Ellinger
Lane
Gorton
Kay
Farmer
Stinnett
Myers
Beard
Lawless
Blues

AGENDA
Budget & Finance Committee
February 28, 2012
1:00 P.M.

1. **FY 11 CAFR** (1-9)
2. **Monthly Budget Report** (10-18,27-29)
3. **Street Light Fund** - Lane (23-26,38-45)
4. **Hotel/Motel Tax** – Stinnett (19-22,30-37)
5. **Items Referred to Committee** (46)

"Budget & Finance Committee, to which shall be referred matters relating to the Department of Finance and Administration and its divisions, and any related partner agencies, the urban county courts and constitutional officers, fiscal operations of the government, revenues and expenditures of the government, and organization changers which affect the fiscal operations of the government. Additionally, this committee shall review the final audit report and management letter of the accounting firm recommended by the Mayor and selected by the Council to conduct the annual financial audit of the Urban County Government and shall report its findings concerning the same to the Mayor and Council for appropriate action." Council Rules & Procedures, Section 2.102 (1)
Effective January 1, 2011. Adopted by Urban County Council October 14, 2010

Budget & Finance Committee

Department of Finance Update
February 28, 2012

Today's Presentation

- FY2011 CAFR
- Auditor Presentation
- January Financial Update
- Transient Room Tax - Response
- Streetlight Funding - Response
- FY2012 *Preliminary* Year-end Estimate

FY 2012 Comprehensive Annual Financial Report

Review of FY11 CAFR

- Introductory Section (Pages 1-11)
- Financial Section (Pages 12-124)
  - Audit Opinion Letter
  - Management Discussion & Analysis
  - Basic Financial Statements
    - Government Wide
    - Fund Statements
    - Combining & Individual Fund Statements
- Statistical Section (Pages 129-153)
  - Financial, Revenue & Debt Schedules
  - Demographic & Economic Indicators

Review of FY11 CAFR, (cont.)

- Layout of Financial Section
  - Summary Statements
  - Detailed Statements
- Government Wide statements are presented using accrual basis of accounting
- Governmental Fund statements are presented using modified accrual
- Proprietary Fund statements distinguish operating revenues and expenses from non-operating items.
  - Sewer Fund – per EPA Consent Decree
    - Excess of user fees over expenditures must be set aside for future infrastructure improvement projects

Review of FY11 CAFR, (cont.)

- Clean Audit Opinion issued January 11, 2012
- Implemented GASB Statement No. 54 – "Fund Balance Reporting and Governmental Fund Type Definitions"
  - Nonspendable – Legally or contractually required to remain intact (prepaid expenses, inventories)
  - Restricted – Represent resource that are constrained for specific purposes by external parties, constitutional provisions or enabling legislation
  - Assigned – Amounts for a specific purpose, that do not meet the criteria of Nonspendable or Restricted (Economic Contingency Funds)
  - Unassigned – Resources that have not been assigned to other categories above

Review of FY11 CAFR, (cont.)

- General Fund Unassigned Fund Balance – 560k
  - 0.2% of the General Fund Revenue
  - FY 2012 Budget Beginning Fund Balance – 500k
- General Fund Assigned Fund Balance - $22MM
  - Economic Contingency Fund – $14.5MM
    - 5.3% of the General Fund Revenue
    - No Draw in FY 2011 - $5.6MM Budgeted
  - 27th Payroll - $3.7MM
    - For the 27th Payroll in FY 2017
  - Firefighter Overtime Lawsuit Designated - $3.5MM
  - Loan Payoff of the Defaulted (LDHF) Loan - $431k

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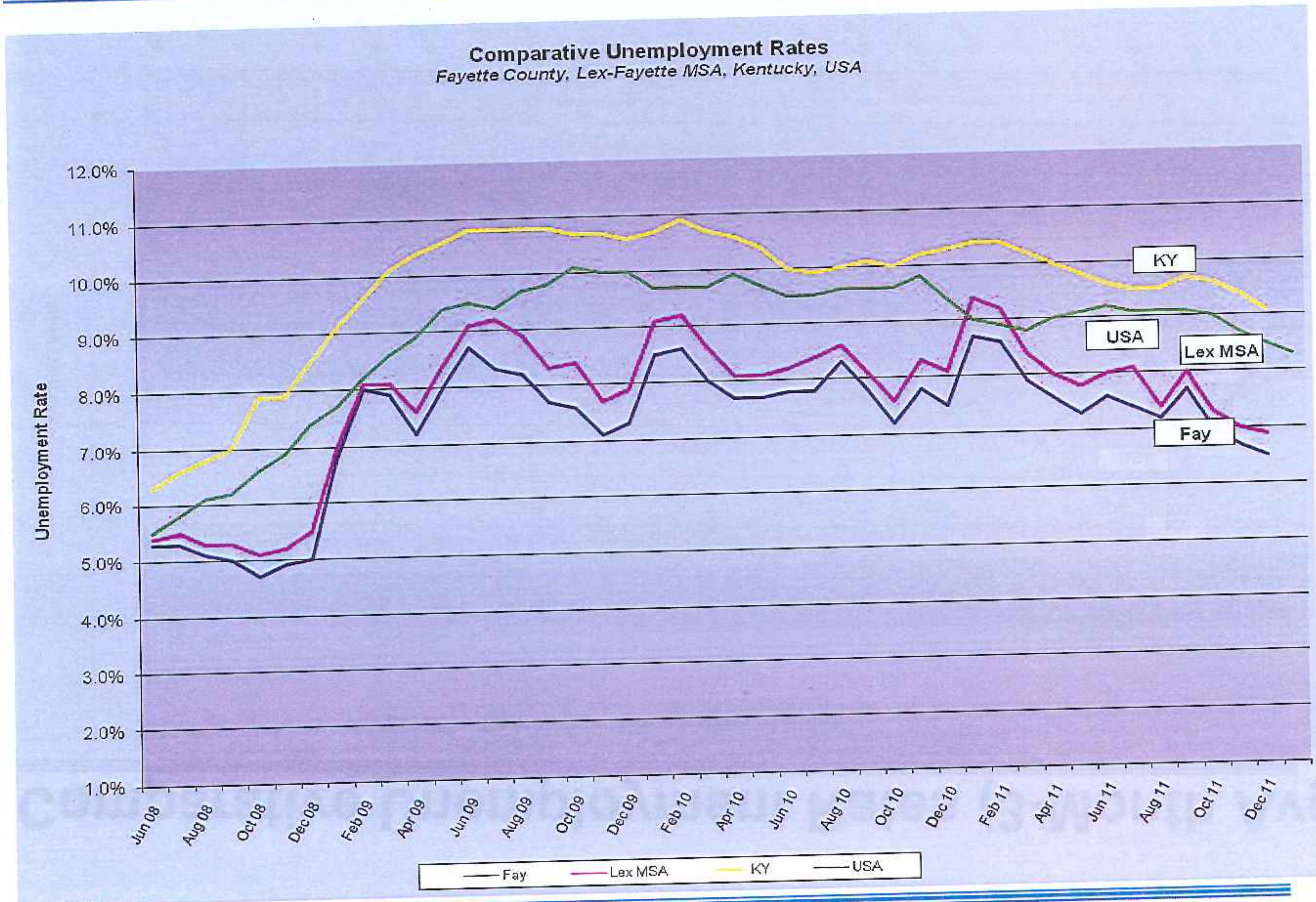
Review of FY11 CAFR, (cont.)

