

Planning Committee

March 17, 2016



Case No:	16AMEND1003
Project Name:	Outdoor Amenities / Focal Point(s) LDC Text Amendment
Case Manager:	Brian Mabry, AICP, Planning Coordinator

REQUEST

Amend Section 5.12.2 of the Land Development Code Related to Outdoor Amenities / Focal Point(s).

SUMMARY

The purpose of Section 5.12.2, Outdoor Amenities / Focal Point(s) (**Attachment 4**), is to require larger-scale developments to provide one, or a combination, of the following features on-site:

1. Sidewalks, plaza or patio area, at least 15 feet wide with seating;
2. Outdoor dining area with seating;
3. Water feature;
4. Landscaped green area with seating;
5. Outdoor playground area; or
6. Multi-purpose trails/paths.

The amenities must consist of 10% of the building footprint of a retail, office, industrial or mixed use development with a building footprint over 60,000 square feet. The amenities are required to be in close proximity to their associated buildings and must contain seating in order to better facilitate use.

Alternatively, the LDC allows a developer to choose to pay a fee-in-lieu of the outdoor amenity set-aside. The fee is calculated by multiplying the square footage of the required amenity area by the value of the property per square foot. The fee is payable at the time of building permit application and goes to the Louisville Public Space Art Fund, administered by the Commission on Public Art, for the purpose of granting money for new works of public art.

TIMELINE

On August 20, 2013, while working on the Round 2 Land Development Code Update, the Miscellaneous Research sub-committee considered changes to Section 5.12.2, Outdoor Amenities / Focal Point(s). Those proposed changes, which failed by a sub-committee vote of 3 to 7, involved:

- Applying the public amenities requirements and the option to use the fee in-lieu, to developments in all form districts, rather than only in four select form districts, as the existing regulations at that time stated.
- Applying the requirements to industrial/warehouse developments (in addition to retail, office and mixed-use developments).
- Changing the building area threshold from “buildings with a total footprint greater than 100,000 square feet” to “buildings with a total building area greater than 60,000 square feet.”
- Offering three options:
 1. Provide only an outdoor amenity feature on site.
 2. Provide half the required outdoor amenity square footage and half the public art fee-in-lieu.
 3. Provide only a public art fee-in-lieu.

- Allowing a reduction in minimum parking requirements for developments that contribute a fee-in-lieu.

In order to recommend a change that more stakeholders could agree on, the Planning and Design Services Staff proposed a modest change to Section 5.12.2 to the Planning Commission at its public hearing on August 14, 2014. That change was to simply apply the existing requirements to all form districts, rather than solely to the four select districts: Neighborhood, Suburban Marketplace Corridor, Suburban Workplace and Regional Center Form Districts. The Planning Commission forwarded the proposed change to Metro Council with a positive recommendation.

On December 11, 2014, the Metro Council approved amendments to Section 5.12.2. Those amendments, which deviated from the Planning Commission recommendation and incorporated some previous recommendations of the Miscellaneous Research sub-committee, involved:

- Applying the public amenities requirements, and the option to use the fee in-lieu, to developments in all form districts, rather than only in four select form districts.
- **Applying this requirement to industrial/warehouse developments**, in addition to retail, office and mixed-use developments.
- Changing the building area threshold from “buildings with a total footprint greater than 100,000 square feet” to “buildings with a total footprint greater than 60,000 square feet.”

AMENDMENT OPTIONS

Since adoption of these amendments, the Planning Commission has granted several waivers. As a result, on February 4, 2016, the Planning Commission passed a resolution (**Attachment 1**) requesting that Staff research and draft additional changes to Section 5.12.2.

On February 11, 2016, the Planning Committee met and considered four possible text amendment options. The draft minutes of the meeting (**Attachment 2**) show that the Committee looked most favorably at what was then designated as Option C, Require Public Amenities Dedication Based on Number of Employees on Largest Shift. They also showed interest in Option A, requiring a 10% set-aside based on office square footage of the industrial development. Finally, the Committee requested that Staff further research the idea of incentivizing the fee-in-lieu option for industrial/warehouse uses.

