

## Planning Commission

Staff Report  
February 7, 2019



<b>Case No:</b>	19AMEND1002
<b>Project Name:</b>	Sidewalk Fee in Lieu LDC Amendment
<b>Applicant:</b>	Louisville Metro
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	All Council Districts
<b>Case Manager:</b>	Chris French, AICP, Planning and Design Supervisor

### REQUEST

Amend Section 6.2.6, of the Land Development Code (LDC) regarding sidewalk fee in lieu.

### SUMMARY/BACKGROUND

The Metro Council adopted Resolution No. 048, Series 2018 on April 12, 2018 (**Attachment 1**). This resolution requested that the Louisville Metro Planning Commission review bonding procedures and fee in lieu payments within the LDC. Specifically, whether that the fees collected for the sidewalk fee in lieu do not reflect the actual cost of the sidewalk and therefore provide insufficient funds for alternative projects.

### PLANNING COMMITTEE MEETING

The Planning Committee conducted three reviews of the sidewalk fee in lieu section of code (section 6.2.6); November 20, 2018, December 6, 2018, and January 14, 2019. It was discussed during these meetings that it was never the intent of the fee in lieu provision to collect dollar for dollar what it would cost to building the sidewalk for an individual residential lot. The sidewalk fee in lieu amount is based on the minimum lot width of the zoning and form district the property is located within. However, the discussion did focus on the need to clarify how the fee was calculated for major subdivisions and other types of development. Staff did propose changes to the committee to help clarify and simplify the provision at the meeting on January 14, 2019. The Committee at the January 14, 2019 meeting voted by consensus to forward the final draft of proposed amendments to LDC Section 6.2.6 to the Planning Commission for a public hearing.

### STAFF ANALYSIS

The main changes proposed for Section 6.2.6 include:

- Renumbered 6.2.6.B.1 to simplify the language
- Add clarification to the term site constraints

- Add language to use the average of the primary contracts for calculating fee-in-lieu and added major subdivisions to the list
- Add clarification that fee-in-lieu may not always result in 1 to 1 replacement
- Add an allowance to accept a fee-in-lieu for pedestrian generators when a site constraint exists

## **APPLICABLE PLANS AND POLICIES**

This amendment to the LDC text is consistent with the following policies of Plan 2040.

Mobility Goal 1, Policy 1 “To promote healthy lifestyles and reduce congestion, new development and redevelopment should provide for the movement of pedestrians, bicyclists and transit users, where appropriate...”

Mobility Goal 2, Policy 1 “Provide transportation facilities and systems that accommodate all users and allow for context-sensitive solutions that recognize the distinguishing characteristics of each of the Form Districts.”

The proposed LDC text amendment clarifies language in Section 6.2.6 regarding sidewalk fee-in-lieu. These amendments also provide additional changes to help simplify this LDC provision.

## **NOTIFICATION**

Notification of the Planning Commission public hearing was conducted in accordance with KRS 100 requirements. In addition, staff provided notice to those groups registered neighborhood groups and individuals on the list for electronic notification for development proposals.

## **STAFF CONCLUSIONS**

The proposed amendments, as set forth in **Attachment 2**, would clarify and simplify Section 6.2.6, regarding sidewalk fee-in-lieu.

Staff makes these LDC text amendment recommendations related to sidewalk fee-in-lieu (section 6.2.6) considering the following:

**WHEREAS**, the Planning Commission finds that the proposed amendments to Section 6.2.6 of the LDC comply with the applicable policies of Plan 2040.

**WHEREAS**, the Planning Commission further finds that the proposed amendments to Section 6.2.6 are in conformance with Mobility Goal 1, Policy 1 because the proposal would help simplify the language and provide clarification where needed in order to better apply the sidewalk fee-in-lieu provision which will assist in identifying those areas that may not need the same level of pedestrian facilities based on site constraints and location characteristics.

**WHEREAS**, the Planning Commission further finds that the proposed amendments to Section 6.2.6 of the LDC are in conformance with Mobility Goal 2, Policy 1 because the sidewalk fee-in-lieu provision was created to provide for context sensitive solutions for areas where sidewalk construction is impractical or incompatible to surrounding development. These proposed

amendments would further that intent by simplifying the section and providing additional clarification where needed.

#### **ATTACHMENTS**

1. Resolution No. 048, Series 2018
2. Proposed LDC text amendment to Section 7.2.45

RESOLUTION NO. 048, SERIES 2018

A RESOLUTION REQUESTING THE LOUISVILLE METRO PLANNING COMMISSION TO REVIEW BONDING PROCEDURES AND FEE-IN-LIEU PAYMENTS IN THE LAND DEVELOPMENT CODE.