- Urban Services Fund Balance
  - $20.4MM
  - 55% of Urban Services Revenue
- Sanitary Sewer Unrestricted Fund Balance
  - $13.9MM
  - 25% of Sanitary Sewer Revenue
- Landfill Fund Unrestricted Fund Balance
  - $8.6MM
  - 120% of Landfill Revenue
- Water Quality Fund Unrestricted Fund Balance
  - $6.5 MM
  - 55% of Water Quality Revenue

Auditor's Report

January Financial Update

Comparative Unemployment Rates



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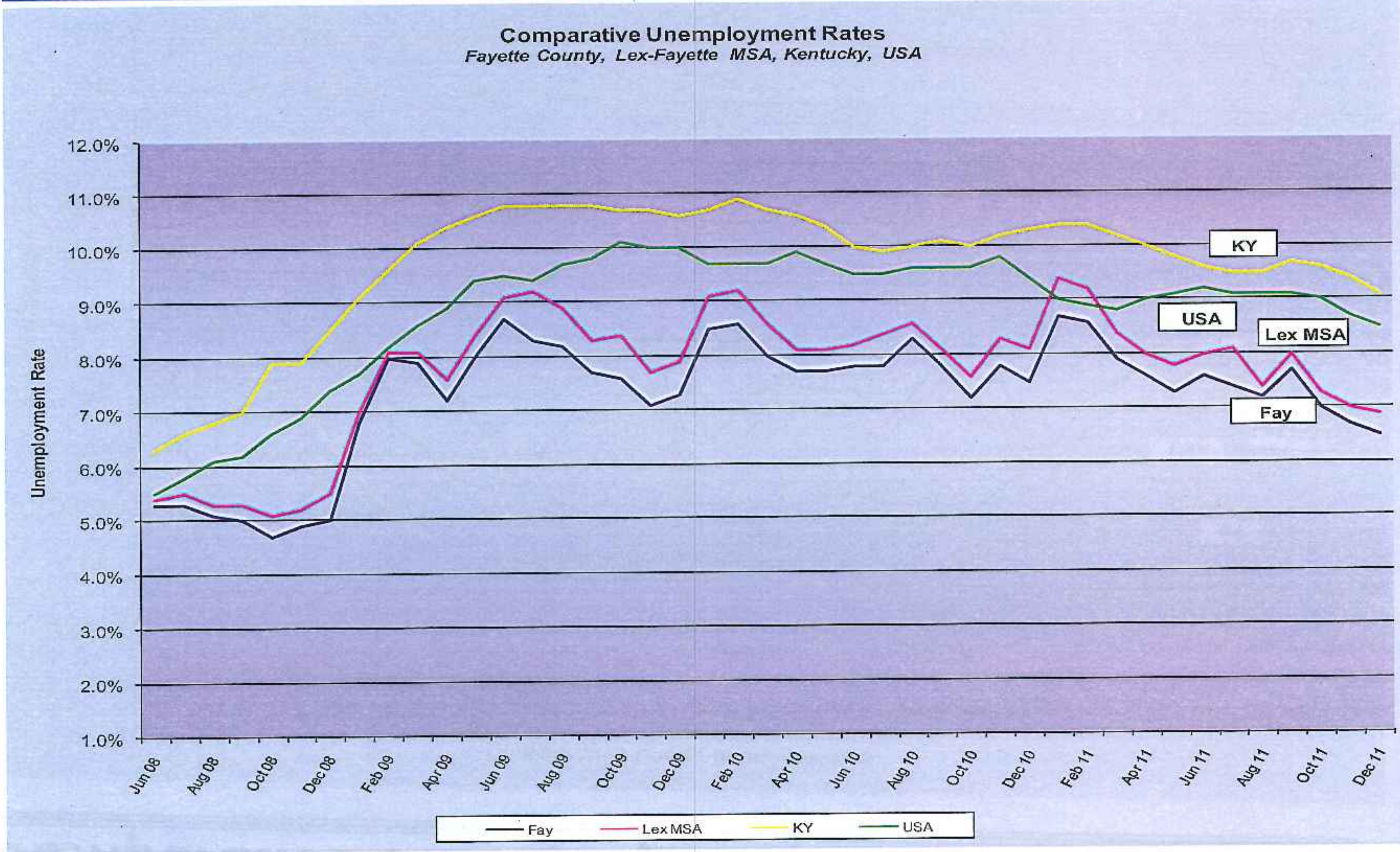
Comparative Unemployment Rates (3-Month Avg.)



