

ORDINANCE NO. _____ SERIES 2022

AN ORDINANCE CREATING CHAPTER 149 AND REPEALING AND REPLACING SECTIONS OF CHAPTER 156 OF THE LOUISVILLE METRO CODE OF ORDINANCES RELATING TO OWNERS OF PROPERTY ON WHICH REOCCURRING CRIME IS NEGATIVELY IMPACTING SURROUNDING NEIGHBORHOODS (AMENDMENT BY SUBSTITUTION).

SPONSORED BY: PRESIDENT JAMES AND COUNCIL MEMBERS GEORGE, FOX, PURVIS, AND MCCRANEY

WHEREAS, in its continuing effort to prevent and eliminate issues with properties where criminal activity has caused a property to become a danger to surrounding areas, both resulting in blight and threatening the health and safety of area residents; and

WHEREAS, in an effort to expand and enhance the ability of code enforcement to address the dangers presented by properties for which criminal activity has become unmanageable and negatively impacts the surrounding area; and

WHEREAS, identification of persistent illegal activity, development of mutually agreed upon resolution agreements, and enforcement requires both a level of expertise worthy of a specialized Code Enforcement response and a dedicated LMPD liaison; and

WHEREAS, to ensure that nuisances created through criminal activity can be handled in the most efficient and reasonable manner.

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

SECTION I: A new chapter is hereby added to the Louisville Metro Code of Ordinances (“LMCO”), under “**TITLE XV: LAND USAGE**,” to read as follows:

CHAPTER 149: CRIMINAL ACTIVITY NUISANCES

§ 149.001 CHAPTER ESTABLISHED.

This Chapter is enacted pursuant to KRS 67.083(3)(a), (j) and (k) and 65.8801 et seq.

§ 149.02 DEFINITIONS.

For the purposes of this Chapter, unless the context clearly indicates or requires a different meaning.

CODE ENFORCEMENT shall mean the Louisville Metro Department of Codes and Regulations.

CODE OFFICIAL/DIRECTOR. The Director of the Department of Codes and Regulations or any duly authorized representative who is charged with the administration and enforcement of this chapter.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

ENFORCEMENT ACTION shall mean (1) the physical arrest of an individual; or (2) the issuance of a criminal or administrative citation or an official incident report for a violation of law; or (3) a referral of charges by law enforcement to counsel or other appropriate authority for prosecution.

IMMINENT DANGER. A condition, which could cause serious or life-threatening injury or death at any time.

LAW ENFORCEMENT OFFICERS. A member of a lawfully organized police unit or police force of Louisville Metro Government or a suburban city of Jefferson County, who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, and campus police officers employed by an agency located in Jefferson County.

OWNER. A person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.

PERSISTENT ILLEGAL ACTIVITY PROPERTY. Any premises or property, excepting hotels/motels, wherein law enforcement officers on more than one occasion within a 12-month period, where each such offense listed below begins a new 12-month period, or any hotel or motel where law enforcement officers on at least five occasions in any 12-month period, where each such offense listed below begins a new 12-month period, have conducted an Enforcement Action for any of the following violations:

- (1) Prostitution and/or human trafficking offenses under KRS Chapter 529;
- (2) Sexual offenses under KRS Chapter 510 with the exception of KRS 510.150;
- (3) Gambling offenses under KRS Chapter 528;
- (4) The sale or use of alcoholic beverages on or from either licensed or unlicensed premises;
- (5) Misdemeanor or felony possession, trafficking, or manufacturing drug offenses under KRS Chapter 218A;
- (6) Murder under KRS 507.020 and manslaughter under KRS 507.030 and KRS 507.040;
- (7) Assault or related offenses under KRS Chapter 508;
- (8) Theft offenses under KRS Chapter 514;
- (9) Drug paraphernalia offenses as defined by KRS 218A.500 and KRS 218A.510; or
- (10) Unlicensed massage therapy under KRS 309.353.

PREMISES. Any building, structure, parking lot, parcel of land, common area, driveway, open space or any portion thereof or the ground itself.

TENANT. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

§ 149.03 OWNER RESPONSIBILITY

(A) No owner of residential, commercial, or vacant property located in Louisville Metro shall allow their premises to become or remain a Criminal Activity Nuisance, as defined by this Chapter. A legal or equitable owner of such premises is deemed to have knowledge of such activity upon issuance or posting of a notice or citation as set forth in this Chapter.

