

**URBAN COUNTY COUNCIL
SCHEDULE OF MEETINGS
September 27-October 4, 2010**

Monday, September 27

No Meetings

Tuesday, September 28

Council Partner Agency Oversight Committee Meeting.....11:00 am
Conference Room-5th Floor Government Center

Council Budget & Finance Committee Meeting.....1:00 pm
Council Chambers-2nd Floor Government Center

Council Work Session.....3:00 pm
Council Chambers-2nd Floor Government Center

Mayor's Youth Council Meeting.....5:30 pm
Conference Room-5th Floor Government Center

Wednesday, September 29

No Meetings

Thursday, September 30

No Meetings

Friday, October 1

No Meetings

Monday, October 4

Fayette Co. Rural Land Management Board Meeting.....3:00 pm
Conference Room-12th Floor Government Center

LEXINGTON-FAYETTE URBAN COUNTY COUNCIL

WORK SESSION AGENDA

September 28, 2010

- I. Public Comment – Issues on Agenda**
- II. Requested Rezoning / Docket Approval – None**
- III. Approval of Summary-Yes, August 31 and September 21, 2010, pp. 3-13**
- IV. Budget Amendments – None**
- V. New Business, pp.15-16**
- VI. Continuing Business / Presentations**
 - A. Council Planning Committee (separate)**
 - B. Internal Audit, Ms. Jennifer Burke, Interim Chair
Internal Audit Board, pp.17-23**
 - C. FY2011 General Fund Budget Position-Elimination Update
Ms. Leslie Jarvis, Acting Director of Human Resources**
- VII. Council Report**
- VIII. Mayor's Report – None**
- IX. Public Comment – Issues Not on Agenda**

ADMINISTRATIVE SYNOPSIS

New Business Items

- A. Authorization of a Deed of Acceptance with Walnut Hill Properties, LLC for Property Located at 3278 Sweet Clover Lane as Dedicated Greenway. (459-10) (Rayan/Webb)

This request will authorize approval of a deed of acceptance, at no cost to LFUCG, with Walnut Hill Properties, LLC for property located at 3278 Sweet Clover Lane as dedicated greenway under the Greenway Master Plan. The cost for maintenance is estimated at \$6,750 annually and will be funded from the Water Quality Management Fee.**p.15**

- B. Authorization of a LEAP (Local Number Portability Enhanced Analytical Platform) Service Agreement with NeuStar®, Inc. on Behalf of the Department of Public Safety, Division of Emergency Management/911, Enhanced 911 System. (460-10) (Lucas/Bennett)

This request will authorize approval of a LEAP Service Agreement at a cost of \$2,000 annually with NeuStar®, Inc. on behalf of the Division of Emergency Management/911, Enhanced 911 system, for access to the Number Portability Administration Center (NPAC) to track telephone number portability. This access, training, products, software, installation and maintenance meet all Commonwealth of Kentucky specifications. Funds are budgeted.**p.16**

URBAN COUNTY COUNCIL
WORK SESSION SUMMARY
& TABLE OF MOTIONS

August 31, 2010

Mayor Newberry chaired today's work session meeting. All Council Members were present, except CM McChord.

- I. Public Comment – Issues on Agenda-None
- II. Requested Rezoning / Docket Approval-None
- III. Approval of Summary-Yes

A motion by CM Martin to approve the summary from August 24, 2010, seconded by CM Myers, passed without dissent.

- IV. Budget Amendments-None
- V. New Business

- A. Authorization to Add the Division of Enterprise Solutions to Section 21-27(b) of the Code of Ordinances for Standby Status. (396-10) (Cottle/Dhuwaraha)
- B. Authorization of a Memorandum of Agreement (MOA) by and between LFUCG and the World Games 2010 Foundation, Inc. for Exchange of Products and Services. (412-10) (Cottle/Dhuwaraha)
- C. Authorization to Amend Section 22-5 of the Code of Ordinances within the Department of Environmental Quality, Division of Water Quality. (413-10) (L. Jarvis/Bush)
- D. Authorization to Provide Grant Funds Outlined in the Proposed Guidelines to Local Nonprofit Organizations Under the Energy Efficiency and Conservation Block Grant (EECBG) Program. (415-10) (Gooding/Bush)
- E. Authorization of Amendment No. 1 to Agreement with Bluegrass PRIDE, Inc. for the Community Energy Awareness Program, Under the Energy Efficiency and Conservation Block Grant (EECBG) Program. (420-10) (Gooding/Bush)

- F. Authorization of Amendment No. 1 to Resolution No. 282-2010 Regarding Neighborhood Development Funds (NDF) to Bluegrass Community Foundation, Inc. (414-10) (Langston)
- G. Authorization to Amend Section 18.65.1(c) and Create Section 18-65.1(d) of the Code of Ordinances Regarding Parking Meters. (416-10) (Bastin/Bennett)
- H. Authorization of an Additional Software License Agreement with New World Systems® on Behalf of the Department of Public Safety, Division of Police. (417-10) (Bastin/Bennett)
- I. Authorization of Addendums No. 1 and 2 to Agreement to Permit Attachments with Kentucky Utilities Company (KU) on Behalf of the Department of Public Safety, Division of Police. (418-20) (Bastin/Bennett)
- J. Authorization to Rename Hilo Street to Durman Drive in Memory of Police Officer Bryan J. Durman. (423-10) (Lucas/Bennett)
- K. Authorization to Accept Donated Items from the Kentucky Division of Emergency Management (DEM) through the Chemical Stockpile Emergency Preparedness Program (CSEPP). (424-10) (Dugger/Bennett)
- L. Authorization to Accept an Additional Award from the Kentucky Division for Air Quality under the Kentucky Clean Diesel Grant Program. (419-10) (Gooding/ Rumpke)
- M. Authorization to Extend Administrative Services Agreement with EyeMed Vision Care®. (426-10) (L. Jarvis/Rumpke)
- N. Authorization to Extend Administrative Services Agreement with Delta Dental Plan of Kentucky, Inc. (427-10) (L. Jarvis/Rumpke)
- O. Authorization to Extend the Claims Payment Agreement, Clinical Program Services, Amendment to Plan Management Agreement, Application for Group Stop-Loss Insurance and the Amendment to the Group Stop-Loss Policy. (428-10) (L. Jarvis/Rumpke)
- P. Authorization of an Amendment to Agreement with Columbia Gas of Kentucky regarding the Clays Mill Road Improvements Project. (422-10) (Gooding/ Webb)
- Q. Authorization to Rescind Resolution No. 168-2010 with Jason Tate Contractor, Inc. Regarding the Sidewalk Ramp Installation/Reconstruction Program 2010 and Award Contract to ZKB Construction, Inc. (429-10) (Rayan/ Webb)

