

Ellinger

Myers

James

Blues

DeCamp

Beard

Crosbie

McChord

Blevins

Lane

SERVICES COMMITTEE

January 8, 2008

1:00 P.M.

A G E N D A

Noise Issues - DeCamp

(1-5)

Special Event Noise - Blevins

School Event Noise - Stevens

Car Radio Noise - Stinnett

Immigration Report - Stinnett

(6-22)

Items in Committee

(23-25)

"Services Committee, to which should be referred matters relating to public safety, public works, urban county courts, and constitutional officers."

Council Rules & Procedures, Section 2.102(3)

LEXINGTON-FAYETTE URBAN COUNTY COUNCIL
Memorandum

TO: Chuck Ellinger, Services Committee Chair, Councilmember-At-Large
Dick DeCamp, Councilmember, 3rd District
David Stevens, Councilmember, 5th District
Kevin Stinnett, Councilmember, 6th District
Don Blevins, Councilmember, 10th District

FROM: Paul Schoninger
Staff to Council

DATE: December 31, 2007

SUBJECT: Noise Related Issues

Recently the Council recommended that several noise related items in Services Committee be merged. This will allow Council to systematically examine noise concerns in a more comprehensive fashion.

Due to the complexity of the issue, you may want to form a sub committee of the Services Committee so that the issue can be examined more fully. The sub committee should solicit opinion from Police and others regarding enforcement issues. You will probably also want to examine how other communities deal with issue.

I have attached a copy of 14-70 thru 14-80 of the UCG Code commonly referred to as the Noise Ordinance for your review.

Should you need any further information please do not hesitate to contact me at 258-3208.



Paul Schoninger
Staff to Council

Lexington Fayette Urban County Government Noise Ordinance

Sec. 14-70. Definitions applicable to sections 14-70 through 14-80.

As used in sections 14-70 through 14-80:

- (1) *Construction* means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition for or on public or private rights-of-way, structures, utilities or similar property.
 - (2) *Demolition* means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way, surfaces, or similar property.
 - (3) *Dwelling unit* means one (1) room or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy by a family as owner, by rental or lease on a weekly, monthly or longer basis and physically separated from any other rooms or dwelling units which may be in the same building, and containing independent cooking and sleeping facilities.
 - (4) *Dwelling unit boundary* means a real or imaginary boundary which separates one (1) dwelling unit from another dwelling unit, including, but not limited to, walls, ceilings and floors in a building containing more than one (1) dwelling unit or in situations involving detached single dwelling unit[s], the real property boundary line of the unit.
 - (5) *Motor vehicle* means every vehicle defined as a motor vehicle in section 18-1(15) of this Code.
 - (6) *Motorcycle* means every vehicle defined as a motorcycle in section 18-1(14) of this Code.
 - (7) *Noise disturbance* means any sound which:
 - a. Endangers or injures the safety or health of humans or animals;
 - b. Annoys or disturbs a reasonable person of normal sensitivities; or
 - c. Endangers or injures personal or real property.
 - (8) *Person* means any individual, association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.
 - (9) *Powered model vehicle* means any self-propelled airborne, waterborne or landborne plane, vessel or vehicle, which is not designated to carry persons, including, but not limited to, any model airplane, boat, car or rocket.
 - (10) *Public right-of-way* means any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.
- (Ord. No. 115-82, § 1, 7-1-82; Ord. No. 192-92, § 6, 10-29-92; Ord. No. 293-2000, § 1, 9-28-00)

Sec. 14-71. Noise disturbances--Generally.

In addition to the specific prohibitions outlined in section 14-72, no person shall make, continue, or cause to be made, continued or permitted any noise disturbance on or across a public right-of-way or a public place. This section shall not apply to noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way.

(Ord. No. 115-82, § 1, 7-1-82; Ord. No. 293-2000, § 2, 9-28-00)

Sec. 14-72. Same--Specific acts.

The following acts, and the causing or permitting thereof, are declared to be in violation of sections 14-70 through 14-80:

- (1) Maintaining any machinery or equipment, whose operation involves rotating or reciprocating parts or equipment in such a manner as to create a noise disturbance across a dwelling unit boundary.

(2) Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time, such that the sound therefrom creates a noise disturbance across a dwelling unit boundary, except for emergency work of public service utilities or by special variance as provided for in section 14-74. This paragraph shall not apply to the use of domestic power tools subject to subsection (3) of this section.

(3) Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawnmower or other similar device used outdoors that creates a noise disturbance across a dwelling unit boundary other than powered snow removal equipment, between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time, or on Saturday or Sunday before the hour of 9:00 a.m., prevailing local time.

(4) Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time, in such a manner as to cause a noise disturbance across a dwelling unit boundary.

(5) Collecting refuse or operating refuse collection vehicles between the hours of 11:00 p.m. and 5:30 a.m., prevailing local time, in such a manner as to create a noise disturbance across a dwelling unit boundary.

(6) a. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom on a public right-of-way or public space for any commercial purpose.

b. Using, operating or permitting for any noncommercial purpose any loudspeaker, public address system, mobile sound vehicle or similar device between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time, such that the sound therefrom creates a noise disturbance across a dwelling unit boundary.

(7) Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a dwelling unit boundary or in a public place between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time.

(8) Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument or similar device:

a. In such a manner as to create a noise disturbance across a dwelling unit boundary; or

b. In such a manner as to create a continuing noise disturbance at fifty (50) feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space.

(9) Repairing, rebuilding, modifying, testing or operating any motor vehicle, motorcycle, motor bicycle or motorboat in such a manner as to cause a noise disturbance across a dwelling unit boundary.

(10) It shall be unlawful for any person to keep or harbor within the urban county any animal, including, but not limited to, domestic pets, that repeatedly or frequently emits any sound, including but not limited to barking, yelping, howling, meowing, or squawking, or that otherwise creates a noise disturbance across a dwelling unit boundary, in such a manner so as to annoy or disturb a reasonable person of normal sensitivities.

