

James
DeCamp
Gray
Blues
Beard
Stinnett
Crosbie
Myers
Blevins
Henson

INTER-GOVERNMENTAL COMMITTEE

November 11, 2008
1:00 P.M.

A G E N D A

- | | | |
|---|----------------|----------|
| 1. Temporary Structures - | Stevens | (1-9) |
| 2. Citizens' Advocate Office Standards/ Policy
& Procedures Manual - | Myers/Ellinger | (10-75) |
| 3. Proposed New Compensation System - | Gorton | |
| 4. Boards/Commissions Reporting - | Myers | (76-84) |
| 5. Update on Committee Items | | (85) |

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

Council Rules & Procedures, Section 2.102(2)



Mayor Jim Newberry
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Division of Building Inspection

October 22, 2008

RE: Intergovernmental Committee Meeting

To Whom It May Concern:

This is in reference to the previous notice you received regarding proposed ordinance changes involving temporary structures (tents). That notice contained an incorrect meeting date. The correct meeting date is November 11, 2008 at 1:00 P.M. in the Council Chambers located on the Second Floor of the Government Center at 200 East Main Street. We apologize for any inconvenience.

Again, if you have any questions or concerns about the proposed changes, please contact our office at 859-258-3770 or the Division of Planning at 859-258-3160 and/or plan to attend the meeting on November 11, 2008.

Sincerely,


Dewey Crowe, Director
Division of Building Inspection

HORSE CAPITAL OF THE WORLD

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ARTICLE 28

MIXED USE ZONING CATEGORIES

28-1 INTENT - The intent of this Article is to permit the development of zoning categories that promote the proper locations and regulation of development, which inherently permits the mixing of residential and non-residential uses. Such mixing of uses in appropriate locations and subject to appropriate restrictions can create a combination of functions compatible with abutting residential neighborhoods. This Article is intended to provide neighborhood-based employment opportunities; provide support services that enhance livability of neighborhoods; enhance the use of public transit and alternative modes of transportation; re-vitalize established neighborhood commercial centers; and promote quality infill and redevelopment potential in accordance with the adopted Comprehensive Plan.

28-3 MIXED-USE 1: "NEIGHBORHOOD NODE ZONE" (MU-1)

28-3(d) Conditional Uses - None The following shall be conditional uses in the MU-1 zone:

1. Temporary structures designed for use or occupancy for 61-180 days per year.

28-4 MIXED-USE 2: "NEIGHBORHOOD CORRIDOR ZONE" (MU-2)

28-4(d) Conditional Uses - The following shall be conditional uses in the MU-2 zone:

1. Drive-through facilities as an adjunct to a permitted use.
2. Temporary structures designed for use or occupancy for 61-180 days per year.

28-5 MIXED-USE 3: "MIXED-USE COMMUNITY ZONE" (MU-3)

28-5(d) Conditional Uses - The conditional uses in the B-1 zone, except as prohibited under Section 28-5(e) below.

28-5(e) Prohibited Uses - The following uses shall be prohibited in an MU-3 zone:

1. The following principal uses in the B-1 zone: parking lots and structures; outdoor miniature golf or putting courses; circuses and carnivals on a temporary basis.
2. The following accessory uses in the B-1 zone: the rental of trucks (single rear axle - 28' maximum overall length), trailers, and related items in conjunction with the operation of an automobile service station, provided the service station abuts a state or federal highway and does not abut a residential zone.
3. The following B-1 conditional uses: self-service car washes; animal hospitals or clinics; the rental of trucks (single rear axle - 28' maximum overall length), trailers and related items in conjunction with the operation of an automobile service station; gasoline pumps available to the public without an employee on site.
4. All uses listed as prohibited in the B-1 zone.

ZOTA/2008/Temp. structures - 1 ZOTA.doc

8-22 LIGHT INDUSTRIAL (I-1) ZONE

8-22(a) Intent - This zone is intended for manufacturing, industrial, and related uses not involving a potential nuisance in terms of smoke, noise, odor, vibration, heat, light or industrial waste. In addition, the Comprehensive Plan recognizes that it is important to promote adaptive reuse of older industrial areas and to allow industrial mixed-use industrial projects. The Comprehensive Plan should be used to determine appropriate locations for this zone and for Industrial Mixed-Use Projects. Consideration should be given to the relationship of this zone to the surrounding land uses and to the adequacy of the street system to serve the anticipated traffic needs.

8-22(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

21. Temporary structures designed for use or occupancy for 61-180 days per year.

8-23 HEAVY INDUSTRIAL (I-2) ZONE

8-23(a) Intent - This zone is intended for manufacturing, industrial, and related uses that involve potential nuisance factors. The Comprehensive Plan should be used to determine the appropriate locations for this zone. Consideration should be given to the relationship of this zone to the surrounding land uses and to the adequacy of the street system to serve the anticipated traffic needs.

8-23(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

36. Temporary structures designed for use or occupancy for 61-180 days per year.

8-24 OFFICE, INDUSTRY AND RESEARCH PARK (P-2) ZONE

8-24(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

4. Temporary structures designed for use or occupancy for 61-180 days per year.

APPENDIX 23A – EXPANSION AREA ZONING CATEGORIES AND RESTRICTIONS

23A-4 CONSERVATION DISTRICT (CD) ZONE

23A-4(d) CONDITIONAL USES

4. Temporary structures designed for use or occupancy for 61-180 days per year.

23A-9 COMMUNITY CENTER (CC) ZONE

23A-9(d) CONDITIONAL USES

11. Temporary structures designed for use or occupancy for 61-180 days per year.

ARTICLE 23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(d) CONDITIONAL USES

4. Temporary structures designed for use or occupancy for 61-180 days per year.

8-17 DOWNTOWN BUSINESS (B-2) ZONE

8-17(a) Intent - This zone is intended to accommodate existing and future development in the Central Business District.

8-17(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

7. Temporary structures designed for use or occupancy for 61-180 days per year.

Note: this change above will also carry to the Downtown Frame Business (B-2A) zone.

8-19 LEXINGTON CENTER BUSINESS (B-2B) ZONE

8-19(a) Intent - This zone is intended to ensure compatible land uses, the preservation of existing attractions compatible with the Lexington Center, and the encouragement of new uses necessary to the proper development of the downtown area. The permitted land uses in the zone should have some logical relation to the Lexington Center and to the downtown core, should promote tourism, should promote the economic health of the community, should provide for an aesthetically pleasing environment, and should prevent the creation of influences adverse to the prospering of the Lexington Center and the downtown area.

8-19(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

11. Temporary structures designed for use or occupancy for 61-180 days per year.

8-20 HIGHWAY SERVICE BUSINESS (B-3) ZONE

8-20(a) Intent - This zone is intended to provide for retail and other uses, which are necessary to the economic vitality of the community but may be inappropriate in other zones. The Comprehensive Plan should be used to determine the locations for this zone. Special consideration should be given to the relationship of the uses in the zone to the surrounding land uses and to the adequacy of the street system to serve the traffic needs.

8-20(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

Required conditions for any conditional use permitted herein shall be as follows:

Any conditional use shall be located, in relationship to the arterial roadway system, so that the conditional use has a minimal effect on the adjoining streets and the surrounding uses.

Any outdoor theater screen or illuminated scoreboard or other similar surface shall not be visible from any street for a distance of one thousand (1,000) feet from said structure.

Entrances of ingress or egress, acceleration lanes, and deceleration lanes shall be provided in conformance with requirements as established by the Urban County Traffic Engineer.

11. Temporary structures designed for use or occupancy for 61-180 days per year.

8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(a) Intent - This zone is intended primarily for wholesaling, warehousing, storage operations and establishments whose activity is of the same general character as the above. To a lesser extent, this zone is also intended to provide for the mixture of professional offices and warehouses that promote reuse and redevelopment of older warehouses, allowing businesses to combine their entire operation in one building, as recommended for the Office/Warehouse land use category in the Comprehensive Plan. The Comprehensive Plan should be used to determine the appropriate locations for this zone. Consideration should be given to the relationship of this zone to the surrounding land uses and the adequacy of the street system to serve the anticipated traffic needs.

8-21(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

5. Temporary structures designed for use or occupancy for 61-180 days per year.

NOTE: Text underlined indicates an addition, while ~~text dashed through~~ indicates a deletion to the existing Zoning Ordinance.

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

1-11 DEFINITIONS - For the purpose of this Zoning Ordinance, certain terms are herewith defined. When not inconsistent with the context, words used in the present tense include the future; words in the singular number include the plural; words in the plural number include the singular; the word **person** includes association, firm, partnership, trust, governmental body, corporation, organization, as well as an individual; the word **structure** includes building; the word **occupied** includes arranged, designed or intended to be occupied; the word **used** includes arranged, designed or intended to be used; the word **shall** is always mandatory and not merely directive; the word **may** is permissive; and the word **lot** includes plot or parcel. Other words and terms shall have the following respective meanings:

ROADSIDE STAND - A temporary structure designed or used for the display or sale of agricultural products grown on the premises upon which such a stand is located.

