

ORDINANCE NO. _____, SERIES 2014

AN ORDINANCE AMENDING CHAPTER 21 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (LMCO) UPDATING THE DEFINITIONS AND STANDARDS OF CONDUCT (AS AMENDED)

Sponsored By: Councilmembers Ward-Pugh and Miller

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: LMCO §21.01 is hereby amended to include the following definitions:

§21.01 DEFINITIONS.

CONFLICT OF INTEREST. Any action, decision or recommendation by a Metro Officer acting in his or her capacity, which would benefit the financial or private interest of a Metro Officer or any family member, unless the benefit arises out of circumstances described in subsection 21.02(C) of this chapter. The term does not include an action having a remote impact or which affects to the same degree a group consisting of the general public or a subgroup consisting of an industry, occupation or other group which includes financial or private interests of a Metro Officer or a family member.

INTEREST. ~~The ownership or control of more than 5% of the profits, assets, or stock of a business, or holding a position as a principal of any nonprofit entity including, but not limited to, a labor organization.~~

ENTITY. A domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest.

FINANCIAL INTEREST. A right, title, legal or equitable share in an asset or transaction which will result in an increase or decrease in the income or net worth of a Metro Officer or family member of a Metro Officer, which does not arise from a primary or proximate action by a Metro Officer or a family member of a Metro Officer or where either no or only a *de minimis* benefit accrues to a Metro Officer or a family member of a Metro Officer.

FINANCIAL GAIN. An ascertainable increase in the net worth or income of a Metro Officer, family member or a related entity, which does not arise from a primary or proximate action by a Metro Officer or a family member of a Metro Officer or where either no or only a *de minimis* benefit accrues to a Metro Officer or a family member of a Metro Officer.

PRIVATE INTEREST. Employment, board membership, or participant in the management and/or operations of an entity by a Metro Officer or family member of a Metro Officer.

SECTION II: LMCO §21.02 is hereby amended to read as follows:

§21.02 STANDARDS OF CONDUCT

In furtherance of the public trust assumed by Metro Officers upon their election or appointment to public office or employment, the following standards of conduct shall be applicable:

~~—(A) No Metro Officer or member of his or her family shall have an interest in a business organization or engage in any business, transaction, or professional activity,~~

~~which is in conflict with the proper discharge of such officer's duties in the public interest.~~

~~(B)~~ (A) No Metro Officer shall use or attempt to use his or her official position to secure unwarranted privileges or advantages, or gain in financial interests or private interests for himself or herself, members of his or her family or other persons.

~~(C)~~ (B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization in which such officer has an ~~interest~~ financial interest or private interest ~~has a direct or indirect financial or personal involvement~~ that might reasonably be expected to impair his or her objectivity or independence of judgement.

~~(D)~~ No Metro Officer shall undertake any employment or service, compensated or not, which might reasonably be expected to prejudice such officer's independence of judgement in the exercise of his or her official duties.

~~(E)~~ (C) No Metro Officer, members of his or her family, or business organization, nonprofit entity, or labor organization in which such officer has an ~~interest~~ financial interest or private interest, shall solicit or accept any gift, favor, loan, political contribution, service, economic opportunity, promise of future employment, or other thing of value based upon an understanding, or under circumstances from which it could reasonably be inferred, that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered:

(1) For the purpose of influencing such officer, directly or indirectly, in the discharge of his/her official duties; or

(2) For the purpose of gaining access to the Metro Officer.

(3) Nothing herein shall be construed to apply to the solicitation or acceptance of contributions to the campaign of announced candidate for elective public office as governed by applicable provisions of the Kentucky Revised Statutes.

~~(F)~~ (D) No Metro Officer, however, shall be prohibited from giving or receiving nor deemed to have a conflict of interest with respect to any activities arising from:

(1) An award publicly presented in recognition of public service;

(2) Commercially reasonable loans made in the ordinary course of the lender's business; or

(3) Reasonable hosting, including entertainment, meals or refreshments furnished in connection with public events, appearances, or ceremonies.

~~(G)~~ (E) No Metro Officer authorized and qualified to solemnize a marriage shall be prohibited from accepting a gratuity for performing such ceremony.

~~(H)~~ (F) No Metro Officer shall use, or allow to be used, ~~his/her public office, or any~~ information, not generally available to the members of the public, which such officer receives or acquires in the course and by reason of his or her office, for the purpose of securing financial gain for himself or herself, any member of his or her family, or any business organization with which such officer is associated.

