

**INDUSTRIAL REVENUE BONDS  
POLICIES AND GUIDELINES OF  
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
(ADOPTED BY ORDINANCE NO. \_\_\_\_-2021)**

**Introduction**

The Lexington-Fayette Urban County Government (“LFUCG”) is authorized by provisions of Kentucky law (KRS Chapter 103.200, *et seq.*) to issue industrial building revenue bonds to finance the development or expansion of industrial facilities projects. An applicant should thoroughly review this statute in order to understand the types of projects that may qualify. A complete list of the types of projects that may qualify for this type of financing is found in KRS 103.200(1). The purpose of this law is to enable political subdivisions like LFUCG to promote local economic development through the introduction, retention, and expansion of new business and industry. In addition, state law allows LFUCG to issue bonds for facilitating the construction of new or existing housing, although federal regulations limit such housing projects to those benefitting low-moderate income families/individuals. It is the policy of LFUCG to use these bonds to assist projects which will benefit the entire community, and for which other forms of financing are not feasible or desirable.<sup>1</sup> Absent special and compelling circumstances, LFUCG will not issue an IRB Bond exceeding thirty (30) years.

LFUCG requires that each project be located within Fayette County, and encourages the use of local and Kentucky bond counsel, architects, engineers, contractors, etc., and minority and women-owned businesses in the development of the project. LFUCG has created additional requirements pertaining the issuance of these bonds, and a commission, known as the Economic Development Investment Board (“IRB Committee” or “Committee”), to review applications for these bonds and make recommendations to the Urban County Council as to whether bonds should be issued for the project. The IRB Committee consists of thirteen (13) members, with eleven (11) appointed by the Mayor and confirmed by the Urban County Council. Some of the members are required to be members of the Chamber of Commerce or the Industrial Authority, the housing industry, the financial investment or banking industry, and the private equity/venture capital industry.<sup>2</sup>

**IT SHALL BE THE POLICY OF THE URBAN COUNTY COUNCIL TO RESERVE THE RIGHT TO IMPOSE ADDITIONAL REQUIREMENTS TO THE TERMS OF THE BOND ISSUE, WHENEVER DEEMED NECESSARY FOR COMMUNITY BENEFIT OR TO FURTHER THE IMPLEMENTATION OF COMMUNITY GOALS AND POLICIES.**

**Structure of Bond Financing**

Industrial revenue bonds (“IRB’s”) and housing bonds (“HB’s”) do not constitute an indebtedness of the Urban County Government, as these bonds are payable solely from the revenues derived from the project.<sup>3</sup> IRB’s may qualify as tax-exempt municipal securities issued for the purpose of financing the building and equipping of industrial facilities and HB’s may qualify as tax-exempt municipal securities issued for the purpose of facilitating new and existing housing. Proceeds from these bonds are loaned to responsible parties.<sup>4</sup> LFUCG, as consideration for issuance of the bonds and the use of the proceeds to finance the project, will enter into a loan agreement with the successful applicant, which will acknowledge its obligations under the agreement by a note. The note would generally require payments of principal and interest corresponding in time and

amount to the principal and interest payments becoming due on the bonds.<sup>5</sup> The applicant shall be solely responsible for all fees and costs related to the bond.

Although KRS Chapter 103 also authorizes the use of a lease or installment sale arrangement in the issuance of industrial revenue bonds, LFUCG will only use the loan agreement format authorized in that Chapter, in order to ensure that the property will remain subject to ad valorem property taxation, unless special and compelling circumstances exist. The applicant should note that any such determination will ultimately be made by LFUCG’s Council and that the applicant would be responsible prior to Council approval for reaching payment in lieu of taxes or other agreements with the other ad valorem taxing entities in Fayette County such as the School Board, Lextran, the Health Department, the Public Library and others.

**Sale of Bonds**

If the bonds are to be sold through private placements, a copy of the placement letter and financial commitment letter must be submitted with the application. The commitment letter must indicate the firm(s) with which the transaction will be placed. The commitment letter will serve as evidence that the lender has performed adequate due diligence and considers the bonds a sound investment. In case of a public offering, a copy of the purchase contract must be provided. This serves as evidence that the underwriter has performed adequate due diligence.