STRUCTURE - Anything constructed, the use of which requires permanent or continuous location on the ground, or attached to something having permanent location on the ground.

TEMPORARY STRUCTURE - Anything constructed and placed on the ground, the use of which is designed for use or occupancy for only 180 days or fewer per calendar year. This use must also be consistent with the requirements and limitations, if any, of the Kentucky Building Code.

ARTICLE 8

8-5 SINGLE FAMILY RESIDENTIAL (R-1A) ZONE

8-5(a) Intent - These zones are established to provide for single family detached residences and supporting uses. The zones should be located in areas of the community where services and facilities will be adequate to serve the anticipated population. The Comprehensive Plan should be used to determine the location and density (units/acre) of each single family zone.

8-5(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Private garages, storage sheds, and parking areas.
3. Swimming pools and tennis courts, including accessory structures and temporary structures associated with those uses.

Note: this change above will carry through the other residential (R-1B through R-5) zones.

8-5(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

4. Temporary real estate sales offices for the sale of lots located only within the subdivision in which said lots are located, to be removed at the end of two years or when all the lots are sold, whichever comes first.

8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(a) Intent - This zone is intended to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Generally, they should be planned facilities and should be located as recommended in the Comprehensive Plan. This zone should be oriented to the residential neighborhood, and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.

8-16(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

11. Temporary structures designed for use or occupancy for 61-180 days per year.

URBAN COUNTY COUNCIL

Inter-Governmental Committee

SEPTEMBER 16, 2008

CM James chaired the meeting, calling it to order at 1:00 pm. All members were present except Vice Mayor Gray. CM Gorton and Dr. Stevens were present as well.

I. Temporary Structures

Dr. Stevens gave some background information on this issue.

Bill Salle, Division of Planning, went over the proposed draft amendment to the Zoning Ordinance that addresses the concerns raised about temporary structures (see attached). He stated he met with representatives from Historic Preservation, Building Inspections and Law to discuss current regulations of temporary structures. He stated there is no mention currently in the zoning ordinance of temporary structures. However, there is a reference to that in the Ky. Building Code. He stated the Ky. Building Code references a 180 day period of time a temporary structure can be up. Mr. Salle stated in talking to Building Inspection they believe that if a temporary structure is removed today it can be replaced in the same spot within a one day period of time. He stated once they met they thought it was reasonable to restrict the temporary structure also the period of time under the zoning ordinance. He stated the proposed draft amendment would not affect the alteration to current practice for a temporary structure that is up less than a couple of months. He stated they felt that if it should be desired to be up for a longer period than two months but up to six months that building code would allow then that would probably rise to level of where Board of Adjustment would need to review that situation. Mr. Salle stated the draft amendment would be on a calendar year. He stated they also discussed the different zoning categories.

Several committee members asked questions regarding certificate of occupancy, how many permits have been issued for temporary structures, and H-1 overlay zones.

Bettie Kerr, Historic Preservation, stated they did discuss county wide zones and specifically H-1 overlay. She stated so much of this is a zoning use issue and H-1 overlay is an overlay to the land use zoning. She stated with that in mind the thought of putting 60 day limit in calendar year for temporary structures if something meets that definition of no more than 60 days total through year then it would not be reviewed by the Board of Architectural Review. If it goes to the Board of Adjustment for a longer period the public would have an opportunity to

have their thoughts and comments known. Ms. Kerr stated if the applicant wants and the BOA grants that it can be there for the whole 180 day window that is fine and would have forum. If someone wants something beyond that in an H-1 overlay zone then they have to get a building permit for a non temporary structure. She stated when it needs a building permit then it comes back to the standard process. Ms. Kerr stated another aspect of the problem coming to the design review process (H-1 overlay) is that the guidelines that are the mechanisms that all applications are reviewed by are based on things being appropriately scaled, appropriately placed on site, and being of compatible materials of the character of the area that it is being placed. There is a conflict with the nature of tents. She stated they will be asking the H-1 process to grant approval to something that is contradictory to the intent of its guideline. She stated this mechanism being put forward will accomplish two things – have the temporary being more limited and not being able to be removed after a day and secondly, it will assure a public forum for temporary structures that will be there for some period of time.

CM Blues asked if this ordinance were in affect now and someone applied for 180 day period that would carry over into 2009 then can they apply for another 180 day period in 2009.

Mr. Crowe stated that is correct.

CM DeCamp asked if there has been an attempt to describe what makes up a temporary structure.

Mr. Crowe stated the Ky. Building Code addresses a time period but not what constitutes a temporary structure.

CM Stinnett asked in the draft where do they get the six months being the maximum.

Mr. Sallee stated 180 days is the current limitation under the building code so they felt they had to respect that existing definition.

CM Stinnett stated someone could get a permit for a temporary structure in December for 180 days and then come back in June and ask for another 180 days. So they could still do it a year round.

Mr. Sallee stated that is why "calendar year" is important so all of 2009 would be reviewed. He stated if this text amendment was adopted and it was to be up more than 60 days then there would be a review by BOA.

CM Stinnett asked since building inspectors can already use discretion on temporary structures why they aren't being monitored closer.

Mr. Crowe stated currently local ordinances do not address temporary structures. He stated the Ky. Building Code states a temporary structure can be in place up to 180 days at a time. He stated that is what they have to utilize.

CM Stinnett stated state law gives permission to terminate at any time.

Mr. Crowe stated with cause such as life safety.

CM Stinnett asked where the need to change this is.

Mr. Crowe stated they can operate with it the way it is but his understanding is there have been concern by neighborhoods and other individuals with temporary structures. He stated they record all complaints.

CM Stinnett asked if they can enforce the proposed changes in the ordinance.

Mr. Crowe stated he does not see any additional burden on the department.

Rochelle Boland, Law Department, stated there is not mechanism right now to let them legally determine if having a temporary structure for longer than 60 days creates a problem for neighboring properties.

CM Crosbie asked about emergency temporary structures.

Mr. Sallee stated it is not addressed.

CM Crosbie asked about Applebee's Park.

Mr. Sallee stated it is in a B-3 zone so it would be governed by this.

Ms. Wiseman spoke on behalf of her client. She stated this ordinance is specifically applied to the greenhouse facility at the Carrick house.

Allison Lundigren Grimes spoke on behalf of the Carrick house.

John Morgan spoke regarding this issue of temporary structures.

Jessica Case, attorney, spoke on behalf of the neighbors across from the Carrick house property. She addressed a letter that was sent on July 7th to 312 N. Limestone St.

CM James requested the letter be entered into the record (see letter attached).

A motion by CM Crosbie for Building Inspection to provide a list of businesses' affected by this change and also notify businesses that have received a

temporary structure occupancy use permit within the last 3 years for public input at the November Intergovernmental meeting, seconded by CM Stinnett, passed.

CM James asked where the information would come from.

Mr. Crowe stated they have that information in their records.

CM James asked who would write the letter

Mr. Crowe stated his office will write the letter.

CM Myers asked if Mr. Crowe had seen the letter that was entered into the record.

Mr. Crowe stated he was not aware of the letter but he knew there was a delay in issuing certificate of occupancy or approvals for specific uses at this location. He stated he does know the tent now has certificate of occupancy. Mr. Crowe stated this does not mean they did not approve it for its use there were specific changes that had requested they address in the structure that delayed its issuance. He stated certificate of occupancy is at the request of the property owner.

CM Myers asked how someone can occupy a temporary structure or any business without a certificate of occupancy.

Mr. Crowe stated the certificate of occupancy is their approval the use is correct. He stated they had approval to start.

II. Grievance Process

CM James gave an introduction to this issue.

Leslie Jarvis, Human Resources, went over the draft Grievance Procedure Survey (See attached).

CM James passed the chair to CM DeCamp.

CM James asked for some modifications to the survey. She stated the ultimate goal and purpose should be stated on the form.

Ms. Jarvis stated it would be important to understand as an organization what the purpose and goal of the grievance procedure is. She stated we need to find out if employees are aware of the grievance procedure.

CM James suggested adding the questions - how employee became aware of the grievance process; why have you not used the grievance process; and do

LEXINGTON-FAYETTE URBAN COUNTY COUNCIL
Memorandum

TO: Councilmember Andrea James, Chair
Intergovernmental Committee

FROM: Councilmember George G. Myers, Chair
Citizens' Advocate Work Group

DATE: November 6, 2008

SUBJECT: Work Group Report

As you are aware, I was asked to chair a work group charged with reviewing two issues that were ultimately referred to the Intergovernmental Committee- adoption of ombudsman standards for the Office of the Citizens' Advocate, and adoption of a procedures manual for the same.

Also serving on the work group were Councilmembers Beard, Blues, Crosbie, Ellinger, and Stinnett. We held seven meetings, reviewed and revised both sets of documents, and discussed other operational matters related to the office.

