

ORDINANCE NO. _____, SERIES 2022

AN ORDINANCE AMENDING SECTIONS 21.02, 21.05, 21.06 AND 21.99 OF THE LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) AND CREATING NEW SECTIONS OF LMCO CHAPTER 21 RELATING TO THE LOBBYING OF METRO OFFICERS. (AS AMENDED BY SUBSTITUTION) (AS AMENDED)

SPONSORED BY: COUNCIL MEMBER HOLLANDER

WHEREAS, the operation of open and responsive government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on executive and legislative action; and

WHEREAS, the identity and expenditures of certain persons who attempt to influence executive and legislative actions should be publicly identified and regulated to preserve and maintain the integrity of government; and

WHEREAS, it is now timely and appropriate to place controls on the lobbying of any Metro Officer, or any member of the staff of any Metro Officer, over all Metro matters and to provide procedures for the registration of lobbyists; and

WHEREAS, Metro Council finds that the enactment of legislation requiring the registration of lobbyists and the disclosure of their employers, and also the filing of statements making public the financial transactions that may be used to influence Metro Council legislation and executive actions, is necessary and appropriate and will lead to a better governed Louisville Metro.

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

SECTION I: LMCO Chapter 21 is amended to include the subtitles specified herein:

Sections 21.40 to 21.45 should appear under the subtitle “**Lobbying.**”

SECTION II: A new section of LMCO is hereby created as follows:

§ 21.40 Definitions

For the purposes of §§ 21.40 to 21.45, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMPLOYER. Any person who, directly or indirectly, engages a lobbyist. This shall include associations, coalitions, or public interest entities. In the case of a business other than a sole proprietorship or self-employed individual, it means the business entity, and not an individual officer, director, or employee thereof.

ENGAGE or ENGAGEMENT. The making of any arrangement by which an individual is employed or retained for compensation to act for or on behalf of an employer.

EXPENDITURE. Any of the following that is made to, at the request of, for the benefit of, or on behalf of any Metro Officer, any candidate for an elected Metro office, or any member of the immediate family or staff of any of those officials:

- (1) A payment, distribution, loan, advance, deposit, transfer, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
- (2) A contract, promise, agreement, or other obligation, whether or not legally enforceable, to make an expenditure; or
- (3) The purchase, sale, or gift of services or any other thing of value.

“Expenditure” does not include a contribution, gift, or grant to a foundation or other charitable organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

“Expenditure” does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to the persons listed in this subsection.

“Expenditure” does not include contributions to the campaign of an announced candidate for elective public office as governed by applicable provisions of the Kentucky Revised Statutes.

FINANCIAL TRANSACTION. A transaction or activity that is conducted or undertaken for profit and arises from the joint ownership, ownership, or part ownership in common of any real or personal property or any commercial or business enterprise of whatever form or nature between the following:

- (1) A lobbyist, his or her employer, or a member of the immediate family of the lobbyist or his or her employer; and
- (2) Any Metro Officer, candidate for elected Metro office, or any member of the staff of any Metro Officer or candidate.

“Financial transaction” does not include any transaction or activity described in this definition if it is available to the general public on the same or similar terms and conditions, or is the result of a competitive bidding process.

IMMEDIATE FAMILY MEMBER. An individual with any of the following relationships to the Metro Officer: spouse, domestic partner, a child who is not emancipated and who resides in the officer’s or employee’s household, or a person claimed by the officer or employee, or the officer’s or employee’s spouse or domestic partner, as a dependent for tax purposes.

LOBBYING.

(A) Direct communication with any Metro Officer or the staff of a Metro Officer for the purpose of influencing official decisions or official actions regarding:

(1) The proposal, drafting, development, consideration, promulgation, amendment, rejection, or repeal of a rule, regulation, or policy;

(2) The passage, modification, defeat, or executive approval or veto of any legislation; or

(3) Financial arrangements under which public funds are distributed or allocated by a Metro Officer or any member of the staff of a Metro Officer; or

(4) The spending of public funds with respect to the award of a contract or lease.

