

**KENDALL COUNTY
AD HOC ZONING ORDINANCE COMMITTEE**

MEETING AGENDA

August 23, 2017

***5:00pm –6:45pm
Kendall County Office Building
Rooms 209 & 210
111 W. Fox Street
Yorkville, Illinois***

- 1. Approval of Agenda**
- 2. Approval of Minutes from the May 24, 2017 meeting (Pages 2-3)**
- 3. Hearing Officer/Code Hearing Unit (Pages 4-16)**
- 4. Noise Ordinance Changes Related to Current Projects and Future Projects (Pages 17-26)**
- 5. Adjournment**

Next meeting will be on September 27, 2017

If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time.

**KENDALL COUNTY AD HOC ZONING
ORDINANCE COMMITTEE**

*Kendall County Office Building
Rooms 209 & 210*

111 W. Fox Street, Yorkville, Illinois

5:00 p.m.

Unapproved Meeting Minutes of May 24, 2017

Present: Larry Nelson (Chairman), Bill Ashton, Judy Gilmour, John Shaw and Jeff Wehrli

Others Present: Dave Guritz from the Kendall County Forest Preserve District and Matt Asselmeier, Senior Planner

Chairman Larry Nelson called the meeting to order at 5:03 p.m.

1. **APPROVAL OF AGENDA**

Ms. Gilmour made a motion to approve the agenda. Mr. Wehrli seconded the motion. With a voice vote of five ayes, the motion carried.

2. **APPROVAL OF MINUTES**

Mr. Wehrli made a motion to approve the minutes from the March 22, 2017, meeting. Ms. Gilmour seconded the motion. With a voice vote of five ayes, the motion carried.

3. **HEARING OFFICER/CODE HEARING UNIT**

Staff provided a copy of the ordinance establishing a hearing code unit. Staff also presented a series of questions for guidance related to the hearing code unit. The Committee felt that the Hearing Officer should only hear building and zoning matters, at least initially. The Committee also felt that the Code Hearing Unit should be a part of the PBZ Department. The Committee recommended leaving the subpoena authority as is. The Committee asked Staff to check with DeKalb County to see how long they consider a reasonable time for a decision. The Committee felt that five (5) working days from the closing of the hearing was sufficient. The Committee wanted the Special Use Hearing Officer to be the first choice for hearings. The County could contract with other hearing officers if the Special Use Hearing Officer was unavailable or had a conflict of interest. The debts would be PBZ debts only. Liens would be tracked with the assistance of the State's Attorney's Office. Staff was directed to get copies of the ordinances to the Ad-Hoc Committee and to create a table of fines as currently defined in the ordinances. Waiting until the codification process was completed was suggested as a good course of action.

4. **STORMWATER ORDINANCE AMENDMENT(S) RELATED TO PROJECTS IN PLANO AND FOREST PRESERVE**

Staff reported that the City of Plano is still working on their application. Staff has not received a request for stormwater variance from any business in Plano.

Mr. Guritz provided an update on the work in the Millbrook South Forest Preserve. They are pursuing a grant and are not ready to apply for a stormwater variance, but are aware that a variance will be needed if they advance the project.

Discussion occurred regarding amending the stormwater ordinance instead of issuing variances. The Committee requested that Staff contact Greg Chismark to see if a ratio of impervious surface could be used for trail and service road projects. The calculation would apply to publicly and homeowner's associated trails.

5. **YORKVILLE COMPREHENSIVE PLAN/LAND RESOURCES MANGEMENT PLAN DIFFERENCES**

Staff provided a memo regarding differences between the United City of Yorkville's Future Land Use Map and Kendall County's Land Resource Management Plan. The Committee requested that Scott Koepfel draft a letter to the Staff, City Administrator, Mayor and Aldermen at the United City of Yorkville outlining our concerns and requesting a meeting to resolve the conflicts in proposed land use.

There were no additional comments from the public or press.

Adjournment:

The next meeting will be June 28, 2017. Mr. Wehrli made a motion to adjourn the meeting. Ms. Gilmour seconded the motion. With a voice vote of five ayes, the motion passed unanimously and the meeting adjourned at 6:20 p.m.