(Ord. No. 115-82, § 1, 7-1-82; Ord. No. 23-83, § 1, 2-24-83; Ord. No. 216-90, § 1, 10-18-90; Ord. No. 5-91, §§ 1-3, 1-24-91; Ord. No. 293-2000, § 3, 9-28-00)

Sec. 14-73. Right of entry of law enforcement officer to investigate noise disturbance.

Any urban county government law enforcement officer, in addition to any authority vested in him, has the power, upon presentation of proper credentials, to enter

and inspect any dwelling, multifamily dwelling, building, structure or premises within the county as may be necessary to enforce the provisions of this section. Needed permission is to be obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused or is otherwise unobtainable, a search warrant must be obtained upon the showing of probable cause to believe that a violation of sections 14-70 through 14-80 may exist, before such entry or inspection is made.

(Ord. No. 115-82, § 1, 7-1-82)

Sec. 14-74. Mayor authorized to grant special variances relative to noise disturbances.

(a) The mayor or his designated representative shall have the authority, consistent with this section, to grant special variances to those persons who can demonstrate that bringing a source of sound or activity into compliance with sections 14-71 and 14-72 would constitute an unwarranted health hazard or an unreasonable economic hardship upon the applicant.

(b) Any person seeking a special variance pursuant to this section shall file a written application with the mayor or his designated representative. The application will be provided by the mayor or his designated representative. The application shall contain reasons why an unwarranted health hazard or an unreasonable economic hardship would result if the applicant was required to comply with sections 14-71 and 14-72. The mayor or his designated representative additionally may require that the applicant give notice of the application for special variance to persons who frequent the area of the sound or activity and may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the mayor or his designated representative containing any information to support his claim.

(c) In determining whether to grant or deny the application, the mayor or his designated representative shall balance the hardship to the applicant, the community and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impact of granting the special variance. Applicants for special variances and persons contesting special variances may be required to submit any information the mayor or his representative may reasonably require. In granting or denying an application, the mayor or his representative shall place on public file a copy of the decision and the reasons for denying or granting the special variance.

(d) Special variances shall be granted by notice to the applicant containing all necessary conditions including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any conditions of the special variances shall terminate it and subject the person holding it to those provisions of this section regulating the source of sound or activity for which the special variance was granted.

(e) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like application for initial special variances.

(f) The mayor or his designated representative may issue guidelines defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

(Ord. No. 115-82, § 1, 7-1-82; Ord. No. 164-82, § 1, 9-9-82)

Sec. 14-75. Order of abatement of noise disturbance.

In lieu of issuing a citation as provided for in section 14-76, any urban county government law enforcement officer may issue an order requiring the immediate abatement of any source of sound alleged to be in violation of sections 14-70 through 14-80.

(Ord. No. 115-82, § 1, 7-1-82)

Sec. 14-76. Citation for violation of sections 14-70 through 14-80.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to section 14-75, violation of any provision of sections 14-70 through 14-80 shall be cause for a citation to be issued by an urban county government law enforcement officer.

(Ord. No. 115-82, § 1, 7-1-82).

Sec. 14-77. Effect of sections 14-70 through 14-80 on existing law.

No provision of sections 14-70 through 14-80 shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of these sections or from other law.

(Ord. No. 115-82, § 1, 7-1-82)

Sec. 14-78. Exceptions to provisions of sections 14-70 through 14-80.

The provisions of sections 14-70 through 14-80 shall not apply to the following:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of emergency work.
- (2) Organized school-related programs, activities or events, or parades or other public programs, activities or events authorized by the mayor or his designated representative.
- (3) The discharge of firearms by members of the division of police or other sworn peace officers.
- (4) The operation of airplanes and aircraft both on and off airport property, the maintenance of same.

(Ord. No. 115-82, § 1, 7-1-82; Ord. No. 5-91, § 4, 1-24-91)

Sec. 14-79. Enforcement of other laws not affected by sections 14-70 through 14-80.

Nothing in sections 14-70 through 14-80 shall be construed to permit conduct prohibited by any other statute, ordinance or regulation, or to prohibit the enforcement thereof.

(Ord. No. 115-82, § 1, 7-1-82)

Sec. 14-80. Penalty for violation of sections 14-70 through 14-80.

Any person who violates any provision of sections 14-70 through 14-80 shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Any person found guilty of a second offense of any of these sections within any twelve-month period shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and any person found guilty of a third offense of any of these sections within any twelve-month period shall be subject to a fine of not less than two hundred-fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(Ord. No. 115-82, § 1, 7-1-82; Ord. No. 293-2000, § 4, 9-28-00)

Newberry signs executive order creating Commission on Immigration

Mayor Jim Newberry today signed an executive order creating the Lexington-Fayette Commission on Immigration.

The nine-member commission includes educators, public safety and criminal justice officials, community volunteers and immigration and civil rights advocates.

“I want to thank all of the people who are serving on this commission,” said Newberry, who said the group represents a broad spectrum of viewpoints. The group’s first meeting will be held at 5:30 p.m., Thursday, June 7, in the Mayor’s Conference Room, Government Center. All commission meetings will be open to the public. Public comment will take place at two meetings set aside for that purpose.

Members include Chair, Glen Krebs, Attorney; Vice-Chair, James E. Keller, retired Supreme Court Justice; Barbara Connor, Civil Rights Compliance Officer, Fayette County Public Schools; Wendy Devier, community volunteer; Dr. Brian Rich, Kentucky Coalition for Immigrant and Refugee Rights and Transylvania University; Kay Dignan, Psychologist; Marilyn Daniels, Attorney and Director, Maxwell Street Legal Clinic; Ray Larson, Commonwealth Attorney; and William Wharton, Executive Director of the Lexington-Fayette Human Rights Commission.

Newberry states in the executive order that while recognizing the many positive benefits of a diverse community, officials also “recognize the concern many residents feel because of the uncertainty and confusion over the extent and limits of local government’s ability to address immigration issues.”