Comparisonn of Economic Indicators 2011-/2012

Economic Indicators		Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
Fayette Co. Unemployment Rate	2010	7.8%	7.8%	8.3%	7.8%	7.2%	7.8%	7.5%	
	2011	7.6%	7.4%	7.2%	7.7%	7.0%	6.7%	6.5%	8.7%
	2012								N/A
Quarterly Fayette County Employment	2010	172,300	-	-	174,100	-	-	177,700	-
	2011	175,000	-	-	N/A	-	-	N/A	-
	2012								-
Fayette County Permits Issued	2010	1,407	1,193	1,434	1,427	923	1,015	707	
	2011	1,405	1,195	1,292	1,102	1,109	893	726	793
	2012								929
Fayette County New Business Licenses	2010	243	350	366	203	239	204	168	
	2011	199	223	224	223	265	187	128	205
	2012								183
Home Sales (MSA)	2010	871	585	539	465	442	438	521	
	2011	720	614	713	610	512	552	596	328
	2012								N/A
Fayette County Foreclosures	2010	50	50	94	52	110	90	118	
	2011	39	39	53	25	29	38	33	59
	2012								71

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January Actual / Adopted Budget

January 2012 Monthly Actual Compared to Adopted Budget

Revenue Category	Actual	Budget	Variance	%
OLT- Employee Withholding	8,628,746	7,353,715	1,275,031	17.3%
OLT - Net Profit	1,552,318	1,367,843	184,475	13.5%
Insurance	3,638,801	1,942,989	1,695,812	87.3%
Franchise Fees	344,652	715,823	(371,171)	-51.9%
TOTALS	14,164,517	11,380,369	2,784,148	24.5%

January YTD Actual / Adopted YTD Budget

Revenue Category	Actual	Budget	Variance	%
	January YTD Actual Compared to Adopted YTD Budget			
OLT- Employee Withholding	85,972,366	83,799,174	2,173,192	2.6%
OLT - Net Profit	11,553,522	10,954,304	599,218	5.5%
Insurance	14,991,326	12,624,225	2,367,101	18.8%
Franchise Fees	8,698,785	9,187,620	(488,834)	-5.3%
TOTALS	121,215,999	116,565,323	4,650,676	4.0%

2012 Fiscal Year - Cash Flow Variance Revenue

	ACTUAL YTD	BUDGET YTD	Variance
Revenue			
Payroll Withholding	$ 85,972,366	$ 83,799,174	$ 2,173,192
Net Profit	11,553,522	10,954,303	599,219
Insurance	14,991,326	12,624,225	2,367,101
Franchise Fees	8,698,785	9,187,620	(488,834)
Other Licenses & Permits	2,992,062	3,112,009	(119,946)
Ad Valorem	18,038,532	17,689,053	349,479
Services	12,514,548	10,100,384	2,414,165
Fines and Forfeitures	120,345	106,192	14,153
Property Sale	102,982	0	102,982
Intergovernmental	901,024	991,190	(90,166)
Investment Income	263,178	17,500	245,678
Other Financing Sources	100,000	350	99,650
Other Income	1,345,661	1,227,056	118,605
Total Revenue	**$ 157,594,331**	**$ 149,809,055**	**$ 7,785,276**

2012 Fiscal Year - Cash Flow Variance Expenses

	ACTUAL YTD	BUDGET YTD	Variance
Expenses			
Personnel	(105,914,753)	(101,700,667)	(4,214,086)
Operating	(15,448,037)	(18,389,975)	2,941,937
Debt Service	(11,384,893)	(11,384,365)	(528)
Partner Agencies	(10,807,459)	(10,028,732)	(778,727)
Insurance - Expense	(786,687)	(786,688)	1
Operating Capital Expenditures	(115,403)	(432,833)	317,430
Total Expenses	$ (144,457,232)	$ (142,723,260)	$ (1,733,973)
Interfund Transfers			
Transfers	(472,030)	-	(472,030)
NET INCOME	$ 12,665,069	$ 7,085,795	$ 5,579,273

YTD NET INCOME (Less Timing & Available Appropriations) **$600,000**

FY2012 Challenges

- Pension Funding
- Health Care
- Collective Bargaining
- Efficiency Savings
- Streetlight Funding (Urban Fund)
- Capital Needs
- Adequate Reserves
- Future Issues/Events

Transient Room Tax

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Transient Room Tax

- Current (Per KRS)
  - 4% of room rental – Lexington Convention and Visitors Bureau
  - 2% of room rental – Retirement of bonds for Lexington Center Corporation
- Available (Per KRS)
  - 1% of room rental – Fund PDR

Transient Room Tax – Revenues Collected

Calendar Year	Annual Total
2006	$6,848,920
2007	$7,579,884
2008	$7,552,208
2009	$6,899,306
2010	$8,712,528
2011	$7,499,549

