Lexington-Fayette Urban County Council

Budget Committee of the Whole (COW)

FY 2014 Mayor's Proposed Budget (MPB)

April 30, 2013
1:00 PM

Council Chambers

Agenda

FY2014 Mayor’s Proposed Budget Overview

April 30, 2013

Overview

- Approach for FY 2014 Budget
  - Personnel
  - Operating
  - New Requests
  - Budget Summary

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FY2014 MPB Approach

- Capital requests in January
- Operating requests in February
- Mayor's Budget Hearings in March
  - Requests were well articulated
  - Good business logic and advocacy

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FY2014 MPB Approach

- Total Operating Request
  - Reflects Built up demand
  - $309 million (*General Fund*)
    - Includes $6.2 million of new requests
- Original Revenue Estimate (*February*)
    - $290 million (*General Fund*)
- Participation from Commissioners and Directors
  - Re-examined budgets for additional savings

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FY2014 MPB Approach

- Guidelines
  - Government Efficiencies
  - Quality of Life
  - Quality of Place
  - Public Safety
  - Leveraging Outside Funding

FY2014 MPB Personnel

- Personnel
  - Reflects filled positions in PeopleSoft as of March 1
  - 2% raise for non-sworn
  - Filled positions budgeted at 98%
  - Vacant positions budgeted at 75%
  - Healthcare
    - Reflects projected impact of PPACA
    - Continuation of benefit pool and supplement

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FY2014 MPB Operating

- Operating
  - All increases over FY 2013 were discussed with Divisions
  - Continued allocation of insurance to the divisions
  - Utilities provided by General Services
  - Vehicle fuel and maintenance provided by Fleet Services
  - True costs of services
    - Pool funding by individual pools
    - Police separate sections to track operations

FY2014 MPB New Requests

- New Requests totaled $6.2 million
  - 107 new positions requested
  - 24 new positions funded
    - 8 previous positions were grant funded
  - Examined all requests for value add
    - Example: 3 Corrections Officers for booking – allows Police to get back on the street faster
  - New and expanded programs that are self supporting
    - Example: Additional camps

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FY2014 MPB Summary

Revenue	
Ad Valorem Taxes	21,251,000
Licenses and Permits	250,353,160
Services	21,906,320
Fines and Forfeitures	167,000
Intergovernmental	1,426,950
Property Sales	20,000
Investments	120,000
Other Financing Sources	200,000
Other Income	1,746,750
Total Revenue	297,191,180
Fund Balance, July 1	1,500,000
Total Funds Available	**298,691,180**

FY2014 MPB Summary

Appropriations	
Operating Expenditures	
Personnel	191,122,680
Partner Agencies	17,670,250
Debt Service	33,652,500
Insurance	8,697,130
Operating	41,903,720
Transfers To\(From) Other Funds	2,980,480
Total Operating	296,026,760
Capital Expenditures	
CIP Capital	284,000
Operating Capital	369,800
Total Capital	653,800
Total Appropriations	296,680,560
Fund Balance, June 30	**2,010,620**

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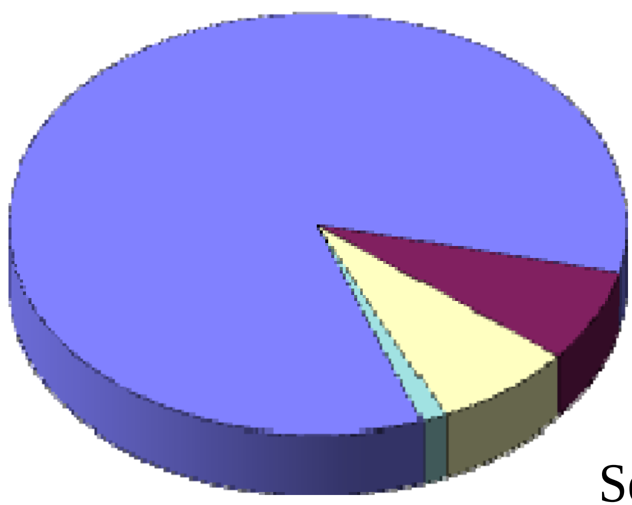
FY2014 MPB Highlights

