

Planning Commission

Staff Report

May 22, 2024



Case No:	23-LDC-0002
Project Name:	Smoking Retail Store Ordinance Amendments
Location:	n/a
Applicant:	n/a
Jurisdiction:	Louisville Metro
Council District:	All Council Districts
Case Manager:	Joseph Haberman, AICP, Planning & Design Manager

REQUEST

- An amendment to the Land Development Code (LDC) concerning Smoking Retail Stores.

SUMMARY/BACKGROUND

On July 20, 2023, the Planning Commission passed a resolution directing Office of Planning staff to review the regulations related to smoking retail stores and provide recommendations to improve the existing requirements. Staff worked with the Louisville Metro Department of Health and Wellness to develop amendments to the LDC as well as related amendments to the Louisville Metro Codes of Ordinances (LMCO).

A smoking retail store is currently defined as a store that primarily sells tobacco, tobacco products, and/or electronic smoking devices. For the purposes of this definition, primarily means that the store a) devotes 10% or more of its the retail floor area to such products and/or b) derives 51% or more of its gross sales receipts from the sale of such products.

The ordinance introducing the specific smoking retail store use in the LDC became effective on November 3, 2020. Except for the Cities of St. Matthews and Middletown, not all of the cities with zoning authority have not adopted specific LDC regulations related to smoking retail stores. St. Matthews and Middletown adopted local regulations in their LDCs that are modeled after but differ from that in the Louisville Metro LDC.

In addition to the provisions in the LDC, there is a license requirement in the LMCO that applies to all businesses that sell tobacco products (some of which may not be classified as smoking retail stores).

The proposed amendments were reviewed by the Planning Commission's Planning Committee on February 23, 2024.

Currently, the Louisville Metro LDC:

- Provides a definition of smoking retail store that distinguishes the use from other uses
- Identifies appropriate locations and levels of approval:
 - Permitted with special standards in C-1, C-2, C-3, C-M, EZ-1, and PEC

- Not permitted in any residential, office residential, or industrial zoning district
- Not permitted in some commercial zoning districts (including C-N and C-R)
- Not permitted in some special purpose/planned zoning districts (including but not limited to PRO, W-1, W-2, W-3, and TNZD)
- Requires at least a 1,000' separation between a smoking retail store and certain uses including a public or private early childhood, elementary, middle, or high schools; parks; public playgrounds; outdoor recreation uses; community centers; child or adult care centers; athletic facilities; libraries; and religious buildings (may not be waived)
- Requires at least a 600' separation between a new smoking retail store and an existing smoking store (may be waived)
- Limits hours of operation to between 6 A.M. and 10 P.M. (may be waived)
- Provides penalties for non-compliance with the LDC provisions (the same as those that apply to all violations of the LDC)

While a formal zoning approval is not required by the LDC for a by right use, uses are reviewed for compliance as part of a tobacco license.

Legislative History of Smoking Retail Store Regulations:

- October 31, 2019: The Planning Commission passed a resolution requesting that staff research and propose amendments to the LDC related to tobacco businesses.
- October 22, 2020: Metro Council passed an ordinance amending the requirements related to retailers selling tobacco, tobacco products, and/or electronic smoking devices in LMCO Chapter 90 (Ordinance #129, 2020, effective April 1, 2021).
- October 22, 2020: Metro Council passed the initial ordinance specifically regulating smoking retail store uses in the LDC to provide the appropriate locations, approval processes, and standards (Ordinance #130, 2020, effective November 3, 2020).
- April 27, 2021: St. Matthews adopted an ordinance establishing LDC regulations for smoking retail stores in the city (Ordinance #21-03, effective April 27, 2021)
- November 11, 2021: Middletown adopted an ordinance establishing LDC regulations for smoking retail stores in the city (Ordinance #08-12-21-B, effective November 11, 2021)
- July 20, 2023: The Planning Commission passed a resolution directing staff to review the regulations related to smoking retail stores and provide recommendations to improve the existing requirements.

STAFF ANALYSIS

The existing requirements were adopted in order to better safeguard vulnerable populations such as children from businesses that primarily sell tobacco products. The separation requirements limit such businesses from overconcentrating in an area and keep retailers at a suitable distance from other uses in which vulnerable populations may congregate.

After a review of the regulations and associated processes that have been in effect since 2020, there are ways to improve the provisions to better protect public health. The draft recommendations attached to this report continue to allow smoking retail stores in commercial areas and restrict concentration through the separation requirements. The changes would also allow the use in industrial areas which tend to be more isolated from the other uses in which the separation requirements apply. In addition, the recommendations amend the definition of smoking retail store to include other products that are commonly sold with tobacco products and may present a similar adverse impact on public health. Finally, the recommendations include revisions

that will help staff better administer the regulations, including providing better direction on how to measure floor area affected by the provisions, amending the separated uses to include only uses in which there is geographic data available, and placing some burden on applicants to determine compliance in advance.

