

ORDINANCE NO. 67, SERIES 2012

AN ORDINANCE AMENDING LOUISVILLE METRO CODE OF ORDINANCES (LMCO) SECTIONS 97.070 AND 97.076 RELATING TO THE OBSTRUCTION OF PUBLIC RIGHT-OF-WAYS BY OBJECTS, STRUCTURES, STREET FURNITURE, ETC. (AMENDED BY SUBSTITUTION).

**Sponsored By:** President Jim King, Council Members Blackwell, Henderson, and Engel

**WHEREAS**, the obstruction of public-right-of-ways by objects, structures, street furniture, and other type installations, presents risks of harm to pedestrians and other users of these public locations; and

**WHEREAS**, the Louisville Metro Government is desirous of preventing such harm to persons who may use public right-of-ways, and in order to regulate and ensure that said harm is minimized it is necessary to amend the LMCO.

**WHEREAS**, the Louisville Metro Government has a valid interest in promoting and ensuring an aesthetically pleasing and uniform streetscape for the benefit of the city and its inhabitants; wherefore

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

**SECTION I:** Section 97.070 of the LMCO shall be amended to read as follows:

(2) *Exceptions.* Metro Government may place or permit other government entities to place trees, posts, rails, or street furniture as defined in 97.076(A) of this chapter that it may deem appropriate upon the public way.

**SECTION II:** Section 97.076 of the LMCO shall be amended to read as follows:

(A) *Definition of street furniture.* **STREET FURNITURE** means miscellaneous objects placed in the right-of-way including, but not limited to, news and information distribution boxes or corrals, refuse receptacles, telephone panels and booths, bus shelters with or without seating, outdoor restaurant furniture, public seating, flower boxes or plant containers, bike racks, decorative objects, kiosks, objects of art and those structures erected or placed by authorized public agencies for public safety and/or public welfare purposes.

(B) *Permit Requirements.*

(1) No party shall place, construct, or maintain within the right-of-way of any public way of Metro Government any permanent or immovable object, street furniture, structure, sidewalk, entrance way, driveway, or other installation, except as otherwise permitted by resolution or ordinance of the Metro Government.

(2) Before placing an object, structure, street furniture, or other installation pursuant to subsection (B)(1) above, a written permit shall be obtained from the Director of the Louisville Metro Department Public Works.

(3) Any party seeking to place an object, structure, street furniture, or other installation shall submit to Louisville Metro Department of Public Works ("Public Works") a signed application in writing upon a form provided and a certificate of insurance, approved in form and amount by risk management, showing Metro as an additional insured covering any liability arising out of the maintenance of the street furniture covered by the permit. The application shall contain:

- (a) The name, address, telephone number and, if applicable, electronic mail address of the applicant;
- (b) A photograph of the item of street furniture and the proposed location for which a permit is sought. When the application is for more than ten (10) locations of the same type of street furniture, the applicant may submit a single application and supply a list of preferred locations;
- (c) Whether the applicant would prefer to receive notice and orders by regular mail or electronic mail;
- (d) The information supplied pursuant to this subsection shall be used for all notices, correspondence, or communications from Public Works;
- (e) The signature of the applicant;
- (f) The required permit fees;
- (g) Maintenance Agreement from Public Works for all items being installed;
- (h) Required correspondence with abutting property owners informing them of proposed installation;
- (i) For applications for permits relating to all Street Furniture objects, each request must provide a scale drawing or site plan to show the Street Furniture's placement relative to existing buildings, curbs and other fixtures and appurtenances in the surrounding public rights-of-way for a minimum of twenty-five (25) feet in any direction. The drawing must depict that the Street Furniture object and its placement meets all Americans with Disabilities Act guidelines.

(4) *Transferability*. Permits shall be valid for the period January 1, or when issued, whichever is later, through December 31 of the following year, shall not be transferable, and shall be renewable pursuant to the procedure for original applications and upon payment of the applicable nonrefundable permit fee.

Fee for permits shall be prorated.