- R. Authorization of Change Order No. 1 to contract with Claunch Construction LLC for the West Hickman Trail Project. (430-10) (Gooding/Webb)

A motion by CM Ellinger to place on the docket for the September 9, 2010 Council Meeting a resolution ratifying the Department of Law's execution, on behalf of the Urban County Government, of a settlement agreement, stipulation, and recommendation, and any other necessary documents, in Public Service Commission Case No. 2010-00204, pertaining the transfer of control of Kentucky Utilities Company, seconded by CM CM Lane, passed without dissent.

A motion by CM Beard to approve the New Business items, seconded by CM Martin passed without dissent.

VI. Continuing Business / Presentations-Yes

A. Council Planning Committee Update

This update was given by Vice-Chair CM Blues.

B. Council Water Resources Oversight Committee Update

This update was given by Chair CM Blues.

C. Bluegrass Airport Runway Dedication

This short presentation was given by CM Lane, 12 District.

VII. Council Report

CM Martin-Announced that tonight is the Southland Jamboree at 7 pm; there are only 2 left. Also, wanted to be the first to wish CM Feigel a very happy birthday.

CM Myers-A motion by CM Myers to place on the docket a resolution by Council to temporarily appoint Paula Campbell to the interim position of Acting Citizen's Advocate, at a salary equal to 10% above incumbents current salary, effective upon passage and continuing until a permanent appointment is made, seconded by CM Beard, passed without dissent.

A motion by CM Myers to approve the Citizens' Advocate Policies and Procedures Manual and Professional Standards, seconded by CM Crosbie, passed without dissent.

CM McChord-Announced that there will be a ribbon cutting tomorrow at 10:30 am

at Shilito Trail, the original Healthway Trail; stated that it is less than 25 days from having the world as our guests; thanked Comm. Webb and George Milligan, and all who helped to make downtown look the way it does.

CM Beard-A motion by CM Beard to approve the NDF list, seconded by CM Myers, passed without dissent.

CM Henson- Stated that last night there was a meeting for revitalization for Oxford Cir; thanked Sgt. Chris Young, Ofc. Shannon Gahafer, and Ofc. Keith Gaines; stated that the old 'Y' property on Cross Keys should be demolished by the end of September; and thanked Mayor Newberry for appointing her to the Keep Lexington Beautiful Commission.

CM Lawless- Gave a report back on Mr. Sellars' contract with the city.

CM Feigel- Stated that tonight at 7 pm will be the final jazz concert in Ecton Park; the culmination of the jazz concerts will be the Sept. 4 concert at Henry Clay's Ashland; on Sept. 2 at 5:30 pm the final public meeting for the Chevy Chase re-design at Park United Methodist Church.

CM Crosbie- Stated that the mid-Sept. timeline for Todds Rd completion is still on; thanked Police for extra patrol and Traffic Eng. with signals and lights.

CM Stinnett- A motion by CM Stinnett to keep Avon Golf Course open until Nov. 30, 2010, seconded by CM Blues, passed without dissent.

VIII. Mayor's Report-None

Mayor Newberry mentioned the passing of Michal Allen, Dir. of Human Resources.

IX. Public Comment-Issues not on the agenda-None

X. Closed Session

A motion by CM McChord pursuant to KRS 61.810(1)(c) to go into closed session for the purpose of discussing potential litigation involving the Urban County Government, seconded by CM Martin, passed without dissent.

A motion by CM Myers to go back into open session, seconded by CM Martin, passed without dissent.

XI. Adjournment

A motion by CM Martin to adjourn, seconded by CM McChord, passed without dissent.

Work session was adjourned at 4:08 pm.

URBAN COUNTY COUNCIL
WORK SESSION SUMMARY
& TABLE OF MOTIONS

September 21, 2010

Mayor Newberry chaired today's work session meeting. All Council Members were present, except CM Martin.

- I. Public Comment – Issues on Agenda-None
- II. Requested Rezoning / Docket Approval-Yes

A motion by CM Blues to approve an ordinance changing the zone from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.120 net (0.225 gross) acres, for property located at 165-167 Jefferson St; and from a Neighborhood Business (B-1) zone to Planned Neighborhood Residential (R-3) zone, for 0.046 net (0.0065 gross) acre, for property located at 163 Jefferson St., and requesting dimensional variances(Lexington Home Ownership Commission, Inc.(AMD)), seconded by CM Beard, passed without dissent.

A motion by CM James to place on the docket for Thursday September 23, 2010 a resolution authorizing the Mayor on the behalf of the Urban Co. Government to execute a Memorandum of Understanding and contract agreement with Greenroofs for Healthy Cities North America, Inc. for greenroofs workshop at a cost not to exceed \$15K, seconded by CM Gorton, passed without dissent.

A motion by CM Gorton to place on the docket for Thursday, September 23 a resolution initiating a text amendment to repeal Article 20 of the Zoning Ordinance which relates to erosion and sediment control. Ordinance no. 151-2010, which passed on August 26, 2010 related to stormwater discharges from construction sites and addresses all matters currently contained in Article 20 of the Zoning Ordinance so that repeal of Article 20 is necessary to assure consistency in the regulation of stormwater from construction sites, seconded by CM Myers, passed without dissent.

A motion by CM Myers to approve the amended docket, seconded by CM Stinnett, passed without dissent.

- III. Approval of Summary-None

IV. Budget Amendments-Yes

A motion by CM Beard to approve the budget amendments, seconded by CM Gorton, passed without dissent.

