

Ellinger
Myers
Blues
DeCamp
Beard
Crosbie
McChord
Blevins
Henson
Lane

SERVICES COMMITTEE

March 4, 2008

1:00 P.M.

A G E N D A

1. Immigration Report Response - Stinnett (1-6)
2. Panhandling Update - Ellinger (7-9)
3. Graffiti - Moloney (10-13)
4. Items in Committee (14-16)

"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)



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

TO: URBAN COUNTY COUNCIL
SERVICES COMMITTEE

FROM: SHAYE RABOLD, CHIEF OF STAFF
MAYOR'S OFFICE

DATE: FEBRUARY 28, 2008

SUBJECT: LEXINGTON-FAYETTE COMMISSION ON IMMIGRATION
RECOMMENDATIONS

The Lexington-Fayette Commission on Immigration report was included in your January 8, 2008 Services Committee packet. If you would like an additional copy please let me know. For your convenience, we have enclosed in this packet the recommendations as summarized in the Commission's report.

Please also find enclosed within this packet of information, a brief report of the actions taken by the Administration relating to the seven recommendation made by the Commission. Staff will be present at the March 4 committee meeting to elaborate on our actions and answer any questions you might have.

If you know of specific questions you might have regarding the enclosed information, please feel free to contact me and I will make sure we have an answer for you and the other members of the Committee at the March 4 meeting.

HORSE CAPITAL OF THE WORLD

200 East Main Street Lexington, KY 40507 (859)258-3100 Fax 859-258-3194 www.lfucg.com

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

EXCERPT FROM IMMIGRATION COMMISSION REPORT 3

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.

Action Taken by Administration Regarding Recommendations Made by the
Lexington-Fayette Commission on Immigration

1. Housing Code Enforcement

An internal, cross-departmental task force is currently underway to address housing code enforcement issues throughout Lexington's neighborhoods.

2. Office of International Affairs

The feasibility of creating an Office of International Affairs will be considered in conjunction with the budget.

3. Title VI Compliance

An evaluation of Urban County Government compliance is currently underway by the Department of Social Services.

4. No Local Enforcement of Federal Immigration Laws

The Administration agrees with the findings of the Immigration Commission report in that there is no basis for changing Police Department Policy with regard to immigrants. The Report also stated that no LFUCG agency or department enter into a 287g Memorandum of Agreement with Immigration and Customs Enforcement at this time.

While local government has not entered into any agreements that would allow local officials to enforce federal immigration laws, the Administration did meet with ICE to determine if there were any appropriate measures that could be implemented that would allow ICE to enforce violations of federal immigration laws more effectively. ICE did not recommend entering into a 287g agreement, but did indicate that the consistent and systematic reporting of foreign born nationals who have been arrested and brought to the Fayette County Detention Center would be beneficial.

On February 1, 2008, the Detention Center implemented a new policy in which one question was added to the intake process form: Were you born in the United States? The question "where were you born?" has always been part of the intake process and is now used as a follow-up to the new question.

The Detention Center sends a report to ICE daily containing information about all people booked that day who were born outside the United States. ICE has the option of issuing a detainer order for an individual so that it can pursue possible federal immigration law violations. If there is no detainer order by the time a person is eligible for release, the person will be released. If a detainer order is issued before the inmate would normally be eligible for release, the person can be held for up to 48 hours beyond the normal release date.

5. Issuance of Local Identification Cards

The Administration is not in support of the local identification cards for undocumented workers. Therefore, no action has been taken.

6. Issuance of Driver's Licenses

The Administration is not in support of the issuance of driver's licenses to undocumented workers. Therefore, no action has been taken.

7. Enforcement of Labor Laws

As noted by the Commission, enforcement of labor laws is the responsibility of the State Government. The recommendation was for the City Government to advocate the Governor and State Representatives that all labor laws be enforced. On February 11, 2008, Mayor Newberry sent a letter and a copy of the Immigration Report to Governor Beshear and copied Lexington's legislative delegation. The letter, which is attached, asked the Governor to make enforcement of labor laws a priority.

February 11, 2008

Governor Steven L. Beshear
Governor's Office
Commonwealth of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, KY 40601

Dear Governor Beshear:

Last fall, I received a report from the Lexington-Fayette Commission on Immigration, a copy of that report is enclosed. While I do not support Recommendations 5 and 6, I do support Recommendation 7 in which the Commission recommended that we advocate to you and to legislators that all labor laws be enforced. I would appreciate your calling this recommendation to the attention of the appropriate officials in your administration.