(B) No person or owner shall destroy, remove, or deface any citation, order, or notice posted by Code Enforcement in connection with this Chapter.

(C) No person or owner shall disobey any order issued by Code Enforcement or the Code Enforcement Board or use, occupy, or permit any other person to use or occupy any premises in contravention of a Final Order issued pursuant to this Chapter.

§ 149.04 AGENCY DUTIES

(A) *Duties of law enforcement officers.* Law enforcement agencies shall notify Code Enforcement in writing within 30 days of any qualifying event regarding a Persistent Illegal Activity Property pursuant to this Chapter when it is determined by the law enforcement agency that this Chapter is applicable. The notification shall include the following details:

- (1) the specific violation(s),
- (2) the address of the property on which the violation(s) occurred,
- (3) the circumstances of the violation(s), and

(4) the number of violations occurring at the property within the previous 24 months.

(B) *Duties of Code Enforcement.* Code Enforcement shall review law enforcement notifications in a timely fashion. Code Enforcement shall notify the relevant law enforcement agency of its intended action in response to a notification.

§ 149.05 PERSISTENT ILLEGAL ACTIVITY PROPERTY

(A) *Determination of Criminal Activity Nuisance.* Once established that a property is a Persistent Illegal Activity Property, the Department of Codes and Regulations shall make a determination as to whether to issue a Notice of Criminal Activity Nuisance. This determination shall be based upon procedures and protocol established by the Department of Codes and Regulations that shall take into account all relevant facts. All incidents of domestic or sexual violence or other crimes in which utilizing this ordinance may have negative public policy implications including discouraging the reporting of crimes by the victims of those crimes, shall not be considered for the purposes of this ordinance.

(B) *Criminal Activity Nuisance.* Based upon the factors referenced in subsection (A) Code Enforcement shall make the following determination: whether the property/premises is owned or operated in such a manner as to encourage, facilitate, enable, or permit persistent illegal activity as defined by this Chapter.

(C) *Determination of Criminal Activity Nuisance.* Code Enforcement, following consideration of subsections (A) and (B), shall make one of the following determinations within thirty (30) days of receipt of a referral for a Persistent Criminal Activity Property from a law enforcement agency:

(1) That the circumstances of the alleged criminal activity do not warrant the issuance of a Notice of Criminal Activity Nuisance, no further action shall be taken; or

(2) If it is determined that the owner is in violation of this Chapter in that their property/premises is owned or operated in such a manner as to encourage, facilitate, enable, or permit persistent illegal activity as defined in this Chapter, the property/premises shall be considered a Criminal Activity Nuisance and a Notice of Criminal Activity Nuisance shall be issued, following procedures set forth in subsection (D).

(D) *Code Enforcement Procedures.* Upon a determination that a property is a Criminal Activity Nuisance, Code Enforcement shall notify the owner and tenant(s) of the property of such determination pursuant to LMCO 32.283(C) which shall include posting the Notice pursuant to subsection LMCO 32.283(C)(4). In addition to following the requirements of LMCO 32.283 and LMCO § 149.05 the Notice shall provide the following information:

(1) a statement that the premises identified in the notice has been determined to be a Criminal Activity Nuisance; and

(2) a street address, parcel number, or legal description sufficient to identify the property; and

(3) a description of the illegal activities supporting the determination that the premises is a nuisance under this section, and the date on which the illegal activities comprising the nuisance occurred; and

(4) the owner's and/or tenant's opportunity to request in writing, by the date certain set forth in such notice or by an agreed upon date between interested parties, a meeting with Code Enforcement and/or local law enforcement, which may include legal

representation, to discuss the allegations contained in the Notice and the need for abatement measures at the premises. Notification shall also be provided that at such meeting(s), the owner and/or tenant may enter into a possible Resolution Agreement with the city to abate the nuisance activity; and

(5) information as to whom a written request for such meeting should be sent and the date certain by which such written request must be received by Code Enforcement; and

(6) that if the owner fails to meet with appropriate city officials in a timely manner or fails to enter into a recommended resolution agreement with Louisville Metro Government or otherwise fails to abate the nuisance under this Chapter, a Citation may thereafter be issued.

(7) that if the tenant fails to meet with appropriate city officials in a timely manner or fails to enter into a recommended resolution agreement with Louisville Metro Government or otherwise fails to abate the nuisance under this Chapter, that actions may be taken to remedy the ongoing criminal nuisance including that a Citation and/or an Order to Vacate and/or Close may be issued against the property which could potentially directly impact the interests of the tenant.