Respectfully submitted,
Matthew H. Asselmeier, AICP
Senior Planner

ORDINANCE# 2017-XX

AN ORDINANCE OF THE KENDALL COUNTY CODE AMENDING A CODE HEARING UNIT

WHEREAS, Kendall County has adopted rules and regulations intended to protect and enhance the public health, safety, and welfare, and these rules and regulations are set forth in the Kendall County Code; and

WHEREAS, enforcement of the rules and regulations of the Kendall County Code sometimes requires County staff to notify a property owner or other person of a violation of the duly adopted rules and regulations; and

WHEREAS, failure by a property owner or other person to correct an identified violation of the Kendall County Code currently requires staff to take further action through the circuit court; and

WHEREAS, it is desirable to have an alternative procedure for the abatement of Kendall County Code violations which is less complex and less time consuming; and

WHEREAS, Chapter 55, Section 5/5-41 of the Illinois State Statutes allows counties to create Code Hearing Units for the administrative adjudication of code violations; and

WHEREAS, Kendall County staff and the Kendall County State's Attorney have reviewed the enabling legislation and have drafted rules, regulations and procedures for a Code Hearing Unit for Kendall County, attached hereto as Exhibit "A"; and

WHEREAS, the Planning, Building and Zoning Committee of the Kendall County Board has reviewed the drafted rules, regulations and procedures for the Code Hearing Unit and has determined that such a Unit will expedite the adjudication of Code violations and improve the administration of the Kendall County Code, and has forwarded a recommendation **to the County Board the Code Hearing Unit regulations for Kendall County be amended**; and

WHEREAS, the Kendall County Board previously established a Code Hearing Unit through Ordinance 2004-28 adopted August 17, 2004; and

WHEREAS, the County Board of Kendall County has determined that it is in the best interest of its citizens of the County to amend the Kendall County Code to **establish amend** the Code Hearing Unit in order to better protect the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

SECTION ONE: The conclusions set forth above and the recommendation of the Planning, Building and Zoning Committee of the Kendall County Board are hereby adopted as the conclusions of the Kendall County Board.

SECTION TWO: The Kendall County Code is hereby amended to **create amend** a Code Hearing Unit, as set forth in Exhibit "A" attached hereto.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the County Board of Kendall County, Illinois.

IN WITNESS OF, this Ordinance was approved by the Kendall County Board on **Month Day, 20XX**

Add Signatures

EXHIBIT "A"

**CODE HEARING
UNIT**

Section 1. Definitions (Re-lettered)

a) "Citation" means the official notification of a violation of a provision of the Kendall County Ordinances. Said citations shall require a correction of the violation and/or imposition of a fine.

b) "Code" means any County ordinance that pertains to or regulates any of the following: animal control; the definition, identification, and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; the construction and maintenance of buildings and structures including improvements; sanitation practices; or subdivision zoning.

c) "Code Enforcement Officer" means a County employee or independent contractor or investigator authorized to issue citations for County Code violations.

d) "Hearing Officer" means a person other than a Code Enforcement Officer or law enforcement officer having the following powers and duties:

- 1) To preside at an administrative hearing called to determine whether a Code violation exists;
- 2) To hear testimony and accept evidence from the Code Enforcement Officer, the respondent, and all interested parties relevant to the existence of a Code violation;
- 3) To preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
- 4) To issue and sign written findings and a decision and order stating whether a Code violation exists;
- 5) To impose penalties consistent with applicable Code provisions and to assess costs reasonably related to instituting the proceedings upon finding the respondent liable for the charged violation. In no event, however, shall the Hearing Officer have the authority to impose a penalty of incarceration.

e) "Person" means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying, managing or otherwise using real property in unincorporated Kendall County.

f) "Property" means any parcel of land whether residential, commercial, agricultural or industrial including land and that which is affixed, incidental, or appurtenant to land including, without limitation, any business or residence, parking area, loading area,

landscaping, common areas, building or structure or any separate unit, or portion thereof, or any business equipment, whether permanent or not permanent. For real property consisting of more than one (1) unit, property may be limited to the unit or portion of the property on which the code violation exists.