Should you need any additional information, please contact me.

Sincerely yours,

Jim Newberry
Mayor

JHNjr/ps

Enclosure

cc:	Hon. Tom Buford	Hon. Stan Lee
	Hon. Jullian M. Carroll	Hon. Sannie Overly
	Hon. Jesse Crenshaw	Hon. Ruth Ann Palumbo
	Hon. Bob Damron	Hon. Carl Rollins
	Hon. Bill Farmer	Hon. Kathy W. Stein
	Hon. Charlie Hoffman	Hon. Susan Westrom
	Hon. Alice Forgy Kerr	

*Signed copy sent to
Governor Beshear and legislative
delegation on Feb. 11, 2008.
Shayne R. Riddell*



Lexington-Fayette Urban County
Division of Police

MEMORANDUM

Lexington, Kentucky

DATE OF ISSUE

January 24, 2008

EFFECTIVE DATE

NUMBER

7

TC08-005

TO:

**Captain Mark Barnard
East Sector Commander**

SUBJECT:

**Panhandling Issue RCO 14-5
Recommendation**

FROM:

**Lieutenant Thomas Curtsinger
East Sector/First Shift**

The Urban County Council removed the old Section A part of the Panhandling ordinance last year dealing with panhandling on private property. That left in place the revised Section A dealing with panhandling upon public streets or at the intersections of public streets.

The Urban County Council has requested an assessment from the Division regarding its recent use and future applicability. Records from the Planning/Analysis Unit indicated that in 2007 we received 41 calls for service in regards to panhandling. Of those 41 calls, 19 people received citations.

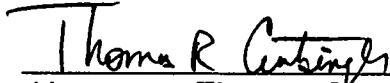
It is my recommendation that the Division requests that RCO 14-5 remain intact. The argument could be made that we have other laws and ordinances that could effectively deal with this issue. For instance, KRS 189.570 Pedestrians, deals specifically with pedestrian actions and solicitation on public streets and intersections.

- KRS 189.570 Section 19: No person shall stand in a roadway for the purpose of soliciting a ride
- KRS 189.570 Section 20: No person shall stand on the roadway for the purpose of soliciting employment or business from the occupant of any vehicle
- KRS 189.570 Section 21: No person shall stand on a highway for purpose of soliciting contributions unless such soliciting is designated by the presence of a traffic control device or warning signal
- Criminal Trespassing KRS could apply to limited access highways where pedestrians are prohibited
- Disorderly conduct or harassment KRS could be applied in some situations

The primary difference between RCO 14-5 and KRS 189.570 is the penalty. Under RCO 14-5 an officer may issue a citation or make an arrest. Under KRS 189.570 officers may only issue a citation. If 14-5 was eliminated there would be situations where an officer may encounter persistent solicitors and be in the position of repeatedly issuing citations only. Given the circumstances other laws such as Criminal Trespassing and Disorderly Conduct may not apply, leaving the officer with the only option of citing under KRS 189.570.

Given the number of calls for service Panhandling is certainly not a "Pervasive Issue" but it does occur with enough frequency that our officers should have the authority to make an arrest for RCO 14-5. With that said it is not the officer's primary objective to make an arrest on these types of calls. The majority of officers would issue a warning and only cite or arrest if given no other choice.

This same issue was reviewed in early 2001 and I have included a copy of these memorandums as well as copies of KRS 189.570 and RCO 14-5. Please advise if further is needed.


Lieutenant Thomas Gurtzinger
East Sector/First Shift



Lexington, Kentucky
MEMORANDUM
Lexington, Kentucky

DATE OF ISSUE	EFFECTIVE DATE	NUMBER
January 3, 2008	N/A	PA 08/001

9

TO:	Assistant Chief Ronnie Bastin Lexington Division of Police	SUBJECT: 2007 Panhandling Information
FROM:	Eugenia Johnson-Smith Planning & Analysis Section	

Please find attached the below listed reports

- 2007 Panhandling Calls for Service Report
- 2007 Panhandling Citations

There were a total of 19 Citations written and a total of 41 Calls for Service received for 2007.