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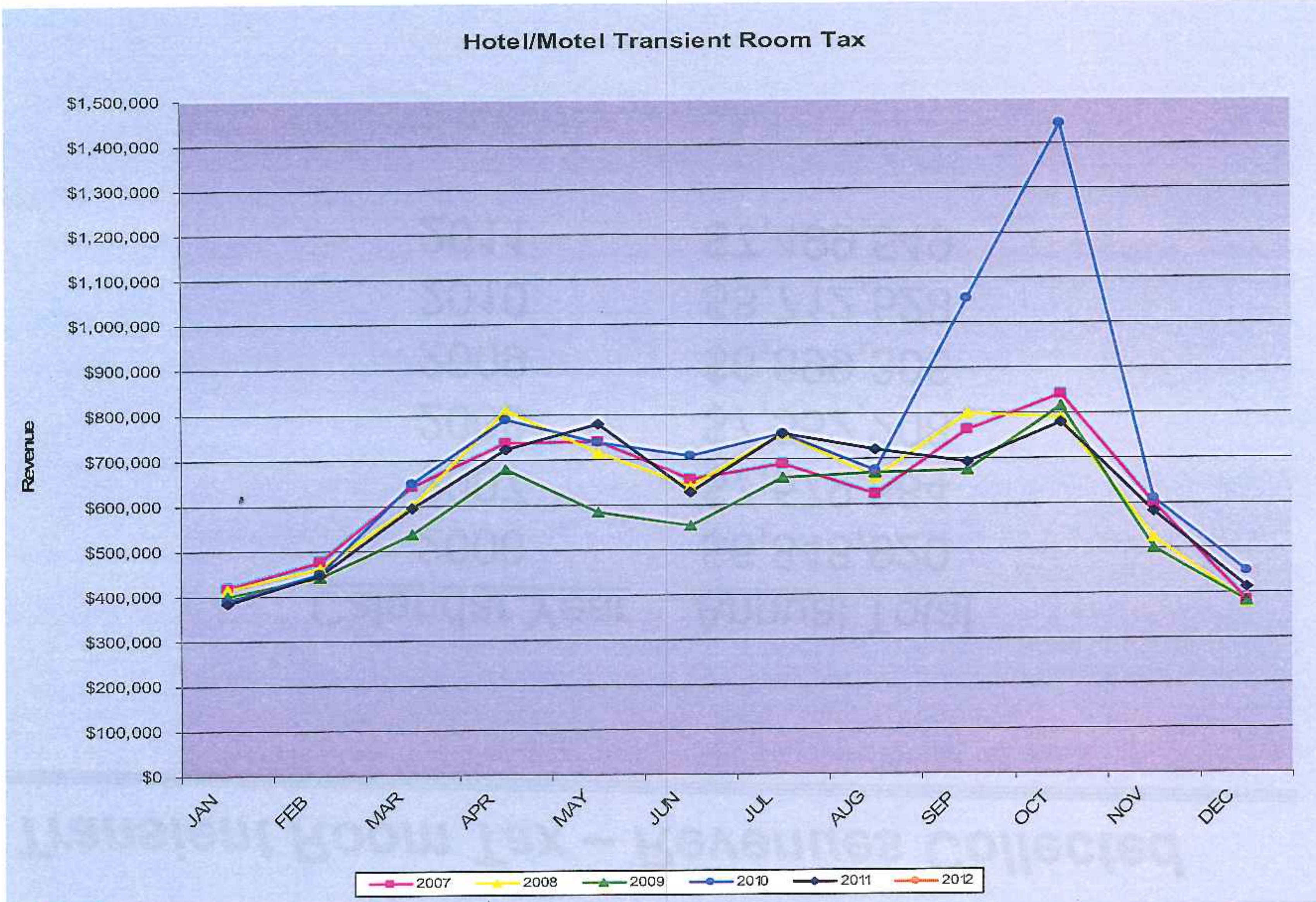
Transient Room Tax – Revenues Collected



Streetlight Questions

"Follow-up from 01-24-12"

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How may Parcels are Paying for Streetlights?

District	Capital Cost	2011 Tax Assessment Residential Parcels	2011 Tax Assessment Farm Parcels	2011 Tax Assessment Commercial Parcels	2011 Tax Assessment Total Parcels
1	Refuse Collection, Streetlights, Street Cleaning	72,435	17	6,784	79,236
2	No Service	3,803	2,414	362	6,579
3	Refuse Collection	3,858	0	100	3,958
4	Streetlights	6,793	9	172	6,974
5	Refuse Collection, Street Lights	7,044	2	155	7,201
6	Street Lights, Street Cleaning	2,559	0	56	2,615
7	Refuse Collection, Street Cleaning	157	0	8	165
8	No Service	1	0	0	1
	Total Parcels (Entire County)	96,650	2,442	7,637	106,729
	Number of Parcels with Streetlights (1, 4, 5, 6)	88,831	28	7,167	96,026

What would be the **estimated** fee for Streetlights?

	Original Budget Fiscal Year 2012	Estimated Fiscal Year 2013	Estimated Fiscal Year 2014	Estimated Fiscal Year 2015	Estimated Fiscal Year 2015	Estimated Fiscal Year 2015
Estimated Total Expense	$5,780,621	$6,363,800	$6,660,839	$6,972,415	$7,299,237	$7,642,049
Urban Est. Number of Parcels without Proper Tax	4,000	4,000	4,000	4,000	4,000	4,000
Number of Parcels with Streetlights (1, 4, 5, 6)	96,026	96,122	96,218	96,314	96,411	96,507
Total Parcels (Entire County)	106,729	106,729	106,729	106,729	106,729	106,729
Collection Factor	90%	90%	90%	90%	90%	90%
HYPOTHETICAL:						
ENTIRE COUNTY						
ANNUAL ESTIMATED FEE	$60.18	$66.25	$69.34	$72.59	$75.99	$79.56
ANNUAL ESTIMATED MONTHLY FEE	$5.01	$5.52	$5.78	$6.05	$6.33	$6.63
PARCELS WITH STREET LIGHTS						
ANNUAL ESTIMATED FEE	$64.21	$70.62	$73.85	$77.23	$80.77	$84.48
ANNUAL ESTIMATED MONTHLY FEE	$5.35	$5.89	$6.15	$6.44	$6.73	$7.04

Can you provide the indirect cost table?

	FY 2012 Indirect Cost Budget	FY 2012 Indirect Cost Rate	FY 2011 Indirect Cost Budget	FY 2011 Indirect Cost Rate	FY 2010 Indirect Cost Budget	FY 2010 Indirect Cost Rate	FY 2009 Indirect Cost Budget	FY 2009 Indirect Cost Rate	FY 2008 Indirect Cost Budget	FY 2008 Indirect Cost Rate
Indirect - Full Urban	(3,606,535)	25.00%	(3,930,000)	25.00%	(4,339,970)	25.00%	(3,558,360)	25.00%	(3,417,660)	25.00%
Indirect - Family Care Center	-	0.00%	-	16.65%	-	16.65%	(149,300)	16.65%	(143,120)	16.65%
Indirect - Sanitary Sewer	(1,833,147)	16.65%	(1,937,870)	16.65%	(1,913,540)	16.65%	(1,655,860)	16.65%	(1,523,070)	16.65%
Indirect - Landfill	(164,593)	25.00%	(207,670)	25.00%	(74,510)	25.00%	(54,270)	25.00%	(66,550)	25.00%
Indirect - Grants		9.06%		9.06%		9.06%		9.06%		9.06%
GIS Mapping										
Indirect - Extended School	(274,862)	15.78%	(263,570)	15.78%	(301,310)	15.78%	(314,820)	15.78%	(333,980)	15.78%
Indirect - Water Quality Management	(558,450)	16.65%	(566,780)	16.65%	(359,620)					
	(6,437,587)		(6,905,890)		(6,988,950)		(5,732,410)		(5,484,380)	

FY 2012 Preliminary
Year-end Estimate

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FY 2012 Preliminary Year-end Estimate

- Increased personnel expense
  - Collective bargaining delays
  - Healthcare costs
  - High retirement payouts

- Monitor expenditures through remaining months of FY 2012

- Ongoing review with Dr. Troske on revenue estimate

Questions ?

