

James
Crosbie
Myers
Gray
Blues
Beard
Henson
Feigel
Lawless
Martin

INTER-GOVERNMENTAL COMMITTEE

September 15, 2009
1:00 P.M.

A G E N D A

1. **Oath of Office – Beard** (1-8)
2. **Ethics Act Financial Disclosure for Board/Commission – Myers** (1,9-35)
3. **Citizens Advocate Dispute Resolution Training- Lawless** (36-38)
4. **Boards & Commissions Reporting – Myers** (39-41)
5. **Boards & Commissions with Nominating Bodies – Crosbie** (42-50)
6. **Update on Committee Items** (51-52)

"Inter-Governmental Committee, to which should be referred matters relating to wages and classification, personnel, government organization, employee relations, government buildings and property maintenance."

Council Rules & Procedures, Section 2.102(2)



Lexington-Fayette Urban County Government
DEPARTMENT OF LAW

Jim Newberry
Mayor

Logan Askew
Commissioner

TO: Intergovernmental Committee
FROM: Department of Law
DATE: September 10, 2009
RE: Oaths and Ethics Act

At the June 9, 2009, Intergovernmental Committee, Councilmember Feigel made a motion requesting the Department of Law to provide a second draft of the Ordinance requiring board and commission members to take an oath of office. The draft ordinance is attached. Additionally, I would like to refer you to the April 10, 2009 memorandum from this Department concerning oaths for boards and commission members. A copy of the memorandum is attached as well.

At the same meeting, Councilmember Myers made a motion to amend the Ethics Act to require that boards and commission members appointed by the mayor and approved by the council be subject to the Ethics Act in its entirety. A copy of the draft ordinance is attached. Additionally, I would like to refer to the October 9, 2008 memorandum from this Department concerning making all boards and commissions subject to the Ethics Act. A copy of the memorandum is attached.

Lastly, attached is a table provided by the Kentucky League of Cities which was previously e-mailed to the Committee by Commissioner Askew. This table shows what other cities do in terms of financial disclosure.

If you have any questions or need additional assistance, please let me know.


Glenda Humphrey George, Attorney Sr.

Attachments

ORDINANCE NO. _____-2009

AN ORDINANCE REQUIRING APPOINTEES TO BOARDS, AGENCIES AND COMMISSIONS COVERED BY THE PROVISIONS OF ARTICLE SEVEN (7) OF THE CHARTER AND WHICH REQUIRE COUNCIL CONFIRMATION FOR APPOINTMENT OF MEMBERS TO TAKE AN OATH OF OFFICE OR OATH BY AFFIDAVIT WITHIN THIRTY (30) DAYS OF COUNCIL CONFIRMATION AND REQUIRING THAT THE OATH BY AFFIDAVIT FORM BE SUBMITTED TO THE OFFICE OF THE COUNCIL CLERK WITHIN FOURTEEN (14) DAYS OF COMPLETION.

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

Section 1 - That Section 2-19 of the Code of Ordinances be and hereby is created to read as follows:

(1) All appointees to the boards, agencies and commissions covered by the provisions of Article 7 of the Charter and which require council confirmation for appointment of members shall take an oath of office administered by the Clerk of the Urban County Council or an oath by affidavit. Appointees shall not take office until after completion of the oath. If the oath is not completed within thirty (30) days after council confirmation, the office shall be vacated and another appointment to the office shall be made by the mayor subject to council confirmation. The oath by affidavit form shall be submitted to the Council Clerk's Office within fourteen (14) days after completion.

(2) The requirements set forth in subsection (1) shall not apply to board and commission members whose appointment began prior to July 1, 2009.

(3) The oath taken by appointees to boards, agencies and commissions shall state as follows:

I, _____, do solemnly swear or affirm that I will attend training offered by the Urban County Government relating to members of boards and commissions and that I have reviewed the governing documents relating to the board, agency or commission to which I have been appointed.

I further solemnly swear or affirm that I will discharge, to the best of my ability, the duties and responsibilities of the board, agency or commission to which I have been appointed.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:

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Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Members, Intergovernmental Committee
FROM: Department of Law
DATE: April 10, 2009
RE: Oath for Board/Commission Members

Pursuant to our discussion at the last Intergovernmental Committee meeting, I write to advise concerning the proposed requirement that Board and Commission members take an oath of office.

If the Council wants to require board and commission members to take an oath, certain boards and commissions would be exempt. We have reviewed the current list of board and commissions and believe that they may be classified into five categories: (1) special districts governed by state law; (2) boards and commissions created by LFUCG and are separate corporations; (3) boards and commissions created and governed by LFUCG; (4) boards and commissions created by state statute and are agencies of the state, but not special districts; and (5) boards and commissions created by state statute and LFUCG has operational or supervisory control.

SPECIAL DISTRICTS GOVERNED BY STATE LAW

Several boards and commissions are created by state law and are considered special districts, which are defined as:

[A]ny agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes political subdivisions of the state except a city, a county, or a school district.

KRS 65.005. Examples of boards and commissions which constitute special districts include, but are not limited to, the following:

Agricultural Extension District Board (KRS Chapter 164)

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Airport Board	(KRS Chapter 183)
Board of Health	(KRS 612.626 <i>et seq.</i>)
Human Rights Commission	(KRS 344.300 <i>et seq.</i>)
Parking Authority Board	(KRS 67A.910 <i>et seq.</i>)
Transit Authority Board	(KRS Chapter 96A)
Housing Authority Board	(KRS 80.020 <i>et seq.</i>)
Library Board of Trustees	(KRS Chapter 173)

Of these, only Library Trustees and Agricultural Extension Board members are required to take an oath mandated by the State. KRS 173.340(3); KRS 164.650(5).

The Kentucky Court of Appeals has held that the Louisville/Jefferson County Metro Ethics Code does not apply to the Louisville/Jefferson County Metropolitan Sewer District because it is an "independent body politic charged with the administration of designated affairs" and was created "by the sovereign power of the state as 'a public body corporate, and political subdivision'." Louisville/Jefferson County Metro Ethics Commission v. Schadein, 259 S.W.3d 510, 512 (Ky. App. 2008).

The enabling statutes for the board and commissions identified above state that each is an "independent body politic" as in the Schadein case. Each of these boards and commissions are creatures of state law over which LFUCG has virtually no operational control. In Cason v. Louisville Water Company, 103 S.W.3d 46, 51 (Ky. 2003), the Supreme Court held that the statutory requirement that board appointments were made by the mayor was insufficient to create an agency relationship between the board and the local government. Moreover, the subject board was also financially independent and the city was not liable for its debts. Id.

The Attorney General has opined that local governments may not impose term limits on boards which are governed by state statute. OAG 85-116. In the opinion, the Attorney General specifically mentions the airport board, library board, board of health and planning commission. The basis for the decision is that local government authority is granted by statute. In these cases, the state statutes govern.

It is our opinion that boards and commissions categorized as special districts are exempt from any oath requirements that may be imposed by the urban county council because they are creatures of the state.

BOARDS AND COMMISSIONS CREATED BY STATE STATUTE WHICH ARE NOT SPECIAL DISTRICTS

There are several boards and commissions which are created pursuant to state statute, but do not fall within the definition of a "special district" as discussed above. Although created by state statute, these boards and commissions are not considered "special districts" because they were not created as independent body politics. Examples of these types of boards and commissions include, but are not limited to, the following:

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**Convention & Visitors Bureau
Civil Service Commission**

Because the state statute authorizing the creation of these types of boards and commissions does not include an oath requirement, it is the opinion of this Department that these boards and commissions would be exempt from any legislation passed by the Council.

