

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). (AS AMENDED)

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 Commonwealth of Kentucky has promulgated emergency regulations effective April 24, 2024, for retailers selling cannabinoid products; including a requirement that all locations of retailers of adult-use cannabinoid products be (i)

permitted by the Cabinet for Health and Family Services, and (ii) shall not be located within 1,000 feet of an elementary, middle, or high school, exempting only those retail establishments registered with the Department for Public Health prior to April 27, 2024 from that separation requirement; and

WHEREAS, the Commonwealth of Kentucky, effective July 15, 2024, enacted legislation regulating kratom, including the retail sale of kratom products and kratom extracts; and

WHEREAS, smoking retail products are demonstrably dangerous to the health and safety, especially to minors, and the Council has a significant interest in addressing any potential adverse secondary effects on neighborhoods, which may result in significant irreversible change to the neighborhood and community character.

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, as amended.

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:

Adult-use cannabinoid – shall have the same meaning as in 902 KAR 45:021E, Section 1(4)(a), as the same may be amended from time to time.

Cannabinoid – means a compound found in the hemp plant Cannabis sativa L from a United States Department of Agriculture sanctioned domestic hemp production program and does not include cannabinoids derived from any other substance.

Kratom – means any part of the plant *Mitragyna speciosa*

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, unless the Smoking Retail Store is selling adult-use cannabinoid products and was not registered with the Department for Public Health prior to April 27, 2024, in which case, the separation requirement from a public or private early childhood, elementary, middle or high school is required by KRS and is not subject to relief. 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 establish that it ~~has~~ 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 listed in (A)(1)-(9), above, is established thereafter, the Smoking Retail Store use shall become a nonconforming use at that time and subject to the provisions related to such nonconforming uses, including but not limited to those restricting expansion and pertaining to abandonment.

- B. No Smoking Retail Store shall be located within one thousand (1,000)~~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) nine (9) A.M. and no later than ten (10) eight (8) 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, unless the Smoking Retail Store is located within one thousand (1,000 feet) of (i) any of the uses listed in (A)(1)-(9) or (ii) residentially used or zoned property, in which case, the hours of operation requirement is not subject to relief.

- 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.
- E. One sign only may be permitted showing the name and address of the Smoking Retail Store. An attached sign shall not exceed 30 square feet in area, shall be attached flat to the face of the building, and shall not project more than 18 inches from the face of the building. A free-standing sign shall not exceed 20 square feet in area per side, shall not have more than two sides, and shall not exceed a height of six feet. Either an attached sign or a free-standing sign may be permitted, but not both. No sign shall project into any required yard. The sign may be illuminated but non-flashing. A sign indicating "No person under the age of eighteen is allowed to purchase tobacco, tobacco products or electronic smoking devices" must be posted at the front of the business so as to be visible from the exterior of the business and readable from a distance of 20 feet, as well as in the interior lobby area. These requirements may not be waived. In addition, signage must also comply with LMCO 155.

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 dominant 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 shall ~~should~~ not identify the business as a Smoking Retail Store. Signage shall also comply with LMCO 155 and Chapter 8 of this Land Development Code. A sign indicating "No person under the age of eighteen is allowed to purchase tobacco, tobacco products or electronic smoking devices" must be posted at the front of the business so as to

be visible from the exterior of the business and readable from a distance of 20 feet, as well as in the interior lobby area.

- 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 of 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, with such documentation to consist of records that a retailer is normally required by the Kentucky Department of Revenue to maintain as adequate and complete records under Kentucky law. If the business refuses to assist the code enforcement officer, or the code enforcement officer cannot determine compliance because the records provided are inadequate and incomplete, it shall be a rebuttable presumption that the gross sales receipts from the sale of such merchandise is equal to or greater than 51 percent.

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 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 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. 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~~ shall refuse to issue or renew the license until all (i) outstanding fines and liens that have been assessed by Louisville Metro Government against the subject property and (ii) delinquent taxes due to Louisville Metro Government 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~~ shall not issue a new license ~~or~~ and shall revoke an existing 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~~shall be considered an additional violation under this subsection.
- (I) An application, whether it be for a new or renewal license, shall be reviewed under the current provisions of 90.11.

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 (as amended) 7-29-24 (lf)