

ORDINANCE NO. **BG2009 - 30**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE CREATING A NEW SUBCHAPTER OF CHAPTER 11 (FINANCE, TAXATION AND ECONOMIC DEVELOPMENT) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO INCORPORATE THE CREATION OF A TAX INCREMENT FINANCING (TIF) DISTRICT RELATED TO THE WKU GATEWAY TO DOWNTOWN BOWLING GREEN DEVELOPMENT AREA

WHEREAS, the City of Bowling Green, Kentucky (the "City") has on July 31, 2007 adopted Ordinance No. BG2007-33, amended by Ordinance No. BG2007-38, amended by Ordinance No. BG2008-54 (collectively, the "Development Area Ordinance"), whereby it established and later expanded the WKU Gateway To Downtown Bowling Green Development Area (the "Development Area") for the purpose of promoting a mixed use development within a numerous block area site in Warren County (the "County") and in the downtown area of the City, which connects Western Kentucky University to the City's downtown (the "Project"); and,

WHEREAS, subsequent to the establishment of the Development Area by the City, the County established the Warren County Downtown Economic Development Authority, Inc. ("Authority") as its agency, instrumentality and constituted authority for the purpose of issuing Increment Bonds to finance portions of the Project and performing other functions to implement the Project; and,

WHEREAS, the City, County and Western Kentucky University ("WKU") previously authorized and entered into a Master Development Agreement, dated August 1, 2007, to utilize the services of Alliance Corporation as the master developer to manage and facilitate the Development Area, which was later amended by the City, County, WKU and Authority on June 1, 2008 (the "Amended and Restated Master Development Agreement"); and,

WHEREAS, the City and County previously authorized and entered into a Local Participation Agreement, dated August 1, 2007, to pledge certain revenues and take other action to promote the

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Project within the Development Area, which was later amended by the City, County and Authority on June 1, 2008, and October 1, 2008 (the "Amended and Restated Local Participation Agreement #2"); and,

WHEREAS, the City, County and Authority previously authorized and entered into an Interlocal Cooperation Agreement, effective June 17, 2008, (the "Interlocal Agreement") to provide for the financing, design, construction and installation of a Baseball Park within the Development Area and the operation and maintenance of the Baseball Park and Parking Garage after their construction; and,

WHEREAS, in October 2008, the City, County and Authority acted to expand the boundaries of the Development Area, applied to the Kentucky Economic Development Finance Authority ("KEDFA") and received approval to expand the boundaries of the Development Area; and,

WHEREAS, on February 11, 2009, the City adopted Ordinance No. BG2009-5, authorizing the execution of an interim financing agreement in order to implement certain temporary modifications to all of the agreements listed above; and,

WHEREAS, while the agreements listed above have been approved by ordinance, the City's Code of Ordinances has not been amended to incorporate this Development Area; and,

WHEREAS, it is in the best interests of the City to adopt a new Subchapter of Chapter 11 (Finance, Taxation and Economic Development) to incorporate the creation of the WKU Gateway to Downtown Bowling Green Tax Increment Financing (TIF) Development Area.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. A new subchapter of Chapter 11 (Finance, Taxation and Economic Development) is hereby created to read as follows:

11-13 TAX INCREMENT FINANCING DEVELOPMENT AREA – WKU GATEWAY TO DOWNTOWN BOWLING GREEN.

11-13.01 Preamble.

a. For several years, the City has been involved in redevelopment efforts in the downtown, historic portion of the City, including the area around Western Kentucky University. Such redevelopment efforts would provide and carry out the following public purposes: (i) the enhancement of economic development and economic growth within the downtown area of the City, including the area around Western Kentucky University, (ii) the inducement of business and residential growth within the downtown area of the City, including the area around Western Kentucky University and (iii) the enhancement of the tax base of the City and the creation of employment opportunities for the citizens of the City.