As of December 11, 2014, when warehousing and manufacturing uses became subject to the provisions, the revised Section 5.12.2 has applied to eight warehousing or manufacturing developments that have come before Planning Commission. Attachment 3 shows that of those, seven have requested and received a waiver from the provisions of Section 5.12.2. In all but one of the seven cases, the Commission approved a waiver allowing the developments to provide an area ranging from 10% to 20% of the office area only for public amenities, rather than applying the 10% rule to the entire building footprint. In one case, for a mini-warehouse facility on Bardstown Road, the Commission waived Section 5.12.2 entirely.

In order to make Section 5.12.2 better accommodate industrial/warehouse developments, and to reduce the amount of requested waivers, Staff proposes the amendment options below for the Commission’s consideration.

Public Amenities Set-Aside

Option A - Section 5.12.2.A.1. – Require Public Amenities Dedication Based on Office Square Footage Only

This option is the more straightforward of the two and mimics what industrial/warehouse developments have been required to dedicate as part of the waiver process: 10% of the office space in the industrial/warehouse development. If Metro Council approves this option, then the result should be fewer waiver requests related to Section 5.12.2. This should be a desirable outcome due to the fact that the Planning Commission has approved every requested outdoor amenity waiver for industrial/warehouse development since December 2014. The development would still have to go to the Planning Commission in order to receive approval of the design of the public amenity set-aside.

A disadvantage of this approach is that, if one compares office square footage with estimated employees as shown in **Attachment 3**, there does not appear to be a direct correlation between smaller office size and fewer employees in recent industrial/warehouse developments. This is important because employees are the main users of an industrial or warehouse development's outdoor amenity space.

OR

Option B (Formerly Option C When Presented to Planning Committee) - Section 5.12.2.A.2. – Require Public Amenities Dedication Based on Estimated Number of Employees on Largest Shift

This option would require a dedication of public amenities square footage based on the estimated number of employees on the largest shift.

The rationale of this option is that the primary users of the amenity space will be employees, since industrial/warehouse uses have little, if any, come-and-go traffic from the general public. The amount of square feet to set aside per employee may be a matter of debate. The Kentucky Building Code has an occupancy requirement of 15 square feet of industrial space per person. As a point of reference, a parking space is approximately 200 square feet. The column to the far right of **Attachment 3** shows the resulting required set-aside if that ratio had been the requirement at the time of approval for previous warehousing or manufacturing projects. In four out of the seven waiver cases, the set-aside based on estimated employees would have been greater than what was actually provided. In one of the seven cases (15DEVPLAN1157) the difference was negligible.

A disadvantage to this approach is that it is difficult for a developer to estimate the number of employees for a warehouse use, less so for an industrial use. A designer does an estimation on a development plan for parking purposes, but the estimation could be inaccurate by the time a user is ready to occupy the industrial/warehouse building.

Considering the pros and cons discussed above Staff recommends Option A.

Fee-In-Lieu Option

Section 5.12.2.A.4 – Incentivize Industrial/Warehouse Developments to Pay Fee-in-Lieu

Because the space set aside for public amenities would most frequently be used only by employees of the industrial/warehouse development, rather than being used and enjoyed by the general public, the Planning Commission could recommend incentivizing industrial/warehouse developers to pay the fee-in-lieu, rather than dedicating outdoor amenity space. This incentive would come in the form of a “discount” on the fee-in-lieu payment for industrial/warehouse developments.

The fee-in-lieu is currently calculated by multiplying the square footage of the required public amenity dedication space by the value of the land. The calculation methodology could be changed for industrial/warehouse developments to incentivize the fee so that the resulting number is discounted by a certain percentage, possibly 25 percent.

An ongoing issue with the existing method of calculating the fee-in-lieu is that the fee is due at the time of building permit, before the property is built upon. Therefore, the value of the property is going to be much lower than it will be post-construction. Staff considered the concept of the fee-in-lieu being due at the time of the tenant of the building applying for a certificate of occupancy, after the building has been built and all other improvements installed, but the annual assessment and change in assessed value would likely still not have taken place at that point in time. In addition, an end user of the building could be unaware of the fee requirement and be unprepared to pay it at the time of Certificate of Occupancy issuance.