**BOARDS AND COMMISSIONS CREATED BY LFUCG AND ARE
SEPARATE CORPORATIONS**

The boards and commissions which LFUCG created solely by ordinance and authorized to incorporate as legal entities separate and apart from LFUCG include, but are not limited to, the following:

Bluegrass Crimestoppers, Inc.
Henry Clay Memorial Foundation
Lexington History Museum, Inc.
Carnegie Literacy Center, Inc.

Explorium of Lexington
Hope Center, Inc.
One Parent Family Facility Corp.

Because these boards and commissions function as corporations, their general duties and responsibilities as board members are covered by state statutes relating to non-profit corporations. A copy of those statutory duties is attached. Being created solely by LFUCG, we believe that an oath may be required of these board members, which does not conflict with state law.

BOARDS AND COMMISSIONS CREATED AND GOVERNED BY LFUCG

As to the boards and commissions that are purely creatures of LFUCG, legislation may be passed requiring members to take an oath of office provided that the requirement does not conflict with state law. Examples of these types of boards and commissions include, but are not limited to:

Address Enforcement Hearing Board
Animal Care and Control Oversight Board
Horse Patrol Commission

Arboretum Advisory Committee
Downtown Events Committee
Internal Audit Board

**BOARDS AND COMMISSIONS CREATED BY STATE STATUTE AND LFUCG HAS
OPERATIONAL OR SUPERVISORY CONTROL**

There are also boards and commissions which are created by state statute, which specifically grants supervisory or organizational control to local government. Examples of these types of boards and commissions include, but are not limited to:

Lexington Downtown Development Authority, Inc.

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Lexington Center Corporation

Because the statute grants LFUCG supervisory and/or organizational control over these types of boards, we are of the opinion that an oath may be required.

Please note that in the absence of state law, board and commission members are removed from office by a majority vote of the council. Charter, Section 7.02. We assume that the penalty for violating an oath would be removal from office.

The constitutional oath taken by all public officials is:

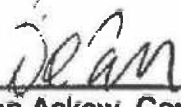
I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of..... according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

Kentucky Constitution, Section 228. All LFUCG elected officials, members of the Planning Commission, and Board of Adjustment and, and members of the Agricultural Extension Board are required to take this oath. KRS 100.151; KRS 100.217(6); KRS 164.650(5).

If the intent of the oath is to ensure that appointees are performing their duties in a manner in which the public has confidence in their integrity, this can be accomplished by providing a board member orientation rather than an oath. The orientation would include duties and responsibilities of board members and might be a more effective way of ensuring ethical conduct.

As you know, the number of boards and commissions in which the members are appointed by the mayor is quite extensive. We are in the process of reviewing the list of boards and commissions and researching the creation of each to determine the appropriate category for each. We will provide you with regular updates concerning our progress in this area.

If you have any questions or need additional assistance, please let me know.



Logan Askew, Commissioner of Law

273.215 General standards for directors.

- (1) A director of a nonprofit corporation subject to the provisions of KRS 273.161 to 273.387 shall discharge his duties as a director, including his duties as a member of a committee:
 - (a) In good faith;
 - (b) On an informed basis; and
 - (c) In a manner he honestly believes to be in the best interests of the corporation.
- (2) Such director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporations, or into a particular action to be taken or decision to be made.
- (3) In discharging his duties such director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - (a) One (1) or more officers or employees of the corporation whom the director honestly believes to be reliable and competent in the matters presented;
 - (b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or
 - (c) A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.
- (4) A director of a nonprofit corporation shall not be considered to act in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.
- (5) In addition to any other limitation on such director's liability for monetary damages contained in any provision of the corporation's articles of incorporation adopted in accordance with the provisions of KRS 273.248, any action taken as a director, or any failure to take any action as a director, shall not be the basis for monetary damages or injunctive relief unless:
 - (a) The director has breached or failed to perform the duties of the director's office in compliance with this section; and
 - (b) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.
- (6) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of subsection (5)(a) and (b) of this section, and the burden of proving that the breach or failure to perform was the legal cause of the damages suffered.
- (7) Nothing in this section shall eliminate or limit the liability of any director for any act or omission occurring prior to July 15, 1988.

Effective: July 15, 1988

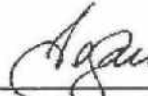
History: Amended 1988 Ky. Acts ch. 224, sec. 12, effective July 15, 1988. -- Created 1988 Ky. Acts ch. 23, sec. 245, effective January 1, 1989.

remove these appointed board members pursuant to Charter, Section 7.02. The Articles of Incorporation for the Lexington Downtown Development Authority, Inc. specifically state that "A director may be removed by a majority of the council members of the LFUCG, in accordance with Section 7.02 of LFUCG's charter."

Boards/Commissions created by Ordinance with no separate corporate existence. The ordinances creating the following boards/commissions do not provide for member removal and are governed by Charter Section 7.02: Internal Audit Board; Town and Gown Commission, Parks and Recreation Advisory Board; Community Partnership Action Council; Court Appointed Special Advocate Board; Citizens Transit Advisory Board; Criminal Justice Commission; Housing and Support Services Commission; Animal Care and Control Advisory Committee; Plant Closing Committee; Special Events Commission; Sister Cities Programs Commission; Roadways Commission; Domestic Violence Prevention Board; Raven Run Citizens Advisory Board; Arts Review Board; Picnic With The Pops Commission; Commission on Community Services for Older Persons; Masterson Station Park Advisory Board; Metropolitan Environmental Improvement Board; Citizens' Transportation Advisory Commission; County Cemetery Board; and, Neighborhood Center Boards.

By Ordinance, removal of the Arts Commission members is by majority vote of councilmembers and only for cause. Section 2-453(d).

Please advise if you have questions or comments.


 Logan B. Askew, Commissioner of Law

attachment

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DRAFT
9/4/09

ORDINANCE NO. _____

AN ORDINANCE

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

Section 1 -- That Section 25-4 of the Code of Ordinances be and hereby is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) Agency means the ~~Lexington-Fayette Urban County Government Board of Adjustment, Comprehensive Plan Update Committee, Ethics Commission, and Planning Commission~~ a board or commission covered by the provisions of Article Seven (7) of the Charter and which require council confirmation for appointment unless exempt by state law.
- (2) Business means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.
- (3) Candidate means any individual who seeks nomination or election to an "office" listed in subsection (9)(a) of this section. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or secretary of state, or is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.
- (4) Constitutional officer means any person who is one of the following: County judge/executive, county clerk, county attorney, sheriff, coroner, surveyor or constable.
- (5) Employee means any person, whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the urban county government or to any "constitutional officer", as

the terms are defined in this section. The term "employee" shall include, but not be limited to, those employees occupying the classified civil service positions established at Code section 21-5, the unclassified civil service positions established at Code section 22-5, and the police and fire positions established at Code section 23-5. The term "employee" shall not include any contractor or subcontractor or any of their employees.

- (6) Ethics commission means the Lexington-Fayette Urban County Government Ethics Commission which is created and vested by this chapter with the responsibility for enforcing the requirements of the Lexington-Fayette Urban County Government Ethics Act.
- (7) Family member means a spouse, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.
- (8) Immediate family member means a spouse, an unemancipated child residing in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.
- (9) Officer means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:
 - (a) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor or constable; or
 - (b) An appointee or a member of the governing body and chief executive officers, if any, of the urban county government ~~board of adjustment, comprehensive plan update committee, ethics commission, or planning commission.~~ agencies.

Section 2 – That Section 25-13 of the Code of Ordinances be and hereby is amended to read as follows:

The following persons shall file an annual statement of financial interests with the ethics commission established at section 25-20:

- (1) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor and constables;

- (2) Candidates for the offices enumerated in subsection (1) of this section;
- (3) Members and chief executive officers, if any, of urban county government ~~board of adjustment, comprehensive plan update committee, ethics commission, planning commission~~ agencies.
- (4) Commissioners, senior advisors to the mayor, division directors, or comparable positions with similar responsibilities and authority and employees holding the positions of buyer and buyer senior of the urban county government; and
- (5) All persons formerly occupying the positions identified in subsections (1--4) of this section for the first full calendar year following the end of their term of office or employment.