Newberry asked the group to review federal, state and local laws concerning immigration and ultimately to provide “recommendations to the Mayor and the Council as to what the Lexington-Fayette Urban County Government can, or cannot do, to address immigration issues,” according to the executive order. It is the first executive order that the Mayor has signed.

Commission members have been asked to gather and analyze demographic statistics, practices and initiatives from other cities, any other relevant material and public comment and report back by Sept. 1. Newberry said he anticipates that two meetings will be held to gather public input, however dates have not been set.

The Lexington-Fayette Commission on Immigration

Members

Glen Krebs, Attorney
Justice James E. Keller (Ret.)

Chairman
Vice Chairman

Barbara Connor, Civil Rights Compliance Officer, Fayette County Public Schools

Marilyn Daniel, Attorney and Director of the Maxwell Street Legal Clinic

Wendy Devier, Community Volunteer

Kay Dignan, Psychologist, Southeastern Program Evaluation, Inc.

Ray Larson, Fayette Commonwealth's Attorney

Dr. Brian L. Rich, Transylvania University and Kentucky Coalition for Immigrant and Refugee Rights

William Wharton, Executive Director of the Lexington-Fayette Human Rights Commission

Introduction and Overview

In compliance with Executive Order No. 2007-01, the Lexington-Fayette Commission on Immigration (Commission), created by Mayor Jim Newberry, met throughout the summer of 2007 to consider what actions, if any, Lexington-Fayette Urban County Government (LFUCG) should take to address immigration issues in our community.

The Commission reviewed current federal and state laws, local ordinances, and developing case law. Members of the Commission recognized the complexity of immigration law and understand that immigration to the United States can be a long and arduous process. Members also learned that federal law, despite its need for revision, supersedes state law and local ordinances, in many instances. Careful review of what other cities have done demonstrated that some immigrant-restrictive actions taken at the local level are unconstitutional or are the subject of ongoing litigation. Thus, the Commission attempted to be thorough and thoughtful in its deliberations.

In gathering information about immigration issues, the Commission learned that some members of the general public are concerned with undocumented persons, rather than with immigrants in general. A number of residents spoke of the possible burden that undocumented persons place on the city's resources and of an alleged increase in crime. In contrast, other members of the public asked that Lexington be a welcoming community with increased opportunities for English acquisition for all newcomers. The Commission carefully scrutinized data and concluded that immigrants enrich our community and that they should be welcomed intentionally and effectively. While recognizing the complexity of determining the immigration status of any non-citizen at any point in time, the Commission acknowledged that there is within the community some level of both fear and anger against undocumented persons. Though undocumented persons are not solely Hispanic, the fear and anger appears to be directed primarily toward Hispanics.

The Commission gathered and reviewed demographic statistics, including census data, crime statistics from the County Attorney's office, LFUCG's Division of Community Corrections, and the Lexington Police Department (LPD), and population trends from the Kentucky Data Center. Census data show that Fayette County's population is about 5% Hispanic (<http://quickfacts.census.gov/qfd/states/21/21067.html>), which is perceived to be an underestimate given the suspected numbers of undocumented persons who live in Lexington. Population trends in the United States reveal a falling birth rate among whites, a major portion of the population entering retirement age and living longer, and a native-born work force, which is not expanding.

The Commission reviewed and has continued to stay abreast of what other cities are doing to address immigration. A total of 55 immigrant-friendly resolutions have been passed, including 37 cities which have adopted sanctuary city status, 15 which support comprehensive immigration reform, and 3 which are against federal anti-immigration law. On the other hand, 106 immigrant-restrictive ordinances have been considered, including housing ordinances limiting the number of people who live in the same dwelling, English-only ordinances that mandate that government business be conducted only in English, employment ordinances, police ordinances, and comprehensive ordinances that include all of the aforementioned ordinances. Of those 106

ordinances that have been proposed, 20 have been tabled, 13 voted down, 8 stayed by the court, 38 pending, and 27 passed and active.

The Commission heard from other agencies in the community, including Fayette County Public Schools, Bluegrass Domestic Violence Program, and the Health Department. These agencies/programs serve all residents of Lexington, without regard to immigration status. The Commission learned that the public school system is required by U. S. Supreme Court case law and by statute to offer access to a free public education to all students. In addition, the Commission learned that the Bluegrass Domestic Violence Program and the Health Department serve all clients in order to fulfill their primary goals of assuring safety and protecting public health for the entire community.

The Commission held two public forums and received numerous emails from people in the community. On June 19th, 39 people addressed the Commission and on August 2nd, 57 people spoke. On both occasions, the majority of speakers was immigrant-friendly and made a number of suggestions, including creating a welcome center, issuing local IDs, offering more opportunities to learn English, and guiding and encouraging citizenship. A minority of speakers was immigrant-restrictive and insisted that local police enforce immigration law through Section 287(g) of the Immigration and Nationality Act. Others expressed concerns about their neighborhoods, including fear for their safety, decline of property values, and violations of the housing code.

The Commission was eager to hear from U.S. Immigration and Customs Enforcement (ICE) and attempted to schedule a time with an ICE officer who could answer questions. The Commission also wanted to hear from businesses, including farmers and the horse industry, regarding the hiring of foreign workers, but was unable to find representatives who were willing to speak.

In establishing the Commission, Mayor Newberry selected people with different opinions, experiences, and training. Members did not always agree on issues or how to handle them, but were able to express themselves without censure. Despite the differences, the Commission attempted to reach consensus on each recommendation. Differences, however, remained and two members of the Commission elected to write separate reports to the Mayor and the LFUCG Council. Their reports are appended to this report. Additionally, one commission member has attached information relative to crime in the community. These minority reports are to be viewed as personal statements by the commissioners.