b. The City by virtue of the provisions of KRS 65.7041 to 65.7083 (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 the development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of the development area, and (4) designate an agency to oversee, administer and implement projects within the development area. The Act further authorizes the City of Bowling Green and Warren County to create development areas and to enter into contracts and grant agreements as set out in the Kentucky Increment Financing Act for the release of incremental revenues created in such development areas to nonprofit corporations established pursuant to KRS Chapter 58. In order to finance the Project, Warren County has heretofore caused to be created the Warren County Downtown Economic Development Authority, Inc. ("Authority"), a nonprofit, non-stock corporation which is a corporation created pursuant to KRS Chapter 58 as its agency, instrumentality and constituted authority for the purpose of issuing Increment Bonds to finance portions of the Project (as further defined hereinbelow) and performing other functions to implement the Project. The City has previously designated the Authority as the agency with the duties and

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responsibilities for the oversight, administration and the implementation of the Development Area Ordinance (as further defined hereinbelow) on behalf of the City.

11-13.02 Approval of Public Project; Implementation of Project.

A public project consisting of the WKU Gateway to Downtown Bowling Green Tax Increment Financing Development Area (the "Project") is hereby officially approved, adopted and confirmed. The Project is a public project within the meaning of KRS Chapter 58 and it has previously been found and determined that the Project is necessary and will perform essential governmental functions.

11-13.03 Creation of WKU Gateway to Downtown Bowling Green Tax Increment Financing (TIF) Development Area.

a. Pursuant to the Act, a tax increment financing development area is hereby officially designated and created by the City of Bowling Green which shall be known as the WKU Gateway to Downtown Bowling Green Tax Increment Financing Development Area which shall encompass the geographic area as set out in Ordinance No. BG2007-33 and amended by Ordinance No. BG2007-38 and amended by Ordinance No. BG2008-54.

b. Pursuant to the Act, the City of Bowling Green hereby ratifies its designation of the Authority as the agency under such Act to receive tax increments derived from the Development Area and to apply such tax increments to amortize the obligations to be issued by the Authority to implement and to develop the Project.

c. There is hereby assigned to the Authority those incremental revenues designated in previously approved ordinances derived and to be derived within the Development Area. All tax increments hereby assigned to the Authority shall be used solely and only for the purposes of the Project and in the Development Area and shall be used solely for the amortization of the bonds or other debt issued for the financing of the Project and for the administrative costs of the Authority. Once all

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debt is paid in full, this Subchapter shall automatically be repealed and the Development Area shall cease.

11-13.04 Application Review and Approval

a. Pursuant to the provisions of the Amended and Restated Master Development Agreement, all sub-developer agreements and proposals for projects to be located in the TIF development area shall be submitted to the City for review and approval. The materials shall first be submitted to the City's Finance Department and to the Office of the City Manager with sufficient information and documentation as requested by the City. Submissions of proposed projects shall include a detailed description of the sub-developer including information related to the experience and financial capacity of the sub-developer, the names, addresses and financial information of the owners of the sub-developer and the names and addresses of the officers and directors of the sub-developer, a copy of the sub-developer agreement, a description of the project, a detailed concept plan, with proposed uses, building sizes and designs for that particular block of the Development Area along with adequate provisions for the public infrastructure needed to support the Project, the number of new employees to be employed by the project, a statement regarding the public benefits of the project, the amount of TIF assistance being provided and the use of the TIF assistance and other information that may be requested by the Finance Department or the Office of the City Manager. In addition, the proposal shall include information on the impact of the project on existing City revenues. The proposal shall include information regarding the relocation of existing City businesses and/or jobs into the TIF Development Area, including the number of jobs being relocated, the payroll and occupational fees / net profits being paid by those jobs and the existing business currently, and the number, if any, of new jobs being created due to the relocation. The Master Developer or sub-developer shall include documentation in the proposal to justify its location in the TIF Development Area and provide justification that without TIF assistance, the proposed project would not occur. The Master Developer

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or sub-developer should not assume that the City will approve a request to locate a project in the TIF Development Area. The City Finance Department, in cooperation with the Office of the City Manager and other appropriate City departments, shall review the proposed project and make recommendations to the Board of Commissioners. Decisions to approve or disapprove proposed projects shall be made on a project-by-project basis by the Board of Commissioners and shall be made in writing based on appropriate municipal orders.

b. In all situations in which projects are approved that include the relocation of existing City businesses or jobs, the tax increment financing base revenue shall be adjusted based on the following Section. In no case shall the City net profits or employee withholdings revenues being generated from an existing City business or employee being relocated into the TIF Development Area be distributed to the Authority.