2007 Citation Breakdown By Month:

January	3
February	0
March	2
April	1
May	3
June	3
July	1
August	0
September	0
October	4
November	2
December	0
Total	19



Eugenia Johnson-Smith
Planning & Analysis Section

Approved:



Lieutenant Gregg Jones
Planning & Analysis Section

cc: Captain Boggs



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Officer Keith Gaines, Division of Police
FROM: Department of Law
DATE: February 8, 2008
RE: Graffiti Ordinance (07-CC1532)

Attached for your review is a draft graffiti ordinance. It is largely based upon your draft, with a few changes based upon the existing Louisville graffiti ordinance. Pursuant to the feedback from the Services Committee, I have left the issue of prohibiting the sale of graffiti implements to minors as an optional section for future consideration by the Urban County Council.

I recommend that we also meet with the County Attorney's Office to get its input prior to bringing the draft ordinance back before the Services Committee for consideration. Please contact me to discuss any issues or concerns that the Division of Police has with the draft.

David J. Barberie
Corporate Counsel

cc: Tim Bennett, Commissioner of Public Safety
Chief of Police Ronnie Bastin
Paul Schoninger, Council Research Analyst

DJB/00153091

HORSE CAPITAL OF THE WORLD

P. O. Box 34028 Lexington, KY 40588-4028 (859) 258-3500 Fax: (859)258-3538 www.lfucg.com

ORDINANCE NO. _____ - 2008

AN ORDINANCE CREATING SECTIONS 14-3.1 THROUGH 14-3.3 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PERTAINING TO GRAFFITI AND PROVIDING FOR DEFINITIONS OF GRAFFITI, GRAFFITI IMPLEMENT(S), BROAD TIPPED MARKER, ETCHING EQUIPMENT, PAINT STICK, SPRAY PAINT CONTAINER, AND SPRAY PAINT NOZZLE; PROVIDING THAT IT IS UNLAWFUL TO APPLY GRAFFITI TO ANY NATURAL OR MANMADE SURFACE WITHOUT CONSENT, THAT ADDITIONAL PROSECUTION UNDER KRS 512 MAY RESULT FROM SUCH CONDUCT, THAT IT IS UNLAWFUL TO POSSESS A GRAFFITI IMPLEMENT WITH THE INTENT TO DEFACE, DAMAGE, OR DESTROY ANY PROPERTY, AND THAT THE POSSESSION OF A GRAFFITI IMPLEMENT ON PUBLIC PROPERTY, OR ON PRIVATE PROPERTY WITHOUT WRITTEN CONSENT OF THE LEGAL OWNER IS PRIMA FACIE EVIDENCE OF INTENT; AND FURTHER PROVIDING THAT A VIOLATION CONSTITUTES A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN FIFTY DOLLARS (\$50.00), AND NOT MORE THAN FIVE HUNDRED DOLLARS (\$500.00), OF UP TO THIRTY (30) DAYS IMPRISONMENT, THE PAYMENT OF RESTITUTION TO VICTIMS, AND THE PAYMENT OF A FIFTY DOLLAR (\$50.00) FEE TO A LOCAL GOVERNMENT OR NOT-FOR-PROFIT PROGRAM THAT REMOVES GRAFFITI OR PROVIDES REWARDS FOR THE REPORTING OF GRAFFITI VIOLATIONS.

WHEREAS, the Lexington-Fayette Urban County Government finds graffiti to be detrimental to the community, and often related to criminal and/or street gang activity; and

WHEREAS, it is in the best interest of the citizens of Lexington-Fayette County to adopt an ordinance criminalizing the application of graffiti to public or private property in Fayette County.

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

Section 1 - That Sections 14-3.1 through 14-3.3 of the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby are created to read as follows:

Sec. 14-3.1

Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) "Graffiti". Drawings, inscriptions, or markings, of whatever kind, character, or description, written, sprayed, painted, etched, or otherwise applied to any surface of a building, wall, fence, tree, sidewalk, curb, or other structure or object, so as to be seen by the public, placed there by a person other than the lawful owner or occupant of the property, without consent or acceptance of said owner or occupant.

(2) "Graffiti Implement(s)" include the following or other similar tools or items that are capable of creating graffiti:

A. "Broad Tipped Marker". Any felt tip indelible or permanent marker and/or marking pen and/or any similar implement which contains any pigmented substance including, but not limited to, ink or any other substance which cannot be easily and completely removed with water after said substance has dried; with

a flat or angled writing surface that, at its broadest width, is greater than one-fourth inch (1/4"), nibs or tips.

