COMMONWEALTH OF KENTUCKY
LOUISVILLE/JEFFERSON COUNTY METRO COUNCIL COURT

IN RE: CHARGES AGAINST DISTRICT 19
COUNCILMAN ANTHONY PIAGENTINI

RESPONSE TO COMPLAINT

*** *** ***

Dear Metro Council Colleagues,

The following is my written Response to the recent charges brought against me from the Charging Commission as allowed by Rule 1 of the Removal Hearing Rules and Procedures. This Response is in addition to the oral comments I made during the Metro Council meeting on November 30, 2023 when the charges set forth in the Complaint were read.

First, I reiterate that Count VII and VIII represent an unprecedented addition of criminal charges, which violate several provisions in the United States Constitution and Kentucky Constitution. The decision by the six members of the Charging Committee to disregard due process and use removal proceedings under KRS 67C.143 to accuse a member of Metro Council of crimes – ***particularly when no criminal charge has been made by a grand jury, much less proven in a court of law*** – sets a dangerous precedent for Metro Council that should concern every member of this body. If this is allowed to stand, what is to stop any group of five (5) members of this body from charging another member with a crime for any reason whatsoever and without the constitutional protections afforded the accused? At this time, I will not comment further on these charges other than to say that I will be filing a Motion to Dismiss that sets forth in greater detail the reasons why this unconstitutional and dangerous precedent should be rejected.

Before addressing the factual allegations in the Complaint, the members of Metro Council need to understand that the unconstitutional inclusion of criminal charges against me is just a continuation of the inexplicable, unprecedented actions which were first taken by the Ethics Commission. For example, in the case of the Ethics Commission, as I outlined in my appeal of its Findings of Fact and Conclusions of Law in the Jefferson Circuit Court, the Ethics Commission inexplicably deviated from the process and procedures set forth in the Code of Ethics and its own Rules and Regulation to deprive me of a fair process, including, but not limited to, the following:

- Under the Code of Ethics, counsel may be assigned to a Complainant "when the Commission deems such representation necessary to ensure due process in hearings conducted before the Commission." The Complainant testified under oath that (a) the Ethics Commission never sought any information from him to determine that legal representation was necessary to protect due process; and (b) the Ethics Commission nevertheless proactively informed him after he filed the Ethics Complaint that legal representation could be appointed for him. The Complainant also represented that he had no personal interest in the outcome of the Ethics Commission's proceedings. Yet despite the fact that the Complainant's due process rights were never in jeopardy, he was assigned

counsel from the outset, paid for by Metro Government, before it was even deemed we would proceed to a hearing, instead of related to protected their rights "in hearings." By way of comparison, this is like allowing an individual off the street to file a civil lawsuit against another party and then paying for that individual's lawyer when the individual had no standing to sue in the first instance. In the judicial system, this type of action would be thrown out entirely, yet the Ethics Commission embraced it wholeheartedly. To my knowledge, this is completely unprecedented.

- The Ethics Commission denied the Complainant's motion for his attorney to be named as the Investigating Officer, the official charged with investigating and prosecuting allegations of ethics violations. Instead, the Ethics Commission officially appointed Commissioner Robert Boyd and Jim Griffin (an investigator contracted by the Commission) as Investigating Officers. The Ethics Commission's Rules clearly state that the Investigating Officer has the burden of proving the allegations, and the Code of Ethics does not permit the Complainant's attorney to even speak during a hearing. Nonetheless, the Ethics Commission allowed the Complainant's attorney to present the entire case while Mr. Boyd, the appointed Investigating Officer, asked a total of 3 questions over 4 days and gave both opening and closing statements that never referenced one piece of evidence. The Investigating Officer is clearly meant to be an impartial party seeking justice. Instead, the Ethics Commission allowed someone who was obligated to represent the interests of another person and not necessarily the interests of justice to act in this capacity. To illustrate the point, this is like allowing both the Commonwealth's Attorney and an advocate for an alleged victim to prosecute a defendant, with the Commonwealth's Attorney deciding to take a side role and permitting the victim to prosecute the case on behalf of the state. Worse still, this required me to defend my actions against 2 different parties. This is unprecedented in the history of the Ethics Commission.

