

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE CREATING A NEW CHAPTER OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (“LMCO”) PROVIDING FOR LIMITED LEGAL REPRESENTATION TO THE INDIGENT IN EVICTION COURT.

SPONSORED BY: COUNCIL MEMBER CHAMBERS ARMSTRONG

WHEREAS, access to safe, stable, and affordable housing is a strongly-correlated social determinant of health, impacting our residents’ health outcomes and health care costs; and

WHEREAS, cost-burdened households spend at least 30 percent of income on housing costs such as mortgage or rent payments, taxes, and utilities; and

WHEREAS, cost-burdened households have less available income to spend on necessary expenses such as nutritious food, health care, education, and transportation; and

WHEREAS, 45.6 percent of those who rent housing in Louisville and Jefferson County are cost-burdened according to the U.S. Census Bureau American Community Survey (ACS) 2013-2017 five-year estimate; and

WHEREAS, more African-American households are cost-burdened than white households in Louisville and Jefferson County: 41.4 percent of African-American households in Louisville and Jefferson County are cost-burdened, compared to 24 percent of white households, according to the ACS and the Greater Louisville Project; and

WHEREAS, renters who are cost-burdened are at an increased risk of eviction and becoming unhoused; and

WHEREAS, 4.82 percent of renter households in Louisville and Jefferson County faced eviction in 2016, according to Princeton University's Eviction Lab; and

WHEREAS, even prior to the COVID-19 pandemic, Louisville's eviction rate was twice the national average; and

WHEREAS, families who experience eviction face numerous consequences including the inability to expunge civil court records, even after paying outstanding court costs, an increased difficulty finding future safe and affordable housing due to a reported eviction published by credit reporting agencies, and are often forced to choose poorer-quality housing, overcrowded housing, or homelessness; and

WHEREAS, those under threat of eviction face numerous negative mental and physical health outcomes, including psychological distress, suicidal ideation, high blood pressure, and child maltreatment, (Vásquez-Vera H, Palència L, Magna I, Mena C, Neira J, Borrell C. The threat of home eviction and its effects on health through the equity lens: A systematic review. *Soc Sci Med.* 175:199-208 Feb. 2017; and

WHEREAS, the public costs of eviction include increased interactions with emergency shelter and rehousing, emergency and in-patient medical services, mental health services, child welfare services, and the criminal legal system; and

WHEREAS, households with a child in the home are at an increased risk of receiving an eviction judgment (Desmond M; et al. "Evicting Children" *Social Forces* 92(1) 303-27 2013); and

WHEREAS, eviction is the leading cause of homelessness for families with children; and

WHEREAS, 51 percent of children who are homeless are under the age of 5, according to the Bassuk Center on Homeless and Vulnerable Children and Youth; and

WHEREAS, infants born during a period of unstable housing and homelessness have higher rates of low birthweight, respiratory problems, fever, longer neonatal intensive care unit stays, more emergency department visits, and higher annual health costs, (Clark, R; et al. "Infants exposed to homelessness: Health, health care use, and health spending from birth to age six" *Health Affairs* 38(5) 721-728, May 2019.); and

WHEREAS, 75 percent of children under the age of five experiencing homelessness have at least one major developmental delay, and 44 percent have two or more major developmental delays, (Grant R. "The special needs of homeless children: early intervention at a welfare hotel." *Topics in Early Childhood Special Education* 10(4) 76-91, 1990.); and

WHEREAS, children experiencing homelessness are four times more likely to score at or below the tenth percentile in reading comprehension, (Molnar JM; et al. "Constantly compromised: the impact of homelessness on children." *Journal of Social Issues* 46(4): 109-124, 1990.); and

WHEREAS, children experiencing homelessness experience emotional and behavioral problems at three times the rate of their housed peers, (Zima BT; et al "Emotional and behavioral problems and severe academic delays among sheltered homeless children in Los Angeles County." *AJPH* 84(2); 260-264, February 1994); and

WHEREAS, students experiencing homelessness are 87 percent more likely to leave school before graduation than housed students and 4.5 times as likely to experience homelessness as young adults, according to America's Promise Alliance's

report “Don’t Call Them Dropouts: Understanding the Experiences of Young People who Leave High School Before Graduation” (2014); and

WHEREAS, most low-income renters cannot afford legal representation in the eviction process; and

WHEREAS, tenants with representation are twice as likely to stay in their homes (Grundman, L & Kruger M “Legal Representation in Evictions—Comparative Study” Mid-Minnesota Legal Aid and Volunteer Lawyers Network (2018)); and

WHEREAS, tenants with representation are four times less likely to use homeless shelters, according to the Grundman & Kruger study; and

WHEREAS, tenants without representation experience disruptive placement 78% of the time (Stout Risius Ross, “Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants” prepared for the Philadelphia Bar Association’s Civil Gideon and Access to Justice Task Force (Nov. 13, 2018)); and

WHEREAS, tenants with representation can avoid disruptive placement 95% of the time, according to Stout’s analysis; and

WHEREAS, a number of cities across America have implemented a limited right to counsel for renters who are facing eviction and these cities have found such programs to be cost effective, with one study showing the City of Baltimore saved at least \$6.24 for every dollar spent according to Stout Risius Ross (2020).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new chapter of Title XV is hereby added to the Louisville Metro Code of Ordinances to read as follows:

TITLE XV: LAND USAGE

CHAPTER 151: LANDLORD AND TENANT CODE

§ 151.99: LEGAL REPRESENTATION IN EVICTION COURT

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

BRIEF LEGAL ASSISTANCE. Means individualized legal assistance provided in a single consultation by a designated organization to a covered individual in connection with a covered proceeding.

