

Planning Commission

June 2, 2016



Case No:	16AMEND1004
Project Name:	Hours of Operation LDC Text Amendment
Case Manager:	Brian Mabry, AICP, Planning Coordinator

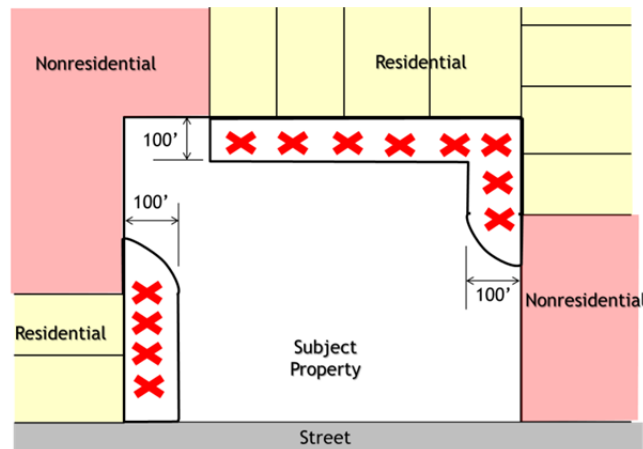
REQUEST

Amend Section 4.1.6, Operating Hours, of the Land Development Code

SUMMARY

Section 4.1.6 of the Land Development Code sets limitations on the following activities, where such activities occur near residential zoning districts or residential uses: collection of garbage and recyclables, loading operations, and exterior construction.

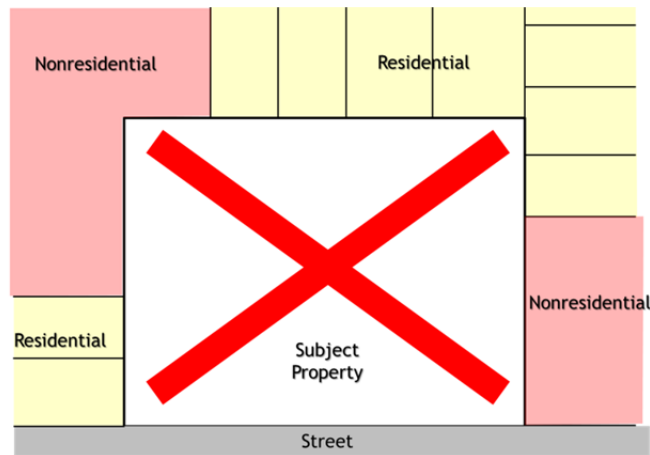
As part of the public review process in late 2015 for a Conditional Use Permit for the Swift Pork Company plant, located at 1100-1200 Story Avenue, the Butchertown Neighborhood Association (BNA) appealed a Director's Interpretation (**Attachment 1**) related to Section 4.1.6, Operating Hours, of the Land Development Code. The Director's Interpretation stated that Section 4.1.6 is intended to set the limits of operating hours only for the area of the subject property within 100 feet of the property line that adjoins residential uses or zoning districts, as demonstrated in the illustration below.



✘ = Operating Hour Restrictions Apply

Director's Interpretation of Applicability of LDC Sec. 4.1.6

In its appeal, the BNA asserted that the prohibition should be interpreted as more restrictive, with the limitations of 4.1.6 applying to the entire site, if any portion of the site is within 100 feet of a residential zoning district or residential use, as demonstrated in the illustration on the next page.



✘ = Operating Hour Restrictions Apply

BNA's Assertion of Applicability of LDC Sec. 4.1.6

At a public hearing on January 11, 2016, the Board of Zoning Adjustment upheld the Director’s Interpretation that the provisions of Section 4.1.6 apply only to a 100-foot inward “buffer” on the interior of a property subject to the Operating Hours limitations, and that those provisions do not apply to the entire site itself, if the site is within 100 feet of a residential zoning district or use, as claimed by the BNA.

On February 4, 2016, the Planning Commission passed a resolution (**Attachment 2**) directing Staff to research and draft revisions to Section 4.1.6 so that its wording more closely aligns with the upheld Director’s Interpretation.

On April 28, 2016, the Planning Committee met to discuss the requested LDC text amendment. The unofficial minutes of their meeting are included as **Attachment 3**.

PLANNING COMMITTEE MEETING

This proposed amendment (**Attachment 4**) is not an attempt to change the substantive provisions related to Operating Hours. It is only meant to clarify how the existing provisions apply to a given property.

