

Ordinance NO. _____, SERIES 2014

AN ORDINANCE ADOPTING THE STATE WHISTLEBLOWER ACT AND AMENDING THE ETHICS CODE TO PROVIDE EXPANDED PROTECTION FOR LOUISVILLE METRO EMPLOYEES. (AMENDMENT BY SUBSTITUTION.)

SPONSORED BY: COUNCIL MEMBERS WARD-PUGH AND MILLER

WHEREAS, the Louisville/Jefferson County Metro Government seeks to promote an environment of accountability and transparency, consistently expressing a commitment to the spirit of an open government; and

WHEREAS, the Commonwealth of Kentucky has a state law Whistleblower's Act (KRS 61.101 *et seq.*) that protects state government employees against retaliation for reporting wrongdoing by the government or its agents; and

WHEREAS, members of the Louisville Metro Council recognize the need and value of such protection for Louisville/Jefferson County Metro ~~employee~~employees ("Metro Employees") and wish to adopt state law; and

~~**WHEREAS**, the Kentucky Supreme Court in case of *Wilson v. City of Central City* held that Kentucky's Whistleblower Act does not apply to city employees; and~~

~~**WHEREAS**, the Louisville Metro Government employees ("Metro Employee") are currently covered by the state Whistleblower Act through the adoption of KRS 61.104 in the Louisville Metro Government personnel policies 1.7(4)(g); and~~

~~**WHEREAS**, Metro Council seeks to ensure that this policy remains in effect by enacting Sadie's Law that will adopt the state Whistleblower's Act for all Metro Employees;~~

WHEREAS, in addition to the adoption of the state Whistleblower law, Metro Council wishes to create a non-litigation administrative alternative for a Metro Employee to voice his or her claims of retaliation in the work place by a supervisor; and

WHEREAS, Metro Council seeks to expand the Ethics Code to allow Metro Employees to file a complaint against a supervisor, even if that supervisor is not a Metro Officer; and

WHEREAS, Metro Council wants the anonymous tip line to advise Metro Employees of the option to file a complaint through the Ethics Commission or pursue a legal action if the employee believes he or she has experienced retaliation at work.

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

Section 1: A new section of LMCO is hereby created to be known as Sadie's Law and ~~to read~~s as follows:

§ _____ WHISTLEBLOWER PROTECTION ACT.

(A) Louisville Metro Council hereby adopts the state Whistleblower's Act, KRS 61.101 et seq. to apply to all Metro Employees. KRS 61.101 et seq. is attached hereto.

(B) Notice advising Metro Employees of rights against reprisal by Metro Government shall be conspicuously posted on all workplace bulletin boards within Metro Government within 90 days of this Ordinance's passage and approval.

Section 2: LMCO section § 21.07 is hereby amended to read as follows:

§ 21.07 PROTECTION AGAINST REPRISAL.

(A) For the purpose of this section and the accompanying penalties as set forth in Section 21.99, the following definitions apply:

(1) **EMPLOYEE.** Individuals employed by Louisville Metro Government ~~or any office covered by this chapter,~~ including a person under contract of hire, express or implied, oral or written, where Louisville Metro Government has the power or right to control and direct the material details of work performance. ~~This section shall not apply to employees covered by a collective bargaining agreement.~~ This section shall not

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apply to employees whose allegations of retaliation are covered by a collective bargaining agreement.

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~~(1)~~

(2) **SUPERVISOR.** Any person authorized to act on behalf of Louisville Metro Government or any office covered by this chapter with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees.

~~(A)~~ (B) No Metro Officer or supervisor or any other employee of the Metro Government or employee of any office covered by this chapter shall subject to reprisal, or directly or indirectly use, or threaten to use, an official authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any other officer, supervisor or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Ethics Commission, any appointing authority, any law enforcement agency or its employees, or any other appropriate body or authority, any facts or information relative to an actual or suspected violation of this subchapter or any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States, the Commonwealth of Kentucky, or the Louisville/Jefferson County Metro Government, or any facts or information relative to actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. No Metro Officer, supervisor or Metro Government employee or employee of any office covered by this chapter shall be required to give notice of any kind prior to making such a report, disclosure, or divulgence.

~~(B)~~ (C) No person shall be subject to discharge or disciplinary action if such person elects not to answer inquiries or speak or testify about any complaint or at any proceeding of the Ethics Commission.

~~(C)~~ (D) No Metro Officer or supervisor or any other employee of metro Government shall subject to reprisal or discriminate against, or use any official authority or influence to cause

reprisal or discrimination by others against, any person who supports, aids, or substantiates any officer or employee who makes public any wrongdoing set forth in subsection (A).

