

ORDINANCE NO. 2457

AN ORDINANCE OF THE CITY OF ERLANGER, KENTUCKY (THE "CITY") MAKING CERTAIN FINDINGS CONCERNING AND ESTABLISHING A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE CITY TO BE KNOWN AS THE HOUSTON ROAD/ERLANGER ROAD DEVELOPMENT AREA; APPROVING A LOCAL PARTICIPATION AGREEMENT AMONG THE CITY, THE COUNTY OF KENTON, KENTUCKY, THE AGENCY (AS HEREINAFTER DEFINED) AND PLANNING AND DEVELOPMENT SERVICES OF KENTON COUNTY ("PDS"), AND ERLANGER, AN USCIV, LLC (THE "DEVELOPER"); ESTABLISHING A SPECIAL FUND FOR PAYMENT OF PROJECT COSTS, INFRASTRUCTURE AND SITE DEVELOPMENT COSTS, FINANCING COSTS, AND REDEVELOPMENT ASSISTANCE; DESIGNATING THE FINANCE DEPARTMENT OF THE CITY. AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION AND IMPLEMENTATION OF THE DEVELOPMENT AREA; AUTHORIZING THE MAYOR AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE DEVELOPMENT AREA.

WHEREAS, the City of Erlanger, Kentucky ("the City"), by virtue of the laws of the Commonwealth of Kentucky (the "State"), Kentucky Revised Statutes, specifically Sections 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a development area to encourage reinvestment in and development and reuse of areas of the City, (2) enter into agreements in connection with the establishment and development of a development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a development area, and (4) designate an agency to oversee, administer and implement projects within a development area; and

WHEREAS, the City desires to establish a "development area" as defined in the Act to encourage reinvestment and development within such development area and to pledge a portion of the "incremental revenues" as defined in the Act generated from the development of such development area to provide redevelopment assistance and provide for the payment of Project Costs. Infrastructure and Site Development Costs, Financing Costs, and Redevelopment Assistance and/or Approved Public Infrastructure Costs (as defined herein) within such development area; and

WHEREAS, the City has identified a contiguous tract of previously developed land consisting of not more than three (3) square miles within the City, specifically

described in Exhibit A to this Ordinance, that is in need of being redeveloped and which is not reasonably expected to be redeveloped without public assistance; and

WHEREAS, there has been a substantial loss of residential, industrial or commercial activity within the Development Area, there has been a substantial abandonment of commercial and industrial structures within the Development Area; there is a need for new public infrastructure to support new development within the Development Area, and there are special conditions within the Development Area that have negatively impacted the growth and development of the City; and

WHEREAS, the City has determined to establish the Development Area as a development area pursuant to the Act to encourage reinvestment and development within the Development Area; and

WHEREAS, the City has agreed to support and encourage development within the Development Area by pledging certain Incremental Revenues (defined below) to the payment of Bonds, or to otherwise provide Redevelopment Assistance or pay for Project Costs if bonds are not issued, under a Local Participation Agreement (defined below); and

WHEREAS, the City has prepared and presented a “Development Plan”, pursuant to the Act, for the consideration and adoption of the City proposing the redevelopment of the Development Area; and

WHEREAS, the City, as required by the Act, held a public hearing on September 19, 2017 after giving proper notice concerning the City’s intention to consider the adoption of the Development Plan; and

WHEREAS, the adoption of the Development Plan and the establishment of the Development Area are for a public purpose and that the establishment and creation of the Development Area within the City is for the benefit and welfare of the City’s citizens; and

WHEREAS, the City deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY AS FOLLOWS:

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used in this Ordinance shall have the following meanings.

“Act” means Kentucky Revised Statutes, Sections 65.7041 to 65.7083, KRS 154.30-010 to KRS 154.30-090 and KRS 139.515.

“Agency” means the Finance Department of the City of Erlanger, Kentucky.

“Approved Public Infrastructure Costs” shall be the costs approved for recovery from State Incremental Taxes as identified and set forth in the Tax Incentive Agreement, if any, and as provided in the Act.