**Issuing Fees**<sup>6</sup>

<b>Issuance Fee:</b>	<b>Amount</b>
Issuance Fee to be paid by the by the conduit borrower to the Lexington-Fayette Urban County Government for the issuance of revenue bonds issued pursuant to KRS 103.200 to 103.285 (the “Act”), payable to the Lexington-Fayette Urban County Government upon issuance of the bonds or as soon thereafter as practicable.	Issuance fee .10 basis points with a minimum of \$10,000.00 and a maximum issuance cost of \$50,000.00.  By way of example For a \$5,000,000 bond issuance the fee minimum is \$10,000.00.  For a \$10,000,000 bond issuance the fee is \$10,000.00.  For a \$25,000,000 bond issuance the fee is \$25,000.00  For a \$50,000,000 bond issuance fee is \$50,000.00.  For a \$100,000,000 bond issuance the fee is capped at \$50,000.00.

Issuer Counsel Review Fee	Amount
Issuer Counsel fee to review the transaction documents on behalf of the Lexington-Fayette Urban County Government to be paid by the conduit borrower and payable to Issuer Counsel for the Lexington-Fayette Urban County Government upon issuance of the bonds or as soon thereafter as practicable.	Actual hourly or flat fee cost

The Urban County Government shall not be responsible for any costs, fees, or expenses associated with the review or issuance of these bonds.

All required deposits and fees shall be waived for projects undertaken by the Urban County Government as applicant.

**Bond Counsel**

Because the issuance of these bonds is a legal process, and includes questions of local, state and federal law, the involvement of legal bond counsel for the applicant is required in all phases of discussion and approval. Due to the level of professional expertise required in the preparation of IRB/HB documentation, this process requires the use of experienced bond counsel. Selection of applicant’s Bond Counsel shall be at the discretion and expense of the applicant. LFUCG’s bond counsel shall be selected by LFUCG and shall be paid by applicant as provided above.

**APPLICATION PROCEDURE AND ISSUANCE PROCESS**

Anyone interested in exploring the feasibility of this type of bond financing for a project in Fayette County should first contact the Mayor’s Office of Economic Development as further provided on LFUCG’s website. Information on policies and procedures, with a standard application form, will be provided upon request.

It is recommended that this initial contact be established at least forty-five (45) calendar days in advance of the submission of the application, so that proper procedure and scheduling may be assured. In particular, adequate time for staff review of all application material is required prior to sending the complete application through the formal review process.

**Application Documents**

Applicants for financing must complete and submit the number of paper and electronic copies specified by the Mayor’s Office of Economic Development, with the materials required in the application form.

An application deposit of \$2,500.00 must accompany the application.<sup>7</sup> This is in addition to the bond issuance fee provided below; however, any amount of said application deposit not required to compensate LFUCG for necessary expenses incurred during review of the application will be credited or refunded to the applicant.

**Preliminary Staff Review**

Staff review of the application includes, but is not limited to, completeness of the application, consideration of the associated economic benefits from the project, the credit worthiness of the

applicant, the financial feasibility of the project, and the security for the bond.<sup>8</sup> Upon completion of this review, the application shall be referred to the IRB Committee, along with comments and a preliminary recommendation from staff.

### **IRB Committee Review**

Once the application is complete and has been reviewed by the staff, a Committee meeting will be scheduled to consider the application. At least one week prior to each such meeting, public notice will be provided by LFUCG with additional notice sent to anyone that LFUCG staff believes also has a direct interest in the project. An official representative of the applicant, assisted by bond counsel, is required to be present at any Committee meeting where the applicant's application is considered.

The Committee shall establish its own procedures for reviewing the applications and for its meetings. In the evaluation of each project, the Committee will examine any factors relevant to the project, including, but not limited to, those same factors considered by LFUCG staff during its preliminary review as well as any state policies or guidelines related to such bond issuances.

The Committee will ultimately determine (by vote) whether to give the project a favorable or unfavorable recommendation. If the recommendation is favorable, the matter will be forwarded to the Urban County Council for review with the original application materials.

### **Inducement Resolution**

If the IRB Committee recommends approval, LFUCG normally requires that an inducement resolution be prepared for consideration by the Urban County Council prior to its consideration of a bond ordinance related to the project. The applicant's bond counsel must timely prepare and submit the number of paper and electronic copies specified by LFUCG staff of the draft inducement resolution and memorandum of agreement. The inducement resolution and memorandum of agreement are an expression of intent by the Urban County Government to issue industrial revenue or housing bonds to finance the project in order to induce the company to develop its project within Fayette County. The inducement resolution and memorandum of agreement also set forth general terms and conditions of the loan arrangement and other matters pertaining to the project. An inducement resolution and memorandum of agreement may also be required before any expenditures are made for the project which may be reimbursed from the proceeds of the sale of the bonds.

