

Ordinance No. 900-2022

**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 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 create a Housing Gap Financing Fund to: (i) provide grants to housing project proposals it receives for the renovation and/or construction of 600 affordable units and 150 market-rate housing units; and (ii) expand the City's Housing Trust Fund by establishing a revolving loan fund ("RLF") to finance approximately 900 affordable housing units and 1,500 market-rate housing units in the City of Cleveland (collectively "Gap Financing Housing Project"); and

WHEREAS, the City desires to fund the Gap Financing Housing Project, to the extent eligible under the Guidance, with the Fund Payment 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 Gap Financing Housing 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 Gap Financing Housing 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

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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

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

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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 alleviating the immediate economic impacts of the COVID-19 pandemic: (i) 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; and (ii) to address vacant or abandoned properties; 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 Community Development to enter into one or more loan, forgivable loan, or grant agreements with various individuals and private and public entities to finance ARPA-eligible acquisition, construction, rehabilitation and other associated costs of the Gap Financing Housing Project.

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 on housing security by providing (i) grants for housing project proposals, to the extent awarded to small landlords, CDFIs, and developers, to renovate and/or construct specific housing units that will be rented to tenants or sold to homeowners who otherwise satisfy one or more of the federal affordable housing programs identified in the Guidance ("Federal Affordable Housing Programs"); (ii) grants for housing project proposals, to the extent awarded to small landlords, CDFIs, and developers, to renovate vacant and abandoned properties that are located in Qualified Census Tracts within the City for the creation of affordable housing and market-rate housing units; and (iii) backstopped loans to developers to renovate and/or construct specific housing units that will be rented to tenants or sold to homeowners who satisfy one or more of the Federal Affordable Housing Programs (collectively "COVID-19 Response").

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Section 2. That the Director of Community Development is further authorized to enter into any loan and grant agreements with individuals and public and private entities for the Gap Financing Housing Project for any costs that are not eligible under the Guidance to be paid from other City funding.

Section 3. That the Director of Community Development is authorized to accept monies in repayment of loans authorized under this ordinance and to utilize the repayments, and other program income in a revolving fund for additional expenditures under this ordinance and administrative expenses, which repayments and program income are appropriated for the purposes of this ordinance.

Section 4. 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 ordinance.

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 Gap Financing Housing Project.

Section 6. That the Director of Community Development is authorized to apply for and accept any gifts or grants for the Gap Financing Housing 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.

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Section 7. 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. That the cost of all loans and grants authorized by this ordinance shall not exceed \$30,000,000 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 8006, RLA 2022-59)

Section 9. That the loan and 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.

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

Section 11. That any contract, grant or loan 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

