

ORDINANCE NO. 103 - 2020

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 42-2020, AS AMENDED AND RESTATED BY ORDINANCE NO. 54-2020 AND ORDINANCE NO. 80-2020, WHICH PERTAINS TO THE SUSPENSION OF CERTAIN ORDINANCES TO ALLOW FOR EXPANDED RESTAURANT, BAR, AND RETAIL BUSINESS USES; TO EXTEND THE DEADLINE THROUGH MAY 2, 2021; TO TEMPORARILY SUSPEND THE ZONING ORDINANCE'S REQUIREMENT FOR A CONDITIONAL USE PERMIT FOR TENTS OR TEMPORARY STRUCTURES; TO INCLUDE REQUIREMENTS FOR THE USE OF HEATING DEVICES WITHIN TENTS OR TEMPORARY STRUCTURES; AND TO INCLUDE ADDITIONAL CLARIFICATIONS, EFFECTIVE UPON PASSAGE OF COUNCIL.

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WHEREAS, the President of the United States and the Governor of the Commonwealth of Kentucky have both declared states of emergency in response to the novel coronavirus (COVID-19) pandemic; and

WHEREAS, Mayor Linda Gorton declared, in Executive Order 2020-01, that a state of emergency exists in Lexington-Fayette County; and

WHEREAS, more than seventy-two thousand (72,000) cases of COVID-19 have been confirmed in the Commonwealth of Kentucky, with more than eight thousand seven hundred (8,700) in Lexington-Fayette County alone (as of October 4, 2020 and October 3, 2020, respectively); and

WHEREAS, the Centers for Disease Control and Prevention (CDC), the Kentucky Department of Health (DPH) and the Lexington-Fayette County Health Department (LFCHD) have recommended that the public practice healthy and safety measures, including social distancing, meaning maintaining at least six feet of distance from other individuals, as well as the wearing of face coverings over one's mouth and nose, to minimize the transmission of COVID-19; and

WHEREAS, on July 22, 2020, Governor Beshear issued updated requirements for retail businesses in the Commonwealth to remain open , including, but not limited to, operating at a maximum of 50% capacity; practicing social distancing; ensuring the premises are cleaned and sanitized regularly; and requiring the wearing of face coverings and other personal protective equipment; and

WHEREAS, on September 15, 2020, Governor Beshear issued updated requirements for restaurants and bars in the Commonwealth to remain open, including, but not limited to, operating at 50% capacity indoors, with no limit on outdoor seating if

following social distancing requirements; practicing social distancing; limiting party sizes to ten (10) or fewer; ensuring the premises are cleaned and sanitized regularly; discontinuing dine-in food and drink service by 11:00 pm nightly (and closing no later than 12:00am, except for drive-thru, carry-out, and delivery services); and requiring the wearing of face coverings and other personal protective equipment; and

WHEREAS, outdoor activities, including outdoor restaurant and bar seating as well as retail space, have been determined to be safer and less likely to lead to the spread of COVID-19 than indoor restaurant seating or retail space; and

WHEREAS, the Urban County Council recognizes the financial impact on local businesses, employees, and citizens resulting from the public health emergency and Governor Beshear's Executive Orders and business opening requirements to reduce the spread of COVID-19; and

WHEREAS, various regulations and ordinances restricting the use of outdoor space, public or private, exist at the local level within Lexington-Fayette County that businesses normally must follow prior to utilizing outdoor space for retail businesses, bars, or restaurants; and

WHEREAS, temporarily suspending the enforcement of certain regulations and ordinances, closing some public streets to motor vehicle traffic, and providing a process for restaurant, bar, and retail business use of closed streets and on-street parking are necessary to help local businesses and the general public comply with the social distancing requirements implemented by the CDC and Governor Beshear, while doing our part to safely revitalize a local economy devastated by the effects of COVID-19 and get Lexington back to work; and

WHEREAS, the Council has authority to temporarily suspend enforcement of ordinances; and

WHEREAS, the Council wishes to temporarily suspend enforcement of certain existing Ordinances to better allow otherwise compliant retail businesses, bars, and restaurants to temporarily expand into adjacent public sidewalks; private parking lots; on-street parking; parks; and public streets closed to motor vehicle traffic.

