

ARTICLE 6

AMENDMENTS

6-1 APPLICATION FOR ZONING MAP AMENDMENT -

A proposal for amendment to the Zoning Map may originate only with the Commission, the Lexington-Fayette Urban County Council, the owner of the subject property, or by a person having written authorization from the owner of the subject property. Regardless of the origin of the proposed amendment, an application must be filed with the Commission requesting the proposed amendment in such form and accompanied by such information as required by this Zoning Ordinance and the bylaws of the Commission. At the time of filing of an application, a non-returnable filing fee shall be paid according to the schedule of fees as established by the Commission; however, there shall be no filing fee for an amendment requested by the Lexington-Fayette Urban County Council, the Commission, or any other governmental agency. Upon the filing of an application for a map amendment by a governmental body, the Commission shall promptly notify the owner of the subject property, as required by KRS 100.

6-1(a) TRAFFIC STUDIES - All significant developments proposed within the Urban Service Area or Rural Activity Center and requiring a zoning map amendment shall submit a Traffic Impact Study. As used herein, the term "significant developments" shall mean any development which will generate one hundred (100) or more additional (new) peak direction (inbound or outbound) trips to or from the site during the adjacent roadway's peak hour or the development's peak hour. The applicant shall have the responsibility of conducting and paying for the study. The Urban County Government will make available to interested parties existing traffic count data needed to complete such studies. Those residential developments in conformance with the Comprehensive Plan shall be required to submit a Traffic Study consisting of those requirements contained in paragraph 6-1(b) hereof. Requests for all other types of zoning, whether or not in conformance with the Comprehensive Plan, shall submit a Traffic Impact Study consisting of those requirements contained in paragraph 6-1(c) hereof. To the extent that the Government has done any independent traffic study pertinent to the proposed development, the results of such study shall be made available to the applicant.

Anticipated roadway improvements shall be determined by a review of the Urban County Government Capital Improvement Plan and Transportation Improvement Program. If the proposed development is within one mile of any county boundary line, then any proposed roadway improvements in the adjoining county shall be included in the study.

6-1(b) RESIDENTIAL REQUESTS IN CONFORMANCE WITH COMPREHENSIVE PLAN - Those significant zone

map amendment requests for residential zoning in conformance with the Comprehensive Plan shall file a Traffic Impact Study along with all other application materials for the zone change. The Traffic Impact Study shall contain the following information:

- (1) Study purpose and objectives.
- (2) Description of the site and study area. Care should be taken to include all known congested locations that may be impacted by the proposed development.
- (3) Anticipated nearby development, to the extent that the information can be obtained from existing data compiled by the Transportation Planning Section of the Division of Planning.
- (4) Documented trip generation for each land use and total trip generation, including assumptions and reasoning, and the sources of trip generation estimates for residential developments.
- (5) Trip distribution and assignment, including methodology, assumptions, and reasoning underlying the distribution and assignment.
- (6) Capacity and level of service determination during the peak or critical periods for the full development year for all affected streets/roads as measured from the boundary of the property to the first collector or arterial intersection in both directions.
- (7) Recommendations, if any, for site access and public transportation improvements needed to maintain traffic flow to, from, within and past the site at an acceptable and safe level of service D.

6-1(c) REQUESTS FOR NON-RESIDENTIAL ZONING, MIXED USE DEVELOPMENTS, AND REQUESTS NOT IN CONFORMANCE WITH COMPREHENSIVE PLAN -

Those significant zone map amendment requests for non-residential zoning, mixed use developments and requests not in conformance with the Comprehensive Plan shall file a Traffic Impact Study along with all other application materials for the zone change. All such studies shall be complete and shall meet the requirements set forth herein below.

The following are the requirements of a Traffic Impact Study under this subsection:

- (1) Study purpose and objectives.

