

ORDINANCE 140 -2017

AN ORDINANCE AMENDING CHAPTER 25 OF THE CODE OF ORDINANCES BY CLARIFYING THE POLICY DECLARATION STATEMENT, INCORPORATING SPECIAL PURPOSE GOVERNMENTAL ENTITIES AND QUALIFIED ADULTS INTO THE ETHICS ACT, EXPANDING THE FINANCIAL INTEREST AND PRIVATE INTEREST DISCLOSURE REQUIREMENTS, CLARIFYING CONFLICTS OF INTEREST, INCORPORATING A PROVISION REGARDING OFFICIAL MISCONDUCT, AND REVISING THE PENALTIES STRUCTURE UNDER THE ETHICS ACT.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE COUNTY GOVERNMENT:

Section 1 – That Section 25-2 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 25-2. -Declarations.

The Council of the Lexington-Fayette Urban County Government finds and declares that:

- (1) The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that government decisions and policy be made in the best interests of the people, the community, and the government; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, the following code of ethics shall apply to all officers and employees of the Merged Government, whether elected or appointed, paid or unpaid, and to officers and employees of other independent agencies where so provided by special laws applicable to such other independent agencies.
- (2) Public office and employment are public trusts.
- (3) The vitality and stability of the government depends upon the public's confidence in the integrity of its elected and appointed officers and employees. Whenever the public perceives a conflict between the private interests and public duties of a public officer or employee, that confidence is imperiled.
- (4) The government has a duty to provide its citizens with standards by which they may determine whether public duties are being faithfully performed, and to make its officers and employees aware of the standards which the citizenry rightfully expects them to comply with while conducting their public duties.

Section 2 – That Section 25-4 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-4. - Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

- (1) *Agency* means the Lexington-Fayette Urban County Government Board of Adjustment, Ethics Commission, Planning Commission, the Downtown Lexington Management District Board, and any Special Purpose Governmental Entity as defined in KRS Chapter 65.

The Ethics Commission shall contact the organizations identified as Special Purpose Governmental Entities to request copies of their respective ethics codes. Special Purpose Governmental Entities that have adopted more stringent ethics provisions are exempt from the requirements of this chapter. Special Purpose Governmental Entities that have not adopted more stringent ethics provisions shall be subject to this chapter in its entirety.

- (2) *Business* means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.
- (3) *Candidate* means any individual who seeks nomination or election to an "office" listed in subsection (9)(a) of this section. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or secretary of state, or is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.
- (4) *Constitutional officer* means any person who is one of the following: County judge/executive, county clerk, county attorney, sheriff, coroner, surveyor or constable.
- (5) *Employee* means any person, whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the urban county government or to any "constitutional officer," as the terms are defined in this section. The term "employee" shall include, but not be limited to, those employees occupying the classified civil service positions established at Code section 21-5, the unclassified civil service positions established at Code section 22-5, and the police and fire positions established at Code section 23-5. The term "employee" shall not include any contractor or subcontractor or any of their employees.
- (6) *Ethics commission* means the Lexington-Fayette Urban County Government Ethics Commission which is created and vested by this chapter with the responsibility for enforcing the requirements of the Lexington-Fayette Urban County Government Ethics Act.
- (7) *Family member* means a spouse, a qualified adult, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.
- (8) *Financial Interest* means a right, title, legal or equitable share in an asset or transaction which (a) will result in an increase or decrease in the income or net worth of an officer or family member of an officer which does not arise from a primary or proximate action by an officer or a family member of an officer or (b) where either no or only a de minimis benefit accrues to an officer or a family member of an officer.
- (10) *Immediate family member* means a spouse, a qualified adult, an unemancipated child residing 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 qualified adult, as a dependent for tax purposes.
- (11) *Officer* means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:
 - (a) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor or constable; or

- (b) An appointee or a member of the governing body and chief executive officers, if any, of the urban county government board of adjustment, comprehensive plan update committee, ethics commission, or planning commission.
- (12) *Private Interest* means employment, board membership, or participation in the management and/or operations of an entity by an officer or family member of an officer.
- (13) *Qualified Adult* means a person of the same or opposite sex who:
- (a) Is at least eighteen (18) years of age;
 - (b) Is not related to the employee;
 - (c) Has resided with the employee for at least twelve (12) months prior to the enrollment period for LFUCG benefits;
 - (d) Has been financially interdependent with the covered employee for at least twelve (12) months. Financial interdependence with the covered employee shall be demonstrated by proof of:
 - (1) Joint ownership of real estate property or joint tenancy on a residential lease;
 - (2) Joint ownership of an automobile;
 - (3) Joint bank or credit account;
 - (4) Joint liabilities;
 - (5) Joint utility account; or
 - (6) A combination of the items set forth in paragraphs (a) through (e) of this subsection; and
 - (e) Is a legal beneficiary or agent of the covered employee. Legal beneficiary or agent status shall be demonstrated by proof of:
 - (1) A will designating the eligible qualified adult as primary beneficiary;
 - (2) A retirement plan or life insurance policy beneficiary designation form designating the eligible qualified adult as primary beneficiary;
 - (3) A durable power of attorney signed to the effect that the employee and eligible qualified adult have granted powers to another;
 - (4) Adoption papers or legal guardianship identifying the employee and qualified adult as the joint adopting individuals or joint legal guardians; or
 - (5) A combination of the items established in paragraphs (a) through (e) of this subsection.

