Lexington-Fayette Urban County Government Council Meeting

Lexington, Kentucky August 13, 2009

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in regular session on August 13, 2009 at 7:00 P.M. Present were Mayor Jim Newberry in the chair presiding and the following members of the Council: Council Members Feigel, Gorton, Gray, Henson, James, Lane, Lawless, McChord, Myers, Stinnett, Beard, Blues, Crosbie, and Ellinger. Absent was Council Member Martin.

The reading of the Minutes of the previous meeting was waived.

Ordinances No. 138-2009 thru 156-2009 inclusive and Resolutions No. 498-2009 thru 530-2009 inclusive were reported as having been signed and published, and were ordered to record.

The Invocation was given by Senior Minister Mark Johnson, Central Baptist Church.

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Upon motion of Ms. Crosbie, seconded by Ms. Henson, and passed by unanimous vote, the Minutes of the May 7 and 14, June 11, 23, and 25, and July 2 and 7, 2009 Council Meetings were approved.

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The following ordinances were given second reading. Upon motion of Ms. Crosbie, and seconded by Mr. Myers, the ordinances were approved by the following vote:

Aye: Feigel, Gorton, Gray, Henson, James,
Lane, Lawless, McChord, Myers, Stinnett,
Beard, Blues, Crosbie, Ellinger----------------------14

Nay: --0

An Ordinance amending Section 21-5(2) of the Code of Ordinances reallocating one (1) position of Dir. of Streets, Roads and Forestry, from Grade 121E to Grade 123E, in the Div. of Streets, Roads and Forestry, and appropriating funds pursuant to Schedule No. 33.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to establish $6 million in Bond Fund Budget for the Lyric Theater Project as approved at the Lexington-Fayette Urban County Council meeting on July 2, 2009 and by Reimbursement Resolution on March 12, 2009, and appropriating and re-appropriating funds, Schedule No. 34.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to provide funds for purchase orders rolling from FY 2009 into FY 2010, and appropriating and re-appropriating funds, Schedule No. 35.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for funds in the amount of $400.00 for the Div. of Parks and Recreation from Neighborhood

Development Funds for the S.T. Roach Basketball Cheerleader t-shirts, and appropriating and re-appropriating funds, Schedule No. 36.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for municipal expenditures, and appropriating and re-appropriating funds, Schedule No. 37.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for funds in the amount of $6,000.00 for a copier for the Div. of Youth Services, and appropriating and re-appropriating funds, Schedule No. 38.

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Ms. Gorton made a motion, seconded by Ms. Crosbie, and approved by unanimous vote, to amend an Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for municipal expenditures, and appropriating and re-appropriating funds, Schedule No. 39 to add funds for Historic Preservation to Budget Journal 35940. Ms Gorton stated that these funds were to roll Purchase Order LF59946 with National Alliance of Preservation Commissions for Board of Architectural Review training in the amount of $5,500 from FY 2009 into FY 2010 and that this purchase order was not identified in the original Purchase Order Roll and needed to be included in this budget journal.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for municipal expenditures, and appropriating and re-appropriating funds, Schedule No. 39 was given first reading as amended and ordered placed on file two weeks for public inspection.

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The following ordinances were given first reading and ordered placed on file two weeks for public inspection.

An Ordinance changing the zone from a Wholesale & Warehouse Business (B-4) zone to a Highway Service Business (B-3) zone for 4.63 net (6.07 gross) acres, for property located at 1837 and 1844 Plaudit Place, subject to certain use restrictions imposed as conditions of granting the zone change (KYROB II, LLC).

An Ordinance changing the zone from a Two Family Residential (R-2) zone to a Townhouse Residential (R-1T) zone for 0.21 net (0.24 gross) acre; and from a Planned Neighborhood Residential (R-3) zone to a Townhouse Residential (R-1T) zone for 0.73 net (0.81 gross) acres, for property located at 310 Romany Rd. (Paul V. & Judy A. Paternostro).

An Ordinance accepting the bid of Altec Industries, in the amount of $86,171.00, for an Aerial Cable Placer and Truck, for the Div. of Facilities and Fleet Management, and appropriating funds pursuant to Schedule No. 48.

An Ordinance amending Section 21-5(2) of the Code of Ordinances, abolishing one (1) position of Health Clinic Director, Grade 118E, one (1) position of Health Clinic Nurse - RN Supervisor, Grade 116E, one (1) position of Administrative Specialist Principal, Grade 114E, one (1) position of Health Clinic Nurse - RN, Grade 114E, one (1) position of Administrative Specialist, Grade 110N, one (1) position of Certified Medical Assistant, Grade 110N, and one (1) position of Staff Assistant Sr., Grade 108N, and amending Section 22-5(2) of the Code of Ordinances abolishing one (1) position of Health Clinic Nurse - RN - P/T, Grade 114E and one (1) position of Staff Assistant P/T, Grade 107N, all within the Div. of Family Services and appropriating funds pursuant to Schedule No. 40.

An Ordinance amending Section 21-5(2) of the Code of Ordinances, creating one (1) position of Municipal Engineer Sr., Grade 119E and one (1) position of Staff Assistant Sr., Grade 108N, and abolishing one (1) position of Municipal Engineer, Grade 117E, and one (1) position of Treatment Plant Operator, Grade 113N and amending Section 22-5(2) of the Code of Ordinances abolishing one (1) position of Municipal Engineer Sr. - P/T, Grade 119E and creating one (1) temporary position of Project Engineering Coordinator, Grade 119E, ending on June 25, 2013 all within the Div. of Water Quality and appropriating funds pursuant to Schedule No. 41.

