

ORDINANCE NO. _____, SERIES 2022

AN ORDINANCE AMENDING THE LOUISVILLE METRO LAND DEVELOPMENT CODE RELATING TO OUTDOOR DINING (CASE NO. 22-LDC-0006).

SPONSORED BY: COUNCIL MEMBER MADONNA FLOOD

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") passed Ordinance No. 57, Series 2020 to permit the temporary use of parking areas, open areas, and sidewalks for outdoor dining and alcohol sales in response to limitations placed upon restaurant during the COVID-19 crisis. The temporary use was allowed from May 22, 2020 until 30 days after the date the state of emergency related to COVID-19 concluded; and

WHEREAS, the time period for the temporary uses permitted by Ordinance No. 57, Series 2020 was extended pursuant to Ordinance No. 85, Series 2021. That ordinance extended the temporary uses to January 30, 2022, and added a cap to the amount of parking that could be used for outdoor dining areas at up to 50% of the required parking spaces; and

WHEREAS, the time period for the temporary uses permitted by Ordinance No. 57, Series 2020, and Ordinance No. 85, Series 2021, was further extended pursuant to Ordinance No. 155, Series 2021, to January 30, 2023; and

WHEREAS, the Council has requested Planning and Design Services staff to review the approved temporary provisions and determine which provisions can be adopted permanently to continue to support outdoor dining areas; and

WHEREAS, approximately 40 restaurants have submitted applications to establish temporary outdoor dining areas, which would otherwise have to be brought in compliance

or be eliminated as of January 30, 2023; and

WHEREAS, Planning and Design Services staff developed an amendment to LDC to remove unnecessary requirements and to provide updated development review procedures that are more simplified and specifically designed for outdoor dining areas; and

WHEREAS, the proposed amendment was reviewed by the Planning Committee of the Planning Commission on October 12, 2022 and was forwarded by that Committee to the Louisville Metro Planning Commission (the “Planning Commission”) for its review; and

WHEREAS, the Planning Commission on November 3, 2022 recommended that the Council adopt the proposed text amendments to the Louisville Metro Land Development Code (“LDC”) as set forth in Planning Commission Resolution No. 22-LDC-0006; and

WHEREAS, the Council approves and accepts the recommendation of the Planning Commission as set forth in Planning Commission Resolution No. 22-LDC-0006.

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

SECTION I: Chapter 1, Part 2, of the LDC is amended as follows:

Chapter 1 Part 2 Definitions

...

1.2.2 Definitions

...

Outdoor Dining Area – Accessory area outside the confines of a building with seating, tables, and other furnishings for the purpose of dining and serving food and beverages by an adjoining restaurant in which the same food and beverages are offered for sale and served.

...

Outdoor Sales and Display – The placement of any item(s) outside a building in a nonresidential zoning district for the purpose of sale, rent or exhibit. (This term shall not include any outdoor dining and seating areas associated with a restaurant.)

...

Restaurant – Commercial establishments, the main business of which is serving food, which may include the sale of alcoholic beverages. Provided, however, that a place wherein both food and alcoholic beverages are sold for consumption on premises and within which the total receipts from the sale of alcoholic beverages exceed the total receipts from the sale of food shall be a tavern.

...

Temporary Activities – Temporary activities are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site to accommodate the activities. ~~Temporary activities include~~ This term includes, but is not limited to, the following types of temporary events/uses: temporary concerts, festivals carnivals, and fairs, temporary non-permanent parking areas/lots, temporary circuses, temporary rodeos, show houses/display homes, seasonal outdoor sales/markets such as pumpkin and Christmas tree sales, seasonal attractions such as haunted houses, temporary “Haunted House”, and temporary “Show House” and seasonal outdoor dining areas.

...

SECTION II: Chapter 2, Part 4, of the LDC is amended as follows:

Chapter 2 Part 4 Commercial Zoning District

...

2.4.3 C-1 Commercial District

...