Section 3 – That this ordinance shall be effective upon date of passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: George Myers, Councilmember
FROM: Department of Law
DATE: October 9, 2008
RE: Ethics Act Revisions – Boards and Commissions
 Log. No. 07-CC1819

In 1994, the General Assembly adopted KRS 65.003 which required that all local governments adopt ethics codes. The language set forth in this statute states as follows:

The governing body of each . . . urban-county . . . shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the urban-county . . . and to appointed officials and employees of the . . . urban-county . . . or agencies created jointly, as specified in the code of ethics.

KRS 65.003(1). Based on this, local ethics codes apply to the following:

- Elected Officials
- Appointed Officials
- Employees
- Agencies created jointly with another governmental entity

Additionally, the statute requires that each code of ethics have at least four provisions which address the following matters:

- (a) Standards of conduct for elected and appointed officials and employees;
- (b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for . . . elective offices . . . elected officials . . . and other officials or employees . . . as specified in the code of ethics, and which

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Memo to George Myers, Councilmember
October 9, 2008

shall be filed with the person or group responsible for enforcement of the code of ethics, provided that nonpaid members of jointly created agencies may be exempted from filing financial disclosure statements;

- (c) A policy on the employment of members of the families of officials or employees . . . as specified in the code of ethics;
- (d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

KRS 65.003(3).

As you know, the Council spent much time debating which boards and commissions should be included under our code of ethics which is commonly referred to as the "Ethics Act". In reviewing the old files, there is an editorial which you might find interesting concerning this matter. A copy of the editorial is attached.

The ordinance revisions that will be discussed at the next Services Committee are attached. Additionally, please note that our further review of this matter indicates that independent boards and commissions are not subject to local ethics codes. This was the subject of a case decided in July of this year. In Louisville/Jefferson County Metro, Ethics Commission v. Schadein, 259 S.W. 3d 510 (Ky. App. 2008), the court held that the Louisville/Jefferson County Metro Ethics Code does not apply to the Louisville/Jefferson County Metropolitan Sewer District because under its enabling statute it is a "independent body politic charged with the administration of designated affairs" and was created "by the sovereign power of the state as 'a public body corporate, and political subdivision'." Id. at 512.

Accordingly, the following are not subject to a local ethics code:

Agricultural Extension District Board	Airport Board
Board of Health	Human Rights Commission
Parking Authority Board	Transit Authority Board
Housing Authority Board	Library Board of Trustees

In each of these cases, there is a state enabling statute which proves that each is an "independent body politic" as defined in the case.

Memo to George Myers, Councilmember
October 9, 2008

Prior to the Schadein decision, the Attorney General had considered whether city and county ethics codes may be applied to boards and commissions whose members are appointed by urban county officials and are considered to be "special districts". In Attorney General Opinion 94-71, the Attorney General opined that the enabling statute, KRS 65.003, does not subject "special districts" to local ethics codes. KRS 65.005 defines a "special district" to include "all political subdivisions of the state except a city, a county, or a school district" giving further support to our position that the above referenced boards and commissions are not subject to ethics codes.

Interestingly, the Interim Committee on Local Government considered in 1995 amending KRS 65.003 to include coverage of special districts within local ethics codes; however, no amendments have been made to the enabling statute relating to special districts.

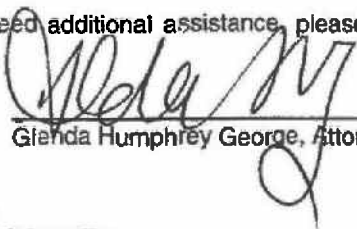
Further, based on the above authorities, it is also the opinion of this Department that KRS 65.003 does not provide that a local ethics code applies to private non-profits in which some or all of the board members are appointed by the mayor subject to confirmation by the council as members of these entities would not be considered as appointed officials of the urban county government.

In the Schadein case, the court held that boards and commissions over which the Government has no operational control, are financially independent, or for which the Government is not liable for its debts, are not considered agencies of the Government. Id. at 515. If these entities are not considered as board, commissions or agencies of the Government, then members of these groups are not considered to be appointed officials within the meaning of KRS 65.003. Each of these groups is created pursuant to Articles of Incorporation and has its own corporate structure. In our case, these agencies include:

Bluegrass Crimestoppers, Inc.	Lexington DDA, Inc.
Community Action Council	Explorium of Lexington
Henry Clay Memorial Foundation	Public Library Corporation
Hope Center, Inc.	Lexington Center Corporation
Lexington History Museum Inc.	One Parent Family Facility Corp.

As I understand it, the proposed Ordinance changes are designed to address certain categories of agencies without specifically naming them. As we have previously indicated to you, we strongly encourage the Council to name the specific agencies to eliminate any confusion about which are covered. In the absence of this specificity, the enclosed should cover all agencies that exercise any land use authority, which are: Board of Architectural Review, Courthouse Area Design Review Board, Historic Preservation Commission and the Rural Land Management Board. The Planning Commission and Board of Adjustment are specifically listed already.

If you have any questions or need additional assistance, please do not hesitate to contact me.



Glenda Humphrey George, Attorney Sr.

cc: Jim Newberry, Mayor
Joe Kelly, Sr. Advisor for Management
Andrea James, Chair, Intergovernmental Committee
Paul Schoninger, Council Office
Rebecca Langston, Council Office

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EDITORIALS

No exemption

Include boards, commissions in ethics code

One by one, they stood to address last week's final meeting of the advisory committee drafting an ethics ordinance for Fayette County. They were lawyers and one board chairman, representing the Library Board, the Airport Board, the Board of Health, the Housing Authority, the Human Rights Commission. Each one's spiel seemed like an echo of the preceding speaker.

The (fill in the blank) board was created by state statute. The mayor appoints its members, but the board is independent. It has no affiliation with any local government. It's beyond the jurisdiction of the Urban County Council.

Imposing an ethics ordinance on the (fill in the blank) board will invite legal challenges of the ordinance, and might leave the Urban County Government open to liability in suits against the (fill in the blank) board.

The (fill in the blank) board will lose good members if it is subject to financial disclosure requirements. Financial disclosure is an invasion of their privacy.

We're for ethics, but include us out.

At times, the comments were overtly elitist. Bert Cowgill, chairman of the Library Board, noted that "the qualified people we want on boards and commissions" tend to be successful people with significant investments and estates. Privacy is a legitimate issue to these people, he said, even though they have nothing to hide.

In other words, those Fayette Countians without significant investments and estates aren't qualified to make decisions about libraries, airports and the like. And if

they were qualified, privacy wouldn't be important to them.

Distinctions need to be drawn, Cowgill argued. The balance between the need for public disclosure and ethics is not the same in Fayette County as it is in some rural counties, he told the board.

Hmmm. It's nice to know that the residents of Fayette County never have to worry about members of these boards and commissions acting out of vested interest, because being from this county automatically invests these folks with an angelic level of purity unavailable to their counterparts elsewhere in the commonwealth.

In the end, the ethics advisory committee caved in to the pressure from the boards. By a 7-4 vote, the committee removed the financial disclosure requirement for most of these agencies. The Urban County Council ought to demonstrate more toughness.

After all, these boards and commissions spend millions of public dollars. They hire and fire people. They buy and/or lease property. They make critical decisions about the quality of life in Fayette County. Some of them have enormous powers. The Board of Health, for instance, can close down businesses. The Airport Board has its own police force with countywide arrest powers.

But to hear them tell it, these boards and commissions don't answer to anyone in Fayette County — not to elected officials, not to the voters. It's time to change that. There's no better way to start than by the Urban County Council requiring financial disclosure for board members and top executives of these agencies.

