

Planning Commission

Staff Report

August 20, 2020



Case No:	20-LDC-0003
Project Name:	Smoking Retail Store Amendment
Applicant:	Louisville Metro
Jurisdiction:	All Jurisdictions
Council District:	All Council Districts
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST

Amend Section 1.2.2 (Definitions) and Chapter 4, Part 3 (Permitted Use with Standards) of the Land Development Code (LDC) to add land use provisions for Smoking Retail Stores.

SUMMARY/BACKGROUND

The Planning Commission adopted a resolution (attachment 1) on October 31, 2019 requesting that Planning and Design Services staff to research and propose amendments to the LDC related to tobacco businesses and electronic smoking retail stores. Staff worked with staff from the Louisville Metro Department of Health and Wellness to develop an amendment to the LDC (attachment 2). This proposed amendment to the LDC is related to a proposed amendment to Chapter 90 of the Louisville Metro Code of Ordinances (LMCO). That ordinance creates a definition for Smoking Retail Store which is referenced within this LDC text amendment. This LDC text amendment creates it's own definition of Smoking Retail Store which is based on the LMCO Chapter 90 amendment. In addition to the definition, the LDC text amendment created LDC Section 4.3.24, which makes a Smoking Retail Store a permitted use with standards. The standards proposed in LDC Section 4.3.24 relate to zoning districts where the use is permitted, proximity of the use to certain uses such as schools, proximity to another Smoking Retail Store, and hours of operation.

PLANNING COMMITTEE MEETING

This LDC Text amendment went to the Planning Committee on May 15, 2020. The Committee unanimously voted to send this text amendment on to the Planning Commission for a public hearing.

STAFF ANALYSIS

As described in the summary/background, this LDC Text Amendment would create the Smoking Retail Store use and add it to the LDC as a permitted use with standards. The definition proposed for Smoking Retail Store references the proposed definition from the Chapter 90 LMCO amendment proposal, that definition states,

SMOKING RETAIL STORE. A business operation with at least 51% of sales dedicated to the sale of tobacco, tobacco products and/or electronic smoking devices. To meet the definition, the 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.

The standards associated with this use are the zoning districts in which the use is permitted, in this case the C-1, C-2, C-3, C-M, EZ-1, and PEC zoning districts. The standards associated with this use are associated with proximity (1,000 feet) to specific uses such as day cares, parks, schools, etc. The 1,000-foot requirement is based on the United State Controlled Substance Act and a similar provision at the state level (KRS 218A) as well as research on similar provisions in other communities.

In addition, there is a proximity requirement (600 feet) to other Smoking Retail Stores. This 600-foot requirement was based on a similar provision within the short term rental regulations as well as research on similar provisions in other communities.

Lastly, hours of operations are proposed based on similar provisions in other communities.

APPLICABLE PLANS AND POLICIES

This amendment to the LDC text is consistent with the following policies of Plan 2040:

Livability Element of Plan 2040

Plan 2040 Livability Goal 2 – Ensure equitable health and safety outcomes for all

NOTIFICATION

Notification of the Planning Commission public hearing was conducted in accordance with KRS 100 requirements. In addition, staff provided notice to those registered neighborhood groups and individuals on the list for electronic notification for development proposals.

STAFF CONCLUSIONS

The proposed amendment, as set forth in a Resolution (Attachment 2); staff recommends that the Planning Commission approve this resolution and forward it to the Louisville Metro Council and all other jurisdictions with zoning authority within Jefferson County.

ATTACHMENTS

1. Planning Commission Resolution – Dated October 31, 2019
2. Planning Commission Resolution 20-LDC-0003

PLANNING COMMISSION MINUTES
October 31, 2019

BUSINESS SESSION
10.31.19 RESOLUTION

Request: Resolution to Research Land Uses that Include Tobacco Businesses and Electronic Smoking Retail Stores and Propose Amendments to the Land Development Code Related to the Zoning and Location of These Uses

Project Name: Tobacco Businesses and Electronic Smoking Retail Stores Resolution

Location: Louisville Metro

Applicant: Louisville Metro Planning Commission

Jurisdiction: Louisville Metro

Council District: All Council Districts

Case Manager: Joseph Haberman, AICP, Planning 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 Planning and Design Services offices, 444 S. 5th Street.)