Recommendations

Based on the information gathered through Commission meetings and public forums, we hereby make the following recommendations to the Mayor and Lexington-Fayette Urban County Government:

1. Housing Code Enforcement

It is recommended that existing housing ordinances be enforced more stringently. This will require reallocation of government resources so that sufficient staffing and training issues can be addressed. Citizen dissatisfaction with current code enforcement extends beyond issues related to immigration. Increased enforcement action should occur throughout the community in a manner that does not unfairly target immigrants.

In Favor: Connor, Daniel, Devier, Dignan, Keller, Krebs, Larson, Rich, Wharton

Opposed: None

2. Office of International Affairs

It is recommended that social service agencies and interested religious and other non-profit, community organizations be convened to determine the feasibility of establishing an enhanced Office of International Affairs. If there is interest in an Office of International Affairs in the region beyond Fayette County, participation should be expanded to include surrounding areas.

It is recommended that, through the Office of International Affairs, LFUCG conduct an educational campaign in partnership with educational and social service agencies and the local media to inform the general public about immigration issues. There is much misinformation and a lack of understanding, which is contributing to tensions around the social, economic, and fiscal impacts of immigrants in our community. Further, it is recommended that through this Office of International Affairs, LFUCG encourage and support efforts to assist immigrants to gain proficiency in reading, writing, and speaking English.

In Favor: Connor, Daniel, Dignan, Keller, Krebs, Larson, Rich, Wharton

Opposed: Devier

3. Title VI Compliance

It is recommended that LFUCG ensure that the City's obligations under Title VI of the Civil Rights Act are being met, especially with regard to "meaningful access" to government services for those who are not English language proficient.

In Favor: Connor, Daniel, Dignan, Keller, Krebs, Larson, Rich, Wharton

Opposed: Devier

4. No Local Enforcement of Federal Immigration Laws

It is recommended that the Lexington Police Department be commended for its nationally acclaimed efforts to build trusting relationships with immigrant communities within the county. These efforts focus on creating an environment where all victims of crime and witnesses to crime will come forward to report and assist the police in solving crimes. The Commission found no basis for changing Police Department policy with regard to immigrants. Further, it is recommended that no LFUCG agency or department enter into a §287(g) Memorandum of Agreement with Immigration and Customs Enforcement (ICE) at this time.

In Favor: Connor, Daniel, Dignan, Keller, Krebs, Rich, Wharton

Opposed: Devier, Larson

5. Issuance of Local Identification Cards

It is recommended that the LFUCG establish a program like the New Haven, Connecticut, program for the issuance of local identification cards for all residents of Lexington.

In Favor: Connor, Daniel, Dignan, Keller, Rich, Wharton

Opposed: Devier, Krebs, Larson

6. Issuance of Driver's Licenses

It is recommended that the Mayor and City Government advocate to the Governor and State Representatives that driver's licenses be made available to all residents of the state, regardless of immigration status.

In Favor: Connor, Daniel, Dignan, Keller, Rich, Wharton

Opposed: Devier, Krebs, Larson

7. Enforcement of Labor Laws

It is recommended that the Mayor and the City Government advocate to the Governor and State Representatives that all labor laws be enforced. The state agencies responsible for enforcement should be adequately funded and staffed. There is an unacceptable level of basic human and worker rights violations, such as non-payment of wages, workplace safety negligence, and other labor abuses.

In Favor: Connor, Daniel, Dignan, Keller, Rich, Wharton

Opposed: Devier, Krebs, Larson

Note:

In a public meeting on October 22, 2007, eight of the nine Commissioners voted on each of the seven (7) recommendations included in this report. The ninth Commissioner voted in person at the Chair's office on October 23, 2007. The results of the voting are shown below each recommendation.

General Discussion

The Immigration Commission's research and discussion was detailed, comprehensive, and wide-ranging. This report will briefly cover our findings on the issues of federal and state laws, schools, and health-care. Then the discussion will focus on our recommendations, including: housing; education of the public, cultural training for life-long residents and newcomers alike; compliance with Title VI; public safety (which will include observance of the law by immigrants, police enforcement of immigration laws, and consular notification); local identification cards; drivers licenses; and employment of undocumented workers. We will be careful not to perpetuate the myths that enshroud the immigration debate. We will provide some historical perspective and a discussion of each area that we considered.

Historical Background

The current immigration crisis in the United States is primarily a result of recent economic and political developments in the relationship with Mexico and other Latin American countries. The Immigration Reform and Control Act of 1986 (IRCA) provided a process for the legalization of nearly 3 million undocumented persons and implemented provisions to fine employers who thereafter knowingly hired undocumented workers. The passage of that legislation began a new era in our bi-national relationship with Mexico. Since that time, in the post-IRCA era, newly legalized immigrants have spread to all 50 states in search of better opportunities. Policies pushing Mexicans northward include the passing of the North American Free Trade Agreement (NAFTA) in 1993, and the devastating peso devaluation in 1994. Furthermore, evidence exists that the devastation of many small farms in Mexico and other economic displacements involved, as a result of the rapid pace of economic integration of the U.S. and Mexican economies after NAFTA, contributed as well. These policies have exacerbated the extent of poverty in Mexico — more than half of Mexico lives in poverty or extreme poverty (Massey, Durand, and Malone 2002; Wallach and Williams, undated).

Kentucky, along with several other states in the Southeast region of the U.S., is one of the states that has seen a rapid increase in the number of immigrants, especially Mexican and other Latino immigrants, both documented and undocumented. Current estimates are that between 65% and 85% of Hispanic immigrants in Kentucky are undocumented. The current stock of undocumented, Hispanic persons in Kentucky has grown from approximately 6,000 in 1990 to between 25,000 to 60,000 in 2005, depending on the methodology used to estimate this population (Childress, 2006; Pew Hispanic Center, 2006). These rapid increases in immigrant populations in new destinations of reception, such as Fayette County, are creating historically novel social tensions that must be resolved, as well as opportunities, of which advantage should be taken, for the improvement of civic life and legal order (Rich and Miranda, 2005).

