

ORDINANCE # 02 - 20

AN ORDINANCE OF THE CITY OF BEREА, KENTUCKY, PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF BEREА, KENTUCKY, BE AMENDED BY REVISING CHAPTER 27, CITY OF BEREА CODE OF ETHICS, BY ADDING DEFINITIONS, REVISING THE PROVISIONS FOR CONFLICTS OF INTEREST, , PROVIDING FOR AN OFFICER OR EMPLOYEE'S WITHDRAWAL FROM PARTICIPATION IN THE EVENT OF A CONFLICT OF INTEREST, ADDING PROVISIONS RELATING TO THE RECEIPT OF GIFTS, USE OF CITY PROPERTY/EQUIPMENT/PERSONNEL, RESTRICTING CERTAIN ACTIONS BY OFFICERS AND EMPLOYEES, REVISING THE CONTENTS OF THE FINANCIAL INTEREST STATEMENT, REVISING NEPOTISM PROVISIONS, PROVIDING FOR THE ANNUAL ELECTION OF A CHAIRPERSON BY THE BOARD OF ETHICS, PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE BOARD OF ETHICS, REVISING THE PROCEDURE FOR THE INVESTIGATION OF COMPLAINTS BY THE BOARD OF ETHICS, PROVIDING FOR THE ISSUANCE OF ADVISORY OPINIONS BY THE BOARD OF ETHICS, AND REVISING THE PENALTIES FOR VIOLATION OF THE ETHICS CODE.

WHEREAS, the City Council has determined that in order to further the purposes of the City of Bereа Code of Ethics, it is appropriate and necessary to revise such Code to manifest the highest moral and ethical standards among its officers and employees, while complying with the requirements of Kentucky State requirements for local government ethics law;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bereа, Kentucky as follows:

SECTION I

That the Code of Ordinances of the City of Bereа, Kentucky, be amended by revising Chapter 27 of the Code of Ordinances so that such Chapter shall read as follows:

§ 27.001 TITLE

This chapter shall be known and may be cited as the "City of Bereа Code of Ethics."

§ 27.002 FINDINGS; PURPOSE; AUTHORITY

(A) *Findings.* The legislative body of the city finds and declares that:

(1) Public office and employment with the city are public trusts.

(2) The vitality and stability of the government of this city 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 city officer or employee, that confidence is imperiled.

(3) The government of this city has a duty to provide its citizens with the 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.

(B) *Purpose.*

(1) It is the purpose of this chapter to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees of the city shall be clearly established, uniform in their application, and enforceable, and to provide the officers and employees of the city with advice and information concerning potential conflict of interest which might arise in the conduct of their public duties.

(2) It is the further purpose of this chapter to meet the requirements of KRS 65.003 as enacted by the 1994 Kentucky General Assembly.

(C) *Authority.* This chapter is enacted under the power vested in the city by KRS 82.082 and pursuant to requirements of KRS 65.003.

§ 27.003 DEFINITIONS

As used in this chapter, the following shall have the meaning ascribed to them unless the context clearly requires a different meaning:

"BUSINESS." 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.

"BOARD OF ETHICS." The City of Berea Board of Ethics which is created and vested by this chapter with the responsibility of enforcing the requirements of the city's code of ethics.

"CANDIDATE." Any individual who seeks nomination or election to a city office. 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.

"CITY." the City of Berea, Kentucky.

"CITY AGENCY." Any agency, board, commission, authority, non-stock corporation, or other entity, created either individually or jointly, by this city.

"CONFIDENTIAL INFORMATION" means information obtained in the course of holding public office or employment, or as a contractor to the city, which is not available to members of the public and which the officer or employee is not authorized to disclose, except to designated individuals or bodies, including written and non-written information. When such information is also available through channels open to the public, officers and employees are not prohibited from disclosing the availability of those channels.

"CONSULTANT" means an independent contractor or professional person or entity engaged by the city or advising a city officer, and in a position to influence a city decision or action, or have access to confidential information.

"CUSTOMER OR CLIENT" means :

- (a) Any person or entity to which a person or entity has supplied goods or services during the previous twenty-four (24) months, having a total value greater than \$1,000.00; or
- (b) Any person or entity to which an officer or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, but only if the officer or employee knows or has reason to know the outside employer or business supplied the goods and services

"DOMESTIC PARTNER" is an adult, unrelated by blood, with whom an unmarried or separated officer or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

"EMPLOYEE." Any person whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the city. The term "employee" shall not include any contractor or subcontractor or any of their employees.

"FAMILY MEMBER." A spouse, parent, child, brother, sister, nephew, niece, uncle, aunt, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, grandchild, step-mother, step-father, step-sister, or step-brother.

"FINANCIAL BENEFIT" includes any money, service, license, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of these, or anything else of value. This term does not include campaign contributions authorized or permitted by law.

"FINANCIAL INTEREST" is a relationship to something such that a direct or indirect financial benefit has been, or will be, or might be, received as a result of it.

"HOUSEHOLD" includes anyone whose primary residence is in the officer or employee's home, including non-relatives who are not rent payers or servants.