In addition, Staff considered a flat per-square-foot fee for industrial/warehouse developments which would not be subject to the change in assessed valuation pre- versus post-construction. The Property Valuation Administrator (PVA) is working on tracking the average assessed value of industrial property throughout the County on a district-by-district basis. This valuation would not be site-specific and it would not be sensitive to pre- and post-construction fluctuations. However the PVA has not completed its work on studying the districts at this time. For this reason, Staff does not propose to change the way the fee is calculated at this time, except to offer the “discount” mentioned above.

Attachment 4 is the draft Ordinance with the amendment options discussed above. Language proposed to change is shown as stricken or underlined to indicate provisions recommended to be removed or added.

APPLICABLE PLANS AND POLICIES

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

1. Plan Element Community Form and Land Use, Guideline 2, A. Policies, Item 12

Focal Point. Encourage large developments in activity centers to be compact, multipurpose centers designed around a central feature such as a public square or plaza or landscaped element.

2. Plan Element Economic Growth and Sustainability Guideline 6, Intent Statement

To reduce the time involved in the review of land development proposals.

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 5.12.2 of the Land Development Code more practical as it relates to industrial/warehouse development.

Considering the pros and cons described for option A and B in terms of the public amenity set-aside, Staff recommends Option A.

In addition, Staff recommends retaining the current method for calculating the fee-in-lieu, except that a 25% reduction in fee for industrial and warehouse developments

The Planning Commission may recommend approval, approval with modifications, or denial to the Metro Council.

ATTACHMENTS

1. Planning Commission Resolution Directing Staff to Research and Draft Amendments to Sec. 5.12.2
2. Draft Planning Committee Minutes from February 11, 2016
3. Developments Subject to Section 5.12.2 Since December 11, 2014
4. Draft Ordinance Amending LDC Sec. 5.12.2.

1. Planning Commission Resolution Directing Staff to Research and Draft Amendments to Sec. 5.12.2 (Signed copy pending)

Resolution _____

WHEREAS, prior to December 15, 2014, Section 5.12.2 of the Land Development Code required retail, office and mixed-use developments that involve construction of a building or buildings with a total footprint greater than 100,000 square feet to set aside an area equivalent to a minimum of 10% of the total building footprint for outdoor amenities or to pay a fee-in-lieu of amenities;

WHEREAS, on December 15, 2014, as an item in Round Two of the Land Development Code update project, the Metro Council approved an amendment to Section 5.12.2 to additionally require applicable industrial developments to set aside 10% of the total building footprint for outdoor amenities;

WHEREAS, industrial and warehouse developments tend to have a high rate of square footage compared to their number of employees;

WHEREAS, industrial and warehouse developments, by their very nature, tend to have little if any retail traffic from the general public;

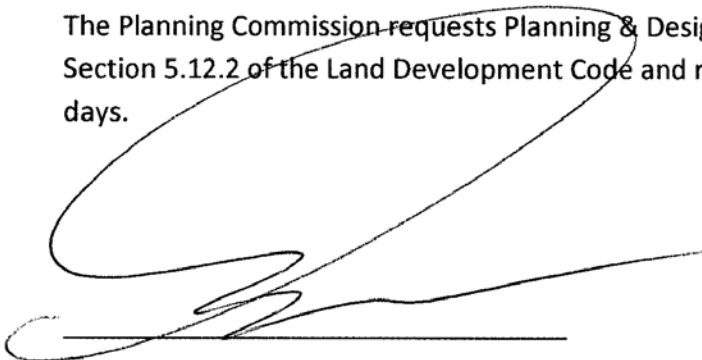
WHEREAS, since December 15, 2014, developers of no less than seven industrial or warehouse developments have requested waivers from Section 5.12.2 and all seven have received the requested relief;

WHEREAS, the public amenity set-aside and fee-in-lieu provisions of Section 5.12.2 warrant greater consideration in terms of how they impact industrial development; and

WHEREAS, a significant number of approved waivers for a portion of the Land Development Code suggests that relevant language of the Code should be reevaluated for practicality and effectiveness;

NOW THEREFORE BE IT RESOLVED THAT:

The Planning Commission requests Planning & Design Services staff to research and draft revisions to Section 5.12.2 of the Land Development Code and report back to the Planning Committee within 120 days.