11-13.05 Calculation and Distribution of Tax Increment Financing Revenue Related to Growth of Existing Businesses or Jobs that Relocate Into the TIF Development Area.

a. It is not the purpose of TIF to shift existing commercial, professional or other businesses that already exist in the City, but outside the TIF area, into the TIF area without an adjustment to Old Revenue (hereinafter also called "base revenues"). Therefore, any existing City business outside the TIF area that moves into the TIF area shall file with the City Finance Department and the Office of the City Manager information related to the number of employees at its existing location or locations and the amount of occupational withholding fees paid by those employees for the preceding calendar year prior to its relocation into the TIF area and the amount of its net profit fees paid to the City for its previous fiscal year. The base revenue for the TIF area shall then be adjusted to include the occupational withholding fees and net profit fees reported by the existing City business and these revenues shall be included as Old Revenue to determine an adjusted base revenue. The adjusted base revenue shall be adjusted annually by the 20-year average CPI of 2.03%. Such businesses shall

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report the existing revenues to the City Finance Department on forms provided by the Department.

b. Additional policies are hereby adopted related to the creation of Western Kentucky University jobs in the TIF area. Prior to the consideration of any Western jobs in the TIF area, the Warren County Downtown Economic Development Authority, Inc. shall file with the City Finance Department copies of the appropriate documents that are required to be filed with the State pursuant to the State grant agreement, including all documents that are required to be filed on an annual basis.

c. No occupational withholding fees generated from Western Kentucky University jobs shall be included as new TIF revenues unless there is an actual increase in Western jobs in the City from the preceding calendar year. In addition, only those jobs in the TIF area that exceed the actual increase in Western jobs in the City shall be considered for TIF revenue calculations.

As an example for illustration purposes only, Western employment increases from 5,000 jobs to 5,100 jobs from the years 2011 to 2012. The TIF documents indicate that 200 new Western jobs were reported in the TIF area for 2012. Only 100 of the new Western jobs will be considered toward TIF revenue calculation.

d. If the growth of Western jobs in the TIF area exceeds the actual increase in total Western jobs from the preceding calendar year, the City Finance Department and the Office of the City Manager shall then examine the Western jobs that were created in the TIF area and that are being considered for TIF revenue calculation. If any of the claimed Western jobs were existing jobs that relocated into the TIF area, the base revenue for the TIF area shall be adjusted to include the occupational withholding fees from the preceding calendar year paid by the existing Western jobs that relocated into the TIF area and these revenues shall be included as Old Revenue.

As an example for illustration purposes only and using the example above, the City will examine the 100 new Western jobs in the TIF area. It is determined that an existing Western department relocated into the TIF area. Ninety-five of these jobs existed prior to

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the relocation of the department. The occupational withholding fees paid on those 95 jobs for the previous calendar year shall be included as Old Revenue to determine an adjusted base revenue. The adjusted base revenue shall be adjusted annually by the 20-year average CPI of 2.03%. The five new positions shall be classified as new jobs and 80% of the occupational withholding fees generated from those five new jobs will be paid to the Authority.


2. 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.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on October 6, 2009, and given final reading on October 20, 2009, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: October 20, 2009

APPROVED: 
Mayor, Chairman of Board of Commissioners

ATTEST: 
City Clerk

SPONSORED BY: Kevin D. DeFebbo, City Manager, 09/30/2009, 5:00 p.m.