

ORDINANCE NO. _____, SERIES 2025

AN ORDINANCE AMENDING CHAPTER 90 OF THE LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) REGARDING SMOKING RETAIL STORES (AS AMENDED).

SPONSORED BY: COUNCIL MEMBERS BATSHON AND HUDSON

WHEREAS, Section 90.11 of the LMCO was previously amended by the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) pursuant to Ordinance No. 136, Series 2024 (the “2024 Amendment”), based on input from the Louisville Metro Public Health and Wellness Department, and recommendations of Office of Planning staff to improve the existing regulations; and

WHEREAS, discussions were held with the Louisville Metro Public Health and Wellness Department to determine whether, after six (6) months of implementation, any other changes were needed for that agency to be able to fully and successfully administer the 2024 Amendment; and

WHEREAS, Council wishes to make those suggested changes.

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

SECTION I: Chapter 90 of the Louisville Metro Code of Ordinances (“LMCO”) is hereby amended as follows:

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If an establishment leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest.

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, e-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.

ELECTRONIC SMOKING RETAIL STORE. A business operation with at least 85% of sales dedicated to the sale of electronic smoking devices, accessories, and/or products. To meet the definition, the **ELECTRONIC 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.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

EXTENDED STAY LODGING. Accommodations for persons away from their permanent place of residence, which are available on at least a 30 day basis and may include kitchen facilities. This term does not include hotel, motels, inns, bed and breakfasts, short term rentals, boarding and lodging houses, nursing homes or assisted living residences, wherein a unit could be rented or leased for less than a 30 day period.

HERBAL SHISHA. A non-tobacco product, which its primary intended use by the producer, manufacturer or seller of such product, is to be smoked in a waterpipe, which may be commonly referred to or known as a hookah, narghile or shisha.

HOOKAH. Any water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, herbal shisha, or other plant matter.

HOOKAH LOUNGES. A business operation primarily dedicated to the allowance of on-site smoking through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known as hookah bars. To meet the definition, the lounge must have been in operation as of May 1, 2017 and shall not allow any minors in the building, sell alcoholic beverages (under LMCO Chapter 113), or be licensed as a Food Service Establishment (under LMCO Chapter 118).

MINOR. A natural person who is under 48 21 years of age.

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.

SMOKE or **SMOKING.** The act of inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in

any manner or form. Smoking also includes the use of an electronic smoking device or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in the chapter.

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. Any merchandise or product that is not lawful for sale by state law is not permitted under this definition.

TOBACCO BUSINESS. Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For purposes of this chapter, a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products.

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.

§ 90.11 RETAIL LICENSE REQUIRED FOR SALE OF TOBACCO, TOBACCO PRODUCTS AND/OR ELECTRONIC SMOKING DEVICES ~~SMOKING RETAIL STORE PRODUCTS.~~

(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~~ smoking retail store products 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 Public Health and Wellness Department, or their designee, for the retailer and the license remains in effect in conformity with the provisions of this subchapter.

(B) To obtain an annual retail license under this Chapter, any application for such license must include a floor plan(s) of the establishment depicting the location(s) and dimension(s) of all retail spaces in which smoking retail store products regulated by a land development code are to be stocked and displayed. The floor plans shall be legible,

appropriately labeled, and prepared at measurable architectural scales. An insufficient floor plan may be rejected by the Louisville Metro Public Health and Wellness Department, resulting in an incomplete application that shall not be further reviewed or processed. Any change to an approved floor plan, including modifications to the location or dimensions of an applicable retail space, must be approved by the Louisville Metro Public Health and Wellness Department in advance of carrying out the change at the establishment. Stocking and/or displaying tobacco, tobacco products, electronic smoking devices, and/or other smoking retail store products regulated by a land development code in a location not identified on the approved floor plan is a violation of this Chapter.

(BC) All license fees shall be issued pursuant to KRS 137.115 and 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.

(CD) Any license issued under this subchapter shall be valid from the date of issuance until the next occurring January 1st, unless the license has been suspended or revoked.

(DE) 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.

(EE) Each retailer licensed under this subchapter shall post the license in a conspicuous place within the facility.

(FG) Any license under this section shall be denied, suspended, or revoked by the Director of the Louisville Metro Public Health and Wellness Department, or their designee, 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 local, state or federal law pertaining to distribution or sale of smoking retail store products ~~tobacco, tobacco products, and/or electronic smoking devices as well as any product containing a cannabinoid derived from a cannabis plant or kratom sold alongside any tobacco, tobacco product, and/or electronic smoking devices.~~ Local law includes any violations of Metro Code as well as any related to the Land Development Code.

(2) Fraud, misrepresentation, or bribery in securing or renewing a license.

(3) The Louisville Metro Department of Public Health and Wellness Department will have discretion to investigate any information provided in each application. The Louisville Metro Department of Public Health and Wellness Department will perform random compliance checks annually, during normal business hours or as deemed appropriate by the Louisville Metro Department of Public Health and Wellness Department. Violations found through compliance checks should be rechecked no earlier than one month and within three months, or as soon as practicable.

(4) The Director, or their designee, shall refuse to issue or renew the license until all (i) outstanding fines and liens that have been assessed by Louisville Metro Government

against the subject property, and (ii) delinquent taxes due to Louisville Metro Government are paid in full.

(5) If the property is subject to two or more substantiated civil and/or criminal complaints or the business is found to have twice violated or failed to comply with any applicable provision of this section with respect to a given property within a 12 month period, the Director, or their designee, shall not issue a new license and shall revoke an existing license. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft, and criminal mischief.

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

(H) The business shall self-report any violations to the Department within 30 days of the notice of violation or citation. Failure to self-report shall be considered an additional violation under this subsection.

(I) An application, whether it be for a new or renewal license, shall be reviewed under the current provisions of this section.

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

Sonya Harward
Metro Council Clerk

Brent Ackerson
President of the Council

Craig Greenberg
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

O-133-25 LMCO 90.11 Amendments