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Lexington-Fayette Urban County Government
DEPARTMENT OF LAW

Jim Gray
Mayor

Janet M. Graham
Commissioner

TO: Members of the Budget and Finance Committee
Paul Schoninger, Council Research Analyst

FROM: Department of Law

DATE: February 21, 2012

RE: Transient Room Tax

You have asked for an opinion regarding restrictions on the use of funds derived from "transient room taxes". Lexington's authority to assess transient room taxes is derived from state law. Lexington currently assesses two different transient room taxes, both of which are set at the maximum rate permitted by law.[1] Section 2-172 of the Code of Ordinances, Lexington-Fayette Urban County Government; KRS 91A.390(1); KRS 153.450.

Tourist and Convention Commission Tax

Lexington assesses the four percent (4%) maximum tax allowed by KRS 91A.390. Per the statute "[a] portion of the money collected from the imposition of this tax, as determined by the tax levying body, upon the advice and consent of the tourist and convention commission, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, including projects described in KRS 154.30-050(2)(a). The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant, except as provided in KRS 154.30-050(2)(a)3.c." KRS 91A.390(3).[2]

The Lexington Convention and Visitors Bureau ("LCVB") is Lexington's tourist and convention commission referenced in the above statute, and its purposes are to promote and develop convention and tourist activities and facilities. KRS 91A.350.

[1] There is also statutory authority to implement an additional one percent (1%) transient tax to fund a Purchase of Development Rights Program. KRS 91A.390(5). However, the implementation of this tax should take place through a voter referendum process. KRS 67A.845.

[2] KRS 154.30-050 deals with "TIF" projects.

Although the Department of Law could find no case law interpreting the scope of legitimate expenditures of this tax, the statute is broadly written. If a facility was useful in attracting and promoting tourist and convention business a portion of the funds collected could be spent to acquire, construct, operate and maintain it as long as the LCVB consented to this use and it did not violate the subsidy restriction contained in the statute. This would appear to allow the expenditure of some of this money on any facility that is reasonably related to these purposes.

Convention Center Tax

In addition to the above, Lexington also assesses the two percent (2%) maximum tax allowable pursuant to KRS 153.450. By law, these funds must be "applied toward the retirement of bonds used to finance a nonprofit corporation which is created for the funding, construction, and management of a convention center in an urban-county, and to defray the operating costs of the nonprofit corporation." KRS 153.450.

Please contact me should you have any other questions related to this matter.

David J. Barberie
Managing Attorney

(via-email only)

cc: Richard Moloney, Chief Administrative Officer
Jamie Emmons, Chief of Staff
Geoff Reed, Senior Advisor to the Mayor
Jane Driskell, Commissioner of Finance
Janet M. Graham, Commissioner of Law
Bill O'Mara, Director of Revenue

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91A.390 Room tax -- Special transient room tax -- Authorization for additional tax by a county with a city of the first class, urban-county governments, and multicounty tourist and convention commissions -- Revenue bonds.

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action shall enact an ordinance for the enforcement of the tax measure enacted pursuant to this section and the collection of the proceeds of this tax measure on a monthly basis.

(2) All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.

(3) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, upon the advice and consent of the tourist and convention commission, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, including projects described in KRS 154.30-050(2)(a). The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant, except as provided in KRS 154.30-050(2)(a)3.c. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission's budget for its next fiscal year.

(4) A county with a city of the first class may impose an additional tax, not to exceed one and one-half percent (1.5%) of the room rent. This additional tax, if approved by the local governing body, shall be collected and administered in the same manner as the regular tax and shall be used for the purpose of funding additional promotion of tourist and convention business.

(5) An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of funding the purchase of development rights program provided for under KRS 67A.845.

(6) Local governing bodies which have formed multicounty tourist and convention commissions as provided by KRS 91A.350(3) may impose an additional tax, not to exceed one percent (1%) of the room rents. This additional tax, if approved by each governing body, shall be collected and administered in the same manner as the regular tax, with the exception that this additional tax shall be used for the purpose of funding regional efforts relating to the promotion of tourist and convention business and convention centers. In no event shall any revenues collected as provided for under KRS 91A.350(3) be utilized for the construction, renovation, maintenance, or additions to any convention center that is located outside the boundaries of the Commonwealth of Kentucky.

(7) The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.

(8) The fiscal court or legislative body of a consolidated local government or city establishing a commission pursuant to KRS 91A.350(1) or (2) and, in its own name, a commission established pursuant to of KRS 91A.350(1) is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county, consolidated local government, or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

(9) A commission established pursuant to KRS 91A.350(3) is authorized and empowered to issue revenue bonds in its own name, payable solely from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the

receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 178, sec. 26, effective July 15, 2008. -- Amended 2007 Ky. Acts ch. 95, sec. 27, effective March 23, 2007. -- Amended 2002 Ky. Acts ch. 167, sec. 1, effective July 15, 2002; and ch. 346, sec. 104, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 154, sec. 2, effective July 14, 2000; and ch. 344, sec. 5, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 372, sec. 8, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 505, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 56, sec. 3, effective July 14, 1992; and ch. 165, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 302, sec. 2, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 11, sec. 1, effective July 15, 1986. -- Amended 1974 Ky. Acts ch. 324, sec. 4. -- Amended 1970 Ky. Acts ch. 59, sec. 2. -- Created 1968 Ky. Acts ch. 138, sec. 3.

