

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE AMENDING THE LOUISVILLE METRO CODE OF ORDINANCES TO EXPAND AND ENHANCE THE ABILITY OF THE LOUISVILLE METRO GOVERNMENT TO COMBAT GRAFFITI (AMENDMENT BY SUBSTITUTION)(AS AMENDED).

SPONSORED BY: COUNCIL MEMBERS PIAGENTINI, COAN, AND GEORGE

WHEREAS, graffiti creates an atmosphere of degradation and squalor inhibiting citizens' enjoyment of our city.

WHEREAS, the removal of graffiti is costly and an unnecessary drain on limited city resources that could be better utilized on projects that improve and benefit the community.

WHEREAS, Louisville Metro Council believes ordinal changes are needed to efficiently and effectively combat graffiti.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF METRO GOVERNMENT (THE COUNCIL), AS FOLLOWS:

SECTION I: The Louisville Metro Code of Ordinances ("LMCO") § 131.10 is hereby amended as follows:

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BROAD-TIPPED INDELIBLE MARKER. Any felt-tip marker or similar implement containing a fluid that is not water-soluble and which has a flat or angled writing surface one-fourth inch or greater.

ETCHING ACID. Any liquid, cream, paste, or similar chemical substance that can be used to etch, draw, carve, sketch, engrave, or otherwise alter, change, or impair the physical integrity of glass or metal.

GRAFFITI. Drawings, inscriptions, or markings, of whatever kind, character, or description, made using aerosol spray paint, etching acid or other etching materials, or broad-tipped indelible markers or other similar materials on a wall or other surface, so as to be seen by the public, placed there by a person other than the lawful owner or occupant of the property, without consent or acceptance of said owner or occupant. The definition of graffiti for the purposes of this Chapter is not intended to discourage legal and authorized artistic expressions including street art, but instead, is meant to address vandalism in the form of graffiti.

SECTION II: *LMCO § 131.11 is hereby amended as follows:*

§ 131.11 SALE OF ITEMS COMMONLY USED FOR GRAFFITI.

A. Any person selling, or offering to sell aerosol spray paint, broad-tipped indelible markers, or etching acid or other etching materials must:

*1. ~~Keep such items in a place that restricts public access within the retail establishment;~~
and*

2. ~~Place a sign in clear public view at or near the display of such products stating: "Graffiti is against the law. Any person who defaces real or personal property with paint or any other liquid or device is guilty of a crime subject to jail time, criminal fines and civil penalties."~~

SECTION ####: *LMCO § 131.12 is hereby amended as follows:*

(A) (1) Unlawful conduct or activities by individuals shall encompass the following: No person may possess an aerosol spray paint container, broad-tipped indelible markers, or etching acid or etching materials with the intent to deface, destroy, or damage any property.

(2) For purposes of this section, any possession of such items on either public property, or private property without the express consent of the legal owner, shall be prima facie evidence of intent.

(B) Unlawful activity with regards to property shall encompass the following:

(1) All sidewalks, walls, buildings, fences, signs and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street, or from other public or private property.

(2) Abatement or removal of graffiti by the property owner, or responsible party (or signature on waiver form as set forth herein) must occur within seven calendar days of issuance of any notice of violation, citation, or order.

(C) It shall be unlawful to create graffiti. A person who creates graffiti and commits an act of criminal mischief as set forth in the Kentucky Penal Code, KRS Chapter 512, may be arrested and/or cited for such unlawful activities in addition to the violations set forth herein. Any offender of this section shall be subject to the civil penalties set forth in this Chapter. Such civil penalties may be in conjunction with any criminal prosecution under KRS 512.030-.040. This Chapter shall not be enforceable in conjunction with any felony prosecution for acts of graffiti.

SECTION ~~III~~IV: LMCO § 131.13 is hereby amended as follows:

(A) (1) The provisions of §§ 131.11 and 131.12(A) shall be enforced by any law enforcement officer.

(2) The provisions of § 131.12(B) shall be enforced by the Louisville Metro Code Enforcement Division, in accordance with all laws, regulations and ordinances pertaining

to public nuisance and/or property maintenance, and shall be considered a civil offense, punishable as set forth in § 131.14.

(3) The provisions of §131.12(C) may be enforced by any law enforcement officer or officer of the Louisville Metro Code Enforcement Division.

(B) A notice of violation, citation, or order shall be issued to the owner of private property and shall include the following:

- (1) Identification/location of the property.
- (2) Location of the graffiti.
- (3) A general description of the graffiti.

SECTION ~~IV~~: LMCO § 131.14 is hereby amended as follows:

131.14 ABATEMENT.

(A) (1) Within seven calendar days of issuance of any notice of violation, citation, or order, the property owner or responsible party must:

(a) Abate the graffiti according to Metro Government's policies and procedures ~~using materials furnished by Metro Government;~~ or

(b) Sign a waiver form that will allow Metro Government to proceed to abate the graffiti with the cost of abatement done on the part of Metro Government being borne by the owner/responsible party.