~~(I)~~ (G) No Metro Officer or business organization in which such officer has an ~~interest~~ financial interest or private interest shall represent any person or party other than the

local government in connection with any cause, proceeding, application or other matter pending before any county agency.

~~(J)~~ (H) No Metro Officer shall be deemed in conflict with these provisions if, by reason of such officer's participation in the enactment of any ordinance, resolution or other matter required to be voted upon, no financial gain accrues to such officer as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

~~(K)~~ (I) No Metro Officer shall be deemed in conflict with the provisions of this Ethics Code, if by reason of such officer's participation in the enactment of any ordinance, resolution, or other matter required to be voted upon, ~~material or monetary~~ financial gain is conferred upon a non-profit or charitable organization with which the Metro Officer or a member of his or her family ~~is in any way associated~~ has a financial interest or private interest if the Metro Officer has disclosed said association to the Ethics Commission through his or her annual report or a supplementary report or if the Metro Officer discloses said association with the clerk or secretary of the voting body prior to casting such vote. For purpose of this section, a Metro Officer or a member or his or her family who volunteers his or her time or makes a donation to such organization shall not be considered a financial interest or private interest.

~~(L)~~ (J) No Metro Officer shall be prohibited from making an inquiry for information or providing assistance on behalf of a citizen or constituent if no fee, reward or other thing of value is promised to, given to, or accepted by, the officer or a member of his or her family, whether directly or indirectly, in return therefor.

~~(M)~~ (K) Nothing in these standards of conduct shall prohibit any Metro Officer, or members of his or her family, from representing himself or herself, or themselves, in negotiations or proceedings concerning his or her, or their, own interests.

SECTION III: LMCO §21.03 is hereby amended to read as follows:

§ 21.03 FINANCIAL DISCLOSURE.

(A) Metro Officers shall be required to file with the Louisville/Jefferson County Metro Ethics Commission (the Ethics Commission) a financial disclosure statement on a form provided by the Ethics Commission and signed under oath by the filer. The financial disclosure statement shall include all of the following information:

(1) Name of filer;

(2) Current business address, business telephone number and home address of filer;

(3) Title of filer's public office or elected office sought;

(4) Occupations of filer and spouse;

(5) The name, address, and telephone number of each business organization doing business with the Louisville/Jefferson County Metro Government, or any Metro Agency, or any Metro Officer, in which the filer or any member of the filer's family has:

(a) An interest of \$10,000 at fair market value or 5% ownership interest or more;

or

(b) Received compensation in excess of \$5,000 during the preceding calendar year. If the interest is the ownership of publicly traded securities, or publicly traded securities are the source of income, the interest need not be reported unless the officer or family member owns 5% or more of the total value of such publicly traded securities.

(6) The location and zoning designation of all real property within Jefferson County, other than the filer's primary residence, in which the filer or any members of the filer's family had an interest of \$10,000 or more during the preceding calendar year and which is the subject of any condemnation proceeding, any regulatory or enforcement proceeding before the Metro Planning Commission, or any proceeding before any other administrative body or court of law wherein the Louisville/Jefferson County Metro Government or any Metro Agency or Metro Officer is an interested party.

(B) (1) The financial disclosure statement shall be filed annually by Metro Officers no later than April 30 of each year. Newly appointed Metro Officers shall be required to file their initial statement no later than 21 days after the date of appointment. Any material change in the information required by subsections (A)(5) or (A)(6) such as to cause previously submitted information to no longer be accurate or complete, shall be reported in writing to the Ethics Commission within ten business days after the affected Metro Officer knows or reasonably should know of that circumstance.

(2) The term "material change" under subsection (B)(1) shall include any gift, loan, gratuity, discount, favor, service or economic opportunity of significant value or having an aggregate value of \$25 or more which the Metro Officer believes in good faith to be exempt from the application of § 21.02(B).

(C) When any Metro Officer, or any member of his or her family, shall have any private interest or financial interest, directly or indirectly, in any contract or matter pending before or within his or her office, or any Metro Agency, the Metro Officer shall disclose such ~~private~~ interest to the Ethics Commission, the governing body of the

affected Metro Agency and, if the contract or matter requires formal action by the Metro Council, to the Metro Council.

(D) Any member of the Metro Council, or the County Attorney, as well as any Metro Officer who derives his or her authority from the Metro Council or from the County Attorney, or a member of any such person's family, who has a financial or private interest in any matter pending before the Metro Council shall disclose such financial or private interest on the records of the Metro Council and shall disqualify himself or herself from participating in any debate, vote, or proceeding whatsoever relating thereto, including engaging in any communications with other Metro Council Members regarding said matter. Any matter pertaining to a Metro Officer's budget or the operation of such officer's office, agency or department, including a Metro Officer's salary, shall not be construed as a "private interest".