Restaurants, tea rooms and cafes excluding dancing and entertainment activity (Indoor alcohol sales and consumption only with property ABC license; outdoor alcohol sales and consumption only with proper ABC license and pursuant to the standards in Chapter 4, Part 3).

...

SECTION III: Chapter 4, Part 2, of the LDC is amended as follows:

Chapter 4 Part 2 Conditional Uses

...

4.2.1 Intent and Applicability

...

4.2.41	Outdoor Alcohol Sales and Consumption/Entertainment Activity for Restaurants in the C-1 zoning district
--------	--

...

4.2.41 ~~Outdoor Alcohol Sales and Consumption/~~Indoor Entertainment Activity for a Restaurant in the C-1 Zoning District.

~~Outdoor and alcohol sales and consumption and/or indoor live entertainment for a restaurant may be permitted in the C-1 zoning district upon the granting of a conditional use permit and compliance with the listed requirements:~~

- ~~A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.~~
- ~~B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards.~~
- ~~B. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public-right-of-way.~~
- ~~C. Outdoor dining areas that include the sale and consumption of alcohol within 40 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards).~~
- ~~D. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:~~
 - ~~1. Restaurant liquor and wine license by the drink for 100 plus seats~~
 - ~~2. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales~~
- ~~E. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1 A.M.~~
- ~~A.G. The entertainment activity shall be in compliance comply with Metro Noise Ordinance (LMCO Chapter 99) noise requirements set forth in Louisville Metro Code Chapter 99.~~
- ~~B. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.~~

...

SECTION IV: Chapter 4, Part 3, of the LDC is amended as follows:

Chapter 4 Part 3 Permitted Uses with Special Standards

...

4.3.7 Temporary Activities

Temporary activities may be permitted by the Planning Director or designee within any form district and zoning district in accordance with the following standards set forth below. In addition, related to the specific nature and extent of an event, the Planning Director may impose additional conditions to ensure the event is safe, properly managed, and does not adversely impact neighboring residents and businesses.

General Events:

- A. Pavement or gravel used for the event shall be removed after completion of the event and the ground reseeded within 2 weeks of removal of pavement or gravel; and
- B. No activities shall take place on land within the required stream buffer of a perennial stream or wetland as specified in Chapter 4 Part 8; and
- C. A temporary fence shall be provided to prevent access and parking from crossing over into adjacent properties and within environmentally sensitive areas (e.g. wetlands, stream buffers, etc.); and
- D. No event shall exceed 10 days in duration within a residential zoning district. No event shall exceed 30 days in duration in any non-residential zoning district. No more than two events shall be permitted on the same property within a calendar year; and
- E. Permanent changes to the site are prohibited; and
- F. Vehicle ingress and egress to the site shall be approved by the Director of Works or designee. Gravel or other measures to accommodate vehicles and prevent tracking of the public right-of-ways may be required; and
- G. No temporary activity within a residential zoning district shall take place within 200 feet of a dwelling unit(s) unless approval is obtained in writing from the owner(s) of the dwelling unit(s); and
- H. Any temporary canopy or tent remains subject to building permit requirements and must be removed at the conclusion of the event/activity unless otherwise permitted by this Land Development Code. A copy of such issued building permit for the canopy or tent shall be provided with the application submittal.

Any tent or canopy shall observe the setback requirements identified in both the temporary activity permit and building permit. In the event the setback requirements differ, the more restrictive setback shall apply; and

- I. As part of the permit application, the applicant shall submit a site plan of adequate detail showing the location of the event; the maximum capacity; and all temporary improvements that are being added to facilitate the event. Any change to this plan shall require a revised permit; and
- J. If the event is subject to two (2) or more substantiated civil and/or criminal complaints, the Planning Director may revoke the permit. Complaints include, but are not limited to, reported violations of criminal, noise, building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Substantiated complaints may be grounds to deny subsequent permit applications.