(5) No permit shall be issued unless:

(a) The party seeking the permit has filed a written statement whereby the party that is to receive the permit signs and agrees to indemnify and hold harmless Metro, its officers, and employees, from any loss, liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use or maintenance of a permitted object, structure, street furniture, and/or installation within Metro. This requirement is in addition to the insurance requirements under subsection three (3) of this section.

(b) The party seeking the permit has paid a nonrefundable permit fee as described below for each item of street furniture for which a permit is sought.

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| \$50 | <ul style="list-style-type: none"> <li>i. 4 tables/chairs</li> <li>ii. 6 tables/chairs</li> <li>iii. 8 tables/chairs</li> <li>iv. 10 tables/chairs</li> <li>v. More than 10</li> <li>vi. Planters/umbrellas</li> <li>vii. Benches</li> <li>viii. Bike Racks</li> <li>ix. News and information distribution boxes or corrals</li> <li>x. Refuse receptacles</li> </ul> | <ul style="list-style-type: none"> <li></li> <li style="text-align: right;">\$50</li> <li></li> <li style="text-align: right;">\$50</li> </ul> |
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(c) The party seeking the permit is not in arrears as to any fees, fines or charges regarding objects, structures, street furniture, and/or installations.

(d) If the selected site location is on a state road, then the party seeking the permit must first obtain review and written approval from the Kentucky Transportation Cabinet, Department of Highways before submitting an application to Public Works and Assets.

(e) If the object, structure, street furniture, and/or installation is to be located in a Historical District or Overlay District, then the prior approval of that district shall be granted prior to the placement of the object.

(f) The party seeking the permit shall provide to the Director of Public Works, or their designee, a current certificate of insurance, naming Metro as an additional insured party of a commercial general liability policy with a minimum limit of total coverage in the amount of one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. The insurance shall be written with a company that has an A.M. Best rating of B+VI or greater. The party seeking the permit shall maintain the insurance described by this section so long as the applicant uses or maintains an object in the public rights of way.

(g) The Director of Public Works, or their designee, has made a determination that:

- i. The object, structure, street furniture, and/or installation does not endanger public safety or property, or interfere or impede the flow of pedestrian or vehicular traffic.
- ii. The placement of the object, structure, street furniture, and/or installation does not impede or interfere with the reasonable use of a display window or display space.
- iii. The design, size, shape, materials and color scheme of the object, structure, street furniture, and/or installation comports with and enhances the quality and character of the streetscape, including nearby development and existing land uses, and any design requirements contained in this Ordinance and any regulations promulgated under section (C)(1) below.
- iv. The object, structure, street furniture and/or installation does not wholly impede the use of any public right-of-way.
- v. The placement of the object, structure, street furniture, and/or installation does not violate any provisions of the Americans with Disabilities Act.

(h) A permit for an object, structure, street furniture and/or installation covered by this chapter shall only be denied on the grounds that (a) the application for the permit contains incorrect or incomplete information or (b) the placement of the object of the application does

not comply with this Ordinance or (c) the Director of Public Works has made a determination that the object, structure, street furniture and/or installation violates one of the permit standards under subsection (g) of this section or does not adhere to the standards for furniture objects spelled out in section (D), (E), (G), (H), (J), or (K) of this Ordinance. If an application for a permit is denied, the written notice shall state the specific reasons for the denial and what specific actions, if any, would be necessary for the permit to be issued.

- (i) Provided all documentation required by this chapter has been submitted, a permit shall be considered approved if Metro takes no action within ten (10) working days from submission of the complete application.
- (j) Louisville Metro Government entities shall not be required to obtain a permit pursuant to the requirements of this chapter to place any object, structure, street furniture, in the public right of way.

