilitation of vacant and abandoned properties described in Section 1 for any costs that are not eligible under the Guidance.

~~Section 3. That the Director of Community Development is authorized to accept monies in repayment under the programs and to utilize the repayments, and other program income in a revolving fund for additional expenditures under these~~

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~~programs and administrative expenses, which repayments and program income are appropriated for those purposes.~~

Section 3. That the selection of all financial institutions and private nonprofit organizations shall be made by the Board of Control on the nomination of the Director of Community Development from a list of qualified institutions and private nonprofit organizations as may be determined after a full and complete canvass by the Director of Community Development for the purpose of compiling a list. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Community Development and certified by the Director of Finance.

Section 4. That all agreements entered into with the selected financial institutions and private nonprofit organizations may authorize them to provide flexible lines or credit to eligible participations and to create loan loss reserves. Said agreements will provide that the selected entities create a revolving loan fund to make additional loans to eligible participants and for administrative expenses.

Section 4.5 That the City is authorized to accept promissory notes, naming the City of Cleveland as payee, and mortgages, naming the City of Cleveland as mortgagee, and any other security instrument executed to evidence and secure repayment of loans made under this program.

~~Section 5. That the Director of Community Development is authorized to enter into forbearance agreements with any recipient of a validly existing loan administered by the City, and to charge and accept fees to cover costs incurred in the preparation of loan documents, closing, and servicing costs. Such fees shall be deposited into a Fund approved by the Director of Finance and are hereby appropriated for the purposes of the Project.~~

Section 6. That all agreements shall provide for a procedure in which the selected entities stop making loans at the end of a given period and return any unused funds at the end of that period, and in which the remaining funds shall be returned to

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the City by no later than a specified period. The Director of Community Development shall assess the effectiveness of the agreements once every 12 months and, at the discretion of the Director and based on the effectiveness of each such agreement, choose whether to initiate the aforementioned procedure to stop making loans. The returned funds shall be deposited back into the fund from which the loans were paid.

Section 6. 7. That the Director of Community 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 7. 8. 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 8. 9. That the cost of all ~~loans and grants~~ 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 and grant or gift received under this ordinance, and from any other funds approved by the Director of Finance. (RQS 8006, RLA 2022-63)

Section 9. 10. That the ~~loan and grant~~ agreements authorized 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 10. 11. That the Director of Community Development shall provide a quarterly report on the Project and, upon written request from Council, make a presentation to Council on any such report.

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Section 11. 12 That any ~~contract, grant or loan agreement~~ over \$50,000 to be entered into under this ordinance shall require additional legislative authority. The Director shall confer with the Chair Persons of the Development, Planning and Sustainability Committee and Finance, Diversity, Equity and Inclusion Committee prior to the issuance of a RFP, RFQ, or other similar document. All projects over \$50,000 that will be generated pursuant to this ordinance shall require prior Council approval; said projects maybe submitted to Council singly or as groups of projects.

Section 12. 13. 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

