

# LOCAL DEVELOPMENT AUTHORITIES

A GUIDE FROM KLC MUNICIPAL LAW

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## LOCAL DEVELOPMENT AUTHORITIES

In order to play any game, you must first learn the rules. The same holds true for the law surrounding local development authorities. It is impossible to carry out the duties of local development authorities unless you familiarize yourself with the applicable state statutes, as well as your local ordinances, that govern.

Statutes are not contained in some magical spell book. There is no forbidden wisdom in a statutory code book. You do not need a law school education to understand their meaning. We wanted to remove some of the mystique from the law by compiling this simple pdf document. It contains the entire portion of Kentucky Revised Statutes which pertain to local development authorities.

Feel free to use this guide in any way that you deem fit. The reason we wanted to present this as a pdf though is because a pdf does have just a little bit of magic, truth be told. A pdf is word searchable. If you have the pdf on a laptop during a meeting and an issue comes up - you can plug the words in and hopefully the relevant portion of the law pertaining to local development authorities will pop up. Failing that, you can always call the KLC Municipal Law Department at 800.876.4552.

*The KLC Municipal Law Team*

### 99.610 Legislative finding and policy

It is hereby declared to be the policy of the Commonwealth to assist in the preservation and revitalization of historically or economically significant local areas, including open spaces, of cities of the first class, cities with populations equal to or greater than fifteen thousand (15,000) based upon the most recent federal decennial census, consolidated local governments, and urban-county governments, for the purpose of planning and financing the preservation and revitalization of areas of said cities which are of economic or historical significance, while at the same time accommodating necessary and desirable central city and suburban growth, to the extent funds are available for the accomplishment of such purposes.

### 99.615 Definitions for KRS 99.610 to 99.680

The following words or terms shall have the following meanings wherever used in KRS 99.610 to 99.680 unless a different meaning is clearly indicated by the context:

- (1) “Act” means KRS 99.610 to 99.680 which may be called the “Local Development Authority Act”;
- (2) “Technical advisory council” means that committee appointed under the terms of KRS 99.655;
- (3) “Price advisory council” means that committee appointed under the terms of KRS 99.680;
- (4) “Agency” means a development authority established by this statute in and for cities of the first class, cities with populations equal to or greater than fifteen thousand (15,000) based upon the most recent federal decennial census, a consolidated local government, and urban-county governments;
- (5) “Bonds” means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency pursuant to the provisions and purposes of KRS 99.610 to 99.680;
- (6) “Project area” means any area or specific property designated by an agency or any area or specific property actually acquired or formally proposed for acquisition by an agency, for historical or open space preservation purposes, or for the development permitted by KRS 99.610 to 99.680;
- (7) “City” means any city of the first class, cities with populations equal to or greater than fifteen thousand (15,000) based upon the most recent federal decennial census, a consolidated local government, or an urban-county government, in which an agency has been established;
- (8) “Development” means the acquisition, planning, designing, clearance, renovation, or rehabilitation of existing improvements, development, and disposal, or any combination thereof, of a project area, including the preparation of such project area for the development of residential, commercial, industrial, public, recreational, open space, or other uses, including the preservation of existing residential, commercial, industrial, public, recreational, open spaces, or other uses valued locally for their economic or historical importance as may be appropriate or necessary, in the opinion of the board of commissioners of an agency;
- (9) “Subdevelopment” means the actual construction, renovation, or rehabilitation of improvements to real property including the installation of or improvement to existing utilities, curbs, gutters, sidewalks, storm sewers, and other necessary works and improvements, consistent with the established development plan for each specific project area in order to market, through private enterprise, said improvements to individuals, commercial business, and industry;
- (10) “Development plan” means the plan for the development as defined, of all or any part of a project area;

- (11) “Mayor” means the mayor of a city as defined in this section;
- (12) “Governing board” means a board of aldermen or commissioners, a legislative council in a consolidated local government, an urban-county council, or any legislative body of a city as defined in this section;
- (13) “Project” means any undertaking within a project area and any such undertaking which may be included in, and financed by, a single or separate financing agreement or bond issue;
- (14) “Persons and families of lower income” means persons and families who lack the amount of income which is necessary (as determined by standards established by the agency) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and
- (15) “Residential housing project” means a specific work or improvement undertaken primarily to provide or to rehabilitate dwelling accommodations for persons and families of lower income, including the acquisition, construction, and rehabilitation of land, buildings, and improvements and such other facilities as may be incidental or appurtenant thereto.

