

PLANNING COMMISSION MINUTES
May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

Request:	Land Development Code Amendment
Project Name:	Smoking Retail Store
Jurisdiction:	Louisville Metro/Jefferson County
Council District:	All Districts
Case Manager:	Joseph Haberman, Planning & Design Manager

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Office of Planning offices, 444 S. 5th Street.)

Agency Testimony:

Joe Haberman provided an overview of the amendments to the regulations related to smoking retail stores and provided recommendations to improve the existing requirements. Haberman responded to questions from the commissioners (see recording for details).

An audio/visual recording of the Planning Commission hearing related to this case is available on the Office of Planning website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution, based on the staff analysis contained in the standard of review in the staff report and evidence and testimony heard today, was adopted:

WHEREAS, Louisville Metro's current comprehensive plan, known as Plan 2040, became effective on January 1, 2019, and

WHEREAS, Plan 2040 sets a framework for growth by using five guiding principles – Connected, Healthy, Authentic, Sustainable, and Equitable (CHASE) – to strategically manage all the benefits and challenges that come from adding more people, and

WHEREAS, Plan 2040 includes a Livability Element that provides guidance and direction for the provision and maintenance of the resources necessary for the health and well-being of citizens. This includes a focus on public health, promoting access to fresh food and health care, as well as designing places for health and safety, and

WHEREAS, Livability Goal 2 of Plan 2040 is to ensure equitable health and safety outcomes for all, and

PLANNING COMMISSION MINUTES

May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

WHEREAS, Community Form Goal 1, Policy 16 of Plan 2040 in part states: consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected; and

WHEREAS, Community Form Goal 2, Policy 2 of Plan 2040 states: Encourage development of non-residential and mixed uses in designated activity centers provided proposed uses, density and design are compatible with adjacent uses and meets Form District guidelines; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council and legislative bodies of cities with zoning authority **APPROVE** the amendments to the Land Development Code (LDC) concerning Smoking Retail Stores as follows:

1.2.2 Definitions

For the purposes of Chapters 1 through 11 the following terms, phrases, words and their derivations shall have the meaning contained herein, except where the context clearly requires otherwise.

Athletic Facility, Indoor and Outdoor – A place designed and equipped primarily for observation and/or training of sports, including but not limited to a sports field, basketball or tennis court, stadium, or arena. Accessory facilities include, but are not limited to, equipment storage facilities, spectator seating, refreshment stands, restrooms, locker rooms and parking. The term does not include paint ball ranges or animal racetracks.

Child Care Center – Child care for any size group of children.

Community Center - A facility that is available for public use as a meeting place or for recreation that does not limit access only to members and does not charge membership dues.

PLANNING COMMISSION MINUTES

May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

Electronic Smoking Device - Any product containing or delivering nicotine, or any other substance intended for human consumption that can be used by a person in any manner or in any form for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, ecigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. Electronic Smoking Device also includes any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of an electronic smoking device.

Park – A relatively large open space available for recreation and usually located at the edge of a development, neighborhood or village. It may be surrounded by roadways, the fronts of buildings, or the side or rear of publicly or privately owned lots. It is usually partially enfronted by buildings and has a landscape which may consist of natural areas, paved paths and trails, some open lawn, trees, recreational facilities and open shelters, and requires substantial maintenance.

Playground - A relatively small open space containing play equipment and areas for active recreation.

Recreation (Use), Outdoor - Any premises (whether public or private) where the principal use is the provision of outdoor amusements, sports, games, athletic facilities, or other outdoor recreational facilities and/ or services except golf courses.

Religious Building - Any building and the grounds of a building used by an association of persons for religious worship and associated buildings and grounds used for instruction regarding the tradition and tenets of a religious faith or for offices of persons engaged in the faith based activities of the religion or for social and recreational purposes or child care centers, or as a meeting hall. Such buildings and grounds may not also be used for retail sales or other merchandising purposes, except that such buildings and grounds may be used for religious bazaars and suppers. No such building or portion of a building may be used primarily as a commercial theater, except that occasional plays or pageants for which a price of admission is charged may be held. Churches, synagogues, temples and mosques are considered religious buildings for purposes of this Land Development Code.

School – A facility used for education or instruction in any branch of knowledge, and including the following: elementary, middle and high schools, whether public or private;

PLANNING COMMISSION MINUTES

May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

colleges, community colleges and universities; vocational and professional schools giving instruction in vocational, professional, technical, industrial, musical, dancing, dramatic, artistic, linguistic, scientific, religious or other special subjects. This term does not include child care centers if separate from elementary schools.

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 that can be legally sold at a business not licensed as a medical cannabis dispensary.

Smoking Retail Store – A store that primarily sells tobacco, tobacco products, 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, electronic smoking devices, and/or other Smoking Retail Store Products.

Tobacco or Tobacco Products – Any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth. The definition of Tobacco Products also includes Tobacco Paraphernalia. Tobacco or tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Tobacco Paraphernalia – Cigarette paper or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products or any product containing or delivering nicotine or any other substance intended for human consumption. Tobacco Paraphernalia also includes an fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of Tobacco Paraphernalia.

4.3.26 Smoking Retail Store

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

PLANNING COMMISSION MINUTES
May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

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 Care Center
7. Athletic Facility, Indoor and Outdoor
8. Public Library
9. Religious Buildings

This separation requirement is eligible for a waiver in EZ-1, PEC, 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 C-1, C-2, C-3, and C-M.

As this land use is permitted with special standards, an advanced 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 their 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 local license application. 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 one of the listed uses is established within 1,000 feet of an existing, lawfully established Smoking Retail Store, the Smoking Retail Store 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. This hours of operation

PLANNING COMMISSION MINUTES

May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

requirement is eligible for waiver in accordance with Chapter 11, Part 8 of this Land Development Code.

- D. The operator shall maintain any Retail License required for tobacco sales as provided for in 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.

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 or services that is dominate to that of Smoking Retail Products. It shall be a use in which is it is customary to include the retail sale of Smoking Retail Products, including but not limited to 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 Store 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.

PLANNING COMMISSION MINUTES

May 30, 2024

PUBLIC HEARING

CASE NO. 24-LDC-0002

- 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.

The vote was as follows:

YES: Commissioners Carlson, Mims, Kern, Fischer, Cheek and Sistrunk

ABSENT: Commissioner Howard