SECTION IV: LMCO §21.03 is hereby amended to read as follows:

§ 21.06 COMPLAINTS.

(A) Written complaints against Metro Officers which allege violations of this chapter may be filed by any person with the Ethics Commission and must be filed within one year of the time of the occurrence which is the subject of the complaint, or within one year of the date the occurrence was discovered or should have been discovered in the exercise of reasonable care. No unsworn complaint shall be considered by the Ethics Commission. The Ethics Commission shall have no jurisdiction to consider a complaint against a person unless that person is employed as a Metro Officer.

(1) The complaint shall be submitted on a form provided by the Ethics Commission and shall contain the complaining party's name, address and contact information

including telephone number, and fax number or e-mail address, if the complaining party has such contact availability. The complaint shall be made under oath and signed by the complaining party before a person who is legally empowered to administer oaths. The Ethics Commission shall have no jurisdiction in the absence of a sworn complaint. The complaint form provided by the Ethics Commission shall contain a statement advising of the elements and penalties under Kentucky law for perjury and for false swearing.

(2) The complaint shall contain the complaining party's sworn statement as to any known facts, details, or circumstances that support the allegation of a violation, including all acts or omissions committed by the Metro Officer.

(3) The complaining party shall submit with the complaint all documents, recordings, pictures and other information which support the basis for the ethical violation by the officer.

(4) The complaining party shall provide the names and addresses of all individuals which the complaining party believes have information to support the allegation of a violation along with a summary of what information the complaining party believes each named individual has to support the alleged violation.

(5) A complaint that does not comply with subsections (A)(1), (A)(2), (A)(3), and (A)(4) above ~~will not~~ will not be filed in the records of the Commission, but shall be returned to the complaining party for correction or completion of any incorrect or incomplete information within ten days, ~~and must be corrected and resubmitted within ten days.~~

(6) If, after a complaint has been submitted and returned to the complaining party three times, complaining party may request in writing that the Commission review the final version of the complaint and direct that it be filed.

(7) The Commission may dismiss any complaint with prejudice, or dismiss individual allegations contained in the complaint. The Ethics Commission may for cause shown allow for an amendment or supplemental filing by the complaining party, grant additional time for response by the subject of the complaint, prohibit the introduction of undisclosed information, or other such order as may be just under the circumstances.

(8) The Ethics Commission may amend a complaint by deleting allegations that do not constitute a violation of this chapter or by deleting allegations against persons or entities not covered by this chapter. The Ethics Commission may amend a complaint to include additional documents, witnesses, or materials that support the allegation or violation. The Ethics Commission may amend the complaint to state an allegation of a violation that is apparent from the complaint or amendments to the complaint.

(9) The Ethics Commission may request that the Jefferson County Attorney contract independent counsel to represent the complainant at the cost of Louisville Metro Government when the Commission deems such representation necessary to ensure due process in hearings conducted before the Commission. Attorney's fees to be paid by Louisville Metro Government for complainants under this section shall not exceed ~~\$25,000~~ \$10,000 dollars per complaint action.

(B) Any Metro Officer who is the subject of a complaint filed with the Ethics Commission shall be afforded due process by the Ethics Commission including, but not limited to, all of the following rights:

(1) Within ten days of its filing with the Ethics Commission, a certified copy of the complaint or any amendment thereto shall be personally served only on the Metro Officer named in the complaint by handing it to the Metro Officer, by leaving it at a conspicuous place in his or her office, or by leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) The Metro Officer shall be given no less than 20 days to respond to a complaint or any amendment thereto.

(3) The Metro Officer shall have the right to legal counsel. The Metro Officer may retain their own attorney at their own expense. If requested by the Metro Officer, the Jefferson County Attorney shall contract independent counsel to represent the Metro Officer in all proceedings before the Metro Ethics Commission at the cost of Louisville Metro Government. Attorney's fees to be paid by Louisville Metro Government for ~~complainants~~ Metro Officers under this section shall not exceed \$25,000 dollars per complaint action.