*(6) Appeal of Permit Denial.*

If a permit is denied, the party seeking the permit may file an appeal with the Director of Public Works. An appeal with regard to a denied permit shall be heard within twenty (20) days following receipt of the appeal, unless the parties mutually agree to an extension of this time period. The parties shall be given at least ten (10) days advance written notice of the time and place of the hearing, and a reasonable opportunity to participate in the hearing. The Director of Public Works shall render a decision in writing within five (5) days after the hearing; a copy of the decision shall be delivered to the parties, and a certified copy shall be kept on file by the Director of Public Works. The decision of the Director may be appealed to a court of competent jurisdiction within thirty (30) days following the date the decision was issued which will provide the parties an opportunity for a prompt hearing and prompt decision by a judicial officer. Failure to file an appeal within the time period provided by this subsection shall constitute a waiver of the right to appeal. Within five (5) days following the expiration of a permit for an individual item of street furniture, the person to whom the permit was issued shall remove the street furniture and shall be liable for the cost of any necessary restoration or repair of the public rights-of-way caused by the removal.

*(C) Erection and Maintenance Criteria*

- (1) In addition to the permit criteria set forth in subsection (B) above, the Director of Public Works shall establish reasonable time, place and manner rules and regulations governing the erection and maintenance of such objects, structures, street furniture, and installations in such right-of-way. The rules and regulations may include design requirements for specific types of objects, structures, street furniture, and/or installations and numerical limits on the quantity of each specific type.

- (2) The rules and regulations shall be available to the public through Public Works and online at the Public Works website.
- (3) All objects, structures, street furniture and installations in the public rights-of-way shall bear a weather proof label which contains the permit number and the name, address and telephone number of the operator, owner and/or permit holder. Such label shall be conspicuous in size and color, and placed in such a location so as to be readily visible.
- (4) All objects, structures, street furniture and installations shall be maintained by the operator, owner and/or permit holder in a reasonably clean condition and shall be free of dirt and grease, rust and corrosion in visible metal areas, graffiti, discolored or bare surfaces, chipped, faded, cracked and peeling paint, cracked, dented, or broken components, pasted bills and other debris.
- (5) No objects, structures, street furniture and/or installations shall be abandoned.
- (6) The operator, owner and/or permit holder of a permanently mounted object, structure, street furniture and/or installation shall repair any damage to the right-of-way caused by the installation or the maintenance of the object, structure, street furniture and/or installation.
- (7) On removal of an object, structure, street furniture and/or installation, the operator, owner and/or permit holder of a permanently mounted object, structure, street furniture and/or installation who removes the rack must completely remove or cut off all bolts or fasteners flush with the surface of the right-of-way and restore the right-of-way to its original condition.

*(D) Specifications Concerning Street Benches*

- (1) All benches must be placed on concrete pads and secured to the concrete pad with a break-away fastener.
- (2) Any bench and its placement must comply with the Americans with Disabilities Act.
- (3) Any benches must be monochromatic in appearance.
- (4) Benches must have a slatted, see through back or no back, with arm rests on each end, and have the option of a center dividing rail.

*(E) Specifications Concerning News and Information Distribution Boxes or Corrals*

- (1) In these regulations, the Central Business District ("the District") is defined as the area from River Road to one (1) block south of Broadway; Roy Wilkins west to Hancock

Street.

- (2) Metro by and through Public Works shall enter into a contract with one (1) provider of corrals for news and information distribution boxes ("corrals") or otherwise provide for the placement and maintenance of corrals in the District; and Metro may enter into contracts with one (1) or more corral providers, or otherwise provide, for the placement and maintenance of corrals in other areas of Metro. The contract shall also ensure that corrals shall be placed in locations throughout the District which afford easy, convenient service to pedestrians, but which do not obstruct or interfere with access to abutting properties, and which do not impede or endanger pedestrian, bicycle or vehicle traffic. Any corrals and their placement must meet all Americans with Disabilities Act guidelines.
- (3) The total number of corrals within the District shall not exceed 30.
- (4) Within the District, individual news and information distribution boxes must be located within corrals.
- (5) A contract under this section would include, but not be limited to, the following terms and conditions:
  - (a) In consideration of the placement and maintenance of corrals, Metro shall grant to the corral provider a permit with respect to the real property where the corral will be placed;
  - (b) A detailed description and photograph or scale drawing of the corrals, including its dimensions, and method of attachment to the public rights-of-way;
  - (c) A scale drawing or site plan for each corral, showing its placement relative to existing buildings, curbs and other fixtures and appurtenances in the surrounding public rights-of-way for a minimum of thirty (30) feet in any direction;
- (6) Prior to entering a contract under this section, Public Works may conduct such investigations, surveys, or test programs it deems reasonable or necessary to determine any of the following: whether corrals would promote the goals and purposes of the District; what different services, and styles and features, are offered by prospective corral providers; the degree of public acceptance and use of corrals; and the areas and exact locations where corrals may be placed.
- (7) Corrals may be placed outside the District provided that corrals placed outside the district and the placement of news and information distribution boxes within those corrals shall conform to the provisions of this ordinance governing corrals and news and information distribution boxes within the district.
- (8) It shall be a violation of these regulations to place or maintain a corral upon the public