DRAFT
10/9/08

ORDINANCE NO. _____

AN ORDINANCE

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

Section 1 – That Section 25-4 of the Code of Ordinances be and hereby is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) Agency means ~~the Lexington-Fayette Urban County Government Board of Adjustment, Comprehensive Plan Update Committee, Ethics Commission, and Planning Commission~~ any board or commission created by the urban county government in which the members are appointed by the mayor subject to confirmation by the council.
- (2) Business means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.
- (3) Candidate means any individual who seeks nomination or election to an "office" listed in subsection (9)(a) of this section. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or secretary of state, or is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.
- (4) Constitutional officer means any person who is one of the following: County judge/executive, county clerk, county attorney, sheriff, coroner, surveyor or constable.
- (5) Employee means any person, whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the urban county government or to any "constitutional officer", as

the terms are defined in this section. The term "employee" shall include, but not be limited to, those employees occupying the classified civil service positions established at Code section 21-5, the unclassified civil service positions established at Code section 22-5, and the police and fire positions established at Code section 23-5. The term "employee" shall not include any contractor or subcontractor or any of their employees.

- (6) Ethics commission means the Lexington-Fayette Urban County Government Ethics Commission which is created and vested by this chapter with the responsibility for enforcing the requirements of the Lexington-Fayette Urban County Government Ethics Act.
- (7) Family member means a spouse, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.
- (8) Immediate family member means a spouse, an unemancipated child residing in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.
- (9) Officer means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:
 - (a) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor or constable; or
 - (b) An appointee or a member of the governing body and chief executive officers, if any, of the urban county government ~~board of adjustment, comprehensive plan update committee, ethics commission, or planning commission.~~ agencies.

Section 2 – That Section 25-13 of the Code of Ordinances be and hereby is amended to read as follows:

The following persons shall file an annual statement of financial interests with the ethics commission established at section 25-20:

- (1) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor and constables;

- (2) Candidates for the offices enumerated in subsection (1) of this section;
- (3) Members and chief executive officers, if any, of urban county government board of adjustment, ~~comprehensive plan update committee~~, ethics commission, planning commission, or any agency whose primary mission involves land use or which has land use regulatory authority.
- (4) Commissioners, senior advisors to the mayor, division directors, or comparable positions with similar responsibilities and authority and employees holding the positions of buyer and buyer senior of the urban county government; and
- (5) All persons formerly occupying the positions identified in subsections (1-4) of this section for the first full calendar year following the end of their term of office or employment.

Section 3 – That the Clerk of the Urban County Council be and hereby is authorized and directed to deliver a copy of this ordinance and proof of publication to the Department of Local Government within twenty-one (21) after the effective date of this ordinance.

Section 4 – That this ordinance shall be effective upon date of passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

X:\Cases\CO\07-CC1819\LEG\00177208-3.DOC

City	Who it applies to?	Applies to those with Disbursement over?	Source of Income Amount	Real Property	Business Interest	Creditor
Ashland	Elected officers; Candidates for elected office; City Manager; All department heads;	N/A	Over \$10,000	Over \$10,000	Over \$10,000	N/A
Augusta	Elected city officials. Candidates for city elective office. (KRS 65.003)	N/A	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000
Berea	officers, candidates for county office, and employees with procurement authority in excess of \$500	Over \$500	Over \$5,000	N/A	N/A	Over \$500
Bowling Green	Elected city officials. City Manager and Department heads. Assistant City Manager/City Clerk. Comptroller. Internal Auditor.		Over \$10,000	Over \$10,000	Over \$10,000	Over \$10,000

	Candidates for elected office.					
Cadiz	Elected city officials. Candidates for elected city office. City Clerk. City Administrator. Nonelected officers and employees of the city or any city agency who are authorized to make purchases of materials or services, or award contracts, leases, or agreements involving the expenditure of more than \$10,000	Over \$10,000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000
Cold Spring	Elected city officials. Candidates for elected city office. Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or	Over \$1,000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	services or award contracts, leases or agreements involving the expenditure of more than one thousand (\$1,000) dollars					
Covington	Elected city officials. City Manager. Assistant City Manager. Candidates for elected city office.	N/A	Over \$10,000	Over \$20,000	Over \$20,000	N/A
Crestview Hills	Elected city officials. Candidates for elected city office.	N/A	Over \$10,000	Over \$10,000	Over \$10,000	N/A
Douglass Hills	Elected city officials, or persons properly appointed to elected positions. Candidates for elected city office	N/A	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000
Edgewood	Elected city officials. Candidates for elected city office. City Administrative	Over \$5,000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	Officer. Members of the city planning and zoning commission and board of adjustment, appointed by the appropriate appointing authority of the city. Members of the Board of Ethics created by this chapter. Nonelected officers and employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditure of five thousand dollars (\$5,000) or more.					
Flemingsburg	Elected local government officials. Candidates for elected local government office	N/A	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

Florence	Elected city officials. Members of the city Planning and Zoning Commission and Board of Adjustment. Members of the Board of Ethics created by this chapter. Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or services, or award contracts, leases or agreements involving any single expenditure of more than \$1,000. Candidates for city elective offices	Over \$1,000	Over \$10,000	Over \$10,000	Over \$10,000	Over \$10,000
Fort Mitchell	Candidates for city elective offices Elected officials of the city	N/A	Over \$5,000	Over \$10,000	Over \$10,000	N/A
Fort Thomas	Elected city officials. The city	N/A	Over \$15,000	Over \$10,000	Over \$25,000	Over \$25,000

	Administrative Officer					
Fort Wright	Elected city officials. Candidates for elected city office. Members of the city board of adjustment. Members of the Board of Ethics created by this chapter. Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditure of more than one thousand dollars (\$1,000).	Over \$1,000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000
Highland Heights	Elected officials. Candidates for city elective offices.	N/A	Over \$5,000	Over \$10,000	Over \$10,000	N/A
Hillview	Elected city officials. Candidates for elected city office	N/A	Over \$10,000	Over \$25,000	Over \$25,000	Over \$30,000

Hopkinsville	Elected city officials; Legislative and mayoral candidates; Members of the Board of Ethics created by this chapter; and Nonelected officers and employees of the city and of any city agency who are authorized to make purchases of materials or services, or award contracts, leases or agreements involving the expenditure of more than \$5,000	Over \$5,000	Over \$5,000	N/A	N/A	N/A
Independence	Elected city officials Candidates for elected city office. Members of the City Planning and Zoning Commission and Board of Adjustment. Members of the Board created by this chapter. Non-elected officers and	Purchases of any amount	Over \$5,000	N/A	N/A	N/A

	employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements					
Louisville	Metro Officers	N/A	Over \$5,000	Over \$10,000	Over \$10,000	N/A
Madisonville	Elected city officials. The City Clerk-Treasurer. The City Finance Director. The City Administrative Officer. The City Attorney. The City Engineer. Candidates for city elective office	N/A	Over \$5,000	Over \$10,000	Over \$10,000	N/A
Maysville	Elected city officials; Candidates for elected city office; Members of the Mason County Planning Commission and City Board of	Over \$100	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	Adjustment; Members of the Board of Ethics created by this chapter; Members of the Maysville-Mason County Industrial Development Authority; Members of the City Utility Commission; Members of the City Housing Commission; and Nonelected officers and employees of the city or any city agency who are authorized to make purchases of materials and services, or award contracts, leases or agreements involving the expenditure of more than \$100					
Morehead	Elected city officials. Candidates for elected city office	N/A	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000
Mount Washington	Elected city officials. Candidates for city elective	Over \$10,000	Over \$5,000	N/A	Over \$10,000	Over \$10,000

	office. Members of the city planning and zoning commission and board of adjustment. Members of the Board of Ethics created by this chapter. Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditure of more than ten thousand dollars (\$10,000).					
Murray	Elected city officials. Candidates for city elective offices. Members of the city planning and zoning commission and board of adjustment.	Over \$10,000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	Members of the Board of Ethics created by this chapter. Non-elected officers and employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditure of more than ten thousand dollars (\$10,000).					
Newport	Board of Commissioners Candidates seeking 1 of the elected City offices City Manager Department heads	N/A	Over \$10,000	Any property	Over \$10,000	Over \$10,000
Owingsville	Elected city officials. Candidates for elected city office	N/A	Over \$5,000	N/A	N/A	N/A
Paris	Elected city officials/officers Candidates for elected city office;	Over \$300	Over \$5,000	Over \$5,000	Over \$5,000	N/A