- The Ethics Commission and/or Metro Government was found by the Attorney General's Office to have violated the Open Records Act ("ORA") in each and every one of the four attempts my attorney made to gather information relevant to the defense of my case.

- In response to my first ORA Request, the Ethics Commission and Metro Government granted themselves an extension of time to provide responsive documents and then unilaterally granted themselves a second extension when I filed my first case in the Jefferson Circuit Court. In fact, they failed to produce responsive documents by the second extended deadline, as they promised. Instead, they produced responsive documents only *after* the Attorney General's Office determined that they had violated the ORA and *after* my first court case was decided. It turns out that one of the emails that was withheld was an email from counsel for the Ethics Commission which directly contradicted a position the Ethics Commission took in the Circuit Court – suggesting that the withholding of public records was willful violation of the ORA. This is another unprecedented circumstance in the history of the Ethics Commission.

- Another ORA violation concerned my request to obtain records from prior Ethics Commission cases against other members of Metro Council. My attorney requested the documents to ensure I was as prepared as possible. When the Ethics Commission and

Metro Government failed to even respond to the request, my attorney appealed to the Attorney General's Office. The Ethics Commission responded that it did "not have custody or control of any public records otherwise apparently belonging to the Louisville Ethics Commission" and that the records from prior cases, if they existed at all, would be in the possession of Metro Government. Metro Government then admitted that it "has determined that it does not possess responsive records for the request underlying this appeal" and, specifically, that "[n]o hearing transcripts, pleadings, motions, or findings from the two requested hearings were located." Except for a handful of meeting minutes, neither the Ethics Commission nor Metro Government had anything that I could review from these prior hearings. Thus, it appears that virtually the entire record of the two previous ethics cases against Metro Council members have been lost or destroyed, which deprived me and the public of critical information to help understand whether the Ethics Commission was applying the same unform procedures to me as it did in other cases. Again, this is unprecedented in the history of the Ethics Commission.

- After the hearing concluded, and while the Ethics Commission was actively deliberating over my case, the Chairperson of the Ethics Commission penned an op-ed in the Courier-Journal titled: "When JCPS busing failed GOP legislators went into attack mode instead of offering to help." In that op-ed, while responding to a proposal by legislators following Jefferson County Public Schools's busing failure on the first day of the school year, she stated, among other things" "[T]heir plan is a takeover: We part-time legislators, who don't like diversity, equity, marginalized students, non-English-speaking immigrants and poor people, we will show JCPS." All of the people she was referring to are Republican legislators. I am a Republican legislator. Had she only argued the merits or lack thereof of their plan, there could be no objection. In this statement, she makes an *ad hominem* accusation that these Republican legislators are racists, bigots, and xenophobes. The rest of the Commission seemed to think this was totally fine and didn't represent any lapse in her judgment and didn't remove her from the process. Another unprecedented circumstance in the history of the Ethics Commission.

The Charging Commission is now working in a similarly unprecedented manner exposing a lack of concern for due process and failure to act in an unbiased manner. For instance, consider the following:

- The Charging Commission, for the first time in Metro Council history, failed to gain bipartisan support.

- The Charging Commission, for the first time in Metro Council history, hired the same attorney who represented the Complainant instead of hiring an independent attorney to present the facts.

- The Charging Commission, for the first time in Metro Council history, added charges beyond what the Ethics Commission recommended and, as stated above, those charges are criminal in nature which is completely beyond the scope of this process and in violation of the Constitution.

Also consider the glaring instances where the Complaint does not even accurately describe the law. For example:

- In paragraph 9, the Complaint purports to cite one of the standards I was alleged to violate, Metro Ordinance § 21.02(B), verbatim. This is how the Charging Committee characterized the law (emphases added):

  (B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization ***in which such officer has an interest, has a direct or indirect financial or personal involvement*** that might reasonably be expected to impair his or her objectivity or independence of judgment.