An Ordinance amending Section 21-5(2) of the Code of Ordinances, creating one (1) position of Administrative Officer, Grade 118E, one (1) position of Operations Manager, Grade 116E, one (1) position of Public Service Supervisor Sr., Grade 114E, one (1) position of Enforcement Officer, Grade 110N, one (1) position of Equipment Operator Sr., Grade 109N, and one (1) position of Public Service Worker, Grade 106N, in the Div. of Waste Management; amending Section 21-5(2) of the Code of Ordinances creating one (1) position of Security Officer, Grade 106N and two (2) positions of Security Officer P/T, Grade 106N and amending Section 22-5(2) of the Code of Ordinances creating two (2) positions of Security Officer P/T, Grade 106N in the Div. of Facilities and Fleet Management, effective retroactive to June 22, 2009.

An Ordinance amending Section 21-5(2) of the Code of Ordinances creating one (1) position of Deputy Director of Enterprise, Grade 120E, in the Div. of Parks and Recreation.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a Grant from the Ky. Transportation Cabinet, which Grant funds are in the amount of $446,400.00 Federal funds under the Congestion Mitigation and Air Quality Improvement Program (CMAQ), are for construction of the Gainesway Trail, the acceptance of which obligates the Urban County Government for the expenditure of $111,600.00 as a local match appropriating funds pursuant to Schedule No. 42, and authorizing the Mayor to transfer unencumbered funds within the Grant budget.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a Grant from the Ky. Justice and Public Safety Cabinet, which Grant funds are in the amount of $150,000.00 Federal funds, for the continuation of the Street Sales Drug Enforcement Project, the acceptance of which obligates the Urban County Government for the expenditure of $50,000.00 as a local match, appropriating funds pursuant to Schedule No. 43, and authorizing the Mayor to transfer unencumbered funds within the Grant budget.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a Grant from the Ky. Justice and Public Safety Cabinet, which Grant funds are in the amount of $40,583.00 Commonwealth of Ky. funds from the Law Enforcement Service Fee Program, are for support of the cost of police overtime hours for a Traffic Alcohol Patrol, the acceptance of which does not obligate the Urban County Government for the expenditure of funds, appropriating funds pursuant to Schedule No. 44, and authorizing the Mayor to transfer unencumbered funds within the Grant budget.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Supplemental Agreement No. 3 with the Ky. Transportation Cabinet, accepting a Grant in the amount of $360,000.00 Federal funds, for the Loudon Ave. Improvements Project, the acceptance of which obligates the Urban County Government for the expenditure of $90,000.00 as a local match, appropriating funds pursuant to Schedule No. 45, and authorizing the Mayor to transfer unencumbered funds within the Grant budget.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a Grant from the Lexington-Fayette Urban County Health Dept., which Grant funds are in the amount of $414,712.00 Federal funds, are for the Home Network Project at the Family Care Center, the acceptance of which obligates the Urban County Government for the expenditure of $31,750.00 as a local match, appropriating funds pursuant to Schedule No. 46, and authorizing the Mayor to transfer unencumbered funds within the Grant budget.

An Ordinance authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a donation of $300.00 from Marcella Nazario, for books and supplies for the Early Start Program at the Family Care Center, and appropriating funds pursuant to Schedule No. 47.

An Ordinance amending certain of the Budgets of the Lexington-Fayette Urban County Government to reflect current requirements for funds in the amount of $380.00 in the Div. of Streets, Roads, and Forestry from the Neighborhood Development Funds for connecting sidewalks in the Courtney Commons Neighborhood Association, and appropriating and re-appropriating funds, Schedule No. 49.

An Ordinance amending Section 14-83(3) of the Code of Ordinances to revise the membership of the Stone Wall Appeals Board to consist of the members of the Board of Architectural Review serving ex officio.

An Ordinance amending Ordinance No. 203-80, as amended by Ordinance Nos. 59-81, 103-86, 237-93, 52-94 and 18-96, relating to the Industrial Building Revenue Bonds to remove the Lexington Economic Development Commission as a nominating organization and increase the number of at-large members from three (3) to four (4).

An Ordinance amending Section 25-20(2) of the Code of Ordinances removing African Americans of Lexington Emerge (A.A.L.E.) as a nominating organization and replacing it with the John Rowe Chapter of the National Bar Association and directing the Council Clerk, pursuant to KRS 65.003(5)(b), to submit a copy of this ordinance and proof of publication to the Dept. for Local Government within twenty-one (21) days of its passage.

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Upon motion of Mr. Myers, seconded by Ms. Crosbie, and approved by unanimous vote, an Ordinance authorizing the issuance of up to $12,800,000 of Educational Building Revenue Refunding and Improvement Bonds, Series 2009 (The Lexington Christian Academy, Inc. Project) of the Lexington-Fayette Urban County Government, the proceeds of which shall be loaned to The Lexington Christian Academy, Inc. to finance and refinance the construction, renovation, installation, improvement, and equipping of improvements suitable for use in furtherance of the educational and recreational purposes of The Lexington Christian Academy, Inc.; providing for the pledge of revenues for the payment of such Bonds, authorizing a Bond Purchase and Loan Agreement appropriate for the protection and disposition of such revenues and to further secure such Bonds; recognizing the Bonds as qualified tax exempt obligations under I.R.C. Section 265(b)(3)(G) (i) and (ii); and authorizing other actions in connection with the issuance of such Bonds was placed on the docket, given first reading, and ordered placed on file two weeks for public inspection.

