

Ordinance No. 899-2022

**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 agreements with one or more financial institutions to provide financing for home repairs and to small businesses economically impacted by COVID-19, 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 Community Development desires to create a Home Repair Fund to do the following: (1) provide grants for home repair for structures owned or occupied by households, including small landlords, with income up to 300% Federal Poverty Guidelines ("FPC"), targeting about 600 home repairs in the City with such grant averaging \$15,000; (2) capitalize with a portion of its ARPA allocation a revolving loan fund ("RLF") by backstopping such fund's loan made for the purpose of financing the repair of structures owned or occupied by households, including small landlords, with incomes between 80%-300% area median income, for about 200 home repairs in the City averaging \$25,000; and (3) provide technical assistance to program participants (collectively "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

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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

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

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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 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”); and (ii) providing assistance to small businesses that experienced negative economic impacts resulting from the COVID-19 pandemic; 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 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,

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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 agreements with one or more financial institutions to provide the following to eligible participants of the Project: (i) grants for ARPA-eligible home repair costs; (ii) backstopped loans for ARPA-eligible home repair costs; (iii) backstopped loans to certain landlords; and technical assistance certain landlords.

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 (i) providing grants and backstopped loans to participating residents and/or landlords to repair specific housing units that are owned by residents or rented to tenants, who otherwise meeting one of the federal affordable housing programs identified in the Guidance; (ii) providing backstopped loans to participating residents and landlords to repair specific housing units that are rented to tenants if the unit has a limited maximum income of 65% AMI and is subject to certain restrictive covenants; (iii) providing backstopped loans to landlords who constitute small business who have experience financial hardship because of COVID-19; and (iv) to provide technical assistance to landlords who constitute small businesses and undertake home repair projects, or otherwise operate, in Qualified Census Tracts (collectively "COVID-19 Response").

Section 2. That the Director of Community 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 for Eligible Participants, provide grants, and technical assistance to Eligible Participants. This fund will be called Home Repair Fund.

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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 Community Development from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Community 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 Community Development, and certified by the Director of Finance.

Section 3. That the Director of Community 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 Eligible Participants and shall authorize said financial institutions to create loan loss reserves, and offer technical assistance to Eligible Participants. Said agreements will provide that selected financial institutions create a revolving loan fund to make additional loans to Eligible Participants 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.

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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 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.

Section 8. That the cost of all agreements authorized by this ordinance shall not exceed \$10,000,000 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 2022-65)

Section 9. That all 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 not later than December 31, 2026.

Section 10. 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.

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

