

ORDINANCE NO. _____, SERIES 2017

AN ORDINANCE AMENDING LOUISVILLE METRO CODE OF ORDINANCES (LMCO) SECTIONS 156.005 AND 156.057 RELATING TO CRIMINAL ACTIVITY AS A PUBLIC NUISANCE (AS AMENDED).

**SPONSORED BY: COUNCILMEMBERS HAMILTON,
BUTLER, JAMES, MULVIHILL**

WHEREAS, in its continuing effort to prevent and eliminate properties where criminal activity has caused the property to become a nuisance to properties in the vicinity resulting in blight and decline in property values as well as threatening the health and safety of area residents; and

WHEREAS, in order to expand the types of criminal activities which contribute to nuisance properties and to clarify the application of this ordinance.

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

SECTION I. Louisville Metro Code of Ordinances (“LMCO”) § 156.005 is amended to add the following definition:

§ 156.005 DEFINITIONS.

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, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement employed by an agency located in Jefferson County.

SECTION II. LMCO § 156.057 is amended to read:

§ 156.057 **CRIMINAL ACTIVITY AS A PUBLIC NUISANCE.**

~~(A) Criminal activity as a public nuisance.~~

~~(1) (A) Definitions.~~ For the purposes of this section, **PUBLIC NUISANCE** shall mean any of the following criminal activity:

~~(a)(1) Any contraband production contaminated premises;~~

~~(b)(2) Any premises, other than hotels/motels, where law enforcement officers have, on more than one occasion in the preceding 12-month period, where each such offense listed below begins a new twelve (12) month period with hotels at least five occasions per 100 rooms or units in the preceding 60 day period, have issued (i) an official incident report, or (ii) criminally or administratively cited, or (iii) arrested a persons for any of the following violations; of the law governing~~

~~(a) prostitution and/or human trafficking offenses under KRS Chapter 529;~~

~~(b) sexual offenses under KRS Chapter 510 with the exception of KRS 510.150;~~

~~(c) gambling offenses under KRS Chapter 528;~~

~~(d) the sale or use of alcoholic beverages on or from either licensed or unlicensed premises;~~

~~trafficking in marijuana, trafficking in synthetic controlled substances under KRS 218A.1430, trafficking in criminal simulation under KRS 516.108, trafficking/manufacturing drug paraphernalia pursuant to KRS 218A.500 et seq., of any controlled substances,~~

(e) misdemeanor or felony possession, trafficking, or manufacturing drug offenses provided under KRS Chapter 218A;

(f) murder pursuant to under KRS Chapter 507.020 and manslaughter under KRS 507.030 and KRS 507.040;

(g) assault or related offenses under KRS Chapter 508; or

(h) theft offenses under KRS Chapter 514.

(3) Any hotel or motel where law enforcement officers, on at least five (5) occasions per 100 rooms or units or less, and proportionally on a one (1) offense to twenty (20) room ratio for over one hundred (100) rooms or units thereafter in any sixty (60) day period, where each such offense begins a new sixty day period, have issued either (i) an official incident report, or (ii) criminally or administratively cited, or (iii) arrested a person for any of the violations set forth in 156.057(A)(2).

~~(2)(B)~~ *Unlawful use of premises.* No owner of residential, commercial, or vacant property located in Louisville Metro shall allow his or her premises to be used as the site for any public nuisance, as defined in subpart A of this section. A legal or equitable owner of such premises is deemed to have knowledge of such activity upon receipt of the notice as set forth in this chapter.

~~(a)(1)~~ No person or owner shall destroy, remove or deface any order or notice posted by the Code Official.

~~(b)(2)~~ No person or owner shall disobey any order issued by the Code Official, or use or occupy or permit any other person to use or occupy any premises ordered closed by the Code Official.

~~(3)(C)~~ *Duties of Louisville/Jefferson County Metro Government Agencies.*

~~(a)(1) Duty Duties of law enforcement officers.~~

~~1.(a) The Louisville Metro Police Department shall no later than 30 days after criminally citing or arresting persons for violations of the law governing prostitution, gambling, the sale or use of alcoholic beverages on or from either licensed or unlicensed premises, trafficking in marijuana or any controlled substances or any felony offense provided under KRS Chapter 218A, Law enforcement officers agencies shall notify the Code Official in writing of any official incident reports, criminal citations, or arrests made in connection with criminal activities identified in subsection A. Notification must be made within thirty (30) days with details concerning the specific violation investigated, the address of the property on or in which the violations occurred, and the circumstances of the violation.~~

~~2.(b) Should the Metro Louisville Police Department law enforcement officer(s) have reason to believe that a property where no citations or arrests have occurred has been used for contraband production as defined in this chapter, the Department officer(s) shall immediately notify the Code Official and the local health department.~~

~~(b)(2) Duties of local health department.~~

~~(a) Immediately upon receipt of a report that a contraband production contamination notice has been posted on a property and upon a finding by scientific testing that the property is contaminated with chemical residues as a result of contraband production, the Louisville Metro Public Health and Wellness Department shall immediately notify the Code Official responsible for enforcement of this chapter by fax, mail, or email.~~

~~(e)~~(b) *Notification.* In the instance of contraband production contamination of a property, the Louisville Metro Public Health and Wellness Department shall notify the Code Official responsible for the enforcement of this chapter at the time of:

1. The demolition of the property; or
2. The receipt of certification of compliance with methamphetamine decontamination regulations from the appropriate certifying state agency. Any such notice to property owners shall be by certified mail return receipt requested.

(3) Duties of Code Enforcement and procedures for violations (in addition to the authority under 156.801 et seq.).