Section 3 – That Section 25-5 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-5. – Standards of conduct including conflicts of interest in general disclosure.

Every officer and employee shall comply with the following standards of conduct:

- (1) No officer or employee, or any immediate family member of any officer or employee, shall have a financial or private interest in a business or engage in any business, transaction, or activity, which

is in conflict with the proper discharge of the officer's or employee's public duties.

- (2) No officer or employee shall use or attempt to use his official position to secure inappropriate personal privileges or advantages for himself or others, which are incompatible with the proper discharge of his duties.
- (3) No officer or employee shall take or refrain from taking any discretionary action, or induce or attempt to induce any other officer or employee to take or refrain from taking any discretionary action, on any matter before or involving the urban county government in the case of urban county government officers and employees; before the agency in the case of urban county government agencies; or before the office of a constitutional officer in the case of a constitutional officer, in order to obtain any improper financial benefit or improper preferential treatment for any of the following:
 - (a) The officer or employee;
 - (b) A family member;
 - (c) An outside employer;
 - (d) Any business in which the officer or employee, or any family member has a financial interest; or
 - (e) Any business with which the officer or employee or any family member is negotiating or seeking prospective employment or other business or professional relationship.
- (4) The mayor, every councilmember and every board member of an agency who shall have any financial or private interest, directly or indirectly, in any matter pending before the urban county government or the agency, which is not prohibited by this section or other provisions of law, shall disclose the precise nature of the interest either orally to the council or the agency while in a meeting or in writing to the clerk of the urban county council prior to consideration of the matter by the council or the agency. Every other officer or employee who shall have any financial or private interest, directly or indirectly, in any matter pending before the urban county government in the case of urban county government officers and employees; or before the office of a constitutional officer in the case of a constitutional officer, which is not prohibited by this section or other provisions of law, shall disclose the precise nature of the interest, in writing, to the clerk of the urban county council prior to consideration of the matter by the government or the constitutional office. The officer or employee shall not take any action with respect to the matter that is the subject of the disclosure.
- (5) No officer or employee shall be deemed in conflict with these provisions if, by reason of participating in the enactment of any ordinance, resolution or other matter required to be voted upon, no financial gain accrues to such officer to any greater extent than any other member of such business, profession, occupation or group.
- (6) No officer or employee shall be deemed in conflict with these provisions, if by reason of participating in the enactment of any ordinance, resolution or other matter required to be voted upon, a financial gain is conferred upon a non-profit or charitable organization in which the officer, employee or family member has a financial or private interest if the officer or employee has disclosed said association to one of the following:
 - (a) The ethics commission through his or her statement of financial interest or a supplementary statement of financial interest;

(b) The clerk of the urban county council or the secretary of the voting board prior to casting such vote. For purposes of this section, an officer or a member of his or her family who makes a donation to such organization shall not be considered a financial interest or private interest.

Section 4 – That Section 25-5.1 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 25-5.2. – Official Misconduct

An officer or employee commits misconduct when, in his or her official capacity, he or she commits any of the following acts:

- (1) Intentionally or recklessly fails to perform any mandatory duty required by law;
- (2) Knowingly performs an act which he or she knows is forbidden by law to perform;
- (3) With intent to obtain a personal advantage for him or herself or another, performs an act in excess of his or her lawful authority; or
- (4) Solicits or knowingly accepts for the performance of any act a fee or reward that he or she knows is not authorized by law.

Section 5 - That Section 25-14 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-14. - When to file statements; amended statements.

- (1) Statements of financial interest shall be filed no later than 5:00 p.m. on April 15 of each year, provided that:
 - (a) An officer or employee newly-appointed to fill an office or position of employment, other than a commissioner of the urban county government, shall file his initial statement prior to confirmation.
 - (b) A person recommended by the mayor for confirmation as a commissioner of the urban county government shall file his initial statement at the same time his name is submitted to the urban county council by the mayor.
 - (c) A candidate for office shall file his initial statement no later than thirty (30) days after the date on which the person becomes a candidate for elected office.
- (2) The commission may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.
- (3) In the event there is a material change in any information contained in a financial statement that has been filed with the commission, the officer or employee shall, no later than thirty (30) days after becoming aware of the material change, file an amended or supplementary statement with the commission.

