

ORDINANCE NO. _____, SERIES 2023

AN ORDINANCE AMENDING LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (“LMCO”) CHAPTER 71 REGARDING VEHICLE SPEED CONTESTS AND RECKLESS DRIVING EXHIBITIONS.

SPONSORED BY: COUNCIL MEMBER DONNA PURVIS

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) previously enacted Ordinance No. 154, Series 2022 (the “2022 Ordinance”) regarding vehicle speed contests and reckless driving exhibitions; and

WHEREAS, since the 2022 Ordinance was implemented, it has become clear that the ability to impound cars utilized to obstruct the streets for purposes of facilitating or aiding or abetting or otherwise as an incident to any vehicle speed contest or reckless driving exhibitions is an enforcement tool needed to better deter this activity; and

WHEREAS, since the implementation of the 2022 Ordinance, impoundment generally, rather than fines, has proven to be a greater deterrent of the activity; and

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) wishes to amend the 2022 Ordinance to provide for this additional enforcement tool and to focus enforcement on impoundment, rather than fines.

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

SECTION I: LMCO § 71.20 is hereby amended as follows:

§ 71.20 VEHICLE SPEED CONTESTS AND RECKLESS DRIVING EXHIBITIONS.

No ~~person who operates a vehicle~~ shall be used engage in a vehicle speed contest or a reckless driving exhibition on any street within Louisville Metro.

SECTION II: LMCO § 71.22 is hereby amended as follows:

§ 71.22 OBSTRUCTION OF STREETS.

~~A person shall not, for purposes of facilitating or aiding or abetting or otherwise as an incident to any vehicle speed contest or reckless driving exhibition, No vehicle shall be used in any manner to obstruct or act as place a barricade or obstruction or assist or participate in placing a barricade or obstruction on any street in Louisville Metro for the purposes of facilitating or aiding or abetting or otherwise as an incident to any vehicle speed contest or reckless driving exhibition.~~

SECTION III: LMCO § 71.24 is hereby amended as follows:

§ 71.24 IMPOUNDMENT OF VEHICLES PURSUANT TO LMCO §§ 71.20 OR 71.22

(A) *Impoundment.* Metro Government shall impound a motor vehicle used in a violation of the provisions of §§ 71.20 or § 71.22 for a period of six (6) months. The length of impoundment imposed may be decreased by the Board during an appeal under § 71.24(C). The Board should evaluate all relevant factors when considering a modification to the impoundment period, including but not limited to the following:

- (1) Whether any property was damaged, or persons harmed in connection with the offense; and
- (2) Whether this is a first offense or a subsequent offense.

Any release of any impounded vehicle under this section shall also meet the release requirements of § 71.24(J).

(B) *Enforcement.*

- (1) Any official authorized to enforce any provision of this section shall be permitted to immediately seize and impound a vehicle for a violation of §§ 71.20 or § 71.22 based on video surveillance, photographs, the official's personal observation and/or

the sworn testimony by one or more eyewitnesses when the vehicle is located at the time of the violation or immediately thereafter.

(2) (a) In addition to the impoundment authorized under § 71.24(B)(1), any official authorized to enforce any provision of this section shall be permitted to seize and impound a motor vehicle after a violation of § 71.20 or § 71.22 ~~when the operator or owner of the vehicle is not present~~, provided that the requirements of ~~§ 71.24(B)(2)~~ of this subsection are met. Before any seizure or impoundment under this subsection, the authorized official shall send to the owner of record of the vehicle to be seized and impounded, either by first class mail or by personal service to the address of the owner of record as indicated in state registration records, a notice of intent to seize and impound the vehicle that includes (i) a statement that Metro Government has evidence sufficient to establish probable cause that an operator of the vehicle violated § 71.20 or § 71.22 and the nature of such evidence, (ii) a copy of the police report that contains the source of the evidence for the violation; (iii) a copy of § 71.24(B)(2), (iv) the date, approximate time and approximate location of the alleged violation; (v) a detailed description of the vehicle, including ~~the vehicle make and color, and the issuing state and number of the license plate of the vehicle~~ any identifying information; and (vi) notice of the owner's opportunity to contest eligibility for impoundment. A copy of the notice shall be forwarded to the Board. A notice is presumed delivered upon being deposited with the United States Postal Service with proper postage affixed.

