

ORDINANCE NO. _____ - 2025

AN ORDINANCE AMENDING AND REPLACING ORDINANCE NO. 203-80, AS AMENDED BY ORDINANCE NO. 59-81; ORDINANCE NO. 103-86; ORDINANCE NO. 237-93; ORDINANCE NO. 52-94; ORDINANCE NO. 18-96; ORDINANCE NO. 180-2009; ORDINANCE NO. 152-2013; ORDINANCE NO. 160-2014, WHICH AMENDED ORDINANCE NO. 152-2013; ORDINANCE NO. 57-2017, WHICH AMENDED ORDINANCE NO. 160-2014; ORDINANCE NO. 26-2020; AND ORDINANCE NO. 142-2022, RELATING TO INDUSTRIAL REVENUE BONDS AND THE ECONOMIC DEVELOPMENT INVESTMENT BOARD. _____

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - Chapter 103 of the Kentucky Revised Statutes authorizes the Urban County Government to issue Industrial Building Revenue Bonds in order to promote local economic development through the introduction, retention and expansion of business and industry. The Urban County Government will issue Industrial Revenue Bonds only for projects located in Fayette County and encourages the use of local and Kentucky bond counsel, architects, engineers, contractors and the like in the development of the project.

Section 2 - The Urban County Government will issue said bonds only through the loan agreement format authorized in KRS Chapter 103, rather than by the lease or installment sale format, also authorized therein, unless the Urban County Government determines that special and compelling circumstances exist to justify the different format, including, without limitation, significant job creation or evidence of strong economic development resulting directly from the project.

Section 3 - The Urban County Government, as consideration for the issuance of such bonds and the use of the proceeds to finance a qualified project, will enter into a loan agreement with a successful applicant. The applicant will acknowledge its obligations under the agreement by a note which will require payments of principal and interest corresponding in time and amount to the principal and interest payments becoming due on bonds issued to finance such project. Lease arrangements may also be considered if the applicant provides evidence, sufficient

to the Urban County Government, that special and compelling circumstances exist as described in Section 2, above.

Section 4 - Although, pursuant to KRS Chapter 103, Industrial Revenue Bonds do not constitute an indebtedness of the Urban County Government, the merits of each application will be closely scrutinized as to whether any proposed project will benefit the entire community and whether other forms of financing are feasible or desirable.

Section 5 - The Urban County Government may require that applicants for the issuance of Industrial Revenue Bonds arrange for the private placement of the bonds with reputable financial institutions.

Section 6 - A board for review of applications and oversight over the issuance of certain funding related to economic development and related matters is hereby created which shall be known as the Economic Development Investment Board,~~or in some instances related to this Ordinance, the Industrial Revenue/Housing Bond Committee~~ ("the Board"). The ~~board~~ Board shall review matters and applications related to the following, with the recommendation of the ~~board~~ Board for any expenditure of funding subject to the final approval of the Urban County Council: (1) Industrial Revenue and Housing Bonds (pursuant to this Ordinance); (2) Lexington Job Fund Program funds (pursuant to Ordinance No. 153-2013); (3) funding from the administrative program currently known as the Lexington Economic Development Partner Agencies program, or its successor; (4) funding from the administrative program currently known as the Lexington Workforce Development Grant program, or its successor; and (5) Lexington Public Infrastructure Program funds (pursuant to Ordinance No. 141-2022).

Section 7 - The Economic Development Investment Board shall consist of thirteen (13) members. The government's Chief Development Officer or his or her designee shall serve as the chairperson of the ~~board~~ Board. The Councilmember, who serves as the chairperson of the Urban County Council's Budget, Finance, and Economic Development Committee, or his or her designee from that committee, shall automatically serve as member of the Board. The remaining eleven (11) members shall be appointed by the Mayor, subject to confirmation by a majority of

the Urban County Councilmembers, and shall consist of one additional member of the Urban County Council; one member from either the Lexington Chamber of Commerce or the Lexington-Fayette Urban County Industrial Authority; one from the housing industry; two from the financial investment or banking industry; one from the private equity/venture capital industry; and five shall be at-large members selected by the Mayor.

Section 8 — Applicants shall follow the pre-application and application procedures described in the Policies and Guidelines, including, without limitation, the provision of a letter of inducement, any pre-application meetings required by the Urban County Government, and the completion of an application. Applicants seeking approval of a project for financing through the issuance of Industrial Revenue or Housing Bonds should initiate negotiations by correspondence with the Mayor or his designee. The applicant should submit a detailed proposal in the form of a letter of inducement addressed to the Mayor specifying the characteristics of the project, including an estimate of the benefits to the community, an itemized cost/benefit analysis and a description of the public service impact of the project.

Section 9 - Applicants must complete an Industrial Revenue or Housing Bond Application Form, the contents of which shall be determined by the Mayor's Office of Economic Development, —and submit same to the Urban County Government. An application deposit of \$2,500.00 must accompany the application. The Economic Development Investment Board may review and increase this application deposit at any time if it determines that the amount provided above is not sufficient to compensate the Urban County Government for necessary expenses incurred during review of the application. —Any amount of said application deposit not required to compensate the Urban County Govern-ment for necessary expenses incurred during review of the application will be refunded.—

Section 10 - Following preliminary discussions-staff review based on the letter of inducement and application, including consideration of the economic benefits to be derived from the project, the credit worthiness of the applicant, the financial feasibility of the project and security for the bondsthose factors described in the Policies and Guidelines, the Mayor's Office of Economic Development shall may

refer the application to the ~~Industrial Revenue/Housing Bond Committee~~Economic Development Investment Board, if it determines the application and project meets the requirements of the Policies and Guidelines.

