ORDINANCE NO. _____, SERIES 2023

AN ORDINANCE AMENDING LOUISVILLE METRO CODE OF ORDINANCES ("LMCO") CHAPTER 39 TO REQUIRE ORGANIZATIONS RECEIVING INCENTIVES, BENEFITS, OR CONTRACTS FROM LOUISVILLE METRO GOVERNMENT TO REPORT INSTANCES OF WORKPLACE SEXUAL HARASSMENT AND PROHIBITING THOSE ORGANIZATIONS FROM ENTERING INTO CERTAIN TYPES OF NON-DISCLOSURE AGREEMENTS THAT ARE CONTRARY TO THE PUBLIC INTEREST (AS AMENDED).

SPONSORED BY: COUNCIL MEMBER ARTHUR

WHEREAS, a survey by the organization Stop Street Harassment found that 77% of women had been verbally harassed, 51% of women had experienced unwelcome sexual touching, 34% of women had been physically followed, and 27% of women had experienced sexual assault; and

WHEREAS, the Kentucky Association of Sexual Assault Programs estimates that 47.7% of Kentucky women have experienced sexual violence, and

WHEREAS, the EEOC found that 32.4% of workplace discrimination complaints were related to sexual harassment; and

WHEREAS, recent incidents have shown that sexual harassment, sexual assault, and gender-based violence are an on-going challenge for women in Louisville; and

WHEREAS, a study by Jason Sockin, a professor at the University of Pennsylvania, found that broad non-disclosure agreements inhibit workers from filing sexual harassment complaints with federal agencies; and

WHEREAS, that same study found that limiting how employers can use these non-disclosure agreements led to more public information about bad behavior at companies; and

WHEREAS, that same data suggests that limiting the use of non-disclosure agreements benefits employees at those companies and slows worker turnover; and

WHEREAS, it is unlawful under the National Labor Relations Act and Title VII of the Civil Rights Act of 1964 to restrict employees from communicating with civil rights agencies and law enforcement through the use of pre- and post-dispute non-disclosure agreements, still many employers lead employees to believe they cannot disclose unlawful acts of harassment, assault, or discrimination to civil and criminal enforcement agencies such as the Equal Employment Opportunity Commission; and

WHEREAS, Louisville Metro Government and its taxpayers seek to ensure that its contracting entities maintain safe working environments for all employees with appropriate processes to resolve wrongdoing; and

WHEREAS, limiting disclosure of unlawful acts of harassment, assault and discrimination from Louisville Metro Government withholds vital information about the covered entities during the contracting process.

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

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

§ 39.XXX DEFINITIONS.

(A) For the purposes of this section, the following definitions apply:

COVERED ENTITY: any entity receiving any contract or Tax Increment Financing ("TIF") incentive worth at least $50,000. A covered entity also includes an entity receiving any other financial incentives, including grant funding or funds from the general budget, from Metro Government, in the amount of $50,000 or more. If the aggregate sum of the incentives meets or exceeds $50,000, an entity is a covered entity for the purpose of this

Section. An entity shall remain a covered entity for the duration of the contract, TIF, or other financial incentive.

SEXUAL HARASSMENT: Any act which influences, offers to influence, or threatens the career, reputation, pay, or job of another person in exchange for sexual favors, any deliberate or repeated unwanted offensive comments or gestures of a sexually explicit nature toward, or in the presence of, another person, or the display or transmittal to another person, without legal justification or lawful authorization, imagery of a sexually explicit nature.

SEXUAL ASSAULT: Any act punishable as a crime under Kentucky's statutes covering sexual crimes found in KRS Chapter 510.