"IMMEDIATE FAMILY MEMBER." a spouse, an unemancipated child resident 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, as a dependent for tax purposes.

"OFFICER." Any person, whether full-time or part-time, and whether paid or unpaid, who is of the following:

- (A) The mayor.
- (B) A city council member.
- (C) The city clerk.
- (D) The city administrator.
- (E) The police chief

____ (F) The fire chief.

~~(E)-G~~ Any person who occupies a nonelected office created under KRS 83A.080.

~~(F)~~(H) A member of the governing body of any city agency who has been appointed to the governing body of the agency by the city; provided, however, not including uncompensated non-elected board and commission members.

"OFFICIAL ACT" means any legislative, administrative, appointive, or discretionary act of any public official or employee of the city or any agency, board, committee, or commission thereof.

"PERSONAL BENEFIT" includes benefits other than those that are directly financially advantageous. These include financial benefits to relatives and business associates, as well as non-financial benefits to these people and to oneself, including such things as reputation and the success of one's career.

"PERSONAL INTEREST" means a relationship to something such that a personal benefit has been, will be, or might be obtained by certain action or inaction with respect to it.

"RELATIVE" means a spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the officer or employee's latest individual state income tax return.

"SUBORDINATE" means another official or employee over whose activities an official or employee has direction, supervision, or control.

"TRANSACTION" means any matter, including but not limited to, contracts, work, or business with the city, the sale or purchase of real estate by the city, and any request for zoning amendments, subdivision approval, conditional use approval, variance approval, or special permit approval, pending before the city upon which a public officer or employee performs an official act or action.

ARTICLE II. STANDARDS OF CONDUCT

§ 27.010 CONFLICTS OF INTEREST IN GENERAL

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

(A) No officer or employee, or any immediate family member of any officer or employee, shall have an interest in a business or engage in any business, transaction, or activity, which is in substantial conflict with the proper discharge of the officer's or employee's public duties.

(B) No officer or employee shall intentionally take, or refrain from taking, or agree to take, or refrain from taking, or induce or attempt to induce any other officer or employee to take or refrain from taking, any discretionary action on any matter before the city in order to obtain a financial benefit for the officer or employee, a family member, an outside employer, or a business defined in § 27.003, or a member of any business, occupation or profession use or attempt to use his or her official position with the city to secure unwarranted privileges or advantages for himself or herself or others.

(C) No officer or employee shall be deemed in violation of any provision in this section if, by reason of the officer's or employee's participation, vote, decision, action or inaction, no financial benefit accrues to the officer or employee, a family member, an outside employer, or a business as defined in § 27.024 (A) (5) and (6), a member of any business, occupation, profession, or other group, to any greater extent than any gain could reasonably be expected to accrue to any other member of the business, occupation, profession, other group intentionally take or fail to take any discretionary action, or agree to take or fail to take any discretionary action, or influence or attempt to influence any other officer or employee to take or fail to take any discretionary action, on any matter before the city in order to obtain a personal or financial benefit for any of the following:

1. The officer or the employee;
2. A family member;
3. An outside employer;
4. Any business in which the officer or employee, or any family member, has a financial interest, including but not limited to:
 - a. an outside employer or business of his or hers, or of his or her family member, or someone who works for such outside employer or business;
 - b. a customer or client; a substantial debtor or creditor of his or hers, or of his or her family member;
5. Any business with which the officer or employee or any family member is negotiating or seeking prospective employment or other business or professional relationship;
6. Any person or entity from whom the officer or employee has received an election campaign contribution of a total of more than Two Hundred Dollars (\$200.00) during the past election cycle, including contributions from a person's immediate family or business as well as contributions from an entity's owners, directors, or officers, as well as contributions to the officer or employee's political committee or non-candidate political committee; or
7. A nongovernmental civic group, social, charitable, or religious organization of which he or she (or his or her immediate family member) is an officer or director.

~~(D) Every officer or employee who has a prohibited financial interest which the officer or employee believes or has reason to believe may be affected by his participation, vote, decision or other action taken within the scope of his public duties shall disclose the precise nature and value of the interest, in writing, to the governing body of the city or city agency served by the officer or employee, and the disclosure shall be entered on the official record of the proceedings of the governing body. The officer or employee shall refrain from taking any action with respect to the matter that is the subject of the disclosure. No officer or employee shall be deemed in violation of any provision of this section if, by reason of the officer or employee's participation, vote, decision, action, or inaction, no personal or financial benefit accrues to the officer or employee, a family member, an outside employer, or a business as defined in Section 27.003, as a member of any business, occupation, profession, or any other group, to any greater extent than any gain that could reasonably be expected to accrue to any other member of the business, occupation, profession, or other group.~~

§ 27.011 CONFLICTS OF INTEREST IN CONTRACTS.