CHILD. Means an individual under the age of eighteen (18).

COVERED INDIVIDUAL. Any person who occupies a dwelling, with at least one (1) child, under a valid lease or other instrument demonstrating a claim of legal right, other than the owner, whose annual gross income is not in excess of one-hundred and twenty-five percent (125%) of the federal poverty guidelines as established and updated periodically by the United States Department of Health and Human Services (42 U.S.C. 9902(2)).

COVERED PROCEEDING. Any proceeding in Jefferson County District Court, Eviction Court ("Eviction Court") to evict, eject, or terminate the tenancy of a covered individual.

LEAD PARTNER ORGANIZATION. An agency within Louisville/Jefferson County Metro Government (hereinafter "Metro"), such as the Office of Housing or other designated agency, that has the capacity to establish and implement a program to provide access to legal services for covered individuals in covered proceedings in Eviction Court and that has the authority to enter into contract on behalf of Metro for such program.

DESIGNATED ORGANIZATION. A not-for-profit organization, such as the Legal Aid Society, or another entity to be determined, that has the capacity to provide legal services

per the standards set by the American Bar Association Standards for the Provision of Civil Legal Aid (ABA standards) to income-eligible individuals facing eviction.

FULL LEGAL REPRESENTATION. Ongoing legal representation, throughout the duration of a covered proceeding, provided by any designated organization to a covered individual who is income-eligible, and all legal advice, advocacy, and assistance associated with such representation. Such representation includes, but is not limited to, the filing of a notice of appearance on behalf of the covered individual in a covered proceeding.

LEGAL SERVICES. Any legal representation provided to a covered individual, including brief legal assistance and full legal representation.

§ 151.99 LEGAL REPRESENTATION IN EVICTION COURT.

(A) Covered individuals may receive access to legal services from designated organizations under contract with the lead partner organization. The designated organizations shall provide legal services in a covered proceeding, as soon as possible after the initiation of the proceeding, and no later than at the time of the individual's first scheduled appearance in a covered proceeding. At a minimum, the designated organization must make a meaningful attempt to contact a covered individual before their first scheduled appearance in a covered proceeding and notify the covered individual of the proceeding. Designated organizations must seek to provide high quality, full legal representation in accordance with ABA and KBA standards, to a covered individual, unless there is a conflict of interest, or other circumstances make full legal representation infeasible to render. If there is a conflict of interest or other circumstances make full legal

representation infeasible to render, the individual shall be offered brief legal services as defined in (C).

(B) The access to legal services described in subsection (A) is contingent upon Metro's Legislative Council appropriating the funds on an on-going and annual basis. Metro Council hereby expresses its intention to fund the program as expressed, but recognizes nothing contained herein shall bind future Councils to this appropriation.

(C) The lead partner organization shall establish and administer a program that provides brief legal assistance to covered individuals. Brief legal representation shall be offered to covered individuals where full representation is not possible, as described in subsection (A). The designated organization and the lead partner organization shall enter an agreement that defines the program and identifies the designated organization's obligations. The agreement shall be subject to Metro Council approval.

(D) At the first scheduled court appearance for a covered individual, the designated organization shall report to the Court as to whether it made a meaningful attempt to contact a covered individual and whether that attempt was successful. If the designated organization was successful at contacting the covered individual, and the covered individual accepts the designated organization's assistance, the designated organization shall inform the Court that it is providing legal counsel to the covered individual. If the covered individual is not present, the Court is encouraged to delay entering a judgment of eviction until such time as the designated organization reports that it has made a meaningful attempt to contact a covered individual. If a covered individual is present, but has not yet made contact with the designated organization, the Court is

encouraged to offer the covered individual a meaningful opportunity to consult with the designated organization before the Court enters a judgment of eviction.

(E) No child shall be named as a defendant in any covered proceeding.

(F) Designated organizations shall work with the lead partner organization and community partners to engage and educate tenants of their rights and available resources.

(G) The designated organization shall compile and report the metrics in Subsection (I) to the lead partner organization on a quarterly basis. The designated organization shall adhere to quality assurance standards set by the lead partner organization, which shall be based upon ABA standards.

(H) Any legal services performed by a designated organization under this section shall not supplant, replace, or satisfy any obligations or responsibilities of that designated organization under any other program agreement or contract the designated organization has with Metro.

(I) On January 31 of each year, beginning in 2022, the lead partner organization shall submit a written report to Metro Council, detailing the number of covered individuals served, the extent of legal services performed, metrics evaluating outcomes, projected budgeting needs for full representation to all covered individuals, and a summary of the engagement and education of tenants.

(J) Nothing in this section, or the administration or application of this section, shall be construed to create a private right of action on the part of any person or entity against Metro, or any agency, official, or employee of Metro.

(K) If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter.

SECTION II: This Ordinance shall be effective upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
Metro Council President

Greg Fisher
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

O-132-21 Ord. Indigent Legal Representation in Eviction Court jdf 022421