SECTION ~~V~~: A new section is added to LMCO Chapter 131 as follows:

131.15 IMPOUNDMENT OF VEHICLES PURSUANT TO § 131.12(C).

(A) Impoundment. Metro Government may impound a motor vehicle used in furtherance of a violation of the provisions of §131.12(C) according to the provisions of this Chapter.

(B) Impoundment Period and Release. Any motor vehicle impounded under this section shall be held for a minimum of 72 hours. After 72 hours, and before the expiration of the appeal period contained in §131.15 (C), Louisville Metro may release the motor vehicle to the owner or other person entitled to possession under the following conditions:

1. Payment of the citation amount in full; and
2. Payment of all abatement expenses incurred by Louisville Metro Government for the removal of the graffiti at issue; and
3. Payment of all towing, handling, impoundment and storage charges imposed; and
4. ~~Written waiver of right to appeal under §131.15 (C)~~

(C) Appeal of vehicle impoundment to Code Enforcement Board.

(1) Within 10 days of the impoundment of a motor vehicle, any person against whom a citation has been issued and/or the owner of a motor vehicle that has been impounded pursuant to this section, or other person entitled to possession, may challenge the validity of such impoundment and request in writing a hearing before the Code Enforcement Board. The hearing shall be conducted within 10 business days of the date of the request, unless the owner or other person entitled to possession waives the limitation or Metro Government shows good cause for such delay. Metro Government shall retain possession of the vehicle pending the hearing, unless the owner or other person claiming right of possession posts a bond in an amount equal to the fines and fees accrued as of the date of the hearing request or \$1,000, whichever is less.

(2) No less than five days prior to the date set for the hearing, Metro Government shall notify the person requesting the hearing of the date, time, and place of the hearing.

(3) Any person who refuses or, except for good cause, fails to appear at the time and place set for the hearing shall be deemed to have conceded on his or her and the owner's behalf the validity of the impoundment.

(4) At the hearing, after consideration of the evidence, the Code Enforcement Board shall determine whether the impoundment was valid and reasonable. Where it has not been established that the impoundment was justified, an order releasing the vehicle shall be entered. All fines and fees paid or amounts posted as bond because of the impoundment of the vehicle shall be returned. Where it has been established that the impoundment was justified, the Board shall uphold the impoundment and condition the release of the vehicle upon payment of all fines and fees accruing thereto set out in §131.15 (B). If bond has been posted as security for release of the vehicle, said bond shall be forfeited to Metro Government. Any fines or fees in excess of the amount of the bond posted shall be ordered to be paid by the owner of the vehicle to Metro Government. The Code Enforcement Board shall furnish the owner or person appearing on the owner's behalf with a copy of its order.

(5) Any person appealing the impoundment of a motor vehicle pursuant to this Chapter, who also seeks to appeal a citation issued in conjunction with such impoundment, shall proceed pursuant to the appeals process set forth in §131.15 (C)(1). Both the Citation and Impoundment Appeal shall be heard within the same hearing and shall require a separate finding and final order of the Code Board as to each matter.

(D) Additional Requirements for Release of a Motor Vehicle.

Before the release of a motor vehicle pursuant to §131.15 (B) or (C) the owner or other person entitled to possession, must establish proof of ownership or right to possession

and the meeting of all other provisions of the Vehicle Impoundment Division of the Louisville Metro Government. Metro Government may require reasonable security, bond, or other assurances of indemnification from a person who is not the registered owner of the vehicle prior to releasing the vehicle to such person.

(E) Appeal from Hearing Board to District Court.

(1) An appeal from the Code Enforcement Board's determination may be made to the Civil Division of Jefferson District Court within 30 days of the Board's determination. The appeal shall be initiated by the filing of a complaint and a copy of the Board's order in the same manner as any civil action. The action shall be tried de novo and the burden shall be on Metro Government to establish that impoundment was justified. If the Court finds that the impoundment was justified, the owner shall be ordered to pay all fees and fines accruing as of the date of judgment. If the Court finds that the impoundment was not justified, Metro Government shall be ordered to release the vehicle, if applicable, and to return all fines and fees paid as a result of the impoundment.

(2) The judgment of the Jefferson District Court may be appealed to the Jefferson Circuit Court, in accordance with the Rules of Civil Procedure.

(F) Impoundment; response to notice required. If a hearing has not been requested pursuant to §131.15 (C), and a motor vehicle impounded by Metro Government has not been claimed, notice shall be mailed by certified mail to the registered owner, if known, and lien holders of record, if any, affording the parties the right within 10 days from the date of notice to claim the vehicle or request a hearing pursuant to KRS 82.625. The notice shall state that, if no hearing is requested, the vehicle shall be deemed abandoned unless the charges thereon are paid within 45 days of the certified mailing of the notice.

(G) Impoundment; escheat to Metro Government if no response to notice.