(A) Pursuant to KRS 61.252, no officer or employee of the city or any city agency shall directly or through others undertake, execute, hold, or enjoy, in whole or in part, any contract made, entered into, awarded or granted by the city or a city agency, except as follows:

(1) ~~The prohibition in subsection (A) of the section should shall not apply to contracts otherwise authorized by appropriate specific code provisions or ordinances of the city entered into before an elected officer filed as a candidate for city office, before an appointed officer was appointed to a city or city agency office, or before an employee was hired by the city or a city agency; provided that any contract entered into by a city or city agency officer or an employee before he or she became a candidate, was appointed to office, or was hired as an employee, which is renewable after he or she becomes a candidate, assumes the appointed office, or is hired as an employee, shall be subject to the prohibition in subsection (A).~~

(2) The prohibition in subsection (A) of this section shall not apply to contracts entered into before an elected officer filed as a candidate for city office, before a appointed officer was appointed to a city or city agency office, or before an employee was hired by the city or a city agency. However, if any contract entered into by a city or city agency officer or employee before he became a candidate, was appointed to office, or was hired as an employee, is renewable after he becomes a candidate, assumes the appointed office, or is hired as an employee, then the prohibition in subsection (A) of this section shall apply to the renewal of the contract.

(3) The prohibition in subsection (A) of this section shall not apply if the contract is awarded after public notice and competitive bidding, unless the officer or employee is authorized to participate in establishing the contract specifications, awarding the contract, or managing contract performance after the contract is awarded. If the officer or employee has any of the authorities set forth in the preceding sentence, then the officer

or employee shall have no interest in the contract, unless the requirements set forth in section (4) below are satisfied.

(4) The prohibition in subsection (A) of this section shall not apply in any case where the following requirements are satisfied:

(a) The specific nature of the contract transaction and the nature of the officer's or employee's interest in the contract are publicly disclosed at a meeting of the governing body of the city or city agency.

(b) The disclosure is made a part of the official record of the governing body of the city or city agency before the contract is executed.

(c) A finding is made by the governing body of the city or city agency that the contract with the officer or employee is in the best interests of the public and the city or city agency because of price, limited supply, or other specific reasons, before the contract is executed.

(d) The finding is made a part of the official record of the governing body of the city or city agency before the contract is executed.

(B) Any violation of this section shall constitute a Class A misdemeanor, and upon conviction, the court may void any contract entered into in violation of this section. Additionally, a violation of this section shall be grounds for removal from office or employment with the city in accordance with any applicable provisions of state law and ordinances, rules or regulation of the city.

§ 27.012 MISUSE OF CONFIDENTIAL INFORMATION

No officer or employee of the city or any city agency shall intentionally use or disclose information acquired in the course of his official duties, if the primary purpose of the use or disclosure is to further his personal financial interest or that of another person or business. Information shall be deemed confidential, if it is not subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.872 to 61.884, at the time of its use or disclosure.

§ 27.013 WITHDRAWAL FROM PARTICIPATION

(A) An officer or employee must refrain from acting on or discussing, formally or informally, a matter before the city, if acting on the matter, or failing to act on the matter, may personally or financially benefit any of the persons or entities listed in section 27.010(C) above. Such an officer or employee should join the public if the withdrawal occurs at a public meeting, or leave the room if it is a legally conducted closed meeting (executive sessions) under KRS 61.810 or 61.815.

(B) Withdrawal at a meeting requires the public announcement, on the record, of the reason for the withdrawal.

(C) Ongoing Conflict: An officer or employee whose outside employment or other outside activity or relationship can be reasonably expected to require more than a sporadic withdrawal must resign or cease such outside employment or activity. An officer or employee should not begin employment or an activity or relationship that can reasonably be expected to require more than sporadic withdrawal. If a prospective officer or employee is in such a situation he or she should not accept the position with the city.

(D) Request to withdraw: If an officer or appointed board member is requested to withdraw from participation in a matter, for the reason that he or she has a conflict of interest, by

- a. Another member;
- b. A party to the current matter; or
- c. Anyone else who may be affected by a decision relating to this matter;

the member must decide whether to withdraw on the official record. If the member decides not to withdraw, the unchallenged members must consider any relevant evidence concerning such claimed conflict of interest, as defined in this Article, and vote whether or not to allow the request and require the member withdraw from participating in such matter.

(E) If withdrawal by the member would leave the body with less than a quorum capable of acting, the member must disclose the conflict on the public record, then the remaining members may vote to allow the member with the disclosed conflict to vote. If the person is the only one authorized by law to act, the person must disclose the nature and circumstances of the conflict to the Board of Ethics and request a waiver or advisory opinion.

§ 27.014 RECEIPT OF GIFTS

No officer, employee, or appointee of the city shall, directly or indirectly, solicit any gift or accept or receive any gift having a value of seventy-five dollars (\$75.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could be reasonably inferred that the gift was intended to influence, or could reasonably be expected to influence, the officer, employee, or appointee in the performance of his or her official duties, or was intended as a reward for any official action. This prohibition shall not include any gift accepted on behalf of the city and transferred to the city.

§ 27.015 USE OF CITY PROPERTY, EQUIPMENT AND PERSONNEL

No officer or employee of the city shall use or permit the use of any city time, funds, personnel, equipment, or other personal or real property for the private use of any person, unless:

1. The use is specifically authorized by a city policy; or
2. The use is available to the general public, and then only to the extent and upon the terms that such use is available to the general public.

