

ORDINANCE NO. _____, SERIES 2019

AN ORDINANCE AMENDING § 10.99 OF THE LOUISVILLE METRO CODE OF ORDINANCES (LMCO) AND OTHER PENALTY SECTIONS OF LMCO FROM CHAPTERS 21, 32, 39, 53, 72, 73, 91, 93, 94, 115, 121, 125, 130, 131, 133, 134, 150, AND 156 TO UPDATE MISDEMEANOR PENALTIES TO CONFORM WITH PENALTIES SET FORTH IN THE KENTUCKY REVISED STATUTES (KRS).

SPONSORED BY: COUNCIL MEMBER ACKERSON

WHEREAS, Kentucky Revised Statutes (“KRS”) 67C.103(13) grants the consolidated local government council (“Metro Council”) the power to enact ordinances;

WHEREAS, as set forth in Kentucky Revised Statutes (“KRS”) § 83A.065(2), Metro Council may make the violation of any of its ordinances a misdemeanor or a violation by the express terms of the ordinance;

WHEREAS, fines and terms of imprisonment for misdemeanors in Kentucky are set by state statute; and,

WHEREAS, the periodic review of LMCO is an important statutory task in KRS 83A.060(10), which directs cities to examine its ordinances “for consistency with state law and with one another and to be revised to eliminate redundant, obsolete, inconsistent, and invalid provisions.”

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

SECTION I: The Council hereby amends LMCO § 10.99 as follows:

(A) Wherever in this code any act is prohibited or is made to be unlawful, an offense, or a misdemeanor, or wherever in this code the doing of any act is required, or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision or of any such ordinance is ~~made a~~

misdemeanor classified as a violation in accordance with Kentucky Revised Statutes (“KRS”) § 534.040, and any violator shall be fined ~~not exceeding \$50 or imprisoned not more than 30 days, or both~~ as set forth in KRS § 83A.065 at an amount not to exceed two hundred fifty dollars (\$250).

(B) When an offense is designated by ordinance as a misdemeanor, a criminal fine not to exceed five hundred dollars (\$500) as set forth in KRS § 534.040(2)(a) or a term of imprisonment not to exceed a term of twelve (12) months as set forth in KRS § 532.090(1), or both may be imposed for the offense, unless the misdemeanor is specified as a Class B misdemeanor in which case the criminal fine is not to exceed two hundred and fifty dollars (\$250) as set forth in KRS § 534.040(2)(b) or a term of imprisonment not to exceed a term of ninety (90) days as set forth in KRS § 532.090(2), or both.

(C) As an alternative to, or in conjunction with, the criminal penalties prescribed above, and in accordance with KRS § 83A.065(4), an ordinance may provide by its express terms that a violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he or she has been cited for the violation of the ordinance.

SECTION II: The Council hereby amends LMCO § 21.99(A)(2) as follows:

In addition to any of the penalties set forth under subsection (A)(1), an intentional violation of §§ 21.02, 21.03, 21.04, 21.08, or 21.09 shall be a ~~misdemeanor~~ civil fine for which a Metro Officer may be fined by the Ethics Commission a sum not less than \$25 nor more than \$500.

SECTION III: The Council hereby amends LMCO §§ 32.136 as follows:

Any person who knowingly makes any false statement, or falsifies, or permits to be falsified, any record or records of this Fund in any attempt to defraud the Fund has committed a crime ~~is guilty of a misdemeanor and shall be punishable therefor~~ under the laws of the state, and the Fund shall have the right to recover any payments made under false representations. If any such person is a member of the Fund, or the beneficiary of a member, he or she shall forfeit all rights to further participation in any benefits thereunder.

SECTION IV: The Council hereby amends LMCO §§ 39.061(B) and 39.062(C) as follows:

39.061(B) A Constable who violates this section shall be deemed guilty of a Class B misdemeanor in accordance with KRS 189.993(11)(b) ~~and may be punishable by a fine not to exceed \$250 and imprisoned for a period not to exceed 90 days.~~

39.062(C) A Constable, Constable's staff, both volunteer and paid, who violates this section shall be ~~deemed~~ guilty of a Class B misdemeanor and may be punishable by a fine not to exceed \$500 ~~and~~ or imprisoned for a period not to exceed 90 days, or both.

SECTION V: The Council hereby amends LMCO § 53.99 as follows:

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$250 for each offense. Each day the violation continues shall constitute a separate offense.

SECTION VI: The Council hereby amends LMCO §§ 72.023 and 72.999(4) as follows:

72.023 Any person violating ~~any provisions of §§ 72.020 through 72.022~~ § 72.021 shall be fined not less than ~~\$25~~\$20 nor more than ~~\$500~~\$100 for each offense, ~~or imprisoned for no more than 50 days in jail.~~

72.999(4) ~~Violations~~A violation of § 72.065 shall be a misdemeanor and punishable by a fine of not more than \$500, or imprisoned no more than ~~365 days~~12 months in jail, or both.

