

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
November 3, 2022**

A meeting of the Louisville Metro Planning Commission was held on November 3, 2022 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Lula Howard, Vice Chair
Jeff Brown
Rich Carlson
Patricia Clare
Te'Andre Sistrunk
Suzanne Cheek
Jim Mims
Glenn Price
Michelle Pennix

Commission members absent:

Marilyn Lewis, Chair

Staff Members present:

Brian Davis, Assistant Director
Joe Haberman, Planning & Design Manager
Julia Williams, Planning & Design Supervisor
Joel Dock, Senior Planner
Laura Ferguson, Assistant County Attorney

Others Present:

The following matters were considered:

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APPROVAL OF MINUTES

OCTOBER 18, 2022 PLANNING COMMISSION SPECIAL MEETING MINUTES

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on October 18, 2022.

The vote was as follows:

YES: Commissioners Carlson, Sistrunk, Clare, Cheek, Brown and Howard

ABSTAINING: Commissioner Pennix, Mims and Price

NOT PRESENT: Commissioner Lewis

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APPROVAL OF MINUTES

OCTOBER 20, 2022 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on October 20, 2022.

The vote was as follows:

YES: Commissioners Carlson, Sistrunk, Clare, Price, Cheek, Brown and Howard

ABSTAINING: Commissioner Pennix and Mims

NOT PRESENT: Commissioner Lewis

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PUBLIC HEARING

CASE NO. 22-LDC-0006

Project Name: Outdoor Dining LDC Amendments
Location: Louisville Metro
Applicant: Louisville Metro
Jurisdiction: All Cities with Zoning Authority
Council District: All Metro Council Districts
Case Manager: Joe Haberman, AICP, Planning & Design Manager

Notice of this public hearing appeared in **The Courier Journal**.

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.)

Agency Testimony:

Joe Haberman discussed the case summary (see video of PowerPoint presentation). Louisville Metro Council has directed Planning & Design Services staff and the Planning Commission to review the requirements for outdoor dining areas in the LDC and provide recommendations to improve the existing regulations. In the LDC, there are not specific and special regulations pertaining to outdoor dining. The use is generally permitted as accessory to restaurants. Some existing requirements act as barriers to the establishment of outdoor dining areas by restricting development of available area and requiring special approvals. Staff reviewed the existing requirements to determine if changes could be made to remove unnecessary requirements and provide updated development review procedures that are more simplified and specifically designed for the use. These proposed changes are presented in the staff report.

Commissioner Mims asked if people would need to come into compliance once the temporary Metro Council relief sunsets. Haberman stated they would need to come into compliance, which would include coming into compliance with these regulations if they are approved. Mims asked about building permits and about ingress/egress from buildings and along sidewalks along building frontages.

Commissioner Carlson asked if a tent would be considered a permanent installation. Haberman said a tent could be erected up to six months under the proposed temporary regulations. Carlson has concerns about the types of materials used for tents and ongoing maintenance of such items. Haberman stated this would be under the jurisdiction of construction review officials, not planning officials.

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Carlson asked if the outdoor dining regulations are meant to add to a restaurant's occupancy load, or if outdoor seating be an option to meet the permitted occupancy load. He has concerns about parking as well. Haberman explained the idea behind not requiring additional parking for outdoor seating areas.

Commissioner Howard stated she would support not having additional parking standards for outdoor dining areas. Commissioner Clare agrees.

The following spoke in favor of this request:

David Tomes, 9418 Norton Commons Boulevard, Prospect, KY 40059

Summary of testimony of those in favor:

David Tomes spoke in support of the proposed amendments. Tomes thinks staff has done a great job of putting together the proposed regulations, especially the standards about noise, hours of operation, and ADA accessibility.

Tomes does have some concerns about the timing of these regulations. Some restaurants are still battling to survive given the social and economic conditions that are present. He would like to see the Metro Council relief be extended an additional six months or so before these regulations take effect. Tomes does not think the parking regulations should be changed.

Summary of testimony of those neither for nor against:

None

Summary of testimony of those in opposition:

None

Deliberation

Planning Commission deliberation.

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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 Carlson, seconded by Commissioner Clare, the following resolution, based on the staff report and evidence and testimony heard at today's hearing, was adopted:

WHEREAS, the Planning Commission finds while already common and found throughout the metro area, outdoor dining areas are increasing in popularity. In recent years, there has been an increased demand for such dining areas due in part to the COVID-19 pandemic,

WHEREAS, to provide immediate relief to facilitate and encourage healthier dining environments outdoors, Metro Council passed Ordinance #057, 2020 in 2020. The ordinance enabled restaurants to immediately establish outdoor dining areas by temporarily providing relief to many zoning requirements that often serve as barriers to establishing outdoor dining areas,

WHEREAS, the temporary allowances are set to sunset on January 30, 2023. Council has requested that staff review the approved temporary provisions and determine if any can be adopted permanently to continue to support outdoor dining areas,

WHEREAS, since the adoption of the ordinance, 43 applications have been submitted to establish temporary outdoor dining areas on private property. Additional applications were submitted to allow temporary outdoor dining areas on rights-of-way,

WHEREAS, when the ordinance sunsets, these restaurants will be required to bring their properties into compliance by either eliminating the outdoor dining areas or bringing them into compliance, which may require special approvals that are subject to denial. Relaxed requirements may negate the need for some or all special approvals, reducing the uncertainty of approval, process time, and project cost,

WHEREAS, amending the requirements for outdoor dining areas can result in the development of more locations in better ways. However, if not adequately regulated, outdoor dining that is poorly located or designed can adversely impact residents. Regulations should effectively provide for the needs of the community and mitigate potential adverse impacts, and

WHEREAS, zoning enforcement staff rarely receives complaints related to outdoor dining areas associated restaurants. Complaints are usually related to the outdoor

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dining areas that have been established in prohibited areas, such as parking areas or sidewalks. Complaints are more common with outdoor areas associated with taverns/bars; with concerns mostly related to noise, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to Louisville Metro Council and all cities with zoning authority to **APPROVE** the following changes to the Land Development Code:

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 items(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.

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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 proper ABC license; outdoor alcohol sales and consumption only with proper ABC license and pursuant to the standards in Chapter 4, Part 3)

4.2.1 Intent and Applicability

**** 4.2.41

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

H. 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.

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 and does not adversely impact neighboring residents and businesses.

General Events:

- A. Pavement or gravel used for the event shall be removed after the 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

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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-way 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).

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 event 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

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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.

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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.

Chapter 4 Part 4 Accessory Uses and Miscellaneous Standards

The following topics are discussed in this section:

4.4.12 Outdoor Dining Areas

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 continuous 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.

5 Part 5 Non-Residential/Mixed Use Design Standards

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5.5.5 Accessory Structure Standards

A. Standards for Accessory Structures (other than accessory structures to single-family residential development)

1. **Unless expressly permitted**, accessory structures (e.g. dumpsters, storage buildings, 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 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

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 *Accessory outdoor dining areas	1 per 100 sq. ft. of gross floor area
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The vote was as follows:

YES: Commissioners Carlson, Sistrunk, Clare, Cheek, Price, Mims, Brown and Howard

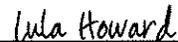
ABSTAINING: Commissioner Pennix

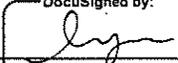
NOT PRESENT AND NOT VOTING: Commissioner Lewis

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ADJOURNMENT

The meeting adjourned at approximately 1:59 p.m.

DocuSigned by:

Chair

DocuSigned by:

Planning Director