§ 27.016 OTHER RESTRICTIONS AND LIMITATIONS

(A) Representation of Interests Before City Government

1. No officer or employee of the city or any city agency shall represent any person or business, other than the city, in connection with any cause, proceeding, application, or any other matter, before the city or any city agency, board, or commission.
2. Nothing in this section shall prohibit any officer or employee from representing himself or herself in matters concerning his or her own interests.
3. No elected officer shall be prohibited by this section from making any inquiry for information on behalf of a constituent, if no compensation, reward, or other thing of value is promised to, given to, or accepted by the officer, whether directly or indirectly, in return for the inquiry.

(B) Political Solicitation

An officer, employee, or candidate for city office may not knowingly request, or authorize anyone else to request, that any subordinate or political future subordinate participate, or not participate, in any political activity, including the making of a campaign contribution; nor may an officer or employee engage in any political activity while on duty for the city, with the use of city funds, supplies, vehicles, or facilities, in uniform, or during any period of time during which he or she is normally expected to perform services for the city for which compensation is paid.

(C) Patronage

No officer or employee may promise an appointment or the use of his or her influence to obtain an appointment to any position as a reward for any political activity or contribution.

(D) Outside Employment

An officer or employee shall not accept any employment or enter into any contracts that result in a conflict of interest with his or her duties as an officer or employee of the city.

(E) Post-Employment Restriction

No officer or employee of the city or any city agency shall appear before the city or any city agency or receive compensation for services rendered on behalf of any person in relation to any particular matter with respect to any matter on which the

officer or employee personally worked in the service of the city or city agency for a period of one (1) year after the termination of the officer's or employee's service with the city or city agency.

(F) Fees and Honoraria

An officer or employee shall not accept any compensation or honorarium in consideration for an appearance, speech, or article unless the appearance, speech, or article is both related to the officer's or employee's employment activities outside of municipal service and is unrelated to the officer's or employee's service with the city.

(G) Endorsements

No officer or employee in his or her official capacity may publicly endorse products or services; provided, however this prohibition does not preclude an officer or employee from answering inquiries by other governmental officials, consumer organizations, or product information services regarding products or services.

(H) Complicity with or Knowledge of Others' Violations

No officer or employee may, directly or indirectly, induce, encourage, or aid anyone to violate any provision of this Code.

ARTICLE III. FINANCIAL DISCLOSURE

§ 27.020 WHO MUST FILE

The following classes of officers and employees of the city and city agencies shall file an annual statement of financial interests with the board of ethics:

- (A) Elected city officials, or persons properly appointed to elected positions.
- (B) Candidates for elected city office.
- (C) City of Berea Planning Commission members.
- (D) Tourism and Convention Commission members.
- (E) Industrial Development Authority members.

§ 27.021 WHEN TO FILE STATEMENTS; AMENDED STATEMENTS

(A) The initial statement of financial interests required by this section shall be filed with the board of ethics, or the administrative official designated as the custodian of its records, no later than 4:00 p.m., April 30, 1995. All subsequent statements of financial interest shall be filed no later than 4:00 p.m. on April 30 each year, provided that:

(1) ~~A person~~ An officer or employee newly-appointed to fill an office or position of employment with the city shall file his or her initial statement no later than thirty (30) days after the date of the appointment.

(2) A candidate for city office shall file his initial statement no later than thirty (30) days after the date on which the person becomes a candidate for elected city office.

(B) The board of ethics may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

(C) In the event there is a material change in any information contained in a financial statement that has been filed with the board of ethics, the elected officer shall, no later than thirty (30) days after becoming aware of the material change, file an amended statement with the board of ethics.

§ 27.022 FORM; STATEMENT OF FINANCIAL INTERESTS.

The statement of financial interests shall be filed on a form prescribed by the board of ethics, or the administrative official designated by the board of ethics. The board, or the designated administrative official, shall deliver a copy of the form to each officer and employee required to file the statement, by first class mail or hand delivery, no later than March 15 of each year. The failure of the board, or the designated administrative official, to deliver a copy of the form to any officer or employee shall not relieve the officer or employee of the obligation to file the statement.

§ 27.023 CONTROL; MAINTENANCE OF STATEMENTS OF FINANCIAL INTERESTS

(A) The board of ethics shall be the "official custodian" of the statements of financial interests and shall have control over the maintenance of the statements of financial interests. The statements of financial interests shall be maintained by the board of ethics, or the administrative official designated by the board of ethics as the "custodian," of public documents, available for public inspection immediately upon filing.

(B) A statement of financial interests shall be retained by the board of ethics, or the designated administrative official ~~for a period of five (5) years after filing, provided that pursuant to the Kentucky Department of Libraries and Archives schedule as follows:~~

(1) Upon the expiration of ~~three (3)~~ two (2) years after a person ceases to be an officer or employee of the city or a city agency, the board of ethics shall cause to be destroyed any statement of financial interests or copies of those statements filed by the person.

(2) Upon the expiration of ~~three (3)~~ two (2) years after any election at which a candidate for elected city office was not elected or nominated, the board of ethics shall cause to be destroyed any statements of financial interest or copies of those statements filed by the person.

