

ORDINANCE NO. 171, SERIES 2016

AN ORDINANCE AMENDING CHAPTER 1, PART 2 AND CHAPTER 4, PART 2 OF THE LAND DEVELOPMENT CODE PERTAINING TO BIODIGESTERS — APPLICABLE SECTIONS ARE MORE SPECIFICALLY SET FORTH BELOW IN EXHIBIT A (CASE NO. 16AMEND1007) (AS AMENDED).

SPONSORED BY: Councilmembers James, Shanklin, Woolridge and Welch

WHEREAS, on March 3, 2016, the Louisville Metro Council passed Ordinance Number 037, Series 2016, placing a 180-day moratorium on biodigesters within the jurisdiction of the Metro Council; and

WHEREAS, Ordinance Number 037, Series 2016, requested that the the Planning Commission, through its staff in the Department of Louisville Metro Planning and Design Services, review the current sufficiency of zoning regulations related to anaerobic digestion facilities in the Land Development Code as well as existing land use regulations from other jurisdictions that address anaerobic digestion facilities and how those jurisdictions address the unique characteristics of such facilities to ensure that any negative visual, noise, odor, traffic, environmental and other impacts related to the operation and associated transportation of materials to and from such facilities are properly mitigated; draft, if necessary, and propose to the Planning Commission amendments to the Land Development Code regarding the appropriate and compatible locations of anaerobic digestion facilities as they relate to other surrounding land uses, especially residential, schools, houses of worship, and parks within Metro Louisville; and that the Planning Commission hold a public hearing and, within one hundred fifty (150) days from the effective date of this Ordinance, forward its recommendations to the Council regarding potential revisions to the Land Development Code.; and

WHEREAS, the Planning Commission held a public hearing on August 1, 2016, to consider an amendment to LDC; and

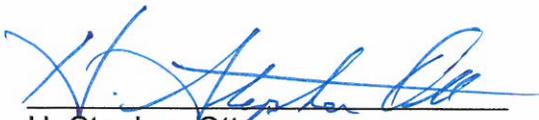
WHEREAS, the Planning Commission recommended approval of the amendments provided in the staff report with modifications as stated in the Planning Commission's minutes of August 1 and August 4, 2016; and

WHEREAS, the Metro Council concurs in and adopts the findings and recommendations of the Planning Commission in Case No. 16AMEND1007 as reflected in the Planning Commission's minutes and records, and as more specifically set forth in Exhibit A attached hereto;

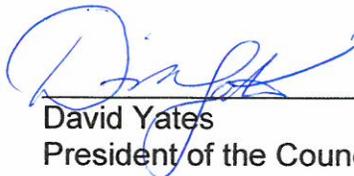
NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

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. 16AMEND1007, dated August 1 and August 4, 2016, and as more specifically set forth in Exhibit A attached hereto.

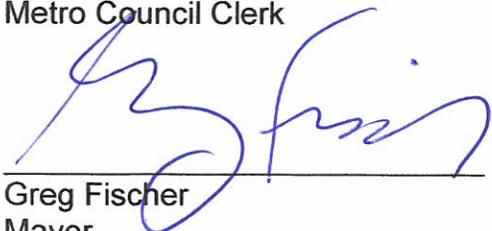
Section II: This Ordinance shall take effect upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

9/22/16
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: 



Exhibit A

Chapter 1 Part 2 Definitions

1.2.2 Definitions

BIODIGESTER - An alternative energy system that is an accessory or principal use on a property and that utilizes anaerobic digestion for the primary purpose of producing energy. Mechanisms and processes that are part of the digester, including but not limited to separators and refining equipment, produce biogas, which is used for production of electricity and pipeline-quality natural gas. A biodigester may refine digestate as a secondary function to produce soil amendments, fertilizer, and other similar products.

ANAEROBIC DIGESTION – A process of controlled decomposition of biodegradable materials under managed conditions where oxygen is absent, at temperatures suitable for naturally occurring bacteria species, which convert feedstock to a methane-rich biogas and whole digestate.

DIGESTATE –Solid or liquid substances that remain following digestion of feedstock in a biodigester.

FEEDSTOCK –Organic material or waste used by a biodigester to produce biogas.

Chapter 4 Part 2 Conditional Uses

4.2.1 Intent and Applicability

Certain land uses due to their extent, nature of operation, limited application, or relationship to natural resources are considered as exceptional cases. The uses listed in this Part may be permitted in certain districts by Conditional Use Permit following a public hearing before the Board of Zoning Adjustment provided such uses will not have an adverse effect on neighboring property, are not in conflict with the goals and plan elements of the Comprehensive Plan, the proposed uses are essential to or will promote the public health, safety, and the general welfare in one or more zones, and are in compliance with the listed standards and requirements.