Over the same period in which we have witnessed both large increases in the numbers of Hispanic immigrants entering the United States to work and live, we have also seen large increases in U.S. government resources (border patrols, fencing, etc.) attempting to stem the flow of undocumented persons. "In 1986 the budget of the Immigration and Naturalization Service stood at just \$474 million, and that of the Border Patrol was \$151 million. IRCA began a modest acceleration of funding for border enforcement, but it was the innovation of border blockades in

1993 that initiated dramatically increased funding. By 2002 the Border Patrol's budget had reached \$1.6 billion and that of the INS stood at \$6.2 billion, 10 and 13 times their 1986 values, respectively. With this additional revenue, more Border Patrol officers were hired. Between 1986 and 2002, the number of Border Patrol officers tripled, and the number of hours they spent patrolling the border grew by a factor of about eight. As a result, the cost to U.S. taxpayers of making one arrest along the border increased from \$300 in 1992 to \$1,700 in 2002, an increase of 467 percent in just a decade (Massey, 2005: 1-2).

It is widely believed - by both sides of the debate over immigration - that the current immigration system is broken and dysfunctional. On one side, it is argued that the United States must do all it can to reduce and even stop the flow of immigrants, while on the other side it is argued that the flow of immigrants is a necessary factor in continued economic growth and development of both countries. The system as it currently exists does not appear to meet the needs of U.S. employers or the expectations of families seeking permanent residence for close family members.

Unfortunately for state and local governments, there are severe legal limitations on the types of policies and other responses they can make to the immigrant communities that are forming all over the country, because international immigration to the United States is an area of law within the rather strict jurisdiction of the federal government. Nonetheless, there are possibilities for state and local governments to take policy initiatives to address the influx of immigrants into their communities. For this reason, Mayor Newberry has established this Commission on Immigration for the purpose of making recommendations to him and the Lexington-Fayette Urban County Government (LFUCG) as to how here, in Fayette County, we can legally address immigration issues.

Immigration Issues

1. Federal and State Laws

United States immigration policy is under the purview of the Federal government. Federal laws determine who can and cannot enter the United States. They also determine how and when persons can work in the United States and how and when they should be removed from the United States. Federal laws pre-empt state and local governments from legislating with respect to matters over which the Federal government has expressed its intent to "occupy the field." Federal laws also determine who should receive education and health-care, who should receive other government benefits, and what information should be made available in foreign languages. Any community interested in initiating local legislation relating to immigration should employ experienced legal counsel for guidance.

2. Public Schools

The Supreme Court of the United States has determined that all children must be provided an education, regardless of their citizenship or nationality. Our local schools are making an effort to fulfill that mandate and to comply with Title VI of the Civil Rights Act. More than 7% of the public school population is Hispanic. Over 100 other nationalities are also represented in the

Fayette County public schools. The Commission commends the Fayette County Public School System for its efforts to educate the foreign-born population, including providing English as a Second Language training, as required by federal law. A small minority of the Commission is in favor of curtailing English language training in the schools. A majority of the members of the Commission believe that we should encourage our congressional delegation to support the DREAM Act, which provides post-secondary educational opportunities for children without legal status in the United States who have graduated from high school here.

3. Public Health Department Services

As with education, Public Health Department services must be provided to all persons in the United States as a result of federal mandates and the commitment to ensure and protect the health of the entire community. In fiscal year 2006/2007, the Lexington-Fayette County Health Department public health clinic served approximately 7,200 patients in the following ethno-racial groups: Asian (201 - 3%), Native American (48 - less than 1%), Hawaiian (4 - less than 1%), Black/African American (1,823 - 25%), White (non-Latino) (3,421 - 48%), Hispanic or Latino (1,708 - 24%). In 2006, the Primary Care Center served approximately 16,450 persons in the following ethno-racial groups: Asian (407 - 2%), Native American (21 - less than 1%), Black/African American (4,958 - 30%), White (non-Latino) (5,742 - 35%), Hispanic or Latino (3,623 - 22%). Of the 3,623 Hispanic patients, approximately 3,200 were children, most of whom were born in the United States. Approximately 90 - 95% of the entire patient population was born in the United States. There were 2,821 patients best served by a language other than English. The members of the Commission were in agreement that no local legislation was needed with respect to this issue.

4. Housing Code Enforcement

There was much discussion regarding this issue among the Commission members. Some members of the public testified that there were many situations where too many persons were living in one dwelling. This caused health and safety concerns, as well as parking concerns. This problem is not limited to the Hispanic neighborhoods. It is also a problem near the University campus and in other areas of Lexington. Some members of the Commission also felt that these housing issues have caused the property values to decline in the affected neighborhoods. Property valuation statistics, however, did not support that conclusion in the Cardinal Valley district. There was also a concern that crime was greater in areas where housing ordinances were disregarded. Statistics were not available to confirm or refute that allegation.

While Federal preemption exists in this area of law, some communities are attempting to control housing issues. Some community's housing ordinances prohibit landlords from leasing to tenants who cannot prove their legal status in the United States, or requiring renter's permits to verify resident status. Other ordinances may limit the number of unrelated people who may live in one residence or room.

After researching the housing issue, the Commission determined that there was no need for new local housing ordinances in Lexington. The Commission commends Code Enforcement for its efforts to enforce the housing ordinances fairly. We were persuaded, however, that the City

should increase efforts to enforce its existing housing code and to educate its residents about the housing ordinances. We recommend that the City hire more Code Enforcement Officers and do a better job of training them to deal with the issues which they will face in overcrowded communities. It was felt that the expanded enforcement corps should be deployed more effectively during the evening hours, when more of the residents are in their dwellings, and that they should be deployed throughout the community without unfairly targeting the immigrant communities.

Finally, the Commission did discuss briefly the relationship between housing and income, as many residents have found it difficult to find affordable housing, including immigrants that may attempt to overcrowd in order to save money. The City should consider ways to increase the availability of low-income housing (in partnership with other governmental and non-governmental entities) as one way to reduce housing code violations.

