



**Jim Newberry**  
**MAYOR**

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
**Citizens' Advocate Office**

**MEMORANDUM**

**TO:** Mayor Jim Newberry  
Vice Mayor Jim Gray  
Council Members

**From:** Joan R. Beck  
Citizens' Advocate

**Date:** April 6, 2007

**Re:** First Quarter 2007 Activity Report

The Citizens' Advocate Office processed forty six cases (46) during the first quarter of this calendar year. The charts on page two of this report illustrate the breakdown of complaints by Council District and by Department effected. Please note that the 13<sup>th</sup> Council District is the label used when a case is not district specific, when it is non-jurisdictional, or when the complainant declines to give an address. Beginning this quarter we advise Council Members of new complaints originating in their respective districts unless the citizen requests that we do not or unless the complaint is non-jurisdictional.

The Department of Public Safety was implicated most often in citizen complaints. Within that department, the Divisions of Police and Code Enforcement were most often effected, followed by Building Inspection. Due to the frequency and nature of citizen contact by these divisions, this distribution is not out of the ordinary. Two complaints concerning Code Enforcement had to do with the charges incurred when nuisances are abated. No irregularities have been documented on these cases. Police complaints most often had to do with traffic, traffic control, and requests for additional patrols.

From January through March we referred eleven non-jurisdictional complaints to the Cabinet for Health and Family Services Office of the Ombudsman, the Lexington-Fayette Human Rights Commission, the Long Term Care Ombudsman, the LexTran Board, the Kentucky Bar Association, Kentucky Utilities, Windstream, and the IRS Taxpayer's Advocate.

During the first quarter of 2007 the Citizens' Advocate Office consulted on three issues or projects facing the Urban County Government. We engaged in five outreach activities. We participated in one professional continuing education activity and have been selected as a presenter for an upcoming conference on legal issues facing public sector ombudsmen.

JRB/mb

**HORSE CAPITAL OF THE WORLD**

200 East Main Street

Lexington, KY 40507

(859)258-3230

Fax: 859-258-3232

[www.lfucg.com](http://www.lfucg.com)

### DEPARTMENT TOTALS

Count of DEPARTMENT	
DEPARTMENT	Total
Administrative Services	5
Council	2
General Services	3
Mayor's Office	1
Outside Agency	9
Public Safety	16
Public Works	7
Social Services	1
Utility Company	2
Grand Total	46

### DISTRICT PER TYPE TOTALS

Count of TYPE1	TYPE2					
DISTRICT	Email	Phone	Visit	Written	(blank)	Grand Total
1		3	2			5
2		1				1
3		2				2
4	1	3				4
5		1				1
6		2	1			3
7		2		1		3
8	2	1				3
9	1		1			2
10		3				3
11		1	1			2
12	1	3	1			5
13	1	9	2			12
(blank)						
Grand Total	6	30	6	1		46



Jim Newberry  
MAYOR

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
Citizens' Advocate Office

## MEMORANDUM

TO: Mayor Jim Newberry  
Vice Mayor Jim Gray  
Council Members

From: Joan R. Beck  
Citizens' Advocate

Date: July 9, 2007

Re: Second Quarter 2007 Activity Report

We are pleased to present our activity report for the second quarter of 2007. The Citizens' Advocate Office processed eighty-two new cases (82) during this term. Discussion of a few key topics is included on pages 2 and 3 of this report, followed by the breakdown of complaints by Council District and by Department effected on page 4. The 13<sup>th</sup> Council District is the label used when a case is not district specific, when it is non-jurisdictional, or when the complainant declines to give an address.

The Department of Public Safety was implicated most often in citizen complaints. Within that department, again the Divisions of Police and Code Enforcement were most often effected, followed by Building Inspection. Due to the frequency and nature of citizen contact by these divisions, this distribution is not out of the ordinary. Several Code Enforcement complaints arose from the intensive efforts in trailer parks. No irregularities have been documented on these cases. Police complaints most often had to do with traffic, nuisance enforcement and complaint procedures. The latter two issues are addressed more fully in the pages that follow.

From April through June we referred ten (10) non-jurisdictional complaints to the Cabinet for Health and Family Services Office of the Ombudsman, Kentucky Department of Labor, U.S. Census Bureau, Kentucky Department of Vital Statistics, Lexington Humane Society and the Lexington Sister Cities Commission.