General Fund Revenue by Category
FY 2014



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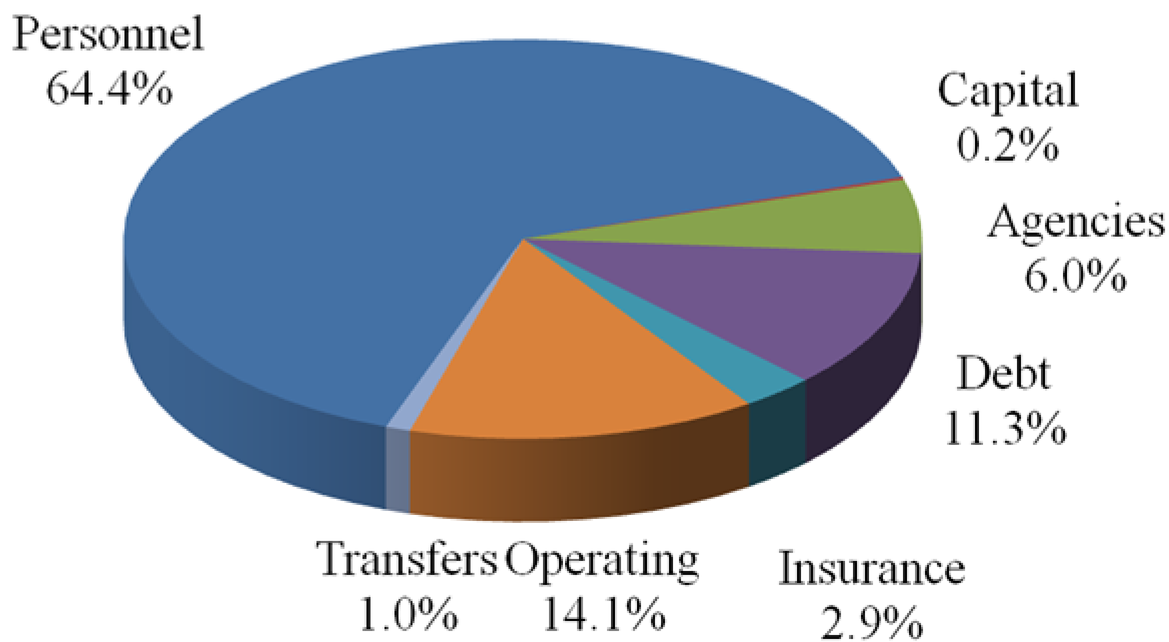
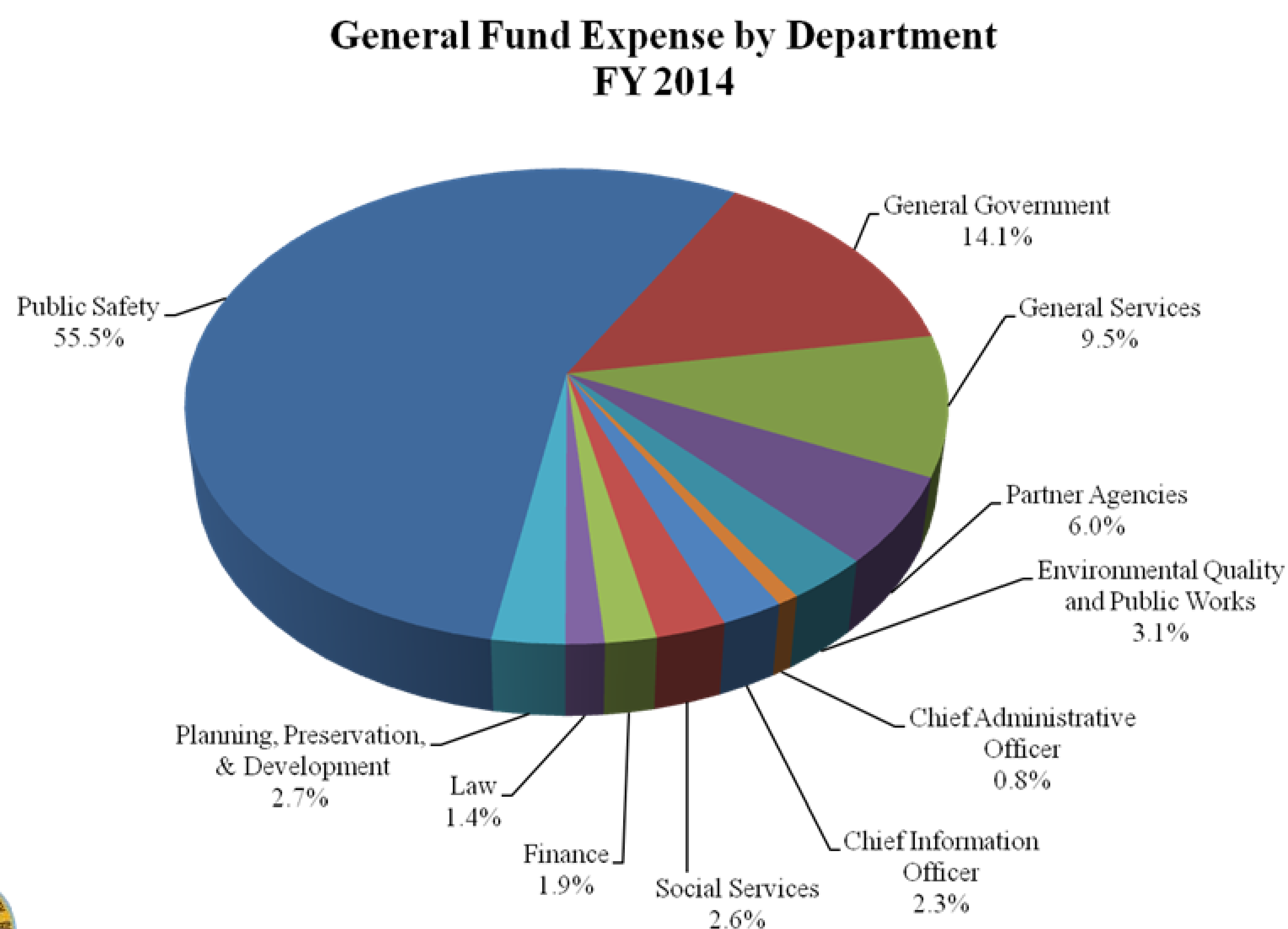
FY2014 MPB Summary

General Fund Expense by Category
FY 2014



FY2014 MPB Summary



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FY2014 MPB

- Mayor’s Proposed Budget Summary Packet
- Questions?

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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
Fayette
Urban
County
Government

DEPARTMENT OF LAW

LDO 95-28

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 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

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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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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

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