- (2) Description of the site and study area. Care should be taken to include all known congested locations that may be impacted by the proposed development.
 - (3) Existing conditions in the area of the development to include current AADT and Peak Hour traffic volume counts on the adjacent road or roads and intersections (including turning movements), existing level of service on roadways, and physical characteristics of the subject roadways. Average peak hour traffic volume shall be the highest average peak hour volume for any weekday 24-hour period.
 - (4) Anticipated nearby development, to the extent that the information can be obtained from existing data compiled by the Transportation Planning Section of the Division of Planning.
 - (5) A plan of proposed development.
 - (6) The proposed number and type of dwelling units for residential development; and for non-residential developments, the square footage, employees, or other relevant trip generation variables of all buildings, and a description of their use.
 - (7) Documented trip generation for each land use and total trip generation, including assumptions and reasoning and the source(s) of trip generation estimates for residential developments. Additionally, for non-residential development, any adjustments to trip generation rates to reflect pass-by trips captured, mixed use, walk-ins, etc., should be justified in the study report.
 - (8) Trip distribution and assignment, including methodology, assumptions, and reasoning underlying the distribution and assignment.
 - (9) Full development year traffic volumes (assuming full build-out and occupancy) composed of all of the following:
 - (a) Existing traffic volumes;
 - (b) Non-site traffic volume growth in the corridor between the existing year and the full development year;
 - (c) The traffic volume added by the proposed development.
 - (10) A description of any government-initiated roadway/intersection improvements that have been assumed as being in place at full development.
 - (11) Capacity and level of service determination during the peak or critical period(s) for the full development year for all affected streets/roads and all intersections, as measured from the boundary of the property to the first collector or arterial intersection in both directions.
 - (12) An assessment of the change in roadway and intersection operating conditions resulting from the development traffic.
 - (13) Recommendations, if any, for site access and public transportation improvements needed to maintain traffic flow to, from, within, and past the site at an acceptable and safe level of service (level of service D).
 - (14) If necessary, other factors should be analyzed: safety, neighborhood impacts, service and delivery access, pedestrian and bicycle movements, adequacy of parking, traffic control needs, circulation patterns, transit needs or impacts, and so forth.
 - (15) Statement as to the proposed improvements, which will be at the developer's expense.
- The analysis should be presented in a straightforward and logical sequence.

6-2 APPLICATION FOR ZONING ORDINANCE TEXT AMENDMENT

- A proposal for amendment to the text of this Zoning Ordinance may originate with any person or governmental body. An application for a Zoning Ordinance text amendment must be filed with the Commission requesting the proposed amendment in such form and accompanied by such information as required by this Zoning Ordinance and the bylaws of the Commission. At the time of filing an application, a non-returnable filing fee shall be paid according to the schedule of fees, as established by the Commission. However, there shall be no filing fee for an amendment requested by the Lexington-Fayette Urban County Council, the Commission, or any other governmental agency.

6-3 PRE-APPLICATION CONFERENCE FOR TEXT AMENDMENTS AND ZONE MAP AMENDMENTS

- Prior to filing an application for a text amendment or a zone map amendment, the applicant shall meet with appropriate staff members of the Division of Planning to discuss the proposed amendment. The purpose of this conference is to discuss, at the earliest stages, the requirements, procedures and issues related to the proposed amendment. It is intended that this conference will help to alleviate possible conflicts by early recognition of existing conditions, necessary facilities, the recommendations of the adopted Comprehensive Plan and other issues related to the proposed amendment. The applicant shall arrange the conference, which shall be held not less than five (5) working days nor more than three (3) months prior to the filing date. The staff shall keep a record of the conference date and include the information in the records of the text amendment or the map amendment application. Where a development plan is also required to be submitted in conjunction with a zone map amendment, the applicant should discuss both the plan and the

zone map amendment at the same conference. The Division of Planning shall not accept an application for a zone map amendment or a text amendment for which a pre-application conference has not been held.

6-4 COMMISSION PROCEDURE - Upon the filing of an application for an amendment to the Zoning Map or the text of this Zoning Ordinance, or a duly imposed binding condition or restriction as set forth in Article 6-7, the Commission shall direct its staff to review the application, make whatever studies the Commission deems necessary, and report its findings at a public hearing. In addition, the Commission may require the applicant to submit further information subsequent to the filing of an application, as provided by KRS 100 and the bylaws of the Commission. A development plan may be required as set forth in Article 21-3.

6-4(a) PUBLIC HEARING ON AMENDMENT APPLICATION - After notice of the public hearing, as provided in Section 6-4(b) herein below, the Commission shall hold a public hearing and vote to recommend approval or disapproval of the proposed amendment within sixty days of the date of filing for any Council-initiated text amendment, within six (6) months of the date of filing for all other text amendment requests, within six (6) months of the date of filing of any H-1 or ND-1 zoning map amendment, or within ninety (90) days of the date of filing of all other zoning map or binding conditions or restriction amendment requests, unless the time is extended by the request of or the agreement of the applicant. At the public hearing, the Commission shall receive the report of the staff, orally or in writing, and shall hear the testimony of the staff members as it sees fit. The Commission shall allow the applicant, protestors, and other interested citizens to testify and rebut the evidence presented by other parties, provided that the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION - Before voting upon any proposed text amendment; zone map amendment; or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners of all property within a 500-foot radius of the subject property. In the event that the subject property adjoins land that is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 500-foot radius of the subject property, but

to the next two properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than 2,400 feet from the subject property for a zone change or variance request, or more than one (1) mile from the subject property for a conditional use request in conjunction with a zone change as allowed in Article 6-4(c). For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

6-4(c) CONDITIONAL USES AND VARIANCES ALLOWED AT THE TIME OF ZONING - The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days from the date of the application, unless postponed further by the applicant.