V. New Business

- A. Authorization of Amendment No. 12 to an Engineering Services Agreement with ENTRAN (f/k/a American Consulting Engineers, PLC) for the Newtown Pike Extension/Small Area Plan Project. (434-10) (Gooding/Webb)
- B. Authorization of Change Order No. 3 to Contract with Woodall Construction Company, Inc. for the Southend Park Temporary Redevelopment Housing Project for the Newtown Pike Extension Project. (FINAL) (454-10) (Gooding/Webb)
- C. Authorization of Amendment No. 1 to Agreement with the Kentucky Transportation Cabinet (KYTC) for the Fiber Optic Cable Installation Program Project – FY2008. (455-10) (Gooding/Webb)
- D. Authorization of Amendment No. 1 to a Professional Services Agreement (PSA) with the University of Kentucky Research Foundation for the Vine Street Streetscape Improvements Project. (436-10) (Kerr/Webb)
- E. Authorization of Amendment No. 1 to a Professional Services Agreement with the University of Kentucky Research Foundation for the Main Street Streetscape Improvements Project (437-10) (Kerr/Webb)
- F. Authorization of Amendment No. 1 to a Professional Services Agreement with the University of Kentucky Research Foundation for the Main Street Streetscape Improvements Project – Phase B. (458-10) (Kerr/Webb)
- G. Authorization of a Contract for Outdoor Lighting Service and a Contract for Electric Service Street Lighting with the Kentucky Utilities Company (KU) as Part of the Downtown Street Lighting Project Under the Limestone Streetscape Project. (438-10) (Herrington/Webb)
- H. Authorization to Approve Critex LLC as the Sole Source for Purchase of Mr. Manhole Replacement Cutter Package and Repair Parts. (439-10) (Williams/Webb)
- I. Authorization to Transfer Property and Temporary Easements to the Kentucky Transportation Cabinet (KYTC) for the Leestown Road Widening Project. (451-10) (Rayan/Webb)
- J. Authorization of a Memorandum of Understanding (MOU) with the Fayette County Public Schools (FCPS) on Behalf of the Department of Social Services. (435-10) (Helm)

- K. Authorization to Accept Loan of P7100 Model Radios Offered by Harris Corporation on Behalf of the Department of Public Safety, Division of Fire & Emergency Services in Support of the 2010 Alltech FEI World Equestrian Games™(WEG) and Spotlight Lexington. (432-10) (Hendricks/Bennett)
- L. Authorization to Accept a Cash Donation from Columbia Gas Transmission LLC on Behalf of the Department of Public Safety, Division of Fire & Emergency Services. (443-10) (Hendricks/Bennett)
- M. Authorization of a Contractual Agreement with the Bluegrass Regional Mental Health-Mental Retardation Board, Inc. (d/b/a Comprehensive Care Center) on Behalf of the Department of Public Safety, Division of Community Corrections. (433-10) (Bishop/Bennett)
- N. Authorization of a Professional Services Agreement (PSA) with Amy Slatin, Sexual Assault Nurse Examiners (SANE), for Performance of Forensic Examinations – FY2010. (444-10) (Gooding/Bennett)
- O. Authorization of Change Order No. 2 to Contract with Free Contracting, Inc. on Behalf of the Department of Environmental Quality, Division of Waste Management for the Solid Waste Facility Expansion Project. (FINAL) (441-10) (Feese/Bush)
- P. Authorization of a Statement of Work (SOW) with VeBridge on Behalf of the Department of Environmental Quality, Division of Water Quality. (449-10) (Martin/Bush)
- Q. Authorization of a Joint Funding Agreement with the US Department of the Interior, US Geological Survey (USGS). (448-10) (Martin/Bush)
- R. Authorization of a Contract for Like Kind Exchange with Delta T Corporation (d/b/a Big Ass Fans® Inc.) on Behalf of the Department of General Services, Division of Parks & Recreation. (238-10) (Hancock/Cole)
- S. Authorization of Amendment No. 2 to Agreement with Kentucky Transportation Cabinet (KYTC) for the Healthway Trail Project. (450-10) (Gooding/Cole)
- T. Authorization of a License Agreement with Hustonville, LLC on Behalf of the Department of General Services, Division of Parks and Recreation. (453-10) (Hancock/Cole)
- U. Authorization to Dispose of Surplus Real Properties Owned by LFUCG by a Bid Process. (445-10) (Baradaran/Cole)
- V. Authorization for the Issuance of Industrial Revenue Bonds (IRB) to Centenary United Methodist Church, Inc. for Outstanding Debt. (452-10) (Wright/Kelly)

- W. Authorization to Amend Chapter 25 of the Code of Ordinances Regarding the Ethics Act. (456-10) (Rabold)
- X. Authorization of a Purchase of Service Agreement (PSA) with Bluegrass State Games, Inc. (457-10) (Rabold)

A motion by CM Lawless to place item 'W' into the Inter Governmental Committee, seconded by CM Blues, passed without dissent.

A motion by CM Gorton to approve the New Business items, except item W, seconded by CM Myers, passed without dissent.

VI. Continuing Business / Presentations-Yes

A. Special Council Services Committee Update

This update was given by Chair CM Ellinger. There were no motions to come forward.

B. Council Budget & Finance Committee Update

This update was given by Chair CM Stinnett. One motion was brought forward.

A motion by CM Stinnett to approve the following changes in the minimum license fee ordinance: due date will change for fees to be paid on April 15th and sole proprietors being exempt from the fee if the total gross receipts from business activity are less than \$4400.00, seconded by CM McChord, passed with a 13-1 vote.

VII. Council Report

CM Blues-Announced the Masterson Station HOA meeting tonight at 7 pm; on 10/22 from 10-6 pm at Applebees Park, the Health Dept will have a free flu shot event; Radcliffe-Marlboro and Oakwood NAs will both meet at 7 pm on 9/27/10-a state representative will be present at the Oakwood meeting to answer questions about the present construction of the new Eastern State Hospital; also asked follow-up questions about the Wayfinding signs and Kevin Wente answered.

