

**KENTON COUNTY FISCAL COURT
KENTON COUNTY, KENTUCKY
ORDINANCE NO. 950.89**

**AN ORDINANCE CREATING AN ENERGY PROJECT ASSESSMENT
DISTRICT ("EPAD") WITHIN THE COUNTY PURSUANT TO THE
PROVISIONS OF KRS 65.205-209 AND ESTABLISHING A PROGRAM TO
ADVANCE CONSERVATION AND EFFICIENT USE OF ENERGY AND
WATER RESOURCES**

WHEREAS, Sections 65.205 to 65.209 of the Kentucky Revised Statutes (the "Act") authorizes local governments to establish a program to advance the conservation and efficient use of energy and water resources within their jurisdiction; and

WHEREAS, the KENTON County Fiscal Court desires to enact and establish an Energy Project Assessment District and establish program related thereto for the improvement of the health, safety and welfare of all citizens in KENTON County, which program advances the conservation and efficient use of energy and water resources; and

NOW, THEREFORE, BE IT ORDAINED BY THE KENTON COUNTY FISCAL COURT, KENTON COUNTY, KENTUCKY:

Section 1. Findings and Determinations; Definitions. The recitals to this Ordinance are incorporated herein as if set forth in this Section in their entirety and are hereby found and determined to be true and correct.

For the purpose of this Ordinance, capitalized words not otherwise defined herein shall have the meanings given them in the Act, and the following definitions shall apply:

"County" means the County of KENTON, Kentucky.

"EPAD" means the entire jurisdictional boundaries of the County.

"EPAD Petition" means a petition of an Owner to participate in the EPAD Program as provided in Section 5 of this Ordinance.

"EPAD Program" means the EPAD program established by the KENTON County Fiscal Court by this Ordinance.

"Owner" means the owner or proposed owner of an interest in a real property in the EPAD.

"Program Assessment" means an assessment for payments to be imposed upon the real property located in an EPAD that is being improved by an Energy Project.

"Project Financing Agreement" means a contractual agreement between the Owner, the Program Administrator, the County and an approved finance lender that provides for the financing of an Energy Project with the costs being repaid by a Program Assessment.

Section 2. Creation of Energy Project Assessment District. There is hereby established an Energy Project Assessment District within the entire jurisdictional boundaries of KENTON County in accordance with KRS 65.205 to 65.209. Through the EPAD, the KENTON County Fiscal Court intends to operate the Program that utilizes assessments on relevant real property to support Energy Projects and Energy Improvements.

Section 3. Program. There is hereby established within the EPAD, an EPAD Program for the advancement of conservation and efficient use of energy and water resources. Under the EPAD Program, Owners may petition for inclusion in the EPAD Program whereby the Owner enters into a Project Financing Agreement to provide financing for an Energy Project with the costs being repaid by a Program Assessment paid in yearly increments and included on the Owner's real property tax bill. Any payments related to a Project Financing Agreement or any other costs of the EPAD Program shall be payable solely and only from amounts collected as Assessment Payments and shall not be payable from the County's general funds.

Section 4. Program Administration. The Judge/Executive, his designee or a third-party entity pursuant to contractual agreement that the Judge/Executive is hereby authorized to enter into, shall serve as Program Administrator (the "Program Administrator"). The Program Administrator shall be responsible for the general administration of the Program and the completion of the following functions:

- (a) Review EPAD Petitions to determine compliance with applicable policies and procedures;
- (b) develop proposed Energy Projects and time lines for completion;
- (c) cause the preparation of and recommend written agreements between the County and Owners that submit EPAD Petitions and accepting Energy Projects pursuant to reasonable terms and conditions established for each Energy Project;
- (d) provide for the collection and distribution of Assessment Payments with respect to Assessment Payments established through the Program; and
- (e) provide for the filing of notices of assessment as required by the Act.