Formerly codified as KRS 83.350.

153.450 Levy of additional transient room tax by urban-county government.

(1) In addition to the four percent (4%) transient room tax authorized by KRS 91A.390 an urban-county government may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations' businesses.

(2) All additional moneys collected from the tax authorized by subsection (1) of this section shall be applied toward the retirement of bonds used to finance a nonprofit corporation which is created for the funding, construction, and management of a convention center in an urban-county, and to defray the operating costs of the nonprofit corporation.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 158, sec. 1, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 11, sec. 2, effective July 15, 1986. -- Created 1980 Ky. Acts ch. 382, sec. 7, effective April 9, 1980.

ARTICLE XII. - TOURIST AND CONVENTION COMMISSION [15]

Sec. 2-167. - Reserved.

Editor's note—

Section 2-167, creating a recreational, tourist and convention commission providing for its membership, and levying transient room tax, derived from Ord. No. 66-80, § 1, adopted June 12, 1980, was repealed by § 2 of Ord. No. 134-82, adopted July 29, 1982. See § 2-170 et seq.

Secs. 2-168, 2-169. - Reserved.

Sec. 2-170. - Created.

(1) For the purpose of promoting recreational, convention and tourist activity in the county, there is hereby established a recreational, tourist and convention commission to be known and designated as the "Lexington-Fayette Urban County Tourist and Convention Commission," hereinafter called the commission.

(2) The commission shall be authorized to conduct and transact business in the assumed name of the "Greater Lexington Convention and Visitors Bureau."

(Ord. No. 134-82, § 1, 7-29-82; Ord. No. 221-83, § 1, 11-17-83)

State law reference— Membership of tourist and convention commission in urban county government, KRS 91A.372.

Sec. 2-171. - Membership.

(a) The commission established pursuant to section 2-170 shall be composed of nine (9) members appointed by the mayor of the urban county government in the following manner:

  (1) Three (3) commissioners from a list submitted by the Greater Lexington Hotel and Motel Association.

  (2) One (1) commissioner from a list submitted by the Bluegrass Restaurant Association.

  (3) One (1) commissioner from a list submitted by the Greater Lexington Chamber of Commerce.

  (4) Four (4) commissioners who shall be residents of Fayette County.

(b) Vacancies shall be filled in the same manner that original appointments are made.

(c) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the mayor shall appoint three (3) commissioners for a term of three (3) years, three (3) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year.

(d) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations and firms with experience and qualifications for providing promotional services and materials, such as event coordinators, advertising firms, chambers of commerce, publishers and printers.

(e) The books of the commission shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, and to the mayor.

(Ord. No. 134-82, § 1, 7-29-82)

Sec. 2-172. - Transient room tax imposed.

(a) Pursuant to KRS 91A.390, there is hereby imposed a transient room tax at the rate of four (4) percent of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses. Provision shall be made by the commissioner of finance for the collection of the tax and the enforcement of the tax measure enacted.

(b) Pursuant to KRS 153.450, in addition to the four (4) percent transient room tax authorized by subsection (a), there is hereby imposed additional transient room tax at the rate of two (2) percent of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses. All additional moneys collected from the tax authorized by this subsection shall be applied toward the retirement of bonds used to finance the Lexington Center Corporation and to defray the operating costs of the Lexington Center Corporation.

(c) The transient room taxes established in this section shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more.

(d) Payment of the transient room tax shall be made to the urban county government on or before the twentieth day of the month following the month of collection.

(e) Any person who is required to pay the transient room taxes pursuant to this section and fails to pay said taxes by the date they become due may be assessed a penalty of four and one-half (4½) percent of the amount of the tax unpaid for each calendar month or fraction of a calendar month, and, in addition, shall be assessed interest at the rate of one (1) percent of the amount of the tax unpaid for each calendar month or fraction of a calendar month. Any partial payment paid and accepted shall be first applied as interest payments, then penalty payments, then transient room tax payments.

(f) The term "person" is defined for purposes of this section to mean every natural person, fiduciary, partnership, association or corporation, resident or nonresident.

(g) Nothing in this section shall remove from the urban county government the right to collect any other tax or to collect a similar tax for any other purpose authorized by law.

(Ord. No. 134-82, § 1, 7-29-82; Ord. No. 64-86, § 2, 5-1-86; Ord. No. 164-94, § 1, 8-25-94; Ord. No. 101-96, § 1, 6-27-96; Ord. No. 268-2000, § 1, 9-14-00)

Secs. 2-173—2-177. - Reserved.

FOOTNOTE(S):

(15) ***Editor's note***— *Section 1 of Ord. No. 66-80, adopted June 12, 1980, amended and reenacted Ord. No. 67-51, inadvertently omitted from inclusion in the Code, as ch. 2, art. XI, § 2-150. Inasmuch as Ord. No. 94-79, § 1, adopted Apr. 19, 1979, added art. XI, §§ 2-150—2-156, the editor has redesignated the provisions of Ord. No. 66-80 as art. XII, § 2-167. In order to reflect the name of the commission created by § 2-170, the editor has deleted the word "Recreational" from the title of this article.* (Back)

(15) ***State Law reference***— *Authority to establish recreational, tourist and convention commission, KRS 91A.350; room tax, use of proceeds, KRS 91A.390.* (Back)

Lexington-Fayette Urban County Government
DEPARTMENT OF LAW

Jim Gray
Mayor

Janet M. Graham
Commissioner

TO: Janet M. Graham, Commissioner of Law

FROM: David Barberie

DATE: December 15, 2011

RE: Street Light Funding (Use of Existing Fees)

You have asked whether public street lights could be funded in part through the restructuring of the Landfill User Fee (the "Fee"). The specific proposal would involve using a portion of the Fee to fund street lights. As further explained below, there are significant legal issues raised by such a proposal.