rights-of-way, except as provided in this section.

(F) *Allocation of Space in Corrals*

- (1) Each compartment in a corral shall contain space for no more than five (5) newspapers or other publications.
- (2) Priority shall be given to publishers who continuously have distributed newspapers or other publications in news and information distribution boxes or corrals at that location for more than twelve (12) months before the effective date of this article, as indicated by the publisher's affidavit provided to Public Works;
- (3) Among publishers who have priority under this subsection, compartments shall be allocated first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between one (1) four (4) days per week, third to newspapers and other publications issued less frequently than once a week;
- (4) If there is space for additional publications after the priority allotment set forth above, then Public Works shall allocate the remaining space among publishers who do not have priority, first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between one (1) and four (4) days per week, third to newspapers and other publications issued less frequently than once a week;
- (5) Notwithstanding the requirements of this subsection, no newspaper or other publication may receive a second space in a corral until all other interested publishers have had the opportunity to have their newspaper or other publication allocated to a space in the corral;
- (6) Whenever additional compartments become available, they shall be allocated in the manner described in this subsection; and
- (7) In the event two (2) or more publications have equal priority under this subsection, then allocation shall be by lottery or other random method.

- (8) The opportunity of publishers to have their newspapers and other publications distributed from a corral shall not be affected whatsoever by their content, consistent with the First Amendment to the United States Constitution.

*(G) Physical Characteristics and Appearance of Individual News and Information Distribution*

*Boxes and/or Corrals*

- (1) This section applies to individual news and information distribution boxes and/or corrals.
- (2) Individual news and information distribution boxes shall have the following dimensions:
- (a) The height shall be at least thirty-five (35) inches, but not greater than fifty (50) inches;
  - (b) The width, measured at the widest point, shall not be less than fifteen (15) inches or greater than twenty-five (25) inches; and
  - (c) The depth, measured at the widest point, shall not be less than fifteen (15) inches or greater than twenty (20) inches.
- (3) No news and information distribution boxes and/or corrals inside or outside of the District shall be chained to any object. Individual news and information distribution boxes and/or corrals inside or outside of the District shall be bolted or attached permanently to a concrete foundation in the public right-of-way-that meets the criteria established by Public Works.
- (4) News and information distribution boxes shall be located side by side. Outside the District no more than five (5) news and information distribution boxes shall be placed side by side at any one location and there shall be a minimum 300-foot distance between groups of news and information distribution boxes along the same sidewalk.
- (5) News and information distribution boxes and/or corrals color shall be monochromatic. Individual news and information distribution boxes or corrals may display the trademark name or logo of the newspaper or other periodical being dispensed therefrom on the sides and back of the news and information distribution boxes

and/or corrals and only in monochromatic letters or symbols.

(6) It shall be a violation of these regulations to own or maintain an individual news and information distribution boxes or corrals upon the public rights-of-way which does not conform to the standards of this section.

