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TO: Councilmen Hollander and Blackwell
Louisville Metro Council

CC: Councilman Downard
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FROM: Sarah J. Martin
Jefferson County Attorney's Office

DATE: August 21, 2015

RE: Special District Procedures

You asked the Jefferson County Attorney's Office to provide an explanation of the process by which new service districts can be created in unincorporated areas of Louisville Metro. There are two types of special districts authorized by the Kentucky Revised Statutes: (1) special districts with taxing authority (hereinafter referred to as "taxing districts") and (2) special districts without taxing authority who may charge a fee for services (hereinafter referred to as "nontaxing districts").

Taxing districts may be created through the procedures set forth in KRS 67.715, KRS 67C.145, KRS 65.182, or KRS 65.192, each of which is explained separately below. Nontaxing districts may be created by the process set forth in KRS 65.810. The nontaxing districts are limited to certain types of statutory districts like water, drainage, and a few others that are not applicable to Jefferson County. As a result, the discussion below focuses on the procedures available to create taxing districts in Louisville Metro.

1. KRS 67.715 – Reorganization Powers

If Metro Council and the Mayor wish to create a taxing district, the simplest process is set forth in KRS 67.715, which states: “(2) The county judge/executive or county judges/executive of multicounty districts may, with approval of the fiscal court or fiscal courts, create any special district or abolish or combine any special district, provided the district was created solely by the county judge/executive or county judges/executive or solely by one or more such fiscal courts.” Under consolidated local government powers contained in KRS 67C, these respective powers now reside with the Mayor and Metro Council.

KRS 67.715 was recently upheld by the Kentucky Court of Appeals in a legal challenge where McLean County created a library taxing district that included an *ad valorem* tax rate.¹ The Court of Appeals ruled that KRS 67.715 expressly granted McLean County the power and authority to create the library tax. The court limited the type of taxing districts that a local government may create to those that exist by statute.² The Court of Appeals adopted a 1983 opinion by the Kentucky's Attorney General on the applicability of KRS 67.715(2) to the creation of special districts and its power to tax.³ The Attorney General opined, “[t]he effect of KRS 67.715(2), as relates to the creation of a special district, is simply that the General Assembly has provided a method of creation of special districts in addition to any other methods presently in statutory existence.” The opinion also concluded, “the powers of the special district set forth in the relevant statutory scheme. . . become applicable.”⁴

The limitation with this approach is that Louisville Metro may only create a taxing district that exists in statute. Essentially, Louisville Metro would not be able to create one taxing district to address several service needs in an unincorporated area of Jefferson County. See attached list compiled by the Department of Local Government that identifies the special district types with its respective statutory authority.

2. Creating Taxing District by Petition with Signatures from Registered Voters

Kentucky statutes provides three distinct processes for the creation of a taxing district by petition: (1) KRS 67C.145 allows the process to be initiated by petition and operated by Louisville Metro Government, (2) KRS 65.182 allows the process to be initiated by petition and operated pursuant to statutory authority, and (3) KRS 65.192 allows the voters to decide by

¹ *Howard v. McLean Cnty. Fiscal Court*, No. 2013-CA-000054-MR, 2015 WL 394106 (Ky. Ct. App. Jan. 30, 2015) (not reported).

² *Id.* at 3.

³ See, 1983 Ky. Op. Att’y Gen. 2-360, pp. 2-3 (1983) (held: “(1) KRS 67.715(2) literally gives the county judge executive, with approval of fiscal court, the authority to create any special district without the petition process. (2) The power of creating special districts relates only to those special districts treated by existing statutory law. (3) Under KRS 67.715(2), as an alternate method of creation, a fire protection district can be created.”

⁴ *Id.*

ballot measure and then operated pursuant to statutory authority. Each process is described separately below.

a. KRS 67C.145 – Service districts – Taxes – Alteration of Service Districts and Change of Boundaries

Metro Government may create a service district by ordinance that can levy and collect taxes in accordance with the kind, type and character of the services provided by Metro Government. The process would begin with submission of a petition signed by a majority of the registered voters in the district as of the last general election. The language in KRS 67C.145 does not state a specific procedure on how to create a new service district, thereby leaving the task of creating a process to Metro Council.

KRS 67C.145 gives broad latitude to Metro Council to establish the type or types of service districts it wishes to establish. A service district could include any service that may be provided by Metro Government, including more than one type of service. The option of multiple services existing under one taxing district is unique to KRS 67C.145. The other methods of creating taxing districts provided in KRS 67.715, KRS 65.182, and KRS 65.192 are limited to statutorily authorized districts (discussed more below).