Background

The Fee was established in 1995 (and Codified in Section 16-16, et seq. of the Code of Ordinances), as a fee specifically for solid waste disposal (i.e., landfill disposal). It is in addition to any ad valorem taxes for garbage and refuse collection. As with other user fees it is: (1) only paid by those who use and benefit from this particular service, and (2) set in an amount that only pays for the service. (LDO 96-02 which discusses the distinction between taxes and user fees is attached).

Public street lights are primarily funded through an ad valorem tax assessed on properties located within the urban services area or a partial service area which includes this additional service. Section 2.02 of the Charter and KRS 67A.150 require that these types of taxes be collected in accordance with the kind, type, level and character of the services provided by the government in each of the districts (street lights located outside of these areas are supposed to be paid with general funds in order to avoid legal claims, including that certain taxpayers are subsidizing others). To date, this has meant that those paying the tax are receiving a service beyond those not paying the tax and commensurate with others paying the tax, which is what is legally required. As a practical matter this means those areas subject to the tax have more street lights.

Legal Issues

1. A user fee must be reasonably related to the government's provision of the service. See Bromley v. Smith, 149 S.W.3d 403 (Ky. 2004); Barber v. Revenue, 674 S.W.2d 18 (Ky. App. 1984)(both attached). Therefore, an argument that some of the fee can now be used for a different service altogether begs the question of whether the current fee is too high and should be reduced.

2. LFUCG would have to be able to articulate and defend what benefit(s) is being derived from an additional user fee beyond what is already being received and paid for by the existing ad valorem tax. (see

e.g., LDO 95-28, which addressES the creation of the landfill user fee)(attached)). It is not clear how this argument can be successfully made for street lights. In addition, if the basis is assumed to be the monthly tariff cost of street lights, then any user fee should probably also be based upon the cost of the type of light (some lights cost more than others), which results in different fees for different users. If the basis is something other than the monthly tariff cost, then a user fee would be problematic because it is ongoing in nature, and the street light costs other than the recurring monthly tariff cost are not.

3. There is not a match between those paying the ad valorem tax for street lights and those paying the landfill user fee. Only those using LFUCG garbage service pay the landfill user fee, regardless of whether they pay the ad valorem tax for garbage and refuse service. A user fee is only defensible if those paying it receive a benefit. Based upon the case law (see e.g., Bromley and Barber), it is unlikely that a successful legal argument could be made that those persons who only generally benefit from street lights should pay a user fee.

4. Under the proposal nothing would be paid for street lights (other than general taxes) by anyone who did not live in one of the street light taxing districts or receive LFUCG garbage service regardless of any general benefit of the lights to them. In essence you would have 4 potential groups of citizens: (1) those who pay neither a fee or tax related to street lights, (2) those who pay both regardless of the fact that they are not going to receive any additional benefit, (3) those who only pay the ad valorem tax but still benefit at an equal level to those paying both, and (4) those who would now pay a use fee but not receive any additional benefit. Therefore unless such a fee was restructured accordingly it would not be defensible.

Conclusion

Using the existing Landfill User fee to supplement street lighting costs is legally problematic and likely indefensible absent an articulation of the extra benefit(s) derived from the fee and a significant restructuring of the fee and its application.

00327151

Lexington
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Urban
County
Government

LDO 95-28

DEPARTMENT OF LAW

TO: Jack Hillard, 11th District Councilmember

FROM: Department of Law

DATE: June 5, 1995

RE: Requests for Deletion from
Urban Service Districts
(Log No. 6846)

This memorandum is in response to a question which you posed at the May 18, 1995 Council Meeting concerning whether property owners had an ability to opt out of an urban service district providing refuse collection. The issue arose during discussion of the proposed landfill user fee.

Under the current user fee proposal, properties within the full urban service area and within partial urban service districts receiving refuse collection will pay for the cost of collection through an ad valorem rate of .175¢ per $100 of real property valuation. The cost of disposal of the collected waste will be recovered through the proposed user fee. As previously indicated, 1/4 of 1% of the occupational license fee has been dedicated to capital expenditures for the Avon landfill in FY95 and a portion of these funds will be carried over for capital costs in FY96. The 1/4 of 1% of the OLF will roll back on July 1, 1995 pursuant to Ordinance No. 236-93. Landfill costs after July 1, 1995 will be paid from the user fee revenues.

The LFUCG's ability to establish service districts, as separate tax districts with property tax levies related to the kind, type, level and character of services provided, is authorized by Section 172A of the Kentucky Constitution, KRS 67A.150, 67A.850 and .860, and Article 2 of the Urban County Charter.

Upon establishment of the merged government, all property within the county was placed within the general services district and properties in the former City of Lexington were initially

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placed in the full urban services district (Charter Section 2.02). Basic services of the Government are provided throughout the general services district and the full urban services district initially included the additional functions of sanitary sewers, street lighting, street cleaning, garbage and refuse collection. (Charter Section 2.05 and 2.06). Sanitary sewer service was converted from an ad valorem tax funded urban service to a user fee funded service in 1982.

As further information was developed by the merged government, some properties initially in the full urban district were placed in appropriate partial urban services districts. The full urban services district was expanded over a period of time and properties from partial urban services districts were placed in the full services district as additional urban services functions were provided.

The process for expansion of the full urban services district and creation of partial urban services district is set forth in Section 2.03 and 2.04 of the Charter. This process, as well as KRS 67A.850 and .860, involves a Council resolution specifying intent to expand or extend the full urban service district or to create a partial urban services district by adding additional service or services in the area specified. Property owners are notified by certified mail of the public hearing on the proposed extension of urban services. After certified mail, notice and publication of the resolution of intent, the Council conducts a public hearing on the proposed expansion of the full urban or creation and establishment of the partial urban district. The resolution of intent includes findings of the need for additional services in the area and the ability of the Government to provide such services. After the hearing, an ordinance is adopted specifying the area to be included in the full urban or the partial urban district and further specifying the kind, type, level and character of services to be provided.