  But this is how Section 21.02(B) actually reads (emphasis added):

  (B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization ***in which such officer has a financial interest or private interest*** that might reasonably be expected to impair his or her objectivity or independence of judgement.

The Charging Committee fundamentally and intentionally rewrote this section by deleting inconvenient terms ("financial interest or private interest") and adding new terms ("has a direct or indirect financial or personal involvement") to make it easier to find me guilty. Besides the glaring arbitrariness, how can anyone trust what the Charging Committee says when it cannot even be trusted to accurately cite the law?

- Under Count 3, paragraph 86, the Charging Committee cites to the wrong section of the Code. The paragraph uses the language "unwarranted privilege or advantage" which is section 21.02(A) of the Code, while the cited section is 21.02(B) of the Code. This sloppy, inaccurate charge will require me to interpret what they are charging me with to prepare my defense, and is consistent with the sloppy, loose interpretation of rules and law that I have experienced through this entire process.

Beyond the numerous procedural and legal problems, the Complaint contains many factual errors and omissions, and mischaracterizes evidence and the appropriate legal process. For instance, in response to specific allegations in the Complaint, I deny the allegations in the following paragraphs are true, in whole or in part, or that they set forth clearly valid or legitimate conclusions: 1, 2, 3, 12, 13, 15, 17, 18, 19, 22, 23, 25, 27, 28, 30, 32 (both of them...the document has 2 paragraphs numbered 32), 34, 35, 37, 38, 39, 40, 42 – 44, 46, 47, 49, 51, 52, 53, 54, 55, 56, 58 – 66, 74 – 76, 78, 79 – 81, 83, 84 – 86, 88, 89 – 92, 94, 95 – 97, 99, 100 – 102, 104 – 110, 112 - 116. By referring only to these specific paragraphs, I do not admit to any allegation unless an allegation is expressly admitted herein. Further, I vehemently and unequivocally deny the alleged violations of the Code of Ethics set forth in Counts I, II, III, IV, V, and VI. In addition to being unsupported by evidence, some or all of the Counts in the Complaint are flawed legally and fail to state claims upon which relief may be granted. As referenced above, the Metro Council Court is without jurisdiction to consider the allegations in Counts VII and VIII because those charges violate the separation of powers provisions set forth in Sections 27, 28, 109, and 112 of the

Kentucky Constitution, and/or they violate 18 U.S.C. 3231. In addition, the addition of criminal charges in Counts VII and VIII violate my rights under the Fifth Amendment and Sixth Amendment to the United States Constitution and Sections 11 and 12 of the Kentucky Constitution. That all being said, to the extent it need be stated here, I categorically and unequivocally deny any guilt as to those two counts.

The following are few, non-exclusive examples of the ways the Charging Committee manipulated the evidence, used innuendo and conclusory statements to paint a totally biased and inaccurate picture of what occurred:

- Paragraph 1 begins a false narrative that the project Metro Council funded "scored 29th out of 30 eligible applicants." That is completely false. It ignores the fact – as *President Winkler* testified – that the project that was scored was rejected, along with every other Workforce Development application for American Rescue Plan funding (except a reentry project), that the project that was ultimately funded was fundamentally different, and that the Fischer Administration sent an email to the CEOc's contact for that project that it had been rejected. In several areas the Complaint conflates two separate programs in contradiction to testimony provided by multiple people including President Winkler and Louisville Healthcare CEO Council, Inc. ("CEOc") President, Tammy York Day.

- In several areas the Charging Committee makes declarative and conclusory statements that have been debunked in undisputed testimony, and it offers no evidence in support of these claims. Here are a few examples:

    - Paragraph 15: "Piagentini had been unable to maintain a long-term and sustainable position in healthcare since he came to Louisville in 2010." First, I didn't move to Louisville until the summer of *2012*. How can you believe a word of this document when obvious, undisputed information like this is misrepresented? Second, I worked for a company called WellCare Health Plans for over 7 years during this time. Third, there are undisputed facts on the record stating I was recruited by companies to move to others in almost every circumstance. Clearly, the Complaint is trying to drive a narrative, not present the facts.