Section 11 - Upon its referral from the ~~Mayor~~Mayor's Office of Economic Development, the ~~Economic Development Investment Board~~Industrial Revenue/Housing Bond Committee is responsible for reviewing the proposed terms of the bond issuance ~~and requires the applicant to submit the following:~~

- ~~a. A completed Industrial Building Revenue Bond Application Form.~~
- ~~b. A copy of the letter of inducement addressed to the Mayor.~~
- ~~c. An independent audit and certified financial statement of the applicant or applicants for the most current completed year, prepared and certified by an independent certified public accounting firm. Audit statements prepared by an independent certified public accounting firm for the last three complete years are preferred, and may be requested by the Industrial Revenue/Housing Bond Committee or the Urban County Council.~~
- ~~d. A letter from the proposed purchaser of bonds confirming its intent and evidencing its ability to purchase the bonds.~~
- ~~e. Letters from at least two (2) institutional lenders stating whether or not conventional financing is available, and if available, upon what terms, including interest rates and other relevant data. The letters should also state the terms and conditions under which the lender evaluated the proposed project.~~

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An official representative of the applicant, assisted by counsel, is required to be present at ~~Industrial Revenue/Housing Bond Committee~~Board meetings where the applicant's application is considered.

The ~~Economic Development Investment Board Committee~~ may request additional information if necessary in order to adequately review any project. -

Following its review of a project, the ~~Industrial Revenue/Housing Bond~~

~~Committee~~Board shall vote either to recommend or not to recommend the issuance of Industrial Revenue or Housing Bonds to finance the project and may propose qualifications or reservations to the terms of the bond issuance.

Section 12 - Following receipt of the Economic Development Investment Board's Industrial Revenue/Housing Bond Committee's recommendation approval, the Mayor's Office of Economic Development shall respond to the applicant and may propose additional qualifications or reservations to the terms of the bond issuance.

Section 13 ~~— Following completion of the review process described in Sections 8 through 12 above,~~Following receipt of the Economic Development Investment Board's approval and any proposed qualifications or reservations provided by the Board or the Mayor's Office of Economic Development, an inducement resolution and memorandum of agreement, setting forth the general terms and conditions of the loan arrangement and other matters pertaining to the project shall be forwarded to the Urban County Council for consideration. The Council may request any additional information it deems necessary to adequately review the project.

Section 14 - If the inducement resolution is passed, such passage would constitute an expression of the intent of the Urban County Government to issue Industrial Building Revenue or Housing Bonds to finance the applicant's project. Passage of the inducement resolution must precede any expenditures by the applicant for the project in order for such expenditures to be eligible for reimbursement from the proceeds of the bonds issued to finance said project.

Section 15 - The final ~~legal~~ step prior to issuance of Industrial Building Revenue or Housing Bonds is the passage of a Bond Ordinance by the Urban County Council, the contents of which, if passed, shall include all requirements of relevant law, which ordinance, if passed, shall include:

a. ~~The loan agreement between the Urban County Government and the applicant.~~

b. ~~The Mortgage Deed of Trust between the Urban County Government and the Trustee for the Bondholders.~~

Section 16 - ~~If bonds are issued, the Urban County Government requires an issuing fee of one fourth of one percent of the principal amount of the bond issue in consideration for the issuance of the bonds and to satisfy all costs, including attorney's fees, incurred by the Urban County Government in issuing the bonds. The Urban County Government shall not be responsible for any costs, fees, or expenses associated with the review or issuance of these bonds. All issuance fees, in the amounts provided in the Policies and Guidelines, as well as all costs and fees for Issuer's counsel, shall be the responsibility of the applicant/borrower.~~

Section 17 - ~~The Commissioner of Housing and Community Development shall promulgate written policies and guidelines for the review of applications for the issuance of Industrial Building Revenue and Housing Bonds not inconsistent with the provisions of the Ordinance. That the revised "Industrial Revenue Bonds Policies and Guidelines of the Lexington-Fayette Urban County Government" (referred to throughout as "Policies and Guidelines"), which are attached hereto and incorporated herein by reference as if fully stated, be and hereby are approved and adopted, and shall replace those Policies and Guidelines previously adopted.~~

Section 18 – ~~That this Ordinance shall amend and replace Ordinance No. 203-80, as amended by Ordinance No. 59-81; Ordinance No. 103-86; Ordinance No. 237-93; Ordinance No. 52-94; Ordinance No. 18-96; Ordinance No. 180-2009; Ordinance No. 152-2013; Ordinance No. 160-2014, which amended Ordinance No. 152-2013; Ordinance No. 57-2017, which amended Ordinance No. 160-2014; Ordinance No. 26-2020; and Ordinance No. 142-2022, in its entirety.~~

Section 19 – ~~That this Ordinance shall become effective on the date of its passage.~~

PASSED URBAN COUNTY COUNCIL:

Mayor

ATTEST:

Clerk of the Urban County Government
Published:

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| 4899-5905-9033, v. 1~~4923-6581-6582, v. 1~~