(B) For the purposes of this chapter, "lobbying" does not include:

(1) Initial communication by an individual with a Metro Officer or the staff of that Officer, so long as the individual making contact has not previously been registered under this subchapter as a lobbyist and is not employed by an employer that is required to register under this subchapter. However, any further direct communication between that individual and a Metro Officer or the staff of that Officer which meets subsections (A)(1 - 4) of this definition and is not excluded under subsections (B)(2 - 9) of this definition shall constitute lobbying under this subchapter;

~~(2)~~ Communications about ordinary and routine operational, permitting, licensing, or compliance decisions with Metro Officers ~~within the executive branch of Metro Government~~ or the staff of those Metro Officers;

~~(3)~~ The application or negotiation of an award for any state or federal grant;

~~(4)~~ The resolution of any outstanding tax matter, including audits, assessments, administrative appeals, claims for refund, or collection activity;

(45) Communication regarding the award of incentives related to an economic development project;

(56) Paid advertising communications that are disseminated to the general public;

(67) Any communications or testimony, oral or written, submitted during a public hearing or meeting;

(78) A response to a request for proposal, a bid, a request for quote, or other solicitation issued by an agency in conformance with applicable procurement codes or rules promulgated thereunder;

(89) Other public or private testimony or communications solicited by a Metro officer or member of that officer's staff; or

(910) Action or communication made as a member of an advisory body of Metro Government authorized to make only nonbinding recommendations.

LOBBYIST. Any person engaged to conduct lobbying for an employer. This includes individuals employed or engaged by associations, coalitions, or public interest entities to spend a portion of that individual's time influencing the decisions of Metro Officers.

"Lobbyist" does not include:

(1) Any person who limits his or her lobbying activities to appearing before public meetings or submitting public comments to an agency;

(2) A private citizen who expresses a personal opinion, petitions an agency for the redress of grievances, or who assembles together with other private individuals, and who receives no compensation for lobbying other than "lost time" from work payments and reimbursement or payment of reasonable travel expenses; or

(3) An elected or appointed officer or employee of a federal, state, or local governmental agency, or of a political subdivision, who attempts to influence a Metro Officer in his or her fiduciary capacity as a representative of his or her agency, public college or university, or political subdivision.

SECTION III: A new section of LMCO is hereby created as follows:

§ 21.41 Registration of lobbyists and employers

(A) Beginning 180 days after the effective date of this section, each lobbyist and each employer of a lobbyist shall, within 7 days following engagement of the lobbyist, file with the Louisville/Jefferson County Metro Ethics Commission (“Ethics Commission”), without fee, an initial registration statement listing the information set forth in paragraphs (1) to (4) of this subsection.

(1) (a) Lobbyists shall provide the name, business address and telephone number, and occupation of the lobbyist; and

(b) Employers of lobbyists shall provide:

1. The name, brief description of the purpose of the organization employing the lobbyist, the address and telephone number of the employer, and the real party in interest on whose behalf the lobbyist is lobbying, if it is different from the employer.

2. For the purposes of this section, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement shall not list the names and addresses of each member of the association or organization, if the association or organization itself is listed;

(2) A brief description of the ordinances, resolutions, or executive or legislative actions for which the lobbyist is or will be engaged in lobbying;

(3) The date on which the lobbyist was engaged; and

(4) Certification by the employer or lobbyist that the information contained in the registration statement is complete and accurate.

(B) (1) The initial registration shall be valid through the next thirty-first day of December of an odd-numbered year, unless the registration has been terminated before that date.

(2) Before the expiration of an initial registration on the thirty-first day of December in an odd-numbered year, each lobbyist who will continue to lobby beyond that date and each employer continuing to engage a lobbyist beyond that date shall file with the Ethics Commission, without fee, a biennial registration statement containing the information specified in subsection (A) of this section. The biennial registration shall be valid until the thirty-first day of December in the next odd-numbered year, unless the registration has been terminated before that date.

(C) (1) In addition to the initial and biennial registration statements required by subsection (A) and (B) of this section, each lobbyist and employer shall also file semi-annual updated lobbying statements with the Ethics Commission, without fee and pursuant to this subsection.