(E) *Appeal of a Notice of Criminal Activity Nuisance.* A Notice of Criminal Activity Nuisance shall not be appealable to the Code Enforcement Board and shall not be considered a pre-requisite for the issuance of a Citation or an order pursuant to LMCO § 149.07(B) when the issuance of a Notice under this Chapter is not considered warranted by Code Enforcement.

§ 149.06 RESOLUTION AGREEMENT

(A) *Notice.* The Notice of Criminal Activity Nuisance pursuant to LMCO § 149.05 may establish the following:

(1) the opportunity to discuss the allegations contained in the Notice, the need for nuisance abatement at the premises, and the parameters of such nuisance abatement; and

(2) a possible offer to enter into an agreed upon Resolution Agreement with Louisville Metro Government to abate the criminal activity nuisance identified in the Notice. An agreement may allow for the avoidance of a citation and/or any other further abatement actions by Louisville Metro.

(B) *Resolution Agreement Meeting.* A Resolution Agreement shall serve as an opportunity for a property owner to avoid the issuance of a citation and/or an abatement order. Upon a written request by the owner and/or tenant requesting a meeting to discuss a Resolution Agreement, Code Enforcement shall meet with the owner and/or tenant of the property in an effort to create a plan for the abatement of the nuisance. Stakeholders whose interests are directly impacted by the condition of the property at issue, shall have the opportunity to be included in such meeting. Code Enforcement and the owner and/or tenant of the property at issue shall have 20 days from the date of receipt of written notice requesting a Resolution Agreement for a meeting to occur.

(C) *Agreement.* At the conclusion of a Resolution Agreement meeting, Code Enforcement shall make recommendations for abatement. If the owner and/or tenant of the property agrees to comply with and/or implement the recommendations, a Resolution Agreement shall be created. Thereafter, Code Enforcement shall ensure compliance and

make a determination as to the effectiveness of the abatement agreement. Upon compliance and abatement, no citation and/or abatement order shall be issued.

(D) *Procedures following agreement.* Code Enforcement shall create protocol and procedures for the determination and enforcement of compliance and abatement pursuant to a Resolution Agreement. These procedures and protocol shall be communicated to all relevant parties in the Resolution Agreement. A Resolution Agreement shall be considered an ongoing agreement and may be adjusted by the parties so as to ensure its effectiveness. Upon a determination by Code Enforcement that the Owner and/or tenants have failed or are failing to comply with the terms of the Resolution Agreement, a Citation may be issued to the owner.

§ 149.07 CITATION FOR CRIMINAL ACTIVITY NUISANCE

(A) *Citation for Criminal Activity Nuisance.* An owner that:

(1) fails to meet with city officials in regards to a Notice of Criminal Activity Nuisance in the instance one is issued; or

(2) fails to enter into or comply with a Code Enforcement recommended Resolution Agreement; or

(3) otherwise fails to abate the criminal activity nuisance,

shall be issued a Citation for Criminal Activity Nuisance. Such Citation shall be issued in accordance with LMCO 32.283(C) and in addition to one of the other methods for notice, posted on the property pursuant to subsection LMCO 32.283(C)(4). The Citation shall meet all of the applicable notification requirements for a Notice of Criminal Activity Nuisance.

(B) *Abatement Actions.* A Citation issued pursuant to this Chapter shall include a civil fine pursuant to LMCO 149.11. Code Enforcement may also issue an order in accordance with this section when it is deemed necessary to protect the health and safety of the community. Such an Order may include any of the following actions:

(1) Upon sufficient proof shown, liability to the city for any and all costs incurred by the city or its agents for police service, emergency service, or any other city service reasonably related to a violation of this Chapter.

(2) Revocation of the certificate of occupancy and/or an Order to Vacate to any current tenant/occupant.

(3) Revocation of an applicable occupational license or any other applicable license or permit issued by Louisville Metro Government.

(4) Discontinuance of the furnishing of utility service by Metro Government to the premises at which the nuisance exists.

(5) An Order of Closure for any commercial property for a period necessary to protect the health and safety of the community and to allow for the abatement of an ongoing Criminal Activity Nuisance.

(6) Use any other legal remedy available under the laws of the state of Kentucky.