Seasonal Outdoor Dining Areas:

- A. The outdoor dining area shall be accessory to and serve a restaurant that is located on the same parcel or a contiguous parcel; and
- B. The outdoor dining area may be covered. Any temporary canopy or tent remains subject to building permit requirements and must be removed at the conclusion of the event/activity unless otherwise permitted by this Land Development Code. A copy of such issued building permit for the canopy or tent shall be provided with the application submittal. Any tent or canopy shall observe the setback requirements identified in both the temporary activity permit and building permit. In the even the setback requirements differ, the more restrictive setback shall apply; and
- C. This section only applies to an outdoor dining area on private property. An outdoor dining area within the public right-of-way must receive approval from the agency responsible for the right-of-way and shall be designed in accordance with agency standards; and
- D. The outdoor dining area shall only be permitted for up to 6 months in a calendar year; and
- E. The outdoor dining area may be temporarily located in a required setback/yard and/or parking area; excluding atop any required ADA accessible parking space, parking/drive aisle needed for safe ingress and egress, and/or fire lane. Required parking spaces shall be immediately reestablished at the conclusion of the permit; and
- F. The outdoor dining area shall not impede access into or out of the building; and

- G. Outdoor dining areas approved as temporary shall not prompt any requirements for additional landscaping; however existing required landscaping and trees shall not be removed unless otherwise permitted; and
- H. Fences and barriers are permitted immediately around an outdoor dining area to define the space, protect patrons, and provide privacy to and from adjacent uses. Such fences are limited to 4 feet in height in required front yard setbacks and 6 feet in height in other required yard setbacks. Any fence or barrier remains subject to building permit requirements and must be removed at the conclusion of the permit unless otherwise permitted by this Land Development Code; and
- I. Only a restaurant that has an alcoholic beverage license that allows alcohol to be served outdoors may serve alcoholic beverages in the outdoor dining area; and
- J. Smoking is prohibited in and within 15 feet of an outdoor dining area; and
- K. An outdoor seating area within a residential zoning district shall not be permitted unless approval is obtained in writing from the owner(s) of dwelling unit(s) on contiguous properties; and
- L. When contiguous to residentially used property, the operating hours of the outdoor dining area shall be limited to between 7:00 A.M. and 10:00 P.M.; and
- M. The use of sound amplifying equipment or live music is prohibited between the hours of 10:00 P.M. and 7:00 A.M.; and
- N. As part of the permit application, the applicant shall submit a site plan of adequate detail showing the location and dimensions of the outdoor dining area; the seating capacity; and all temporary improvements that are being added to facilitate the event. Any change to this plan shall require a revised permit; and
- O. Any improvements that are not otherwise permitted shall be removed immediately upon the conclusion of the event; and
- P. If the outdoor dining area is subject to two (2) or more substantiated civil and/or criminal complaints, the Planning Director may revoke the permit. Complaints include, but are not limited to, reported violations of criminal, noise, building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing and mechanical codes. Substantiated complaints may be grounds to deny subsequent permit applications.

...

4.3.28 Outdoor Alcohol Sales and Consumption for a Restaurant in the C-1 Zoning District

...

Outdoor alcohol sales and consumption for a restaurant may be permitted in the C-1 zoning district with the following standards:

- A. The outdoor dining area shall have designated boundaries.
- B. An outdoor dining area within the public right-of-way must receive approval from the agency responsible for the right-of-way and shall be designed in accordance with agency standards.
- C. An outdoor dining area immediately adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.
- D. An outdoor dining area within 50 feet of a residentially zoned or used property shall provide a continuous screen of 6 feet in height as part of the designated boundary for the areas of the outdoor area within 50 feet of the residentially used or zoned property. The continuous screen shall be in conformance with Chapter 10, Part 4.
- E. This allowance shall be limited to restaurant uses in the C-1 that hold an alcoholic beverage license granted pursuant to Louisville Metro Code Chapter 113, with sales limited to between 6:00 A.M. and 12 A.M. on Mondays through Saturdays, and between 10:00 A.M. and 11:59 P.M. on Sundays.

...

SECTION V: Chapter 4, Part 4 of the LDC, is amended as follows:

Chapter 4 Part 4 Accessory Uses and Miscellaneous Standards

The following topics are discussed in this section:

...