The draft LDC text amendment has the following elements:

- Organizes the existing language into A. Applicability and B. Restrictions.
- Differentiates between the use of a property (for example, warehousing, retail, etc.) and activities taking place on the property (collection of garbage and recyclables, loading operations, exterior construction).
- Specifies what is meant by “zoned residential” by referring to the zoning districts listed in Chapter 2, Part 2.
- Combines existing terms “Any solely residential use” and “Any mixed use development that contains a residential use” into “Any property that contains a residential use.”
- Provides a more clear method for measuring where the Operating Hours restrictions apply on a property by specifying that the 100-foot separation requirement is measuring inwardly onto the site.

The Planning Committee was in agreement with the presented draft, as it relates to applicability of the Operating Hours standards, and unanimously voted to approve the proposed amendment.

After additional discussion, the Planning Committee also unanimously voted to request that the Planning Commission pass a resolution authorizing Planning and Design Services staff to research the 100-foot

separation requirement and report back to the Planning Committee at a later date. **Attachment 5** is a draft resolution that the Planning Commission may approve at its public hearing on this request.

APPLICABLE PLANS AND POLICIES

These amendments to the LDC text are consistent with the following policies of Cornerstone 2020.

Marketplace Strategy, Goal A1, Objective A1.2 “Ensure that planning and zoning requirements are clear, consistent, and reasonable.”

Marketplace Strategy, Goal C1, Objective C1.1 “Improve the efficiency and effectiveness of the development review, approval and permitting process.”

The proposed LDC text amendment promotes clarity and consistent enforcement and facilitates development review by clarifying provisions that have previously been questioned and appealed by the public.

NOTIFICATION

Notification of the Planning Commission public hearing has been conducted in accordance with KRS 100 requirements.

STAFF CONCLUSIONS

The proposed amendments, as set forth in **Attachment 4**, would make Section 4.1.6 of the Land Development Code clearer and would better reflect the Director’s Interpretation upheld by the Board of Zoning Adjustment on January 11, 2016. The Planning Commission may recommend approval, approval with modifications, or denial to the Metro Council.

Staff makes these LDC text amendment recommendations related to Operating Hours in light of the following:

WHEREAS, the Planning Commission finds that the proposed amendments to the Operating Hours provisions of the LDC comply with the applicable guidelines and policies of Cornerstone 2020.

WHEREAS, the Planning Commission further finds that the proposed amendments to the Operating Hours provisions of the LDC comply with Marketplace Strategy, Goal A1, Objective A1.2 of Cornerstone 2020. The amendments make the applicability of existing Operating Hours provisions clearer, which contributes to more consistent enforcement.

WHEREAS, the Planning Commission further finds that the proposed amendments to the Operating Hours provisions of the LDC comply with Marketplace Strategy, Goal C1, Objective C1.1 of Cornerstone 2020. The amendments facilitate development review by codifying the determination of the Board of Zoning Adjustment on January 11, 2016, when it upheld the Director’s Interpretation related to the applicability of the Operating Hours provisions of the Land Development Code.

ATTACHMENTS

1. Director’s Interpretation of Section 4.1.6 of the Land Development Code
2. Planning Commission Resolution Directing Staff to Research and Draft Amendments to LDC Section 4.1.6
3. Excerpt from Planning Committee Unofficial Minutes for April 28, 2016
4. Draft LDC Text Amendment Ordinance Related to Hours of Operation
5. Draft Resolution Requesting Planning and Design Services Staff Further Research the 100-Foot Separation Requirement in Section 4.1.6 of the Land Development Code

1. Director's Interpretation of Section 4.1.6 of the Land Development Code

From: [Liu, Emily](#)
To: [Baker, Jonathan](#)
Cc: [Brown, Christopher](#); [Hill, Michael](#)
Subject: Operating Hours
Date: Tuesday, March 04, 2014 6:34:07 PM

Jon, I reviewed this section with several of our staff members. We feel the code is intended to set the limits of operating hours only for the area of the subject property (say FedEx project) within 100 feet of their property line that adjoins residential use or zones.

4.1.6 Operating Hours

The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses on the ground floor as measured from the closest property line of the proposed use.

A. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 7:00 a.m.

B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.