Discussion

00:13:55 Mr. Haberman stated he worked with some members of Metro Council and the Office of Public Health and Wellness to prepare this resolution. If adopted, staff will be directed to research land uses that include tobacco businesses and electronic smoking retail stores.

00:16:35 Councilman Brandon Coan (District 8) said he supports this request. There is a concern about the vaping devices, specifically the public health hazards. It will apply to vaping and smoking businesses.

00:19:50 Mr. Carroll asked if the study will include marijuana or CBD uses. Mr. Haberman said yes, if directed by the Planning Commission. CBD can be looked at but marijuana is illegal at this time.

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

On a motion by Commissioner Tomes, seconded by Commissioner Howard, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **ADOPT** a resolution to research land uses that include tobacco businesses and electronic smoking retail stores and propose amendments to the Land Development Code related to the zoning and location of these uses.

PLANNING COMMISSION MINUTES
October 31, 2019

BUSINESS SESSION
10.31.19 RESOLUTION

The vote was as follows:

**YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Peterson, Tomes
and Jarboe**

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION RESOLUTION NO. 20-LDC-0003

A RESOLUTION BY THE PLANNING COMMISSION RECOMMENDING APPROVAL OF LAND DEVELOPMENT CODE TEXT AMENDMENTS TO SECTION 1.2.2 AND CHAPTER 4, PART 3 TO THE LOUISVILLE METRO COUNCIL AND OTHER JURISDICTIONS WITH ZONING AUTHORITY.

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), smoking is the leading cause of preventable death in the U.S.;

WHEREAS, approximately 480,000 people die in the U.S. from smoking-related diseases and exposure to secondhand smoke every year;

WHEREAS, according to the CDC, if cigarette smoking continues at the current rate among youth in the U.S., 5.6 million of today's Americans younger than 18 will die early from a smoking-related illness. That's about 1 of every 13 Americans aged 17 years or younger who are alive today;

WHEREAS, according to the CDC, electronic smoking devices (e-cigarettes) entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth. E-cigarette use by Kentucky 10th graders doubled between 2016 and 2018, from 11.7% to 23.2%, and in 2019, increased again to 27.5%; and

WHEREAS, youth who use e-cigarettes are twice as likely to take up smoking traditional cigarettes and addiction to nicotine may also increase likelihood of addiction to other substances in the developing adolescent brain;

WHEREAS, a high density of tobacco retailers has been associated with increased smoking rates, particularly among youth;

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day;

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller and density is higher;

WHEREAS, tobacco retailer location and density also heavily contribute to social inequities as retailers are more prevalent in lower-income areas and communities in which a greater percentage of residents identify as African American or Hispanic, which perpetuates disparities in tobacco use and associated negative health effects;

WHEREAS, there are laws that prevent the sale of products to minors but there are no specific regulations in place to limit the retail locations and their efforts to appeal to minors;

WHEREAS, policies and regulations to reduce tobacco retailer density have been shown to be effective and may reduce or eliminate inequities in the location and distribution of tobacco retailers;

WHEREAS, given the public health impacts related to smoking and the rise of vaping and e-cigarette use, Louisville Metro should review its current zoning regulations related to businesses that sell such products and determine the appropriate locations for such businesses (which could involve restricting where such a use may be located via the zoning classifications and/or modifying the appropriate approval process);

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; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE LOUISVILLE METRO PLANNING COMMISSION AS FOLLOWS:

Additions

SECTION I: Chapter 1 of the LDC, Section 1.2.2 – Definitions, is amended to add the following definition:

Smoking Retail Store – a store defined by Chapter 90 of the Louisville Metro Code of Ordinances (LMCO) as a Smoking Retail Store and required to obtain a retail license for sale of tobacco, tobacco products and/or electronic smoking devices in accordance with chapter 90 of the LMCO.

SECTION II: Chapter 4 of the LDC, Part 3 – Permitted Use with Standards, is amended to add the following:

4.3.24 Smoking Retail Store

In the C-1, C-2, C-3, C-M, EZ-1, and PEC 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. Community Center
 6. Day Care Center
 7. Athletic Facility, Indoor and Outdoor
- 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.

SECTION III: This resolution shall take effect upon its passage and approval.

Vince Jarboe
Chair