	Officers and employees with procurement authority exceeding three hundred dollars (\$300.00) per purchase; and Boards and Commissions which set tax rates, have procurement authority or vote to adopt budgets					
Pikeville	Officers and employees who are elected; Compensated employees whose job descriptions or actual duties as determined by the Ethics Board involve the negotiation, authorization, or approval of: (1) Contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses; (2) The purchase, sale, rental, or lease of real property, personal property, or services, or a	Compensated employees whose job descriptions or actual duties as determined by the Ethics Board involve the negotiation, authorization, or approval of: (1) Contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses; (2) The purchase, sale, rental, or lease of real property, personal property, or services, or a contract	Each source of income of the filer and the filer's immediate family members (spouse and dependents) from within the state, except where other existing law, statute, ordinances or generally recognized codes of professional conduct prohibit any disclosure, and the form of the income (e.g. salary, interest, etc.), if such source of income is a partnership, unincorporated association, or other	Over \$10,000	Over \$10,000	Over \$10,000

	contract therefor; (3) The obtaining of grants of money or loans; or the adoption or appeal of any rules or regulation having the force of law. Compensated employees who hold policy making positions as determined by the Ethics Board. All candidates for Commission, Mayor or any other elected city office	therefor; (3) The obtaining of grants of money or loans; or the adoption or appeal of any rules or regulation having the force of law.	incorporated business or individual which has engaged within the past twelve (12) months, or which is anticipated to have, any business dealings with the city			
Richmond	Elected city officials, or persons properly appointed to such elected positions. Candidates for elected city office	N/A	Over \$5,000	Over \$10,000	Over \$10,000	N/A
Strathmoor Village	Elected city officials Candidates for elected city office Members of the planning and zoning commission and board of adjustment Members of the	Over \$1000	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	Board of Ethics Officers and employees with procurement authority exceeding three hundred dollars (\$1,000.00) per purchase					
Union	Elected city officials (required by KRS 65.003). Candidates for elected city office (required by KRS 65.003). Members of the city Planning and Zoning Commission and Board of Adjustment. City Administrator and City Clerk/Treasurer. Appointed members of the city's Urban Renewal Agency. Members of the Board of Ethics created by this section. Non-elected officers and employees of the city or an city agency who are	Over \$500	N/A	N/A	N/A	N/A

	authorized to make purchases of materials or services, or award contracts, leases or agreements involving expenditure of more than five hundred dollars (\$500.00) per purchase. Management personnel such as chief deputies and department heads. Members of boards and commissions which set tax rates, have procurement authority, or vote to adopt budget					
Versailles	Elected city officials. Candidates for elective city offices. City appointed members of the Planning and Zoning Commission, Board of Adjustment and Economic Development Authority. Police Chief, Fire Chief, Director of	N/A	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000

	Public Works, City Clerk/Treasurer/T ax Administrator					
Walton	Elected city officials Candidates for elected city office. Members of the city planning and zoning commission and board of adjustment. Members of the Board of Ethics created by this chapter. Non-elected officers, except the city attorney, and employees of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditure of more than three hundred dollars (\$300.00).	Over \$300	Over \$5,000	Over \$10,000	Over \$10,000	Over \$10,000



Lexington-Fayette Urban County Government
OFFICE OF THE CITIZENS' ADVOCATE

Jim Newberry
Mayor

Joan R. Beck
Citizens' Advocate

MEMORANDUM

TO: Council Members

FROM: Joan Beck, Citizens' Advocate

DATE: August 19, 2009

SUBJECT: Dispute Resolution Training for Neighborhood Leaders

Council Member Lawless has asked me how it came to be that Susan Straub issued a press release about the Neighborhood Leader Training program we are promoting. In response to Council Member Lawless' direct question, I do not know how exactly it came to be that Ms. Straub did a press release about the dispute resolution training for neighborhood leaders program. I do know that, after the last Committee of the Whole meeting, when we discussed the second quarter activity report of the Citizens' Advocate Office, we released the report to general circulation. Also, I contacted Malcolm Stallons of the Public Information Office to inquire if this would be a subject of interest for the Employee Extra. He agreed that it was and we did an email interview. I assume that the press release was an earnest attempt by the Public Information Office to be supportive of the initiative.

I'd like to give some history and background for this initiative. From the minute I stepped into this position in 2003 I was asked to do neighborhood mediation and to do outreach with neighborhood associations. In discussions with former Council Members we agreed that it would be inappropriate for the Citizens' Advocate to get involved in actually mediating private matters, since this job relates to government activity. Nonetheless, we have had discussions with several Council Members over the years about ways that this office can bring value and be of service to residents. We've tried to find a way to help neighbors resolve their differences without actually becoming involved in the resolution. It occurred to us that one option would be to help neighborhood leaders improve their skills in this regard, so that they could in turn help their neighbors. We have been encouraged by several Council Members including some who are currently serving, to become more active in the community along these lines.

Building upon the suggestions we have received, and after undertaking significant training ourselves, we began developing the idea of training neighborhood leaders to help their residents work out their differences. I highlighted this proposal during my presentation to the Council of the 2007 Annual Report during Work Session on February 5, 2008, when discussing initiatives for the year ahead. You may recall that shortly thereafter all conversation about new initiatives ceased, in response to Management Partners' audit report. We resurrected the initiative as a goal for this year while working through the budget process. We included discussion of the project in the answers to the 2010 Budget Year Council Links written questions, which we distributed to all Council Members. I did not receive a single negative comment on the proposal.

I presented the idea to the Neighborhood Leaders Forum hosted by the Mayor's Office in April, 2009. Several Council members were in attendance, although most had left by the time my presentation came up on the agenda. That forum gave us a chance to test the waters, to see if neighborhood leaders might be interested in such a program. Our brief presentation was well received. I reported on it in my second quarter report which was distributed to Council on July 10, 2009. I did not receive a single negative comment on the proposal.

Although the recommendations of the Citizens' Advocate Working Group have not been formally adopted, I inferred that it would be best to operate in accordance with those recommendations in the interim. So I refrained from public discussion or dissemination of anything in that report until after the Committee of the Whole on August 11, 2009. After that date I believed that it was acceptable to release the report, having heard nothing to the contrary. Since I had been encouraged in the past to increase the public awareness of the Citizens' Advocate office, it is our practice to distribute our reports to media outlets, including the Public Information Office.

I very much appreciated the phone conversation I had with Council Member Lawless on Tuesday, August 18, 2009, and I believe I heard and understood her concerns. Nonetheless, I believe that I have discussed this idea with Council Members, developed it with the encouragement of Council Members, and promoted the idea in the manner agreed to, at the very least, by members of the Citizens' Advocate Working Group. And up until Tuesday early afternoon I had absolutely no indication from any Council Member of misgivings with the project. However, I am always happy to have the opportunity to converse with you about our activities and look forward to the meeting of the Intergovernmental Committee to which this has been referred.



Lexington-Fayette Urban County Government
OFFICE OF THE CITIZENS' ADVOCATE

Jim Newberry
Mayor

Joan R. Beck
Citizens' Advocate

Dispute Resolution Techniques for Neighborhood Leaders

Being a leader often entails listening to your friends and neighbors. But what do you do when those friends and neighbors have trouble getting along? As a neighborhood leader you can help create a positive environment for resolution of those differences.