§ 27.024 CONTENTS; FINANCIAL INTEREST STATEMENT

(A) The statement of financial interests shall include the following information for the preceding calendar year:

(1) The name, current business address, business telephone number, and home address of the filer.

(2) The title of the filer's office, office sought, or position of employment.

(3) The occupation of the filer and the filer's spouse.

(4) Information that identifies each source of income, but not the amount, of the filer and the filer's immediate family members exceeding five thousand (\$5,000.00) dollars during the preceding calendar year, and the nature of the income (e.g. salary, commission, dividends, retirement fund distribution, etc.).

(5) 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 ten thousand (\$10,000.00) dollars at fair market value or five percent (5%) ownership interest or more.

(6) The name and address of any business located outside the state, if the business has engaged in any business transactions with the city during the past three (3) years, or which is anticipated to engage in any business transactions with the city, 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 ten thousand (\$10,000.00) dollars at fair market value or five percent (5%) ownership interest or more.

(7) 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 of ten thousand (\$10,000.00) dollars or more.

~~(8) The receipt of any gift having a fair market value of more than two hundred (\$200.00) dollars; provided, however, that this provision shall not apply to gifts received from family members. Each source by name and address of gifts or honoraria having an aggregate fair market value of one hundred dollars (\$100.00) or more from any single source, excluding gifts received from family members, received by the filer or any member of the filer's immediate family during the preceding calendar year.~~

~~(9) The name and address of any creditor 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.~~

(B) Nothing in this section shall be construed to require any officer or employee to disclose any specific dollar amounts nor the name of individual clients or customers of business listed as sources of income.

§ 27.025 NONCOMPLIANCE WITH FILING REQUIREMENT

(A) The board of ethics, or the designated administrative official, shall notify by certified mail each person required to file a statement of financial interests who fails to file the statement by the due date, files an incomplete statement, or files a statement in a form other than that prescribed by the board of ethics. The notice shall specify the type of failure or delinquency, shall establish a date by which the failure or delinquency shall be remedied, and shall advise the person of the penalties for violation.

(B) Any person who fails or refuses to file the statement or who fails or refuses to remedy a deficiency in the filing identified in the notice under subsection (A) within the time period established in the notice shall be subject to a civil fine imposed by the board of ethics in an amount not to exceed twenty-five (\$25.00) dollars per day, up to a maximum total civil fine of five hundred (\$500.00) dollars. Any civil fine imposed by the board of ethics under this section may be recovered by the city in a civil action in the nature of debt if the offender fails or refuses to pay the penalty within a prescribed periods of time.

(C) Any person who intentionally files a statement of financial interests which he knows to contain false information or intentionally omits required information shall be guilty of a Class A misdemeanor.

ARTICLE IV. NEPOTISM

§ 27.030 NEPOTISM PROHIBITED.

(A) No family member of any elected official ~~shall be appointed to any office or hired as an employee of the city or appointed city officer who has any authority to make any decision regarding the employment, appointment, promotion, transfer, discipline, or dismissal of any officer at any level of city government, shall be appointed to any office or employed in any position of employment with the city.~~

(B) The prohibitions in this section shall not apply to any relationship or situation that would violate the prohibition, ~~but which existed prior to the effective date hereof;~~ nor to full-time students working in a temporary summer position, for four (4) months or less, so long the a student is not supervised by a family member.

ARTICLE V. ENFORCEMENT

§ 27.040 BOARD OF ETHICS ESTABLISHED

(A) There is hereby created a board of ethics which shall have the authorities, duties, and responsibilities as set forth in this chapter to enforce the provisions of this chapter.

(B) The board of ethics shall consist of three (3) members who shall be appointed by the executive authority of the city, subject to the approval of the city council. ~~The initial members of the board of ethics shall be appointed within sixty (60) days of the effective date of this chapter.~~ No member of the board of ethics shall hold any elected position or employment with the city or any city agency. The members shall serve for a term of three (3) years; except that with respect to the members initially appointed, one (1) member shall be appointed for a term of one (1) year, one (1) member shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. Each member of the board of ethics shall have been a resident of the city for at least one (1) year prior to the date of the appointment and shall reside in the city throughout the term in office. The members of the board of ethics shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. The members may be re-appointed for any number of consecutive terms.

(C) A member of the board of ethics may be removed by the executive authority, subject to the approval of the city council for misconduct, inability, or willful neglect of duties. Before any member of the board of ethics is removed from office under this section, the member shall be afforded the opportunity for a hearing before the executive authority and the legislative body.

(D) Vacancies on the board of ethics shall be filled within sixty (60) days by the executive authority, subject to the approval of the legislative body. ~~If a vacancy is not filled by the executive authority within sixty (60) days, the remaining members of the board of ethics may fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.~~

(E) Members of the board of ethics shall serve without compensation, unless otherwise approved by the legislative body, but shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.

(F) The corporation counsel or other chief law officer of the city shall act as legal advisor and counsel to the board, and shall attend the meetings of the board; provided, however, that the corporation counsel shall recuse in the event that a conflict should arise as defined in the Rules of Professional Conduct adopted by the Kentucky Supreme Court.

(G) Meetings of the board of ethics shall be held, as necessary, upon the call of the chairperson or at the written request of a majority of the members.