As of the date of this report, 1,311 tobacco retail license applications have been submitted and reviewed for compliance with the smoking retail store provisions. As a note, not all of the businesses exceeded the floor area or sales thresholds and were not classified as smoking retail stores.

Staff is recommending the following changes to the LDC:

- Expand the definition of “Smoking Retail Store Products” to include other products that are customarily sold at smoke/vape shops but do not contain tobacco and are a public health concern (i.e. products containing CBD).
- Continue to allow in C-1, C-2, C-3, C-M, EZ-1, and PEC upon adherence with the special standards.
- Further allow in M-1, M-2, and M-3 upon adherence with the special standards, which may encourage businesses to locate in industrial areas that tend to be more isolated from the vulnerable populations.
- Maintain the 1,000’ separation requirement from the uses that can be adversely affected by smoking retail stores and are thereby incompatible. The 1,000’ distance is based on a similar provision in the United State Controlled Substance Act and in KRS 218A. In addition, 1000’ is a commonly used distance requirement for separation in zoning requirements, including other provisions in the LDC related to blood/plasma collection centers, heavy truck off-street parking/storage, and group housing.
- Continue to not allow a waiver to the 1,000’ separation requirement in C-1, C-2, C-3, and C-M, but allow a waiver on a case by case basis in an industrial zoning district (EZ-1, PEC, M-1, M-2, or M-3) in accordance with Chapter 11, Part 8 of the LDC.
- Maintain the 600’ separation requirement from other smoking retail uses to deter overconcentration in a given area. The 600’ distance is based on a provision in the LDC related to short term rentals and is generally the length of an urban block (a similar 500’ is used for other uses, including adult entertainment activities).
- Add “Public” to “Community Center” and “Library” in the separated use list (currently there is not any available GIS data on private community centers and libraries, making this provision very difficult to determine compliance).
- Remove Adult Care Centers in the separated use list, which may have been inadvertently added with Child Care Centers and in which there is nominal GIS data available.
- Place some responsibility on applicants to research and determine compliance with the separation requirements prior to investment in the site and/or operation.
- Affirm that smoking retail stores established prior to November 3, 2020 may have nonconforming rights if the use has continuously existed and that such nonconforming smoking retail store uses cannot expand.
- Affirm that a Retail License is required for tobacco sales.
- Add a new set of standards related to the accessory sales smoking retail store products at a business not classified as a smoking retail store.

In addition, the following LMCO changes are currently recommended by staff (for informational purposes only, no Planning Commission action required):

- Add a violation of “local” law as grounds to deny, suspend, or revoke a license.
- Require payment of all outstanding fines and lines prior to issuance of a license.
- Allow for revocation of a license after two substantiated complaints.
- Require a business to self-report any violations within 30 days of the notice of violation or citation.

Other administrative improvements may include the following (for informational purposes only, no Planning Commission action required):

- Create an interactive map that can be used by the public to determine eligibility (staff has been already began work with Metro GIS on this initiative).
- Establish a webpage that informs prospective applicants and the public of the requirements.
- Improve the Accela license review process by requiring better information as part of an application, including higher quality floor plans and statements of compliance with the separation requirements.

INTERESTED PARTY COMMENTS

No formal interested party comments have been submitted as of the date of this report related to the specific amendments. However, staff has discussed the ordinance with several members of the public since 2020. This feedback has influenced many of the suggestions.

ATTACHMENTS

None.

PROPOSED AMENDMENTS

The Planning Commission must make a recommendation to Metro Council and the legislative bodies of cities with zoning authority to approve, approve with modifications, or deny the LDC text amendments. This section shows specific amendments to the Louisville Metro version of the LDC. The cities with zoning authority in Louisville Metro have different versions. If any of the cities consider incorporating the amendments into its LDC, staff will assist the city in preparing specific amendments that reflect the nature of the changes recommended in this report.

Related amendments to the Louisville Metro Code of Ordinances are also presented in this report. The Planning Commission’s recommendation is not required by law for changes to Metro Code.

PROPOSED FINDINGS

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

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;

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;

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

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.

LOUISVILLE METRO LAND DEVELOPMENT CODE

The following changes are staff recommendations and preliminary. They are subject to change upon public input and further review. To be effective, any changes must be approved by Metro Council.

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.

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; 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, ~~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.

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, ~~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 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 requirement is eligible for 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 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.
- 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.

Related recommendations to improve the LMCO provisions are included so that they can be reviewed by the Planning Commission if desired.