Section 6 – That Section 25-17 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-17. - Contents of the financial interests statement.

- (1) Nothing in this section shall be construed to require any officer or employee to disclose any specific dollar amounts nor the names of individual clients or customers of businesses listed as sources of income.
- (2) The statement of financial interests shall include the following information for the preceding calendar year:
 - (a) The name, current work/business address, work/business telephone number, and home address of the filer.
 - (b) The title of the filer's office, office sought, or position or former office or position of employment.
 - (c) The occupation of the filer and the filer's spouse.
 - (d) Information that identifies each source of income of the filer and the filer's immediate family members exceeding five hundred dollars (\$500.00) during the preceding calendar year, and the nature of the income (e.g., salary, commission, dividends, retirement fund distribution, etc.)
 - (e) The name and address of any business located within the state in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of five thousand dollars (\$5,000.00) or more at fair market value or ten (10) percent ownership interest or more, whichever is less.
 - (f) The name and address of any business located outside of the state, if the business has engaged in any business transactions with the urban county government during the past three (3) years or is anticipated to engage in any business transactions with the urban county government, in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of one thousand dollars (\$1,000.00) or more at fair market value or ten (10) percent ownership interest or more, whichever is less, provided that this subsection shall only apply to the mayor, members of the urban county council, commissioners and division directors.
 - (g) A designation as commercial, residential, or rural, and the location of all real property within the county, other than the filer's primary residence, in which the filer or any member of the filer's immediate family had during the preceding calendar year an interest, having a value exceeding five thousand dollars (\$5,000.00) at the close of the reporting period.
 - (h) A requirement that the filer answer, under penalty of perjury, the following question(s): "To your knowledge, do either you or any immediate family member of your family have any interest in property, tangible or intangible, or any other assets or business that may constitute or cause a conflict with your official duties? If yes, please explain."
 - (i) The name and address of any creditor of the filer and the filer's immediate family, who is owed more than ten thousand dollars (\$10,000.00), except debts arising from the purchase of a primary residence or the purchase of consumer goods which are bought or

used primarily for personal, family or household purposes.

- (j) The name and address of any board, commission, non-profit or charitable organization in which the officer has a private or financial interest, is a member of the board of directors or in which the officer or immediate family member has made a donation.

Section 7 – That Section 25-19 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-19. - Nepotism prohibited.

- (1) As used in this section, the term "relative" shall mean and include an officer or employee's spouse, a qualified adult as defined in section 25-4(12), child, parents, siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, first cousins, step-mothers, step-fathers, step-brothers/sisters, half-brothers/sisters, sisters/brothers-in-law, or mothers/fathers-in-law.
- (2) No officer or employee shall advocate, recommend, or cause the employment, appointment, promotion, transfer or advancement of his or her own relative to an office or position of employment in the urban county government in the case of urban county government officers and employees; in the agency in the case of urban county government agencies; or in the office of a constitutional officer in the case of a constitutional officer.
- (3) No officer or employee shall supervise or manage the work of a relative.
- (4) No officer or employee shall participate in any action relating to the employment or discipline of a relative.
- (5) The prohibitions in this section shall not apply to any relationship or situation which would violate this prohibition, but which existed prior to six (6) months before the effective date of this chapter. Any officer covered by section 25-4(9)(a), who was serving a term of office and who had any relatives employed by his office prior to six (6) months before the effective date of this chapter, may continue the employment of those relatives during any consecutive terms of office in the same office.
- (6) The prohibitions in this section shall not apply to any relationship or situation created by marriage or by a change in LFUCG policy governing qualified adults after the effective date of this section, provided, however, that such relationships shall be reported to the ethics commission which may recommend lateral transfer, substitute supervision, or other personnel action to eliminate or ameliorate the adverse effects of the relationship.

Section 8 – That Section 25-25 of the Code of Ordinances by and hereby is amended to read as follows:

Sec. 25-25. - Hearing procedure.

- (1) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall not apply to hearings conducted by the ethics commission; however, the hearings shall be conducted in accordance with this section and in accordance with any additional rules and regulations adopted by the commission so as to afford all

parties the full range of due process rights required by the nature of the proceedings.