WHEREAS, the proposed changes are temporary in nature and narrowly tailored to address the negative impacts created by the COVID-19 crisis

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT THAT ORDINANCE NO. 42-2020, AS AMENDED AND RESTATED BY ORDINANCE NO. 54-2020 AND ORDINANCE NO. 80-2020, IS AMENDED AND RESTATED IN ITS ENTIRETY AS FOLLOWS:

#### Section 1 – Definitions

- (a) The term “retail business” shall be coextensive with the term “retail business” as used by the Governor of the Commonwealth of Kentucky in his most current reopening requirements for retail businesses.
- (b) The term “restaurant” shall be coextensive with the term “restaurant” as used by the Governor of the Commonwealth of Kentucky in his most current reopening requirements for restaurants and bars.
- (c) The term “bar” shall be coextensive with the term “bar” as used by the Governor of the Commonwealth of Kentucky in his most current reopening requirements for restaurants and bars.
- (d) The term “business” when not used as part of “retail business” shall include retail businesses, restaurants, and bars.

#### Section 2 – Temporary Use of Public Sidewalks for Retail Business and Restaurants

- (a) Enforcement of the requirement to obtain a Sidewalk Café Permit under Sections 17-29 through 17-29.5 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is suspended for retail businesses, bars, and restaurants otherwise complying with this Ordinance.
- (b) Retail businesses, bars, and restaurants otherwise complying with this Ordinance and the provisions of Section 17-29.3, excluding subsections (1) and (11), may use adjacent public sidewalk for the purposes and in accordance with the provisions of this Ordinance.
- (c) Retail businesses, bars, and restaurants otherwise complying with this Ordinance and the provisions of Section 17-29.3, excluding subsections (1) and (11), may also use up to fifty (50) feet of public sidewalk in either direction for the purposes and in accordance with the provisions of this Ordinance, with the prior approval by the adjacent business and property owner.

#### Section 3 – Temporary Suspension of Enforcement for Certain Zoning Ordinance Requirements

- (a) Enforcement of the Zoning Ordinance’s off-street parking requirements be and hereby is suspended for retail business, bars, and restaurants otherwise complying with this Ordinance.
- (b) Enforcement of the Zoning Ordinance’s requirement for a Zoning Compliance permit be and hereby is suspended for temporary changes to existing restaurants, bars, and retail businesses that are otherwise complying with this Ordinance. This shall not affect the requirements for permanent construction or alterations, including, but not limited to, changing fixed glass for overhead

doors; attaching an overhang or awning to the building; adding a balcony; or permanent rooftop improvements.

- (c) Enforcement of the Zoning Ordinance's requirements relating to non-permanent signs on private property, except requirements related to electronic signs, shall be suspended for retail businesses, bars, and restaurants otherwise complying with this Ordinance, unless placement of the non-permanent sign creates a threat to public safety, as determined by the Division of Police.
- (d) That review by the Courthouse Area Design Review Board shall not be required for any temporary changes to existing restaurant, bar, and retail space for businesses otherwise compliant with this Ordinance.
- (e) Enforcement of the Zoning Ordinance's requirement for a Conditional Use permit be and hereby is suspended for tents or temporary structures placed on the property of existing restaurants, bars, and retail businesses that are otherwise complying with this Ordinance and that have received the applicable permit for tents or temporary structures, if necessary.