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The following resolutions were given first reading. Upon motion of Mr. McChord, and seconded by Mr. Blues, the rules were suspended by unanimous vote.

The resolutions were given second reading. Upon motion of Mr. Ellinger, seconded by Mr. Beard, the resolutions were approved by the following vote:

Aye: Feigel, Gorton, Gray, Henson, James,
Lane, Lawless, McChord, Myers, Stinnett,
Beard, Blues, Crosbie, Ellinger--------------------14

Nay: --0

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Amendment to Agreement with the Ky. Office of Homeland Security, for extension of the Metropolitan Medical Response Systems (MMRS) Project through July 31, 2009, at no cost to the Urban County Government.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an assignment of collateral with Providence Business Center, LLC, and Fifth Third Bank, at no cost to the Urban County Government.

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A Resolution accepting the bid of Woolpert, in the amount of $2,933,902.20, for the SSA Group 2/3 Sewershed Field Activities - Field Services - Contract 3, for the Div. of Water Quality, and authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Agreement with Woolpert, related to the bid was on the docket for first reading.

The Mayor recognized Mr. Richard Lawrence of Leak Eliminators, 1064 Manchester St. Mr. Lawrence had believed his company to be the low bidder on the bid. He spoke of his concerns about the bidding process.

The Council asked questions of Mr. Logan Askew, Commissioner of Law, regarding the bidding process.

The Council asked questions of Mr. Bill O'Mara, Acting Commissioner of Finance, regarding the bidding process.

The Mayor responded on the question of procedure.

The Council asked questions of Mr. Rod Chervus, Div. of Water Quality, regarding the specifics of the particular bid.

The Council continued their discussion.

The Mayor stated that he would ask Mr. Brian Marcum, Director of the Div. of Purchasing, to be at the next meeting to answer any questions.

The resolution was given first reading and ordered placed on file two weeks for public inspection.

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The following resolutions were given first reading and ordered placed on file two weeks for public inspection.

A Resolution accepting the bid of Quadmed, Inc., establishing a price contract for Transport Ventilators, for the Div. of Emergency Management/911.

A Resolution accepting the bid of D&W Environmental, Inc., establishing a price contract for Recycling Dumpsters for Schools, for the Div. of Waste Management.

A Resolution accepting the bid of The Trophy Center, establishing a price contract for Trophies, Plaques, and Silver, for the Div. of Parks and Recreation.

A Resolution accepting the bids of Montgomery Tractor Sales, Inc., Central Equipment Company, Reynolds Farm Equipment D/B/A Reynolds Golf and Turf, Price's Tractor Sales, Inc., and Alamo Sales Corp., establishing price contracts for tractor and mower parts, for the Div. of Facilities and Fleet Management.

A Resolution accepting the bid of Klosterman Baking Company, Inc., establishing a price contract for Bakery Products, for the Div. of Parks and Recreation.

A Resolution accepting the bid of ADS, LLC, in the amount of $536,794.00, for the SSA Group 2/3 Sewershed Field Activities - Flow Monitoring Services Contract 2, for the Div. of Water Quality, and authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Agreement with ADS, LLC, related to the bid.

A Resolution accepting the bids of BudsGunShop.com D/B/A Buds Police Supply, Galls, Grants Tactical, Gulf States Distributors, Ky. Uniforms, Inc., and U.S. Cavalry, establishing price contracts for Police Recruit Equipment, for the Div. of Police.

A Resolution accepting the bid of Lexington Foodservice, establishing a price contract for concession products, for the Div. of Parks and Recreation.

A Resolution accepting the bid of Tobacco Rose Farm Construction & Development Services, in the amount of $1,381,531.00, for the SSA Group 2/3 Sewershed Field Activities - Raising Manhole Covers - Contract 4, for the Div. of Water Quality, and authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Agreement with Tobacco Rose Farm Construction & Development Services, related to the bid.

A Resolution ratifying the probationary civil service appointments of: Chera Mattox, Eligibility Counselor, Grade 110E, $1,161.10 bi-weekly, in the Div. of Adult Services & Tenant Services, effective September 14, 2009, Robert Andrews, Hostler, Grade 104N, $13.596 hourly, in the Div. of Police, effective August 17, 2009, Victor Obonyo, Computer Analyst, Grade 115E, $1,472.00 bi-weekly, in the Div. of Computer Services, effective August 31, 2009, Alecia Smith, Administrative Specialist, Grade 110N, $16.540 hourly, in the Div. of Water Quality, effective August 17, 2009, Kristina Stambaugh, Program Administrator, Grade 117E, $2,357.12 bi-weekly, in the Dept. of Social Services, effective August 3, 2009, Charles Neal, Public Service Worker Sr., Grade 107N, $13.167 hourly, in the Div. of Water Quality, effective July 20, 2009, Clarence Steele, Public Service Supervisor Sr., Grade 114E, $1,842.32 bi-weekly, in the Div. of Waste Management, effective August 10, 2009, Rebecca Weems, Program Manager Sr., Grade 120E, $2,634.61 bi-weekly, in the Div. of Waste Management, effective July 20, 2009; ratifying the probationary sworn appointments of: John Barnott, Rick Branham, Jerome Brown, Shane Callahan, Eric Campbell, Daniel Clemons, Kevin Clemons, Adam Davis, Joseph Elliot, Chris Gaidzik, Jeffrey Hallman, John Harris Jr., Jesse Holman, Michael Hurt, Jeffrey Hylton, Schlondia Jackson, Mark Lucas, Stephen Parker, Richard Peak, Anthony Releford, Matthew Schwarberg, Erin Sherrill, Christopher Spears, Charlton Sweazy, David Waters, Gary Weddington II, Firefighter, Grade 111N, $17.027 hourly, in the Div. of Fire and Emergency Services, effective August 31, 2009, Jason Walton, Fire Lieutenant, Grade 315N, $17.268 hourly, in the Div. of