*Yu "Emily" Liu, AICP
Planning Director
Louisville Metro Planning & Design Services Division
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Louisville, KY 40202-4313
502-574-6678/502-574-8129 (F)*

2. Planning Commission Resolution Directing Staff to Research and Draft Amendments to LDC Section 4.1.6

Resolution _____

WHEREAS, Section 4.1.6 of the Land Development Code contains language that has been debated before the Planning Commission;

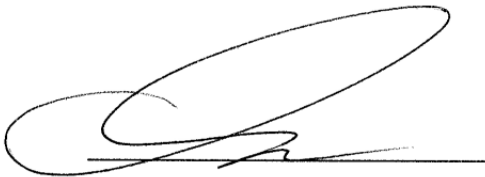
WHEREAS, the interpretation of the Planning Director for Section 4.1.6 was appealed to the Board of Zoning Adjustment;

WHEREAS, the Board of Zoning Adjustment affirmed the interpretation of the Planning Director; and

WHEREAS, the Planning Commission recognizes the need to clarify Section 4.1.6 so that its wording more closely aligns with the decision of the Board of Zoning Adjustment;

NOW THEREFORE BE IT RESOLVED THAT:

The Planning Commission requests Planning & Design Services staff to research and draft revisions to Section 4.1.6 of the Land Development Code and report back to the Planning Committee within 120 days.



Chair

02-04-16

Date

3. Excerpt From Planning Committee Unofficial Minutes for April 28, 2016

**MINUTES OF THE MEETING
OF THE
PLANNING COMMITTEE**

April 28, 2016

A meeting of the Planning Committee was held on, Thursday, April 28, 2016 at 11:30 a.m. at the Metro Development Center, located at 444 S. 5th Street, Louisville, Kentucky.

Committee Members present were:

Robert Kirchdorfer - Chair
Donnie Blake
Jeff Brown
Richard Carlson
Chuck Kavanaugh
Barbara Kelly

Committee Members absent were:

Lula Howard
David Tomes

Staff Members present were:

Emily Liu, Planning Director
Joe Haberman, Planning Manager
Brian Mabry, Planning Coordinator
Jon Baker, Jefferson County Attorney's Office

Others present were:

Steve Porter, Attorney
Michael Tigue, Attorney

The following matters were considered:

**MINUTES OF THE MEETING
OF THE
PLANNING COMMITTEE**

April 28, 2016

The vote was as follows:

YES: Committee Members Blake, Brown, Carlson, Kavanaugh, Kelly and Kirchdorfer.

NO: No one.

NOT PRESENT: Committee Members Howard and Tomes.

ABSTAINING: No one.

Case No. 16AMEND1004

Text Amendment to LDC Section 4.1.6 Operating Hours

Brian Mabry, Planning Coordinator, presented an overview of the request to amend LDC Section 4.1.6 regarding applicability of Section 4.1.6. In January 2016, a Director's Interpretation on the Section was upheld on appeal to the Board of Zoning Adjustment. The Planning Commission approved a resolution requesting Staff to draft an amendment to this Section in February 2016. The purpose of the proposed amendment is to have the language of Section 4.1.6 more closely align with the upheld interpretation.

Mr. Mabry presented the following proposed amendments: organize the existing language into Applicability and Restrictions; better delineate "uses" from "activities" so that it is clear that the restrictions apply to part of the property, not the entire site; clarify what is meant by "residential districts;" combine "Any solely residential use" and "Any mixed use development that contains residential uses" into "Any property that contains a residential use;" and provide a more clear method for measuring where the Hours of Operation restrictions apply on a property, specifically, that it is an inward measurement into the property, not an outward measurement.

Committee Member Kelly expressed concern that the 100-foot separation requirement was not sufficient for residential protection. Audience member Steve Porter concurred, emphasizing that in the separation requirement were increased it would be eligible for a variance on a case-by-case basis.

Committee Member Kavanaugh asserted that the Committee is meeting to discuss changes to how the standards of Section 4.1.6 apply to a property, not the standards themselves.

**MINUTES OF THE MEETING
OF THE
PLANNING COMMITTEE**

April 28, 2016

Committee Member Carlson asked about the Noise Ordinance and discussion followed.

Committee Member Blake made a motion to recommend approval of Case No. 16AMEND1004 to the Planning Commission based on the Staff Report and testimony heard today. The motion was seconded by Committee Member Carlson.

Committee Member Kelly proposed an amendment to the motion to recommend that the Planning Commission instruct Staff to further investigate changing the currently existing 100-foot separation requirement in Section 4.1.6.

Committee Member Blake did not accept the amendment, saying that Committee Member Kelly should make a second, separate, motion requesting Staff to investigate changing the 100-foot separation requirement.

On a motion by Committee Member Blake and seconded by Committee Member Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Committee does hereby **RECOMMEND** that Case No. 16AMEND1004, Text Amendments to LDC Section 4.1.6, proceed to a public hearing of the Louisville Metro Planning Commission on June 2, 2016, with an recommendation to approve.

The vote was as follows:

YES: Committee Members Blake, Brown, Carlson, Kavanaugh and Kirchdorfer.