#### Section 4 – Temporary Use of On-Street Parking for Retail Business, Bars, and Restaurants

- (a) That subject to the approval of LexPark and the Divisions of Engineering and Traffic Engineering, on-street parking locations, with the exception of disabled parking, on streets with speed limits of twenty-five (25) miles per hour or less, may be temporarily converted to outdoor seating by adjacent restaurants or bars, or use by adjacent retail businesses otherwise compliant with this Ordinance.
- (b) Prior to allowing patrons to access the converted on-street parking for seating or other bar or retail use, a physical barrier, approved by the Divisions of Engineering and Traffic Engineering, must be erected to prevent motor vehicles from traveling into the converted space.
- (c) In condition for the approval of LexPark as required in subsection (a) of this Section, LexPark may charge a fee for use of on-street parking location(s).

Section 5 – That, to the extent any permit is required that has not otherwise been suspended by this Ordinance to provide outdoor seating for restaurants or bars, or for outdoor use by a retail business, including, but not limited to a tent permit or a special recovery district permit, all application fees normally collected by the Lexington-Fayette Urban County Government are suspended.

#### Section 6 – Procedure for Requesting Outdoor Seating or Retail Use in Adjacent Parks

- (a) Restaurants, bars, or retail businesses adjacent to a public park that wish to provide outdoor seating or otherwise utilize a public park for the purposes and in accordance with the provisions of this Ordinance may apply to the Division of Parks and Recreation.
- (b) The application shall be created by the Division of Parks and Recreation, but shall include, at a minimum, the plans for the restaurant's, bar's, or retail business' use of the park, including, but not limited to, garbage collection; social distancing methods; and the business' use of physical barriers; as well as proof of compliance with this Ordinance and an acknowledgment that the business will comply with all local, state, and federal laws.

#### Section 7 – Procedure for Requesting Temporary Street Closure

- (a) That those retail businesses, bars, or restaurants adjacent to public streets that wish to provide outdoor seating on or otherwise utilize the street for the

purposes and in accordance with the provisions of this Ordinance must apply for a special recovery district permit through the Office of the Mayor and otherwise receive the approval of LexPark. No business may utilize those lanes of a street open to motor vehicle traffic.

- (b) The application shall be created by the Office of the Mayor, but shall include, at a minimum, the plans for the restaurant's, bar's, or retail business' use of the adjacent closed street, including, but not limited to, garbage collection; social distancing methods; the business' use of physical barriers; as well as proof of compliance with this Ordinance and an acknowledgment that the business will comply with all local, state, and federal laws.
- (c) Upon receipt of a special recovery district permit application, the Divisions of Engineering and Traffic Engineering shall review and, if appropriate, approve the proposal's design for public safety.
- (d) Upon receipt of a special recovery district permit application and design approval by the Divisions of Engineering and Traffic Engineering, the Office of the Mayor may close public streets to motor vehicle traffic. The Office of the Mayor should take into consideration the completed special recovery district permit application requesting the street be closed, the concentration of requests for closure of a specific street, how traffic flow will be altered if the street is closed, the degree to which other businesses may be effected by the street closure, and public safety.
- (e) If the Office of the Mayor approves an application and temporarily closes the applicable street to motor vehicle traffic, the applicant may utilize the street for the purposes and in accordance with the provisions and requirements of this Ordinance and the business' application, to the extent the latter does not conflict with the former.
- (f) A public street closed to motor vehicle traffic under this Section shall be closed only during the operating hours of the holder of a special recovery district permit. The permit shall provide the time in which all on-street facilities and barriers used by the permit holder must be removed each day. The street must be left in such a condition as may allow for safe motor vehicle travel during the hours in which street is open for motor vehicle traffic.
- (g) Nothing provided herein shall prohibit multiple businesses, restaurants, bars, or combination thereof, from filing one application together to close a street adjacent to all applicants, provided all abide by the requirements of this Ordinance.