“Bonds” means bonds or notes issued pursuant to the Act to pay for Project Costs, Redevelopment Assistance and/or Approved Public Infrastructure Costs, the payment of which Bonds shall be supported solely by Incremental Revenues pledged by the City, County, Planning Development Services of Kenton County, and/or the State.

“Development Agreement” means that certain Development Agreement by and between the City of Erlanger, Kentucky and Al. Neyer, LLC, an Ohio limited liability company dated April 4th, 2017 which Development Agreement has been assigned by Al. Neyer, LLC to Erlanger, AN USICIV, LLC, a Delaware limited liability company.

“Development Area” means a contiguous geographic area of previously developed land, located within the geographical boundaries of the City, which is created for economic development purposes by this Ordinance in which a Project is proposed to be located and consisting of less than three square miles in area, with the actual size being approximately 185.66 acres, as more specifically described in Exhibit A attached to this Ordinance, to be known as the “Houston Road/Erlanger Road Development Area”.

“Development Plan” means the Development Plan for the Houston Road/Erlanger Road Development Area attached to this Ordinance as Exhibit C.

“Establishment Date” means the date that the Development Area is established pursuant to the Act, the Local Participation Agreement and this Ordinance.

“Financing Costs” shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for Approved Public Infrastructure Costs, Project Costs or Redevelopment Assistance within the Development Area or as defined in the Development Agreement.

“Incremental Revenues” means the amount of tax revenues from real property *ad valorem* taxes and occupational taxes received by the City, County, and PDS, with respect to the Development Area and the State with respect to a Footprint (as defined in the Act for projects within the Development Area that may be approved by the State) by subtracting Old Revenues, (as defined in the Act and Local Participation Agreement) from New Revenues (as defined in the Act and the Local Participation Agreement) in a calendar year.

“Infrastructure and Site Development Costs” are costs, defined in the Development Agreement and Local Participation Agreement, eligible to be reimbursed to the Developer from Incremental Revenues.

“KEDFA” means the Kentucky Economic Development Finance Authority.

“Local Participation Agreement” shall mean the Local Participation Agreement between City, County, PDS, the Developer, and the Agency, attached to this Ordinance as Exhibit B.

“PDS” means the Planning and Development Services of Kenton County, formerly known as the Northern Kentucky Area Planning Commission, a special taxing district organized under Chapter 147 of the Kentucky Revised Statutes.

“Pledged Revenues” means that portion of the Incremental Revenues which are pledged by the City, County, PDS or State, pursuant to the Local Participation Agreement or a Tax Incentive Agreement, to the pay for Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs for the Development Area

“Project” means the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Plan, being undertaken by various developers or public agencies.

“Project Costs” means any capital investment (as defined in the Act) expended to construct the Project.

“Redevelopment Assistance” shall have the meaning as provided in the Act.

“State” shall have the meaning given such term in the recitals.

“Tax Incentive Agreement” shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 and KRS 139.515 of the Act between KEDFA and the Agency relating projects eligible for a pledge of State Incremental Revenues under the Act within the Development Area.

1.2 All capitalized terms used in this Ordinance and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the City hereby makes the following findings and determinations with respect to the Development Area:

(a) The Development Area consists of a contiguous tract of land that is not more than three (3) square miles. The actual size of the Development Area is 185.66 acres.

(b) The Development Area constitutes previously developed land as required by KRS 65.7043.

(c) The establishment of the Development Area will not cause the assessed value of taxable real property within the Development Area and within all “development areas” and “local development areas” (as those terms are defined in the Act) established by the City to exceed twenty percent (20%) of the assessed value of all taxable real property within the City. The assessed value of taxable real property within the Development Area for calendar year 2016 is \$10,211,500. The total assessed value of taxable real property within the City for the calendar year 2016 is approximately \$1,019,020,057. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within the City.