<u>4.4.12</u>	<u>Outdoor Dining Areas</u>
---------------	-----------------------------

...

4.4.12 Outdoor Dining Areas

- A. This section only applies to an outdoor dining area that is accessory to and serves a restaurant that is located on the same parcel or a contiguous parcel.
- B. This section only applies to an outdoor dining area on private property. An outdoor dining area within the public right-of-way must receive approval from

the agency responsible for the right-of-way and shall be designed in accordance with agency standards.

- C. Uncovered outdoor seating may be situated in a required setback. If located in a required setback contiguous to a residential use, screening of at least 6 feet in height shall be provided. Screening may be in the form of a solid fence and/or landscaping. The contiguous screen shall be in conformance with Chapter 10, Part 4. Any fence shall meet the applicable fence requirements for the location.
- D. An outdoor dining area may be covered. Any gazebo, canopy, or tent that provides cover remains subject to building permit requirements and must meet applicable setback requirements for the location.
- E. An outdoor dining area may not be located on any required parking space.
- F. An outdoor dining area shall not impede access into or out of the building.
- G. Only a restaurant that has an alcoholic beverage license that allows alcohol to be served outdoors may serve alcoholic beverages in the outdoor dining area.
- H. Smoking is prohibited in and within 15 feet of an outdoor dining area.
- I. When contiguous to residentially used property, the operating hours of the outdoor dining area shall be limited to between 7:00 A.M. and 10:00 P.M.
- J. The use of sound amplifying equipment or live music is prohibited between the hours of 10:00 P.M. and 7:00 A.M.

The provisions in this section do not apply to any outdoor dining area approved by a temporary activity permit.

...

SECTION VI: Chapter 5, Part 5 of the LDC, is amended as follows:

Chapter 5 Part 5 Non-Residential/Mixed Use Design Standards

...

5.5.5 Accessory Structure Standards

- A. Standard for Accessory Structures (other than accessory structures to single-family residential development)
 - 1. Unless expressly permitted, accessory structures (e.g., dumpsters, storage building, HVAC equipment, fast food ordering stations/menu boards and similar uses) shall not be constructed or permitted within any required setback/yard. These structures shall be subordinate in size to the principal structure, shall not be visible from the public street, and shall be screened from adjacent residential areas by fencing or walls. When accessory

structures are adjacent to residential uses, the accessory structure shall not exceed the scale of the adjacent residential structure(s). Open unenclosed seating, decks or other similar types of areas are permitted to encroach within the required front setback/yard, provided that minimum landscape buffer areas are provided per Chapter 10 Part 2. Outdoor dining areas are permitted to encroach within any required setback/yard, provided that the minimum landscape buffer areas are provided per Chapter 10 Part 2.

2. Setback from Alley or Rear Property Line – The setback shall be the same as for the required landscape buffer area or transition setback/yard if applicable, whichever is the greater.

B. Form District Specific Requirements.

1. Downtown Form District – Accessory structures/screens shall be designed and constructed of the same materials as the primary structure. Accessory structures, excluding those related to outdoor dining, shall only be permitted at the rear of a principal structure.

...

SECTION VII: Chapter 9, Part 1 of the LDC, is amended as follows:

Chapter 9 Part 1 Motor Vehicle Parking Standards

...

Table 9.1.3B Minimum and Maximum Motor Vehicle Parking Based on Use

...

Shopping, business or trade (2000)			
...			
	Restaurant (includes bars) (2200)	Suburban Form: 1 per 500 sq. ft. of gross floor area Traditional Form: 1 per 1,000 sq. ft. of gross floor area <u>*Accessory outdoor dining area associated with a restaurant with indoor seating is excluded</u>	1 per 100 sq. ft. of gross floor area
...			

SECTION VIII: This Ordinance shall take effect upon its passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County
Attorney

By: _____

O-332-22 Amending LDC Relating to Outdoor Dining.docx (lf)