5. Education, Cultural Training, and Language Needs

LFUCG should explore the establishment of an **enhanced International Affairs Office**, which could serve as the center for such community services as:

1. Connecting with the University of Kentucky and local employers who employ non-citizen workers to assist with integration into the community;
2. Planning multi-cultural events;
3. Distributing materials about the community in various languages;
4. Providing educational events and materials about other cultures;
5. Conducting an educational campaign in partnership with educational and social service agencies and the local media to inform the general public about immigration issues;
6. Encouraging community-sponsored visits to other countries;
7. Assisting government offices and agencies to meet their Title VI obligations;
8. Training LFUCG employees in immigration matters, including provisions of the Immigration and Nationality Act and statutes like 8 USC 1324;
9. Serving as an ombudsman for those residents with concerns about diversity and newcomers;
10. Linking with neighborhood associations experiencing cultural transitions;
11. Collecting and distributing demographic data about newcomers;
12. Encouraging naturalization, literacy and English competency among newcomers through dissemination and coordination of existing community services;
13. Working with resettlement organizations, such as the Kentucky Refugee Ministries, to ease integration of refugees into the community;
14. Coordinating delivery of social services to newcomers;
15. Publication of a resource guide for new move-ins;
16. Providing a helpline/referral service to prevent exploitation of immigrants.

Lexington is a jewel – the rolling green pastures inhabited by beautiful horses combined with the intellectual resources of a large university and medical center. It is large enough to provide challenges, opportunities, entertainment, and diversity; it is small enough for truly participatory government and caring neighborhoods. Lexington should be a place where newcomers – whether visiting or planning to stay, whether from another state or another nation - feel welcome;

a place where they can work, learn, play, have medical needs met, feel respected and valued, and participate openly in community life. We want Lexington to be a place where visitors and residents alike are safe.

Lexington and the surrounding counties grow more diverse each year. Immigrants and refugees from all over the world are settling here. They are diverse in language, culture, educational level, skill level, age, and financial status. All should be welcomed in very intentional ways. There are existing organizations and agencies, whose work could be better coordinated for newcomers' benefit. There is anger and fear within the community about change, and that should be addressed intentionally.

Louisville has such an office and might serve as a model. Convening a roundtable of existing social service, religious, educational, and international organizations could generate marvelous ideas for helping Lexington grow more diverse in delightful and constructive ways.

6. Title VI Compliance

Since the LFUCG receives federal financial assistance, it is required to comply with Title VI of the Civil Rights Act and Executive Order 13166. Fayette County has a wide range of language diversity among its United States citizens and non-citizens with legal immigration status. In order to be an effective local government, particularly in areas of activity which affect public health and safety, it must be able to communicate with the recipients of its services. A police officer who cannot communicate with the dying victim of a violent crime – a fire fighter who cannot communicate with the distraught owner of a burning building – a 911 operator who cannot communicate with a frantic caller – an EMT who cannot communicate with the parent of a seriously injured child – cannot provide the services they have been trained and commissioned to provide. The fact that there are in the community some individuals who do not have legal immigration status does not change this obligation, nor does it obviate the need to provide these services effectively. Continued efforts should be made to assure access to these services by persons with Limited English Proficiency. Furthermore, we see evidence that the city's obligations under Title VI are evolving rapidly and efforts to hire and retain bi- and multi-lingual staff, including interpreters, may be an area that needs special attention, so that our legal obligations are met.

7. Public Safety

We reviewed a plethora of statistics regarding the prevalence of criminal activity among the Hispanic population. The statistics we reviewed did not differentiate between crimes committed by Hispanics who are in the United States with proper documentation and those who are not. The statistics showed that generally the percentage of arrests of Hispanics in Lexington is lower per capita than arrests of native-born residents. Specifically, the ratio of arrests of Hispanics in proportion to their contribution to the county population does not support the claim that they are engaged in disproportionate amounts of criminal activity. The Hispanic arrests that were most likely to be out of proportion were those related to traffic and driving violations. This is related to our recommendation regarding advocating for the state to issue driver's licenses to all, regardless of immigration status (see discussion of Driver's Licenses below).

A. Local Enforcement of Federal Immigration Law

We tried to complete our research about local officers enforcing immigration laws by having a conversation with a properly-trained officer of the Immigration and Customs Enforcement (ICE) service. INA §287(g) allows local governments to enter into a Memorandum of Agreement with ICE regarding the enforcement of federal immigration laws by local officers. The MOA would allow certain local officers to receive special training from ICE, so that the local officers could exercise the federal authority of ICE officers to enforce federal immigration laws. We recommend that no LFUCG agency or department enter into an MOA with ICE at this time for the following reasons.

- a. At this time, LPD is cooperating with ICE regularly in the conduct of the investigation and apprehension of any persons, including American citizens, who are suspected of serious criminal violations of immigration law. We commend and encourage LPD to continue to cooperate with ICE to investigate, apprehend, and detain any such individuals. One of public safety's highest priorities should continue to be the investigation of serious crime, whether violations are of federal or state law, and the apprehension, prosecution, conviction and detention of those who commit these crimes, regardless of immigration status.
- b. At the same time and for several years, LPD has expended significant effort and funding to build positive and cooperative relationships with the Hispanic and other immigrant communities in Fayette County, which consists of American citizens, those with legal immigration status and those without. In an effort to make Fayette County safe for all persons, LPD has worked to create an environment of trust and credibility with Hispanics to encourage the victims of crime to come forward for assistance, the witnesses of criminal activity to assist with investigations and prosecutions, and the Hispanic community to openly support law enforcement. Hispanics appear to be victims of personal robberies at a higher rate than their population percentage. Empowering any local law enforcement officer to perform a function of a federal immigration officer will lead to fear, suspicion and retreat into the shadows for Hispanics (with and without legal status), and Lexington will be less safe for all of us. The immigrant community would view Sheriff's deputies, detention officers and LPD officers as law enforcement officers. They would not be able to distinguish one uniform from another. If any of these officers were performing the functions of a federal immigration officer, the time, money and effort expended to date to build good relationships with the immigrant community would be lost. If people do not trust and will not cooperate with law enforcement, the community becomes a more frightening place, and those in the shadows become victims more often. It is critically important that all law enforcement officers be perceived as public safety officers and not as enforcers of immigration law. As public safety officers, they will continue to enforce the laws of the state and the county. Serious crime is and should be treated with the highest priority, regardless of the immigration status of the perpetrator.