(H) The presence of three (3) or more members shall constitute a quorum and the affirmative vote of three (3) or more members shall be necessary for any official action to be taken. Any member of the board of ethics who has a conflict of interest with respect to any matter to be considered by the board shall disclose the nature of the conflict, shall disqualify himself or herself from voting on the matter, and shall not be counted for purposes of establishing a quorum.

(I) The Board of Ethics shall annually elect a chairperson from among its membership. The Chairperson shall preside at meetings of the board and shall be a full voting member of the board. Minutes shall be kept for all proceedings of the board of ethics and the vote of each member on any issue decided by the board shall be recorded in the minutes.

§ 27.041 ALTERNATE MEMBERS

The executive authority of the city, with the approval of the legislative body, may appoint two (2) alternate members of the board of ethics who may be called upon to serve when any regular member of the board is unable to discharge his duties. An alternate member shall be appointed for a term of one (1) year. Alternate members shall meet all qualifications and be subject to all of the requirements of this chapter that apply to regular members.

§ 27.042 FACILITIES; STAFF

Within the limits of the funds appropriated by the legislative body in the annual budget, the city shall provide the board of ethics, either directly or by contract or agreement, with the facilities, materials, supplies, and staff needed for the conduct of business

§ 27.043 POWERS; DUTIES OF BOARD

The board of ethics shall have the following powers and duties:

(A) To initiate on its own motion, receive and investigate complaints, hold hearings, and make findings of fact and determinations with regard to alleged violations of the provisions of this chapter.

(B) To issue orders in connection with its investigations and hearings requiring persons to submit in writing and under oath reports and answers to questions that are relevant to the proceedings and to order testimony to be taken by deposition before any individual designated by the board of ethics who has the power to administer oaths.

(C) To administer oaths and to issue orders requiring the attendance and testimony of witnesses and the production of documentary evidence relating to an investigation or hearing being conducted by the board of ethics.

(D) To refer any information concerning violations of this chapter to the executive authority of the city, the city legislative body, the governing body of any city agency, the corporation counsel, the county or commonwealth's attorney, or other appropriate person or body, as necessary.

(E) To render advisory opinions to city and city agency officers and employees regarding whether a given set of facts and circumstances would constitute a violation of any provision of this chapter.

(F) To enforce the provisions of this chapter with regard to all persons who are subject to its terms by issuing appropriate orders and imposing penalties authorized by this chapter.

(G) To control and maintain all statements of financial interests that are required to be filed by this chapter and to ensure that all statements are available for public inspection in accordance with the requirements of this chapter and the Kentucky Open Records Act.

(H) To develop and submit any reports regarding the conduct of its business that may be required by the executive authority or legislative body of the city.

(I) To adopt rules and regulations and to take other actions, as necessary, to implement the provisions of this chapter, provided that the rules, regulations, and actions are not in conflict with the provisions of this chapter or any state or federal law; and to provide training and education on the city ethics code to officials and employees.

(J) To review on an annual basis the List of Officials required to file annual disclosure statements, and to determine whether the Lists are complete and accurate. By February 15 of each succeeding year, the Board of Ethics shall (a) cause to be filed with the City Clerk a list of the names and offices, or positions, of all officials and employees and any others required to file annual disclosure statements pursuant to Section 27.020 hereof; and (b) notify all such persons of their obligation to file an annual disclosure statement.

(K) The Board of Ethics shall prepare forms for complaints and for financial disclosure statements, and make these forms available at the City Clerk's office and on the city's website.

(L) By June 15 of each succeeding year, the Board of Ethics shall review all annual financial disclosure statements filed with it to determine whether any person required to file such statement has failed to file it, has filed a deficient statement, or has filed a statement that reveals a possible or potential violation of this code. If the board determines that a disclosure statement is deficient or reveals a possible or potential violation of this code, the board will notify the person in writing of the deficiency or possible or potential violation, and of the penalties for failure to comply with this code.

(M) In the event of the recusal of the corporation counsel, to retain independent legal counsel to advise and represent the board.

§ 27.044 FILING; INVESTIGATION OF COMPLAINTS

(A) All complaints alleging any violation of the provisions of this chapter shall be filed with the City Clerk, who shall immediately convey the complaint to the chairperson of the board. to the board of ethics, or the administrative official designated by the board of ethics. All complaints shall be in writing, signed by the Complainant, and shall meet any other requirements established by the Board of Ethics. The Board of Ethics shall acknowledge receipt of a complaint to the Complainant within ten (10) working days from the date of receipt. The board shall forward within ten (10) working days to each officer or employee of the city or city agency who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this chapter.

(B) The Board of Ethics may, on its own initiative, determine through an inquiry into informal allegations or information provided directly to the board, by referral, in the public news media, or otherwise, that a violation of this code may exist, and prepare a complaint on its own. The board of Ethics may also amend a complaint that has been filed with it by adding further allegations, by adding Respondents involved in the same conduct, directly or indirectly, by action or inaction, or by deleting allegations that would not constitute a violation of this code, have been made against persons or entities not covered by this code, or do not appear to be supported by the facts. The Board of Ethics may also consolidate complaints where the allegations are materially related.