Fire and Emergency Services, effective July 20, 2009, Leslie Fryman, Fire Captain, Grade 316N, $22.368 hourly, in the Div. of Fire and Emergency Services, effective July 20, 2009; ratifying the permanent sworn appointments of: Jonathan Abbott, Christopher Burlile, Christopher Carrington, Charles Davis, Bryan Durman, Mark Evans, Joseph Felinski, Robert Fraser, Timothy Fritz II, Christopher Harris, Brad Hawkins, Ryan Holland, Jeffrey Howard Jr., John Linton, Christopher Mason, Brian Misik, Brandon Muravchick, Jason Newman, James Norris, Jesse Palmer, Richard Rader, Marcus Sell, Aaron Sharrard, Donna Shepherd, Kevin Sloas, Tyler Smith, Sean Stafford, John Steele III, Michael Taulbee, Nicholas Whitcomb, James Winter, Police Officer, Grade 311N, in the Div. of Police, effective June 10, 2009; approving the unclassified civil service appointment of: Shannon Gordon, Social Worker, Grade 111E, $1,677.76 bi-weekly, in the Dept. of Social Services, effective August 31, 2009; approving the unclassified civil service salary adjustment in the Office of the Urban County Council of: Ronald Scott Seymour, Aide to Council, Grade 000E, $1,856.80 bi-weekly to $1,923.08 bi-weekly, in the Office of the Urban County Council, effective June 1, 2009; approving the voluntary demotion of: Scott Kelly, Client Assessment Counselor, Grade 112E, $1,346.35 bi-weekly, in the Div. of Adult Services & Tenant Services, effective August 24, 2009.

A Resolution of the Lexington-Fayette Urban County Government requesting that the Ky. Economic Development Finance Authority issue Industrial Building Revenue Bonds to finance an Industrial Building Project in Lexington-Fayette County for Goodwill Industries of Ky., Inc.

A Resolution of the Lexington-Fayette Urban County Government approving the application of the Lexington Christian Academy, Inc. for educational building revenue refunding and improvement bonds related to an Industrial Building Project; undertaking the issuance of educational building revenue refunding and improvement bonds to finance and refinance the project; authorizing the execution of a Memorandum of Agreement relating to the project and the bonds; and taking other preliminary action.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Certificates of Consideration and other necessary documents, for property interests needed for the Leesway Dr. Sanitary Sewer Project, at a cost not to exceed $5,000.00.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Certificates of Consideration and other necessary documents, for property interests needed for the Beverly Ave. Sanitary Sewer Project, at a cost not to exceed $50,000.00.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Amendment to Agreement with the Ky. Transportation Cabinet, for extension of the FY2007 Fiber Optic Cable Installation Project through June 30, 2010, at no cost to the Urban County Government.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute a Mental Health Services Agreement with Bluegrass Regional Mental Health - Mental Retardation Board, Inc., for court ordered mental health evaluations of clients referred to the Div. of Youth Services, at a cost not to exceed $2,000.00.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute and submit a Grant Application to the Knight Foundation and to provide any additional information requested in connection with this Grant Application, which Grant funds are in the amount of $4,000.00, and are for continuation of the Another Chance Program, for the Div. of Youth Services.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute two (2) Partial Releases of Easements, releasing portions of sanitary sewer easements on property located at Sandlake & Estates Properties, Section 2, Lot 2, and at Lot 1, 105 Sand Lake Dr.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute a Facility Usage Agreement with Consolidated Baptist Church, for use of the Andrew Center, at a cost not to exceed $728.90.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute a Memorandum of Understanding with the Ky. Dept. of Military Affairs, for utilization of the Dept. of Military Affairs Radio Communications System, at no cost to the Urban County Government.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Agreement with the Internal Revenue Service, for reimbursement of certain police expenses, at no cost to the Urban County Government.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Change Order No. 2 to the Contract with G & G Paving and Construction, Inc., for the Valley Park Parking Renovation Project, increasing the contract price by the sum of $9,376.50 from $40,700.00 to $50,076.50.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute a Power of Attorney appointing Kimra Cole, the Commissioner of General Services, as Attorney-In-Fact to act for the Urban County Government in connection with the U.S. Dept. of Agriculture Farm Service Agency and Community Credit Corporations Programs with regard to all Urban County Government owned real property subject to the Programs.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Agreements with NAMI Lexington, Inc. ($875.00), Alpha Beta Lambda Chapter of Alpha Phi Alpha ($850.00), Meadow-Loudon Neighborhood Association ($250.00) and Beaumont Presbyterian Church of Lexington, Ky., Inc. ($250.00), for the Office of the Urban County Council, at a cost not to exceed the sums stated.