*(H) Placement and Location of Individual News and Information Distribution Boxes or Corrals*

(1) Individual news and information distribution boxes and/or corrals shall be placed in a location which affords easy, convenient service to pedestrians, but which does not obstruct or interfere with access to abutting properties, and which does not impede or endanger pedestrian, bicycle or vehicle traffic. Accordingly, individual news and information distribution boxes and/or corrals shall not be placed as follows:

- (a) On more than two opposing street corners;
- (b) Upon a sidewalk directly in front of an entrance to a building, or adjacent to a designated bus stop zone, loading zone, taxi stand, or handicapped parking space;
- (c) In such a manner as to obstruct sight lines at street intersections, within the triangle area formed by the street curblines and a line connecting points twenty-five (25) feet from the intersection of the curblines extended;
- (d) Within ten (10) feet of a fire hydrant;
- (e) Within eight (8) feet of any TARC bus shelter, TARC bus sign in the direction of traffic flow, or within twenty (20) feet of any TARC bus sign in the direction against traffic flow;
- (f) Within six (6) feet of an alley, pedestrian crosswalk, curb cut, or sidewalk cafe;
- (g) Within thirty (30) inches of a street curb or curbline where parking is permitted, or within eighteen (18) inches of a street curb or curbline where parking is not permitted;
- (h) Within two (2) feet of a parking meter, mailbox, bench, light post, planter, or tree (measured from the nearest edge of the tree grate); or

- (i) In such a manner that the remaining free and open sidewalk width is not at least five (5) feet in the District, or less than three (3) feet in all other areas of Metro.
- (j) In such a manner that violates the Americans With Disabilities Act.
- (k) Individual news and information distribution boxes and/or corrals shall not be placed against a building unless the building manager agrees to such placement in writing, the placement of the news and information distribution boxes and/or corrals closer to the curb cannot be achieved consistent with the other placement restrictions provided in this section, and such placement does not impede pedestrian traffic.
- (l) Individual news and information distribution boxes and/or corrals shall not be chained or otherwise attached to any tree, bench, sign post or other fixture whatsoever.
- (m) Multiple News and information distribution boxes or corrals shall be located linearly side by side.

(2) It shall be a violation of these regulations to own or maintain an individual newsrack upon the public rights-of-way in a manner which does not conform to the requirements of this section.

*(I) Maintenance of News and Information Distribution Boxes*

Each news and information distribution boxes shall have a self-closing, spring-loaded door for each enclosed compartment, and each news and information distribution boxes or corrals which offers newspapers or other publications for sale shall be equipped with a functional coin-return mechanism which permits customers to secure an immediate refund if the door is inoperable. The door and coin return mechanisms of news and information distribution boxes or corrals shall be maintained in good working condition, and the operator, owner and/or permit holder shall cause any malfunction in their operation to be repaired promptly.

*(J) Specifications Concerning Refuse Receptacles*

- (1) All refuse receptacles shall have an enclosed metal containment device or frame that houses an internal liner. Front of the refuse receptacle shall be hinged with a latch as to allow for access and removal of internal liner.
- (2) Refuse receptacles shall be 19" to 30" in width or diameter and minimum of 36" to a maximum of 48" in height.
- (3) All refuse receptacles shall be secured to a concrete pad by way of metal anchors capable of breaking away if impacted by a vehicle.

- (4) All refuse receptacles shall be a solid color either white, cream, black, green, brown, brushed metal, or bronze.
- (5) All refuse receptacles shall be placed in an accessible location as to all for easy tendering of the refuse.
- (6) Any refuse receptacle and its placement must meet all Americans with Disabilities Act guidelines.
- (7) All permits for refuse receptacles must have a Service agreement with a schedule for pick up of the refuse.
- (8) Design of any refuse receptacle in an overlay district, historic preservation district, or the central business district must conform to the regulations as outlined for that area.

(K) *Specifications Concerning Bike Racks*

- (1) All bike racks shall be a minimum of 34" in height.
- (2) All racks should allow for two points of support at least 28" apart from 24" to 34" from the rack's bottom. Two mounting pads at the base of the rack and each consisting of horizontal metal plates, square or circular, each with minimum of 20 square inches, firmly attached to the rack.
- (3) The functional portions of the bike rack must have the equivalent strength of 1 1/2" tubular steel or stronger. This level of strength must be continuous in connecting the mounting flanges, the two points of bicycle support.
- (4) The surface of the bike rack shall not mar or scratch the paint or the surface of a standard bicycle, must be solid in color, and resistant to rusting.