- (2) Prior to the commencement of the hearing, the alleged violator, or his or her representative, shall have a reasonable opportunity to examine all documents and records obtained or prepared by the commission in connection with the matter to be heard. The commission shall inform the alleged violator, or his or her representative, of any exculpatory evidence in its possession.
- (3) All testimony in a commission hearing shall be taken under oath, administered by an individual designated by the commission who has the power to administer oaths. All parties shall have the right to call and examine witness, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel.
- (4) Any person, other than a party to the proceeding, whose name is mentioned during the hearing and who may be adversely affected thereby may file a written statement regarding the adverse mention for incorporation into the record of the proceeding.
- (5) All hearings of the ethics commission shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (6) After the conclusion of the hearing, the ethics commission shall, as soon as practicable, begin deliberations in executive session for the purpose of reviewing the evidence before it and making a determination as to whether a violation of this chapter has been proven.
- (7) Within thirty (30) days after completion of the hearing, the commission shall either:
 - (a) Adopt by the affirmative vote of five (5) or more members who were present at the hearing a written report giving its findings and its conclusion that a violation of this chapter has occurred; or
 - (b) Dismiss the complaint.

Any vote on the merits of the complaint which results in less than five (5) members who were present at the hearing voting that a violation has occurred shall result in the automatic dismissal of the complaint. In the event of such a dismissal, the complainant shall not be entitled to file a new complaint regarding the same subject matter unless a showing has been made that new evidence exists which was not presented at the previous hearing. The council clerk shall immediately send a copy of a written report adopted by the commission or written notice of the dismissal of a charge, as applicable, to the officer or employee who was the subject of the complaint and to the party who filed the complaint.
- (8) If the commission concludes in its report that in consideration of the evidence produced at the hearing there is by a preponderance of the evidence proof of a violation of this chapter, the commission may impose one or more penalties as set forth in Section 25-30 of this Chapter.
- (9) Findings of fact or final determinations by the commission that a violation of this chapter has been committed, or any testimony related to the commission's findings of fact or final determinations, shall not be admissible in criminal proceedings in the courts of the Commonwealth of Kentucky. Evidence collected by the commission may be used in a criminal proceeding if otherwise relevant.

Section 9 – That Section 25-30 of the Code of Ordinances by and hereby is amended to read as follows:

- (1) Upon a determination by the ethics commission of a violation of any of the provisions of the Ethics Act by an officer or employee, 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 or employee prior to any action by the ethics commission, a notice of mootness shall be issued by the commission;
 - (b) For any violation which is determined by the ethics commission to have been unintentional or the result of good faith misinterpretation of the requirements of the Ethics Act, a letter of technical violation or a letter of reprimand shall be issued by the ethics commission as the commission deems appropriate;
 - (c) For any intentional violation which is acknowledged and rectified by the officer or employee prior to any action by the ethics commission, the commission may take the following actions:
 - (i) Issue a letter to cease and desist;
 - (ii) Issue a letter of public reprimand;
 - (iii) Issue a letter of formal censure;
 - (iv) Issue a recommendation to the council, the mayor, or the civil service commission for removal, training or remediation.
- (2) In addition to any penalties set forth under subsection (c), an intentional violation of the Ethics Act shall be subject to the criminal penalties imposed by a court of competent jurisdiction pursuant to KRS 522.020 and KRS 522.030.
- (3) Any person who files with the ethics commission a false complaint under section 25-23, alleging a violation of any provision of this chapter which he does not believe, shall be subject to the criminal penalties imposed by a court of competent jurisdiction pursuant to KRS 523.040.
- (4) Any officer or employee who willfully violates the provisions of section 25-29 shall be subject to the criminal penalties imposed by a court of competent jurisdiction pursuant to KRS 61.990(3).
- (5) In addition to any of the penalties set forth under subsection (c), an intentional violation of the Ethics Act shall be subject to the civil penalties set forth below:
 - (a) Any person who is found by the ethics commission to have violated any provision of this chapter shall be deemed guilty of a civil offense and may be subject to a civil fine imposed by the ethics commission not to exceed five hundred dollars (\$500.00), which may be recovered by the urban county government in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time.
 - (b) In addition to all other penalties which may be imposed under this chapter, any person who is found by the ethics commission, the urban county council,

or the civil service commission to have violated any provision of this chapter shall forfeit to the urban county government or the office of any constitutional officer, an amount equal to the economic benefit or gain which the person is determined by the commission to have realized as a result of the violation. The amount of any forfeiture may be recovered by the urban county government in a civil action in the nature of debt, if the offender fails to pay the amount of the forfeiture within a prescribed period of time.

- (6) Nothing in this chapter is intended to, nor is to be construed as, repealing or modifying in any way the provisions of any of the criminal or penal laws of this state, but shall be held and construed as ancillary and supplemental thereto. The civil penalties provided in this chapter shall be levied in conjunction with, and not as an alternative to, the criminal penalties provided in this chapter and in state law.

Section 10 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 11 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: September 28, 2017

MAYOR



ATTEST:


CLERK OF URBAN COUNTY COUNCIL

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