B. "Etching Equipment" any:

1. tool or device, including, but not limited to, those commonly known as "glass etchers," "glass cutters," "metal etchers," "cutting instrument," and/or "drill bits"; or
2. substance, such as etching acid (hydrofluoric acid), acid etching materials, liquid, cream, paste, or similar chemical substance that can be used to etch, draw, carve, sketch, engrave, or otherwise alter, change, or impair the physical integrity of glass, metal, plastic, concrete or any other surface; or
3. any other instrument that can be applied by pressure or any other contact with any surface including, but not limited to, glass, metal, plastic, concrete or any other surface which can cause graffiti.

C. "Paint Stick". Any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of greater than one-fourth inch (1/4") in width.

D. "Spray Paint Container". Any canister, can, bottle, container, or other receptacle which contains any substance commonly known as paint, stain, dye and/or any other pigmented substance which is and/or can be modified to contain pressure (or be pressurized) in order to impel, spray, eject and/or propel any such substance or other substances capable of defacing property.

E. "Spray paint nozzle". A nozzle designed to deliver a spray of paint of particular width or flow from a can of spray paint.

Sec. 14-3.2

(1) It is unlawful for any person to apply graffiti to any natural or manmade surface without the authority or consent of the property owner or by an authorized agent for such owner. Each act of applying graffiti shall constitute a separate offense.

(2) In addition to being prosecuted for the violations herein, any person who creates graffiti and commits an act of criminal mischief may be arrested and/or cited for such unlawful activities pursuant to KRS Chapter 512 (Kentucky Penal Code).

(3) No person may possess a graffiti implement with the intent to deface, damage, or destroy any property.

(4) For the purposes of this section, any possession of a graffiti implement on either public property, or on private property without the express written consent of the legal owner, shall be prima facie evidence of intent.

[Sec. 14-3.3 -- this section is presented as an option, and should only be adopted if the Urban County Council wants to criminalize the below conduct --

(1) It shall be unlawful for any person to sell, offer to sell, give, deliver or furnish or otherwise transfer a spray paint container, spray paint nozzle, broad tipped marker, paint stick, or etching equipment to any person under the age of eighteen (18) years unless such person is accompanied by his parent, legal guardian or other legal custodian.

(2) It shall be unlawful for any person to display for sale any graffiti implement without first providing a sign or plaque in such display area a warning containing the following language:

"It is unlawful to sell or transfer any aerosol spray paint, broad-tipped marker, marker nibs or tips, paint stick or acid etching materials to any person under the age of 18. Persons under the age of 18 who possess any graffiti implements may be prosecuted for a crime."

(3) *It is a defense to prosecution under subsection (1) of this section that the seller, deliverer or transferor was actively misled or deceived by the presentation of a written or printed information presented by a person under the age of eighteen (18) years, relating to the age of identity of such person.]*

Sec. 14-3.3.

Any person violating this section shall be deemed to have committed a misdemeanor for each offense, and shall be subject to the following penalties, which shall not be mutually exclusive:

- (1) Payment of a fine in the amount of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00) and court costs;
- (2) Imprisonment for not more than thirty (30) days;
- (3) Payment of appropriate restitution to any victim(s);
- (4) Payment of a fee in the amount of fifty dollars (\$50.00) to any local government or not-for profit program that removes graffiti and/or provides rewards for the reporting of graffiti violations.

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

PASSED URBAN COUNTY COUNCIL:

ATTEST:

MAYOR

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

DJB/X:\Cases\CO\07-CC1532\LEG\00152633.DOC

Services Committee Items

Revised 10.26.2007

<u>Date</u>	<u>Councilmember</u>	<u>Issue</u>
11-20-07	Stinnett	Immigration Report
11-20-07	Beard	Zandale Ditch
10-30-03	Blues	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*
5-22-07	Moloney	Graffiti
5-15-07	DeCamp	News Rack Ordinance
3-13-07	Moloney	Dispatching Inter-City Buses from Terminals

Other Items (cont)		
Date	Councilmember	Issue
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
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
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

Other Items (cont)		
Date	Councilmember	Issue
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