SECTION VII: The Council hereby amends LMCO §§ 73.03(C) and 73.99 as follows:

73.03(C)(1) All permits issued pursuant to subsections (A) and (B) above shall be issued only in the sound discretion of the Director. Applications for permits shall be in writing, shall set forth substantial reasons for the request, and shall state the proposed maximum wheel loads, maximum axle loads, minimum axle spacing of each vehicle, vehicles or combination thereof, and the height, length, and width of such vehicle with its loads, whichever may be applicable, as well as the specific streets or public ways over which permit for operation is requested and the time of such operations. The application shall show whether the permit is requested for a single trip or for continued operation.

(2) The Director is authorized to issue or withhold such permit in his or her discretion, or to limit the number of trips, or to establish seasonable or other time limitations and routes within and over which the vehicles described may operate on the public ways indicated, or may otherwise limit the prescribed conditions of operation of such vehicles when necessary to assure against undue damage to the street foundations, surfaces, or structure.

(3) The Director either may require a fee for the operation of such vehicle if it may damage the public ways, or may require the applicant to give bond with sufficient surety to indemnify the Metro Government against any damage which may occur to person or property by reason of the operation under such special permit.

(4) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, or duly-sworn citation officer.

(5) It shall be a ~~misdemeanor~~crime for any person to violate any of the terms or conditions of such special permit, and upon conviction any person found in violation shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents (\$0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars (\$100) and shall not be more than five hundred dollars (\$500), pursuant to KRS § 189.990(2)(a).

73.99 It shall be a misdemeanor to violate any provision of this chapter, and a criminal fine not to exceed \$500 as set forth in KRS 534.040(2)(a) or a term of imprisonment not to exceed a term of twelve (12) months as set forth in KRS 532.090(1), or both may be imposed for the offense.

SECTION VIII: The Council hereby amends LMCO §§ 91.092(A), 91.095 91.999(A)(2) as follows:

91.092(A) No person shall abandon any animal. Abandonment consists of leaving an animal for a period in excess of 24 hours, without the animal's owner or the owners' designated caretaker providing all provisions of necessity as defined in this chapter and

checking on the animal's condition. No person shall leave an animal by a roadside or other area, or leave such animal on either public or private property, without the property owner's consent. In the event that an animal is found so abandoned, such animal may be taken by an Animal Control Officer or peace officer and impounded in MAS facilities and there confined in a humane manner. Such animal, if taken from private property, shall be kept for not less than the prescribed period in accordance with the procedures set forth in the § 91.070 of this chapter, or for any longer period required by law, regulation, or medical necessity. In the event that an animal is so abandoned, the owner or the person, if any, whom he/she has charged with the animal's care, shall be subject to a citation ~~or civil penalties~~ under KRS § 525.130 for any violation of this section.

91.095 No person shall place any poisonous substance which may be harmful to any domestic animal, livestock, poultry or community cats, as described herein, in any location where it may be readily found and eaten by such animal. A violation of this section involving the intentional poisoning of a dog or cat shall result in a citation under KRS § 525.130.

91.999(A)(2) Any person cited for a criminal offense under any other provision of this chapter, except for violations of § 91.075 or any offense designated a criminal offense under the Kentucky Revised Statutes, shall be ~~deemed~~ guilty of a Class B misdemeanor and upon conviction of such offense, shall ~~may~~ be punished by a fine not less than \$5 nor more than ~~\$100~~ \$250 or imprisoned for a period not less than five days but not to exceed

~~6090~~ days in jail, or both ~~so fined and imprisoned~~. Each day a violation continues shall constitute a separate offense.

SECTION IX: The Council hereby amends LMCO § 93.99 as follows:

(A) Any person who shall violate any provision of this chapter for which no other specific penalty is provided shall be subject to the provisions of § 10.99(A).

(B) Any person violating any provision of ~~§§ 93.01 through~~ §§ 93.02 and 93.03, shall, upon conviction thereof, be subject to a fine of not less than \$25, nor more than \$100, or imprisonment for up to 50 days, or both such fine and imprisonment.

(C) Any person who ~~shall violates~~ any provision of this chapter shall be ~~deemed to be~~ guilty of a Class B misdemeanor and, upon conviction of such offense, shall be fined not more than ~~\$200~~ \$250 or imprisoned for not more than ~~3090~~ 3090 days, and in addition shall pay all costs and expenses involved in the case. Each and every day or portion thereof during which any violation continues shall be considered a separate offense.

SECTION X: The Council hereby amends LMCO § 94.99(C)(1) as follows:

~~Any person, firm, corporation or other legal entity~~ violating any of the provisions of §§ 94.30 through 94.34 or neglecting to comply with any order issued pursuant to §§ 94.30 through 94.34, shall be guilty of a misdemeanor and shall be fined not less than \$25, nor more than \$1,000, or be imprisoned for not more than ~~6030~~ 6030 days, or both in accordance with KRS § 227.990(4). Each day's violation shall constitute a separate offense.

SECTION XI: The Council hereby amends LMCO § 115.999 as follows:

(A) Any person who violates any provision of this chapter for which no other specific penalty is provided shall be subject to the provisions of § 10.99(A).

(B) Any person who violates any of the provisions of §§ 115.091 through 115.100 shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500. Each day's violation shall constitute a separate offense.