A Resolution amending Section 1 of Resolution No. 500-2009, which ratified probationary civil service appointments, correcting the salary of Dann Dettman, Environmental Compliance Coordinator, Grade 119E, from $2,289.28 bi-weekly to $2,389.28 bi-weekly, in the Div. of Environmental Policy, effective July 6, 2009.

A Resolution amending Section 2 of Resolution No. 517-2009, which ratified probationary civil service appointments, correcting the salary of Angela Mullins, Probation Officer, Grade 110N, from $16.062 hourly to $15.062 hourly, in the Div. of Community Corrections, effective July 20, 2009.

A Resolution making a Declaration of Official Intent with respect to reimbursement from subsequent borrowings of temporary advances made for Capital Expenditures for implementation of the time and labor, payroll conversion of Project Synergy in the approximate amount of $600,000.00.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute a Professional Services Agreement with Berkley Appraisal Co., for appraisal services for Citation Blvd. Phase II, at a cost not to exceed $50,550.00.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute an Amendment to the Agreement with Ky. Utilities Co., for relocation of utilities for the Liberty Todds Rd. Reconstruction, increasing the contract price by the sum of $48,318.45 from $96,782.00 to $145,100.45.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Change Order No. 2 to the Contract with Central Rock Mineral Co., LLC (ATS Construction), for Loudon Ave. Improvements Project, increasing the contract price by the sum of $356,025.23 from $4,604,017.13 to $4,960,042.36.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to execute Change Order No. 2 to the Contract with MAC Construction & Excavating, Inc., for Meadows/Northland/Arlington Public Improvements Design Phase 3B, increasing the contract price by the sum of $24,976.85 from $1,209,895.44 to $1,234,872.29.

A Resolution authorizing and directing the Mayor, on behalf of the Urban County Government, to accept a donation of eleven (11) complete used Federal Signal outdoor warning sirens from the Madison County Emergency Management Agency.

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Upon motion of Mr. Lane, seconded by Ms. Henson, and passed by unanimous vote, the Communications from the Mayor were approved and are as follows: (1) Recommending the reappointment of Mr. Louis Stout to the Board of Adjustment, with a term to expire 7-1-2013; and (2) Recommending the appointment of Mr. Derek Paulsen to the Planning Commission, with a term to expire 7-1-2013. The term of Mr. Neill Day has expired. Also, recommending the reappointment of Ms. Lynn Roche-Phillips to the Planning Commission, with a term to expire 7-1-2013.

The Council discussed the appointments.

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The following Communications from the Mayor were received for information only: (1) Resignation of Amy Calcavecchia, Community Corrections Officer, Grade 110N, in the Div. of Community Corrections, effective August 2, 2009; (2) Resignation of Luann Campbell, Community Corrections Officer, Grade 110N, in the Div. of Community Corrections, effective July 28, 2009; (3) Resignation of Jennifer Gooding, Community Corrections Officer, Grade 110N, in the Div. of Community Corrections, effective July 21, 2009; (4) Resignation of Fredrick Mager, Community Corrections Officer, Grade 110N, in the Div. of Community Corrections, effective July 30, 2009; (5) Resignation of Jamie McLemore, Community Corrections Officer, Grade 110N, in the Div. of Community Corrections, effective July 11, 2009; (6) Resignation of Joshua Kincaid, Police Officer, Grade 311N, in the Div. of Police, effective July 24, 2009; (7) Resignation of Ralph Landrum, Traffic Signal Technician Sr., Grade 112N, in the Div. of Traffic Engineering, effective June 24, 2009; (8) Resignation of Leonard Lauria, Microcomputer Support Specialist, Grade 113N, in the Div. of Police, effective August 1, 2009; (9) Resignation of Robert Johnson, Firefighter, Grade 311N, in the Div. of Fire and Emergency Services, effective July 10, 2009; and (10) Temporary civil service appointment of Kevin Bennett, Program Manager Sr., Grade 120E, $2,469.44 bi-weekly, in the Div. of Waste Management, effective July 6, 2009.

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The report from the Div. of Building Inspection for the 2nd Quarter (April - June) of 2009 was received and ordered filed.

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Mr. Bernard McCarthy, Harry St., spoke about building streets instead of streetscapes. He stated his concerns about the proposed requirements of burying utilities.

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Mr. Tom Kehler, Harrods Pointe Trace, spoke regarding the Newtown Pike Extension and the proposed utility poles and filed the following exhibits: (1) Newspaper photographs of churches, and (2) Photographs. He stated his concerns about the appearance of the area.

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Fire Chief Robert Hendricks stated that Firefighter Joe Nugent has committed the offense of Misconduct in violation of KRS 95.450 and LFUCG Employee Handbook and Division Policies and SOPs, in that on the 27th day of April, 2009, he was disrespectful to a citizen, and had a public conflict with another professional, and that the appropriate punishment for this conduct is a Written Reprimand.

Upon motion of Mr. Ellinger, and seconded by Ms. Crosbie, the disciplinary action was approved by unanimous vote.