6-4(d) RECOMMENDATION OF COMMISSION FOR ZONING MAP AMENDMENT - Before recommending to the Lexington-Fayette Urban County Council that an application for amendment to the Zoning Map be granted, the Commission shall find that the map amendment is in agreement with the Comprehensive Plan adopted by the Commission; or, in the absence of such a finding, that: (1) the existing zoning classification given to the property was inappropriate and the proposed zoning classification is appropriate; or (2) there have been major changes of an economic, physical or social nature within the area involved, which were not anticipated in the Comprehensive Plan adopted by the Commission and which have substantially altered the basic character of such area. The findings of fact made by the Commission shall be recorded in the minutes and records of the Commission. The Commission shall vote to recommend that an application for amendment to the Zoning Map be approved, approved with binding conditions or restrictions, or disapproved. A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed thirty (30) days, at the end of which, if the tie has not been broken, the application shall be forwarded to the Urban County Council without a recommendation of approval or disapproval.

6-4(e) RECOMMENDATION OF COMMISSION FOR TEXT AMENDMENT - After voting to recommend that an application for amendment to the text of this Zoning Ordinance be granted or denied, the Commission shall forward its recommendation in writing to the Lexington-Fayette Urban County Council.

6-5 FORWARDING OF THE PLANNING COMMISSION'S ACTION TO THE URBAN COUNTY COUNCIL - Within fourteen (14) days of the Commission's final action to recommend that a zone map amendment be approved, approved with binding conditions or restrictions, or disapproved, the development plan(s) and/or other plans filed in conjunction with the map amendment shall be certified by the Commission's Secretary as set forth in Article 21-4 herein, or else the final action of the Commission on the zone map amendment shall be null and void. Any further consideration of the zone map amendment shall be treated as a new application and shall be reviewed as set forth herein. Upon certification of the plan(s), the Commission's Secretary shall forward its report in writing to the Urban County Council. This report shall include at least the application, legal description of the property, notification area map, staff report, and the findings of fact and conclusions of law and the recommendation of the Planning Commission, including any binding conditions or restrictions to be imposed as set forth in Section 6-7 below. Minutes of the Planning Commission public hearing shall be included in the final report whenever they are available.

6-6 ACTION BY LEXINGTON-FAYETTE URBAN COUNTY COUNCIL ON ZONING MAP AMENDMENTS - The Lexington-Fayette Urban County Council shall take final action upon a proposed map amendment within ninety (90) days of the date upon which the Planning Commission takes its final action upon such a proposal. The Council shall not act upon a proposed amendment to the Zoning Map until it shall have received the written report from the Commission. Upon receiving the report, the Council may adopt the recommendation of the Commission without a public hearing or may elect to hold a new public hearing. In the event that the Council shall have a public hearing, notice of such hearing shall be in the same manner as the notice required to be given under Article 6-4(b) herein. The Council shall allow testimony from members of the staff, the applicant, protestors, and any other interested citizens; and it shall allow parties to rebut the evidence presented by other parties, provided that the Mayor or presiding officer of the Council shall have the authority to limit repetitive testimony and to exclude irrelevant testimony or evidence. Regardless of whether or not the Council holds a public hearing, the Council may order a written transcript of the Planning Commission's hearing to be prepared for distribution to each Council member. In the event the Council shall order the preparation of a transcript, it shall be prepared at the cost of the applicant, certified by the Secretary of the Commission, and distributed to each Council member at least forty-eight (48) hours prior to second reading of the ordinance pertaining to the zoning map amendment. It shall take a majority of the entire Lexington-Fayette Urban County Council to override the recommendation of the Commission, and it shall take a majority of the entire Council to adopt a zone map amendment whenever the Planning Commission forwards the application to the Council without a recommendation due to a tie vote.