On behalf of the work group, I forward to you the following recommendations:

- 1) Adoption of the Professional Standards for the Lexington Citizen's Advocate
- 2) Adoption of the Citizens' Advocate Office Policy & Procedure Manual
- 3) Reporting to Council: That the Citizens' Advocate shall distribute a written report to the Council on a quarterly basis, and appear at the quarterly Committee of the Whole meetings to discuss the report with the Council and answer any questions or concerns of the Council.
- 4) Public Awareness: That the Citizens' Advocate work with Government Communications to produce a periodic program to appear on GTV3.
- 5) Case tracking: That the Citizens' Advocate work with the CIO and Council staff to review available software solutions for tracking of cases, and recommend to the Council a solution appropriate for the office which could also be used by Councilmembers and staff.

I encourage the Intergovernmental Committee to approve the above recommendations. Please let me know if you have any questions or I may be of further assistance.

PROFESSIONAL STANDARDS FOR THE LEXINGTON CITIZENS' ADVOCATE

A. Independence

Independence is a core defining principle of an effective and credible Citizens' Advocate. The Citizens' Advocate should be independent to the greatest degree practicable. Authoritativeness and permanency are two criteria by which to measure this standard. The following are indicators of independence, the absence of any one of which may create functional problems:

1. The Citizens' Advocate's authority is established by law so that the existence, authority, and power of the Citizens' Advocate are less apt to be challenged, compromised, or diminished.
2. The Citizens' Advocate is appointed by the Urban County Council, which is not subject to the Citizens' Advocate's jurisdiction and which does not have operational or administrative authority over the program(s) or agency(ies) that are subject to the Citizens' Advocate's jurisdiction. Appointment by a legislative body is the preferred means to ensure independence. The Citizens' Advocate may be removed from office in accordance with the terms of the Charter of the Urban County Government and the Council Rules
4. The Citizens' Advocate should be afforded sufficient compensation, status, budget, resources, and staff. Affording the Citizens' Advocate sufficient compensation, status, budget, resources, and staff gives indication that the office has meaning and importance. When the Citizens' Advocate is not afforded appropriate status and compensation, to allow the office to meet its responsibilities, it may not command the respect and responsiveness necessary to operate in accordance with best practice.
5. The Citizens' Advocate should retain sole authority to select, direct, and discharge staff within the bounds of the Civil Service System. The Citizens' Advocate should have access to independent legal advice, either in-house or on a contract basis. It would compromise the Citizens' Advocate's independence to be forced to rely on the attorneys representing the governmental entity in the event of a legal controversy. The Citizens' Advocate should be empowered to contract with outside experts when useful or necessary to conduct a thorough investigation.
6. The Citizens' Advocate should have discretion to accept or reject matters for investigation, including the ability to initiate on the Citizens' Advocate's own motion, subject only to the legally defined limits of jurisdiction.
7. The Citizens' Advocate should have discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations. The Citizens' Advocate should not have to receive complaints through an intermediary.
8. The Citizens' Advocate should have discretion to determine which conclusions and recommendations are reached, and freedom to determine what to publish. Inhibiting the

Citizens' Advocate by requiring a structured review procedure before speaking weakens the credibility and integrity of the office in both fact and appearance. Similarly, the Citizens' Advocate's communications and record keeping should be separate from and independent of those services under the Citizens' Advocate's jurisdiction. When absolute independence cannot be achieved, sufficient separation, insulation, or firewalls should be sought and fundamental elements such as locking file cabinets, password protected email systems, keyed doors to enclosed offices, internally controlled surveillance systems, and confidentiality agreements with service providers, vendors and consultants should be ensured.

9. The Citizens' Advocate should be immune from discovery and prosecution for claims arising out of the lawful performance of duty, to the extent permitted by law.

10. The findings and recommendations of the Citizens' Advocate are not appealable to any other authority. Because the Citizens' Advocate does not affect substantive rights and is not be able to impose binding decisions, the Citizens' Advocate's findings and recommendations should stand alone and not be subject to modification or alteration upon appeal to some other body or authority.

B. Impartiality

Impartiality is at the heart of the Citizens' Advocate concept. Both the complainant and the agency are able to place confidence in the Citizens' Advocate knowing that the Citizens' Advocate has no vested interest in the outcome of a complaint investigation. If the Citizens' Advocate is not perceived to be impartial by the complainant, the complainant will not seek the Citizens' Advocate's assistance. If the Citizens' Advocate is not perceived to be impartial by the agency, the agency will be resistant to the investigation and unlikely to accept the Citizens' Advocate's criticism and recommendations. It is not sufficient for the Citizens' Advocate to avoid actual conflict of interest but also to avoid the appearance of such a conflict to instill the utmost confidence. Members of staff acting under delegated power should also be subject to the same high standards. The following are indicators of impartiality, the absence of any one of which may create problems of credibility and effectiveness:

1. The Citizens' Advocate refrains from partisan and political activities, and employment and business relationships and transactions that may create a conflict of interest, or may create the appearance of a conflict of interest. The Citizens' Advocate as citizen may, or course, exercise his or her right to vote in partisan elections. However, because the Citizens' Advocate works within a political environment, it is essential not to be perceived as favoring one political person or group over another. This limits the ability of the Citizens' Advocate to speak publicly in favor of or against any candidate for elective or appointive office, make or solicit contributions to political candidates or parties, put partisan signs on vehicles or in yards, or other similar political activities. It is equally important that the Citizens' Advocate not enter into any business or employment relationship that might, rightly or wrongly, cause others to question the Citizens' Advocate's ability to be impartial and fair.

2. The Citizens' Advocate holds no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.

3. The Citizens' Advocate absents himself or herself from involvement in complaints where a conflict of interest or the appearance of a conflict of interest may exist.

If the Citizens' Advocate does receive a complaint with which there is a potential for a conflict of interest or the appearance of a conflict of interest, the Citizens' Advocate must remove himself or herself completely from that complaint and turn it over to a staff member or other party for appropriate action. It must be understood that the Citizens' Advocate will not interfere in any investigation or the production or publication of recommendations.

4. The Citizens' Advocate does not allow personal views regarding the subject matter or the parties involved to affect decisions as to what complaints to accept or how they are investigated. It would be unrealistic to think that the Citizens' Advocate would never have personal values and opinions that may relate to the subject of a complaint. It is imperative, however, that the Citizens' Advocate be able to set aside his or her personal views and approach the complaint in an impartial, unbiased manner. It is important that the Citizens' Advocate be aware of his or her personal views and guard against letting those views influence whether or not a complaint will be accepted and how it will be treated.

5. The Citizens' Advocate is not predisposed as an advocate for the complainant nor an apologist for the government, however the Citizens' Advocate may, based on investigation, support the government's actions or advocate for the recommended changes. The Citizens' Advocate has no client. The Citizens' Advocate is not the complainant's representative, and is not the protector of the public agency. The Citizens' Advocate's primary interest is in assuring that laws, rules, and policies are adhered to, and that the outcome is fair. While the Citizens' Advocate may advocate changes that benefit a complainant, it is the objective of the Citizens' Advocate to improve government performance.

C. Confidentiality

Under Kentucky Revised Statutes, the records of a governmental ombudsmen are not exempt from the Open Records Act.

1. The Citizens' Advocate should not promise confidentiality that cannot be maintained under law. The Citizens' Advocate has a responsibility to advise that person as to any limitations to confidentiality that may apply. Once confidentiality has been promised, and its known limits explained, the Citizens' Advocate must honor the promise within those limits.

2. The Citizens' Advocate should not release information where confidentiality is required by law, or where unnecessary harm would result. During the course of an investigation, the Citizens' Advocate may come into possession of information that federal and/or state law prohibits being made public. The Citizens' Advocate must treat

information with the same degree of confidentiality as would be legally required of the agency being investigated. Further, if the Citizens' Advocate has reason to believe that release of information, though legal, would result in unnecessary harm to one or more persons, the Citizens' Advocate should protect that information and/or its source, to the extent permissible by law.

3. All staff of the Citizens' Advocate Office shall agree to continue to uphold confidentiality to the greatest extent permissible by law and such agreement should survive the term of employment.