#### Section 8 – General Requirements for Retail Businesses, Bars, and Restaurants

In addition to the other requirements provided in this Ordinance, to utilize adjacent public sidewalks, private parking lots, on-street parking, parks, or public streets closed to motor vehicle traffic as provided in this Ordinance, the retail business, bar, or restaurant must, for the entire period of temporary use:

- (a) Possess general liability insurance in the minimum amount of \$1,000,000.00 per occurrence, \$2,000,000 aggregate, and liquor liability insurance in the additional minimum amount of \$1,000,000.00 per occurrence for those businesses serving alcohol, covering the expanded location and naming the Lexington-Fayette Urban County Government as an additional insured with such language as required by the Lexington-Fayette Urban County Division of Risk Management, which cannot be terminated or cancelled without thirty (30) days notice to the Government for use of public sidewalks; on-street parking; or public streets closed to motor vehicle traffic; and
- (b) obtain the private owner's permission to use the space; and

- (c) assume responsibility for any and all damage to public property that occurs within the retail business', bar's, or restaurant's use of additional outdoor space; and
- (d) regularly pick up, remove, and dispose of all trash or refuse left by the business or its patrons in its additional outdoor space;
- (e) refrain from blocking fire hydrants;
- (f) prohibit smoking in the retail business', bar's, or restaurant's additional outdoor space; and
- (g) erect boundaries to physically identify the retail business', bar's, or restaurant's use of additional outdoor space and to protect patrons from motor vehicles, if seating or retail use is immediately adjacent to an active roadway or within a private parking lot; and
- (h) install temporary lighting to illuminate and delineate the boundary of the retail business', bar's, or restaurant's additional outdoor space; and
- (i) clearly define the walk zone for pedestrians on sidewalks to provide the clearance required by the Americans with Disabilities Act. This walk zone must begin six (6) feet away from outdoor seating or the restaurant's, bar's, or retail business' physical boundary identifying its additional space to ensure compliance with social distancing requirements implemented by Governor Beshear; and
- (j) otherwise comply with the requirements of local, state, and federal law, including, but not limited to, the Americans with Disabilities Act, state and local Alcohol Beverage Control regulations, health department regulations, local ordinances for which enforcement was not suspended under this ordinance, including the Smoking Ordinance, and Executive Orders and business opening directives issued by Governor Beshear.

Section 9 – That all facilities placed for use by retail businesses, bars, and restaurants in accordance with this Ordinance must be temporary in nature and shall be removed upon expiration or termination of this Ordinance.

Section 10 – That any heating devices used within tents or temporary structures must be approved by the Division of Building Inspection and the Division of Fire and Emergency Services as part of the tent permit process and shall comply with all applicable codes and manufacture's instructions.

Section 11 – That the Lexington-Fayette Urban County Government reserves the right to require removal of facilities not in compliance with this Ordinance, other existing ordinances for which enforcement has not been suspended under this Ordinance, or state or federal law.

Section 12 – That nothing contained herein shall allow restaurants, bars, and retail businesses to operate if otherwise ordered closed by the Governor of the Commonwealth of Kentucky.

Section 13 – That any approval to use on-street parking; to close a public street temporarily; or to use an adjacent park, previously provided by the Lexington-Fayette Urban County Government under this Ordinance shall continue to be effective while the Ordinance is in effect, provided the restaurant or retail business continues to comply with this Ordinance. If a business' application is currently pending, that business shall not be required to re-apply. Both applicants and approved businesses must re-submit proof of continuing insurance coverage, in the amounts required by Section 8 of this Ordinance, to LFUCG. Nothing contained in this Section shall relieve any retail business, restaurant, or bar from obtaining any new approvals required by LexPark for the business' continued use of on-street parking or the continued closure of a public street.

Section 14 – That this Ordinance shall be effective upon passage of Council until 11:59pm on May 2, 2021. At which time, unless extended by Council, the provisions of this Ordinance shall expire; enforcement of all applicable ordinances and regulations which were suspended under this Ordinance shall resume; and any restaurant, bar, or retail business with facilities on the sidewalk, private parking lots, on-street parking, parks, or public streets as allowed by this Ordinance shall cease operations and remove any facilities thereon.

PASSED URBAN COUNTY COUNCIL: October 22, 2020

*Linda Gorton*

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MAYOR

ATTEST:

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CLERK OF THE URBAN COUNTY COUNCIL

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