    - Paragraph 37 states "the Ethics Commission did not find that testimony credible." The Complaint uses similar language elsewhere, such as in Paragraphs 44 and 46. Note that the Complaint does not point out why or what proof indicates the testimony is not credible. Without any evidence to dispute it, they simply declare certain testimony not credible. By that standard, anything anyone says at a hearing can be deemed that way and we have lost all standards of evidentiary proof.

    - Paragraph 63 states: "Piagentini offered no substantial evidence of any other services he has provided for the CEO Council." This statement that turns the entire burden of proof on its head. It was the *Investigating Officer*'s burden to prove a violation occurred, as is now the Charging Commission's burden. Regardless, there is undisputed testimony on the record of the work product that I completed

and there is zero testimony or proof that I did not fulfill every part of the work I was contracted to do. Again, this is another fact-free exercise in narrative creation.

- In multiple paragraphs, the Complaint states I had discussions with Ms. York Day about a potential job or employment with the CEOc in November 2021, and in January, September, and October 2022. This is completely false and is refuted by undisputed testimony that the *only* discussions I had with Ms. York Day about a potential job occurred from November 18, 2022 (after she sent me a proposed non-disclosure agreement) through December 1, 2022.

These are just some of the many similar examples I could point to of deliberately misrepresenting facts. There are other examples of undisputed facts from the Record that the Charging Committee refused to include because they refute the Committee's preferred narrative. For example:

- It was Mayor Fischer's Accelerator Team – not the Workforce Development workgroup – that released the RFA for workforce proposals. President Winkler testified that he believed (and I agreed) the RFA process was a waste of time. Furthermore, we were not consulted through the process including the creation of the scoring criteria.

- In or around April 2022, President Winkler called Grace Simrall to tell her that the RFA applications were not near what he wanted in terms of identifying a bold, transformational project for using ARP funds. During that conversation, Ms. Simrall mentioned a project submitted by the Healthcare Workforce Innovation Coalition (of which the CEOc and Metro Government, among others, were members) for funding under the federal Build Back Better ("BBB") program. That was the first time President Winkler had heard of that project and Ms. Simrall convinced him it was a worthwhile project.

- After that conversation, President Winkler contacted me and convinced me of the merits of the project. At the time he called me about it, I had no knowledge of the project.

- In other words, the Healthcare Workforce Innovation Coalition project was a key priority of the Fischer Administration, and members of the Administration convinced President Winkler of its promise, who then persuaded me it was worthwhile.

- In April of 2022, the Workforce ARP group met to include Grace Simrall, Margaret Handmaker, President Winkler, Councilman Hollander and myself. At that meeting, we agreed that the Healthcare Workforce Innovation Coalition was the project we were going to move forward with and we would hold funds until September when we would get word if the BBB grant would take the lead on funding it. An email from Ms. Handmaker instructing Ms. Simrall to take actions based on that understanding which were sent during or immediately after that

meeting are in the Record. No further meetings were held until after the BBB grant news came out proving that everyone, including the members of the Mayor's Administration and Councilmen Winkler and Hollander, knew and agreed that this was the direction we were committed to. Nobody raised any objections to that path forward.

- At no time prior to this meeting were there any discussion between Ms. York Day and myself about potentially going to work for the CEOc.

- To be clear about the implications of this timeline, I had already made the decision to support this project, based entirely on its merits, and with multiple witness who can confirm this *before* there was any opportunity or discussion of even a potential contract with the CEOc. Since no job or any offer of a job was discussed at anytime prior to this, under what circumstances could my judgement have been impaired?

- In September, the federal government notified the Accelerator Team within the Fischer Administration that the Healthcare Workforce Innovation Coalition had not won the BBB grant. This decision was communicated to President Winkler who then called me and informed me. He told me at that time that he would negotiate directly with the CEOc about what dollar amount was needed if we were to fund the program through ARP. I was not involved in any of those conversations. Once President Winkler concluded those discussions, he informed me of the final decision and we agreed to move forward.