Employing some basic mediation skills you can help neighbors hear, not just listen, to each other. You can help them identify their core concerns. You can lead them to resolutions that respect each other's needs. You can bring your neighbors together and improve the way they communicate and reach compromises in the future.

Why would a neighborhood leader want to engage in this process? First, teaching your neighbors how to clearly communicate their concerns will empower them to respectfully engage in civic discourse. Your neighbors will be better able to discuss future concerns with each other, with you, and with government representatives. Second, clear communication leads to faster resolutions with less discord. Third, early resolution eliminates the escalation factor that comes from allowing small annoyances to fester into systemic infection. Fourth, relationships within your neighborhood will grow stronger as you learn to work together toward common goals.

Skills will you learn:

Setting ground rules

Effective listening

Identifying core interests

Emotions in the mix

Contact the Citizens' Advocate Office to schedule a Dispute Resolution Skills workshop in your neighborhood. The two hour workshop is designed for small groups (6 – 10) and can be scheduled at the convenience of the participants. Call 859-258-3230 for more information, or email jbeck@lfucg.com



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

TO: URBAN COUNTY COUNCIL / *Intergov Committee*

FROM: SHAYE RABOLD
ANNA HARTJE
MAYOR'S OFFICE

DATE: SEPTEMBER 10, 2009

SUBJECT: BOARDS AND COMMISSIONS INFORMATION

Since our last meeting on this topic, the Administration has made some progress in getting information about the boards and commissions on the website for the public's reference. In this memo, we will outline what progress has been made and provide a timeline for completion of the project.

As you know, the Council has requested that the names of the boards be listed on the website along with the board's mission statement and make-up requirements. The Council also requested that minutes from all boards be posted on the website.

Thus far, we have been able to list all of the boards and commissions whose members are appointed by the Mayor and confirmed by the Council on the website. It can be accessed by going to the Mayor's Page and clicking on "Boards and Commissions" or by going to the "I want to" tab on the main page and selecting "Become a board/commission member".

Attached for your reference is a screen shot of the LFUCG website where all of the boards and commissions are listed, along with information about the creating ordinance or state statute. If the board or commission was created by KRS, a link is provided to the state website where detailed information on the board is provided. If the board or commission was created by ordinance, the chapter number is provided and a link to the Code of Ordinances is provided at the top of the page. Currently, we are unable to link directly to the code of ordinances by chapter on our website, hence the link to the Code of Ordinances at the top of the boards and commission list page. The citizen can simply search the code of ordinances for the appropriate chapter provided and find information on the board's purpose (mission) and the boards required make-up.

Some boards such as the Planning Commission already list their minutes online and we currently link to that information from the Boards and Commissions site. By the end of this calendar year, we will have as many minutes available as possible and a more user-friendly description of board purpose, make-up, membership and meeting times/locations.

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Finally, a letter will be sent to all boards and commissions this fall requesting an update from them on this year's activities for their respective board. Specifically, we will be seeking information about the number of times the board met, if there were any membership or quorum issues and a recommendation about whether or not the board should remain in existence or if the board is no longer needed. The deadline for this information to be provided to our office will be January 31 and we will provide the Committee with these reports during the February 2010 Intergovernmental Committee meeting.

Lexington-Fayette Urban County Government Lexington, Kentucky: Boards and Commissions Listing - LFUGC

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Destination 2040
Management Audit

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Charter and Code of Ordinances, Lexington-Fayette Urban County Government

Address Enforcement Administrative Hearing Board: Code of Ordinances Ch. 17-4.2

Administrative Hearing Board: KRS 82.760 through 82.725 and KRS 361.770 and Code of Ordinances Ch. 12, Art. 1, sec. 12.13

Agricultural Extension District Board: [KRS 164.605](#)

Airport Board: [KRS 183.132](#), Code of Ord. Sec. 7.18

Alarm Advisory Board: [KRS 65.8201-65.8639](#), Code of Ordinances Ch. 13, sec. 13.73.5

Animal Care and Control Oversight Committee: Code of Ord. Ch 2, Art. XXVII, sec. 2.311 to 2.314

Arboretum Advisory Committee:

Black & Williams Neighborhood Community Center Board: Article IX, Sec 2 - 141

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Lexington-Fayette Urban County Government Lexington, Kentucky: Boards and Commissions - LFUGC

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Dear Friend

Thank you for your interest in volunteering for one of the Lexington-Fayette Urban County Government's boards or commissions. It is citizens like you that make Lexington a great place to live.

We have more than 80 boards and commissions with many areas of interest from which to choose: land use and planning, our parks, the environment, public safety and public health are all areas of importance to our community.

Please follow the steps to be considered for a board or commission. You also will be required to download the background check authorization, complete both

Complete the steps below if you are interested in becoming a board member.

- 1 Step 1 Click [here to open, print, and then complete the application](#).
- 2 Step 2 Click [here to open, print and then complete the authorization form](#).
- 3 Step 3 Mail the completed authorization form and application.

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Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

TO: URBAN COUNTY COUNCIL
INTERGOVERNMENTAL COMMITTEE

FROM: SHAYE RABOLD
ANNA HARTJE
MAYOR'S OFFICE

DATE: SEPTEMBER 10, 2009

SUBJECT: BOARDS AND COMMISSIONS WITH NOMINATING BODIES

During the August 11, 2009 Work Session, Councilmember Crosbie made the following motion:

"A motion by CM Crosbie to place the Ethics Commission and all groups that make nominations for confirmation into the Inter Governmental Committee, seconded by CM Gorton, passed without dissent."

Our office was asked to answer the following questions for the Committee's review:

1. Are there any guidelines that are utilized to fill such appointments?

The Mayor's Office follows the ordinance language in filling positions.

There are three scenarios for such appointments (examples of three ordinances mentioned below are attached).

- The first example is the LFUCG Ethics Commission. In this case, the ordinance spells out that each nominating group must provide a list to the Mayor of not less than three nominees to fill the entities slot. For example, the ordinance states that the ethics commission shall consist of nine members... "One member from a list of not less than three names submitted by the Better Business Bureau of Central and Eastern Kentucky, Inc."...
- The second example is the Urban County Arts Review Board (UCARB): In this case, the nominating body picks the nominee and does not provide a list of options for the Mayor to choose from. In most cases, we accept the nominee, but the Mayor reserves the right to reject the nominee and ask for another if he feels the nominee would not appropriately complement the current make-up of the board. In UCARB's case, the ordinance says the make-up of the board shall include "One licensed architect, submitted by the local American Institute of Architecture Chapter."
- The third example is the Masterson Station Park Advisory Board. In this case, a representative from a certain entity(ies) is required to be on the board. Nominations from the

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entity are not required, but in some instances we do solicit feedback from the organization about who would be a good representative of the group. This happens mainly in the event that we are not aware of the membership of the body and therefore do not know who to put in the position. For example, the ordinance says "one member shall be from The Friends of the Dog Park."

There are no guidelines other than those specified in the respective ordinances. When the Mayor selects a nominee, he considers the board make-up in terms of current skill levels presently on the board and the diversity of the board, as well as recommendation from the Council. Typically, the nominee or nominees submitted by the body is suitable for his recommendation to the Council.

2. What type of interaction is there between the Mayor's Office and nominating bodies regarding these appointments?

When a position becomes vacant, the Mayor's Office contacts the nominating body and requests nominations for the position. This communication happens via email and by phone. On occasion, letters are sent as well. In some instances, the staff person for the board or commission is also involved in seeking the nominations for the board. Frankly, some boards and staff liaisons are better at keeping track of upcoming appointments and we appreciate the assistance.