The following uses are subject to the Conditional Use Permit process:

Section	Conditional Use
****	****

Section	Conditional Use
4.2.37	Non-emergency Generator and Non-Emergency Alternative Energy Systems, <u>Other than Biodigesters</u>
****	****
4.2.63	<u>Biodigesters</u>

4.2.37 Non-emergency Generator and Non-Emergency Alternative Energy Systems,
Other than Biodigesters

4.2.63 Biodigesters

Biodigesters may be permitted in the M-3 zoning district upon the granting of a Conditional Use Permit and compliance with the listed requirements of this Section. For the purposes of this Section, a “residentially-zoned property” is a property in a zoning district listed in Chapter 2, Part 2, of this LDC. For the purposes of this Section, distances shall be measured in a straight line from the nearest structure or building associated with the digester to the nearest property line of the nearest residential use, residentially-zoned property, college, school, institution of learning, religious building, park, playground, community center, hospital, nursing home, daycare, airport terminal or assisted living facility.

- A. A biodigester shall be a minimum of ~~one mile 2,640 feet~~ from the nearest existing residential use, residentially-zoned property, college, school, institution of learning, religious building, park, playground, community center, hospital, nursing home, daycare, airport terminal or assisted living facility. ~~This provision may not be waived or modified. This provision may be waived or modified to no less than 1,320 feet by the Board of Zoning Adjustment upon consideration of factors including, but not limited to, nearby land uses, scale, capacity, design, operational history of the applicant and of the technology, traffic, noise, odor, appearance, potential risks of pollution, fires, or explosion, and type of feedstock.~~ Residentially-zoned portions of the Ohio River shall not be included in this separation requirement.
- B. Vehicles delivering feedstock to the biodigester shall not be offloaded until they are parked inside a fully-enclosed receiving building, and all doors and windows of the receiving building are completely closed.
- C. No outdoor storage of feedstock, filtering chemicals, or digestate shall take place on the site. All feedstock, filtering chemicals, and digestate shall be stored inside a fully-enclosed building with all doors and windows closed.
- D. All bulking, transfer, and pre-treatment of feedstock shall be carried out in an enclosed building maintaining negative air pressure. All feedstock storage and processing shall occur on an impermeable surface with a sealed drainage system. Feedstock shall be stored in enclosed containers or reactor vessels. The building shall have equipment to control the release of objectionable odors, bioaerosols, and microorganisms into the ambient air.

- E. All storage and process tanks shall be bermed with a concrete barrier to prevent spills and shall have a total capacity of at least 110 percent of the largest tank. Each individual tank shall have a capacity of 25 percent of the total tankage volume.**
- F. The biodigester shall be at least 50 feet from a perimeter property line adjacent to a public right-of-way.**
- G. The applicant shall ensure that the noise level at the property line does not exceed 65 dBa. The Board of Zoning Adjustment may require review by an independent noise professional to confirm compliance with this requirement.**
- H. The biodigester shall be screened as a utility substation in accordance with Chapter 10 of the LDC. In addition, a solid fence or wall in compliance with Section 10.4.9 shall be installed around the perimeter of the operational area of the biodigester.**
- I. The applicant shall submit an operating plan containing strategies for mitigating odor as part of its application for this Conditional Use Permit. This plan shall be in a form established by Planning & Design Services, in consultation with the Louisville/Jefferson County Air Pollution Control District (APCD). The applicant shall detail how the facility will comply with District Regulation 1.13 *Control of Objectionable Odors in the Ambient Air*. Planning and Design Services shall provide APCD with an opportunity to review and comment on said application, including the odor mitigation plan, prior to the Board of Zoning Adjustment's public hearing. The odor control plan shall be subject to future changes or amendments, as needed, to implement measures that further address existing and future odor issues.**
- J. Prior to the operation of a biodigester, the applicant shall submit an emergency response plan to the Louisville Metro Emergency Management Agency/MetroSafe and to the Fire Protection District with jurisdiction, which shall review, provide comments on, and accept said plan prior to the Board of Zoning Adjustment's public hearing.**
- K. The biodigester shall continually maintain compliance with all applicable federal, state, and local laws and regulations, including but not limited to laws or regulations on building, safety, property maintenance, health and sanitation, fire, electrical, plumbing, mechanical, and other applicable laws.**
- L. The applicant shall submit a traffic analysis to the agency responsible for transportation planning, which shall review, provide comments on, and accept said analysis prior to the Board of Zoning Adjustment's public hearing. The traffic analysis shall include information on trip generation, peak hour traffic, trip distribution, haul routes, and other information as may be requested.**
- M. The Board of Zoning Adjustment ~~may~~ shall retain special expert consultants as it deems necessary to provide assistance in the review of proposed biodigesters. Application fees may be established to cover the costs of staff and/or special**

expert consultant review of requests filed under this section, within any limits established by KRS Chapter 100.

N. All biogas condensate shall be discharged into a sealed drainage system or recirculated back into the digester. Liquids may be discharged into a sewer only as approved by the Metropolitan Sewer District, or may be taken off-site in a closed tanker.

4.2.42 Potentially Hazardous or Nuisance Uses

M-3 Only:

Distillation of wood and bones

Explosives (when not prohibited by other ordinances) including ammunition, fireworks, nitrating of cotton or other materials, nitrates (manufactured and natural) of an explosive nature, and storage of latter

Exterminating operations where exterminating chemicals or agents are stored

Fertilizer (organic and non-organic), including fish, oils, manure, or peat, **except as a by-product of a biodigester**