One limitation included in KRS 67C.145 is that Metro Government may not create or change the boundaries of a service district if that “change would adversely affect the powers or functions of any city, taxing district, fire protection district, water district, or any other special taxing or service district . . . unless such entity consents by resolution adopted by its governing body.”⁵ Metro Government would need to determine what taxing districts exist in an area marked for expansion and what affects a proposed service district would have on those existing taxing districts.

b. KRS 65.182 – Procedure for Creating Taxing District

KRS 65.182 allows persons who want to create a special taxing district a process to do so. The first step is to submit a petition to the Metro Council Clerk and to each member of the Metro Council. The petition must contain the following language for voters to consider: "The following registered voters of [Jefferson County] hereby petition the [Metro Council] to form a (insert type of taxing district) which shall have the authority to impose a special ad valorem tax of (insert exact amount) on each one hundred dollars (\$100) worth of property assessed for local taxation in the district for the following reasons: (A valid petition shall contain a brief list in layman's terms of the reasons for the creation of the taxing district.)"⁶ In addition, the petition

⁵ KRS 67C.145

⁶ KRS 65.184

must contain the name and address of each petitioner.⁷ The petition must be signed by a number of registered voters equal to or greater than 25% of an average of the voters living in the proposed taxing district and voting in the last four (4) general elections.⁸ The signatures must include the date the petition was signed. The last signature can be no later than one hundred eighty (180) days from the first signature.⁹

This petition is to contain a plan of service, including the following information that is germane to the proposed taxing district:

1. The statutory authority under which the district is created and under which the taxing district will operate;
2. Demographic characteristics of the area including but not limited to population, density, projected growth, and assessed valuation;
3. A description of the service area including but not limited to the population to be served, a metes and bounds description of the area of the proposed taxing district, the anticipated date of beginning service, the nature and extent of the proposed service, the projected effect of providing service on the social and economic growth of the area, and projected growth in service demand or need;
4. A three (3) year projection of cost versus revenue;
5. Justification for formation of the taxing district including but not limited to the location of nearby governmental and nongovernmental providers of like services; and
6. Any additional information, such as land use plans, existing land uses, drainage patterns, health problems, and other similar analyses which bear on the necessity and means of providing the proposed service.

Upon receipt of said petition, the Metro Council Clerk then notifies "all planning commissions, cities, and area development districts within whose jurisdiction the proposed service area is located and any state agencies required by law to be notified of the proposal for the creation of the taxing district."¹⁰ Metro Council Clerk then schedules a "hearing on the proposal for no earlier than thirty (30) nor later than ninety (90) days following receipt of the petition, charter, and plan of service[.]"¹¹ Metro Council Clerk publishes "notice of the time and place of the public hearing" with an "accurate map of the area or a description in layman's terms reasonably identifying the area" in "accordance with KRS Chapter 424."¹²

⁷ *Id.*

⁸ KRS 65.182(1)(a)

⁹ KRS 65.184

¹⁰ KRS 65.182(2)

¹¹ KRS 65.182(3)

¹² KRS 65.182(3)

At the public hearing, the Metro Council “shall take testimony of interested parties and solicit the recommendations of any planning commission, city, or area development district” within whose jurisdiction the proposed service is located, and any state agencies required by law to be notified of the proposed creation of the taxing district.¹³ Metro Council may extend the hearing for 90 days from the date of the initial hearing and shall render a decision within 30 days of the final adjournment of the hearing.¹⁴

Following the hearing, the Metro Council “shall set forth its written findings of fact and shall approve or disapprove the formation of the taxing district. If the Metro Council approves such district, they must do so in the form of an ordinance, which also requires the Mayor’s signature, unless he vetoes it, in which case, the Metro Council can override such veto.”¹⁵ For the taxing district to be adopted, a majority of Metro Council members must vote in favor of an ordinance that creates the taxing district. A certified copy of the executed ordinance is then filed with the county clerk.¹⁶ The effective date of the tax levy begins January 1 of the year following the certification of the creation of the taxing district.¹⁷

The governance of any newly created taxing district is determined by the operation established by its enabling statute. Attached is a list compiled by the Department of Local Government that identifies the special district types with its respective statutory authority.

c. Creating Taxing District by Ballot Measure

Another method to create a taxing district is contained in KRS 65.192. Persons desiring to form a taxing district under this statute may present a petition to the Metro Council Clerk requesting that the question of establishing the taxing district be placed upon the ballot for the next general election.¹⁸

For the petition to be valid, it must contain at least hundred registered voters from each senatorial district, contained wholly or partially, within the proposed taxing district. If a senatorial district does not have 100 registered voters that reside within such district, then the petition must be signed by twenty-five percent (25%) of the registered voters within said senatorial district. This petition shall contain a plan of service, including any of the following information that is germane to the proposed taxing district:

- (a) The statutory authority under which the district is created and under which the taxing district will operate;

¹³ KRS 65.182(4)

¹⁴ KRS 65.182(5)