3. Does the Administration have any recommendations to improve the present process?

The only difficulty the Mayor's Office has identified over the past few years is getting some bodies to respond in a timely manner to the request for nominations, which can potentially slow the process. In the case of the Ethics Commission, the ordinance actually spells out what action should be taken if a nominating body does not submit nominations. This is what happened in the event of A.A.L.E., which is why we came to the Council to request that a new group be put in place of the group that had become defunct. Most boards comply in a timely fashion and some boards actually send the information to us even before our request, which is fine. In these cases, the staff person assigned to the board helps move the process along. The administration is not opposed to changes being made to the nominating bodies included in the ordinances or the elimination of the need for nominating bodies. We do, however, see the value in having nominating bodies so that our boards are diverse as possible and represent varying perspectives.

Sec. 25-20. LFUCG Ethics Commission created.

- (1) There is hereby created a Lexington-Fayette Urban County Government Ethics Commission which shall have the authorities, duties, and responsibilities as set forth in this chapter to enforce the provisions of this chapter.
- (2) The ethics commission shall consist of nine (9) members appointed by the mayor subject to confirmation by a majority of the council, from the following:
 - (a) One (1) member from a list of not less than three (3) names submitted by the Greater Lexington Chamber of Commerce, Inc.;
 - (b) One (1) member from a list of not less than three (3) names submitted by the League of Women Voters of Lexington, Inc.;
 - (c) One (1) member from a list of not less than three (3) names submitted by the Fayette County Bar Association;
 - (d) One (1) member from a list of not less than three (3) names submitted by the Better Business Bureau of Central and Eastern Kentucky, Inc.;
 - (e) One (1) member from a list of not less than three (3) names submitted by the African-Americans of Lexington Emerge (A.A.L.E.);
 - (f) One (1) member from a list of not less than three (3) names submitted by the Professional Women's Forum;
 - (g) One (1) member from a list of not less than three (3) names submitted by the Citizens for Ethical Government; and
 - (h) Two (2) members chosen at large, who are not members of any entities listed in subsection (2)(a)-(g) of this section.
- (3) A nominating organization listed in subsections (2)(a)-(2)(g) of this section may nominate a person regardless of whether that person is a member of the organization.
- (4) The initial members of the ethics commission shall be appointed within sixty (60) days of the effective date of this chapter. No member of the ethics commission shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the urban county government, any urban county government agency, or the office of any constitutional officer. The members shall serve for a term of four (4) years; except that with respect to the members initially appointed, four (4) members shall be appointed for a term of two (2) years, and five (5) members shall be appointed for a term of four (4) years. Thereafter, all appointments shall be for a term of four (4) years. No more than five (5) of the members shall be of the same political party. Each member of the ethics commission shall have been a resident and registered voter of Fayette County for at least one (1) year prior to the date of the appointment and shall reside in Fayette County throughout the term of office. The members may be re-appointed for one consecutive term.
- (5) A member of the ethics commission shall be removed only by a majority vote of the council, and only for cause, except that a member of the ethics commission shall automatically be removed by operation of law in the event of three (3) unexcused

absences, whether consecutive or non-consecutive, in a two (2) year period or in the event of absence from at least twenty-five (25) percent of the meetings in a two (2) year period, beginning after March 1, 1999. An unexcused absence is any absence in which the chair of the ethics commission or the clerk of the urban county council is not notified of the intended absence at least twenty-four (24) hours in advance of a regularly scheduled meeting. In the event of three (3) unexcused absences or the absence from at least twenty-five (25) percent of the meetings over a two (2) year period, within the meaning of this section, the clerk of the urban county council shall notify the mayor and council administrator that a vacancy exists on the ethics commission.

- (6) The mayor shall notify a nominating organization promptly once a seat on the commission becomes vacant by rotation off the commission, by resignation, or otherwise. Upon receipt of such notice, the nominating organization shall submit to the mayor its list of three (3) nominees within sixty (60) days. If the nominations are not received within the prescribed time period, the mayor shall appoint, subject to confirmation by a majority of the council, the member from a list of not less than three (3) names submitted by a majority vote of the remaining members of the ethics commission, to fill the vacancy for that full term or remaining term.
- (7) Members of the ethics commission shall serve without compensation, but may be reimbursed for all actual and necessary expenses incurred within the limits of the funds appropriated by the council in the annual budget.
- (8) The ethics commission shall, upon the initial appointment of its members, and annually thereafter, elect a chairperson from among the membership. The chairperson may be reelected for unlimited consecutive terms. The chairperson shall be the presiding officer and a full voting member of the commission.
- (9) Beginning after February 1, 2000, all groups named as nominating organizations shall submit to the mayor the following information in writing:
 - (a) Name of the organization;
 - (b) Number of members in good standing;
 - (c) Copies of bylaws;
 - (d) Names of current officers and directors;
 - (e) Schedule of meetings;
 - (f) Mission statement if not contained within the bylaws; and
 - (g) Percent of the organization's funding provided by the Lexington-Fayette Urban County Government.

This information shall be updated on a rotating basis to coincide with the end of the term of each commission member nominated by one (1) of the nominating organizations. The chairperson of the ethics commission shall request the updated information no sooner than one (1) year and no later than six (6) months prior to the expiration of the relevant member's term. The nominating organization shall submit the updated information to the mayor within sixty (60) days of the request.

- (10) The mayor shall consider the information submitted pursuant to subsection (9) and relevant other information and evaluate whether the nominating organization's continued

participation by nominating members for the commission is consistent with this chapter's objectives. An organization's failure to submit the information within sixty (60) days of the request by the chairperson of the ethics commission shall be prima facie evidence that the organization's continued participation is not consistent with the chapter's objectives. After such consideration the mayor shall make a recommendation to the council that the organization's continued participation is or is not consistent with this chapter's objectives and whether the council should consider an amendment to this chapter to replace the nominating organization with another.

- (11) The ethics commission shall provide for a schedule of regular meetings by resolution or bylaw. The schedule of regular meetings shall be made available to the public. Special meetings may be called pursuant to the provisions of KRS 61.823 of the Kentucky Open Meetings law.
- (12) The presence of five (5) or more members shall constitute a quorum and the affirmative vote of five (5) or more members shall be necessary for any official action to be taken. For purposes of this subsection, "official action" is defined as any motion to adopt an order, issue a reprimand, make findings of fact, recommend discipline, fix a civil penalty, refer the matter for possible criminal prosecution, file charges against classified civil service employees or members of the division of fire and emergency services or the division of police, or make any other final determination of guilt following a hearing upon a complaint. A simple majority of those members present and voting shall be necessary for votes taken on all other matters, including, but not limited to, adoption of minutes, recommending that the urban county council adopt particular ordinances or resolutions, issuing advisory opinions, making determinations based on preliminary inquiries as to whether a complaint is within the commission's jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this chapter. Any member of the ethics commission who has a conflict of interest with respect to any matter to be considered by the commission shall disclose the nature of the conflict, and shall disqualify himself or herself from voting on the matter, and shall not be counted for purposes of establishing a quorum.
- (13) Minutes shall be kept for all proceedings of the ethics commission and the vote of each member on any issue decided by the commission shall be recorded in the minutes.

(Ord. No. 255-94, § 1, 12-13-94; Ord. No. 75-95, § 1, 4-27-95; Ord. No. 73-99, § 1, 3-25-99; Ord. No. 25-2000, § 3, 1-27-00; Ord. No. 87-2001, § 2, 4-19-01; Ord. No. 88-2001, § 1, 4-19-01)

Sec. 2-229. Definitions.

Artist means a practitioner of the arts whose objective is to create original works of art and is generally recognized as accomplished by others in his or her field.

Arts council means the Lexington Arts and Cultural Council.