CM James- Stated that she and CM Blues received applause for the *progress* of the stormwater project in the Green Acres neighborhood; thanked Darryl Bennett, Jim Wray, and Amanda Gumbert, with the Cane Run Watershed Group for their continued work on this project; asked administration about the process and procedures for those going to the emergency homeless shelters during the WEG-Comm. Helm answered.

CM Beard-Asked about the Wayfinding signs for the WEG.

A motion by CM Beard to approve the NDF list, seconded by CM Lane passed without dissent.

CM Stinnett- Stated that the Liberty/Todds Rd/Man-O-War project is 99% completed; on 9/27/10 at 7 pm at Bryan Station High School the Beverly Ave Sanitary Sewer Construction meeting will be held; also 2 other meetings were announced: Andover on Tuesday night at 7 pm at the Methodist Church on Todds Rd and at 7 pm at BSHS the Northpoint NA will.

CM McChord- Stated that the clock that we have been looking at is now down to 3 days until the WEG; gave thanks to all involved; thanked Steve Austin and Beth Wilmont of the Bluegrass Community Foundation for making the Legacy Trail a reality; on 10/10/10 another 2nd Sunday event will take place; this year 115/120 KY counties will be involved.

CM Crosbie- Echoed CM Stinnett's statements about the Liberty/Todds Rd/Man-O-War construction project; thanked Police for extra patrol and Brad Frazier.

CM Lawless- Announced the Elizabeth St NA will be tonight at 7 pm at the 1st Christian Church at the corner of Audubon and Forest Park; Goodrich NA will meet Thursday at 7 pm at the end of Goodrich Ave-their annual picnic will be on Saturday, 9/26/10 at 2 pm; announced if anyone needs updates about Spotlight Lexington, they can go to Facebook; asked questions about the Way Finding signs- Kevin Wenthe answered; also asked about garbage collection during the WEG- Susan Bush answered.

A motion by CM Lawless to place into the Services Committee the issue of residential parking permits, seconded by CM Gorton, passed without dissent.

CM Feigel- Stated that there was a news conference on yesterday on Newtown Pike to announce the banners that will be put up along Newtown and Versailles Rd for the WEG, welcoming all visitors.

A motion by CM Feigel to place into the Services Committee the issue of sidewalk specifications for review and possible modifications, seconded by CM Lane, passed without dissent.

CM Ellinger- Asked Krista Greathouse how citizens can get Spotlight Lexington books; asked Comm. Webb about the bike trail to the Horse Park

being closed on Sunday.

VM Gray-Made a statement about the delay of the Wayfinding signs for the WEG.

VII. Mayor's Report-Yes

A motion by CM Blues to approve the Mayor's Report, seconded by CM Beard, passed without dissent.

Mayor Newberry asked Asst. Chief Boggs to speak about the temporary locations during the WEG for the homeless who are usually in Phoenix Park.

IX. Public Comment-Issues not on the agenda-None

X. Closed Session-Pending Litigation

A motion by CM Blues pursuant to KRS 61.810(1)(c) to go into closed session for the purpose of discussing pending litigation involving the Urban County Government, seconded by CM Gorton, passed without dissent.

A motion by CM Blues to go back into open session, seconded by CM Myers, passed without dissent.

XI. Adjournment

A motion by VM Gray to adjourn, seconded by CM Myers, passed without dissent.

Work session was adjourned at 5:11 pm.

Budget Information For New Business Items
Work Session
September 28, 2010

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Item	Number	Amount	Fund	Name / Description
A	459-10	6,750	4051	Water Quality Management Fund
B	460-10	2,000	4204	Enhanced 911 Fund



459-10

15


Lexington-Fayette Urban County Government
DEPARTMENT OF PUBLIC WORKS & DEVELOPMENT

Jim Newberry
Mayor

Mike Webb
Commissioner

MEMORANDUM

To: Mayor Jim Newberry
Urban County Council

From: James R. Wray 
Engineering Technician Principal

Date: September 17, 2010

Re: Resolution Authorizing Acceptance of One Greenway Parcel Dedication
At 3278 Sweet Clover Lane

The purpose of this memorandum is to request a resolution authorizing the acceptance of a deed of dedication for greenway at 3278 Sweet Clover Lane from Walnut Hill Properties, LLC at no cost to the Lexington Fayette Urban County Government. This parcel was identified in the development plat as a dedicated greenway.

The purpose of this acquisition is for greenway protection. Recommendation for the acquisition comes from the Greenway Master Plan, the Division of Engineering, and the Division of Planning. The annual cost of continuous maintenance is expected to be \$6,750.00 and is to be funded out of the Water Quality Management Fee.

The Division of Engineering staff agrees that acquisition of the parcel would allow for the preservation of the greenway, improvement of wildlife habitat and protection of water quality.

Funds for the payment are currently budgeted in 4051 303204 3321 76101.

Acceptance of the deed is recommended.

Approved by:



Marwan A. Rayan, P.E.
Urban County Engineer



James M. Webb, Commissioner
Department of Public Works & Development

c/with att: Charles Martin, P.E. Yvonne Stone Robert Bayert, P.E. Keith Lovan, P.E. Edd Mackey
Cindy Deitz File

10.P280.406.blue 3278 sweet clover ln



460-10

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Lexington-Fayette Urban County Government
DEPARTMENT OF PUBLIC SAFETY

Jim Newberry
Mayor

Tim Bennett
Commissioner

September 15, 2010

TO: Mayor Jim Newberry and Urban County Council

FROM: David S Lucas, Director of Enhanced 9-1-1 

RE: Agreement with NeuStar, Inc

VIA: Tim Bennett, Commissioner of Public Safety

This request will authorize the mayor to enter an agreement with NeuStar Inc, to provide LFUCG access to the Number Portability Administration Center (NPAC) in order to track telephone number portability for the exclusive use related to supporting Enhanced 911 services.

The total cost for the present fiscal year is \$ 2,000 and all funds are budgeted within the Division of Enhanced. The requested access, training, products, software, installation and maintenance meet all state specifications and are acceptable expenses as outlined by regulations created by the Commonwealth of Kentucky.

The following documents are attached:

1. Administrative review form. (Blue sheet)
2. License Agreement between DCC and LFUCG

Please return completed documents to my attention for final disposition.