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Fire Chief Robert Hendricks stated that Firefighter William Taylor has committed the offense of Misconduct in violation of KRS 95.450 and LFUCG Employee Handbook and Division Policies and SOPs, and Collective Bargaining Agreements by and between IAFF Local 526 and LFUCG, in that on the 30th day of March, 2009, he made and/or implied a verbal threat towards his supervisor, and that the appropriate punishment for this conduct is a Written Reprimand.

Upon motion of Mr. Ellinger, and seconded by Ms. Crosbie, the disciplinary action was approved by unanimous vote.

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Fire Chief Robert Hendricks stated that Fire Lieutenant George J. Lusby has committed the offense of Gambling While On Duty in violation of KRS 95.450 and LFUCG Employee Handbook, in that on multiple days of 2009, he participated in internet gambling activities while on duty as a Fire Lieutenant, and that the appropriate punishment for this conduct is a Written Reprimand.

Upon motion of Mr. Ellinger, and seconded by Ms. Crosbie, the disciplinary action was approved by unanimous vote.

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Police Commander Shawn Coleman, Div. of Police, stated that Officer Matthew G. Jordan has committed the offense of Not Submitting Division Reports and Not Being Courteous in violation of KRS 95.450 and General Order 73-2H, Section 1.19, Division Reports, and General Order 73-2/H, Section 1.07, Courtesy, in that on the 17^{th} day of January, 2009, he applied force during the booking of a female prisoner at the Fayette County Detention Center in a response to resistance situation where the prisoner was resisting Officer Jordan's attempts to control her. Officer Jordan did not check the prisoner for injuries. A few minutes after that, Officer Jordan ordered the prisoner to sit down. When she appeared to be heading for a chair, Officer Jordan grabbed the prisoner by the collar of her jacket and forcefully placed her on the floor. Officer Jordan was holding a cell phone to his ear during both incidents. In addition, Officer Jordan indulged in cursing and bantering with the female prisoner and also threatened to go back and tow her vehicle from the area in which she was arrested. The complainant, Sergeant Andrew Daugherty, believes Officer Jordan did not control his temper, was insolent and did not exercise patience and discretion in his actions. During the attempt to control the female prisoner, Officer Jordan delivered a kick to her superficial peronial which stopped the resistance. General Order 91-2/G, Response to Resistance Policy, Section G (2) advises when a Form 616, Critical Incident Report shall be completed by an officer and his immediate supervisor. Subsection (e) advises Form 616 will be completed when an officer strikes a blow (including hands and feet) or exerts a level of control that is likely to result in injury (i.e., forcefully taking a suspect to the ground). According to the complainant, Sergeant Andrew Daugherty, Officer Jordan did not submit the necessary report, and that the appropriate punishment for this conduct is Twenty (20) Hours Suspension Without Pay and Mandatory Employee Assistance Program (EAP).

Upon motion of Mr. McChord, seconded by Mr. Blues, the disciplinary action was approved by unanimous vote.

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Police Commander Shawn Coleman, Div. of Police, stated that Officer Christopher P. Martin has committed the offense of Inappropriate Action in violation of KRS 95.450 and General Order 73-2H, Section 1.48, in that on the 4th day of April, 2009, he responded to a dispatched call in the area of 1333 Centre Parkway, Apt. #78. The call was in reference to terroristic threatening and the suspect was known to Officer Christopher Martin. Lieutenant Christopher Van Brackel advises the suspect was responsible for firing shots at Officer Martin in 2007. According to Lieutenant Van Brackel, when Officer Martin could not locate the suspect in the Centre Parkway area, he proceeded to the suspect's last known address in the area of Kittiwake Drive and Jandymar Court. Other officers arrived at the location with Officer Martin. Lieutenant Van Brackel states that information received says Officer Martin approached the suspect's last known address with a shotgun pointed at the door. He then began yelling profanities and challenging the suspect to come outside. Lieutenant Van Brackel believes the actions taken by Officer Christopher P. Martin were inappropriate, and that the appropriate punishment for this conduct is Twenty (20) Hours Suspension Without Pay and Mandatory Employee Assistance Program (EAP).

Upon motion of Mr. McChord, seconded by Mr. Beard, the disciplinary action was approved by unanimous vote.

* * *

The Council recessed at 8:23 p.m.

* * *

At 8:32 p.m., the Council returned with the same members present except for Ms. Gorton, and with the Vice-Mayor in the chair presiding in the absence of Mayor Newberry.

* * *

An Ordinance changing the zone from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for a 1.36 net (1.83 gross) acres, for property located at 2981 Cadentown Rd. and 3097 (a portion of) Old Todds Rd., subject to certain use restrictions imposed as conditions of granting the zone change (Todds Rd. Development, LLC) was given second reading with a public hearing being held.

Mr. Bill Sallee, Div. of Planning, explained the procedures of the public hearing.

The Vice-Mayor swore in the witnesses.

Mr. Sallee gave his presentation and filed the following exhibits: 1) Legal Notice, 2) Affidavit of notices mailed, 3) MAR 2009-6, Final Report and minutes of the Planning Commission, 4) 2007 Comprehensive Plan, 5) 1983 Zoning Ordinance with amendments, 6) Land Subdivision Regulations, 7) Photographs of the subject property, 8) Zoning Map of subject area (USA 43), 9) 2007 Comprehensive Plan section of the subject area (USA 43), 10) Preliminary Development Plan, and 11) Endris Engineering Vicinity Map.