During the second quarter of 2007 the Citizens' Advocate Office engaged in four (4) outreach speaking activities. I published a guest editorial in the Lexington Herald Leader, promoting the role of apology in dispute resolution. I continue to participate in the USOA conference planning committee and have been elected to a second term on its Board of Directors.

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Repeated complaints and public concern lead us to provide brief synopses on three issues.

#### I. Accessibility

Throughout the first half of 2007 the Citizens' Advocate Office helped collect applications from people interested in serving the disabled community. We worked with Robynn Pease and Arty Green to present the Mayor with a good slate of candidates. On June 19, 2007 the Mayor appointed the first members to the newly created Commission for Persons With Disabilities. This is a great step forward in the struggle to make life more accessible to those who are differently able. We applaud these appointments and look forward to the input, study, and impact of this Commission.

At the same time we are pleased that the Equal Employment Officer has begun work on a transition plan for compliance with the Americans with Disabilities Act. It is encouraging to see representatives from all departments and government buildings involved in creating the plan.

Two things are happening in American society that will increase demand for accessible facilities. It is not uncommon these days to see a veteran on the sidewalks of our City with an artificial limb or in a wheelchair. Also, we are aging rapidly. We need to be even more intentional in everything we do, to ensure that all people can freely and fully participate in civic life. Do we allow the proper mix of uses within a reasonably accessible distance to support the neighborhood residents? Do our subdivision layouts promote easy access to goods and services? Are we erecting artificial barriers to productive worklife? We applaud the first steps undertaken by this government, and look forward to changing the look and function of our city to that end.

#### II. Noise – Barking Dogs

Last year a study group looked at the current nuisance noise regulations and how they are enforced. The group recommended amending the noise ordinance to specifically define when a barking dog becomes a nuisance, so the determination is no longer subject to interpretation. Some dog owners objected to the time limits contained in that proposal. Consideration of the amendment was tabled at the committee level. This Spring as the weather warmed and citizens became more engaged with the outdoors, the nuisance issue arose again, especially late at night. Police refused to write citations unless a neighbor was willing to swear out the complaint. Even in those cases where neighbors did swear out complaints, their pleas for peace have fallen on deaf ears. We urge the Urban County Council to take the ordinance off the table. Consider the effect of an objective definition. Refine the definition, if necessary. In the grand scheme of things a barking dog is not the end of the world. Inability to get a good night's sleep does, however, adversely effect the livability of a City. Alternatively, consider repealing the barking dog ordinance entirely. In its present state it only gives false hope to the public and frustrates police officers.

#### III. Police Complaint Procedures

We are grateful to the Division of Police and specifically to Major Michael Bosse of the Bureau of Internal Affairs for providing us with information on the complaint processes. We have had good discussion about the processes and several recommendations have already been adopted. We believe they are motivated to improve the Lexington Division of Police at every opportunity. We also believe the processes are worthy of study and that there is room to improve the complaint system within the current framework.

Complaints about police conduct are governed by two documents: the "Policeman's Bill of Rights", Section 15.520 of the Kentucky Revised Statutes (herein, "PBR"), and the "Collective Bargaining Agreement By and Between the Lexington Fayette Urban County Government and Bluegrass Fraternal Order of Police Lodge No. 4, April 1, 2005 – March 31, 2008" (herein, "CBA"). By its terms the PBR established the procedural due process rights accorded an accused officer when a formal complaint is sworn out. The CBA augments the statutory requirement, in part by establishing an alternative informal process.

Two recent cases involve the formal complaint process. The process consists of several steps which are briefly outlined here. A complainant makes a statement to the investigator; the statement is transcribed and

put in the format of an affidavit. The investigator looks into the allegations contained in the affidavit and presents the information to Disciplinary Review Board. The officer is entitled to be present at the hearing and may present evidence. The Board makes a recommendation to the Chief. The Chief may affirm, reject or modify the recommendations of the Board. The officer may accept the punishment or appeal the decision to the Urban County Council. Our complaints have pointed to several items which reduce the credibility of the police complaint systems and potentially lower public opinion of the force.