~~(4)(a) Notice. Whenever~~ After an initial report from law enforcement of an offense contained in this chapter, the Code Official shall notify the owner of the property that further violations will constitute a public nuisance. Following a second report from law enforcement to the Code Official receives information that a public nuisance exists in or upon residential, commercial, or vacant property and a ~~third~~ fifth report of a public nuisance in or upon a hotel or motel, he the Code Official shall notify the owner that the property is a public nuisance and that the public nuisance must be abated. Such notice shall be provided per § 156.804.

~~(5) Abatement. Should the public nuisance not be fully abated at the time stated in the notice, the Code Official shall be authorized at any time thereafter to issue an order closing and vacating the premises to the extent necessary to abate the public nuisance.~~

(b) Citation and Order. Should the public nuisance not be fully abated at the time stated in the notice, the Code Official shall be authorized at any time thereafter

to issue a citation and an order closing and vacating the premises to the extent necessary to abate the public nuisance. Such closing and vacating shall be for such period as ~~the Code Official may order a property to close and vacate for a reasonable period of time reasonably may direct,~~ but in no event shall the order closing and vacating be for a period of more than one year from the date of the closing. A ~~closing and vacating order~~ close and vacate order issued by the Code Official, pursuant to this subchapter is not an act of possession, ownership or control by the Metro Government. A citation and a close and vacate order of the Code Official will be rescinded within 14 days of full abatement unless such premises is the site of another close and vacate order within 60 days.

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

~~(b)(ii)~~ Upon the issuance of any order provided for in this section, a copy of the order shall be served on the owner of the property in the same manner as the notice provided for in this chapter, and a copy shall be conspicuously posted on the property.

(iii) Any person or owner directly affected by an order of the Code Official may appeal to the Code Enforcement Board in accordance with § 32.283(F).

(c) Punitive actions. If any person or owner fails to comply with a citation and an order to close and vacate issued pursuant to this subsection, the Code Official may:

1. Discontinue the furnishing of utility service by Metro Government to the premises at which the nuisance exists;
2. Revoke the certificate of occupancy of the premises; or
3. Use any other legal remedy available under the laws of the state.

~~(d) Any person or owner directly affected by an order of the Code Official may appeal to the Code Enforcement Board in accordance with § 32.283(F).~~

~~(8)(d) Relief from order. The Code Official may vacate or suspend the provisions of an Order to close and vacate upon a showing by clear and convincing evidence that the public nuisance has been abated and will not be maintained or permitted in any unit of the premises.~~

(e) Pursuant to the provisions of KRS 65.8801 et seq. and in accordance with § 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.

(f) Owner's rights.

~~(6)(i) Eviction as a defense. (a)—~~It shall be a defense to a violation of this section if the owner has instituted an eviction proceeding within 30 days against the offending tenants or occupants of the subject premises, and completes the eviction within 75 days of commencement or as soon thereafter as court procedures allow. In

the event that judicial or quasi-judicial proceedings prohibit an owner from proceeding with an eviction, abatement of the public nuisance by eviction will be stayed until the judicial or quasi-judicial proceeding is resolved. ~~(b)~~ In the case of multi-unit dwellings, apartment buildings or mixed uses, the only parties necessary to name in an eviction proceeding are the occupants of the actual unit involved with the activity suspected, or the occupants suspected of the activity described in the notice.

~~(7)~~ (ii) *Other defenses.* The Code Enforcement Board may consider evidence presented by any person or owner directly affected by a citation, notice of violation, or order regarding whether the owner knew or should have known of the violations and whether reasonable steps were taken to abate the violations by removing the offender, notifying police of the violation(s), and/or securing vacant property.

~~(8)~~ *Relief from order.* ~~The Code Official may vacate or suspend the provisions of an order to close and vacate upon a showing by clear and convincing evidence that the public nuisance has been abated and will not be maintained or permitted in any unit of the premises.~~

~~(9)~~ (iii) *Abatement actions not in violation of law.* Actions taken by an owner to abate a public nuisance as defined in this section shall not be deemed to be violations of Fair Housing or Landlord-Tenant laws.

SECTION III. LMCO § 156.999 is amended to read:

§ 156.999 PENALTY.

(A) Any person, firm, or corporation who shall violate violation of § 156.057(B) shall be subject classified as a civil penalty offense and shall be enforced through the Code Enforcement Board as provided in §§ 32.275 et seq. or as it may be amended.

The civil penalty shall be in accordance with the penalty schedule set forth in Appendix A, Exhibit A. ~~Any person cited pursuant to this subsection (B) may pay the civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Code Enforcement Board ("Board") in accordance with § 32.284. 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 final. Each day that a violation continues after a citation has been issued or notice has been served shall be deemed a separate offense.~~

(B) ~~Any person, firm, or corporation who shall violate~~ violation of § 156.057(B)(1) or (2) shall be subject classified as a civil penalty offense and shall be enforced through the Code Enforcement Board as provided in §§ 32.275 et seq. or as it may be amended. The civil penalty shall be in accordance with the penalty schedule set forth in Appendix A, Exhibit B. ~~Any person cited pursuant to this subsection (B) may pay the civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Board in accordance with § 32.283(F). 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 final. Each day that a violation continues after a citation has been issued or notice has been served shall be deemed a separate offense.~~

SECTION IV. LMCO § 156.999 Appendix A regarding civil penalties are hereby repealed and replaced with the attached civil penalty schedules contained in Appendix A.

SECTION V. This Ordinance shall take effect upon passage and approval.

H. Stephen Ott
Metro Council Clerk

David Yates
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL
Jefferson County Attorney

By: _____

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