(d) There has been a substantial loss of residential, commercial or industrial activity within the Development Area. The Development Area previously contained a significant number of commercial and hospitality related businesses, including the Showcase Cinemas, Showcase Cinemas was the first multi-screen movie theatre in Northern Kentucky, which for years served as the primary location for moviegoers across the region. However, the Showcase Cinemas has been closed for years and the building has been demolished. In addition, the Development Area previously included other businesses, such as L&N Concrete, a Texaco gas station, insurance office building, restaurant and rental car offices that have closed, with the buildings being demolished.

(e) There has been a substantial abandonment of residential, commercial, or industrial structures within the Development Area. Several of the commercial business references above have since closed and their respective buildings have been demolished. As evidence of the abandonment of these sites, many of these locations have been the subject of code enforcement action by the City for such issues as weeds, accumulation of rubbish, abandoned vehicles, graffiti and other related violations.

(f) There are inadequate improvements or substantial deterioration of public infrastructure to support the proposed new development within the Development Area. To support the redevelopment of the Development Area, there must be significant improvements to the public infrastructure, including road improvements, provision of sanitary and storm sewer facilities, and other infrastructure. The redevelopment of the Showcase Cinemas site has been significantly impaired by the poor road access to the location. In addition, the Showcase Cinemas site is impacted by a gas main that transects the site, and which must be relocated to allow for development of the site as contemplated herein. The site development and infrastructure costs

needed to allow for the redevelopment of the Erlanger Commerce Center Area of the Development Area is estimated to exceed \$15,500,000.

(g) There is a combination of factors that substantially impairs the growth and economic development of the City. Despite of the Development Area's close proximity to and visibility from I-75 and other major roadways, it has not developed and has impeded to overall development of the City due to its limited access. Additionally, the topography of the Development Area and elevation changes thereon present unique development challenges that increase the cost of any potential redevelopment.

(e) That the Development Area is not reasonably expected to be developed without public assistance. The City finds the Development Area is not reasonably expected to develop without public assistance including, but not limited to, assistance available under the Act. The extreme cost for site development and infrastructure needed to fully development the Development Area, the topographical challenges in the Development Area and the gas main relocation make public assistance critical to the redevelopment of the Development Area.

(f) That the public benefits of redeveloping the Development Area justify the public costs proposed. The City finds that the public benefits of redeveloping the Development Area justify the public costs involved. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of increasing new investment within the Development Area by well over \$100 Million. The resulting increases in new City, County and other taxes from these developments will more than offset the incentives recommended through the establishment of the Development Area. While the Development Plan recommends the City commit 80% of the incremental increase in real property taxes and occupational taxes to pay for redevelopment assistance and projects costs within the Development Area, there will be still be a net benefit in new revenues to the City. First of all, the establishment of the Development Area will not impact the amount of any existing City tax revenues generated within the Development Area. Secondly, the City will retain 20% of the incremental increase in revenues from real property taxes and occupational taxes. Finally, the Project will generate other taxes to the City and other taxing districts, including personal property taxes, insurance premium taxes, etc, which will not be impacted by any pledge of incremental revenues through the establishment by the City of the Development Area.

(g) That the area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise. The City finds that the area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise.

SECTION 3. Establishment, Name, Boundaries. All that area described in Exhibit A to this Ordinance is located within the City and is hereby established and

designated as the “Houston Road/Erlanger Road Development Area”. At the time of the enactment of this Ordinance the Development Area is less than three (3) miles.

SECTION 4. Establishment Date, Commencement Date, Termination Date. The Establishment Date is the effective date of this Ordinance. The Commencement Date of the Development Area is the date of execution of the Local Participation Agreement and in accordance with the terms of the Local Participation Agreement, the Termination Date shall be thirty (30) years from the Activation Date as provided in the Local Participation Agreement. Notwithstanding the foregoing, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The City hereby adopts the Development Plan attached to this Agreement as Exhibit C. The City Council of the City hereby finds and determines that a public hearing was duly held on September 19, 2017, to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with City Clerk, and with the Fiscal Court Clerk of the County prior to the notice of the public hearing being advertised.