The primary opportunity complainants have to present information is during the initial statement. If this is the end of the complainant's involvement, then there must be ample opportunity for the investigator to probe the complainant, making sure that all relevant information is contained in that one affidavit. Allowing ample opportunity for complainants to give the fullest, most complete account of the circumstances which give rise to the complaint may result in a better understanding of the conduct. Perhaps more importantly, complainants could have an additional chance to make sure the record is complete. They are not permitted to attend the hearing, to give testimony, to know what facts are presented to the board other than their affidavits. Complainants have no way to know whether a full picture of the conduct is presented to the Board, or on what basis it reached its conclusion.

Complainants receive a letter advising them of the outcome of the hearing. The conclusion letter does not relate any specific findings of fact, only the final action, leading some complainants to be skeptical of the procedure. When no information is given they are left to surmise what might be going on. The explanation of the process to the complainant often leaves them confused about the purpose and intent of the hearing. While it looks like a judicial procedure in many respects, it acts very differently in others. Since they have not been able to participate in the process they often feel unresolved at the end. The complainant has an interest in the life of the complaint but is not given the opportunity to participate as the complaint moves through the system. The conclusions letter complies with the CBA but we believe the letter could go farther without violating the terms of the agreement.

We do not find fault with the scope, nature, and validity of the investigation. We do suggest that public confidence in the process would improve with disclosure of more information to the complainant and with greater complainant participation in the process. Modifications that might be considered could be providing a synopsis to the complainant of the case to be presented to the board; in depth interview of complainants at the beginning of the investigation and after initial attempts to verify fact contained therein; including the findings of fact as well as the conclusions of the board in the outcome letter; allowing complainants to observe the evidentiary portion of disciplinary hearings.

For a variety of reasons many people do not want to file a formal complaint. They are not seeking punishment but rather behavior modification, acknowledgment of an imposition and an apology. They fear retribution from the authority figure if he finds out who filed the complaint. The CBA sets up an informal process as an alternative. The goal of the informal process is "counseling and remedial training". While the effort is admirable, in execution there is a flaw. The informal process begins with the officer's direct supervisor. Many citizens view this just as intimidating as dealing with the officer or with the formal process. In order to obtain information necessary to evaluate behavior it is necessary to overcome the perceived inequality of status. The supervisor is not perceived as being impartial; indeed in most cases the supervisor is perceived as being biased in favor of the officer. One alternative might be to receive and investigate complaints at the bureau level, with input from and participation by the supervisor. The CBA allows the informal process to be conducted at the Bureau level; we recommend that the Division of Police consider reassigning responsibility for informal complaints out of the sector and to the Bureau. A process that is not perceived as being fair cannot be effective. The CBA is silent as to communication with complainants; we would again encourage greater communication throughout the informal process. Greater communication includes establishing a fair listening environment. Finally, we believe it is appropriate to consider at this time whether the CBA should be modified when it comes up for renewal, specifically with regard to complaint process.

### DEPARTMENT TOTALS

Count of DEPARTMENT	
DEPARTMENT	Total
Administrative Services	8
Council	8
Finance	3
General Services	2
Outside Agency	2
Public Safety	27
Public Works	12
Social Services	12
State Agencies	8
Grand Total	82

### DISTRICT TOTALS

DISTRICT	Grand Total
1	10
2	7
3	4
4	4
5	4
6	2
7	1
8	3
9	2
10	1
11	3
12	4
13	37
Grand Total	82



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MAYOR

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
Citizens' Advocate Office

## MEMORANDUM

TO: Mayor Jim Newberry  
Vice Mayor Jim Gray  
Council Members

From: Joan R. Beck  
Citizens' Advocate (Ombudsman)

Date: October 8, 2007

Re: Third Quarter 2007 Activity Report

"Trust everybody, but cut the cards." said Mr. Dooley, a.k.a. Finley Peter Dunn. We like to believe that we are all honest and competent and that we never make mistakes. Nonetheless to avoid controversy, to keep us above board, we cut the cards. Believe that the cards are well shuffled and go the extra step just to be sure.

In the arena of designing public infrastructure in Lexington, no one is cutting the cards. Here's how the current system works. Mr. Public proposes a development project and hires a professional consulting engineer to design the infrastructure: roads, sidewalks, water distribution system, sanitary sewer, utility locations and storm water system. The consulting engineer refers to the "Division of Engineering Manuals" for the design criteria for the various elements and creates the plans. The Manuals were originally adopted in January of 2001 and updated in 2005. The consulting engineer then certifies that the plans meet the specifications contained in the design manuals. The LFUCG accepts the plan and relies on the consulting engineer's certification that the plans do indeed meet the specifications. No one is cutting the cards. No one is checking the math, running spell check, or verifying that the criteria have indeed been met.

