**File #:** 1042-21, **Version:** 1

An Ordinance amending and restating Ordinance No. 42-2020, as amended and restated by Ordinance No. 54-2020; Ordinance No. 80-2020; Ordinance No. 103-2020; and Ordinance No. 18-2021, which pertains to the suspension of certain Ordinances for expanded restaurant, bar, and retail business uses, to extend the deadline through December 31, 2021; to remove certain references to the Governor's business reopening requirements; to require businesses acting under this Ordinance to refrain from blocking sewer inlets; to require any barriers utilized to protect patrons from vehicles be crashworthy; to clarify that businesses will be required to obtain a sidewalk cafe permit for use of the public right of way after December 31, 2021; and to clarify that insurance coverage shall be required at all times for businesses utilizing sidewalks, on-street parking, or parks under this Ordinance, effective upon passage of Council. [Mayor's Office, Peacher]

Authorization to amend and restate Ordinance No. 42-2020, as amended and restated by Ordinance No. 54-2020; Ordinance No. 80-2020; Ordinance 103-2020; and which pertains to the suspension of certain Ordinances for expanded restaurant, bar, and retail business uses, to extend the deadline through December 31, 2021, and to provide certain clarifications and other corresponding changes. No Budgetary impact. (L1042-21) (Peacher/Scott)

Budgetary Implications: No

Advance Document Review:

**Law**: { Yes, Completed by [Evan Thompson, 10/8/2021]}

**Risk Management**: {Select Yes/No, Completed by [Official, Date]}

Fully Budgeted: N/A

Account Number:

This Fiscal Year Impact: $

Annual Impact: $

Project:

Activity:

Budget Reference:

Current Balance:

WHEREAS, given that the novel coronavirus (COVID-19) pandemic and its response continues to present economic challenges to businesses; 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 residents resulting from the public health emergency; 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 and providing a process for restaurant, bar, and retail business use of sidewalks, parks, and on-street parking are within the authority of the Urban County Council and are necessary to help local businesses continue to operate 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 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; ORDINANCE NO. 80-2020; ORDINANCE NO. 103-2020; AND ORDINANCE NO. 18-2021, 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 final reopening requirements for



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retail businesses.

(b) The term “restaurant” shall mean an entity that stores, prepares, serves, vends food directly to the consumer or otherwise provides food for human consumption, and must hold a food service permit in good standing and has table seating. This definition includes any portion of a facility that serves food to the public.

(c) The term “bar” shall mean an entity that stores, prepares, serves, vends alcohol directly to the consumer for on-site human consumption and must hold a service permit in good standing. This definition includes any portion of a facility that serves alcohol to the public.

(d) The terms “business” or “businesses” when not used as part of “retail business” shall be defined as “retail businesses, restaurants, and bars.”

Section 2 - Temporary Use of Public Sidewalks for Business Use

(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 businesses otherwise complying with this Ordinance.

(b) Businesses otherwise complying with this Ordinance and the provisions of Section 17-29.3, excluding subsections (1) and (11), may use adjacent public sidewalks for the purposes and in accordance with the provisions of this Ordinance.

(c) Businesses otherwise complying with this Ordinance and the provisions of Section 17-29.3, excluding subsections (1) and (11), may also use up to twenty-five (25) 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.

(d) The relief provided under this Ordinance only applies through December 31, 2021. After that date, a business will be required to obtain all necessary permits and comply with all applicable laws and regulations in order to operate in the public right of way.

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 businesses 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 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 businesses 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.



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(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 businesses that are otherwise complying with this Ordinance and that have received the applicable government permit or permission for tents or temporary structures, if otherwise required.

Section 4 - Temporary Use of On-Street Parking by Businesses

(a) That subject to the approval of an application by the Office of the Mayor as provided in Section 7 of this Ordinance, a business may temporarily convert on-street parking locations, with the exception of disabled parking, on streets with speed limits of twenty-five (25) miles per hour or less, for 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 crashworthy 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 Section 7 of this Ordinance, 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, all application fees normally collected by the Lexington-Fayette Urban County Government for any permit necessary to provide outdoor seating for restaurants or bars, or for outdoor use by a retail business, are suspended.

Section 6 - Reserved

Section 7 - Procedure for Requesting Temporary Use of On-Street Parking or Use of Adjacent Parks

(a) That those businesses adjacent to public streets that wish to provide outdoor seating on or otherwise utilize on-street parking or use of adjacent city park property for the purposes and in accordance with the provisions of this Ordinance must apply for a permit through the Office of the Mayor and otherwise receive the approval of LexPark or the Division of Parks and Recreation, as applicable.

(b) The application shall be made available by the Office of the Mayor, and will require, at a minimum, the plans for the business' use of the adjacent on-street parking or park property, 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 permit application, a review committee including but not limited to the Divisions of Engineering, Traffic Engineering, and the Department of Public Safety shall review and, if appropriate, approve the proposal's design for public safety and compliance with this Ordinance.

(d) Upon receipt of a permit application and design approval by the review committee, the Office of the Mayor will provide notice of approval to the applicant, which may contain



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conditions as provided by the Office of the Mayor or other LFUCG Division or Department.

(e) If the Office of the Mayor approves an application, the applicant may utilize the designated areas 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.

Section 8 - General Requirements for Businesses

In addition to the other requirements provided in this Ordinance, to utilize adjacent public sidewalks, private parking lots, on-street parking, or parks, the business 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 during the period in which the business utilizes public sidewalks; on-street parking; or parks; 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 business' 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 and sewer inlets;

(f) prohibit smoking in the business' additional outdoor space; and

(g) erect boundaries to physically identify the business' 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 business' 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 business' physical boundary identifying its additional space to ensure social distancing; 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 the recommendations of relevant local, state, and federal health authorities.

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



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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 manufacturer'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 businesses to operate if otherwise ordered closed by the Governor of the Commonwealth of Kentucky or the Centers for Disease Control and Prevention (or other relevant local, state, or federal authority).

Section 13 - That those businesses with valid permits for the use of street parking or the use of an adjacent park approved through October 31, 2021 shall not be required to reapply. However, proof of insurance as required by Section 8(a) of this Ordinance must be resubmitted. Nothing contained in this Section shall relieve any business from obtaining any new approvals required by LexPark for the business' continued use of on-street parking.

Section 14 - That this Ordinance shall be effective upon passage of Council until 11:59pm on December 31, 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 business with facilities on the sidewalk, private parking lots, on-street parking, or parks, as allowed by this Ordinance, shall cease operations and remove any facilities thereon.

PASSED URBAN COUNTY COUNCIL:

_____

MAYOR

ATTEST:

_____

CLERK OF THE URBAN COUNTY COUNCIL

Published:

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