(L) Any violations of this Ordinance shall be subject to the penalties set out in § 97.999 and shall be enforced by the Louisville Metro Code Enforcement Board and any Code Enforcement Officer as defined in § 97.001.

(M) Notwithstanding any other provision of this Ordinance, Metro may cause to be removed from the public rights of way, without prior notice to the operator, owner and/or permit holder an object which:

(1) Presents a clear and present danger to the public, or substantially impedes the use of the public rights of way by pedestrians

(2) Does not bear the name and address of the operator, owner and/or permit holder

(3) A Citation Officer determines that said object, structure, street furniture, and/or installation has not been granted a permit from the Director of Public Works as required by and pursuant to subsection (B)(1) of this section.

(N) Within forty-eight (48) hours after an object, structure, street furniture, and/or installation

has been impounded under this section, Metro shall give written notice of the impoundment

and shall issue a citation for violation of this Ordinance to the operator, owner and/or permit

holder, using the name and address listed thereon. If there is no name, address or telephone

number listed on the object, then Metro shall make a reasonable effort to determine the

operator, owner and/or permit holder for the purpose of notifying such person of the citation

and the impoundment. The notice shall inform the operator, owner and/or permit holder of

the procedure to claim the impounded object, structure, street furniture, and/or installation,

including the administrative cost of impoundment and storage, the procedure for contesting

the citation and impoundment, the time within which the object, structure, street furniture,

and/or installation must be claimed, and the legal consequences of failure to claim the object

in a timely manner.

(1) The operator, owner and/or permit holder of an object, structure, street furniture, and/or installation that has been cited and impounded pursuant to this section, may challenge the validity of a citation and an impoundment and request in writing a hearing before the Code Enforcement Board. The hearing shall be conducted within seven (7) business days of the date of the request, unless the owner, operator and/or permit holder waives the limitation or Metro Government shows good cause for such delay. Metro Government shall retain possession of the object, structure, street furniture, and/or installation pending the hearing, unless the operator, owner and/or permit holder posts a bond in an amount equal to the fines and fees accrued as of the date of the hearing request, or \$100, whichever is less. If the operator, owner and/or permit holder is unable to pay the amount of the bond, the hearing shall be held within forty-eight (48) hours of the date the request for hearing is received, unless such person requests or agrees to a continuance.

(2) No sooner than thirty (30) days after the date of notice of impoundment, or thirty (30) days after the date of impoundment in which Metro has made a reasonable effort to determine the operator, owner and/or permit holder for the purpose

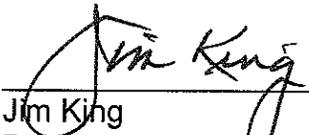
of notifying such person notice of impoundment, Metro may dispose of any impounded and unclaimed objects. Metro may not dispose of any impounded and unclaimed objects in which an appeal of the citation and the impoundment is pending pursuant to the administrative procedures outlined in this Ordinance.

(3) The operator, owner and/or permit holder of an object, structure, street furniture, and/or installation that has been cited and impounded pursuant to this section, shall be assessed an impoundment fee of fifty dollars (\$50) for each object, structure, street furniture, and/or installation that has been impounded. In the event that the operator, owner and/or permit holder has been found not to have violated this Ordinance, no impoundment fee shall be assessed.

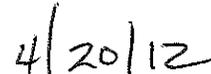
(O) Any permanent or immovable object, street furniture, structure, sidewalk, entrance way, driveway, or other installation that has been designated as public art or an object of art by the Louisville Metro Commission on Public Art, shall be exempt from any design requirements contained in this Ordinance or in any regulations promulgated by Public Works.

**SECTION III:** This Ordinance shall take effect upon its passage and approval.

  
Kathleen J. Herron  
Metro Council Clerk

  
Jim King  
President of the Council

  
Greg Fischer  
Mayor

  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:** *KBB*

Michael J. O'Connell  
Jefferson County Attorney



BY: 