SECTION 6. Local Participation Agreement. The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver on behalf of the City and the Agency, the Local Participation Agreement which authorizes the pledge of a portion of the Incremental Revenues of the City from the Development Area to the payment of Redevelopment Assistance, Project Costs, Infrastructure and Site Development Costs, and/or Approved Public Infrastructure Costs and Financing Costs, the form of Local Participation Agreement to be signed by the Mayor on behalf of City (acting as the City and Agency), the County, the Developer, and PDS, shall be in substantially the form attached to this Ordinance, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the City. The approval of such changes by said officers, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of, as applicable, such Local Participation Agreement by such officials.

SECTION 7. Special Fund. There is hereby established a Special Fund of the City to be known as the Houston Road/Erlanger Road Development Area Tax Increment Fund, which will be maintained by the Agency, into which the City covenants to deposit, and into which City officials are hereby authorized and directed to deposit all Pledged Revenues. The Agency shall maintain the Special Fund unencumbered except for the purposes set forth in Section 8 of this Ordinance. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, the Local Participation Agreement, and any applicable Tax Incentive Agreement, the Development Plan and related documents to pay for Redevelopment Assistance,

Project Costs, Infrastructure and Site Development Costs, and/or Approved Public Infrastructure Costs and Financing Costs within the Development Area.

SECTION 8. Use of Pledged Revenues. Pledged Revenues shall be deposited by the City into the Special Fund created under Section 7 of this Ordinance and shall be used solely to: (a) pay directly for Redevelopment Assistance, Project Costs, Infrastructure and Site Development Costs, and Approved Public Infrastructure Costs as determined from time to time by the City and Agency in accordance with the Local Participation Agreement and the Development Plan; (b) pay debt service and costs of issuance on the Bonds, including Financing Costs, which may be issued by the City or Agency (at the direction of the City issued to finance Redevelopment Assistance, Project Costs, Infrastructure and Site Development Costs, and/or Approved Public Infrastructure Costs; and (c) for such other purposes as may be determined by the City and Agency and that are appropriate and in compliance with the purposes set forth in this Ordinance, the Local Participation Agreement, any applicable Tax Incentive Agreement, the Development Plan, and the Act, as the same may be amended from time to time.

SECTION 9. Periodic Accounting / Analysis. Any entity, other than the City that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the City in accordance with the Act and the documents controlling such grant, loan or loan guarantee. The governing body of the City shall be required to review and analyze the progress of the development activity in the Development Area on an annual basis. Such reports shall, at a minimum, include a review of the progress in meeting the stated goals of the Development Area. The Mayor, City Administrator and other officials of the City and the Agency shall report to the governing body of the City during such reviews and shall when necessary invite developers to participate in the review process to report on the progress of their developments within the Development Area. The review and documentation supporting the review shall be forwarded to KEDFA in accordance with the Act for any projects that have been provided assistance by KEDFA.

SECTION 10. Designation of Oversight Agency. Pursuant to the Act, the City hereby designates the Agency as the “agency” of the City for purposes of oversight, administration and review responsibility of this Ordinance, the Local Participation Agreement and the Development Area established by this Ordinance. The Agency shall act on behalf of the City in administering the Development Area, entering into Development Area agreements, and other related agreements, with respect to the development of the Development Area and the financing of Redevelopment Assistance, Project Costs, Infrastructure and Site Development Costs, and/or Approved Public Infrastructure Costs within the Development Area, including making application(s) to KEDFA or other related State agencies for projects within the Development Area that may qualify for a pledge of State incremental revenues under the Act or other State assistance.