#### **99.620 Creation of development authority**

There is hereby authorized, created, and established in cities as defined in KRS 99.615, upon adoption of a resolution so declaring by a majority of the governing board of said cities, an agency to be known by the name of the city, and the words “Development Authority.” Said agency shall exist for each such city with the powers, duties, and functions hereinafter provided.

#### **99.625 Appointment of commissioners; term; reimbursement of expenses**

Upon the date of the creation of the development authority, or within a reasonable time thereafter, the mayor shall appoint, with the approval of a majority of the governing board as aforesaid, seven (7) citizens of the city as members of the agency, each of whom shall bear the title of commissioner and shall constitute, with the other commissioners, a board of commissioners of said agency. The commissioners initially designated shall serve one (1) for a term of one (1) year, two (2) for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years, from January 1, 1974, the length of said terms to be noted by the mayor in the written document making each of said appointments. Thereafter members shall be appointed as aforesaid for a term of office of four (4) years, except that all vacancies occurring during a term shall be filled for the unexpired term. A commissioner shall hold office until his successor has been appointed and qualified. The mayor or his designee shall be an ex officio nonvoting member of the agency. Commissioners shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred by them in the conduct of the affairs of the agency.

#### **99.630 Officers**

The agency shall elect a chairman and a vice chairman from among the members of its board of commissioners. The term of office of each of said officers, unless otherwise prescribed by the agency, shall be for the calendar year or for that portion thereof remaining after each such officer is designated or elected. Other officers may be selected without regard to membership on the board of commissioners. The powers and duties of all officers shall be established by bylaws adopted by the board of commissioners, subject to approval, amendment or modification by the governing board.

### **99.635 Powers vested in commissioners; removal procedure**

The powers of the agency shall be vested in the commissioners appointed as members of the board of commissioners. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the governing board of the city, but only after he shall have been given a copy of the charges made against him at least ten (10) days prior to a public hearing thereon, if such a public hearing is requested within two (2) days after notice of charges.

### **99.640 Disclosure of interest in property in project area**

No officer, employee or consultant of an agency, who in the course of his duties is required to participate in the formulation of plans or policies for the development of a project area, or in the implementation of such plans or policies, shall acquire any interest in any property to be included within a project area. If any such officer, employee or consultant owns or has or seeks to establish a financial interest, directly or indirectly, in any property to be included within such a project area, he shall immediately disclose, in writing, such interest to the board of commissioners of the agency, and such disclosure shall be entered in the minutes of the board of commissioners. Failure to so disclose such interest shall constitute misconduct in office. No payment shall be made to any commissioner or officer of an agency for any property or interest therein acquired by the agency from such commissioner or officer unless such payment is unanimously approved by the price advisory board and board of commissioners at public meetings of said boards subsequent to the meeting at which the interest in property has been disclosed in writing.

### **99.645 Appropriation and receipt of funds**

The board of commissioners of an agency is authorized to receive, and the governing board of the city for which the agency is established, is authorized to appropriate, such amounts of money as may be necessary for the administrative purposes of the agency, which may include payments to staff and consultants for research, various studies and surveys, designation of project areas, preparation of development plans, estimates of the cost of acquisition, clearance, renovation, rehabilitation, improvement of project areas, and payments for architectural, engineering, legal and financial advisory services and other administrative expenses deemed necessary by the board of commissioners. The board of commissioners is also authorized to receive, and the governing board of the city is authorized to appropriate, moneys necessary to meet any contractual commitments made by the city to the agency for any project undertaken by agreement between the city and the agency.