- c. In its July 2007 Guide to Immigration Issues, the International Association of Chiefs of Police stated: “Through daily contact and many outreach programs, local agencies have been working to change the negative image of police and build trust and confidence in immigrant neighborhoods. Research demonstrates that people who believe in officers’ good motives are more likely to cooperate and obey, perceiving police as a legitimate authority. One of the central benchmarks of a well-commanded police department is establishing good relationships with the local communities, including those composed of immigrants. Working with these communities is critical in preventing and investigating crimes.”
- d. None of the crime statistics we were provided suggested that undocumented immigrants or Hispanics are committing serious crimes out of proportion to their population percentage. In fact, they appeared to be underrepresented in those statistics. There does not appear to be any basis for a public safety rationale for authorizing local law enforcement officers to act as federal immigration officers.
- e. Agreements under §287(g) contain specific details about the immigration officer functions to be performed and the specific powers and duties of the authorized individual. At this time, no details have been proposed or discussed, so no responsible judgment can be made about the full impact of the agreement on this community.
- f. Under such an agreement the local employee must be directly supervised by a federal official during the performance of the immigration duties. No careful analysis has been made of the impact of this fact on the “chain of command” within the local employee’s agency or department.
- g. All functions carried out under this agreement are “at the expense of thepolitical subdivision,” e.g., the LFUCG or the Sheriff’s office. No estimate of the costs associated with such activity or the impact on the operating budget of the LPD, the Detention Center or the Sheriff’s office have been made. This activity is an unusual exercise in the potential expenditure of state and local funds to perform a federal responsibility.
- h. Immigration law functions must be carried out “to the extent consistent with State and local law.” No analysis has been made of the extent to which existing State and local law may hinder or help enforcement of federal immigration law.
- i. The Congressional Research Service of The Library of Congress has stated in 2005: “One of the overriding concerns with state and local police involvement in the enforcement of immigration law is the potential for civil rights violations....Because unauthorized aliens are likely to be members of minority groups, complications may arise in enforcing immigration laws due to the difficulty in identifying illegal aliens while at the same time avoiding the appearance of discrimination based on ethnicity or alienage... Moreover, suspects of immigration violations may become victims of ‘racial profiling’...” The LPD, the Detention Center and the Sheriff, by law, cannot discriminate and cannot engage in racial or ethnic profiling. Our immigrant community

consists of many contributing American citizens and individuals with legal immigration status who would be at risk in any effort to identify those without legal status.

- j. Federal immigration law consists of both civil and criminal violations. The Congressional Research Service states: “For example, mere illegal presence in the U.S. is a *civil*, not criminal, violation of the INA, and subsequent deportation and associated administrative processes are civil proceedings.” However, entering the country illegally is a criminal offense. Using the criminal justice process to address civil matters is a contentious issue, such that the Immigration Committee of the Major Cities Chiefs (of Police) have strongly requested “that the federal agencies cease placing civil immigration detainees on N.C.I.C. and remove any existing civil detainees currently on the system” because “[t]he integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained.” Clear guidance on this issue does not appear to exist.
- k. The Department of Homeland Security has several initiatives (outside the provisions of §287(g)) with state and local law enforcement agencies to facilitate the investigation and apprehension of foreign nationals (whether with legal status or not), who have violated the law, including the Alien Criminal Apprehension Program, Quick Response Teams, and the Absconder Apprehension Initiative, any of which could involve the LPD or the Sheriff’s office upon request by ICE. In private conversations between ICE representatives and Chairman Krebs, ICE encouraged use of other options before pursuing an MOA under §287(g).

We commend the LPD for its continuing cooperation with ICE in its various other programs assuring the arrest and prosecution of all offenders suspected of serious criminal conduct, regardless of the immigration status of the offender. The Commission was unanimous in its support for the efforts of all levels of law enforcement to combat serious crime, including but not limited to violent crimes, human trafficking, drug crimes, and dangerous gang activity. We further note that in addition to any penalty imposed under the criminal statutes, the members of the Commission as well as the representatives of the Hispanic community favor the deportation of undocumented immigrants who are convicted of serious crimes.

B. Consular Notification

Federal law requires that when a non-U.S. citizen is arrested in the United States, his/her consulate should be notified. The Commission believes that the local enforcement and detention officers should make a more concerted effort to comply with this federal requirement.

8. Local Identification Cards

All residents of Fayette County would benefit from an LFUCG identification card designed like the one recently created and distributed in New Haven, Connecticut. There would be many advantages of providing such an ID card. Ensuring that as many residents as possible possess a valid ID will assist public safety and emergency workers (police, firefighters, emergency medical technicians, etc.). It will help them identify people and thereby be more effective in performing

their jobs of protecting and serving the injured, at-risk, and victims of crime or accidents. Immigrants, the elderly, and children would be especially benefited, as many of them do not have or cannot qualify for driver's licenses or other forms of valid identification. Many persons, including immigrants, are in need of an official identification card for the purposes of: opening bank accounts; acquiring housing with landlords; cashing checks; paying taxes; accessing city services; and verifying/demonstrating their residence in Fayette County for a variety of purposes. The elderly and children can have important health-related information included in their IDs, something of great importance to public safety and emergency workers.