(1) After 45 days from the date of impoundment, if no appeal is filed, or if an appeal is filed, 45 days from the date of a final order of the last presiding administrative body or court with jurisdiction, an impounded motor vehicle shall be deemed abandoned and the vehicle shall escheat to Metro Government.

(2) If the vehicle is judged suitable for use, Metro Government may obtain a certificate of registration and ownership from the Jefferson County Clerk, pursuant to KRS 186.020 and either use the vehicle for governmental purposes or sell the vehicle at public auction to the highest bidder. If the vehicle is not suitable for use it may be sold for its scrap or junk value.

(H) Metro Government lien on vehicles impounded. Metro Government shall possess a lien on a motor vehicle impounded, pursuant to KRS 82.625 for all fines, penalties, and towing, handling, and storage charges and fees imposed thereupon. Such lien shall be superior to and have priority over all other liens thereupon.

(I) No effect on security interest in vehicle. Nothing in these provisions shall otherwise affect the rights or obligations between the owner of the motor vehicle and those persons who claim a security interest therein.

(J) Release of impounded vehicle; impoundment fees paid. In addition to the release requirements imposed under §131.15 (B), any motor vehicle impounded pursuant to this section may be released to the appropriate owner or other person entitled to possession of the vehicle upon payment of any fines and abatement costs imposed under this Chapter and of all towing and impoundment fees incurred up to the date of the release request.

SECTION ~~VIII~~: LMCO § 131.15 is hereby amended as follows:

§ 131.15~~6~~ PENALTIES.

(A) ~~.Any person violating § 131.12(A) shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed \$500 for each offense. Independent of any non-felony criminal prosecution, any person violating § 131.12(A) shall be cited civilly. A minimum civil penalty fine of \$250 or a maximum civil penalty fine of \$500 shall be issued.~~

(B) Independent of any non-felony criminal prosecution, any person violating § 131.12(C) shall be cited civilly. For a first offense within 12 months, a minimum civil penalty fine of \$250 or a maximum civil penalty fine of \$500 for each act of graffiti committed shall be issued. After an initial final order is entered, for any additional offense within a 12-month period, a minimum civil penalty fine of \$500 or a maximum civil penalty fine of \$1,000 for each act of graffiti committed shall be issued. Any civil penalty fine issued pursuant to § 131.16(B) shall be a separate and distinct fine, and shall not be included as either: (1) any part of any abatement costs for the removal of graffiti, or (2) any portion of the costs associated with the towing and impoundment of any vehicle.

~~—(B)~~ (C) A violation of § 131.11 shall be classified as a civil offense and shall be enforced through the Code Enforcement Board ("Board") as provided in §§ 32.275 et seq., or as it may be amended.

~~—(C)~~ (D) Any person violating § 131.11 shall be fined a minimum civil penalty of \$250 or a maximum civil penalty of \$500. Each day that a violation continues after a citation has been issued or notice has been served shall be deemed a separate offense.

~~—(D)~~ (E) Any person cited in accordance with subsection ~~(C)~~ (D), directly above, may pay the minimum civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Board in accordance with §§ 32.275 et seq. If the person fails to respond to the citation within seven days as referenced above, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to Jefferson District Court. ~~In this event, the Board shall enter a final order determining that the violation was committed and impose the maximum civil penalty as set forth in the citation;~~

(F) Once a non-appealable final order is issued, all civil penalty fines collected pursuant to §131.16 (A), (B) and (D) shall be allocated directly to the Louisville Public Space Art Fund.

SECTION ~~IV~~VIII: LMCO § 131.16 is hereby amended as follows:

§ 131.167 APPEALS.

- (A) Any ~~any~~ appeals of civil penalties may shall be made by filing a written notice of appeal with the Board, as provided in §§ 32.275 et seq., or as such sections may be amended.
- (B) Appeals of civil penalties issued pursuant to §131.12(C), in which the impoundment of a motor vehicle has not taken place, shall be made by filing a written notice of appeal with the Board, as provided in §§ 32.275 et seq., or as such sections may be amended.

(B)(C) Appeals of criminal citations may be made to a court of competent jurisdiction.

SECTION ~~VIII~~IX: LMCO § 32.055 is hereby amended as follows:

§ 32.055 FUND.

(A) There is created as a restricted agency fund the Louisville Public Space Art Fund. This shall be funded by appropriations by the Council and funds received from development projects as outlined in Section 5.12.2, item 3 of the Louisville Metro Land Development Code. It also may be funded through grants and donations from federal and state governments, corporations, foundations, individuals, and other not-for-profit organizations. In addition, once a non-appealable final order is issued, all civil penalty fines collected pursuant to §131.16 (A), (B) and (D) shall be allocated directly to the Louisville Public Space Art Fund.

SECTION ~~IX~~X: This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL
Jefferson County Attorney

By: _____
O-273-20 Graffiti-Amendment by Sub-As Amended 8-25-20