

**CITY OF SHIVELY
ORDINANCE NO. 14, SERIES 2025
CERTIFIED SUMMARY**

**AN ORDINANCE AMENDING SECTION 1.2.2 AND CREATING SECTIONS 4.3.12
AND 4.4.12 OF THE SHIVELY LAND DEVELOPMENT CODE ("LDC") REGARDING
SMOKING RETAIL STORES WITHIN THE CITY OF SHIVELY (AS AMENDED)**

I hereby certify that the foregoing amended ordinance concerning smoking retail stores within the city of Shively adopts certain amendments to the Shively Land Development Code ("LDC") by the Louisville Metro Planning Commission which include the addition of definitions related to smoking retail stores in Chapter 1, Section 1.2.2 of the LDC.

Chapter 4, Section 4.3.12 is created in the LDC to allow with special standards smoking retail stores in the C-1, C-2, C-3, C-M, EZ-1, PEC, M-1, M-2, and M-3 zoning districts. The special standards provide that the smoking retail stores in these zoning districts shall not be located within 1,000 feet of a public or private early childhood, elementary, middle or high school, park, public playground, recreation (use) outdoor, public community center, child care center, indoor and outdoor athletic facility, public library and church building. Nonconforming smoking retail stores must establish that they have been lawfully in operation on the effective date of the regulation for such use, January 15, 2026. No smoking retail store shall be located within one thousand (1,000) feet of a site occupied by another smoking retail store, and the hours of operation shall be no earlier than nine (9) A.M. and no later than eight (8) P.M., seven (7) days a week. The operator shall maintain any retail license required for tobacco sales as provided for in the Louisville Metro Code of Ordinances, and one sign only may be permitted showing the name and address of the smoking retail store. Along with specified size restrictions, signage must comply with LMCO 155.

Chapter 4, Section 4.4.12 is created in the LDC regarding accessory sales of smoking retail store products at a business not classified as a smoking retail store. Any use that meets the definition of a smoking retail store shall be regulated by section 4.3.12 of the LDC, but if the use does not meet the definition of a smoking retail store, accessory sales of smoking retail store products may be permitted in the subject zoning district that allows for retail sales. The principal use shall be a use that involves the retail sales of merchandise that is dominant to that of smoking retail products and a use in which it is customary to include the retail sale of smoking retail products such as a convenience grocery, convenience store, drug store, grocery store or package liquor store. In addition, signage shall not identify the business as a smoking retail store, and signage shall comply with LMCO 155 and chapter 8 of the LDC. For accessory sales of smoking retail products to be permitted, the total retail floor area dedicated for the display and/or sale of such merchandise shall be less than 10 percent. For accessory sales of smoking retail products to be permitted, the gross sales receipts from the sale of such merchandise shall be less than 51 percent.

The complete text of said ordinance may be read at the office of the Shively City Clerk, Shively City Hall, 3920 Dixie Highway, Shively, Kentucky 40216.



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Louisville, KY 40220
Shively City Attorney

**CITY OF SHIVELY
ORDINANCE NO. 14, SERIES 2025**

**AN ORDINANCE AMENDING SECTION 1.2.2 AND CREATING SECTIONS
4.3.12 AND 4.4.12 OF THE SHIVELY LAND DEVELOPMENT CODE (“LDC”)
REGARDING SMOKING RETAIL STORES WITHIN THE CITY OF SHIVELY
(AS AMENDED)**

WHEREAS in Case Nos. 20-LDC-0003 and 24-LDC-0002, the Louisville Metro Planning and Design Office of Planning staff made recommendations to the Louisville Metro Planning Commission (“Planning Commission”) to develop an amendment to the Land Development Code (“LDC”) of Louisville Metro/Jefferson County regarding smoking retail stores, and the Planning Commission held a public hearing on those amendments on August 20, 2020 and May 30, 2024, respectively, and

WHEREAS the Planning Commission considered the record and testimony relative to those amendments and recommended the approval of such amendments to the Louisville Metro Council and legislative bodies of cities with zoning authority; and