D. Credible Review Process

The concept of a credible review process encompasses the authority granted to the Citizens' Advocate and the Citizens' Advocate's responsibilities towards the complainant, the subject of a complaint, the appointing entity, and the public. If the process the Citizens' Advocate uses to investigate complaints is flawed, the resulting recommendations are more likely to be ignored. The following are powers and responsibilities inherent in a credible review process:

1. The Citizens' Advocate should be qualified to analyze issues and matters of law, administration, and policy, and these qualifications should be reflected in the job description for the Citizens' Advocate.
2. The Citizens' Advocate should have the discretion to act informally to resolve a complaint. Conducting investigations is the primary function of an Citizens' Advocate, but not all inquiries and complaints are appropriate for formal investigation. The choice of the right approach to use should remain with the Citizens' Advocate.
3. The Citizens' Advocate should have the authority to delegate responsibilities to a deputy Citizens' Advocate. Delegation of responsibilities should be for periods of ten business days or less and with notice to the Urban County Council. The only authority not delegable should be the authority to delegate and the reporting responsibilities.
4. The Citizens' Advocate must be accessible to any person who wishes to make a complaint known directly without a fee.
5. The Citizens' Advocate's jurisdiction should be clearly defined and the Citizens' Advocate should not act outside of that jurisdiction.
6. The grounds for Citizens' Advocate review should serve the goal of improving government.
7. The Citizens' Advocate should have sufficient powers to conduct thorough investigations. The Citizens' Advocate should have unlimited access to records and proceedings held by jurisdictional agencies, including records that are considered confidential or not otherwise open to the public. Additionally, all persons subject to the Citizens' Advocate's jurisdiction shall be required to cooperate fully with the Citizens' Advocate's inquiries and respond within three business days, unless a later date is agreed

upon by the Citizens' Advocate. Agreement by the Citizens' Advocate shall not be unreasonably withheld.

8. The Citizens' Advocate should have the authority and responsibility to publish findings, recommendations, and reports to the Urban County Council on a quarterly and annually as well as under special conditions, or as often as requested or directed by the Urban County Council or by an individual Council Member.

9. The agencies involved in the Citizens' Advocate's reports should be consulted and afforded the opportunity to respond to the report prior to its being published. Once the Citizens' Advocate has reviewed the agency's response, it is for the Citizens' Advocate to release the final version.

10. The process for how complaints are to be made, received, and acted upon, including the scope and manner of investigations, should be defined and transparent. Clearly stated standard procedures let parties know what to expect from an Citizens' Advocate's review and establish benchmarks to evaluate whether the office operates as it is intended.

11. The Citizens' Advocate should state the reason a complaint is not accepted for investigation. Examples of the reasons why cases are not accepted include the following: the case is outside the Citizens' Advocate's jurisdiction, the complainant has other available remedies, the complaint is made in bad faith or is vexatious, the complaint is trivial, the complainant will not provide information necessary to conduct an investigation, the office lacks sufficient resources, or the issue has been previously investigated.

12. The Citizens' Advocate should keep all parties apprised of the status of the investigation.

13. The Citizens' Advocate should complete investigations in a timely manner.

14. The Citizens' Advocate should, in practice and appearance, uphold the highest standards of public service.

CITIZENS' ADVOCATE OFFICE

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

POLICY & PROCEDURE MANUAL

CITIZENS' ADVOCATE OFFICE

Policy and Procedure Manual

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Table of Contents

Introduction	i	Chapter 3: Interviews	29
Vision	ii	The Interviewer	30
Mission	iii	Location of the Interview	31
Values	iv	Preparing for the Interview	32
Goals	v	Capture the Interview	33
		Introduction and Identification	34
		Active Listening Steps	35
Chapter 1: Intake	1	Questioning Technique	37
Agency First	2	Closing the Interview	38
Receiving Complaint	3	Promises or Commitments to Complainant	39
Determining Jurisdiction	4	Evaluation of the Interview	40
Complaint Intake	7	Statements	41
Recording Complainant Information	8		
Information Requests	9	Chapter 4: Planning & Evaluation	42
Referrals	11	Planning	43
Assistance	13	Evaluation of Complaint	44
		Conclusion of Investigation	45
Chapter 2: Investigation	15		
General Steps	16	Chapter 5: Finding, Reporting and	
Investigation Plan	17	Recommendations	46
Investigative Strategy	18	Findings	47
Interview Witness	19	Recommendations	48
Conduct the Investigation	20	Reporting to the Agency	49
Initial Agency Contact	21		
Evidence	22	Appendix A	50
Physical Evidence	23		
Testimony	24		
Response from Agency	25		
Procedure After Receipt of Documentation	26		
Access to Records	27		
Standards, Statutes and Regulations	28		

Introduction

This document sets forth the policies, intake and case handling procedures for the Citizens' Advocate Office of Lexington Fayette Urban County Government. These procedures are to be used by the staff of the Citizens' Advocate office as an example in carrying out their duties and as a guideline for complaints and by anyone interested in how the office operates.

MAIN FUNCTIONS AND ACTIVITIES

- a. Receiving complaints and concerns by telephone, e-mail, fax and in-person.
 - b. Making inquiries and providing information to clarify situations and issues.
 - c. Making appropriate referrals.
 - d. Conducting investigations, and monitoring.
 - e. Issuing reports relating to activities of the office.
 - f. Facilitating the resolution of disputes and valid grievances.
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Vision

The Citizens' Advocate Office vision is to provide an effective and efficient government that is responsive and accountable to the residents of the Lexington Fayette Urban County.

Mission

Promoting fairness and efficiency in Public Administration

Values

- a. Independence
- b. Impartiality
- c. Integrity
- d. Accessibility
- e. Professionalism
- f. Excellence
- g. Objectivity

Goals

- a. To provide administrative justice for all residents of Lexington-Fayette County in their dealings with their local government.
- b. To exhibit best practices in the performance of our functions.

Chapter**1**

Intake

I. Agency First

- a. The Citizens' Advocate office is not a substitute or replacement for a department's normal complaint resolution mechanism. All LFUCG departments should have a system in place to receive and respond to citizen or employee complaints about the functions of local government. This is a basic and important practice. The goal of the Citizens' Advocate office is to ensure that internal systems are effective and can objectively resolve differences.
- b. If the complainant has not approached the agency involved, advise them to do so and decline the complaint as premature.
- c. If possible, refer complainant to the appropriate person within the department concerned and explain to the complainant how they can resolve the problem on their own. Further, advise the complainant to call the Citizens' Advocate Office back if not treated fairly by the department. After the complainant has made reasonable effort to assist him/herself then take on the case.

II. Receiving Complaint

If a citizen has an inquiry or complaint they can contact the Citizens'

Advocate Office via:

- a. Phone,
- b. Fax,
- c. E-mail,
- d. Mail,
- e. Office Visit,
- f. Adequate means of communications for citizens with special needs and non English speaking residents shall be provided by the Office of the Citizens' Advocate.

III. Determining Jurisdiction

In determining jurisdiction, consider the status of the officer or individual who is the subject of the complaint.

a. The Citizens' Advocate is not authorized to investigate complaints against:

1. Elected officials
2. Constitutional Offices Courts, Fiscal Court & County Clerk.
3. State or Federal Government Offices
4. Private Parties
5. Outside agencies or non governmental organizations
6. Police Officers.

b. If the grievance is an outside jurisdiction case then the Citizens' Advocate may provide information to the client about alternative dispute resolution venues.

c. If the complaint is with regard to an Outside Agency the Citizens' Advocate shall make a referral and close the case.

Within Jurisdiction

- a. All cases that concern the Urban County Government but do not involve elected officials, constitutional offices, state or federal government offices, private parties, Police Officers, Outside Agencies or non-governmental organizations are considered within jurisdiction.

Declining of Cases

- a. Declining a case should be an exception, not the norm. Since we are a service business, the goal is to find a way to help someone, not to look for a reason not to help them. If a case is declined, inform the complainant of the decision and reason.

The following are reasons to decline a case:

1. There is already available an adequate remedy for grievance stated in complaint. This includes cases that are being litigated in courts or are the subject of a formal administrative hearing or administrative appeal.
2. The case is outside the jurisdiction of the Citizens' Advocate.
3. The complainant has other available remedies.
4. The complaint was made in bad faith or is vexatious or trivial.
5. The complainant does not provide information necessary to conduct the investigation.

6. The office lacks sufficient resources to proceed with the case.
7. The complaint has been previously investigated.
8. Cases can also be declined subject to the discretion of the Citizens' Advocate.

IV. Complaint Intake

The staff member on intake duty will be responsible for receiving inquiries and complaints. The following guidelines apply to the intake and preliminary evaluation of complaints.

a. Listen

Gather as much information as possible on the first call or meeting with the client. When the meeting or call is over, write a detailed narrative that answers Who, What, Where, Why and How. Try to resolve the problem on the spot. However, if this isn't possible, make sure the complainant is aware of what is going to happen and next and what actions will be taken to resolve the problem.

b. Identify the Complainant

Ask the caller to identify him- or herself: obtain the complainant's name, address, phone number or any other way the complainant prefers to be contacted. If the complainant is apprehensive or refuses, explore the reasons therefor. If they still choose not to identify themselves, assign an identifier and provide it to the complainant. Consult the Citizens' Advocate before pursuing the complaint. Information requests do not require complainant name.

