

# SERVICES COMMITTEE SUMMARY

JANUARY 8, 2008

Mr. Ellinger chaired the committee meeting. The meeting was called to order at 1:00 p.m. All committee members were in attendance except CM Crosbie and CM Lane. CM Gorton and Dr. Stevens were present also.

## I. Noise Issues

CM Decamp there has been reference made to noise issues in different ordinances. He stated there has been a suggestion to create one noise ordinance that would cover all aspects of the issue.

CM Blues stated there are issues emerging from the close relationship between industrial areas and neighborhood. He stated as they review the noise ordinance this aspect should be included in the review. He stated he would support the forming of a task force to look at the issue.

CM James stated one of the issues is also the hours of enforcement of the noise ordinance. CM James read an email she received from a constituent regarding the noise issue from a scrap yard that is located very closely to his home. (Email attached). She stated we really need to look at enforcement and how to make this happen.

Dr. Stevens stated he received a complaint from a constituent that lives close to a high school that the public address announcement can be heard all over the neighborhood. He stated the commissioner told him that school events are exempt, however; it is not clear so he would ask the task force to look at this as well.

A motion by CM Myers to create a task force to look at all noise issues, seconded by CM Blues, passed without dissent.

## II. Immigration Report

CM Ellinger stated Mr. Glen Krebs, Lexington Fayette Commission on Immigration Chairman, is present to speak. He stated they will hear from the administration regarding the report at a later date.

Mr. Glen Krebs, Lexington Fayette Commission on Immigration Chairman, gave an overview of the report and its recommendations. (Report attached).

CM Ellinger asked what Title VI requires LFUCG to do.

Mr. Krebs stated that in regards to medical emergency, fire, and other public safety areas there needs to be the capability to communicate with those needing services.

CM DeCamp thanked Mr. Krebs and the committee for the time they have spent on this.

CM James thanked Mr. Krebs. She asked the issues of trailer parks were ever mentioned in the Housing Code Enforcement.

Mr. Krebs stated not in their discussions. He stated in passing it was felt there was general discomfort in the community about enforcement of housing in general.

CM James asked if the comments made were from residence.

Mr. Krebs stated no residence of trailer parks but one example was residence of Cardinal Valley.

CM James asked if the Title VI compliance is just for those who don't speak English or could it be for those who are illiterate.

Mr. Krebs stated he doesn't know the answer to that question.

CM Beard stated one of the confusions that everyone has is that we label this as an immigration problem. He stated immigration is a legal process to come into the United States. He stated the problem is the illegal visitors. He stated we need to draw the line a little fine as to what we are attempting to do.

Mr. Krebs stated that is an area where extreme care needs to be taken because you can't profile.

CM Stinnett asked if Title VI only applies to those who have legal status.

Mr. Krebs stated his understanding is that it is for anyone who is in the United States.

CM Stinnett asked how we would verify who the person is on the ID cards.

Mr. Krebs stated yes they discussed verifying by taking fingerprints or some other kind of documentation but the committee voted that down.

CM Stinnett stated to basically the committee's recommendation is that they do not have to verify who they are or where they came from with a foreign ID card or anything like that.

Mr. Krebs stated that is correct.

CM Stinnett stated that education is a big piece that is missing in all this.

CM Ellinger stated the workshops last fall were very helpful.

CM Gorton asked about the discussion of Enforcement of Labor Laws.

Mr. Krebs stated basically there seems to be consensus throughout the nation that the problem of undocumented workers would be alleviated if employers didn't give them jobs. He stated if a community or state is interested in alleviating a problem of undocumented workers coming in to their community one area they always come back to is companies enforcing labor laws. He stated that is why this issue is important. He stated Arizona has received a lot of publicity for an ordinance they have created whereby a company who has been found to be hiring illegal workers can have their business license taken away for 10 days on the first offense. He stated if they continue to do it then on the second offense their business license is taken away completely. He stated the state will enforce it.

CM Blevins stated having the vote as it occurred is really helpful. He asked in regards to Title VI compliance recommendation if the committee is aware of the language complexity problem we have in Lexington.

Mr. Krebs stated they are aware of the many languages. He stated there are 102 different languages dealt with in Lexington.

CM Blevins asked about the dissents on the Enforcement of Labor Laws.

Mr. Krebs stated his dissent was based on two things: he thinks federal laws pre-empts state and local entities and because of the cost.

CM James if any business owners who employed undocumented workers came to speak to the committee.

Mr. Krebs stated none that admitted it.

CM James asked if there was a representative of ICE at the meetings.

Mr. Krebs stated they didn't. They did attempt to have someone come in from ICE but they were unwilling to do that in a public forum.

CM Ellinger asked about other laws that could apply before doing ICE.

Mr. Krebs stated he is not real clear on some of this. He stated ICE told him that since ICE is costly to a community there are other types of programs that could be used to identify criminals who didn't have proper documentation.

CM Ellinger stated they will ask the administration to present their recommendations at the next meeting.

### III. Items in Committee

A motion by CM Blues to take the issue of trailer tie downs out of committee, seconded by CM McChord, passed without dissent.

The meeting adjourned at 1:49 pm.

**Sarah Brown**

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**From:** larryhamilton@insightbb.com  
**Sent:** Monday, January 07, 2008 12:13 PM  
**To:** Sarah Brown; Andrea James  
**Subject:** Noise ordinance

Andrea

Thanks for the chance to repond. Here is some of my thoughts on the junk yard. 1) Baker Iron and Metal was sold 2-3 years ago to Cohen Bros. which own several locations around the region. They closed the operation on the corner of 7th and Limestone and moved it to the 7th street yard. They also bought a scrap yard in Frankfort KY and closed it and moved it to 7th Street as well. The yard is at least two times bigger than when the Baker family owned it. It is much louder now than it used to be . They work longer hours and start every day between 6:15 and 6:30 Monday thru Saturday. Sometimes they work Sundays as well. Useally they finish around 5:30 to 6:00 pm, but they have worked several times to 9:00 . During the night large dump trucks will dump scrap metal at all hours which is very loud and disrupting to the neighbors. Currently the laws would allow the yard to stay open and work till 11pm. and there would nothing we could do. I have met with the operators several times to no avail. I would like to see the ordinance changed to where a loud business is not allowed to work till 11pm 7 days a week. There also needs to be hefty fines for people and businesses who violate the ordinance. Thanks Larry

01/07/2008

## **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 19<sup>th</sup>, 39 people addressed the Commission and on August 2<sup>nd</sup>, 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 the ....political 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.