### **99.650 Powers of agency**

- (1) Each agency created under the terms of KRS 99.610 to 99.680 shall constitute a public body corporate and politic, exercising public and essential governmental functions, and shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of KRS 99.610 to 99.680 including but without limiting the generality of the foregoing, the following powers in addition to other powers granted herein and by other statutory authority:
  - (a) To sue and be sued; to have a seal; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
  - (b) To make, and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with KRS 99.610 to 99.680, to carry into effect the powers and purposes thereof, subject to approval, amendment, or modification by the governing board;
  - (c) To select and appoint such officers, agents, counsel, and employees, permanent and temporary, as



it may require, and determine their qualifications, duties, and compensation, subject, however, to the provisions of its budget;

- (d) Within the jurisdiction of the city in which it is established, and for the purpose of developing a project area or areas, to purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property or any interest therein, together with any improvements thereon; to clear any and all buildings, structures, or other improvements from any real property so acquired; to renovate or rehabilitate any improvements to such real property so acquired and to dispose of any personal property resulting therefrom; to develop and construct residential housing for persons and families of lower income; to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust or otherwise, or otherwise to dispose of any real or personal property or any interest therein at its fair value for uses in accordance with the development plan, irrespective of the cost of acquiring and preparing said property; to insure or provide for the insurance of any real or personal property or operation of the agency against risks or hazards; and pursuant to the provisions of KRS 99.610 to 99.680, to rent, maintain, manage, operate, and repair such real property and any improvements thereto;
- (e) Within the jurisdiction of the city in which it is established, and for the purpose of developing a project area or areas: to make or participate in the making of construction, land development, mortgage, and rehabilitation loans and to purchase or participate in the purchase of construction, land development, mortgage, and rehabilitation loans for residential housing projects, provided, however, that such loans shall be made only upon the determination by the agency that such loans are not otherwise available, wholly or in part, from private lender upon reasonably equivalent terms and conditions; to insure or reinsure construction, land development, mortgage, and rehabilitation loans on residential housing projects provided, however, that any such insurance or reinsurance shall be made only upon the determination by the agency that such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; to make grants from appropriated funds, and any other funds from any source available to the agency, to builders, developers, and owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as the agency shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the agency; to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction land development, or rehabilitation loan for residential housing projects of any type, appropriate to the purpose of the agency; to consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction or land development loan, rehabilitation loan, contract, or agreement of any kind relating to residential housing projects to which the agency is a party;
- (f) Within a project area, to cause streets and highways to be laid out and graded, and pavements or other road surfacing, sidewalks, curbs, gutters, storm sewers, and public utilities of every kind to be improved, constructed, and installed and to close any streets according to the development plan;
- (g) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in property or securities in which banks or insurance companies may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled;
- (h) To obligate lessees or purchasers of land acquired in a project: (1) to use such land for the purpose designated in the development plan; (2) to begin the building of specified improvements or

renovation of existing improvement within a period of time which the agency fixes as reasonable; and (3) to comply with such other conditions as in the opinion of the agency are necessary to carry out the purposes of KRS 99.610 to 99.680; the agency, by provision in the contract, deed, or lease may make any of the purchaser's obligations, covenants or conditions running with the land, whose breach shall cause the fee to revert to the agency;

- (i) To contract as, and to accept the obligations of, an owner of benefited property under the terms of KRS 107.010 to 107.220, inclusive;
  - (j) To exercise all powers granted to governmental agencies under proposed legislation which deals with the use of "tax increment" revenues and financing of public purpose projects through the use thereof;
  - (k) To exercise all powers granted to governmental agencies by KRS 58.010 to 58.140, inclusive;
  - (l) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of low income;
  - (m) To rehabilitate, acquire, establish, and operate, lease, and sublease, residential housing for persons and families of lower income and to enter into agreements or other transactions with any federal, state, or local government agency for the purpose of providing adequate living quarters for such persons and families and to contract to assume the rights, powers, duties, and obligations of any local housing authority or similar agency of the federal, state, city, or urban-county governments;
  - (n) To borrow from and to accept loans and grants from the federal, state, city, or urban-county governments or any agency thereof, or from any sources, public or private, for the purposes of KRS 99.610 to 99.680, and to pledge such security as may be required, an agency, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal, state, city, or urban-county government any conditions which the federal, state, city, or urban-county government may attach to its financial aid not inconsistent with the purposes of KRS 99.610 to 99.680; and
  - (o) To exercise all or any part or combination of the powers herein granted.
- (2) Nothing contained in this section shall authorize such agency to construct any of the buildings for residential, commercial, industrial, or other use contemplated by the development plan, except as to the development and construction of residential housing for persons and families of lower income and except insofar as any industrial building may be authorized to be constructed by a lessee, on behalf of the agency, under the provisions of KRS 103.200 to 103.285, inclusive.