Chair

02-04-16

Date

2. Draft Planning Committee Minutes from February 11, 2016

MINUTES OF THE MEETING OF THE PLANNING COMMITTEE

February 11, 2016

Case No. 16AMEND1003 Outdoor Amenities/Focal Points

Brian Mabry, Planning Coordinator, presented an overview of the recent changes that were made to Section 5.12.2 of the Land Development Code. When Metro Council was reviewing proposed changes, they made two changes that had not been included in the recommendations from the Planning Commission, 1.) they changed the building footprint threshold for outdoor amenities to 60,000 square feet (from 100,000 square feet) and 2.) added industrial uses to the requirement (they had previously not been included).

Since implementation of these changes, there have been a number of waiver requests to reduce or eliminate the outdoor amenities requirements for industrial developments. The requirement appears to be excessive, so staff has supported these waiver requests and all have been approved. The majority of the reductions have required outdoor amenities to be equal to 10 percent of the office space, not the entire industrial/warehouse footprint. There are also problems with the way the fee-in-lieu is calculated.

Sarah Lindgren, Public Art Administrator, Louisville Forward, discussed the fee-in-lieu and how it is intended to be collected and administered. She believes the fee-in-lieu could be a viable option for industrial developments but the requirements as they are now do not work.

Mr. Mabry presented four options for calculating the amount of required outdoor amenity space:

1. Option A would be to reword the language of the Land Development Code to utilize the 10 percent of office area within an industrial building as the standard for calculating the amount of required outdoor amenity space.
2. Option B would be to split the requirements for the office area and industrial/warehouse area in a building and assign different outdoor amenity space requirements for them.
3. Option C would be to create a calculation based on the number of employees within the building.
4. Option D would be to completely eliminate industrial developments from the outdoor amenity requirements.

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

February 11, 2016

Mr. Mabry also stated it might be a good idea to change the fee-in-lieu option, especially the way it is calculated, so it might be a more reasonable alternative to providing all the space or requesting a full waiver.

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

RESOLVED, the Louisville Metro Planning Committee does hereby RECOMMEND that Case No. 16AMEND1003, Outdoor Amenities/Focal Points, be forwarded to the Louisville Metro Planning Commission on March 17, 2016 with staff providing language for Option C (calculating required outdoor amenity space requirements based on number of employees) and different options of calculating the fee-in-lieu option.

RESOLVED, the Louisville Metro Planning Committee does hereby **RECOMMEND** that Case No. 15AREA1003, Dixie Highway Town Center/Lower Hunters Trace Planned Development District, be forwarded to the Louisville Metro Planning Commission at a date to be determined by staff for review and consideration.

The vote was as follows:

YES: Committee Members Brown, Carlson, Howard, Kelly and Kirchdorfer.

NO: No one.

NOT PRESENT: Committee Members Blake, Kavanaugh and Tomes.

ABSTAINING: No one.