There was a reason for creation of the Engineering Manuals in the first place. There could be many different designs that would accomplish a result. Relying on the manuals was a way to allow the consulting engineer to exercise best judgment when designing facilities to meet public needs. Encouraging creativity is a good thing and a valid reason for allowing alternative designs. Also, the Urban County Government feared liability for faulty design if it required changes to plans, by interfering with the professional judgment of the consulting engineer. This argument is itself defective. Governments require changes to plans routinely, in order to protect the public interest. Governments create minimum standards for design and construction of homes, stores, and commercial buildings. We allow governments to check the plans for compliance with those codes and inspect the construction for compliance with the plans. We reject plans that do not meet design criteria and allow the designer to change, correct, alter the plans OR appeal the determination. We do that without stifling the creativity of architects, engineers and builders and at the same time we protect public health, safety and welfare. We do not fear liability in those realms, just because we verify compliance with those codes.

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Checking the work is not a bad thing. In many respects the checking process is the way we learn. Doctorate candidates defend their dissertations. Attorneys defend their briefs. Students prove their knowledge and learn their shortcomings through batteries of tests, which are checked. We balance our checkbooks (or should) to verify that our math is correct. And often times we find mistakes. But with the design of public infrastructure, no one has been verifying since 2001.

Just a few months ago this administration began a reorganization process. All Divisions dealing with development are now functionally aligned. There is a new Department of Environmental Quality. A management audit is in process. As the function and flow of government is being evaluated and altered its time to take a second look. I recommend that the Intergovernmental Committee of the Council carefully examine the rights and responsibilities of local government to ensure the health, safety and welfare of its citizens by requiring and verifying compliance with infrastructure design standards.

## **INTAKE DATA REPORT:**

Complaint volume increased 50% from the second to the third quarters of this year. Several complaints touched on building permits, or lack thereof. A few callers needed help finding the new way to lodge a Code Enforcement complaint through LexCall. We visited with members of the Martin Luther King Neighborhood Association and participated in the Lexington-Bluegrass Minority Business Expo and the Community Needs Assessment. At the annual conference of the United States Ombudsman Association I facilitated a session on eminent domain and lead a presentation on legal issues for ombudsmen.

<b>INTAKE PER DISTRICT</b>		
<b>Districts:</b>	<b>Totals:</b>	
<b>James</b>	<b>1</b>	<b>7</b>
<b>Blues</b>	<b>2</b>	<b>10</b>
<b>DeCamp</b>	<b>3</b>	<b>2</b>
<b>Beard</b>	<b>4</b>	<b>6</b>
<b>Stevens</b>	<b>5</b>	<b>2</b>
<b>Stinnett</b>	<b>6</b>	<b>6</b>
<b>Crosbie</b>	<b>7</b>	<b>0</b>
<b>Myers</b>	<b>8</b>	<b>2</b>
<b>McCord</b>	<b>9</b>	<b>2</b>
<b>Blevins</b>	<b>10</b>	<b>3</b>
<b>Moloney</b>	<b>11</b>	<b>0</b>
<b>Lane</b>	<b>12</b>	<b>3</b>
<b>Non-District Related</b>	<b>13</b>	<b>21</b>
<b>TOTAL INTAKE</b>		<b>64</b>

<b>DEPARTMENT INTAKE TOTALS</b>	
<b>Departments:</b>	<b>Totals:</b>
<b>Council</b>	<b>5</b>
<b>Environmental Quality</b>	<b>3</b>
<b>Finance and Administration</b>	<b>4</b>
<b>General Services</b>	<b>4</b>
<b>Law</b>	<b>2</b>
<b>Mayor's Office</b>	<b>2</b>
<b>Public Safety</b>	<b>14</b>
<b>Public Works &amp; Development</b>	<b>12</b>
<b>Social Services</b>	<b>5</b>
<b>Others:</b>	
<b>Non-Jurisdictional</b>	<b>6</b>
<b>Outside Agency</b>	<b>10</b>
<b>State</b>	<b>8</b>
<b>TOTAL INTAKE ROUTED:</b>	<b>75</b>

\* A total of 64 intakes impacted the various department 75 times.

\*\* some intakes may affect several different departments