The New Haven ID card program requires strict verifications of residence and identification. The card includes a photo and a chip for debit purposes, and it has been thoroughly researched and defended by staff and faculty at the Yale Law School for its legality under federal statutes.

The Commission recommends that the ID not include fingerprints because of the increased cost and because many persons, including non-immigrants, for various reasons, will not apply for a card if fingerprints are required.

9. Driver's Licenses

State law controls the issuance of a driver's license in Kentucky. Driver education and safety is enhanced by requiring all persons to pass a test of their driving skills before being issued a license. Those who are ineligible to obtain a driver's license, because they are not legally in the United States, continue to drive and contribute to the unsafe nature of our highways. In many instances these drivers cannot obtain automobile liability insurance, which leaves other drivers without full protection in the event of an accident. Some type of driver's license or permit is advisable in the interests of public safety. However, because driver's licensing laws are controlled by the state, LFUCG should consider actively communicating with the state legislature regarding driver safety. Other states have taken steps to deal with this concern, including New York state, that recently passed a law to provide licenses to all residents regardless of immigration status. The central purpose of this change was to improve public safety (See N.Y. Governor Spitzer's press release). The public safety in Kentucky and in Lexington has been negatively impacted by increasing numbers of drivers on our roads and highways without training, licenses, or auto insurance.

10. Enforcement of Labor Laws

Section 274A of the Immigration and Nationality Act addresses "Unlawful employment of aliens." Subsection (h)(2) states: "Preemption. The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

Section 274A of the INA lays out a 13-page federal system of dealing with employers who hire unauthorized aliens, including defining the unlawful conduct, establishment of an employment verification system, describing types of acceptable and unacceptable documents, elements of compliance, Congressional review, cease and desist orders, civil money penalties, administrative appellate review, and criminal penalties and injunctions. And in subsection (h)(2) quoted above,

Congress includes in the statute notice that the federal government has occupied this field and this federal statute preempts any attempts by State or local governments to impose civil or criminal penalties for this type of conduct.

For a local government to entertain an ordinance addressing this issue would be a clear disregard of existing law. Though frustration has been expressed with the manner in which the federal government has enforced this law, the proper course of action is to encourage more aggressive federal enforcement, if that is desired. It appears that more aggressive enforcement is, indeed, now occurring at the federal level. The LFUCG should not adopt new ordinances that attempt to penalize employers who hire, recruit or refer for a fee for employment, unauthorized aliens.

There is much evidence of many abuses of immigrant labor in our county and state, such as non-payment for hours and/or overtime worked, inadequate provisions for job safety requirements, and discriminatory and demeaning treatment on the job. In sum, there is an unacceptable level of basic human and worker rights violations occurring. For this reason the Commission makes the recommendation related to advocating for adequate enforcement of Kentucky's labor laws.

Conclusion

The issue of immigration, whether legal or illegal, is one that will not soon disappear. The Commission wishes to thank the community for assisting us in our research and in our discussions of this issue. We appreciate the opportunity to live in this great community and are pleased to note that despite the controversial nature of this debate, the members of our community were, for the most part, polite to one another and understanding of the divergent views. We were encouraged by the level of consensus that existed among the members of the Commission at the conclusion of our deliberations. We understand that there will be much discussion and debate about these findings and recommendations. We will be pleased to see the debate conducted with facts and logic, rather than emotion and hyperbole. Finally, we wish to express appreciation to the Mayor for allowing us to serve our community and we hope that our research and recommendations will help guide him and the Urban County Council in their deliberations about these issues.

Services Committee Items

Revised 10.26.2007

<u>Date</u>	<u>Councilmember</u>	<u>Issue</u>
12-11-07	Crosbie	Multi-Way Stop @ Summerhill/Squires
11-20-07	Stinnett	Immigration Report
11-20-07	Beard	Zandale Ditch
10-30-03	DeCamp	Combined Car Radio Noise, School Event Noise & Special Events Noise
10-23-07	Stevens	Speed Limit Reduction on Streets Adjacent to Christ the King Cathedral
9-18-07	Moloney	Vicious Dogs
9-18-07	Moloney	Block Party Process
9-18-07	Ellinger	Alcohol Impact on Local Government
9-11-07	Blevins	Noise Ord-Special Events*
8-14-07	Stevens	Par 3 Golf Course
7-10-07	Stevens	School Event Noise*
6-5-07	Beard	Inattentive Drivers
5-22-07	Moloney	Graffiti

Other Items (cont)		
<u>Date</u>	<u>Councilmember</u>	<u>Issue</u>
5-15-07	DeCamp	News Rack Ordinance
3-13-07	Moloney	Dispatching Inter-City Buses from Terminals
2-27-07	Stinnett	Door to Door Peddlers
1-16-07	Myers	Multi-Way Stop Armstrong Mill/Crosby
1-9-07	Stinnett	Multi-Way Stop Pleasure Ridge/Plaudit
11-14-06	McChord	Traffic Light at US 27/Waveland Museum Lane
11-14-06	Moloney	Imposing Fee for Signage in ROW
10-17-06	Moloney	Restrict Parking on Cambridge Drive from Oxford Circle to Village Drive
9-12-06	Wigginton	Tie Downs on Mobile Homes in Trailer Parks
7-11-06	Moloney	Towing on Private Property
6-13-06	Stinnett	Car Radio Noise*
3-21-06	Moloney	Red Light Issues
2-14-06	Myers	US Ombudsman Association Standards for Citizen's Advocate Office
2-7-06	Gorton	Private Fire Hydrants

Other Items (cont)		
<u>Date</u>	<u>Councilmember</u>	<u>Issue</u>
12-13-05	Gorton	Traffic Calming on Harvard Drive
12-13-05	Gorton	No Parking Signage on Belvoir between Malabu and crest of the hill
6-21-05	Moloney	Private Swimming Pool Safety
3-12-05	Gorton	Curb Replacement Program
2-22-05	Moloney	Mini Motorcycles

* Combined noise related issues