LOUISVILLE METRO CODE OF ORDINANCES

§ 90.01 POLICY.

In order to serve the public health, safety and general welfare, it is the declared purpose of this chapter to prohibit smoking in all buildings open to the public and other establishments where employees work on the premises, to protect against the dangers associated with youth addiction to tobacco products, and to safeguard against the urgent public health epidemic associated with e-cigarette products.

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If an establishment leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest.

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, e-cigar, 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.

ELECTRONIC SMOKING RETAIL STORE. A business operation with at least 85% of sales dedicated to the sale of electronic smoking devices, accessories, and/or products. To meet the definition, the **ELECTRONIC SMOKING RETAIL STORE** shall not allow any minors in the building, sell alcoholic beverages (under LMCO Chapter 113), be licensed as a Food Service Establishment (under LMCO Chapter 118), or have an entrance that opens to a common area with other retail establishments.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

EXTENDED STAY LODGING. Accommodations for persons away from their permanent place of residence, which are available on at least a 30 day basis and may include kitchen facilities. This term does not include hotel, motels, inns, bed and breakfasts, short term rentals, boarding and lodging houses, nursing homes or assisted living residences, wherein a unit could be rented or leased for less than a 30 day period.

HERBAL SHISHA. A non-tobacco product, which its primary intended use by the producer, manufacturer or seller of such product, is to be smoked in a waterpipe, which may be commonly referred to or known as a hookah, narghile or shisha.

HOKKAH. Any water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, herbal shisha, or other plant matter.

HOOKAH LOUNGES. A business operation primarily dedicated to the allowance of on-site smoking through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known as hookah bars. To meet the definition, the lounge must have been in operation as of May 1, 2017 and shall not allow any minors in the building, sell alcoholic beverages (under LMCO Chapter 113), or be licensed as a Food Service Establishment (under LMCO Chapter 118).

MINOR. A natural person who is under 18 years of age.

RETAILER. Any person, firm, partnership or corporation engaged in the business of buying, selling or merchandising products and/or services for profit. Retailer does not mean the non-management employees of any retail establishment.

SMOKE or SMOKING. The act of inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or form. Smoking also includes the use of an electronic smoking device or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in the chapter.

TOBACCO BUSINESS. Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For purposes of this chapter, a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products.

TOBACCO OR TOBACCO PRODUCTS. Any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and 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 papers 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 any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of tobacco paraphernalia.

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

§ 90.98 SEVERABILITY.

If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

§ 90.99 VIOLATIONS AND PENALTIES.

(A) Except as otherwise provided in subsections (B) and (F) hereof, any violation of this chapter, including a person who smokes in an area where smoking is prohibited, shall be classified as a civil offense and shall be enforced through the Code Enforcement Board ("Board") as provided in §§ 32.275 et seq., or as it may be amended. The civil penalties for violations of §§ 90.01 through 90.09 are as follows:

- (1) A penalty of no less than \$50 nor more than \$100 for the first offense within a one-year period;
- (2) A penalty of no less than \$150 nor more than \$250 for the second offense within a one-year period; and
- (3) A penalty of no less than \$350 nor more than \$500 for the third and each subsequent offense within a one-year period.
- (4) Any person cited for violation of this chapter as provided in subsection (A) hereof may pay the minimum civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Board in accordance with §§ 32.275 et seq. If the person fails to respond to the citation within seven days as referenced above, the person shall be deemed to have waived the right to a hearing, and the determination that a violation was committed shall be considered final. In this event, the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to Jefferson District Court.

(B) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked.

(C) All violations discovered upon a single inspection by the Louisville Metro Health Department or in the instant presence of a peace officer shall constitute a single offense for purposes of the issuance of a citation under this chapter to an owner, operator, or employee of a building or an establishment, or a smoker therein, as the case may be.

(D) The civil penalty for a violation of § 90.10(A) is as follows:

- (1) A penalty of no less than \$50 for the first offense within a one-year period;
- (2) A penalty of no less than \$100 for the second offense within a one-year period;
- (3) A penalty of no less than \$250 for the third and each subsequent offense within a one-year period.

(E) The civil penalty for a violation of § 90.10(B) is as follows:

- (1) A penalty of no less than \$500 for each offense.

(F) An appeal from a final order of a Code Enforcement Board or assigned hearing officer following a hearing conducted pursuant to § 32.284(E) may be made to the Jefferson District Court within 30 days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure. The Jefferson District Court shall review the final order de novo. If no appeal from a final order following a hearing is filed within the time period set in this section, the order shall be deemed final for all purposes.

(G) The civil penalty for a violation of § 90.11 is a penalty of no less than \$100 and no more than \$500 for each offense.