Ms. Rena Wiseman, attorney for the petitioner, introduced Kevin Phillips, Brad Johnson, and Nick Nicholson, all potential witnesses. Ms. Wiseman gave the reasons for the requested zone change and filed the following exhibits: 1) Exhibit Book which included the following: a) Plat of Subject Properties, b) List of Prohibited Uses, c) KRS 100.213, d) Photographs, e) Plat of Subject Properties Prior to Road Realignment, f) 2002 Aerial Photo, g) 2002 Aerial Photo Depicting Subject Properties, h) Certificate of Occupancy for 3097 Todds Rd., i) 2003 Board of Adjustment Minutes, j) Plat of Subject Properties Prior to Liberty Rd. Construction, k) Plat of Subject Properties After Liberty Rd. Construction, l) 2007 Aerial, m) Section 6-8(q)(2)(c) from Subdivision Regulations, n) Plat of Previous Business Uses on Subject Properties, o) E-mail from District 7 of Ky. Dept. of Transportation, p) Section 6-8(q)(3)(b) of Subdivision Regulations, q) Photos of Proposed Location of Access, r) Aerial Photo with Spacing Measurements, s) Chart: Minimum Access Spacing, t) Chart: Trip Comparison, u) 2007 Aerial, and 2) Affidavit of Notices Posted.

Mr. Kevin Phillips, Endris Engineering, discussed the traffic situation in the subject area and filed the following exhibit: 3) Traffic Map of the subject area.

Ms. Wiseman filed the following additional exhibit: 4) Proposed Findings of Fact.

The following witness spoke against the requested zone change: (1) Mr. Alami Abdulqader, Cadentown Rd.

Mr. Sallee gave his rebuttal and summation.

Ms. Wiseman gave her rebuttal and summation.

The Council asked questions of Mr. Sallee, Ms. Wiseman and Mr. Phillips.

Ms. Rochelle Boland, Department of Law, explained the Planning Commission's Findings of Fact.

Upon motion of Mr. Stinnett, seconded by Mr. McChord, and approved by unanimous vote, the Council recessed at 8:55 p.m. in order to review the Findings of Fact.

* * *

The Council returned with the same members present at 9:05 p.m.

* * *

Mr. Stinnett made a motion, seconded by Ms. James to approve the following Planning Commission's Findings of Fact for Conditional Approval for 3097 (a portion of) Old Todds Road:

1. There has been an unanticipated change of a physical, social, or economic nature in the community area since the Comprehensive Plan was adopted in 2007.
2. The existing R-1D zoning is inappropriate, and the proposed B-1 zoning is more in agreement with the Comprehensive Plan.
3. <u>Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited via conditional zoning:</u>
   a. Shoe repair, self-service laundry or laundry pick-up station, including clothes cleaning establishments using a closed-system process.
   b. Automobile service stations.
   c. Parking lots and structures.
   d. Repair of household appliances.
   e. Outdoor miniature golf or putting courses.
   f. Circuses and carnivals on a temporary basis.
   g. Indoor theaters.
   h. Arcades, including pinball and electronic games.
   i. Pawn shops.
   j. Athletic facilities exceeding 4,000 square feet.
   k. Banquet facilities.
   l. Drive-through facilities.
   m. Pool or billiard tables.
   n. Self-service car washes.
   o. Restaurants offering live entertainment and/or live dancing, cocktail lounges, brew pubs or nightclubs.
   p. Upholstery shops.
   q. Mining.
   r. Gasoline pumps.
   s. Assisted living facilities and rehabilitation homes.
   t. Funeral parlors.
   u. Hospitals, nursing homes, and rest homes.
   v. Cable television signal distribution centers and studios.

These use restrictions have been offered by the applicant, and are appropriate and necessary to protect the established residential neighborhood from the most intrusive and intense land uses otherwise possible in a B-1 zone.

And the following amended Findings of Fact for Disapproval for 2981 Cadentown Road:

1. The requested rezoning to a Neighborhood Business (B-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Medium Density Residential (MD) land use, defined as 5-10 dwelling units per net acre, for the subject property. For a majority of the subject property, the existing Single Family Residential (R-1D) zone could be developed in keeping with the residential recommendation of the Plan.
2. Although the subject property is situated at the edge of a defined commercial area, and along a recently improved roadway, no justification exists for expansion of business zoning for the subject property. KRS 100 and Article 6 of the Zoning Ordinance require a two-fold justification to support a zone change if it is not in agreement with the Comprehensive Plan, that both the existing zoning is inappropriate AND that the proposed zoning is appropriate.
3. That the Planning Commission, in its discussions, was concerned about the additional traffic impact on Liberty Road, and has found that this additional impact would be detrimental to the area.

The motion **passed** by the following vote:

Aye: Gray, Henson, James, Lawless, McChord,
Myers, Stinnett, Beard, Blues---------------------9

Nay: Feigel, Lane, Crosbie, Ellinger--------------------4

* * *

The Council continued their discussion.

Upon motion of Mr. Gray, seconded by Mr. Stinnett, the Council recessed at 9:59 p.m.

* * *

At 10:06 p.m. the Council returned with the same members present.

* * *

Upon motion of Mr. Stinnett, seconded by Mr. Ellinger, and approved by unanimous vote, an Ordinance changing the zone from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for a 1.36 net (1.83 gross) acres, for property located at 2981 Cadentown Rd. and 3097 (a portion of) Old Todds Rd., subject to certain use restrictions imposed as conditions of granting the zone change (Todds Rd. Development, LLC) was removed from the docket.