V. Recording Complaint Information

The Citizens' Advocate shall record all relevant information such as:

- a. Complainant Name – If the complainant wishes to remain anonymous, the Citizen's Advocate (C.A.) will assign a unique identifier to the complainant.
- b. Complainant's contact information.
- c. Geographical Area: The location of within which the complaint arose.
- d. Council District.
- e. The date of the complaint or inquiry.
- f. The agency about with which the complaint is grieved.
- g. Witness information if applicable.
- h. A brief description of the complaint.

VI. Information Requests

- a. While the principal work of the Office of the Citizens' Advocate involves the investigation and resolution of complaints about agencies, it receives other kinds of inquiries as well. Notable among them are questions about agencies, operations and procedures of LFUCG. Quite often, the client is seeking an explanation of how a process works so they can take care of their own problem.
 - b. When a person contacts the Citizens' Advocate and requests information, that contact should be treated as coaching. Generally, we respond to the request by providing the requested information. In some cases it is better to refer the person to someone else who can give them a better answer or respond to specific follow-up questions.
 - c. After initial inquiry is made be it via e-mail, mail, phone, fax, office visit, all inquiries should be answered expeditiously. However, if it is going to take any longer than one business day, contact the person and tell them when they can expect a final response.
 - d. Information requests are not reviewed for jurisdiction. Reasonable effort should be made to provide accurate, prompt information
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and referral regardless of whether or not the inquiry concerns an agency is within the jurisdiction of the Citizens' Advocate.

- e. Every request for information should be evaluated with scrutiny in order to determine if it should be treated as a complaint. If it is clear that the person is complaining, or that the caller is looking to our office as a source of assistance, rather than just seeking information or using us as a source of referral, treat the contact as a complaint.
- f. If you do not know the answer, or are unsure, research the question in order to provide a proper response and call the complainant back at a later time. Inaccurate or inappropriate answers seriously harm the offices credibility.
- g. It is essential to maintain a person's privacy when requested. This is especially important if the citizens request for information is forwarded to an agency. Prior to forwarding the inquiry obtain the complainant's permission to reveal personally identifiable information.
- h. It is very important to log all inquiries, including information requests, on the complaint form.

VII. Referrals

- a. A referral is a complaint that would be best handled by another agency. In these situations the best we may be able to do is refer the complainant to someone who can help them.
- b. When making a referral :
 - 1. Explain to the complainant why the office will not handle the complaint.
 - 2. Refer the complainant to a specific person, where possible.
 - 3. If appropriate, explain how the complainant can proceed with their complaint. (e.g. What's the process? What forms will they need? What information does the agency require? etc.)
 - 4. If appropriate, help the complainant get started by sending forms, brochures, rules, etc.
 - 5. Inform the complainant that they can call back if the referral doesn't work.
- c. If not completely certain about a referral, contact the referral agency to make sure the information given to the complainant is accurate.
- d. Be careful to maintain a complainant's privacy. When forwarding a copy of a written complaint obtain permission from the

complainant to reveal personally identifiable information, or advise the complainant of limitations on the ability to maintain confidentiality.

VIII. Assistance

- a. Often, a citizen has a simple complaint that can be quickly resolved with a telephone call. Such cases do not warrant a full investigation.
- b. What constitutes an Assist?

Assists may be used to resolve complaints informally. Administrative acts that lend themselves to handling as assists are typically those in which the complainant has experienced delay, wants action expedited. A key factor in disposing of a complaint as an assist is the perception that the complainant wants prompt action without determination of whether or not the administrative act is erroneous.

Typically, in handling an assist:

1. Focus on solving the problem not on determining the correctness of the action.
2. Conduct the inquiry by phone or in person.
3. Talk directly to the person who is responsible for the decision or who has custody of the records.
4. Focus solely on the complainant's problem (not any related program or policy concern).
5. Strive to affect a resolution satisfactory to both the complainant and the agency.

- c. Before closing the complaint file, make sure that the complaint/issue is resolved. Two suggestions may help reduce repetitive processing of these informally handled complaints :
1. When a complaint seems familiar ask the complainant if there has been a previous contact. If there has been previous contact on the matter, get details.
 2. Check the closed complaint file and see how we handled previous contacts. What was the disposition?
 3. Did the complainant provide pertinent information?
 4. Is the call for further assistance reasonable in light of the earlier disposition?
 5. Did the agency drop the ball? Don't redo work that has already done.
 6. All assists must be logged via a complaint form, in order to track trends.

Chapter**2**

Investigation

I. General Steps

The overwhelming majority of complaints are and should be resolved informally. Full investigations as outlined in this chapter occur only in those situations that cannot be resolved informally, when informal attempts have failed, or when the initial inquiry leads the investigator to believe that a systemic problem may exist.

In general the staff member who receives the complaint is responsible to:

- a. Obtain from the complainant a statement of the complaint and all the facts bearing on investigation of the complaint.
- b. Define the problem(s) to be investigated.
- c. Plan the investigation.
- d. Conduct the investigation.
- e. Evaluate the complaint, the facts obtained, and the applicable rules and laws.
- f. Coordinate with the agency and complainant to try and work out a fair and appropriate remedy in cases where the complaint is justified.
- g. If necessary, write a preliminary report and forward to the agency for response.
- h. Evaluate agency's response to finding and recommendations.
- i. Manage the complaint file.
- j. Debrief the complainant for the finding.
- k. Conclude the investigation.

II. Investigation Plan

The Subject Matter of the Complaint

- a. It is the duty of the Citizens' Advocate Office to acquaint itself with the subject matter of the complaint and the basis for the agency's administrative action, prior to investigating the specific allegation. A good place to start is the Charter and Code of Ordinances of LFUCG.
- b. Give the agency notice of your investigation and a description of the complaint and a request for information.

III. Investigative Strategy

- a. Once it has been established that there is a grievance, settle upon an order in which to conduct the investigation. Strategies include but are not restricted to the following:
- b. Interview the Complainant
- c. Conduct relevant background research on the complainant and the related agency practice and policies. This may include:
 - 1. Checking with other Citizens' Advocate staff to see if the issue being addressed is familiar to them.
 - 2. Review open and closed complaints to determine if this issue has been reviewed in the past.
 - 3. Conduct research in statutes, rules, and the Code of Ordinances in order to determine how this issue should have been handled.

IV. Interview Witness

- a. Consider possible options such as telephones, person interviews, letters and requests for information.
- b. Consider the following factors when deciding whether to use phone, send and e-mail or write a letter to the affected department:
 1. If the matter needs immediate attention, a telephone call could potentially allow you to derive a response quickly.
 2. If the matter can be handled informally and there is no need to establish a formal record, use the telephone and avoid the time it takes to write a letter
 3. If the matter is complex and requires formal procedures, or there are indications that a formal record should be established, good practice dictates that you write a letter of inquiry stating the allegations of the complainant and requesting the information you would like the agency to provide.

V. Conduct the Investigation

Notice

- a. Unless the Citizens' Advocate believes that providing notice will hinder the investigation, notify the subject agency, officer or employee prior to the opening of the case. If notice is not provided list the reasons for such an action in the individual case file.
- b. Notice to the subject agency ought to contain:
 1. Summary of the substance of the complaint in general terms;
 2. Allegations stated in a logical sequence;
 3. List particular questions to which the agency must respond;
 4. Specific documents required from the agency to determine the direction of the case;
 5. A request that the agency provide a primary point of contact for the investigation;
 6. A reminder of any applicable confidentiality provisions, if appropriate;
 7. The time frame the response is required;
 8. Send a blind copy of the notice to the complainant.

VI. Initial Agency Contact

- a. The Citizens' Advocate may begin at any level within the agency to find facts.
- b. Initial agency contact normally is with the officer or employee responsible for the action or decision about which the complaint is made. In absence of an identifiable individual, contact the Division's Director or head of the field office involved.
- c. If the letter of inquiry sent to any level below that of a Division director, a copy of the correspondence must be sent to the director as well.
- d. Initial contact should include reference to the Council rule requiring prompt response.
- e. Log all contact.

VII. Evidence

There are three types of evidence: documents, physical evidence and testimony.

Documents

- a. Documents are information that is written or available in the form of records. This term is inclusive of statutes, regulations, guidelines and standards, manuals and written procedures. (Documents are records as defined by Open Records Act., KRS 61.870 – 61.884)
- b. When requesting documents subsequent to initial agency contact:
 1. Briefly describe the complaint or problem.
 2. Clearly state the documentation required;
 3. Indicate the time frame within which response is required, citing the Council Rule requiring prompt response.
- c. The more specific information request provided to the agency, the better the agency can respond.

VIII. Physical Evidence

- a. The key element in handling physical evidence is to maintain a record as to its origin and relevance. Carefully collect, identify, store and handle evidence.
- b. Physical evidence such as photographs and video documentation of a complaint should be marked to assure future identification of the item. Ensure that the item is stored in a secure area.