(2) (a) The updated lobbying statement shall confirm the existence of each engagement described in an initial or biennial registration statement and list the specific action, ordinances or resolutions on which the lobbyist lobbied under that engagement during the period covered by the updated statement.

(b) A change in any information required by subsection (A) of this section shall be reflected in the next updated lobbying statement filed.

(c) Any statement of spending required to be filed under § 21.42 and any statement of financial transactions required to be filed under § 21.43 shall be filed with the updated lobbying statement.

(3) (a) Updated lobbying statements shall be filed before the first day of July and before the first day of January. A statement due in July shall cover December 16 through June 15. A statement due in January shall cover June 16 through December 15.

(b) The Ethics Commission may grant a reasonable extension of time for filing any updated lobbying statement for good cause shown.

(4) (a) If a lobbyist is engaged by more than one employer, the lobbyist shall file separate initial and biennial registration statements for each engagement, and shall file updated lobbying statements for each engagement.

(b) If an employer engages more than one lobbyist, the employer shall file a single updated lobbying statement regarding all lobbyists engaged by the employer.

(D) (1) Within 30 days after the termination of an engagement, the lobbyist who was employed under the engagement shall file written notice of the termination with the Ethics Commission.

(2) If the termination of a lobbyist leaves an employer without the engagement of any lobbyists, within 30 days after the termination, the employer shall file written notice with the commission of its intent to terminate its current registration.

(E) Upon initial and biennial registrations pursuant to this section, the lobbyist shall be issued a card by the Ethics Commission, showing that the lobbyist is registered. The

registration card shall be valid from the date of its issuance through the next thirty-first day of December of an odd-numbered year.

SECTION IV: A new section of LMCO is hereby created as follows:

§ 21.42 Statements of Spending on Lobbying

(A) Beginning 180 days after the effective date of this section, each lobbyist and each employer shall file with the Ethics Commission a statement of spending as provided in subsections (B), (C), and (D) of this section when filing an updated lobbying statement as required by § 21.41(C). A lobbyist shall file a separate statement of spending for each employer engaging him or her.

(B) If an employer or any lobbyist whom the employer engaged made expenditures, either separately or in combination with each other, either directly or indirectly, on behalf of any particular Metro Officer or candidate seeking to become an elected Metro Officer or his or her immediate family or members of his or her staff, for food, beverages, or the costs of admittance or attendance, lodging, or other expenses related to any events, the employer or lobbyist shall state the following:

(1) The name of the Metro Officer, candidate, or member of his or her immediate family or his or her staff on whose behalf the expenditures were made;

(2) The total amount of the expenditures made;

(3) A description of the expenditures made;

(4) The date and specific location of the event for which the expenditures were made; and

(5) For a representative of an organized association, coalition, or public interest entity, the source of the entity or association's funds spent on the expenditures.

(C) In addition to the information required by subsection (B) of this section, a statement filed by a lobbyist shall show:

(1) The total amount of expenditures made by the lobbyist during the reporting period covered by the statement, if the expenditures are not reimbursed by the employer; and

(2) Spending by the lobbyist for informational, educational, or promotional items or activities, and other expenses directly associated with the lobbyist's lobbying activities during the reporting period, if the expenditures were not reimbursed by the employer.

(D) (1) In addition to the information required by subsection (B) of this section, a statement of spending filed by an employer shall list:

(a) The total amount of expenditures made by the employer filing the statement during the period covered by the statement;

(b) A complete and itemized account of all amounts expended for receptions or other events, including the date and specific location of the event and the name of the Metro Officer, candidate, immediate family, or staff invited to the event, when such amounts were not reported under subsection (B);

(c) A complete and itemized account of all other amounts expended for lobbying, including reimbursements paid to any lobbyist;

(d) 1. For those lobbyists who are not employees of the reporting employer. the compensation earned by each lobbyist, prorated to reflect the time the lobbyist was engaged in lobbying during the period covered by the statement; and

(e) The cost of advertising which supports or opposes executive or legislative action, if the cost is paid by an employer or a person or organization affiliated

with an employer. As used in this subparagraph, "advertising" means statements disseminated to the public either in print, by radio or television broadcast, or by any other electronic means, including Internet or telephonic communications, and may include direct or bulk mailings of printed materials.