(C) (B) Within thirty (30) forty (40) days of the receipt of a proper complaint, the board of ethics shall conduct a preliminary inquiry concerning the allegations contained in the complaint. The board shall afford a person who is the subject of the complaint an opportunity to respond to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations.

(D) The person who is the subject of the complaint (Respondent) may file with the Board of Ethics a response under oath to the complaint within fifteen (15) days after his or her receipt of the complaint. The board shall cause the response to be sent to the

person filing the original complaint within five (5) days after it is filed. Thereafter, the Complainant may also file a response under oath to the Respondent's response, which the board shall send to Respondent within five (5) days after it is filed.

(E) Extensions of time to any of the limitations specified in this section may be granted by the Board of Ethics upon request of a party upon either a vote of a majority of the members, or if it is impractical for a meeting to be held, the chairperson may extend the limit. The Board of Ethics shall give written notice of any extension(s) of time to the parties.

(F) (G) All proceedings and records relating to a preliminary inquiry being conducted by the Board of Ethics shall be confidential until a final determination is made by the board, except:

(1) The board may turn over to the commonwealth's attorney or county attorney evidence which may be used in criminal proceedings.

(2) If the Complainant or alleged violator publicly discloses the existence of an inquiry, the board may publicly confirm the existence of the inquiry, and, at its discretion, make public any documents which were issued to either party.

(G) (D) The board shall make a determination based on its preliminary inquiry whether the complaint is within its jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this chapter. If the board concludes that the complaint is outside of its jurisdiction, frivolous, or without factual basis, the board shall immediately terminate the inquiry, reduce the conclusion to writing, and transmit a copy of its decision to the Complainant and to all officers or employees against whom the complaint was filed.

(H) (E) If the Board of Ethics concludes, based upon its preliminary inquiry, that the complaint is within its jurisdiction and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the board shall notify the officer or employee who is the subject of the complaint and may:

(1) Due to mitigating circumstances, such as lack of significant economic advantage or gain by the officer or employee, lack of economic loss to the city and its taxpayers, or lack of significant impact on public confidence in city government, issue, in writing, a confidential reprimand to the officer or employee concerning the alleged violation and provide a copy of the confidential reprimand to the executive authority and governing body of the city or city agency.

(2) Initiate a hearing to determine whether there has been a violation.

(I) In its investigation, the Board of Ethics is authorized to administer oaths or affirmations, subpoena witnesses, compel their attendance, and require the production of documents, books, and records which it deems are relevant to the investigation. The Berea Police Department and all city agencies, bodies, officials, and employees are required to respond fully and truthfully to all enquiries and

cooperate with all requests of the board or its attorneys and agents relating to an investigation. It is a violation of this code for any official or employee to deny access to information requested by the Board of Ethics in the course of an investigation or hearing, except to the extent that such denial is required by law.

a. Nothing in this section shall be construed to permit the Board of Ethics to conduct an investigation of itself or any of its members or staff. In the event that there is a complaint filed with the board which alleges that the board or any of its members or staff have violated any provision of this code, the board shall promptly transmit a copy of the complaint to the Berea City Council.

(J) (F) Any person who knowingly files with the board a false complaint alleging a violation of any provision of this chapter by an officer or employee of the city or any city agency shall be guilty of a Class A misdemeanor.

§ 27.045 NOTICE OF HEARING

If the Board of Ethics determines that a hearing regarding allegations contained in the complaint is necessary, the board shall issue an order setting the matter for a hearing within thirty (30) days of the date the order is issued, unless the alleged violator petitions for and the board consents to a later date. The order setting the matter for hearing, along with a copy of any pertinent regulations of the board relating to the hearing shall be sent to the alleged violator within twenty-four (24) hours of the time the order setting a hearing is issued.

§ 27.046 HEARING PROCEDURE

(A) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall not specifically apply to hearings conducted by the board; however, such rules may be used as general guidelines, and the hearings shall be conducted in accordance with this section and in accordance with any additional rules and regulations adopted by the board so as to afford all parties the full range of due process rights required by the nature of the proceedings.

(B) Prior to the commencement of the hearing, the alleged violator, or his representative, shall have a reasonable opportunity to examine all documents and records obtained or prepared by the board of ethics in connection with the matter to be heard. The Board of Ethics shall inform the alleged violator, or his representative, of any exculpatory evidence in its possession.

(C) All testimony in a Board of Ethics hearing shall be taken under oath, administered by the presiding officer. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel.

(D) Any person whose name is mentioned during the hearing and who may be adversely affected thereby may appear personally before the board, with or without

counsel, to give a statement regarding the adverse mention, or may file a written statement regarding the adverse mention for incorporation into the record of the proceeding.

(E) All hearings of the board of ethics shall be public, unless the board determines to go into executive session in accordance with KRS 61.810.

(F) After the conclusion of the hearing, the Board of Ethics shall, as soon as practicable, make a determination whether a violation of this chapter has been proven. Within thirty (30) days after the completion of the hearing, the board shall issue a written report of its findings and conclusions.