3. Developments Subject to Section 5.12.2 Since December 11, 2014

Case No.	Case Name	Address	Form / Zoning District	Use	Building Size (SF)	Requirement / Proposal	A=Approved; D=Denied; P = Pending	Waiver needed?	% Office	% Industrial	Estimated # of Employees on Largest Shift	Outdoor Amenity Dedication @ 10% of Office Space	Outdoor Amenity Dedication @ 15 SF per Employee (SF)
15DEVPLAN1068	Renaissance South Business Park - Lot 6	8701 Minor Ln	SW / EZ-1	Warehouse	1,132,655 / 26 acres	Required: 2.6 acres of amenity area Provided: 2,000 SF of landscaping and outdoor patio area or 10% of office area	A - DRC -7/15/15	Y	2%	98%	410	2,000	6,150
				Office	20,000								
15ZONE1004	Louisville Industrial Center Building W	7830 National Turnpike	N / EZ-1	Warehouse	384,960	Required: 41,496 SF of amenity area Provided: 5,000 SF of landscaping, walkways and seating areas or 17% of office area	A - PC - 7/16/15	Y	7%	93%	150	3,000	2,250
				Office	30,000								
15DEVPLAN1100	Renaissance South Business Park - Tract 5B World Logistics Center South	2500 Export Dr	SW / EZ-1	Warehouse	632,923	Required: 64,584 SF of amenity area Provided: 1,286 SF of amenity area or 10% of office area	A - LD&T - 8/13/15	Y	2%	98%	338	1,292	5,070
				Office	12,917								
15DEVPLAN1103	Blankenbaker Station II Lot 27	13001 Plantside Drive	SW / PEC	Warehouse	144,000	Required: 16,400 SF of amenity area Provided: 3,922 SF outdoor amenity area for the use of employees on the site or 20% of office area	A - DRC - 9/2/15	Y	12%	88%	200	2,000	3,000
				Office	20,000								
15ZONE1029	New Cut Center	6112/6120 New Cut Road & 8901 Kessler Ave	SW / CM & C-2	Warehouse	770,000	Required: 78,000 SF of amenity area Provided: 1,000 SF outdoor amenity space or 10% of office square footage	A - PC - 10/1/15	Y	1%	99%	543	1,000	8,145
				Office	10,000								
15DEVPLAN1154	Old Bardstown Road Storage	8814 Old Bardstown Rd	N / CM	Mini-warehouse	105,400	Required: 10,540 SF of amenity area Provided: None	A - DRC 11/18/15	Y	4%	96%	2	405	30
				Office	4,050								
15DEVPLAN1157	Jefferson Commerce Center	5101 Jeff Commerce Dr	SW / EZ-1	Distribution facility	253,000	Required: 29,300 SF of amenity area Provided: 4,000 SF of amenity area with concrete patio, picnic table and benches or 10% of office square footage	A - DRC - 11/4/15	Y	14%	86%	254	4,000	3,810
				Office	40,000								

Case No.	Case Name	Address	Form / Zoning District	Use	Building Size (SF)	Requirement / Proposal	A=Approved; D=Denied; P = Pending	Waiver needed?	% Office	% Industrial	Estimated # of Employees on Largest Shift	Outdoor Amenity Dedication @ 10% of Office Space	Outdoor Amenity Dedication @ 15 SF per Employee (SF)
15DEVPLAN1160	Ford Kentucky Truck Plant Expansion	3001 Chamberlain Ln.	SW / PEC	Manufacturing	288,715	Required: 28,871 SF of amenity area Provided: 29,050 SF outdoor amenity area with 192 seats or 10% of entire building	A - DRC - 12/2/15	N	0%	100%	110	0	1,650
						Average Required: 47,805 SF of amenity area Average Provided: 5,782 SF		Average	5%	95%	251	1,712	3,763

4. Draft Ordinance Amending LDC Sec. 5.12.2

ORDINANCE NO. _____, SERIES 2016

AN ORDINANCE AMENDING SECTION 5.12.2 OF THE LAND DEVELOPMENT CODE PERTAINING TO OUTDOOR AMENITIES / FOCAL POINT(S) — APPLICABLE SECTIONS ARE MORE SPECIFICALLY SET FORTH BELOW IN EXHIBIT A (CASE NO. 16AMEND1003).