(2) No employer is required to show any spending on a statement filed under this subsection if the spending is reported by a lobbyist engaged by the employer.

(E) (1) Any statement required to be filed under this section shall be filed at the times specified in § 21.41(C). Each statement shall cover spending during the period that ended on the fifteenth day of the month immediately preceding the month in which the statement is required to be filed.

(2) If it is impractical or impossible for a lobbyist or employer to determine exact dollar amounts or values reported under this section, reporting of good faith estimates, based upon reasonable accounting procedures, constitutes compliance with this subsection.

(F) All lobbyists and employers shall retain receipts or maintain records for all spending that is required to be reported pursuant to this section. These receipts or records shall be maintained for a period ending on the thirty-first day of December of the second calendar year after the year in which the spending occurred.

SECTION V: A new section of LMCO is hereby created as follows:

§ 21.43 Statements of Financial Transactions

(A) Beginning 180 days after the effective date of this section and except as provided in subsection (B) of this section, any lobbyist and any employer who has had any financial transaction with or for the benefit of any Metro Officer, any member of the staff of any

Metro Officer, or any candidate seeking to become an elected Metro Officer shall describe the details of the transaction in a statement filed with the Ethics Commission along with the updated lobbying statement required by § 21.41(C), including details regarding: the name of the Metro Officer, staff member, or candidate; the purpose and nature of the transaction; and the date it was made or entered into. The statement shall be filed on or before the first day of July and January of each year. Each statement shall describe each financial transaction that occurred during the filing period that ended on the fifteenth day of the month immediately preceding the month in which the statement is required to be filed. (i.e. the fifteenth of June or the fifteenth of December)

(B) No employer shall be required to file any statement under this section if the financial transaction to which the statement pertains is reported by a lobbyist engaged by the employer.

SECTION VI: A new section of LMCO is hereby created as follows:

§ 21.44 Prohibitions and Standards of Conduct for Lobbyists and Employers

(A) A lobbyist or employer shall register under § 21.41.

(B) A lobbyist or employer shall keep all receipts and maintain all records which § 21.42 requires the person to keep or maintain.

(C) A lobbyist or employer shall file a statement of spending on lobbying under § 21.42.

(D) A lobbyist or employer shall file a statement of financial transactions under § 21.43.

(E) (1) A lobbyist or employer shall not offer, give, or agree to give any thing or service valued at more than \$50 to a Metro Officer, a candidate, the immediate family member of a Metro Officer or candidate, or members of his or her staff, unless such thing or service is available to the general public on the same terms, ~~except that entertainment, food,~~

~~refreshments, meals, or beverages valued at more than \$50 may be provided to Metro Council members if such invitations are extended to the entire membership of the Metro Council.~~

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

~~(F) For Metro Officers as defined in LMCO 21.01 (1) through (2)(j) and excluding Metro Officers as defined in LMCO 21.01(2)(k) and (l), an employer shall not engage those current or former Officers as lobbyists until at least two years have elapsed from the date on which that individual vacated his or her office, and those current or former Metro Officers shall not serve as lobbyists during that two-year period.~~

(F) For Metro Officers as that term is defined in LMCO 21.01 (1) through (2)(j) and excluding Metro Officers as defined in LMCO 21.01(2)(k) and (l): Those officers shall not accept any engagement, and no employer shall engage those officers, for the purposes of lobbying any Metro Officer or any member of the staff of any Metro Officer until at least one year has elapsed from the date when the lobbyist vacated his or her office.

(G) No employer shall engage any person to lobby in exchange for compensation that is contingent in any way upon any executive action or the passage, modification, or defeat of any legislation. No lobbyist shall accept any engagement to lobby in exchange for compensation that is contingent in any way upon any executive action or the passage, modification, or defeat of any legislation.