SPONSORED BY: COUNCILMAN JAMES PEDEN

**WHEREAS**, pursuant to the Land Development Code ("LDC") 7.2.45 et seq., developers are required to post bonds as security to ensure completion of sidewalks, sewers, and other improvements;

**WHEREAS**, the financial amount of such security is determined in the discretion of the Metro Department of Public Works and the Metropolitan Sewer District;

**WHEREAS**, there have been numerous instances where such bond amounts have been insufficient to complete improvements causing Louisville Metro Government to expend taxpayer dollars to complete improvements in private developments which creates an undue financial burden on Louisville Metro Government and an unfair claim on citizens' tax dollars;

**WHEREAS**, the LDC permits fee-in-lieu payments for certain required development improvements, such as sidewalks (LDC 6.2.6(B)(1)), landscaping (LDC 10.1.3(A)(4)), and amenity areas (LDC 5.12.2(A)(4)); and

**WHEREAS**, fee-in-lieu payments often do not reflect the actual cost of the required improvements which reduces the effectiveness of the application of the funds received for the alternative projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ("METRO COUNCIL") AS FOLLOWS:**

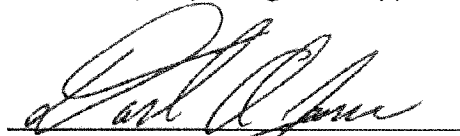
**SECTION I:** The Metro Council requests that the Louisville Metro Planning Commission review the bond/security requirements of the LDC to ensure that security for improvements in private developments is sufficient to cover all costs associated with the completion of required improvements in the event of the developers' default.

**SECTION II:** The Metro Council requests that the Louisville Metro Planning Commission review the fee-in-lieu procedures of LDC Sections 6.2.6, 10.1.3, and 5.12.2 to ensure that the fee accurately reflects the actual cost of the improvements that were required.

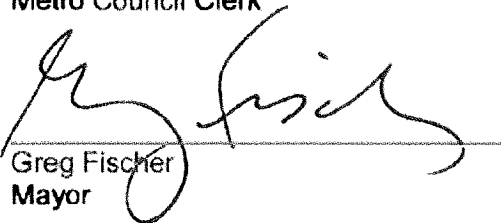
**SECTION III:** This Resolution shall take effect upon passage and approval.



H. Stephen Ott  
Metro Council Clerk



David James  
President of the Council

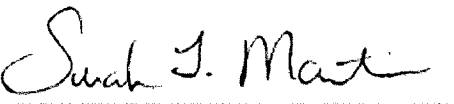


Greg Fischer  
Mayor

4-23-18  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

BY: 



R-053-18 Resolution Regarding Review of Bonding Procedures in LDC(3-14-18).docx

2. Proposed LDC Text Amendment for Section 6.2.6

**LOUISVILLE METRO LAND DEVELOPMENT CODE**

**6.2.6 Requirements for Specific Types of Streets and Alleys**

\* \* \* \*

B. Development activity that meets the thresholds in the form district for Street and Roadside Design and new streets shall provide sidewalks in accordance with Tables 6.2.1 and 6.2.2 subject to the following exceptions:

\* \* \* \*

1. Fee in Lieu Option - The Director of Works and the Director of Planning or designees may allow the payment in lieu of sidewalk construction upon a finding that construction of a sidewalk is not appropriate due to one of the following applicability requirements reasons.

- Sidewalks construction is impracticable due to topographical conditions or site constraints. Site constraints may include, but are not limited to, steep slopes, utility infrastructure, or tree removal; or

\* \* \* \*

a. Amount of fee shall be set by Metro Public Works based on average sidewalk construction. The fee amount shall be calculated using the average construction cost of all primary Metro Public Works contracts for new sidewalks multiplied by the area of sidewalk. The area of sidewalk shall be calculated as follows.

- Multi-family, non-residential and major subdivision developments shall be calculated based on the area of sidewalks required to be constructed per the LDC.
- The fee in lieu amount for single family residential property that is not part of a major subdivision plan shall be calculated based on the minimum lot frontage of the applicable zoning district or actual lot width, whichever is less.

b. All fees paid shall be used for sidewalk construction within the same Metro Council District. The sidewalk fee-in-lieu does not account for site constraints that may increase the cost of construction.

c. It should be noted that payment of a fee in lieu of sidewalk construction is an option available to developers that must be approved by the Director of Works and the Director of Planning or designees. Applicants retain the right to request a sidewalk waiver (see B.2 below). In no case shall the Planning Commission or Director of Works require the payment of a fee in lieu of sidewalk construction.

d. The fee in lieu option shall not be ~~approved and the sidewalk shall be constructed~~ permitted when one of the following situations apply:

- Where an existing sidewalk network can be completed or extended, except in locations where site constraints cause construction difficulties as determined by the Director of Works and the Director of Planning or designees.
- The required sidewalk would provide a direct means of access to a lot that contains a pedestrian generator such as a school, church, library, community center or park, except in locations where site constraints cause construction difficulties as determined by the Director of Works and the Director of Planning or designees.

e. A new fee in lieu or sidewalk shall not be required in the future for a street frontage in which a fee in lieu has already been approved and paid.

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