LFUCG Internal Audit Board Working Session Presentation

Goals/Agenda

- Introductions and Backgrounds
- History of Internal Audit Board
- History of Investigation
- Fundamental Internal Audit Principles/Standards
- Response to Special Investigations Committee Report
- Closing Comments and Questions

Introductions and Backgrounds

- Internal Audit Board
 - Current chair: open
 - Jennifer Burke, Vice-Chair/Acting Chair, Partner, Crowe Horwath
 - 20+ years of internal audit and public accounting experience
 - Certified Public Accountant, Certified Risk Professional, Certified Fraud Examiner
 - Nationally recognized speaker on internal audit, governance, fraud and risk management
 - Ed Lane, Councilmember
 - Linda Rumpke, Commissioner of Finance, LFUCG
 - George Myers, Councilmember
 - Rebecca Langston, Council Administrator (non-voting)
 - Joe Kelly, Senior Advisor for Management (non-voting)

Introductions and Backgrounds

- Bruce Sahli, Internal Audit Director, LFUCG
 - 20+ years of internal audit experience
 - Certified Internal Auditor
 - MBA from University of KY
 - 7 years as Director of Internal Audit, LFUCG
- Dr. David Stephens
 - Served on Intergovernmental Committee that formed sub-committee to advise 2002 Council on how to set up Internal Audit (IA) function & Board
 - Served on sub-committee whose recommendations were instrumental in 2002 ordinance that set up IA Board and responsibilities,
 - Served on IA Board

History of Internal Audit Board

- LFUCG established an internal audit function in 1976 and filled two internal audit positions in 1979. Function moved to Council in 1982
- In January 2001, Council Intergovernmental Committee voted without dissent to form sub-committee to examine development of an internal audit function for LFUCG
- Council members assigned to sub-committee included Al Mitchell, Scott Crosbie, David Stevens, George Brown, and Bill Farmer
- Sub-committee met five times. Minutes of those meetings demonstrate that maintaining auditor independence was a primary concern of both Intergovernmental Committee and its sub-committee
- End result of that sub-committee's decision, and subsequent deliberation by 2002 Urban County Council, was the formation of Internal Audit Board and its functions via Ordinance 63-2002
- Ordinance clearly states that authority to determine Audit Board's charter resides with Audit Board, not with Council. It also clearly obligates Urban County government to provide staff to Internal Audit Board as needed

History of Internal Audit Board

Governance

- Certified Internal Auditors are bound by Institute of Internal Auditors (IIA) Code of Ethics and International Standards For the Professional Practice of Internal Auditing (Standards)
- A charter is required by IIA Standards to define the purpose authority and responsibility of the internal audit activity
 - IA Charter was approved by IA Board in March 2003
 - Amended charter in compliance with updated IIA standards was approved by IA Board in March 2009

History of Investigation

- LFUCG employee made fraud allegations in 2008 and 2009 when he completed Fraud Risk Assessment Questionnaire (FRAQ) supplied by External Auditor during annual financial audit
- In August 2009, Mountjoy brought to Director of Internal Audit (DIA) allegations of fraud made by an employee in his response to 2009 FRAQ
- Office of Internal Audit conducted a preliminary review to examine specific 2009 FRAQ allegations against fraud predication standards of Association of Certified Fraud Examiners (ACFE) and determined that based on predications of fraud there was no credible evidence of fraud

History of Investigation

ACFE Standards state:

- Predication: "Would the totality of the circumstances lead a reasonable, prudent and professionally trained person to believe that a fraud has occurred, is occurring, or will occur?"
- If answer to predication question is "no", then fraud investigator must discontinue examination
- Predication is so important that fraud examiner will continually assess it throughout the process
- If, at any point, it becomes clear predication can no longer be supported, work must stop
- If it becomes clear fraud examiner finds no predication, should discontinue work before accusing people of a crime they did not commit
- Defamation: "Disclosure of damaging untrue statements"

History of Investigation

- DIA discussed fraud investigation and subsequent resolution with IA Board Chair Dewitt Hisle
- Board members Hisle, Acting Finance Director O'Mara (no longer on board), and Kelly were all involved in vetting allegations
- Board Chair Hisle decided matter would not be discussed with full IA Board due to:
 - concerns regarding employee's confidentiality requests, further complicated significantly by Mountjoy's direct statement previously made in writing to this employee that his questionnaire responses would be confidential and only used for audit analysis
 - a reluctance to potentially damage reputation of (defame) person the primary accusations were leveled against and which were deemed unfounded based on standards of fraud predication
 - Advisement from Department of Law that KRS governing Open Meetings do not provide IA Board option of going into Closed Session to discuss such matters, and would subject information to Open Records law

History of Investigation

- Results of preliminary review indicating no credible evidence of fraud were communicated to employee in a memo issued to him on September 22, 2009
- An open records request was made by Commissioner of Law Askew September 24, 2009. DIA complied with Open Records request as required by law
- Councilmember Crosbie requested copies of questionnaire in May, 2010
- When DIA advised he would not release document to Councilmember Crosbie, Commissioner Askew, citing a conflict of interest, retained Terry Sellars on May 17 to advise whether IA was obligated to release document to councilmember
- Sellars released legal opinion on May 21 which was distributed to council members via email same day which concluded that DIA could disclose document to no one other than members of IA Board, who supervised him pursuant to CO 63-2002

History of Investigation

- Issue became public when Councilmember Crosbie made comment at Committee of the Whole meeting on May 25: "Our internal audit board knew, our internal auditor knew, that there had been some sort of fraud and never interviewed this individual, never, never talked to this individual, and determined because an outside external auditor, financial auditor, didn't see any type of issues with it, that it didn't need to be investigated further."
- In response to allegations by Councilmember Crosbie, Council voted unanimously to establish Special Investigative Committee (SIC)
- DIA requested review by State Auditor on May 29 to review handling of fraud allegations by Office of Internal Auditor. DIA chose to request State Auditor review as they are bound by same IIA Standards regarding confidentiality, and have KRS authority to review all documents
- State Auditor announced review on June 3, same day the SIC members were named
- First SIC meeting was held June 8