SECTION VII: A new section of LMCO is hereby created as follows:

§ 21.45 Ethics Commission's duties with respect to lobbying

~~(A) (1) The Ethics Commission shall review all registrations and statements filed with it that are required by §§ 21.41, 21.42, and 21.43. The Ethics Commission shall notify by certified mail each person required to file under §§ 21.41, 21.42, and 21.43 who fails to file by the due date, files an incomplete registration or statement, or files in a form other than that required by the Commission. The notice shall specify the type of failure or delinquency, establish a date by which the failure or deficiency shall be remedied, and shall advise the person of the penalties for violation.~~

~~(2) If the person fails to remedy the failure or deficiency identified by the Ethics Commission under (1) of this subsection, after the Commission has given the alleged violator notice of the amount of the fine the Commission intends to impose and an opportunity has been afforded to the alleged violator to appear before the Ethics Commission or otherwise offer evidence in mitigation of the imposition of the fine, the Commission may civilly fine the person an amount not to exceed \$25 per day, up to a maximum fine of \$500 pursuant to § 21.99(A). Any civil fine imposed by the Commission under this section may be recovered in a civil action in the nature of debt if the person fails or refuses to pay the penalty within a prescribed period of time.~~

(BA) If a member of the Ethics Commission or any other person believes a required registration or statement under §§ 21.41, 21.42, or 21.43 was intentionally not filed by a lobbyist or employer, intentionally contains false information, or intentionally omits required information, any investigation by the Ethics Commission shall require a written complaint and follow the procedures of § 21.06.

(CB) Beginning 90 days after the effective date of this section, the Ethics Commission shall draft and make public its rules and regulations for the administration of §§ 21.40 to

21.45. The Ethics Commission shall include changes to its rules, operations, or procedures regarding §§ 21.40 to 21.45 in the annual report submitted to the Louisville Metro Council as required by § 21.05(D).

~~(DC)~~ (1) The Ethics Commission shall be the official custodian of the registrations and statements required by §§ 21.41, 21.42, and 21.43. The registrations and statements shall be maintained by the Commission, or the administrative official designated by the Commission as the “custodian” of public documents, and shall be available for public inspection immediately upon filing via open records requests under KRS 61.870 et. seq.

(2) The Ethics Commission shall endeavor to make all registrations and statements available online in order to make those documents available to the public without an open records request, and shall report to Metro Council on progress toward that goal 90 days after the effective date of this section.

~~(ED)~~ The Ethics Commission shall publish a handbook that explains §§ 21.41 to 21.45 in clear and concise language, and make it available free of charge to Metro Officers, candidates for elected Metro Offices, lobbyists, employers, and any other interested persons.

~~(EE)~~ On or before the fifteenth day of February of each year, the commission shall, in a manner and form it determines, publish a report containing statistical information on the registration statements filed with it under § 21.41 during the preceding year.

SECTION VIII: LMCO § 21.02 is hereby amended as follows:

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 shall use or attempt to use his or her official position to secure unwarranted privileges or advantages, for himself or herself, members of his or her family or other persons.

(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 a financial interest or private interest that might reasonably be expected to impair his or her objectivity or independence of judgement.

(C) No Metro Officer, members of his or her family, or business organization, nonprofit entity, or labor organization in which such officer has a 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.

(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.

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

(F) No Metro Officer shall use, or allow to be used, 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.

(G) No Metro Officer or business organization in which such officer has a 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.

(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.

(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, financial gain is conferred upon a non-profit or charitable organization with which the Metro Officer or a member of his or her family 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.

(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.

(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.

~~(L) Pursuant to § 21.44, no Metro Officer as defined in LMCO 21.01 (1) through (2)(j) and excluding a Metro Officer as defined in LMCO 21.01(2)(k) and (l) may serve as a lobbyist as defined in § 21.40 until at least two years have elapsed from the date on which he or she vacated his or her office.~~

(L) Pursuant to § 21.44, a Metro Officer as that term is defined in LMCO 21.01 (1) through (2)(j) and excluding Metro Officers as defined in LMCO 21.01(2)(k) and (l) shall not accept any engagement for the purposes of lobbying any Metro Officer or any member of the staff

of any Metro Officer until at least one year has elapsed from the date when the lobbyist vacated his or her office.