(E) For the purpose of this section, only an employee who is alleging direct retaliation may file a complaint with the Louisville/Jefferson County Ethics Commission against a supervisor for conduct identified in subsection (B), (C), or (D).

(F) A complaint filed by an employee against a supervisor pursuant to this Section shall follow the complaint process as set forth in Section 21.06.

(G) Upon request by the Ethics Commission, Metro Government, including the executive and legislative branches, shall provide relevant records except those records deemed confidential under federal or state law. Any records provided by Metro Government shall remain Metro Government records. The exchange of records or the sharing of information with the Ethics Commission does not constitute a waiver of any applicable open records exemption.

(H) Complaints alleging retaliation under sections (B), (C), or (D) filed within one year of passage of this Ordinance shall be exempt from the hearing deadline set forth in Section 21.06(B)(7).

Section 33: LMCO section § 21.99 is hereby amended to read as follows:

§ 21.99 ENFORCEMENT; PENALTY.

(A) (1) Upon a determination by the Ethics Commission of a violation of any of the provisions of ~~§§ 21.01 through 21.09~~ 21.02, 21.03, 21.04, 21.08, 21.09 by a Metro Officer, the Ethics Commission may impose 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;

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(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 §§ ~~21-01 through 21-09~~ 21.02, 21.03, 21.04, 21.08, 21.09 ~~21.02, 21.03, 21.08, 21.09~~, 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 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 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 §§ ~~21-01 through 21-09~~ 21.02, 21.03, 21.04, 21.08, 21.09 ~~21.02, 21.03, 21.08, 21.09~~ shall be a misdemeanor for which a Metro Officer 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 subsection (A)(1) and (A)(2), an intentional violation of §§ ~~21-01 through 21-09~~ 21.02, 21.03, 21.04, 21.08, 21.09 ~~21.02, 21.03, 21.08, 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 ~~may shall do do one of the~~ following:

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

(b) if a violation has not been voluntarily corrected, the Ethics Commission ~~shall may~~ 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.

~~(B)~~ (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 44: LMCO section § 39.140 is hereby amended to read as follows:

§ 39.140 ESTABLISHMENT.

(A) The Council hereby establishes a third party operated anonymous tip lines (the "tip line ") that will offer the Metro Government employees and citizens of this community a resource to report privately their concerns of alleged unethical or illegal actions and/or behavior by another employee or official serving Louisville Metro in writing, by telephone, or through electronic means such as web or email.

(B) Complaints received will be forwarded to the Louisville Department of Internal Audit and any that are believed to be of merit by the tip line operator shall be forwarded to, but not limited

to, one or more of the following Metro Government departments for proper investigation: Metro Ethics Commission, Metro Human Resources, the Metro Human Relations Commission or the Louisville Metro Police Department.

(C) The tip line will be available 24 hours a day, seven days a week and shall provide a toll free telephone number.

(D) A monthly statistical summary of activity and results of investigations generated by the tip line , which is not descriptive of any readily identifiable person, shall be given to each department listed within this section along with members of the Louisville Metro Council and Office of the Louisville Metro Mayor and shall be available for public inspection. The monthly statistical summary shall list information including, but not limited to the date of the original report, an identification of the report by number, the type of issue identified or alleged, the department in which the issue is alleged to have occurred, and any resolution of the report. The monthly statistical report shall list all pending or unresolved complaints and shall be in a form substantially similar to that provided as attachments 1, 2, and 3 attached to Ordinance No. 66-2009.

(E) Funding for this section shall be made available through the Office of the Louisville Metro Internal Auditor. The Louisville Metro Internal Auditor will administer the contract with the tip line service provider.

(F) Within 45 days of the effective date of this section, the Louisville Metro Internal Auditor shall draft and submit to the Metro Council its policies, rules, and regulations for the administration of this section including, but not limited to, any contracts required for administration of the section, reports to be made and records to be maintained. If the Metro Council does not approve, amend, or reject by resolution the Louisville Metro Internal Auditor's policies, rules, and regulations and any related contracts, within 45 days after submission to the Council, such policies, rules and regulations shall go into effect the 46th day after submission.

(G) The tip line operator is to advise Metro Employees who call alleging retaliation by a supervisor that the Metro Employee may file a complaint with the Louisville/Jefferson County Ethics Commission or pursue legal action in accordance with KRS 61.101 et seq.

Section 55: 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

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

~~Sadies Law CW Ward-Pugh ROCsim 25 Nov 2014~~
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