IX. Testimony

Though interviews and depositions are similar in many respects, it is important to distinguish when one is more appropriate to use than the other. We rarely, if ever use depositions.

a. An interview is appropriate in the following instances:

1. When you want to gather routine information from a cooperative witness.
2. When you need information in which the identity of the witness as the source of information or as the source of corroboration of other testimony is not important.
3. When you need to overcome the hostility of an adverse or reluctant witness and you believe it is to your advantage to do so informally.
4. When you want to take a person's narrative testimony rather than pushing for details and specifics.

X. Response From Agency

- a. If the Citizens' Advocate issues a written request for information, generally agencies have three days to respond unless otherwise agreed.
- b. If preservation of evidence is a concern, it is advisable to request immediate production.
- c. Log all requests for production and note requested compliance date.

XI. Procedure after Receipt of Documentation

After careful review of the agency's response it may be possible to make an immediate determination as to whether or not the agency's action was reasonable. If so, the complainant and agency should be notified. On the other hand, if the response is incomplete then request further information or otherwise proceed with the investigation.

XII. Access to Records

- a. Records mean a paper or electronic document, memorandum, book, letter, file, drawing, map, photographic file, film, microfilm, microphotograph, exhibit, magnetic or paper tape or other items developed or received under law or in connection with the transaction of official business, but does not include material that is privileged communication between attorney and client, ongoing police investigations and juvenile records.
- b. Because of the requirement not to release confidential information we receive during our investigation, it is important that Citizens' Advocate Office is aware of any legal conditions or restrictions on the documents or materials obtained. A record that is exempt from release in the hands of the custodian shall be exempt from release in the hands of the Citizens' Advocate Office.
- c. The Citizens' Advocate Office shall not intentionally use or disclose information acquired in the course of official duties, to the extent that such confidentiality can or must be lawfully maintained.

XIII. Application of Standards, Statutes and Regulations

- a. When an agency administers a statute or regulation, check on the agency's interpretation of its own statute. An unbiased clear statement of the agency's interpretation should be included in the final report of the complaint.
- b. Often it is difficult to find an applicable standard to measure an agency's performance. In the absence of local precedent, law or guidance, neighboring jurisdiction may provide alternate example of best practices

Chapter**3**

Interviews

I. The Interviewer

- a. A successful interviewer is in control of the conversation without it being unnecessarily authoritarian. Keep the interviewee focused on the central issue.
- b. The technique utilized while formulating a series of questions is critical since it assists the interviewee to recall information which they wouldn't otherwise.
- c. Always maintain a professional demeanor, remain objective and treat the interviewee with respect.

II. Location of the Interview

- a. When choosing a location for the interview, ask the interviewee what area would be convenient to them.
- b. The location must be distraction free.
- c. The interview generally should be private and confidential.
- d. Consider the interviewee's time schedule when setting up an interview.

It is hard to gain the interviewee's cooperation if the interview is unreasonably scheduled.

- e. If concerned for personal safety, the interviewer may conduct the meeting in a public place.

III. Preparing For the Interview

- a. Good interviews are often the result of good planning. Before the interview, review details of the complainant and be ready to use names of people involved and the technical language of the subject matter without floundering.
- b. The questions asked need to be logically sequenced prior to the meeting with the interviewee. If there is more than one issue to be addressed, decide what would be the best sequence.

IV. Capture the Interview

- a. Recorded interviews allow detailed analysis of statements and facilitate quotations for reporting purposes. Comments documented on audio recording are difficult to deny and cannot be used out of context.
- b. Always request permission from the complainant prior to recording the conversation.
- c. If not recorded, the interview should be documented via notes. At the conclusion of the interview, review the notes aloud with the interviewee, to verify that they accurately reflect the discussion.

V. Introduction and Identification

- a. Make introduction, state the interviewer's credentials and the purpose of the interview.
- b. If using a recorder, set it up as if it was a part of your normal routine.

VI. Active Listening Steps

Active listening is a way of listening and responding to another person so that it improves mutual understanding and trust. It is an essential skill for third parties and disputants alike, as it enables the interviewer to receive and accurately interpret the complainant's message prior to evaluation.

- a. Be attentive. Be interested. Be alert and not distracted. Create a positive atmosphere through nonverbal behavior.
- b. Be a sounding board – allows the complainant to express their feelings while being nonjudgmental.
- c. Act like a mirror -- reflect back what you think the speaker is saying and feeling.
- d. Do not discount the complainant's feelings by using stock phrases like "It's not that bad," or "You'll feel better tomorrow."
- e. Don't let the speaker "hook" you. This can happen if you get angry or upset, allow yourself to get involved in an argument, or pass judgment on the other person.
- f. Indicate you are listening by :
 1. Providing brief and noncommittal acknowledging responses.

2. Giving nonverbal acknowledgements, e.g., head nodding, facial expressions matching the speaker, open and relaxed body expression, eye contact.
3. Invitations to say more, e.g., "Tell me about it," "I'd like to hear about that."

g. Follow good listening "ground rules:"

1. Don't interrupt.
2. Don't change the subject or move in a new direction.
3. Don't rehearse in your own head.
4. Don't interrogate.
5. Don't teach.
6. Don't give advice.
7. Do reflect back to the speaker what you understand and how you think the speaker feels.

VII. Questioning Technique

- a. Keep questions simple and ask only one question at a time. Asking two questions at once can make response unclear and generally only serves to confuse the interviewee
- b. Avoid long and complex observations before getting to the question at hand.
- c. Avoid asking questions in such a way that the answers are already implied.
- d. Portray an understanding by providing both verbal and non verbal cues.
- e. Verify responses provided by interviewee by rephrasing the question.
- f. Observe the witness. If the question makes the interviewee nervous
- g. Evaluate the veracity of the interviewee.

VIII. Closing the Interview

- a. When all relevant information is received terminate the interview.

An interview that drags on unproductively creates tension and reduces cooperation. At the same time, if suddenly stopped, the complainant will feel jolted by the lack of closure.

- b. At this point in the interview, it is important that the investigator understand the complainants account. To reduce the chance of misinterpretation, summarize the interviewee's account and allow the complainant to correct discrepancies. After all of the above has been accomplished inform the complainant what to expect from the Citizens' Advocate office in the future.

XI. Promises or commitments to Complainants

Only in very special instances should a promise be made to the complainant; certainly, neither should it be made unless it can be delivered. Further, speak only in general terms as to what the Citizens' Advocate Office can do for the complainant. In short, be careful not to fall into the trap of trying to please the person who you are interviewing with false information that will lead to unrealistic expectation and eventual disappointment.

X. Evaluation of the Interview

There are three important elements to be examined while evaluating an interview session. Review the reactions of the interviewee, the information received and the investigators performance. If there are any discrepancies with the information, compare the interviewee's account with the information that the investigator has. It is important to review the interview critically and to learn from mistakes. Make note of any different technique that can be used more productively.

XI. Statements

- a. Sometimes, it is necessary to document a witness's testimony by preparing, verifying and signing a formal witness statement.

Witness statement may take the form of:

1. A statement prepared by the investigator in long hand and verified and signed by the complainant;
 2. The witness's own handwritten or typewritten statement;
 3. The use of a recorded statement;
 4. A statement transcribed from a recording.
- b. In taking and using statements, note at the outset the place, date and time of the interview. If taped, each person present during the taping of the statement should, at the outset be identified. Beware of breaks in tapes and be prepared to account for the manner in which the time during the break was spent.

Chapter**4**

Planning & Evaluation

I. Planning

Investigators will encounter problems concluding an investigation if they do not have an adequate plan. An adequate plan helps:

- a. Being sure of the exact nature of the problem presented by the complaint;
- b. Avoid making erroneous assumptions about the problem;
- c. Avoid taking immediate action, or calling for immediate action from an agency, without thinking the problem through;
- d. Avoid failing to define or categorize the complaint as an appropriate subject for investigation;
- e. Identify the applicable law or policies and procedures of the agency;
- f. Identify the resources available to resolve the complaint.

II. Evaluation of Complaint

The Citizens' Advocate shall report their opinion or recommendation to the agency concerned if he or she finds, after investigation that:

- a. The matter should be further considered by the agency;
- b. The administrative act should be modified or cancelled;
- c. Valid reasons should be provided for an administrative act;
- d. Any other action should be taken by the agency;
- e. The agencies act was arbitrary or capricious, constituted an abuse of discretion or was not in accordance with the law;
- f. There are no grounds for action by the agency.

III. Conclusion of Investigation

The investigation can be concluded:

- a. Once sufficient information and cooperation from both parties to resolve the complaint informally.

Or

- b. Once you have obtained evidence and testimony to substantiate or refute an allegation placed by the complainant.

Chapter**5**

Findings, Reporting and Recommendations

II. Recommendations

The most critical contribution the Citizens' Advocate Office can make in response to government functions is to recommend improved administrative policy and procedures. Effective recommendations can not only resolve a problem for an individual complainant but also improves the future operation and efficiency of Lexington Fayette Urban County Government. The formal recommendation process allows to present ideas that will make agencies policies and procedures conform to professional standards or help the agency provide services to the public in a more equitable manner.