WHEREAS the City Council of the City of Shively has considered the amendments to the LDC recommended by the Planning Commission as set forth in the minutes of the Planning Commission in Case Nos. 20-LDC-0003 and 24-LDC-0002 and believes it is in the best interest of the City of Shively to approve and accept the recommendations, as amended, now therefore:

BE IT ORDAINED BY THE CITY OF SHIVELY AS FOLLOWS:

SECTION 1. The City Council of the City of Shively does hereby adopt the amendments to the Land Development Code of the Planning Commission as set forth in the minutes of the Planning Commission in Case Nos. 20-LDC-0003 and 24-LDC-0002 for smoking retail stores, as amended.

SECTION 2. Notwithstanding the foregoing, the City Council of the City of Shively reserves all powers assigned to it by Kentucky Revised Statutes including, but not limited to KRS 100, review and final approval of recommended zoning changes, review and approval of development plans in conjunction with form district and zoning map amendments.

SECTION 3. Notwithstanding the foregoing, the following amendments to the Land Development Code are hereby adopted, as amended:

Chapter 1 of the LDC Section 1.2.2, Definitions is hereby amended to add the following definitions:

Adult-use cannabinoid - Shall have the same meaning as in 902 KAR 45:021 E. Section 1 (4)(a). as the same may be amended from time to time.

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.

Cannabinoid - Means a compound found in the hemp plant *Cannabis sativa* L from a United States Department of Agriculture sanctioned domestic hemp production program and does not include cannabinoids derived from any other substance.

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, 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.

Kratom - means any part of the plant *Mitragyna speciosa*.

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 or kratom sold alongside any tobacco, tobacco product, and/or electronic smoking devices at a business. Any merchandise or product that is not lawful for sale by state law is not permitted under this definition.

Smoking Retail Store – A store that primarily sells tobacco, tobacco products, 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, 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.

Chapter 4 of the LDC, Part 3, Permitted Uses with Special Standards, is hereby amended to include the following section:

4.3.12 Smoking Retail Store

In the C-1, C-2, C-3, C-M, EZ-1, PEC, 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 Care Center
7. Athletic Facility, Indoor and Outdoor
8. Public Library
9. Church Building

This separation requirement is eligible for a waiver in M-1, M-2, and M-3 in accordance with Chapter 11, Part 8 of the LDC unless the Smoking Retail Store is selling adult-use cannabinoid products and was not registered with the Department for Public Health prior to January 15, 2026, in which case, the separation requirement from a public or private early childhood, elementary, middle or high school is required by KRS and is not subject to relief. A waiver or other relief to this requirement is prohibited in the other listed zoning districts.

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 establish that it has been lawfully in operation on the effective date of the initial regulation for such use (January 15, 2026) and continuously in operation to date. If one of the listed uses is established and one of these uses listed in A(1)-(9), above, is established thereafter, the Smoking Retail Store shall become a nonconforming use at that time and subject to the provisions related to such nonconforming use, including but not limited to those restricting expansion and pertaining to abandonment.

- B. No Smoking Retail Store shall be located within one thousand (1,000) 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 nine (9) A.M. and no later than eight (8) 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 Land Development Code, unless the Smoking Retail Store is located within one thousand (1,000 feet) of (i) any of the uses listed in (A)(1)-(9) or (ii) residentially used or zoned property, in which case, the hours of operation requirement is not subject to relief.
- D. The operator shall maintain any retail license required for tobacco sales as provided for in the 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.
- E. One sign only may be permitted showing the name and address of the Smoking Retail Store. An attached sign shall not exceed 30 square feet in area, shall be attached flat to the face of the building, and shall not project more than 18 inches from the face of the building. A free-standing sign shall not exceed 20 square feet in area per side, shall not have more than two sides, and shall not exceed a height of six feet. Either an attached sign or a free-standing sign may be permitted, but not both. No sign shall project into any required yard. The sign may be illuminated but non-flashing. A sign indicating "No person under the age of twenty-one is allowed to purchase tobacco, tobacco products or electronic smoking devices" must be posted at the front of the business so as to be visible from the exterior of the business and readable from a distance of 20 feet, as well as in the interior lobby area. These requirements may not be waived. In addition, signage must also comply with LMCO 155.