Section 5. Petition. Owners pursuing the development of an Energy Project shall complete a Petition and submit it to the Program Administrator. The Petition shall include and require the following:

- (a) The signature of the Owner;
- (b) the names and current addresses of all current owners of record of the real property;
- (c) the full legal description of the real property to which a proposed Assessment Payment is to be imposed, including reference to deed book and page number and property identification number;
- (d) a general description of the proposed Energy Project;

(e) a proposed time schedule for undertaking and completing the proposed Energy Project;

(f) the written consent to the proposed Assessment Payment by each and every holder of a recorded mortgage lien on the affected property;

(g) the proposed scope of the work for the Energy Project;

(h) the construction, installation and equipping budget for the Energy Project; and

(i) information setting forth the baseline energy or water usage conditions and the energy or water savings projected to be achieved with respect to the Project Property as a result of the Energy Project.

Section 6. Review of Petitions. The Program Administrator shall review each Petition and all associated materials supplied therewith to determine if the Petition complies with this Ordinance and all other applicable rules and regulations of the Commonwealth and the County.

If the Petition complies, the Program Administrator shall provide for the preparation of a Project Financing Agreement related to the financing of the costs of the Energy Project. The Project Financing Agreement shall have the customary and reasonable terms and conditions, including but not limited to, the imposition of a Program Assessment for a period of no more than thirty (30) years. The Program Administrator shall submit a form of the Project Financing Agreement, a recommendation as to approval, the application and all supporting documentation for final approval by the Fiscal Court.

If approved by the Fiscal Court, the Program Administrator shall file a Notice of Assessment in the real property records of the county as required by KRS 65.207, which shall include the following:

(a) The amount of the assessment;

(b) the legal description of the real property;

(c) the name of each owner of record of the real property; and

(d) a reference to the statutory assessment lien provided under this section.

Section 7. Assessments. The Program Administrator shall review each Petition and all associated materials supplied therewith to determine if the Petition complies with this Ordinance and all other applicable rules and regulations of the Commonwealth and the County.

(a) As enumerated in the Program Financing and Assessment Agreement, the Program Administrator shall ensure the assessment is imposed and a statement as to the assessment payment due is included with the tax bill for the real property, in accordance with KRS 65.207(4)(a).

(b) Any Assessment shall, together with any collection fees, accrued interest and penalties, constitute a first and prior lien against the real property on which the Assessment is imposed from the date on which the Notice of Assessment is recorded until

no Assessment Payments remain unpaid and the lien shall have the same priority as a lien for any other state or local ad valorem tax upon the Project Property.

(c) Any unpaid assessment payment shall bear the same interest rate and penalty as other delinquent taxes included in the Tax Bill.

(d) To offset the cost of administering the Program, including the cost of collection of Assessment Payments, in accordance with KRS 206(2)(c)2 fees may be imposed in amounts to be set forth in in a Program Financing and Assessment Agreement, to be collected as a part of the Assessment Payment; provided that such fee shall not exceed the cost of the services performed.

(e) The Program Administrator shall ensure that the assessment payments collected annually are paid to the County or the finance lender in accordance Project Financing Agreement.

Section 8. Amendments. Pursuant to KRS 65.206(2)(b), the Fiscal Court may amend the terms and conditions of the Program by ordinance, except that no amendments shall be adopted to retroactively change the conditions under which an existing Program Assessment was imposed, unless the Owner consents to the amendment in writing.

Section 9. Effective Date. This ordinance shall be in full force and effect from and after its adoption, approval and publication as is required by law.

Section 10. Conflicts. Any ordinance or part of ordinance in conflict with this Ordinance or any part of this Ordinance is hereby repealed.

Section 11. Severability. Should any section, clause, line, paragraph, or part of this Ordinance be held unconstitutional or invalid for any reason, the same shall not affect the validity of the remainder of this Ordinance.

Adopted this _____ day of _____, 2020.

1st Reading –

2nd Reading – _____. Vote: _____, Yes, _____, No

Fiscal Court of
Kenton County, Kentucky

By: _____
Kris A. Knochelmann
Judge/Executive

Attest:

Sue Kaiser, Fiscal Court Clerk