III. Reporting to the agency

When preparing findings, the investigator should prepare a report detailing the complaint, the complainants allegations, the issues considered, the agency's position, investigative activity, the findings and any recommendations. The complaint, the findings and recommendations should be summarized. These documents should be sent for the Citizens' Advocate's review. The Citizens' Advocate is solely responsible for all reporting.

Appendix A: Terms and Definitions

Abuse of Discretion	The agency has discretion in a matter and either doesn't act at all or makes a finding unsupported by the evidence.
Administrative Action	'Administrative Action' means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.
Agency	Agency includes all LFUCG entities, departments, boards, commissions, councils and any officer, employee or member thereof acting or purporting to act in the exercise of official duties.
Allegation/ Disposition Categories	How a complaint is defined shapes its investigation.
Anonymous Complaints	The citizens' advocate may accept a complaint from an anonymous person. However, if the citizens' advocate at any time determines the complainant's identity is needed to pursue an investigation of the complaint, the citizens' advocate may request that the complainant's identity be disclosed. If the identity of the complainant is not disclosed as requested, the citizens' advocate may decline to pursue investigation of the complaint.
Arbitrary	There is not a valid basis or standard to justify an action or decision.
Assistance by Citizens' Advocate	If a person is incapable of submitting a written complaint or has difficulty communicating with the citizens' because of a disability or language barrier, the Citizens' Advocate can make reasonable accommodation to assist the complainant via TDD phone service or by using translation services.
Assists	This when a case is resolved informally. Administrative acts that lend themselves to handling as assist are typically those in which the complainant has experienced delay, wants action expedited, or wants some reasonable explanation of the reason for the delay. A key factor in disposing of a complaint as an assist is your perception that the complainant wants prompt action without a determination of whether or not the administrative act is erroneous.

Bad Faith/Vexatious

If the citizens' advocate has reason to believe that a complaint is being made for the purpose of annoying to harming an individual or agency, it can be declined as being in bad faith or vexatious.

Based on a Mistake of Fact

A significant part of an agency decision is based on a misperception or misunderstanding of the relevant facts.

Coaching

Citizen doesn't have a complaint or has complaint that is outside our jurisdiction i.e. exclude state and local government. In these cases we can help the citizen by providing them information and advice of their rights, options and existing programs that can help resolve their problem. We may provide information about a state agency, operation or procedure or refer the person to an administrator who has the authority and responsibility for dealing with their problem.

Complainant

The term 'complainant' refers to any person, including an officer or employee of LFUCG, who has lodged a grievance with the citizens' advocate, whether on behalf of himself or any other person.

Confidentiality

The Citizens' Advocate should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation. This standard balances the need to protect sensitive information so that a complainant can come forward and witnesses and subjects can speak openly, with the need to disclose information as a part of an investigation or public report.

Conflict of Interest

If during the course of an investigation, you determine that investigation involves (a) a friend, a family member, a business, organizational, professional or personal association or (b) a circumstance or situation that constitutes a conflict of interest or that may have the appearance of a conflict of interest. Investigation of the matter will be transferred to another staff member.

Contrary to law or Administrative Practice

The action complained of violates federal or state statute, city code, a judicial order, an agency policy or regulation.

Evaluation	The Citizens' Advocate evaluates whether the matter immediately lends itself to resolution or requires further investigation or appears amenable to mediation, or can be resolved by explanatory information.
Intake	Intake is defined as the initial contact the complainant makes with the Citizens' Advocate Office.
Investigation	Complaints which are jurisdictional may be investigated upon the citizens' Advocates discretion. An investigation is a thorough and systematic attempt to learn all the facts about a complaint. The Citizens' Advocate can perform his /her investigation by seeking proof of allegations, corroboration, analysis of facts, conducting interviews, conducting site visits, home visits, witness interviews, obtaining release forms, gathering medical data, open records and legal opinions whilst in the investigation phase.
Jurisdiction	All those that are excluded from the Article 10 and 11 (Charter) are to be considered within jurisdiction.
Lexington Fayette Urban City Government	Lexington Fayette Urban City Government shall be referred to as LFUCG for the purposes of this manual.
Non- Jurisdiction	Complaints with respect to the Urban County Courts which includes the Circuit Court, Quarterly Court, County Court, Justice Court, County Judge, Fiscal Court, County Court Clerk, County Attorney, and County Sheriff are considered non- jurisdictional.
Otherwise Erroneous	When nothing else fits, use this sparingly and with a full explanation of the specifics of the claim
Outside Agency	Outside Agency is defined as a private or non profit organization funded impart by LFUCG. They are distinguished from federal and state governmental agencies and are beyond our jurisdiction.
Performed Discourteously	Unprofessional conduct (complaints alleging that an employee's performance was negligent or failed in a duty that the employee owed to the public apart from misconduct under the Code of Ordinance) or individual rudeness or discourtesy

Performed Inefficiently

The agency decision making process or the implementation of an act or service is too slow or and/or it requires the complainant to wade through an unreasonable amount of 'red tape'. An agency performs inefficiently when an administrative act exceeds : A limit established by law; or a limit or a balance established by custom, good judgment, sound administrative practice or decent regard for the rights or interests of the person complaining or of the general public.

Referrals

A referral is a complaint that would best be handled by an outside agency. This maybe because the case falls outside our jurisdiction.

Self-initiated Complaints

An investigation into an agency's administrative action may be initiated on the citizens' advocate own motion, if he or she determines it is an appropriate subject for investigation

Trivial/Frivolous Complaints

A complaint where the action complained of is extremely unimportant or has no basis in fact may be declined as trivial or frivolous.

Unfair

The action taken or the decision made was flawed because if an inequitable balance between the agency and a complaint in the decision making process. Elements of due process, such as adequate notice, opportunity to be heard, creation of a record and having an unbiased decision-maker maybe lacking

Unreasonable

A procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program.

Unsupported by an adequate statement of reasons

The complainant's concerns are not addressed or explained directly and completely in a decision; the decision of the agency does not plainly state the rule of law and/or factual assertion on which it is based; the reasons provided are not comprehensible or appropriately documented



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

TO: ANDREA JAMES, COUNCILMEMBER
CHAIR, INTERGOVERNMENTAL COMMITTEE

FROM: SHAYE RABOLD, MAYOR'S OFFICE
ANNA HARTJE, MAYOR'S OFFICE

DATE: NOVEMBER 6, 2008

SUBJECT: BOARDS AND COMMISSIONS INFORMATION

After the numerous conversations with the Intergovernmental Committee and the various solutions and ideas considered, we understand that it is the ultimate goal of the Administration and the Council to provide citizens with as much information regarding boards and commissions as possible. The information should be in an easily accessible format in an effort to be more transparent and to allow citizens a way to participate in a more meaningful way with the business of their local government that is carried out by volunteer members of our Boards and Commissions. This memo will outline the actions we have already taken and the actions we plan to take to meet this goal.

First, the Intergovernmental Committee has asked that the following information be provided on the website for each board and commission:

Boards/Commission mission statement, bylaws, board roster, and minutes.

To meet this request and the joint goal of better access to information for our citizens, the Administration has taken the following steps:

1) The first phase of the website was to provide the application to serve on a board or commission on the site. Citizens can now access this form under the Mayor's Page "Become a Board Member." We are working towards an electronic application.

2) The second phase is to list all of the Boards and Commission created by Council in which members are appointed by the Mayor and confirmed by the Council on the website. Currently underway is a project to launch an updated LFUCG website, which will include the following information on each board/commission where applicable:

- Board Name
- Board overview (Summary of purpose of the board as derived from the creating ordinance. Most Boards and Commissions do not have a formal mission statement separate from the

HORSE CAPITAL OF THE WORLD

purpose stated in the creating ordinance. We believe providing the purpose of the board via the overview will meet the intent of the providing a "mission statement")

- Membership Requirements
- Authorizing Legislation (ordinance numbers will be listed and hyperlinked to electronic version of code of ordinances)
- Meeting Location
- Meeting Time
- Board Contact person and contact information
- Board Roster (with term start and term end dates. Membership will be updated by Mayor's Office Staff)
- Minutes
- Bylaws (where applicable. Not all Boards/Commissions have bylaws nor are the required to have them.)

The Administration is currently working with IT to determine server capacity to archive minutes. For minutes that are not archived due to practical and efficient space considerations, citizens will be instructed to request that information from the contact person directly as is the case now.

(Please see attached an example of the information format for the website.)

After consulting with the Law Department, it is recommended that an official policy created by the Administration in the form of a CAO policy or by resolution or ordinance by the Council is not advisable. Rather, a written directive from the Mayor's Office to each board chair and staff person to provide the aforementioned information will be given. For example, the current Blue Sheet process is not an official policy, but rather the traditional administrative practice to bring items before the Council. Employees are aware of the process and are asked to comply. We believe this same type of practice is appropriate for Boards and Commissions.