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

§ 39.XXX REPORTING REQUIREMENTS

(A) Each covered entity shall annually report to Louisville Metro internal complaints of workplace sexual harassment and sexual assault ~~annually~~ by employees who reside or work in Louisville/Jefferson County. The report shall be submitted to the Office of Equity. The report shall contain the following:

1. The number of such complaints that were filed;

2. Of those complaints in paragraph 1 of this subdivision, the number of complaints resolved;

3. Of those complaints in paragraph 2 of this subdivision, the number of complaints which the covered entity investigated and deemed sexual harassment or sexual assault to have occurred;

4. Of those complaints in paragraph 2 of this subdivision, the number of complaints which the covered entity investigated and deemed sexual harassment or sexual assault to have not occurred;

5. Of the complaints in paragraph 2 of this subdivision, the number of complaints which the covered entity investigated but ultimately deemed inconclusive; and

6. The number of complaints that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

The Office of Equity shall annually compile complaints of workplace sexual harassment and sexual assault for the preceding fiscal year and shall annually submit by December 31 to the Mayor, the Council, and the Louisville Human Relations Commission, a report containing the above information for each covered entity.

(B) No report required pursuant to this chapter shall contain personally identifiable information.

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

§ 39.XXX PROHIBITED SETTLEMENT AGREEMENTS

(A) No covered entity may enter into a settlement agreement that prevents or restricts the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action regarding the following:

1. An act of workplace sexual assault;

2. An act of workplace sexual harassment;

3. ~~An act of workplace harassment or discrimination, f~~Failure to prevent an act of workplace sexual assault or sexual harassment~~ or discrimination~~, or ~~an act of~~ retaliation

against a person for reporting or opposing workplace sexual assault or sexual harassment ~~or discrimination.~~

(B) Notwithstanding the restrictions in subsection (~~a~~A), an employee with a claim for workplace sexual assault, workplace sexual harassment, failure to prevent workplace sexual assault or sexual harassment or retaliation for reporting or opposing workplace sexual assault or sexual harassment ~~or harassment~~ may voluntarily enter into a settlement agreement shielding the identity of the employee as well as factual information relating to the employee's claim if:

1. the employee wants the information to remain withheld or confidential;

2. the employee has consulted with an attorney;

3. the employee is receiving additional compensation; and

4. the employee has a period of time to contemplate the agreement and change their mind no less than 10 days.

(C) Nothing in this section shall prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in settlement of a claim.

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

§ 39.XXX NONDISCLOSURE AGREEMENTS

No covered entity shall, in exchange for a raise or bonus, or as a condition of employment or continued employment, require an employee to sign any agreement that prohibits the disclosure of information about unlawful acts in the workplace. This section does not prohibit the inclusion of a general release or waiver in an agreement related to an employee's separation from employment, provided that the release or waiver is otherwise lawful and valid. As used in this section "information about unlawful acts in the workplace"

includes, but is not limited to, information pertaining to harassment or discrimination or any other conduct that the employee has reasonable cause to believe is unlawful.

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

§ 39.XXX VIOLATIONS OF THIS SECTION

Any covered entity which enters into a settlement agreement or requires a nondisclosure agreement in violation of this section shall, upon the determination that the covered entity has violated this section, become ineligible for contracting with, receiving TIF incentives, receiving any other financial incentives, or receiving a grant or general budget funding from Metro Government for a period of five (5) years. Additionally, any covered entity which enters into a settlement agreement or requires a nondisclosure agreement in violation of this section shall be considered to be in breach of its contract with Louisville Metro and shall be liable to Louisville Metro for liquidated damages in the amount of 10% of the amount of the contract, TIF incentive, financial incentive, or grant of funds awarded to the covered entity by Metro Government. This clause shall be included in all contracts or agreements entered by Metro Government after the effective date of this ordinance, and shall not constitute the total amount of damages recoverable by Metro should an additional breach outside of the violations contained in the section occur.

SECTION VI: The provisions of this Ordinance shall only apply to covered businesses who receive any contract, TIF, or other financial incentives worth at least $50,000 after this Ordinance takes effect. Additionally, the provisions of this Ordinance shall only prohibit any settlement or nondisclosure agreements in violation of this Ordinance which are entered after this Ordinance takes effect.

SECTION VII: This Ordinance shall take effect six months after its passage and approval.

_____	_____
Sonya Harward Metro Council Clerk	Markus Winkler President of the Council
_____	_____
Craig Greenberg Mayor	Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

O-321-22 Sexual Harassment Ordinance KM 10-23-22 FAM