*   *   *

Upon motion of Mr. Stinnett, seconded by Mr. McChord, and approved by unanimous vote, an Ordinance changing the zone from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for 0.4363 net (0.5516 gross) acres, for property located at 3097 (a portion of) Old Todds Rd., subject to certain use restrictions imposed as conditions of granting the zone change (Todds Rd. Development, LLC) was placed on the docket and given first reading.

*   *   *

Upon motion of Mr. Stinnett, seconded by Mr. Ellinger, and approved by unanimous vote, an Ordinance changing the zone from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for .9238 net (1.2757 gross) acres, for property located at 2981 Cadentown Rd. (Todds Rd. Development, LLC) was placed on the docket and given first reading.

*   *   *

Upon motion of Mr. Ellinger, seconded by Ms. Crosbie, the rules were suspended by unanimous vote.

The following ordinances were given second reading.

An Ordinance changing the zone from a Single Family Residential (R-1D) zone to a Neighborhood (B-1) zone for 0.4363 net (0.5516 gross) acres, for property located at 3097 (a portion of) Old Todds Rd., subject to certain use restrictions imposed as conditions of granting the zone change (Todds Rd. Development, LLC).

An Ordinance changing the zone from a Single Family Residential (R-1D) zone to a neighborhood Business (B-1) zone for .9238 net (1.2757 gross) acres, for property located at 2981 Cadentown Rd. (Todds Rd. Development, LLC).

*   *   *

Mr. Stinnett made a motion, seconded by Mr. Ellinger, to approve the following Planning Commission's Findings of Fact for Conditional Approval for 3097 (a portion of) Old Todds Road:

1. There has been an unanticipated change of a physical, social, or economic nature in the community area since the Comprehensive Plan was adopted in 2007.
2. The existing R-1D zoning is inappropriate, and the proposed B-1 zoning is more in agreement with the Comprehensive Plan.
3. <u>Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited via conditional zoning:</u>

a. Shoe repair, self-service laundry or laundry pick-up station, including clothes cleaning establishments using a closed-system process.
b. Automobile service stations.
c. Parking lots and structures.
d. Repair of household appliances.
e. Outdoor miniature golf or putting courses.
f. Circuses and carnivals on a temporary basis.
g. Indoor theaters.
h. Arcades, including pinball and electronic games.
i. Pawn shops.
j. Athletic facilities exceeding 4,000 square feet.
k. Banquet facilities.
l. Drive-through facilities.
m. Pool or billiard tables.
n. Self-service car washes.
o. Restaurants offering live entertainment and/or live dancing, cocktail lounges, brew pubs or nightclubs.
p. Upholstery shops.
q. Mining.
r. Gasoline pumps.
s. Assisted living facilities and rehabilitation homes.
t. Funeral parlors.
u. Hospitals, nursing homes, and rest homes.
v. Cable television signal distribution centers and studios.

<u>These use restrictions have been offered by the applicant, and are appropriate and necessary to protect the established residential neighborhood from the most intrusive and intense land uses otherwise possible in a B-1 zone.</u>

The motion **passed** by the following vote:

Aye: Feigel, Gray, Henson, James, Lane,
Lawless, McChord, Myers, Stinnett, Beard,
Blues, Crosbie, Ellinger------------------------------13

Nay: ---0

Upon motion of Mr. Stinnett, seconded by Ms. Crosbie, the ordinance was approved by the following vote:

Aye: Feigel, Gray, Henson, James, Lane,
Lawless, McChord, Myers, Stinnett, Beard,
Blues, Crosbie, Ellinger------------------------------13

Nay: ---0

* * *

Mr. Stinnett made a motion, seconded by Ms. Lawless, to approve the following Findings of Fact for Disapproval for 2981 Cadentown Road:

1. The requested rezoning to a Neighborhood Business (B-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Medium Density Residential (MD) land use, defined as 5-10 dwelling units per net acre, for the subject property. For a majority of the subject property, the existing Single Family Residential (R-1D) zone could be developed in keeping with the residential recommendation of the Plan.

2. Although the subject property is situated at the edge of a defined commercial area, and along a recently improved roadway, no justification exists for expansion of business zoning for the subject property. KRS 100 and Article 6 of the Zoning Ordinance require a two-fold justification to support a zone change if it is not in agreement with the Comprehensive Plan, that both the existing zoning is inappropriate AND that the proposed zoning is appropriate.
3. That the Planning Commission, in its discussions, was concerned about the additional traffic impact on Liberty Road, and has found that this additional impact would be detrimental to the area.

The motion **passed** by the following vote:

Aye: Gray, Henson, James, Lawless, McChord,
Myers, Stinnett, Beard, Blues, Crosbie-----------10

Nay: Feigel, Lane, Ellinger-----------------------------------3

Upon motion of Mr. Stinnett, seconded by Mr. Beard, the ordinance **failed to pass** by the following vote:

Aye: Feigel, Lane, Ellinger----------------------------------3

Nay: Gray, Henson, James, Lawless, McChord,
Myers, Stinnett, Beard, Blues, Crosbie-----------10

* * *

Upon motion of Mr. Ellinger, seconded by Ms. Crosbie, and approved by unanimous vote, the meeting adjourned at 10:19 p.m.

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Clerk of the Urban County Council