(G) If the Board of Ethics concludes in its report that no violation of this chapter has occurred, it shall immediately send written notice of this determination to the officer or employee who was the subject of the complaint and to the party who filed the complaint.

(H) If the Board of Ethics concludes in its report that in consideration of the evidence produced at the hearing, there is clear and convincing proof of a violation of this chapter, the board may:

(1) Issue an order requiring the violator to cease and desist the violation.

(2) In writing, publicly reprimand the violator for the violations and provide a copy of the reprimand to the executive authority and governing body of the city or city agency with which the violator serves.

(3) In writing, recommend to the executive authority and the governing body (if different than the executive authority) that the violator be sanctioned as recommended by the board, which may include a recommendation for discipline or dismissal, or removal from office.

~~—(4) Issue an order requiring the violator to pay a civil penalty of not more than one thousand (\$1,000.00) dollars.~~

(4) (5) Refer evidence of criminal violations of this chapter or state laws to the county attorney or commonwealth's attorney for prosecution.

§ 27.047 APPEALS

Any person who is found guilty of a violation of any provision of this chapter by the Board of Ethics may appeal the finding to the Madison Circuit Court within thirty (30) days after the date of the final action by the Board of Ethics by filing a petition with the court specifying ~~his complaint~~ a petition against the action of the Board of Ethics. The Board of Ethics shall transmit to the clerk of the court all evidence considered by it at the public hearing.

§ 27.048 LIMITATIONS OF ACTIONS

Except when the period of limitation is otherwise established by state law, an action for a violation of this chapter must be brought within one (1) year after the violation is discovered.

§ 27.049 REPRISALS AGAINST PERSONS DISCLOSING VIOLATIONS PROHIBITED

(A) No officer or employee of the city or any city agency shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority to influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Board of Ethics, or any other agency or official of the city or the commonwealth, any facts or information relative to an actual or suspected violation of this chapter.

(B) This section shall not be construed as prohibiting disciplinary or punitive action if an officer or employee of the city or any city agency discloses information which he knows:

- (1) To be false or which he discloses with reckless disregard for its truth or falsity.
- (2) To be exempt from the required disclosure under the provisions of the Kentucky Open Records Act, KRS 61.884.
- (3) Is confidential under any other provision or law.

§ 27.050 ADVISORY OPINIONS

- (A) The Board of Ethics may render advisory opinions concerning matters under its jurisdiction, based upon real circumstances, upon its own initiative, or when requested by any officer or employee of the city or a city agency subject to the provisions of this code.
- (B) An advisory opinion shall be requested in writing and shall state relevant facts and pose specific questions. The request for an advisory opinion shall remain confidential unless confidentiality is waived in writing by the requestor.
- (C) All advisory opinions shall be public documents, provided that prior to publicly issuing an advisory opinion, it shall be modified so that the identity of any person associated with the opinion shall not be revealed
- (D) The confidentiality of an advisory opinion may be waived either:
 - (1) In writing by the person who requested the opinion, or
 - (2) By majority vote of the members of the board, if a person makes or purports to make public the substance of any portion of an advisory opinion requested by or on behalf of the person. In such event, the board may vote to make public the advisory opinion, the request for advisory opinion, and related materials.

§ 27.099 PENALTY

~~—(A) Except when another penalty is specifically set forth in this chapter, any officer or employee of the city or any city agency who is found by the board of ethics 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 board of ethics not to exceed one thousand (\$1,000.00)~~

dollars, which may be recovered by the city in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time.

(A) (B) In addition to all other penalties which may be imposed under this chapter, any officer or employee of the city or any city agency who is found by the Board of Ethics to have violated any provision of this chapter shall forfeit to the city or the city agency an amount equal to the economic benefit or gain which the officer or employee is determined by the board to have realized as a result of the violation. The amount of any forfeiture may be recovered by the city in a civil action in the nature of debt, if the offender fails to pay the amount of forfeiture within a prescribed period of time.

(B) (C) In addition to all other penalties which may be imposed under this chapter, a finding by the Board of Ethics that an officer or employee of the city or any city agency is guilty of a violation of this chapter may be sufficient cause for removal, suspension, demotion, or other disciplinary action by the executive authority of the city or city agency, or by any other officer or agency having the power of removal or discipline, to include the city council in the event that the person found guilty of a violation of this chapter is an elected official, pursuant to KRS 83A.040(9). Any action to remove or discipline any officer or employee for a violation of this chapter shall be taken in accordance with all applicable ordinances and regulations of the city and all applicable laws of the commonwealth.

SECTION II

All ordinances or parts of ordinances in conflict herewith are repealed. This ordinance shall be published according to law.

FIRST READING: February 4, 2020.


SECOND READING AND ENACTMENT: February 18, 2020.

CITY OF BEREA, KENTUCKY

ATTEST:

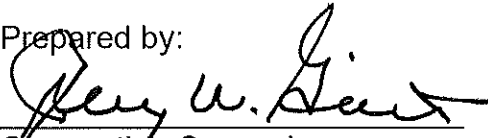

Clerk of the City Council

APPROVED BY:


Bruce Fraley, Mayor

Published this 19 day of February, 2020

Prepared by:



Corporation Counsel