- In September, Ms. York Day sent then-Councilman Winkler and then-President James, and myself an invitation to Optimize, the CEOc's annual conference focusing on healthcare innovation. At that point, I had never heard of the conference. It is true that I was the only Metro Council member who attended the conference. This is (at least in part) because Councilman Winkler and President James were on the GLIDE trip sponsored by GLI that year. I would note that there were members of the Fischer Administration at the conference to include Mayor Fischer himself and Ms. Simrall. Their admission was covered because they authorized the funding of a sponsorship of the conference and their attendance was included in the sponsorship. The sponsorship was paid by taxpayer dollars.

- Ms. York Day testified that at a rooftop reception during the conference she briefly said to me: "If we move forward with an initiative, I'm going to want to talk to you." She testified that she never said anything to me about a potential job opportunity (because none existed at the time) or provided any other information that would make clear that she wanted to talk about a potential business opportunity. Although I don't dispute her testimony, I also do not recall her making that statement, as I testified. And I testified that if she (or anyone else) was approaching me about a job, I would have distinctly remembered that.

- Councilman Winkler worked with the Jefferson County Attorney's office to draft the ordinance approving funding for the Healthcare Workforce Innovation

Coalition based on his meetings with the CEOc. The ordinance was filed on October 24, 2022, with Councilman Winkler, President James and myself as sponsors. To be perfectly clear, by that point, there had been absolutely no conversations about a job or contract with the CEOc, and my support for the project dated back to at least April 2022, 6-months prior, when Councilman Winkler first brought it to my attention.

- Councilman Winkler and I issued a press release on October 25, 2022 to tout the merits of this project. Although the Charging Committee seems to indicate that this is strange or unusual, look no further than the Charging Committee Chairperson's actions as evidence on why we did that.

- Councilman Winkler and I discussed doing this as we had already communicated in April to other Councilmembers that we wanted to hold $50 million for a potential workforce project. We knew that some Council members might want to allocate that money at the end of the year for projects that they supported in fear that their favored projects might not get funded. At or around that same time, Councilwoman Fowler filed a $10 million request for a birthing center with the University of Louisville. This project was not the recommendation of a workgroup, thus it was outside of the ARP process we defined *and* it was deemed ineligible for ARP funding. Councilwoman Fowler criticized the process Councilman Winkler and I followed when she tried to allocate ARP funding outside of the agreed-upon process, earmarked it for one organization only (the project Councilman Winkler and I advocated for was a coalition of organizations of which CEOc was only one player) and her preferred project was ineligible for this funding. To be clear, I ultimately supported and voted for funding the birthing center after speaking with Councilman Winkler among others about moving that request to a general fund allocation where we had no compliance problems with her request.

- Representatives of the Healthcare Workforce Innovation Coalition were allowed to present its project at the November 3, 2022 Budget Committee meeting. While the Coalition was the only group allowed to make a presentation, that decision was made by Budget Committee Charmain Hollander at the sole request of Councilman Winkler without my input or involvement.

- The Board of Directors of the CEOc authorized the creation of a government affairs committee at a meeting on November 7, 2022. This decision led to the creation of a position which Ms. York Day eventually reached out to me to discuss later that month. Again, how could we have been discussing a position that didn't even exist until sometime after November 7, 2022?

- On November 17, 2022, Ms. York Day had a conversation with a mutual business acquaintance whom I have known and worked with for almost a decade, Bruce Greenstein. He advised her that if I was available for the position to lead the government affairs committee, she should grab me for the position.

- Ms. York Day sent me the non-disclosure agreement ("NDA") on November 17, 2022. I did not remember seeing it or reading it until the morning of November 18, 2022. I did read it, sign it, send it back to her that morning, and then I called her shortly afterward to discuss what it was about. The NDA clearly stated that it was not an offer or a commitment for anything. It was a boilerplate mutual non-disclosure agreement without any reference to the subject matter and clearly stated that neither I nor Ms. York Day nor the CEOc were committing to any action by signing it.