(b) An owner of record who receives a notice pursuant to § 71.24(B)(2) may contest eligibility for impoundment by written request delivered to the Board, postmarked within 14 days after the delivery of the notice. The Board shall set a

date for a hearing on the eligibility of the vehicle for impoundment and shall notify the owner of the date, time and place of the hearing. The hearing date must be no more than 30 days after a request for a hearing has been filed. At the hearing, Metro Government's evidence of probable cause shall be considered prima facie correct. In order to disprove the motor vehicle's eligibility for impoundment, the owner of record must prove that: (i) at the time and date of the alleged violation as described in the notice, the described vehicle was not operated at the location of the alleged violation; or (ii) at the time and date of the alleged violation, the vehicle had been reported stolen; ~~or (iii) the license information described in the report does not match the listed make of the described vehicle.~~ If the owner of record prevails, the notice of intent to impound the owner's vehicle shall be withdrawn and the vehicle shall not be eligible for impoundment under § 71.24(B)(2).

(c) If a vehicle owner receives a notice pursuant to this subsection § 71.24(B)(2) and (i) fails to contest eligibility for impoundment or (ii) does not prevail at the hearing regarding eligibility for impoundment, the vehicle described in the notice shall be eligible for impoundment if found on the street within 12 months following the date of the Board's determination regarding the hearing, if a hearing was requested, or following the last date to request a hearing on eligibility for impoundment, if none was requested. Provided, however, if the owner of the vehicle that is eligible for impoundment under this subsection pays both the maximum fine under § 71.99 and an additional civil penalty of \$1,000 any time before such vehicle is impounded, the vehicle shall not be eligible for impoundment.

(C) *Appeal of vehicle impoundment to the Board.*

(1) Within ten days of the impoundment of a vehicle, the owner of a 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 Board. The hearing shall be conducted within ten 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 \$2,500, whichever is ~~less~~greater.

(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 as determined by the Board, 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. 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.

(4) At the hearing, after consideration of the evidence, the 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 § 71.24(J). 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 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 vehicle pursuant to this subsection, ~~who also seeks to appeal a citation in conjunction with such impoundment,~~ shall proceed pursuant to the appeals process set forth in § 71.24(E)(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 Board as to such matter.~~

(6) In all instances, notice shall be issued to the owner of record concerning their right to appeal the civil penalty, including impoundment, pursuant to § 32.283(C).

(D) *Additional Requirements for release of a vehicle.* Before the release of a vehicle pursuant to § 71.24(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.

(E) *Appeal from Board to District Court.*

(1) An appeal from the Board's determination that impoundment was justified 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 judgement. 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 § 71.24(C), and a 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 ten 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~~the impoundment period has concluded, if no appeal is filed, or if an appeal is filed, 45 days from the date of the conclusion of the impoundment period from a final order of the last presiding

administrative body or court with jurisdiction, an impounded 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 all vehicles impounded pursuant to KRS § 82.625 for all fines, penalties, and towing, handling, and storage charges and fees imposed thereon. Such a 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 vehicle and those persons who claim a security interest therein.

(J) *Release of impounded vehicle; impoundment fees paid.* Any vehicle impounded under this section shall be held for a minimum of 72 hours. After 72 hours, Louisville Metro may release the motor vehicle to the owner or other person entitled to possession, and Metro Government shall condition the release of a vehicle impounded under this section, only upon:

- (1) Payment of the citation amount in full or in part if by agreement; and
- (2) Payment of all towing, handling, impoundment and storage charges imposed.

In addition to the release requirements imposed under this section, a vehicle may be released to the owner or other person entitled to possession, only upon proof of ownership or right to possession. 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.

SECTION IV: LMCO § 71.25 is hereby amended as follows:

§ 71.25 APPEALS.

(A) Any appeal of civil penalties 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 § 71.20 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.~~

SECTION V: LMCO § 71.99 on penalties is hereby amended as follows:

§ 71.99 PENALTIES.

(A) Any person who violates § 71.02 of this chapter shall be subject to a civil penalty and fined not less than \$25 nor more than \$250.

(B) Any person who violates §§ 71.86 or 71.87 of this chapter, or who violates any other ordinance of the Louisville/Jefferson County Metro Government or any statute of the state restricting speeding, shall be fined as provided by KRS 189.394.

(C) Any person who violates § 71.85 of this chapter shall be subject to a civil penalty and fined not less than \$20 nor more than \$100.

(D) An owner of a vehicle in violation of §§ 71.20 or 71.22 of this chapter shall be subject to a civil penalty and fined \$1,000 for the first offense, and \$2,000 for each subsequent offense. Any civil penalty fine issued pursuant to § 71.99(D) shall be a separate and distinct fine and shall not be included as any portion of the costs associated with the towing and impoundment of any vehicle.

(E) Any person who violates §§ 71.21 ~~or 71.22~~ of this chapter shall be subject to a civil penalty and fined up to \$1,000 for the first offense, and up to \$2,000 for each subsequent offense.

SECTION VI: This Ordinance shall take effect upon its passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

Markus Winkler
President of the Council

Craig Greenberg
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____