History of Investigation

- Chairman Hisle resigned on June 22 after council vote to forcibly remove him failed by vote of 7-6
- DIA was issued subpoena on July 15 from Chair of SIC Myers commanding DIA produce and permit inspection and copying of audit workpapers related to employee's fraud allegations
- SIC Chair quoted in paper that he was incensed with DIA's failure to comply with subpoena and there was possibility full Council might penalize DIA
- IA Board voted unanimously on July 21 not to respond to subpoena until and unless there is legal action that supports validity of subpoena, to release workpapers in question to SIC pending alleging employee's release indemnifying Office of Internal Audit and IA Board from legal action, and to redact from workpapers any information that could impact others from a defamatory perspective
- Alleging employee did not grant release
- On August 9 a summary judgment was filed on legality of subpoena
 - General Assembly has not conferred subpoena power on Council (Stansbury v Maupin)
 - LFUCG's Charter does not confer subpoena power on Council
- Attorney General opined on August 20 that LFUCG did not violate Open Records Act in denying release of workpapers to Lexington Herald Leader
- On September 9, 2010, SIC issued final report

Fundamental IA Principles/Standards

Audit Workpapers

- Audit workpapers are preliminary documents (and are therefore not subject to open records), may contain sensitive information of a preliminary nature, and may contain names of individuals who have spoken to Internal Audit in good faith with reasonable expectation of confidentiality
- IIA Code of Ethics: "Internal auditors respect value and ownership of information they receive and do not disclose information without appropriate authority unless there is a legal or professional obligation to do so." (IIA Code of Ethics Principles-Confidentiality)
- IIA's Standards: "The chief audit executive (in LFUCG, this is DIA) must control access to engagement records. Chief audit executive must obtain approval of senior management and/or legal counsel prior to releasing such records to external parties, as appropriate." (IIA Standard 2330.A1)

Fundamental IA Principles/Standards

- Independence
 - IIA Standards: "The internal audit activity must be independent, and internal auditors must be objective in their work." (IIA Standard 1100-Independence and Objectivity)
 - IIA Interpretation of Standard 1100: "Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional, and organizational levels."
 - LFUCG Ordinance No. 63-2002 created IA Board: "The powers and duties of the board include... To supervise, coordinate, evaluate, monitor, and implement the internal audit function of the urban county government."
- Office of Internal Audit reports to IA Board and does not report to either Administration or Council, a reporting structure consistent with intent of ordinance, and that provides IA the ability to remain independent of both Administration and Council and to be objective in its decisions and processes

Fundamental IA Principles/Standards

Audit Charter

- IIA Standards: "The purpose, authority, and responsibility of internal audit activity must be formally defined in an internal audit charter consistent with the Definition of Internal Auditing, Code of Ethics, and Standards." (IIA Standards 1000)
- IIA's Interpretation of Standard 1000: "Internal audit charter is formal document that defines internal audit activity's purpose, authority, and responsibility. IA charter establishes internal audit activity's position within organization, authorizes access to records, personnel, and physical properties relevant to the performance of engagements, and defines the scope of internal audit activities. Final approval of the internal audit charter resides with the (IA) Board"
- IA Board was specifically assigned powers and duties to supervise, coordinate, evaluate, monitor, and implement IA function of LFUCG. IA Board approved Office of Internal Audit's Charter which specifically states:
 - "The Office of Internal Audit shall comply with requirements for practice of internal audit as set forth in IIA Code of Ethics and Standards."
 - "Office of Internal Audit personnel shall respect confidentiality, value, and ownership of information they receive and will not disclose information without appropriate authority unless there is a legal or professional obligation to do so."

Fundamental IA Principles/Standards

Confidentiality

- Internal Audit has a clearly defined professional obligation to:
 - Protect confidentiality of audit workpapers developed in course of an audit
 - Guard against any actual or perceived impairment to its independence and objectivity
- Releasing audit workpapers sets a negative precedent as it:
 - Raises questions about IA's ability to maintain confidentiality, independence, and objectivity on both this and any future audits
 - Makes it more difficult to obtain information and cooperation from audit clients if they are concerned that their comments, preliminary notes, etc., may at some point become subject to review by individuals outside of IA who will not be compelled to honor any standards of confidentiality or proper use of information, and who may not have professional expertise to properly evaluate audit evidence

Fundamental IA Principles/Standards

To comply with Standards, as well as based on legal advice of counsel (reasons as explained in Sellars' May 21 letter), audit workpapers were not released to Council Special Investigative Committee when requested in a June 15, 2010 letter to DIA or when subsequently subpoenaed

Response to SIC Report

Excerpts from DIA Sahli's response to SIC final report to clarify inaccuracies and to respond to findings:

- Page 1: "Because Internal Auditor refused to provide information to the Committee or to appear before the Committee..."
- RESPONSE: Statement gives impression DIA was obstructionist and acted without authority or direction regarding matter
- In three letters issued to SIC and copied to Council, it was communicated that DIA's declining to provide 2009 FRAQ and related audit workpapers was necessary to comply with:
 - Both Institute of Internal Auditors (IIA) Code of Ethics and IIA Standards
 - Requirements of Internal Audit Charter as approved by the IA Board
 - Advice of legal counsel

Response to SIC Report

- Page 2: "Internal Auditor's response to Committee's determination to obtain requested information from other sources was to file suit against the Chair of the SIC in Fayette Co. court."
- RESPONSE: Chair of SIC attended July 21, 2010 IA Board meeting wherein IA Board by unanimous vote (Chair of SIC recused himself) instructed DIA not to honor subpoena
- Attorney Terry Sellers has stated he did not believe subpoena has any legal validity
- As a result of threat of penalty, IA Board joined with DIA to file a Petition of Rights in Circuit Court
- Once petition was filed, Sellers communicated to Judge Crittenden in writing that DIA would not appear before SIC on legal advice