(D) Any person, ~~firm, or corporation~~ operating a massage facility or acting as a massage facility employee without a valid license or temporary license issued pursuant to §§ 115.170 through 115.181 shall be guilty of a Class B Misdemeanor and upon conviction shall be fined not less than \$100 nor more than ~~\$500~~\$250, imprisoned for not more than 30 days, or both in accordance with KRS § 309.3535. Each day such violation continues shall constitute a separate offense.

(E) Any person who violates any of the provisions of §§ 115.220 through 115.224 shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500 for each offense. Each day on which a swimming pool or bathing place is operated in violation of these sections shall constitute a separate offense.

(G) Any person who violates any provision of §§ 115.290 through 115.293 shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500. Every day the violation exists shall constitute a separate offense.

(K)(1) Any person, owner, or lessee who operates any machine or device as defined and regulated in §§ 115.500 through 115.504 within Louisville Metro without having a license therefor or without displaying such license on the machine so as to be visible from the outside shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$100, imprisoned in the metro jail for not less than ten, nor

more than 30 days, or both, at the discretion of the court. Each day during which such machine or device is maintained or operated shall constitute a separate offense.

(M)(2) Notwithstanding subsection (M)(1) above, any person who violates any provision of §§ 115.550 through 115.562, or who knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 nor more than \$500 or imprisonment not to exceed 90 days, or both, for each offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after a prior citation and in such case each citation may constitute a separate offense.

SECTION XII: The Council hereby amends LMCO § 121.04 as follows:

Any person who shall knowingly make any incomplete, false or fraudulent return or who shall willfully fail to timely make any return required by § 121.032(C), shall be guilty of a misdemeanor punishable by a fine not to exceed \$100 or imprisonment not to exceed 50 days, or both. The Revenue Commission, acting through its designee is authorized to initiate criminal action, when appropriate, against any person, corporation, or entity that withholds transient room taxes from one or more transient guests within Louisville Metro and fails to remit such withheld tax to the Revenue Commission. The penalty imposed by this section shall be in addition to any penalties imposed by § 121.03.

SECTION XIII: The Council hereby amends LMCO § 125.99(B) as follows:

Notwithstanding subsection (A) above, any person who commits any act prohibited by § 125.11 or who knowingly provides false information in an attempt to gain or maintain a license, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine

of not less than \$250 nor more than \$500 or imprisonment not to exceed ~~90 days~~12 months, or both, for each offense. Each day that a violation continues after a citation has been issued shall be deemed a separate offense.

SECTION XIV: The Council hereby amends LMCO § 130.99 as follows:

Any person who violates § 130.01 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine ~~not more than \$100 and/or imprisoned for no longer than~~ not more than \$100 ~~and/or imprisoned for no longer than~~ or imprisonment not to exceed 50 days, or both.

SECTION XV: The Council hereby amends LMCO § 131.15(A) as follows:

Any person violating § 131.12(A) shall be ~~deemed to have committed~~ a guilty of a misdemeanor, and upon conviction shall be ~~subject to~~ punished by a fine not to exceed \$500 for each offense.

SECTION XVI: The Council hereby amends LMCO § 133.99 as follows:

Any person who violates any provision of § 133.12 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500 or imprisonment not to exceed 50 days, or both, for each offense. Each such violation shall constitute a separate offense. Any person cited hereunder for a failure to meet a requirement hereof may be cited again for said failure one or more days after a prior citation and in such case each citation shall constitute a separate offense.

SECTION XVII: The Council hereby repeals LMCO §§ 134.05 and 134.99(C).

SECTION XVIII: The Council hereby amends LMCO § 135.99 as follows:

Any person found to have violated the provisions of § 135.04 shall be guilty of a misdemeanor and upon conviction shall be ~~fin~~ punished by an amount not to exceed \$500 or ~~imprisoned for~~ imprisonment not to exceed 90 days, or both, for each offense.

SECTION XIX: The Council hereby amends LMCO § 150.99(C) as follows:

Notwithstanding subsections (A) and (B) above, any person, ~~firm, partnership, corporation~~ or ~~other legal entity~~ violating any provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of up to \$500 or by imprisonment for a period not to exceed ~~365 days~~12 months, except as otherwise provided by KRS Chapter 198B for violations of the Kentucky Building and Residential Codes. Each day the violation continues shall be a separate offense. No additional notice other than the notice for the original offense shall be required to convict a person, ~~firm~~ ~~partnership, corporation~~ or ~~other legal entity~~ for such violations resulting from a continuation of such offense.

SECTION XX: The Council hereby amends LMCO § 156.999(C)(1) as follows:

Any person, ~~firm or corporation~~ violating any of the provisions of § 156.203, or neglecting to comply with any order issued pursuant to § 156.203, shall be guilty of a misdemeanor and shall be fined not less than \$25 nor more than ~~\$1,000~~\$500, or be imprisoned for not more than 60 days, or both. Each day's violation shall constitute a separate offense

SECTION XXI: This Ordinance shall take effect 90 days after its passage and approval.

H. Stephen Ott
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

DRAFT

DRAFT

DRAFT

Michael J. O'Connell
Jefferson County Attorney

BY: _____

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