NO: No one.

NOT PRESENT: Committee Members Howard and Tomes.

ABSTAINING: Committee Member Kelly.

On a motion by Committee Member Kelly and seconded by Committee Member Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Committee does hereby **RECOMMEND** that the Planning Commission instruct Staff to further investigate changing the currently existing 100-foot separation requirement in Section 4.1.6 and to report back to the Planning Committee.

**MINUTES OF THE MEETING
OF THE
PLANNING COMMITTEE**

April 28, 2016

The vote was as follows:

YES: Committee Members Blake, Brown, Carlson, Kavanaugh, Kelly and Kirchdorfer.

NO: No one.

NOT PRESENT: Committee Members Howard and Tomes.

ABSTAINING: No one.

The meeting was adjourned at 12:48 p.m.

Chairman

Division Director

4. Draft LDC Text Amendment Ordinance Related to Hours of Operation

4.1.6 Operating Hours

A. Applicability

Note to Reviewers: The proposed edits organize the existing language into A. Applicability and B. Restrictions.

1. The following operating hour restrictions shall apply to ~~all uses~~ all activities listed in subsection B. below that are within 100 feet of:

a. Any property that is zoned residential, as established in Chapter 2, Part 2, of this LDC; or

b. Any ~~solely property that contains a~~ residential use, ~~or~~

~~Any mixed use development that contains residential uses~~

Note to Reviewers: One point of contention in the Appeal case was the use of the phrase “all uses” above. Staff believed that the proper phrase should have been “activities” since they are called as such in the Restrictions provisions below. The BNA made the claim that use of the term “all uses” meant that the restrictions apply to the entire subject property.

Also “Any solely residential use” and “Any mixed use development that contains a residential use” are combined into “Any property that contains a residential use.”

2. ~~The activity area that is subject to the restrictions shall be as~~ measured inwardly from ~~the closest any~~ property line of the proposed use that is adjacent to a property described in subsection A.1. above. The most current version of the Louisville Metro Noise Ordinance shall also apply to all activities listed below.

Note to Reviewers: Proposed edits in 2. above provide a more clear method for measuring where the Hours of Operation restrictions apply on a property.

B. Restrictions

1. A- Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 6:00 a.m.

2. B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.

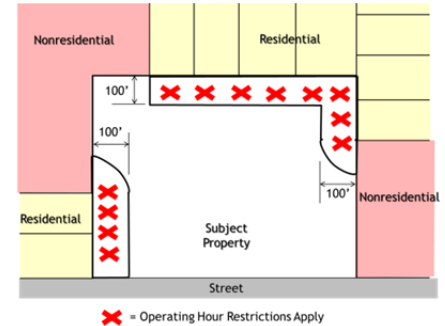
3. C- Exterior Construction Activity - No exterior construction activity shall be conducted between the hours of 9:00 p.m. and 7:00 a.m.

Because the proposed edits above may be difficult to understand with all the editing marks, below is a “clean” version of the proposal. The illustration shown below, or one similar to it, could be added to Section 4.1.6 as a visual aid.

4.1.6 Operating Hours

A. Applicability

1. The following operating hour restrictions shall apply to all activities listed in Section B. below that are within 100 feet of:
 - a. Any property that is zoned residential, as established in Chapter 2, Part 2, of this LDC; or
 - b. Any property that contains a residential use.
2. The activity area that is subject to the restrictions shall be measured inwardly from any property line of the proposed use that is adjacent to a property described in subsection A.1. above. The most current version of the Louisville Metro Noise Ordinance shall also apply to all activities listed below.



B. Restrictions

1. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 6:00 a.m.
2. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.
3. Exterior Construction Activity - No exterior construction activity shall be conducted between the hours of 9:00 p.m. and 7:00 a.m.

5. Draft Resolution Requesting Planning and Design Services Staff Further Research the 100-Foot Separation Requirement in Section 4.1.6 of the Land Development Code

See next page

Resolution _____

WHEREAS, the Planning Committee met on April 28, 2016, to discuss proposed amendments to the applicability provisions in Land Development Code Section 4.1.6, Operating Hours;

WHEREAS, the discussion continued regarding the 100-foot separation requirement between listed activities in Section 4.1.6 and residentially zoned and used properties; and

WHEREAS, at least one member of the Planning Committee questioned whether the 100-foot separation requirement was adequate;

NOW THEREFORE BE IT RESOLVED THAT:

The Planning Commission requests Planning & Design Services Staff to research and draft revisions related to the aforementioned separation requirement in Land Development Code Section 4.1.6 and report back to the Planning Committee within 120 days.

Chair

Date