Response to SIC Report

- Page 4: "An attachment included in a May 10, 2010 letter to the Mayor identified Patrick Johnston... as the person who raised the issue of fraud... During the same period of time, the external auditor would not provide the same information to Council"
- RESPONSE: This "attachment" was IA's Internal Memorandum issued to Patrick Johnston on September 22, 2009, regarding results of IA's preliminary review of fraud allegations, which found no credible evidence of fraud
- This Internal Memorandum was released by Mountjoy without knowledge or consent of DIA
- There is documentation that clearly indicates this information was also provided to Council Member Crosbie on May 11, 2010
- Therefore, statement that "external auditor would not provide the same information to Council" is incorrect

Response to SIC Report

- Page 5: "the Model Procurement Code was not followed"
- RESPONSE: LFUCG has its own purchasing policies and procedures, does not follow Model Procurement Code of Kentucky, and is not obligated to do so
- Page 5: "KLC was given preferential treatment in the bidding process"
- RESPONSE: Insurance is a professional service whose procurement is guided by CAO Policy #1, which includes seven criteria for selection of professional services but does not require bids
- Page 7: "The Internal Auditor refused all requests for participation".
- RESPONSE: See above responses

Response to SIC Report

- Page 9: "The Committee received no information regarding its investigation from IA or IA Board"
- RESPONSE: In June 2010, SIC received 96 pages of documents relating to:
 - IIA Standards and Code of Ethics
 - Association of Certified Fraud Examiners (ACFE) Standards and Code of Ethics
 - Internal Audit Charter
 - Internal Audit Special Request Policy
- This included 56 pages from the ACFE Manual et al dictating how a fraud allegation should be handled

Response to SIC Report

- Page 9: "Internal Auditor did not interview Director of Risk Management, the Commissioner of Law, or Claims Manager."
- RESPONSE: Approximately one week prior to Mountjoy bringing fraud allegations to DIA's attention, Patrick Johnston spoke with DIA about allegations and told DIA that Mountjoy would probably be bringing allegations to DIA's attention
- Once DIA received 2009 FRAQ from Mr. Johnston, he recognized written allegations were consistent with Mr. Johnston's verbal statements he previously made to DIA
- (Continued)

Response to SIC Report

- (Continued)
- IA did not interview:
 - Claims Agent because bid actions in question were for professional services wherein bids are not required under LFUCG purchasing procedures
 - Commissioner of Law because audit procedures implemented during preliminary review determined no credible evidence of fraud without requiring an interview of individual the allegations were against, thereby protecting Mr. Johnston's anonymity. This practice was also consistent with ACFE predication standards
- Subsequent fact that DIA was required under KRS 61.878 (3) to later provide 2009 FRAQ to Commissioner of Law does not negate IA's reasons and intentions for not interviewing Commissioner of Law

Response to SIC Report

- Page 10: "While the Committee found no clear and convincing information that "fraud" was committed, the 2009 FRAQ... should have raised a red flag within the Internal Auditor's Office."
- RESPONSE: The FRAQ did raise red flags that were sufficiently examined during IA's preliminary review, conducted consistent with ACFE standards
- SIC drew same conclusion as IA did, i.e., that there was no fraud, but SIC report omits Committee's agreement with IA regarding this very important fact

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Response to SIC Report

- Page 10, "Committee is troubled because Internal Auditor did not choose to involve Internal Audit Board when he received 2009 FRAQ."
- RESPONSE: IA Board Chair Dewitt Hisle, voting IA Board member Bill O'Mara, and Ex-Officio Board member Kelly were all involved to some degree in IA's preliminary review of allegations

Mr. Hisle and Mr. O'Mara accompanied DIA to meeting with Mountjoy in September 2009 during which allegations were discussed. SIC was made aware of this meeting during its discussion with Bill O'Mara

On May 14, DIA contacted via phone other IA Board members not involved in preliminary review (George Myer, Ed Lane, Rebecca Langston, Jennifer Burke), and briefed each that a fraud allegation had been received and a preliminary review found no credible evidence of fraud, and why each of them had not been informed of this prior to May 14

This approach was taken without divulging names of the accuser or accused, or of specifics regarding allegations

During those phone discussions, all Board members expressed their full support for IA approach

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Response to SIC Report

- Page 10 "...Committee is also troubled by fact that the relevant portions of 2009 FRAQ were communicated to Commissioner of Law Patrick Johnston's supervisor, after an Open Records Request was filed day after review was completed. 2009 FRAQ, with a few redactions was delivered without apparent restriction, without notification to Patrick Johnston and without redaction of Patrick Johnston's name. The criteria used by the Internal Auditor for determining what portions of 2009 FRAQ to redact was unclear."
- RESPONSE: DIA received Open Records request from Commissioner of Law Askew for "any and all documents relating in any way to any investigation by IA or external auditors of LFUCG's placement of insurance in 2008 and 2009"
- DIA conferred with LFUCG Attorney Keith Horn (attorney who advises IA on all open records requests received by the office), who:
 - Advised that DIA should provide Mr. Askew September 22 Internal Memorandum sent to Mr. Johnston
 - Agreed that FRAQ completed by Mr. Johnston was a preliminary document; however, advised that pursuant to KRS 61.878(3), because FRAQ "related to" Logan Askew, who is "public agency employee", and because Mr. Askew was one who had made specific request, IA had to provide document
 - DIA could redact any portion that did not relate to Mr. Askew. DIA did so
- (Continued)

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Response to SIC Report

- (Continued) Mr. Horn advised DIA:
 - To inform Mr. Askew that 2009 FRAQ was generally exempt from public inspection, but since document related in part to Mr. Askew, Mr. Askew could inspect document in accordance with KRS 61.878 (3), but that any portion not related to Mr. Askew would have to be redacted
 - To allow Mr. Askew to inspect memos that Mr. Askew had written
- DIA fully complied with Mr. Horn's legal counsel
- In e-mail Mr. Johnston sent DIA on August 21, 2009, Mr. Johnston stated, "I would like to concur with the sharing of this information with anyone outside your office."
- DIA did not seek Mr. Johnston's concurrence regarding release of documents to Mr. Askew because Mr. Horn's interpretation of state law clearly indicated Mr. Askew had legal right to examine documents, and state law clearly superseded Mr. Johnston's request for concurrence
- DIA asked Mr. Horn if he could redact Mr. Johnston's name from September 22, 2009 Internal Memorandum addressed to Mr. Johnston before giving to Mr. Askew. Mr. Horn advised that he could not. DIA understood this to mean that Mr. Johnston's name could not be redacted from the 2009 FRAQ as well
- SIC report states FRAQ had a "few redactions". In fact, more than 40% of comments in FRAQ were redacted

