

February 3, 2022 – Memo from City Attorney Hetlage

Brittany and Chief:

Below is the language that Crestwood is adopting for amendment to its tampering ordinance (new language in red). Note in sub-part 6 Crestwood is actually going further by including language that there is evidence that the tampering is both, “with knowledge that he or she does not own such vehicle or have permission to enter such vehicle,” and that it is, “for the purpose of attempting to steal the motor vehicle or its contents.”

The City can remove the language that was of concern to Ald. Epperson, but that may open the ordinance up to a constitutional challenge that it sweeps in innocent conduct (going to the wrong but similar vehicle in a grocery store parking lot, for instance). Our recommendation is to include some mental state to avoid an overbreadth challenge. Case law provides that “Direct evidence of a particular mental state is seldom available; therefore, proof of the mental state will usually rest on circumstantial evidence and permissible inferences.” *State v. Jensen*, 184 S.W.3d 586, 589 (Mo. App. S.D. 2006). Such circumstantial evidence of the perpetrator’s knowledge could be inferred from acts such as checking multiple vehicles locks/doors along a street.

Sec. 16-30 Tampering.

A person commits the offense of tampering if he or she:

- (1) Tampers with property of another for the purpose of causing substantial inconvenience to that person or to another; or
- (2) Unlawfully rides in or upon another’s automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle; or
- (3) Tampers or makes connection with property of a utility; or
- (4) Tampers with, or causes to be tampered with, any meter or other property of an electric, gas, steam or water utility, the effect of which tampering is either:
 - a. To prevent the proper measuring of electric, gas, steam or water service;
 - b. To permit the diversion of any electric, gas, steam or water service; or
- (5) Enters a motor vehicle that he or she does not own or lease, without the owner’s or lessee’s permission for any illegitimate or unlawful purpose. For purposes of this Section “enter” shall mean being physically present in or accessing a vehicle in a way that would lead a reasonable person to believe said conduct was in furtherance of a crime; or
- (6) Tampers with the motor vehicle of another, with knowledge that he or she does not own such vehicle or have permission to enter such vehicle, for the purpose of attempting to steal the motor vehicle or its contents, the effect of which tampering includes:
 - a. The act of lifting door handles or otherwise trying the doors or locks; or
 - b. The act of attempting to open the trunk.