(C) *Appeal to Code Board.* The owner shall have the right to appeal a citation and/or order of abatement to the Louisville Metro Code Board pursuant to LMCO 32.283(F). The Board shall make the following determinations and may take the following actions:

(1) Whether the property/premises is owned or operated in such a manner as to encourage, facilitate, enable, or permit illegal activity as defined by this Chapter.

(2) Issuance of a civil fine consistent with LMCO § 149.11.

(3) Issue an Order(s) of Abatement consistent with subsection (B).

(4) If a Notice to Vacate and/or Close is before the Code Enforcement Board, a determination shall be made as to whether the Order shall be immediately enforceable based upon the requirements of LMCO § 149.08(C).

(5) The Board may institute a Resolution Agreement if agreed to by all parties in lieu of a fine and/or an abatement order.

(D) *Tenant appellate rights.* In addition to the owner, a current tenant directly impacted by an abatement order issued pursuant to this Chapter may appeal to the Code Enforcement Board in accordance with § 32.283(F). Notice to the tenant shall be effectuated pursuant to LMCO § 32.283(C). In the instance that the tenant is unknown, notice shall be issued to "Occupants."

(E) *Appeal from final order.* A Final Order of the Code Enforcement Board may be appealed to Jefferson District Court, in accordance with LMCO § 32.286. A trial *de novo* at District Court shall make the same determination as set forth in LMCO § 149.07(C).

§ 149.08 ORDERS TO CLOSE AND/OR VACATE

(A) Code Enforcement or the Code Enforcement Board may order a property to close and/or vacate for a reasonable period of time, but in no event shall such order be for a period of more than one year from the date of the action. A close and/or vacate order issued by Code Enforcement, pursuant to this Chapter is not an act of possession, ownership, or control by the Metro Government. An Order to Vacate will be rescinded within 14 days of full abatement unless such premises is the site of another close and/or vacate order within 60 days.

(B) If the premises consists of multi-unit dwellings, apartment buildings, or mixed uses, and the criminal activity nuisance has occurred solely within a unit or units, the authority to close and/or vacate is restricted to the unit or units in which the violation has occurred, and does not extend to any other unit in the premises. This provision is not applicable to hotels, motels, licensed boarding, and lodging houses.

(C) An Order to Close and/or Vacate may become immediately enforceable upon the following conditions:

(1) Immediate action is required to remedy the violation due to the reasonable belief that the existence of the violation presents imminent danger, a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible and;

(2) Such a determination is made by the Director of Codes and Regulations or the Code Enforcement Board.

(D) Any party with a direct interest in a Notice to Vacate or Notice of Closure shall be granted at least 10 days by which to comply with the Order to Close and/or Vacate unless a finding mandating immediate action has been made pursuant to subsection (C). If timely filed, an appeal of an Order to Close and/or Vacate shall be heard within 10 days of receipt of the appeal unless all parties agree to an extension.

§ 149.09 LIENS

Pursuant to the provisions of KRS 65.8801 et seq. and in accordance with LMCO § 32.288, the Louisville Metro Government shall possess a lien against the property for all fines, penalties, charges, abatement costs, and fees imposed to abate the public nuisance.

§ 149.10 ENFORCEMENT AND ADMINISTRATION.

Enforcement. Unless otherwise specified, the Louisville Metro Department of Codes & Regulations shall have the authority to administer and enforce this Chapter.

§ 149.11 PENALTIES

Any violation of Chapter 149 shall be classified as a civil offense and shall be enforced through the Code Enforcement Board as provided in LMCO § 32.275 *et seq.* or as it may be amended. For a citation issued pursuant to LMCO § 149.03(A) or (C), the fine shall be no less than \$500 and no more than \$2,000. For a citation issued pursuant to LMCO § 149.03(B), the fine shall be no less than \$250 and no more than \$500. Each day that a violation continues unabated after a citation has been issued or notice has been served shall be deemed a separate offense.

SECTION II: LMCO § 156.057 and LMCO §§ 156.999(A) and (B) (including Appendix A, Exhibits A and B) are repealed. All citations issued prior to the effective date of Chapter 149 shall be enforced pursuant to LMCO § 156.057 and LMCO §§ 156.999(A) and (B).

SECTION III: LMCO Section 156.808 is amended as follows:

Any person directly affected by a decision of the Code Official or a citation, or order issued under this code shall have the right to appeal to the Code Enforcement Board ("Board") in accordance with § 32.283(F).

SECTION IV: This Ordinance shall be effective three months after its passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

David James
Metro Council President

Greg Fisher
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

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