The biggest challenge to providing access to minutes in a timely manner is staffing levels and time constraints given staff's other duties. Therefore, boards that have LFUCG staff assigned to assist them will be responsible for uploading the minutes to the website. Boards that do not have this assistance will submit minutes to the Mayor's Office to be posted. The Mayor's Office will monitor the fulfillment of this obligation on a regular basis. (Draft Letter to Board Chairs is attached)

Second, the Intergovernmental Committee requested that all Boards and Commissions meet at least once per year.

Most Boards do meet on a regular basis throughout the year, but some, such as appeals boards only meet as needed. Sometimes they may not meet for an entire year. The Law Department has advised that we cannot create a policy that requires Boards to meet in a way that is contrary to the creating ordinance. For most Boards, we will be able to monitor how often they meet and their activities from the minutes they will now be asked to provide via the website.

It is our recommendation that Boards and Commissions that do not meet at least once per year be asked to send a memo to the Mayor's Office by January 30 of the following year outlining why the Board did not meet. These memos could be provided to the Intergovernmental Committee in

February of each year or to all Councilmembers so that a review of the necessity of the board's existence can be discussed. The Mayor's Office will send a letter to each board that has not provided documentation of meetings (in the form of minutes) at the end of the year requesting the memo for January 30.

A handwritten signature in dark ink, appearing to read "Shaye Rabold", written over a horizontal line.

Shaye Rabold
Chief of Staff
Mayor's Office

ADDRESS ENFORCEMENT HEARING BOARD
Overview

The Address Enforcement and Hearing Board hears matters related to the enforcement of ordinance by the Department of the Department of Public Safety. The Board conducts hearings to determine violations of UCG ordinance and enforcement of street address issues. The board is a judicial is nature.

Authorizing Legislation

Ordinance no. 374-2006, updating ordinance 17-4.1—17-4.8 (hyperlinked)

Membership Requirements

3 members and two alternates appointed by the Mayor and confirmed by the Council. Members and alternates must be a resident of Fayette County for a minimum if one year prior to the appointment and live if Fayette County for the duration of the term. Members cannot be elected or employed by LFUCG. Original members shall serve 1 year, 2 year, or three year terms.

Maximum members

5

Maximum terms

2

Meeting Location

200 East Main Street
Council Chambers

Meeting Time

As Needed

Membership

Name	Term	Office
Joe Smith	11/15/2007 – 11/15/2010	Chair
John Doe	10/30/2007 – 10/30/2009	
Jane Plumber	10/30/2007 – 10/30/2008	

Contact Information

Paul Pebble
Division of Public Safety
859-258-5555

Minutes

November 1, 2008 (PDF document)

Archived minutes (For minutes not listed above, please contact the person listed under Contact Information)

(Specific information provided above is not entirely accurate and rather intended as an example for discussion purposes)

DRAFT

November 30, 2008

John Smith, Chair
Address Enforcement Hearing Board
123 Rose Street
Lexington, KY 40507

Dear Mr. Smith:

Thank you for your volunteer service to the community through the Address Enforcement Hearing Board. In an effort to provide the citizens of Lexington-Fayette County with better access to information in the most efficient way possible, we will provide the following on the LFUCG website for each Board and Commission created by the Urban County Council:

- Board Name
- Board overview (Summary of purpose of the board as derived from the creating ordinance.
- Membership Requirements
- Authorizing Legislation (ordinance numbers will be listed and hyperlinked to electronic version of code of ordinances)
- Meeting Location
- Meeting Time
- Board Contact person and contact information
- Board Roster (with term start and term end dates)
- Minutes
- Bylaws (where applicable. Not all Boards/Commissions have bylaws nor are the required to have them.)

We will need your help to provide some of the information. According to Section 61.835 of the Kentucky Open Meetings and Open Records Laws:

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of the votes and actions at such meetings shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

For Boards and Commissions that are not assigned an LFUCG staff member, we request that you provide minutes to the Office of the Mayor, Attention Anna Hartje, in a timely

manner and in accordance with the state statute above. Minutes may be provided electronically in either Word Format or as a PDF. Hard copies will also be accepted and will be scanned into a PDF document. It will be the responsibility of the LFUCG staff assigned to certain Boards and Commissions to upload the minutes using the content management software provided.

Further information on how to comply with this request is attached. Please contact Anna Hartje at 258-3100 or ahartje@lfucg.com for more information and assistance.

Thank you for your cooperation and assistance in helping make your government more accessible to your fellow citizens.

Sincerely,

Jim Newberry,
Mayor

Cc: Paul Pebble, Staff Liaison



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Department of Law

TO: George Myers, Councilmember
FROM: Department of Law
DATE: March 26, 2008
RE: Draft Ordinance re website information for Boards and
Commissions
Log No. 08-CC0425

As requested, please find attached a draft resolution directing boards and commissions to meet at least once a year and to provide certain information to the administration for posting on the LFUCG website.

The resolution only applies to the boards and commissions created in the LFUCG Code of Ordinances. The LFUCG can not direct boards or commissions it did not create to provide information to post on the website. The draft also requires that the citation to the ordinance creating the board or commission be posted rather than the entire ordinance since the Code of Ordinances is also available on the LFUCG website and to reprint each ordinance would be duplicative.

If you have any questions, please contact me.


Tracy W. Jones
Attorney Senior

cc: Joe Schuler, Aide to Council
Anna Hartje, Administrative Specialist Principal
Office of the Mayor

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HORSE CAPITAL OF THE WORLD

**P.O. Box 34028

Lexington, KY 40588

(859) 258-3500

Fax: (859) 258-3538

www.lfucg.com

**Please note new mailing address

DRAFT 03-26-08

RESOLUTION NO. _____ - 2008

A RESOLUTION DIRECTING ALL BOARDS AND COMMISSIONS CREATED IN THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, TO MEET AT LEAST ONCE A YEAR, UNLESS OTHERWISE REQUIRED BY ORDINANCE, TO PROVIDE THE ADMINISTRATION WITH THE CITATION TO THE CREATING ORDINANCE, COPIES OF BYLAWS (IF ANY), A BOARD ROSTER, AND MINUTES OF EACH MEETING, AND TO UPDATE THIS INFORMATION AS NEEDED TO ENSURE THE AVAILABILITY OF CURRENT INFORMATION AND DIRECTING THE ADMINISTRATION TO POST THE INFORMATION ON THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT WEBSITE.

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

Section 1 – That all boards and commissions created in the Code of Ordinances, Lexington-Fayette Urban County Government, be and hereby are directed to meet at least once a year, unless otherwise required by ordinance and to provide the Administration with the citation to the creating ordinance, copies of bylaws (if any), a board roster and minutes of each minutes of each meeting, and to update this information as needed to ensure the availability of current information.

Section 2 – That the Administration be and hereby is directed to post the information provided by the boards and commissions pursuant to Section 1 of this resolution on the Lexington-Fayette Urban County Government website.

Section 3 – That this resolution shall become effective on _____

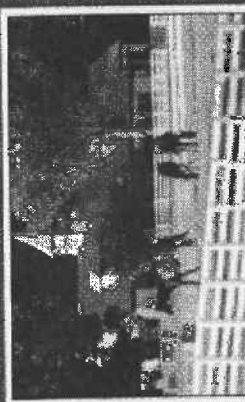
PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:



Lexington-Fayette Urban County Government

Lexington, Kentucky

- [Government Services](#)
- [GTV3 Schedule](#)
- [Parks & Recreation](#)
- [Home](#)

Dear Friend,

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

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

Please follow the steps to be considered for a board or commission. You also will be required to download the background check authorization, complete both forms and mail to the address in step #3.

We will contact you when your interests and qualifications match specific vacancies.

Again, thank you for your willingness to offer your talents to make Lexington even better.

Jim Newberry
Mayor

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

- **Step 1:** Click here to open, print, and then complete the application.
- **Step 2:** Click here to open, print and then complete the authorization form.
- **Step 3:** Mail the completed authorization form and application to:

LFUCG -- Office of the Mayor
Boards and Commissions
200 East Main Street
Lexington, KY 40507

Intergovernmental Committee Items-Pending

10/06/2008

<u>Item</u>	<u>Referred By</u>	<u>Date Referred</u>
Grievance Procedures	James	4-8-08
Citizens' Advocate Office Draft Policy & Procedures Manual	Ellinger	2-5-08
Boards & Commissions That Adhere to Ethics Act Financial Disclosure	Myers	8-14-07
Review Current Boards & Commissions	Myers	6-12-07
Boards/Commissions Reporting	Myers	8-14-07
Council Standing Committees	Myers	1/16/07
High Risk Pay Supplement	Gorton	2/14/06
Proposed New Compensation System	Gorton	1/15/05 Next Update 11/11/08