### **99.655 Prerequisites for acquisition of land: Plan; technical advisory board**

No agency may acquire title to any land for the purpose of carrying out a development plan unless the following conditions have been met: A development plan clearly fixing the boundaries of the proposed project area has been approved by the board of commissioners and the plan has been made available for public inspection. The development plan shall designate, among other things, the proposed location, character and extent of the public and private land ownership and uses proposed within the area. The development plan may be amended from time to time including the extension of established project boundaries. All such amendments shall be made available for public inspection. There shall also be established a technical advisory board appointed by the mayor of the city or urban-county government. There shall be eleven (11) members and the chairman of the board of commissioners shall serve as the eleventh member and chairman of said board. The board shall be composed of

professions in the various developmental disciplines and shall include, but not be limited to architects, land use planners, engineers, civic leaders in the area of historical preservation, related agency heads of city or urban-county government, developers, builders, and other members of the community whose knowledge and ability will contribute to the purposes established in KRS 99.610 to 99.680.

### **99.660 City, consolidated local government, or urban-county aid**

A city, consolidated local government, or urban-county shall have the power to aid an agency in any manner provided for aid by public bodies to urban renewal and community development agencies by KRS 99.410.

### **99.665 Housing rehabilitation development fund; purpose**

- (1) An agency may create and establish a special revolving loan fund to be known as the housing rehabilitation development fund and to be administered by the agency as a trust fund separate and distinct from any other moneys or funds administered by the agency.
- (2) The housing rehabilitation development fund shall be comprised of, and the agency is hereby authorized to receive and accept for such fund, the proceeds of grants, contributions, appropriations, repayment of loans made from the fund, and the proceeds of bonds and any other moneys which may be made available to the agency for the purpose of the fund from any other source.
- (3) The purpose of the housing rehabilitation development fund is to provide a source from which the agency may make loans, and invest in loans, for rehabilitation of residential housing projects, and the agency is authorized to make such loans and to invest in such loans from such fund, at such interest rate or rates as may be determined by the agency to be for the best interest of the agency and best effectuate the purposes of the agency, and with such security for repayment as the agency deems reasonably necessary and practicable. In administering the housing rehabilitation development fund, the agency may exercise all powers granted in KRS 99.610 to 99.680.

### **99.670 Bond issue; agency powers**

- (1) An agency shall have power to issue bonds from time to time at its discretion for any of its corporate purposes under KRS 99.610 to 99.680. An agency shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An agency may issue bonds on which the principal and interest are payable:
  - (a) Exclusively from the income and revenues, including the increment of tax revenues as allowed by law, of the project or projects financed from the proceeds of such bonds; or
  - (b) Exclusively from such income and revenues together with grants and contributions from the federal, state, city, or urban-county government, or other sources. Any such bonds may be additionally secured by a mortgage, deed of trust, or other lien or encumbrance on the property, including pledges of tax increments as allowed by law in the project or projects financed from the proceeds of such bonds.
- (2) Neither the members of the board of commissioners of an agency nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an agency shall so state on their face that such bonds and obligations issued under this section shall not be a debt of the city, the county, the state, or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction and neither the city, the county, the state, nor any political subdivision thereof shall be liable thereon, nor, in any event, shall such bonds



or obligations be payable out of any funds or properties other than those of said agency, except as provided by contract.