SECTION IX: LMCO § 21.05 is hereby amended as follows:

(A) (1) A Louisville/Jefferson County Metro Government Ethics Commission (the Ethics Commission) is hereby created which shall be responsible for the enforcement and administration of the Code of Ethics adopted in this ~~chapter~~ subchapter in the manner set forth in this ~~chapter~~ subchapter. When requested by a Metro Officer, a candidate seeking to become an elected Metro Officer, or a lobbyist or lobbyist's employer as defined in § 21.40, the Ethics Commission shall issue an advisory opinion concerning acts or activities covered by this ~~chapter~~ subchapter. Such opinions shall be public and shall not disclose the identity of persons associated with the opinion. Confidential opinions may be issued, if requested by the ~~Metro Officer or Metro Agency~~ entity submitting the question and only if the subject is exempt from disclosure pursuant to KRS 61.878.

(B) (1) The investigation and determination of whether ~~a Metro Officer~~ a person or entity has committed any violation of this ~~chapter~~ subchapter shall be the responsibility of the Ethics Commission. In order to ensure a thorough investigation, the Commission is authorized to appoint an investigating officer.

(2) When requested by an appointing authority, the Ethics Commission shall have authority to issue an opinion concerning whether or not an act or activities undertaken by a Metro Officer constitute a violation of this ~~chapter~~ subchapter. The Ethics Commission shall have authority to adjudicate factual issues, and to determine whether the alleged act or activity constitutes a violation of this ~~chapter~~ subchapter.

(C) (1) The Ethics Commission shall consist of seven members appointed by the Metro Mayor and approved by the Metro Council. Ethics Commission members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No two Ethics Commission members shall reside in the same Metro Council district. Members of the Ethics Commission shall serve for a term of three years or until his or her successor is appointed. Provided, however, that the term of office may be less than three years at appointment if necessary to prevent the expiration of more than three members' term of office in any one year. In addition, such Ethics Commission members may be reappointed for one consecutive term and shall not be eligible for reappointment until one year after the expiration of his or her last term. Members of the Ethics Commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties in the same manner as provided by existing Louisville Metro Government policy for expense reimbursement.

(2) The absence of any member from three consecutive meetings, unless the Ethics Commission has excused the absence for good and sufficient reason, shall constitute a resignation.

(3) When a vacancy occurs in the membership of the Ethics Commission, the vacancy shall, within 60 days, be filled for the unexpired portion of the term in the same manner as regular appointments. Any person appointed to fill a vacancy on the Ethics Commission must meet the qualifications and limitations set forth in this chapter.

(4) An Ethics Commission member may be removed from office by at least a two-thirds majority of the Metro Council, after written notice, including a clear statement of the

grounds for removal, and opportunity for reply, at least 30 days before voting on removal. The sole grounds for removal shall be failure to meet the qualifications or limitations set forth in this code, neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or a violation of this chapter.

(5) No member of the Ethics Commission may be, or have been within one year prior to appointment: a person serving in an elected office of any level of government or a candidate for election to office of any level of government; a Metro Officer or employee of the Metro Government; a lobbyist as defined in § 21.40 of this Code or KRS 11A.010(11); a member of a Metro Officer's family.

~~(D) Within 60 days of the effective date of this subchapter, the Ethics Commission shall draft and submit to the Metro Council its rules and regulations for the administration of this subchapter and the conduct of its meetings, including, but not limited, to maintenance of financial disclosure statements, issuance of opinions and imposition of penalties for violations of this Code. If the Metro Council does not disapprove of the Ethics Commission's rules and regulations within 45 days after submission to the Council, such rules and regulations shall go into effect on the 46th day after submission. The Ethics Commission shall annually report any changes to its rules operations, or procedures to the Louisville Metro Council by August 1.~~

(E) There is hereby created the position of Legal Counsel to the Ethics Commission. The Ethics Commission shall employ Legal Counsel on contract on either a full-time or part-time basis provided that Legal Counsel employed under contract shall not be employed counsel or under contract in any capacity with Metro Government, or

associated with an attorney employed by or under contract in any capacity with Metro Government.

(F) The Metro Human Resources Department shall provide reasonable and necessary staff support for the operation of the Ethics Commission, including all training of Metro Officers required in this section.