- During that call on November 18, 2022, Ms. York Day told me this was about a potential contract position. We both clearly testified that at that point, I told her that if we moved forward with this conversation I would have to abstain from voting on the ARP grant at the next Metro Council meeting and that she would effectively lose my vote. I further asked her if the position was in any way related to the ARP grant, including being funded by or being dependent upon the grant. Ms. York Day assured me the position was not related to the ARP grant. And with those assurances, I decided to learn more about the position.

- From this point forward, I had absolutely no conversations with any member of Metro Council about the grant. At the meeting of the Minority Caucus on December 1, 2022, I notified the members that I would be abstaining from voting on the legislation approving the grant at the Metro Council meeting later that day.

- And at the Metro Council meeting, I publicly announced, on the record, my abstention, as required by Section 21.03(F) of the Code of Ethics:

    - *"Any member of the Metro Council, or the County Attorney, as well as any Metro Officer who derives his or her authority from the Metro Council or from the County Attorney, or a relative of any such person, who has a financial or private interest in any matter pending before the Metro Council shall disclose such financial or private interest on the records of the Metro Council and shall disqualify himself or herself from participating in any debate, vote, or proceeding whatsoever relating thereto, including engaging in any communications with other Metro Council Members regarding said matter."*

- In addition, I asked that I be removed as a co-sponsor of the proposed legislation. Contrary to what the Charging Committee indicates, there is no requirement to send an email or do anything other than precisely what I did and what is stated above plainly by the law. Further, Councilman Kramer, who has been a Councilmember since the formation of Council, testified that there was nothing strange or unusual about my abstention and many others have done it in a similar manner in his experience.

- Ultimately, this ordinance was passed by a vote of 25 for, 0 against, and 1 abstention.

- In addition to the unanimous vote by Metro Council (except for my abstention), 2 mayoral administrations supported this grant. The Fischer Administration was a partner when this was a BBB grant, and signed the legislation into law without objections, and the Greenberg administration, even after knowing the allegations against me, negotiated and signed the agreement with the relevant parties.

- As I do every year, I placed my family Christmas card in the mailbox of every member of Metro Council on or around the last meeting of the year in mid-December. My 2022 Christmas card read: "Anthony was re-elected to Louisville Metro Council and consults for the Louisville Healthcare CEO Council." Does that sound like the actions of a man who is hiding what he is doing?

Although the Charging Committee faults me for the way I abstained, my abstention was consistent with the way other members of Metro Council have abstained over the years. In addition, every member of Metro Council knew I was an original sponsor of the legislation and had supported it in previous committee meetings. As mentioned above, I publicly stated I needed to be removed as a cosponsor. If my abstention was improper, as the Charging Committee contends, why did not even one (1) of the twenty-five (25) other members even ask me to clarify or explain my abstention?

Colleagues, in light of all of the foregoing, I ask you to seriously consider what kind of precedent the Charging Committee is trying to establish. Is the process it invites you to follow one you would want to be subject to if you were in my shoes? I also ask you to consider if you can trust what the Charging Committee is telling you.

In an American justice process, we rely on the prosecutorial power to bring all evidence to the table. We also rely on everyone to follow a process that reduces the risk of injustice and protects the due-process rights of the accused to ensure they are not wrongfully convicted by a corrupt and biased process. I believe that the Charging Committee has demonstrated that it cannot be trusted to follow the law or to fairly present evidence in this matter.

I will continue to use all legal methods at my disposal to fight this, and I am confident that, at the end of this when you have heard all of the evidence, you will agree that I did not violate the Code of Ethics. I appreciate your time and attention to this matter.

Sincerely,
/s/ Anthony Piagentini

CERTIFICATE OF SERVICE

I hereby certify that on **December 14, 2023**, I filed the foregoing Response to Complaint with the Louisville/Jefferson County Metro Council Court and served it via e-mail upon the following:

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