

Planning Commission

August 1, 2016



Case No:	16AMEND1007
Project Name:	Biodigesters LDC Text Amendment
Case Manager:	Brian Mabry, AICP, Planning & Design Supervisor

REQUEST

Amend the Land Development Code Related to Biodigesters.

SUMMARY

A biodigester uses natural digestion processes to convert biodegradable materials such as food scraps, yard trimmings and spoiled or outdated food products into biogas, organic solids and liquids. The biogas can be cleaned for use as sustainably-produced natural gas. The solids and liquids can be used as a fertilizer. Many biodigesters are built to reduce the amount of food waste and other biodegradable materials that are placed in landfills, and to use these materials as a source of renewable, clean energy.

Louisville Metro's current Land Development Code does not have provisions specific to biodigesters. Instead, biodigesters are interpreted as falling under the standards for 4.2.37 Non-emergency Generator and Non-accessory Alternative Energy System. Such uses are allowed with a Conditional Use Permit in the following zoning districts: OR, OR-1, OTF, OR-2, OR-3, CN, C-1, C-2, C-3, C-M, M-1, M-2, M-3, EZ-1, PEC, PRO, W-1, and W-2. Alternative Energy Systems have standards related to setbacks, Air Pollution Control District review, noise, and screening, all of which are carried over to the proposed biodigester draft. See **Attachment 1** for a map showing where biodigesters, interpreted as being an Alternative Energy System, may be located under current regulations.

Recognizing the need for language directed specifically toward biodigesters, in late February 2016, Metro Council passed an ordinance (**Attachment 2**) imposing a temporary ban on biodigesters and requesting Planning & Design Staff to research regulations from other communities, produce a draft set of regulations for biodigesters, and hold a public hearing with the Planning Commission. For the last few months, Staff has been researching how other communities regulate biodigesters and has used the information to produce the draft regulations. **Attachment 3** is a summary of the research. In addition, on the evenings of July 25, 26 and 27, Staff held a total of six community forums in the following locations: California Community Center, Southwest Library, East Government Center, Beechmont Community Center, Newburg Library, and South Central Government Center. The purpose of these meetings to gather community input on the draft to forward to Planning Commission and Metro Council for their consideration. **Attachment 8** contains notes from these forums.

The following are highlights of the draft regulations:

- Allowed with a Conditional Use Permit in C-M, M-1, M-2, M-3, and EZ-1. (See **Attachment 6** for locations of these districts)
- Under existing regulations, a Conditional Use Permit requires a neighborhood meeting, public notice, public hearing, and decision by BOZA.

- Must be located a minimum of 1,320 feet (1/4 mile) from any residential use, residentially-zoned property, college, school, religious building, park, playground, community center, hospital, nursing home, or assisted living facility. This distance is not waivable in EZ-1. (See **Attachment 7** for locations potentially eligible for a biodigester based on the zoning districts above and the draft separation requirements)
- The biodigester would also be subject to additional standards to address noise, odor, safety and traffic. Noise must not exceed 65 decibels at the property line of the digester. That is roughly equal to the noise level of a normal conversation. An applicant for a CUP for a biodigester must submit an odor mitigation plan to be reviewed by Air Pollution Control District, an emergency response plan to be reviewed by EMA/MetroSafe, and a traffic analysis to be reviewed by Transportation Planning.
- Agricultural properties are exempt from zoning requirements under state law. As a result, a biodigester that is accessory to a bona fide agricultural operation is permitted as of right with no zoning approval, and would not be subject to the requirements of the proposed regulations. Whether a biodigester is accessory to a bona fide agricultural use would have to be reviewed on a case-by-case basis.

INTERESTED PARTY COMMENTS

See **Attachment 4**, which includes emailed comments as well as written comments from the six community forums.

PLANNING COMMITTEE MEETING

The Planning Committee met on July 28, 2016. Staff will provide minutes from that meeting at the Planning Commission hearing on August 1, 2016. Items that the Planning Committee brought up for potential change in the draft include, but are not limited to:

- Remove C-M from permitted zoning districts
- Remove EZ-1 from permitted zoning districts
- Remove all but M-3 from permitted zoning districts
- Change separation requirement from ¼ mile to ½ mile
- Make screening more specific
- Explicitly require a fence around the property
- Require annual report or update to odor mitigation “ongoing plan”
- Prohibit waiver ability for any separation requirement regardless of district
- Add Fire Department to Metro Safe Provisions
- Require approval rather than just review by appropriate agencies for odor plans and emergency plans

APPLICABLE PLANS AND POLICIES

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

Traditional and Workplace Form Districts, Goal G4, Site Design, G4.3 Buffers and Compatibility. “Utilize buffer, landscape, lighting and noise and similar performance standards and guidelines to ensure compatibility between uses and buildings within workplaces.”

Traditional Neighborhood, Neighborhood and Village Form Districts. Goal C4, Site Design, C4.6 Buffers and Compatibility. “Ensure compatibility of new developments with the existing blockface and with abutting uses by high quality design and compatibility of building types. When these measures afford insufficient protection for

abutting uses, provide buffering, screening or other techniques to mitigate any nuisance which may reasonably be foreseen from the proposed development.”

Community Forum / Land Use, Guideline 3 Compatibility, Policy A.5. Odor and Air Quality Emissions “Consider prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when residential areas may be impacted.”

Community Forum / Land Use, Guideline 3 Compatibility, Policy A.6 Traffic “Mitigate adverse impacts of traffic from proposed development on nearby existing communities.”

Community Forum / Land Use, Guideline 3 Compatibility, Policy A.7. Noise “Mitigate adverse impacts of noise from proposed development on existing communities.”

These amendments to the LDC text are consistent with the following policies of Sustain Louisville.

2.4 Waste, Goal 8. “Divert 50% of solid waste away from the landfill by 2025 and 90% by 2042.”

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 5**, would allow biodigesters to be located in certain zoning districts in Louisville Metro, provide minimum separation requirements, and establish standards related to setbacks, screening, noise, odor, safety and traffic.

Staff makes these LDC text amendment recommendations related to biodigester provisions in light of the following:

WHEREAS, the Planning Commission finds that the proposed amendments related to biodigesters comply with the applicable guidelines and policies of Cornerstone 2020 and Sustain Louisville.

WHEREAS, the following parts of Cornerstone 2020 recommend many of the measures found in the biodigester draft regulations: G4.3 and C4.6 “Buffers and Compatibility” and Community Form / Land Use, Guideline 3, Policy A.5 through A.7, related to Odor and Air Quality Emissions, Traffic, and Noise.

WHEREAS, Section 2.4 Waste, Goal 8, of Sustain Louisville recommends a 50% reduction in solid waste sent to the landfill. Regulations that enable biodigesters to be established in safe and appropriate locations will help to reduce the amount of solid waste going to the landfill.

The Planning Commission must approve, approve with modifications, or deny the proposed draft regulations.

ATTACHMENTS

1. Map - Zoning Classifications Eligible for Biodigesters with CUP Under Current Land Development Code Regulations
2. Ordinance 37-2015
3. Summary of Biodigester Research
4. Interested Party Comments

5. Draft Biodigester LDC Text Amendment
6. Map - Zoning Classifications in Louisville Metro (C-M, M-1, M-2, M-3, EZ-1)
7. Map - Locations Potentially Eligible for Biodigesters
8. Community Forum Notes