- (3) Bonds of an agency shall be authorized by resolution of its board of commissioners. Such bonds may be issued in one (1) or more series, each of which may be separately secured, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture or mortgage may provide.
- (4) The bonds may be sold at less than par, and shall be sold at public sale held after notice has been given by publication pursuant to KRS Chapter 424, except as follows:
  - (a) Bonds may be sold at private sale without advertisement to the federal, state or urban-county governments, or to an agency of any such governments;
  - (b) Payment for any portion of a project area may be made in bonds, provided, however, that:
    1. Any such transaction shall be approved by the price advisory council before its consummation;
    2. Such exchange is valid and legal pursuant to regulations of the Internal Revenue Service.
- (5) The bonds may be sold with provision that they bear no interest, or only nominal interest, for a period of years, after which they may bear greater interest; and provision may be made for the capitalization of interest for periods not in excess of five (5) years. More than one (1) project may be established within the same project area, and each such project may be financed with a different issue or bonds with differing security. Each of said bond issues may be designed to meet standards required under federal statutes or regulations pertaining to the issuance of tax-exempt bonds; provided, however, that nothing herein shall be deemed to prohibit the issuance of any series of bonds, the interest on which may not be exempt from federal income tax.
- (6) In case any of the members or officers of the agency whose signatures appear on any bonds, coupons, notes, or other obligations shall cease to be such members or officers before the delivery of such bonds, coupons, notes, or other obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds, coupons, notes, or other obligations issued pursuant to KRS 99.610 to 99.680 shall be fully negotiable except as limited by their terms.
- (7) In any suit, action, or proceedings involving the validity or enforceability of any bonds of an agency or the security therefor, any such bonds reciting in substance that they have been issued by the agency to aid in financing a project shall be conclusively deemed to have been issued for a project and said project shall be conclusively deemed to have been planned, approved, located, and carried out in accordance with the purposes and provisions of KRS 99.610 to 99.680.
- (8) In connection with the issuance of bonds, an agency, in addition to its other powers, shall have power:
  - (a) To pledge all or any part of its gross or net revenue to which its right then exists or may thereafter come into existence;



- (b) To encumber, by mortgage, deed of trust, or otherwise, all or any part of its real or personal property in the project;
- (c) To covenant against pledging all or any part of its revenues, or against encumbering all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to its sale, leasing, or other disposition of any project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;
- (d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;
- (e) To covenant as to the amounts to be charged in the sale or lease of properties in a project or projects, the amount to be raised from revenue each year or other period of time and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for development or other costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the money held in such funds;
- (f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;
- (g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;
- (h) To covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (i) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or trustees the right, in the event of a default by said agency, to take possession of any project or part thereof, and to collect the rents and revenues arising therefrom, or due the agency in connection therewith, and to dispose of such moneys in accordance with the agreement of the agency with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds;
- (j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the discretion of said agency, except as otherwise provided in KRS 99.610 to 99.680, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

- (9) The bonds, notes, and other obligations of an agency are declared to be issued for an essential public and governmental purpose, and together with interest thereon and income therefrom shall be exempt from all taxes.

### **99.675 Sale or exchange of real property**

The agency may sell, exchange, lease, or otherwise transfer real property acquired under the provisions of KRS 99.610 to 99.680 to one (1) or more private individuals or to public bodies, and thereafter the real property shall be used only in accordance with the limitations and conditions set forth in the development plan. Maximum opportunity, consistent with the sound needs of the locality, shall be given private enterprise in the development and subdevelopment of project areas. The agency shall sell, lease, exchange, or withhold for public use by the state or any public body thereof, all of the property which it has acquired in such project area as soon as feasible and in the public interest. Prior to any such sale or exchange of real property, the agency shall obtain appraisals made by independent appraisers of the value of such real property proposed to be sold or exchanged, which appraisals shall be based upon the new uses established for such real property. These appraisals shall be used as a guide for the agency in disposing of its real property, but the agency shall not be bound thereby.

### **99.680 Price advisory council**

A price advisory council is hereby established in each agency which shall be entirely separate from the board of commissioners. Said price advisory council shall consist of seven (7) persons who shall be appointed for terms of four (4) years in the same manner provided herein for appointment of commissioners. Said price advisory council shall be required to pass upon the propriety of all proposed prices fixed for either purchase or sale of any real estate.