SPONSORED BY: Planning Commission

WHEREAS, the Planning Commission approved a resolution on February 4, 2016, requesting Planning and Design Services staff to research and draft amendments to Section 5.12.2 of the Land Development Code (“LDC”) in order to more effectively address industrial developments; and

WHEREAS, the Planning Commission held a public hearing on March 17, 2016 to consider an amendment to LDC; and

WHEREAS, the Planning Commission recommended approval of the amendments provided in the staff report as stated in the Planning Commission's minutes of March 17, 2016; and

WHEREAS, the Metro Council concurs in and adopts the findings and recommendations of the Planning Commission in Case No. 16AMEND1003 as reflected in the Planning Commission's minutes and records, and as more specifically set forth in Exhibit A attached hereto;

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

Section I: The Metro Council hereby adopts the amendments to the LDC as contained in the minutes and records of the Planning Commission in Case No. 16AMEND1003, dated March 17, 2016, and as more specifically set forth in Exhibit A attached hereto.

Section II: This Ordinance shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

David Yates
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By:

5.12.2 Outdoor Amenities/Focal Point(s)

- A. Developments in all form districts shall meet the following standard.
1. Retail, Office, ~~Industrial~~, and Mixed-Use developments that involve construction of a building or buildings with a total footprint greater than 60,000 square feet shall set aside an area equivalent to a minimum of 10% of the total building footprint for outdoor amenities. Outdoor amenities may be used as a way of fulfilling the focal point requirement for activity centers listed within the Cornerstone 2020 comprehensive plan. The applicant shall provide outdoor amenities that include any one or a combination of the following (Note: Final design of outdoor amenities shall require approval from the Planning Commission or designee):
 - a. Sidewalks, plaza or patio area, at least 15 feet wide and providing seating
 - b. Outdoor dining
 - c. Water feature
 - d. Landscaped green area with seating
 - e. Outdoor playground area
 - f. Multi-purpose trails/paths
 2. Industrial developments that involve construction of a building or buildings with a total footprint greater than 60,000 square feet shall set aside an area equivalent to a minimum of 10% of the total office square footage for outdoor amenities, as described in paragraph 1 above.

OR

2. Industrial developments that involve construction of a building or buildings with a total footprint greater than 60,000 square feet shall set aside 15 square feet of public amenity area, as described in paragraph 1 above, per estimated employee on the largest shift.

Comment for Reviewers: The first option is the more straightforward of the two and mimics what industrial developments have been required to dedicate as part of the waiver process. This is the Staff's recommendation.

The other option bases the public amenity set aside on the number of employees on the largest shift. The rationale is that the primary users of the amenity space will be employees, since Industrial uses have little, if any, come and go traffic from the general public. As a point of reference, a parking space is typically about 200 square feet. The Planning Committee preferred this option but Staff has concerns about administration.

3. Any such areas shall be accessible by walkways linking with the various uses within the development and/or with adjacent development. Amenities may be centralized or dispersed, but shall be located no more than 600 feet (measurement based on the pedestrian walkways) from the buildings required to provide the amenities. Outdoor open space may contain food service areas. The outdoor space shall include seating at a rate on not less than 1 seat per 200 square feet of outdoor amenity. To enhance usability, at least 25% of the open space shall be shaded or used for landscaping.
4. As an applicant option to the requirements set forth above, a fee in lieu of the Outdoor Amenity/Focal Point requirements may be provided with approval of the Planning Commission or designee. For applicable non-industrial developments, the fee in lieu shall be calculated based on the square footage required for the outdoor amenity area multiplied by the per square foot value of the parcel of land, as determined by its actual documented value at the

time of development. For applicable industrial developments, the fee in lieu shall be calculated based on the square footage required for the outdoor amenity area, multiplied by the per square foot value of the parcel of land, as determined by its actual documented value at the time of development, multiplied by 75%. This fee-in-lieu shall be calculated as part of the development review and payable at the time of building construction permitting. The fee shall be directed to the Louisville Public Space Art Fund. In June of every year, the Mayor's Commission on Public Art shall come before the Parks and Libraries Committee or other committee designed by the Metro Council President to provide information regarding the expenditure of funds from the Louisville Public Space Art Fund. Such presentation shall include information regarding the amount of money collected from the fee-in-lieu, and what percentage of such money was spent on the maintenance of existing art and the installation of new art.

Comment for Reviewers: The amendments above simply provide a 25% reduction in the optional industrial or warehouse development fee-in-lieu for public art.