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Response to SIC Report

- Page 11: "It was not until August 6 that Committee received information that document (FRAQ) in the Internal Auditor's possession had come from Patrick Johnston..."
- RESPONSE: On May 21, 2010 Attorney Keith Horn sent Attorney Terry Sellers' May 21, 2010 letter to all members of LFUCG Council:
 - This letter specifically states, "when the same employee (Johnston) reported the same possible fraud to the external auditor during the 2009 audit, he (Johnston), on the external auditor's recommendation, delivered a copy of his Fraud Risk Assessment questionnaire to you (Sahli)."
 - Therefore, SIC members knew or should have known as early as May 21, 2010 that DIA had received the 2009 FRAQ from Mr. Johnston

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Response to SIC Report

- Page 11: "Internal Auditor failed to adequately address allegations in 2009 FRAQ when he did not interview the affected persons and did not report allegations to the entire Internal Audit Board."
- RESPONSE: Reasons why Internal Audit did not interview affected persons have been provided in response above
- The entire IA Board was not made aware of fraud allegations due to reasons outlined above
- DIA issued Internal Memorandum dated September 22, 2009 to Patrick Johnston and no further action was taken
- When Mr. Johnston received September 22, 2009 Internal Memorandum, he thanked DIA for what he called a review of concerns by LFUCG employees and Council members, and made no further comments or requests regarding allegations

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Response to SIC Report

- Page 11: "Council should reconstitute IA Board with new charter and Bylaws. Council should form committee to determine restructuring of IA Board, its staffing and process for handling FRAQs distributed annually by external auditor."
- RESPONSE: Ordinance 63-2002, adopted by Urban County Council by unanimous vote on March 21, 2002 establishes IA Board
- Ordinance clearly states that authority to determine Audit Board's governance resides with IA Board, not with Council
- As stated above, the meeting minutes of initial sub-committee's decision, and subsequent deliberation by the 2002 Urban County Council, that formed IA Board and its functions, demonstrate that maintaining auditor independence was a primary concern of both Intergovernmental Committee and its sub-committee
- Continued...

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Response to SIC Report

- Continued...
- Current structure of IA Board is fundamentally sound and in compliance with professional standards of IIA
 - Professional auditing standards require that purpose, authority, and responsibility of IA activity should be formally defined in a charter and approved by Board
 - To be effective, IA function should be fully independent of both Administration and Council, and should operate in an environment free from interference or threats to independence and objectivity in determining scope of internal auditing, performing work, and communicating results
 - Requirement is met via current reporting relationship between DIA and IA Board. No reasonable justification for changing this reporting structure exists
- One change is recommended to structure: that all voting members of Board should be audit professionals from community at large with CIA, CMA, CPA, CISA, CFE, or other appropriate professional designations. Council and Administration officials should be retained on Board as non-voting ex-officio members

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Response to SIC Report

- Regarding audit processes, those should be addressed by IA Board, consistent with Ordinance 63-2002, which states, "The powers and duties of the Board include: to supervise, coordinate, evaluate, monitor, and implement the internal audit function of the Urban County Government."
- To improve IA Board independence, consider pursuing KRS to prohibit removal of Board members by Administration or Council except for extraordinary circumstances consistent with current laws regarding airport board member removal.
- Current process of being able to remove IA Board members without cause weakens Board independence and may hamper efforts to recruit outside professionals to serve on Board

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Response to SIC Report

- Page 12: "Council should establish a process for employees to report suspected wrongdoing which protects the identity of employees;"
- RESPONSE: Agreed. In addition, the employee bringing forth the allegations should be required to declare that the allegations are true and accurate to the best of their knowledge and belief
- Page 12: "Committee determined that no other agency of LFUCG or contractor examined allegations or response to those allegations in any detailed manner other than whether there was any impact upon Urban County financial statements."
- RESPONSE: Office of IA conducted preliminary review examining allegations for any type of fraud in accordance with ACFE professional standards of and found no credible evidence of fraud
- According to ACFE, fraud examinations should not be conducted if totality of circumstances would lead a reasonable, professionally trained, and prudent individual to believe a fraud has not occurred, is not occurring, and/or will not occur. Therefore, no further investigation into fraud allegations was conducted by Office of IA

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Response to SIC Report

- Page 13: "... had allegations been presented to IA Board in the Fall of 2009 ... there is a strong possibility that there would have been no need for the Committee"
- RESPONSE: On June 3, State Auditor Lubben issued following public statement two days after Council voted to form SIC, and on same day Committee members were appointed by the Vice-Mayor. No Committee meetings or actions had taken place as of date of this public statement by State Auditor:
 - FRANKFORT, KY (6-3-10) "Based on recent media coverage, information provided to our office and a direct request by the Lexington Internal Auditor, my office will conduct an independent examination of questions raised by a city employee's allegations concerning procurement issues. This review will include the handling of the allegations and an analysis of the procurement process for this city's insurance services. I have spoken with Mayor Jim Newberry who encouraged our office to review the matter. And I have spoken with Vice-Mayor Jim Gray concerning the Lexington Urban County Council's plan to name a committee to look into the issue. We plan to meet with committee representatives to brief them on the scope of our examination." — State Auditor Eric Lubben

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Response to SIC Report

- In the SIC report: "The Committee, by its nature, does not possess the expertise for contract analysis available to the State Auditor;"
- RESPONSE: SIC was aware, or should have been aware, of this fact early in Committee's process, but chose to move forward with its investigation despite being fully aware that State Auditor was conducting an examination with a highly trained and competent staff that would be able to offer a complete analysis of the allegations

Office of IA is not responsible for creation of SIC, nor of that Committee's decision to move forward with its activities after the State Auditor announced her examination of the fraud allegations

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