SECTION 11. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 12. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

SECTION 14. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

CITY OF ERLANGER, KENTUCKY

By: _____
Tyson Hermes, Mayor

ATTEST:

Sherry Hoffman, City Clerk

Date of First Reading:

Date of Second Reading and Enactment:

Date Published:

Exhibit A
to Ordinance No. _____ - _____

(Development Area Map)

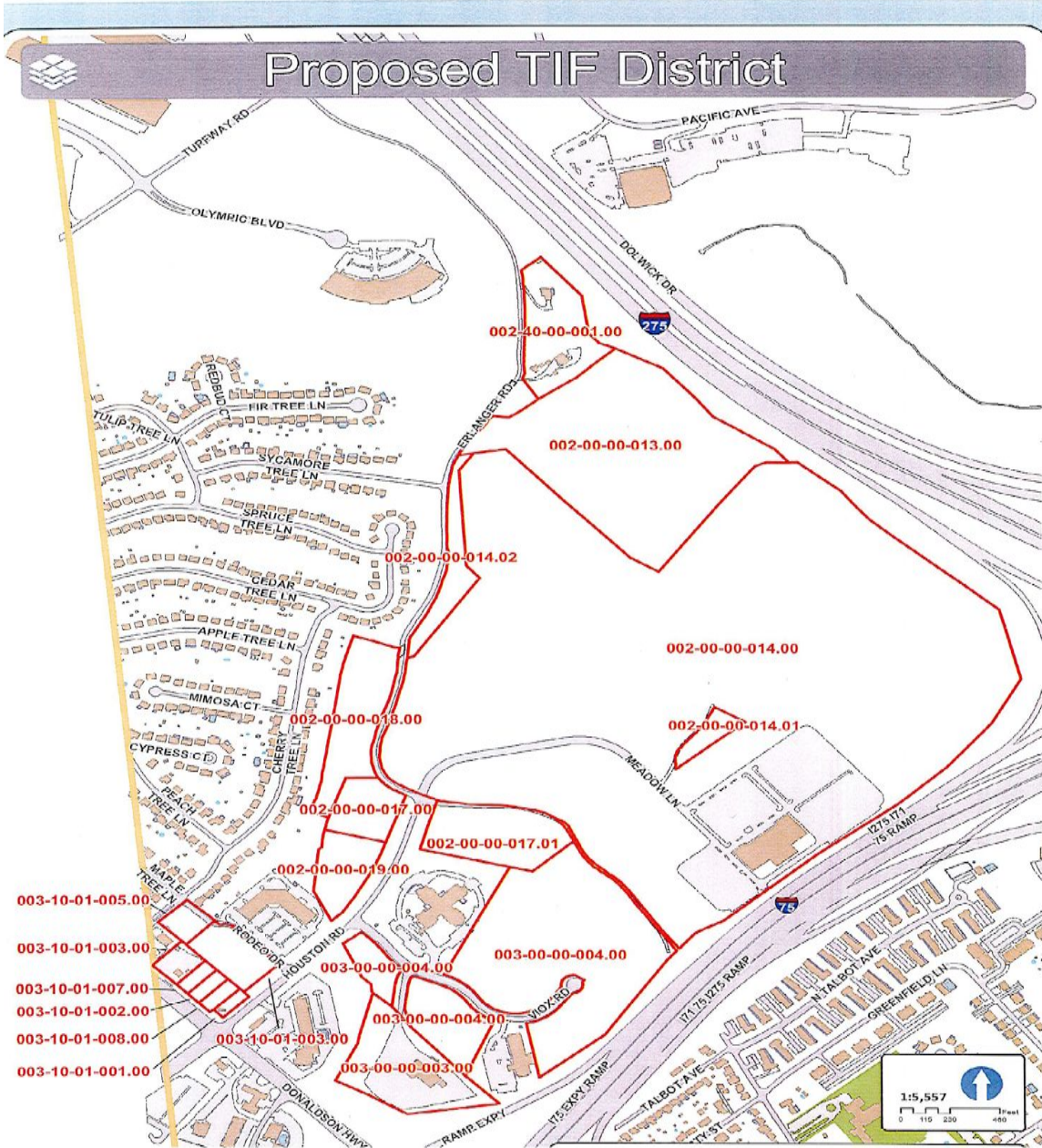


Exhibit B
to Ordinance No. _____ - _____
(Local Participation Agreement)

Exhibit C
to Ordinance No. _____ - _____

(Development Plan)