Permanent artwork means visual artwork including, but not limited to, a fresco, mosaic, sculpture, and other architectural embellishment of functional art created by a professional artist, artisan or craftsman; and any work of visual art including, but not limited to, a drawing, painting, sculpture, mosaic, photograph, work of calligraphy or work of graphic art or mixed media. All such artwork that is designed to remain in place for one (1) year or longer is defined as permanent. All such permanent artwork described herein shall become the property of the Urban County Government upon placement.

Public spaces means any real property or improvements owned or leased by the Lexington-Fayette Urban County Government and open to the public including but not limited to: courthouses, libraries, administrative office buildings, plazas, right-of-ways and parks.

UCARB means the Urban County Arts Review Board.

(Ord. No. 209-2004, § 1, 8-26-04)

Sec. 2-230. Members.

The members of the UCARB shall be ten (10) in number, residents of Fayette County, and shall be appointed by the mayor, subject to confirmation by a majority of the Urban County Council, from the following interest areas:

- (1) One (1) licensed architect, submitted by the local American Institute of Architecture Chapter;
- (2) President of the Lexington Arts and Cultural Council;
- (3) One (1) licensed landscape architect, submitted by Kentucky Chapter of the American Society of Landscape Architects;
- (4) One (1) sculptor, with public art experience;
- (5) One (1) painter, with public art experience;
- (6) One (1) licensed civil engineer, submitted by Bluegrass Chapter of Kentucky Society of Professional Engineers;
- (7) One (1) Art Historian;
- (8) One (1) representative from the University of Kentucky College of Design;
- (9) One (1) representative from the Transylvania University College of Fine Arts; and
- (10) One (1) representative from the mayor's office.

(Ord. No. 209-2004, § 1, 8-26-04)

ARTICLE IV. MASTERSON STATION PARK ADVISORY BOARD

EXAMPLE 3

Sec. 2-86. Created; purpose.

- (a) A board is hereby created which shall be known as the Masterson Station Park Advisory Board of the Lexington-Fayette Urban County Government, hereinafter referred to as the "MSP Advisory Board".
- (b) The MSP Advisory Board is established for the purpose of serving as an advisory board to the division of parks and recreation on issues relating to policies, programming, fundraising and development with the goal of implementation of the approved Masterson Station Park master plan.

(Ord. No. 177-2004, § 1, 7-8-04)

Sec. 2-87. Membership; terms; staff.

- (a) The members of the MSP Advisory Board shall be twenty (20) in number and shall be appointed by the mayor, subject to confirmation by a majority of the urban county councilmembers. Nineteen (19) members shall be voting members and one (1) shall be an ex-officio non-voting member. The twenty (20) members shall be as follows: one (1) member from the Audubon Society; one (1) member shall be from the Lexington Lions Club, Inc.; one (1) member shall be from the Bracktown Neighborhood Association; one (1) member shall be from the Casual Riders; one (1) member shall be a citizen representing the division of parks and recreation Equestrian Program; one (1) member shall be a citizen representing the In-line Hockey Program; one (1) member shall be from the Federal Medical center; one (1) member shall be from the Friends of the Dog Park; one (1) member shall be from the Greenways Community; one (1) member shall be from the Kentucky Border Collie Association; one (1) member shall be from the McConnell Trace Neighborhood Association; one (1) member shall be from the Lexington Youth Soccer Association; one (1) member shall be from the Masterson Station Neighborhood Association; one (1) member shall be from the Masterson Equestrian Trust; one (1) member shall be from the Fayette County Neighborhood Council; one (1) member shall be from the Meadowthorpe Neighborhood Association; one (1) member shall be from the Georgetown Road Corridor; one (1) member shall be from the international sports community; one (1) ex-officio, non-voting member shall be from the urban county council; and one (1) member shall be the director of the division of parks and recreation or his designee.
- (b) The members of the MSP Advisory Board will serve a term of four (4) years from the date of appointment, provided the terms of those originally appointed shall be staggered in the manner required by section 7.02 of the Urban County Charter.
- (c) Vacancies shall be filled for an unexpired term in the manner prescribed for the original appointment. The membership of the appointed councilmembers shall be terminated upon leaving office as a councilmember.
- (d) No member originally appointed to the MSP Advisory Board who has served one (1) consecutive full term after his initial term may succeed himself until the lapse of twelve (12) months from the end of said consecutive term. No later appointed member who has

served two (2) consecutive full terms may succeed himself until the lapse of twelve (12) months from the end of said consecutive terms.

(Ord. No. 177-2004, § 1, 7-8-04; Ord. No. 229-2006, §§ 1, 3, 8-24-06; Ord. No. 263-2007, § 1, 11-15-07)

Sec. 2-88. Officers.

The officers of the MSP Advisory Board shall consist of a chairman, a vice-chairman, a secretary and other officers elected from the membership as set forth in the bylaws. They shall take office at the first meeting of the MSP Advisory Board after election. The duties of the officers shall be as specified in the bylaws.

(Ord. No. 177-2004, § 1, 7-8-04)

Sec. 2-89. Rules of procedure; quorum.

- (a) The MSP Advisory Board shall determine its own rules and order of business and so provide for keeping a record of its proceedings.
- (b) A majority of the MSP Advisory Board, that is ten (10) members, shall constitute a quorum for transaction of business at any meeting of the MSP Advisory Board. The acts of a majority of those members present at any regular meeting or special meeting shall be the acts of the MSP Advisory Board, provided that it shall take a vote of ten (10) members to adopt or amend its bylaws.

(Ord. No. 177-2004, § 1, 7-8-04; Ord. No. 229-2006, § 2, 8-24-06)

Sec. 2-90. Meetings; records.

Regular meetings shall be held at least quarterly. All meetings shall be open to the public and conducted in a manner consistent with KRS 61.805 to 61.850. Full and complete minutes of all meetings and records of all proceedings including the number of votes for and against each motion and the record of the vote of each member shall be kept and made available for public inspection.

(Ord. No. 177-2004, § 1, 7-8-04)

Sec. 2-91. Powers and duties.

This board is advisory in nature and is established with the following powers and duties:

- (1) To represent users of Masterson Station Park.
- (2) To review proposed park improvements and programs at Masterson Station Park.
- (3) To advise the Division of Parks and Recreation in the implementation of park improvements and programs at Masterson Station Park.
- (4) To assist in fund-raising for Masterson Station Park.
- (5) To adopt bylaws.

(6) To appoint standing and ad-hoc committees.

(Ord. No. 177-2004, § 1, 7-8-04)

Sec. 2-92. Conflict of interest.

All members of the MSP Advisory Board shall be subject to the Code of Ethics contained in article 16 of the Urban County Charter.

(Ord. No. 177-2004, § 1, 7-8-04)

Secs. 2-93--2-95. Reserved.

Intergovernmental Committee Items-Pending

<u>Item</u>	<u>Referred By</u>	<u>Date Referred</u>	<u>Status</u>
Citizens Advocate Program	Lawless	8-18-09	
Groups that Make Board/Commission Nominations	Crosbie	8-11-09	
Authority of the Downtown Development Authority: Article 40	James	6-8-09	June 30, 2009
Section 2-248 of Code of Ordinances	Beard	3-3-09	Sub Committee/Working Group
Oath for Boards/Commissions	James	4-8-08	Sub Committee
Grievance Procedures	Myers/ Ellinger	2-5-08	Sub Committee Meeting Pending
Citizens' Advocate Office Draft Policy & Procedures Manual	Myers	8-14-07	Sept Meeting
Boards & Commissions That Adhere to Ethics Act Financial Disclosure	Myers	8-14-07	Sept Meeting
Boards/Commissions Reporting	Myers	1/16/07	COW Discussion
Council Standing Committees			

<u>Item (cont)</u>	<u>Referred By</u>	<u>Date Referred</u>	<u>Status</u>
High Risk Pay Supplement	Gorton	2/14/06	Unknown
Proposed New Compensation System	Gorton	1/15/05	Delayed-Finance & HR

PAS September 10, 2009