

ORDINANCE NO. _____, SERIES 2024

AN ORDINANCE AMENDING SECTIONS 1.2.2 AND 4.3.26 AND CREATING SECTION 4.4.13 OF THE LOUISVILLE METRO LAND DEVELOPMENT CODE (“LDC”) AND AMENDING SECTION 90.11 OF THE LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) REGARDING SMOKING RETAIL STORES (CASE NO. 23-LDC-0002).

SPONSORED BY: COUNCIL MEMBER MADONNA FLOOD

WHEREAS, the Louisville Metro Planning Commission (“Planning Commission”) adopted a resolution on July 20, 2023 requesting that Planning and Design Services (“PDS”) research the regulations related to smoking retail stores and provide recommendations to improve the existing requirements in the LDC; and

WHEREAS, PDS staff worked with the Louisville Metro Department of Health and Wellness to develop an amendment to the LDC as well as related amendments to the LMCO; and

WHEREAS, the Planning Committee of the Planning Commission reviewed PDS’s proposed amendments on February 28, 2024 and unanimously voted to send them to the full Planning Commission for a public hearing; and

WHEREAS, the Planning Commission held a public hearing on those amendments on May 30, 2024; and

WHEREAS, the Planning Commission considered the record and testimony relative to those amendments and recommended the approval of such amendments to the Legislative Council of the Louisville/Jefferson County Metro Government (“Council”); and

WHEREAS, the Council approves and accepts the recommendation of the Planning Commission, as set forth in the minutes of the Planning Commission in Case

No. 23-LDC-0002, and the proposed amendments to the LMCO as set forth in the staff report in the records of the Planning Commission in Case No. 23-LDC-0002.

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

SECTION I: Chapter 1 of the LDC, Section 1.2.2 – Definitions is hereby amended to amend and to add the following definitions:

. . . .

Smoking Retail Store Products – this term includes any merchandise, good, or product further defined as a tobacco, tobacco product, or electronic smoking device as well as any product containing a cannabinoid derived from a cannabis plant or kratom sold alongside any tobacco, tobacco product, and/or electronic smoking devices at a business. Any merchandise or product that is not lawful for sale by state law is not permitted under this definition.

Smoking Retail Store – a store that primarily sells tobacco, tobacco products, ~~and/or~~ electronic smoking devices and/or other smoking retail store products. For the purposes of this definition primarily means that either store devotes 10 percent or more of floor area of the retail space and/or derives 51 percent or more of gross sales receipts from the sale of tobacco, tobacco products, ~~and/or~~ electronic smoking devices and/or other smoking retail store products.

. . . .

SECTION II: Chapter 4 of the LDC, Part 3, Section 26 – Smoking Retail Store, is hereby amended as follows:

4.3.26 Smoking Retail Store

In the C-1 C-2, C-3, C-M, EZ-1, ~~and~~ PEC, ~~and~~ M-1, M-2, and M-3 zoning districts, Smoking Retail Stores may be permitted in accordance with the following special standards:

- A. No Smoking Retail Store shall be located within one thousand (1,000) feet of the boundary of any parcel occupied by any of the following uses (as measured in a straight line from parcel boundary to parcel boundary):
 - 1. Public or private early childhood, elementary, middle or high school
 - 2. Park
 - 3. Public playground

4. Recreation (Use), Outdoor
5. Public Community Center
6. ~~Child or Adult~~Care Center
7. Athletic Facility, Indoor and Outdoor
8. Public Libraries~~Library~~
9. Religious Buildings

This separation requirement is eligible for a waiver in M-1, M-2, and M-3 in accordance with Chapter 11, Part 8 of the LDC. A waiver or other relief to this requirement is prohibited in the other listed zoning districts.

As this land use is permitted with special standards, an advance approval by the Office of Planning is not formally required by this Land Development Code. The burden is on the property owner/business operator to determine compliance with these separation requirements prior to investment in the site and/or operation. The Planning Director, or designee, may review for compliance with this separation requirement as part of a zoning confirmation, rezoning, or development plan review as well as during the review of any license required outside of this Land Development Code. The Director or designee shall utilize the best available data to verify and confirm compliance.

In order to be nonconforming to this requirement, a Smoking Retail Store must have been lawfully in operation on the effective date of the initial regulation for such use (November 3, 2020) and continuously in operation to date. If a Smoking Retail Store is established and one of these uses is established thereafter, the use shall become a nonconforming use at that time and subject to the provisions related to such uses, including but not limited to those restricting expansion and pertaining to abandonment.

- B. No Smoking Retail Store shall be located within six hundred (600) feet of a site occupied by another Smoking Retail Store, as measured in a straight line from parcel boundary to parcel boundary. This separation requirement is eligible for a waiver in accordance with Chapter 11, Part 8 of the LDC.
- C. The hours of operation for a Smoking Retail Store shall be no earlier than six (6) A.M. and no later than ten (10) P.M., seven (7) days a week. The hours of operation requirement is eligible for a waiver in accordance with Chapter 11, Part 8 of ~~the LDC~~this Land Development Code.
- D. The operator shall maintain any retail license required for tobacco sales as provided for in the Louisville Metro Code of Ordinances. Any required license shall be in good standing and if not the sales of products regulated by the license are prohibited.