(G) The Ethics Commission shall be the official custodian of all registrations and financial disclosure statements to be filed under this chapter subchapter.

(H) (1) The Ethics Commission shall conduct at least one annual training and review session open and available to all Metro Officers, and such other training and review activities as shall from time to time be requested by the Metro Mayor, the Metro Council, or Ethics Commission.

(2) ~~All Metro Officers in office on the effective date of this subchapter shall be required to attend one training session conducted by the Ethics Commission within 12 months of the effective date of this subchapter and at least once every 24 months thereafter.~~ All Metro Officers ~~elect~~ or appointed after the effective date of this ~~subchapter~~ shall be required to attend one training session conducted by the Ethics Commission within 12 months of his or her election or appointment, and at least once every 24 months thereafter.

(I) The Ethics Commission shall prepare and submit an annual report to the Metro Council, summarizing the activities, decisions, and advisory opinions of the Ethics Commission. The annual report may also recommend changes to the text or administration of this Ethics Code. The annual report must be submitted no later than July 31st of each fiscal year, covering to the previous fiscal year ending June 30th, and must

be filed with the Metro Council Clerk. The annual report shall be made available on the Metro website with a statement that financial disclosure forms are available for public inspection with the Ethics Commission. On a monthly basis, a report must be prepared and submitted to Metro Council if any decisions or advisory opinions have been pending for more than 180 days from the date of the complaint or request. The report shall summarize the Ethics Commission's actions on the request or complaint, reasons for delay, and an anticipated time frame for issuance of a decision.

(J) The Ethics Commission shall at least every four years review this Ethics Code, the enforcement of the Ethics Code, and the Ethics Commission's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in Louisville Metro Government, and whether they set forth clear and enforceable, common-sense standards of conduct. After at least one public hearing, the Ethics Commission may recommend to the Metro Council amendments to this Ethics Code.

SECTION X: LMCO § 21.06 is hereby amended in relevant part as follows:

(A) Written complaints against Metro Officers, or candidates seeking to become elected Metro Officers, or lobbyists or employers as defined in § 21.40, 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. Except as provided in § 21.03(CD)(1) regarding fines imposed for a failure to file a completed financial disclosure statement, ~~and except as provided in § 21.45(A)(2) regarding fines imposed for deficiencies in lobbying registrations and statements,~~ 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 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.

(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 \$10,000 dollars per complaint action.

(B) Any ~~Metro Officer~~ alleged violator 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~~ alleged violator named in the complaint by handing it to the ~~Metro Officer~~ alleged violator, 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~~ alleged violator shall be given no less than 20 days to respond to a complaint or any amendment thereto.

(3) The ~~Metro Officer~~ alleged violator shall have the right to legal counsel. ~~The A~~ Metro Officer may retain their own attorney at their own expense. If requested by ~~the a~~ 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 Metro Officers under this section shall not exceed \$25,000 dollars per complaint action.

(4) ~~A Metro Officer~~ An alleged violator 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 provided to the ~~Officer~~ alleged violator 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~~ alleged violator.

(5) Any information whether in documentary or electronic format which is not furnished to the Ethics Commission or to the ~~Metro-Officer~~ alleged violator 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~~ an alleged violator 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~~ alleged violator shall be permitted to present to the Ethics Commission, at any proceeding before the Ethics Commission involving a ~~Metro Officer~~ an alleged violator, or otherwise, any witnesses or any electronic or documentary evidence the ~~Metro Officer~~ alleged violator 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) Per KRS § 65.003(7), the Ethics Commission has authority to issue subpoenas to compel the attendance and testimony of witnesses or the production of documents, books, papers, or other records in connection with any complaint filed with the Ethics Commission alleging violation(s) under this chapter. Subpoenas may be issued by the majority of the members of the Ethics Commission and shall be served in the same manner as subpoenas for witnesses in civil cases. All provisions of law relative to subpoenas issued in such cases shall apply to subpoenas issued by the Ethics Commission. Upon petition by the Ethics Commission, any Circuit Court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to comply with a subpoena or order of the Commission, issue an order requiring compliance. Any failure to comply with the order of the court may be punished by the court as contempt thereof.