The aforementioned procedure makes clear that it is the decision of the Council to extend and expand urban services. There is no provision for individual property owners to opt out of the full or a partial district after its establishment.

The Council has, for a number of years, regularly expanded the full urban service area to include newly developed and platted subdivisions within the urban county. In proposing to extend street light service to existing developed areas, the Government has followed a policy of allowing property owners on a numerical block of a street to indicate their preference for inclusion in an urban services district providing street lights. This policy relates only to the issue of bringing properties into a street light service district and not to opting out after being placed in a particular service district. Further, the street light policy is possible since installation and maintenance of street lights can be provided in a hopscotch pattern without a significant impact on efficiency of providing the service. This policy rationale does not equally apply to the urban service of garbage collection where skipping areas, certain blocks or portions of streets can adversely affect the efficiency and cost of providing collection services.

Although property owners do not have the ability to opt out of an urban service, such as garbage and refuse collection, the Council may possess authority to revise service districts and place certain properties in a district with less services. For example, designated properties in the full or partial urban services district could be reassigned to a partial urban services district which does not include a particular service such as garbage collection. However, the Council's authority to make such changes is not clear-cut in that the Charter talks only of expansion and extension of services to certain properties and does not clearly deal with elimination and reduction of services to property. If such a downward revision of services is possible, the notice and other procedures noted above would apply to the process. It should be noted that we are not aware of any instances in which the Council has approved a change of district resulting in a reduction of urban services to a property. A proposed changing of service districts would cause practical problems of efficiency of services as noted above. Finally, it must be remembered that the urban services districts, although related to provision of certain functions and services, are funded by ad valorem taxes rather than user fees for the service.

Several years ago, the Government began to receive requests from some newly developing subdivisions to be exempted from the urban service of street lights. These areas wanted to be exempt from the ad valorem levy for street lights so that they could privately provide various decorative light fixtures within the developments. If one looked only at a particular development or subdivision, it is evident that the ad valorem tax rate as applied to the properties therein could generate more revenue than the cost of providing the street light service for that particular area. However, application of the ad valorem rate to properties in certain other subdivisions or developments does not produce revenues adequate to provide the important service of street lights

Memo to Jack Hillard
June 5, 1995
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to those areas. In consideration of these factors, the Council viewed the situation from a community wide perspective and adopted a decorative street light policy providing that areas requesting such lights would remain in the full urban service area and would privately pay the cost, beyond initial installation costs, of the decorative lights. All of the considerations that entered into the decorative street light policy are presented in the issue of extension of LFUCG refuse collection to newly developing areas and any request to withdraw service from existing areas.

Wayne Waddell
Corporate Counsel

WW/sce\431.

cc: Jeff Wilson, Commissioner of Public Works
Mary Helen Casey, Director of Budgeting
Donna Cantrell, Commissioner of Finance
Baxanna McClure, Department of Public Works

Lexington
Fayette
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DEPARTMENT OF LAW

LDO 96-02

TO: Dr. David B. Stevens
Councilmember-at-Large

FROM: Department of Law

DATE: February 13, 1996

RE: User Fees (George S. Wiedemann Letter)
(Log No. 7260)

This memorandum is in response to a letter to you concerning water, sewer and landfill user fees. The writer indicated to you that various user fees are not tax deductible at the state and federal level because they are not classified or considered as "taxes".

The ability of local governments, such as the LFUCG, to tax is limited by the Kentucky Constitution and state statutes. Basically, taxing authority for local governments is limited to ad valorem property taxes and occupational license fees or taxes.

These permitted taxes generate revenues for local governments which become part of the government's general fund which is appropriated and expended by the authority of the legislative body, such as the Urban County Council. As noted by the writer, these general revenues are available for provision of basic services and the cost of operating the government. A person who owns real property and/or is employed within the county pays taxes to support the General Fund. These taxes pay expenses such as street repaving and traffic lights even if the person does not own or operate a vehicle. The taxes further support public safety services such as police and fire even though a payor may not have occasion to directly use these types of general services.

State statutes provide for "user fee" charges by local governments for certain specified services provided by the government. These types of charges are distinguishable from "taxes" in two basic ways: (1) the fee or charge is applied only to those who use and benefit from the particular service; and (2)

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Dr. David B. Stevens
February 13, 1996
Page 2

the rates, charges or fees must be set so that the revenue generated pays only for the service and does not generate general revenues to the government.

The LFUCG's landfill/solid waste and sewer fees go into restricted "enterprise funds" which pay for the cost of solid waste disposal and operation of the sanitary sewer system. The user fee revenues are not part of the general fund and are not used for general government purposes. Water service is provided in Fayette County by Kentucky-American Water Company. The rates and fees for water services are set by the company subject to regulation and approval by the state Public Service Commission.

The ability to deduct local "taxes" but not user fees for services on state and federal tax returns is primarily a function of state and federal tax policy which is not subject to the control by the Urban County Government.

Please advise if you need further information on this subject.

Wayne Waddell

Wayne Waddell
Corporate Counsel

WW/sce\499.

cc: Donna A. Cantrell, Commissioner of Finance
Council Office

Budget & Finance Committee Referrals

Item	Referred By	Date Referred	Status
BOAR Fee Structure	**General Government Link**	**8-11-11**	**Dec Meeting**
Solid Waste Costs/Revenue/Tax Structure	Gorton	2-1-11	Waste Management Task Force
Cost Per Ton; Cost Per Customer			
Impact of User Fee Structure			
Local Vendor Preference*	Gorton	10-14-10	Nov 29 WS
Minority/Women Business Recruitment*	Stinnett	10-7-10	Procurement Task Force
Purchasing, Procurement & Professional* Service Selection Process	Crosbie	9-24-10	Procurement Task Force
Itinerant Merchant	Henson	4-17-11	Moved from PS to B&F Via VM Gorton 10-6-11
Activity Based Costing	Lane	1-16-12	
Street Light Fund	Lane	1-23-12	
Hotel/Motel Tax	Stinnett	2-14-12	

* Purchasing related items were also referred to Purchasing & Procurement Task Force

PAS 2-16-12