

ORDINANCE NO. 184, SERIES 2017

**AN ORDINANCE AMENDING CHAPTER 21 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (LMCO) RELATING TO THE DELEGATION OF SUBPOENA POWER PURSUANT TO KRS 65.003(7).**

**SPONSORED BY: COUNCIL MEMBERS ENGEL, HOLLANDER, MULVIHILL, AND KRAMER**

**WHEREAS**, the Kentucky General Assembly amended Kentucky Revised Statute (“KRS”) 65.003 during the 2017 General Session;

**WHEREAS**, Senate Bill (“SB”) 222 became law without Governor Bevin’s signature on March 27, 2017 and went into effect on June 29, 2017;

**WHEREAS**, SB 222 conveyed authority to the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) to delegate its subpoena power to the Louisville/Jefferson County Ethics Commission (“the Ethics Commission”);

**WHEREAS**, per KRS § 65.003(7), the Council conveys subpoena authority to the Ethics Commission so it may issue subpoenas for the production of documents and the testimony of witnesses in connection with any complaint filed with the Ethic Commission alleging violation(s) under this chapter.

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

**SECTION I:** LMCO § 21.06 is hereby amended as follows:

§ 21.06 Complaints, Procedure, and Hearings

(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 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 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 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 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) 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.

(9) (10) 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)~~ (11) 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:


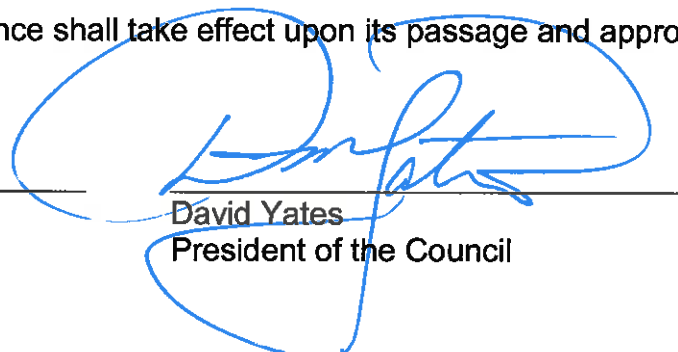
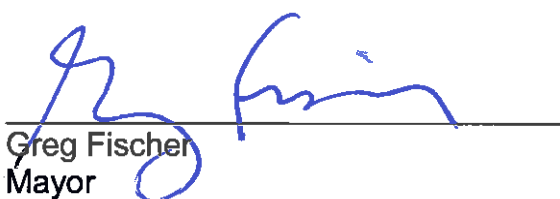
(1) The Ethics Commission may turn over to the Attorney General, the United States Attorney, Commonwealth's Attorney, County Attorney, or a law enforcement agency within the jurisdiction, evidence which may be used in criminal proceedings;

(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 II:** This Ordinance shall take effect upon its passage and approval.

 _____ H. Stephen Ott Metro Council Clerk	<b>PRO - TEM</b>	 _____ David Yates President of the Council
 _____ Greg Fischer Mayor		<u>10/19/17</u> _____ Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

BY: 

**LOUISVILLE METRO COUNCIL  
READ AND PASSED  
October 12, 2017**