LFUCG staff will place the resolution on the Council's agenda for discussion and, if approved, the resolution must normally receive readings at two separate formal meetings of the Urban County Council, with a reasonable opportunity for the public to comment on the project.

### **Bond Ordinance**<sup>9</sup>

The final legal step prior to issuance of bonds is the passage of a Bond Ordinance by the Urban County Council, which ordinance, if passed, shall include: the loan agreement between LFUCG, the applicant, and any other necessary party(s), and a Mortgage Deed of Trust between LFUCG and the Trustee for the Bondholders (or similar equivalent security).

The process for Bond Ordinance approval repeats the steps for the Inducement Resolution. The applicant must timely prepare and submit the number of paper and electronic copies of each document specified by LFUCG staff. LFUCG staff will place the ordinance on the Council's

agenda for discussion and, if approved, the ordinance must normally receive readings at two separate formal meetings of the Urban County Council. The occasion of the second reading of the bond ordinance may also serve as the public hearing on revenue bond projects, if required by Federal law.

### **Approval by the Commonwealth of Kentucky**

Certain specific projects are also required to be reviewed and approved by the Commonwealth of Kentucky through the Kentucky Private Activity Bond Allocation Committee pursuant to KRS 103.2101. An applicant is responsible for determining whether such review is required and for obtaining the necessary approval.

### **Alternate Issuer of Bonds**

LFUCG has the authority to issue industrial revenue and housing bonds for all eligible projects located within Fayette County. Current state law provides that the Kentucky Economic Development Finance Authority may also issue such bonds at the request of the Urban County Government. No such request will be made without approval of an Inducement Resolution by the Urban County Council. Therefore, all applicants for industrial revenue or housing bonds for projects in Fayette County must adhere to the procedures outlined herein.

## ANNOTATIONS

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<sup>1</sup> Ordinance No. 203-80, as amended by Ordinance No.'s 59-81, 103-86, 237-93, 52-94, and 18-96; 180-2009; 152-2013; 160-2014, which amended Ordinance No. 152-2013; Ordinance No. 57-2017, which amended Ordinance No. 16-2014; and 26-2020.

<sup>2</sup> Id.

<sup>3</sup> The bonds are issued using the alternative procedures in KRS 103.215 which provide: "In the event of use of such alternative financing procedure, such bonds shall not constitute an indebtedness of such city or county within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the revenues derived from the revenues derived from payments, repayments, or sublease payments made by such person to such city or county in respect of such loan, sale or sublease." KRS 103.230(2) provides that "it shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 103.200 to 103.280 and that it does not constitute an indebtedness of the city or county within the meaning of the Constitution."

<sup>4</sup> KRS 103.215 authorizes alternative procedures for the purpose of financing the acquisition of an "industrial building." The government may issue bonds using a loan, lease, or installment sale in addition to obtaining fee simple ownership. KRS 103.215(2)(a) specifically authorizes a loan of the proceeds from the sale of the bonds to any person for the acquisition of an industrial building.

<sup>5</sup> KRS 103.215(2)(b) provides that the loan and "any agreement or contract with respect thereto may include such provisions as such city or county shall deem appropriate to effect the securing of the financing undertaken in respect of such industrial building."

<sup>6</sup> Ordinance No. 21-2021.

<sup>7</sup> Id.

<sup>8</sup> Ordinance No. 203-80, as amended by Ordinance No.'s 59-81, 103-86, 237-93, 52-94, and 18-96; 180-2009; 152-2013; 160-2014, which amended Ordinance No. 152-3013; Ordinance No. 57-2017, which amended Ordinance No. 16-2014; and 26-2020.

<sup>9</sup> KRS 103.210 specifies certain items which must be included in the ordinance: "the proposed undertaking, the maximum amount of bonds to be outstanding at any one (1) time, and the maximum rate of interest the bonds are to bear." The ordinance must also provide that the industrial building is to be acquired pursuant to the provisions of KRS 103.200 to 103.285. The bond ordinance is effective only after publication of information about the transaction in an authorized newspaper.