

ORDINANCE NO. _____, SERIES 2022

AN ORDINANCE AMENDING SECTIONS 21.02, 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.

SPONSORED BY: COUNCIL MEMBERS HOLLANDER AND CHAMBERS ARMSTRONG

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, the Commonwealth of Kentucky has in place comprehensive legislation which requires registration of executive and legislative lobbyists and the filing of statements of expenditures concerning lobbying; and

WHEREAS, Metro Council finds that the Commonwealth of Kentucky lobbying regulations provide a model for such local regulations; 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. 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 to lobby.

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 staff of any of those officials:

- (1) A payment, distribution, loan, advance, deposit, 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, or agreement, 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.

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.

LOBBYIST. Any person engaged to influence executive agency decisions or to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation by direct communication with any Metro Officer or any member of the staff of a Metro Officer. 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 receives no compensation for lobbying and who expresses a personal opinion; 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) Each lobbyist and employer of a lobbyist within 7 days following engagement of the lobbyist, shall file with the Louisville/Jefferson County Metro Ethics Commission ("Ethics Commission") an initial registration statement listing the following:

(1) For lobbyists, the name, business address and telephone number, and occupation of the lobbyist shall be provided;

(2) The employers of lobbyists shall provide:

(a) 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.

(b) 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;

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

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

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

(B) The registration shall be valid through the end of the calendar year in which it is filed, unless the registration has been terminated before that date.

(C) (1) In addition to the initial registration statement required by subsection (A) of this section, each lobbyist and employer shall file an updated quarterly registration statement with the Ethics Commission, to be received by the Commission not later than 4 p.m. on the 15th day of April, July, October, and January of each year, covering the period from the end of the period covered by the previous quarterly registration statement through the last day of the month immediately preceding the filing month. The Ethics Commission may grant a reasonable extension of time for filing the updated quarterly registration statement for good cause shown.

(2) (a) The updated quarterly registration statement shall confirm the continuing existence of each engagement described in an initial 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 quarterly registration statement filed.

(c) Any statement of expenditures required to be filed under § 21.42 and any details of financial transactions required to be filed by § 21.43 shall be filed with the updated quarterly registration statement.

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

(b) If an employer engages more than one lobbyist, the employer shall file only one updated quarterly registration statement under this subsection, which shall contain the information required by subparagraph (2) of this subsection 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 registration pursuant to subsection (A) of 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 Expenditures

(A) With the updated quarterly registration statement required by § 21.41(C), each lobbyist and each employer shall file a statement of expenditures as provided in subsections (B), (C), and (D) of this section. A lobbyist shall file a separate statement of expenditures 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 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 lobbying expenditures made by the lobbyist during the reporting period covered by the statement, if the expenditures are not reimbursed by the employer; and

(2) Expenditures made 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 filed by an employer shall list:

(a) The total amount of lobbying 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 group of public servants invited to the event;

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

(d) 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 expenditure on a statement filed under this subsection if the expenditure 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 expenditures made during the quarterly period that ended on the last 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 of expenditures, 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 expenditures that are 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 expenditure was made.

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

§ 21.43 Statements of Financial Transactions

(A) 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 or any

member of the staff of any Metro Officer shall describe the details of the transaction, including the name of the Metro Officer or staff member, the purpose and nature of the transaction, and the date it was made or entered into, in a statement filed with the commission with the updated registration statement required by § 21.41(C). The statement shall be filed at the times specified in § 21.41(C). Each statement shall describe each financial transaction that occurred during the filing period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed.

(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

(A) A lobbyist or employer shall not fail to register under § 21.41.

(B) A lobbyist or employer shall not fail to keep a receipt or maintain a record which § 21.42 requires the person to keep or maintain.

(C) A lobbyist or employer shall not fail to file a statement of expenditures under § 21.42.

(D) A lobbyist or employer shall not fail to file a statement of financial transactions under § 21.43.

(E) A lobbyist shall not offer, give, or agree to give anything of value to a Metro Officer, a candidate, or the immediate family member of a Metro Officer or candidate.

(F) A lobbyist shall not serve as a campaign treasurer, and shall not directly solicit, control, or deliver a campaign contribution, for a candidate or Metro Officer.

(G) A lobbyist shall not make a campaign contribution to a Metro Officer, a candidate, or his or her campaign committee.

(H) An employer of a lobbyist shall not make a campaign contribution to a Metro Officer, candidate, or a campaign committee for a Metro Officer or candidate.

(I) An employer shall not engage a serving elected Metro Officer or former elected Metro Officer as a lobbyist until at least 2 years have elapsed from the date on which he or she vacated his or her office, and an elected Metro Officer shall not serve as a lobbyist during that two-year period.

(J) No person 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 person 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 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 statement, or files a statement 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 deficiency identified by the Ethics Commission under (a) 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 violator 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 offender fails or refuses to pay the penalty within a prescribed period of time.

(B) If a member of the Ethics Commission or any other person believes a required 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.

(C) The Ethics Commission shall be the official custodian of the statements required by §§ 21.41, 21.42, and 21.43. The 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. The Commission shall also endeavor to computerize them so that the information contained in them is readily accessible to the general public.

(D) 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.

(E) 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 elected Metro Officer may serve as a lobbyist as defined in § 21.40 until at least 2 years have elapsed from the date on which he or she vacated his or her office.

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

(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. Except as provided in § 21.45(A), 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.

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SECTION X: 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 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, 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 a civil fine 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 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 XI: 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: _____