6-7 CONDITIONS TO GRANTING A ZONE MAP AMENDMENT - Pursuant to KRS 100.203(8), Planning Commission or the Urban County Council may, as a condition to granting a map amendment, restrict the use of the property affected to a particular use, a particular class of use, or a specified density within those permitted in a given zoning category; impose architectural or other visual requirements or restrictions upon development in areas zoned historic; and impose screening and buffering restrictions upon the subject property. In recognition that the aforementioned powers may be useful in accomplishing the purposes set forth in Section 1-3, but at the same time in recognition that such powers should be thoughtfully and sparingly used, the method whereby such restrictions or conditions may be imposed, modified, removed, amended and enforced is set forth below.

6-7(a) CRITERIA AND TERMS - A binding restriction or condition may be imposed whenever one or more of the specifications of the Zoning Ordinance for the proposed zoning category, if exercised by the applicant, would impair the integrity and character of the area in which the subject property is located or adjoining areas, unless restrictions or conditions as permitted in this Article are imposed in addition to those imposed in the Zoning Ordinance. Such restriction or condition may include, but shall not be limited to, time limitations; requirements that one or more things be done; or restrictions or conditions of a continuing nature, so long as the same are limited to the matters set forth in Section 6-7. No restriction or condition may be imposed which shall deprive the applicant of a reasonable use of the land or create an unnecessary hardship on the applicant.

6-7(b) PROCEDURE - Imposition of binding restrictions or conditions may be considered at any point in the zoning map amendment procedure. However, before the Commission recommends such a restriction or condition or the Urban County Council adopts the same, it shall make findings of fact and conclusions of law which are supported by substantial and competent evidence, which are not arbitrary or capricious; and which demonstrate that the effect of the proposed zoning map amendment on the public health, safety and welfare in the area in which the subject property is located and adjoining areas has been considered. The Council may also designate certain conditions or restrictions as amendable only by Council action. Any such condition or restriction so designated may only be amended, modified or removed by Council action as set forth under Section 6-7(c)(1). Conditions or restrictions not so designated may be amended, modified or removed by the Planning Commission as set forth under Section 6-7(c)(2). Only when the Urban County Council holds its own public hearing or reviews the record and the transcript of the Commission hearing may the Council impose a binding restriction or condition not recommended by the Commission, or modify or remove a restriction recommended by the Commission or designate certain conditions as amendable only by Council action. Any binding restriction or condition finally imposed after completion of the zoning map

amendment process shall be included in the Urban County Council ordinance adopting the zoning map amendment, a copy of which the Urban County Council Clerk shall furnish to the Divisions of Building Inspection and Planning.

6-7(c) AMENDMENT - Modification, removal or amendment of conditions or restrictions shall be as follows:

6-7(c)(1) RESTRICTIONS OR CONDITIONS DESIGNATED BY THE URBAN COUNTY COUNCIL - The Urban County Council shall have final authority to consider and act upon requests for modification, removal or other amendment of a duly imposed binding restriction or condition so designated by the Council at the time of their adoption.

6-7(c)(1)(a) FINDINGS REQUIRED - The request may be granted by the Council only if it is found that there has been a major change of an economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

6-7(c)(1)(b) PROCEDURE - The procedure for review, notice and action on requests to modify, remove or amend an imposed restriction or condition shall be the same as for a zone map amendment, except that a full public hearing by the Urban County Council shall be required in all cases. The Council's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action; and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS - The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Section 6-7(c)(1) above, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character Overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Section 6-7(c)(2)(a) below. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning

Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE - The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

- (1) The granting of the modification, removal or amendment to an ND-1 overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. In making these findings, the Planning Commission shall consider whether:
 - (a) The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 overlay district;
 - (b) The strict application of the provisions of the restriction would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the ND-1 overlay restrictions from which relief is sought; and
 - (d) The general intent and preservation goals of the ND-1 overlay district are being met.
- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant, the Division of Planning and the Division of Building Inspection to constitute proof of the change.

6-7(d) ENFORCEMENT - Binding restrictions or conditions imposed under this Article shall be enforced through subsequent development plans, subdivision plans, building

permits, occupancy permits and other enforcement powers, and shall be in addition to requirements imposed by such plans or permits and other laws or regulations.

6-7(e) JUDICIAL REVIEW - Imposition of binding restrictions or conditions pursuant to this Article shall be upheld on review if supported by substantial, reliable and probative evidence found within the record as a whole.

6-8 ACTION BY LEXINGTON-FAYETTE URBAN COUNTY COUNCIL ON TEXT AMENDMENTS - The Lexington-Fayette Urban County Council shall not act upon a proposed amendment to the text of this Zoning Ordinance until it shall have received the written recommendation thereon from the Commission. It shall take an affirmative vote of a majority of the Lexington-Fayette Urban County Council to adopt the proposed amendment.