(4) A Metro Officer who is the subject of any proceedings before the Ethics Commission shall be given not less than ten days notice of the date, time, and place of each proceeding. The notice shall also include a description of the matters to be heard at such proceedings together with copies of any motions or other documents to be considered in connection with the noticed proceedings whether in written or electronic

form. Any individual who offers facts pertaining to the complaint shall testify under oath. Only the party filing the complaint and those individuals listed on the complaint, or a supplemental list of provided to the Officer by the Ethics Commission in accordance with subsection (B)(1) above and provided not less than ten days prior to the proceedings, shall be permitted to testify in support of the violation by the officer. Only documents filed with the Ethics Commission at the time of the institution of the complaint, or supplemented not less than ten days prior to the proceedings, shall be considered by the Ethics Commission. The names and information of all individuals and documents provided by the complaining party shall be immediately forwarded to the Metro Officer.

(5) Any information whether in documentary or electronic format which is not furnished to the Ethics Commission or to the Metro Officer in compliance with subsection (B)(4) above shall not be used for any purpose in any proceeding before the Ethics Commission.

(6) If any hearing before the Ethics Commission is based upon a complaint of an individual, not less than ten days before the date of the hearing, the complainant shall be notified to appear at the time and place of the hearing by certified mail. If the complaining party does not appear, the hearing shall be continued to a later date, however no hearing will be held unless the complainant within ten days of the original hearing dates states in writing circumstances that compelled complainant's absence. If the Ethics Commission does not find that extraordinary circumstances exist to justify the complaining party's absence, such complaint may be dismissed.

(7) A complaint filed against a Metro Officer shall be given a hearing as provided by this subchapter within 120 days of the complaint being filed, unless the Commission grants, for good cause shown, extensions of time not to exceed a total of 60 days. Otherwise the complaint shall be dismissed with prejudice and not be considered by any hearing authority.

(8) The Metro Officer shall be permitted to present to the Ethics Commission, at any proceeding before the Ethics Commission involving a Metro Officer, or otherwise, any witnesses or any electronic or documentary evidence the Metro Officer wishes, subject only to reasonable standards of relevance and materiality, and may examine or cross-examine all witnesses called to testify at such a proceeding.

(9) Any evidence presented against a Metro Officer at any proceeding before the Ethics Commission involving a Metro Officer, including witnesses and electronic or documentary evidence, shall be subject to reasonable standards of relevance and materiality.

(10) No person shall offer evidence at any proceeding before the Ethics Commission involving a Metro Officer unless the person is first placed under oath in accordance with law. No person other than counsel for the Ethics Commission, or the Metro Officer involved in a proceeding before the Ethics Commission, or the Metro Officer's counsel, who refuses to be placed under oath may speak at any such proceeding.

(C) An Officer found guilty by clear and convincing evidence by the Ethics Commission of violating the Ethics Code may appeal the decision to a court of

competent jurisdiction as provided by law. Any such appeal shall be served on Legal Counsel for the Ethics Commission.

(D) Any complaint against a Metro Officer pending for 60 days or longer as of the date of the passage and approval of Metro Ordinance No. 52-2010 shall be given a hearing as provided by this section within 30 days of the passage and approval of that ordinance, or the complaint shall be dismissed with prejudice at the termination of that period and shall not be considered by any hearing authority. Subsection (B) of this section shall apply to all complaints pending for less than 60 days prior to the passage and approval of Metro Ordinance No. 52-2010.

(E) No person shall file a complaint against a Metro Officer with the Ethics Commission which complaint is false, or made in bad faith, or with actual malice, or without probable cause. In the event that such a complaint is filed with the Ethics Commission, it shall be forwarded to the Commonwealth's Attorney, together with all electronic and documentary materials related to the complaint, for action as that official may deem appropriate.

(F) All Ethics Commission records, including the complaint and answer and other records relating to a preliminary inquiry, shall be confidential until a final determination is made by the Ethics Commission, except:

(1) The Ethics Commission may turn over to the Attorney General, the United States Attorney, Commonwealth's Attorney, County Attorney, or a law enforcement agency within the jurisdiction, evidence which may be used in criminal proceedings;

(2) If the complaining party or alleged violator publically discloses the existence of a preliminary inquiry, the Ethics Commission may publically confirm the existence of the

inquiry and, in its discretion, make public any documents which were issued to either party;

(3) The Ethics Commission shall make disclosure that are required, and not subject to exemption, under Kentucky's open records and open meetings laws.

(G) Following a hearing on a complaint filed against a Metro Officer pursuant to the Metro Code of Ethics, the record of the hearing may remain open no more than 60 days for the filing of post-hearing pleadings and documents, including transcripts and recommended orders. Upon showing of good cause, the Ethics Commission may extend the period for an additional 60 days. The Ethics Commission shall render a final decision within 30 days following the closing of the record.

SECTION V: This Ordinance shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

Jim King
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____