Chapter 4 of the LDC, Part 4, Accessory Uses and Miscellaneous Standards, is hereby amended to include the following section:

4.4.12 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 4.3.12 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 that is dominant to that of Smoking Retail Products. It shall be a use in which it is customary to include the retail sale of Smoking Retail Products, such as a Convenience Grocery, Convenience Store, Drug Store, Grocery Store or Package Liquor Store.

- C. Signage shall not identify the business as a Smoking Retail Store. Signage shall also comply with LMCO 155 and Chapter 8 of this Land Development Code. A sign indicating "No person under the age of twenty-one is allowed to purchase tobacco, tobacco products or electronic smoking devices" must be posted at the front of the business so as to be visible from the exterior of the business and readable from a distance of 20 feet, as well as in the interior lobby area.
- 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 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. Such documentation to consist of records that a retailer is normally required by the Kentucky Department of Revenue to maintain as adequate and complete records under Kentucky law. If the business refuses to assist the code enforcement officer, or the code enforcement officer cannot determine compliance because the records provided are inadequate and incomplete, it shall be a rebuttable presumption that the gross sales receipts from the sale of such merchandise is equal to or greater than 51 percent.

SECTION 4. Severability. If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect the other provisions that can be given effect without the invalid provision or application.

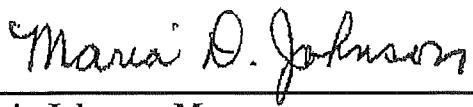
SECTION 5. This ordinance shall take effect upon its adoption by the Shively City Council and publication as required by law.

First reading: December 15, 2025

Second reading: January 5, 2026

Passed and approved: January 5, 2026

Introduced by: Ms. Burton-McBroom



Maria Johnson, Mayor

Attest: 

Mitzi R. Kasitz, City Clerk

| Council | Yea | Nay |
|--------------------|------------|------------|
| Ms. Burton-McBroom | ✓ | _____ |
| Mr. Gibson | ✓ | _____ |
| Ms. Gibson | ✓ | _____ |
| Ms. Thompson | ✓ | _____ |
| Mr. Vincent | ✓ | _____ |
| Ms. Wakaba | ✓ | _____ |

PLANNING COMMISSION MINUTES
August 20, 2020

PUBLIC HEARING

CASE NO. 20-LDC-0003

Project Name: Smoking Retail Store Amendment
Request: LDC Text Amendment
Applicant: Louisville Metro
Jurisdiction: All Jurisdictions
Council Districts: All Council Districts
Case Manager: **Chris French, AICP, Planning & Design Supervisor**

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:

04:18:48 Mr. French discussed the case summary, standard of review and staff analysis from the staff report.

Deliberation

04:22:03 Commissioner Mims said this is uncharted territory but this is a great start. The smoking retail stores will have some of the same concerns as the liquor stores. The other commissioners agree.

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.

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

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

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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.

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

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.; and

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

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; and

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; and

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

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

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

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; and

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; and

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); and

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

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; and

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; and

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

Additions

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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

RESOLVED, that the Louisville Metro Planning Commission does hereby
RECOMMEND to the Louisville Metro Council and all other jurisdictions with zoning

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authority within Jefferson County that the **RESOLUTION** for an amendment of 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 be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Daniels, Howard, Lewis, Mims, Peterson, Seitz and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Brown

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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; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council and legislative bodies of cities with zoning authority **APPROVE** the amendments to the Land Development Code (LDC) concerning Smoking Retail Stores as follows:

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.

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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;

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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, 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, 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, PEC, M-1, M-2, and M-3 zoning districts, Smoking Retail Stores may be permitted in accordance with the following special standards:

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- 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 Care Center
 7. Athletic Facility, Indoor and Outdoor
 8. Public 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

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requirement is eligible for waiver in accordance with Chapter 11, Part 8 of 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.