¹⁵ KRS 65.182(6)

¹⁶ KRS 65.182(1)(b)&(7)

¹⁷ KRS 65.182(8)

¹⁸ KRS 65.192(1)

- (b) The method of creating and appointing the governing body of such district if it is to be different from the general statutory authority under which it will operate;
- (c) Demographic characteristics of the area, including but not limited to population, density, projected growth, and assessed valuation;
- (d) A description of the service area, including but not limited to the population to be served, a metes and bounds description of the area of the proposed taxing district, the anticipated date of beginning service, the nature and extent of the proposed service, the projected effect of providing service on the social and economic growth of the area, and projected growth in service demand or need;
- (e) A three (3) year projection of cost versus revenue and the method chosen for raising such revenues as authorized in this section;
- (f) Justification for formation of the taxing district, including but not limited to the location of nearby governmental and nongovernmental providers of like services; and
- (g) Any additional information such as land use plans, existing land uses, drainage patterns, health problems, and other similar analyses which bear on the necessity and means of providing the proposed service.¹⁹

After receiving a petition, the Metro Council Clerk is to “notify all planning commission, cities and area development districts within whose jurisdiction the proposed taxing district is to be created and any state agencies which may be affected by the creation of such district.”²⁰ The Metro Council Clerk is responsible for verifying the signatures on the petition and then scheduling a “hearing on the proposal for no earlier than thirty (30) nor later than ninety (60) days following receipt of the petition, charter and plan of service.”²¹ At the public hearing, the Metro Council “shall take testimony of interested parties and solicit the recommendations of any planning commission, city, or area development district” within whose jurisdiction the proposed service is located, and any state agencies required by law to be notified of the proposed creation of the taxing district.²²

Following this hearing, the Metro Council must adopt a resolution submitting to the qualified voters of Metro Louisville the question as to whether a taxing district should be established for the area and whether a special ad valorem tax or an occupational license fee will be imposed for the maintenance and operation of the district.²³ A certified copy of the resolution is to be filed with the county clerk’s office by the second Tuesday in August so it will

¹⁹ KRS 65.192(1)

²⁰ KRS 65.192(2)

²¹ KRS 65.192(3)

²² KRS 65.192(4)

²³ KRS 65.192(5)

be placed on the ballot.²⁴ The question must be stated so that the service to be provided by the district, the type of governing body, and the method of financing are clearly outlined.²⁵

There are two ways under KRS 65.192 that the special taxing district may be financed. The first method of financing is by levying an ad valorem tax. However, the tax imposed by the district may not exceed ten cents (\$.10) per one hundred dollars (\$100) of assessed value of the property subject to taxation. The second method of financing is by levying an occupational license fee. This fee may not exceed one percent (1%) of: (a) salaries, wages, commissions, and other compensation earned by persons for work done and services performed; and (b) the net profits of businesses, trades, professions, or occupations from activities conducted in the district, except public service companies, banks, trust companies, combined banks and trust companies, combined trust, banking and title companies, any savings and loan association whether state or federally chartered. It is important to note that only one method of financing (i.e., either ad valorem taxation or occupational license fees) may be used to fund the district.

As stated above, the governance of any newly created taxing district is determined by the operation established by its enabling statute. Attached is a list compiled by the Department of Local Government that identifies the special district types with its respective statutory authority.

²⁴ KRS 65.192(5)

²⁵ KRS 65.192(6)

KRS STATUTES by Special District Type

<u>District Type</u>	<u>Chapter</u>	<u>Tax Power</u>
1. Agricultural Extension	164	Yes
2. Air Board	183	Yes
3. Air Pollution Control	77	No
4. Ambulance	108	No
5. Area Development	147A	No
6. Area Planning Commission	147	Yes
7. Community Action Corporation	273	No
8. Community Improvement	107	Yes
9. Drainage and Levee	266, 267, 268, 269	Yes
10. Fire Protection	75	Yes
11. Flood Control	104	Yes
12. Hospital	216	Yes
13. Housing Authority	80.310	No
14. Industrial Development Authority	154.50	No
15. Library	173.710 or 173.450	Yes
16. Mass Transit Authority	96A	Yes
17. Mental Health	210	Yes
18. Public Health	212	Yes
19. Rescue Squad	39F	Yes
20. Riverport Authority	65, 58, 273	Yes
21. Road District	184	No*
22. Sanitation District	220	Yes
23. Sewer District	76.005 & 76.300	No*
24. Soil and Water Conservation	262	Yes
25. Solid Waste Management	109	Yes
26. Tourist and Convention	91A	Yes
27. Urban Services	108	No*
28. Water District	74	No
29. Watershed Conservancy	262	Yes

*These districts cannot levy a tax; however, they can levy assessments against real property in order to generate revenue.