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

(11) No person shall offer evidence at any proceeding before the Ethics Commission involving a ~~Metro Officer~~ an alleged violator 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~~ alleged violator involved in a proceeding before the Ethics Commission, or the ~~Metro Officer's~~ alleged violator's counsel, who refuses to be placed under oath may speak at any such proceeding.

(C) ~~An Officer~~ A violator 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~~ an alleged violator 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.

(~~FE~~) 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.

(~~GE~~) Following a hearing on a complaint filed against a ~~Metro Officer~~ an alleged violator 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 XI: LMCO § 21.99 is hereby amended as follows:

(A) (1) Upon a determination by the Ethics Commission of a violation of any of the provisions of §§ 21.02, 21.03, 21.04, 21.08, or 21.09 by a Metro Officer, or a violation of § 21.03 by a candidate seeking to become an elected Metro Officer, or a violation of the provisions of §§ 21.41 to 21.44 by a lobbyist or employer, the Ethics Commission shall impose one or more of the following penalties:

(a) For any unintentional violation which has been voluntarily corrected ~~by the officer~~ prior to any action by the Ethics Commission, a notice of mootness shall be issued by the Ethics Commission;

(b) For any violation which is determined by the Ethics Commission to have been unintentional or the result of a good faith misinterpretation of the requirements of §§ 21.02, 21.03, 21.04, 21.08, ~~or 21.09~~ or §§ 21.41 to 21.44, a letter of technical violation or a letter of reprimand shall be issued by the Ethics Commission as the Ethics Commission deems appropriate;

(c) For any intentional violation which is acknowledged and rectified by the officer, candidate, employer, or lobbyist prior to any action by the Ethics Commission, a letter of public reprimand may be issued by the Ethics Commission;

(d) For any intentional violation, a letter of formal censure may be issued by the Ethics Commission;

(e) For any intentional violation by a Metro Officer, a written recommendation may be made by the Ethics Commission to the Metro Council, the Mayor, or other appointing authority of removal, training, or remediation.

(2) In addition to any of the penalties set forth under subsection (A)(1), an intentional violation of §§ 21.02, 21.03, 21.04, 21.08, ~~or 21.09~~ or §§ 21.41 to 21.44 shall

be subject to a civil fine for which a Metro Officer, candidate, employer, or lobbyist may be fined by the Ethics Commission a sum not less than \$25 nor more than \$500.

(3) In addition to any of the penalties set forth under subsections (A)(1), and (A)(2), an intentional violation of §§ 21.02, 21.03, 21.04, 21.08, or 21.09 may:

(a) In the case of a non-elected Metro Officer, be grounds for other sanctions or actions by his or her appointing authority; or

(b) In the case of an elected Metro Officer, be grounds for removal under KRS 67C.143; or

(c) In the case of a Metro Council member, be grounds for other sanctions or actions by the Metro Council under its rules, or otherwise.

(B) Upon a determination by the Ethics Commission of a violation of any of the provision of § 21.07 by a Metro Officer or a supervisor, the Ethics Commission shall do one of the following:

(1) If a violation has been voluntarily corrected by the Metro Officer or supervisor, a notice of mootness shall be issued by the Ethics Commission;

(2) If a violation has not been voluntarily corrected, the Ethics Commission shall issue a written recommendation to the Metro Council, the Mayor, or other appointing authority of removal, training, or other appropriate remediation with respect to the supervisor who is the subject of the complaint and/or hearing.

(C) (1) Any housing authority officer or employee who violates any provision of §§ 21.30 through 21.33 shall be subject to disciplinary action in accordance with procedures established by the Ethics Commission. Any such disciplinary action by the Ethics

Commission shall not foreclose any action that the public housing authority may take with respect to the officer or employee's employment status.

(2) After written notice of a failure to timely file a statement of financial disclosure, any housing authority officer who fails to file within ten business days of such notice may be fined by the Ethics Commission a sum not less than \$25 nor more than \$500.

SECTION XII: This Ordinance shall take effect upon its passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____