

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE AMENDING CHAPTER 90 OF THE LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) RELATING TO INCREASED PROTECTIONS FOR THE PUBLIC HEALTH BY REQUIRING LICENSES FOR RETAILERS SELLING TOBACCO, TOBACCO PRODUCTS AND/OR ELECTRONIC SMOKING DEVICES (AS AMENDED).

SPONSORED BY: COUNCIL MEMBER COAN

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation’s leading cause of preventable death; and

WHEREAS, consumption of tobacco is a leading factor in numerous poor health outcomes including COPD, heart disease, stroke, cancer, diabetes, asthma, gum disease and tooth loss; and

WHEREAS, tobacco use among priority populations in Louisville contributes to health disparities and creates significant barriers to health equity; and

WHEREAS, according to the Center for Disease Control and Prevention, if cigarette smoking continues at the current rate among youth in this country, 5.6 million of today’s Americans younger than 18 will die early from a smoking-related illness; and

WHEREAS, the Surgeon General has warned that the proliferation of e-cigarettes is “cause for great concern”, and that the use of e-cigarettes has “become an epidemic among our nation’s young people”; and

WHEREAS, in 2019, more than 1 in every 4 Kentucky teens reported using e-cigarettes in the past 30 days; and

WHEREAS, tobacco products and electronic nicotine delivery products contain nicotine which the U.S. Department of Health and Human Services has concluded is a

highly addictive drug with adolescents and young adults being more susceptible to its effects; and

WHEREAS, despite state laws prohibiting the sale of tobacco products and electronic smoking devices to minors, access by minors to tobacco products is a major public health problem; and

WHEREAS, a local licensing system for retailers selling tobacco, tobacco products and electronic smoking devices is appropriate to ensure that retailers comply with tobacco control laws and business standards to protect the health, safety, and welfare of our residents; and

WHEREAS, requiring retailers who sell tobacco, tobacco products and/or electronic smoking devices to obtain a retailer license will not unduly burden legitimate business activities of retailers but will, however, allow the Louisville Metro Government to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws.

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

SECTION I: LMCO § 90.01 is hereby amended as follows:

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.

SECTION II: LMCO § 90.02 is hereby amended as follows

§ 90.02 DEFINITIONS.

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.

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.

SECTION III: LMCO § 90.11 is hereby created to read as follows:

§ 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 a fee of ten dollars made payable to the County Clerk's 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 first (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 state or federal law pertaining to distribution or sale of tobacco, tobacco products, and/or electronic smoking devices.

(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 (1) month and within three (3) months, or as soon as practicable.

(G) An applicant or licensee may appeal or challenge a suspension, revocation or denial of a license pursuant to §§ 32.275 et seq.

SECTION IV: LMCO § 90.99 is hereby amended as follows:

(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;

(3) A penalty of no less than \$350 nor more than \$500 for the third and each subsequent offense within a one-year period; and

(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. ~~In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty as set forth in the citation.~~ 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.

(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.

SECTION V: This Ordinance shall take effect on April 1, 2021.

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-447-20 V.3 FAM 101420 Tobacco Products