SECTION III: Chapter 4 of the LDC, Part 4, Accessory Uses and Miscellaneous

Standards is hereby amended to include the following new section:

4.4.13 Accessory Sales of Smoking Retail Store Products at a Business Not Classified as a Smoking Retail Store

Any use that meets the definition of Smoking Retail Store shall be regulated as such in Section 4.3.26 of this Land Development Code. If a use does not meet the definition of Smoking Retail Store, accessory sales of Smoking Retail Store Products may be permitted subject to the following standards:

- A. The principal use shall be a permitted use in the subject zoning district that allows for retail sales.
- B. The principal use shall be a use that involves the retail sale of merchandise that is dominate to that of Smoking Retail Products. It shall be a use in which it is customary to include the retail sale of Smoking Retail Products, such as a Convenience Grocery, Convenience Store, Drug Store, Grocery Store or Package Liquor Store.
- C. Signage should not identify the business as a Smoking Retail Store.
- D. The use shall not exceed the floor area threshold as provided for in the definition of Smoking Retail Store. A Smoking Retail Store devotes 10 percent or more of floor area of its retail space to the sale of Tobacco, Tobacco Products, Electronic Smoking Devices, and/or other Smoking Retail Products. For accessory sales to be permitted, the total retail floor area dedicated for the display and/or sale of such merchandise shall be less than 10 percent. Retail space means the floor area of a building used for the display or sale of goods, including walkways and open spaces associated with such display, but does not include floor areas separate from the retail space used for closed offices, restrooms, concealed storage, food preparation, and/or other areas generally inaccessible to customers. In addition to including the area of displays devoted to such products, the measurement shall include any adjacent walkway or open space allowing view or access to such product.
- E. The use shall not exceed the sales threshold as provided for in the definition of Smoking Retail Store. A Smoking Retail Store derives 51 percent or more of gross sales receipts from the sale of Tobacco, Tobacco Products, Electronic Smoking Devices and/or other Smoking Retail Store Products. For accessory sales to be permitted, the gross sales receipts from the sale of such merchandise shall be less than 51 percent. In the event of a reasonable suspicion of a potential violation, the business shall assist a code enforcement officer to determine compliance by providing documentation related to sales.

SECTION IV: Section 90.11 of the LMCO is hereby amended as follows:

§90.11 RETAIL LICENSE REQUIRED FOR SALE OF TOBACCO, TOBACCO PRODUCTS AND/OR SMOKING ELECTRONIC DEVICES.

- (A) No person, firm or corporation shall operate or be permitted to operate as a retailer selling tobacco, tobacco products and/or electronic smoking devices in or on any premises within Jefferson County unless an annual license for the retailer has been applied for and issued by the Director of the Louisville Metro Health Department for the retailer and the license is in effect in conformity with the provisions of this subchapter.
- (B) All license fees shall be issued pursuant to KRS 137.115 and made payable to the County Clerk's Office and shall be credited to the general fund of the Louisville/Jefferson County Metro Government and used for Metro Government purposes only. The County Clerk shall receive a 5% commission fee for collection and accounting of said fees.
- (C) Any license issued under this subchapter shall be valid from the date of issuance until the next occurring January 1st, unless the license has been suspended or revoked.
- (D) A license for a retailer may not be transferred from one person to another or from one location to another. A new license is required whenever a retailer has a change in ownership.
- (E) Each retailer licensed under this subchapter shall post the license in a conspicuous place within the facility.
- (F) Any license under this section may be denied, suspended, or revoked by the Director of Louisville Metro Public Health for one or more of the following reasons:
 - (1) The applicant or licensee has failed to comply with one or more provisions of this chapter or violated any local, state, or federal law pertaining to distribution or sale of tobacco, tobacco products, and/or electronic smoking devices. Local law includes any violations of Metro Code as well as any related to the Land Development Code.
 - (2) Fraud, misrepresentation, or bribery in securing or renewing a license.
 - (3) The Louisville Metro Department of Public Health and Wellness will have discretion to investigate any information provided in each application. The Louisville Department of Public Health and Wellness will perform random compliance checks annually, during normal business hours, or as deemed appropriate by the Louisville Department of Public Health and Wellness.

Violations found through compliance checks should be rechecked no earlier than one month and within three months, or as soon as practicable.

- (4) The Director may refuse to issue or renew the license until all outstanding fines and liens that have been assessed by Louisville Metro Government against the subject property are paid in full.
- (5) If the property is subject to two or more substantiated civil and/or criminal complaints or the business is found to have twice violated or failed to comply with any applicable provision of 90.11 with respect to a given property within a 12-month period, the Director may opt to not issue a new license or revoke a license. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft, and criminal mischief.
- (G) An applicant or licensee may appeal or challenge a suspension, revocation or denial of a license pursuant to §§ 32.275 et seq.
- (H) The business shall self-report any violations to the Department within 30 days of the notice of violation or citation. Failure to self-report may be considered an additional violation under this subsection.

SECTION V: 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: _____

O-129-24 Amend LDC 1.2.2 and 4.3.26 and Create Section 4.4.13 and Amend LMCO 90.11 Re Smoking Retail Stores - 5-30-24 (lf)