g) "Property owner" means the legal or beneficial owner of an improved or unimproved parcel of real estate.

h) "Respondent" means a property owner, waste hauler, or other person charged with liability for an alleged Code violation and the person to whom the notice of violation is directed.

i) **"Responsible Person" means any person recognized by law as having control over, right to use, management rights and/or right of possession of property including, without limitation, legal title holders, lessees, property managers and other adult occupants of the property.**

j) "Solid waste" means demolition materials, food and industrial processing wastes, garden trash, land cleaning waste, mixed refuse, non-combustible refuse, and trash as defined in the Illinois Solid Waste Disposal District Act.

k) **"Violation" means any Kendall County building, property maintenance, zoning, subdivision, stormwater, junk and debris or other ordinances enforced by the Kendall County Planning, Building and Zoning Department not being in compliance by a person.**

l) "Waste hauler" means any person owning or controlling any vehicle used to carry or transport garbage, refuse, or other forms of solid waste.

Section 2. Code Hearing Unit - Establishment and Jurisdiction.

There is hereby established a Code Hearing Unit as a division of the County Planning and Zoning Department which is authorized to conduct administrative adjudication proceedings for the County, its departments and officers. The function of the Code Hearing Unit shall be to expedite the prosecution and correction of code violations. The Code Hearing Unit is authorized to establish a system of administrative adjudications for the enforcement of all provisions of Kendall County Code, except those pre-empted by State law or County ordinance.

Section 3. Hearing Officer - Appointment.

The Chairman of the County Board, with the advice and consent of the County Board, shall appoint one or more Hearing Officers for the purposes of this Section. A Hearing Officer may not be a Code Enforcement Officer or other law enforcement officer.

Section 4. Hearing Officer - Powers and Duties.

The Hearing Officer shall have the following powers and duties:

- a) All powers and duties set forth in Sections **1 and 2**, above.

- b) The authority to call and preside at conferences for the settlement or simplification of issues.
- c) The power to administer oaths and affirmations.
- d) The authority to rule on motions, objections and the admissibility of evidence.
- e) Subject to the provisions of this Section, the authority to subpoena relevant witnesses and the production of relevant documents, records or other information.
- f) The authority to exercise all powers and duties necessary and proper to the administration of fair hearings.

g) Any other powers authorized by State statute.

Section 5. Code Enforcement Officers - Appointment.

The County Planning, Building, and Zoning Director and County Environmental Health Director (or their designees) are hereby authorized to serve as County Code Enforcement Officers. In the event that the County Planning, Building, and Zoning Director or the County Environmental Health Director positions are vacant, the County Administrator shall appoint an interim Code Enforcement Officer.

Section 6. Issuance of Citation.

a) Any responsible person allowing, causing, committing, continuing to permit or maintain a violation pertaining to any property maintenance, zoning, building, plumbing, electrical, or other similar matter regulated by the Kendall County, Planning, Building and Zoning Department may be issued a citation.

b) Each citation shall contain the following information:

- 1. The date of the violation;**
- 2. The address or description of the location where the violation occurred including parcel identification number;**
- 3. The specific section of the code or ordinance violated and a description of the nature of the violation;**
- 4. The amount of fine for said violation;**
- 5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;**
- 6. A statement that the violation must be corrected and the time within which it must be corrected and that failure to correct will result in further legal proceedings;**
- 7. A description of the administrative hearing process, including the time within which the administrative citation may be contested and the place to which to submit a written request for a hearing;**
- 8. The name and signature of the citing code enforcement officer; and**
- 9. Other such information as may be deemed necessary from time to time.**

Section 7. Service of Citation.

Citations issued pursuant to this ordinance may be served by any one or more of the following methods:

- a) **Service by Mail.** A citation may be served by first class mail with a declaration of t service by mail executed by the person mailing the citation. The citation will be addressed to the responsible person at the address shown on the last tax assessment rolls or to any address known for the responsible person. For purposes of this ordinance, if the citation is served via first class mail, service shall be deemed effective on the date the citation is mailed and shall not affect the validity of the citation or of any subsequent proceedings.
- b) **Service by Posting.** A citation may be served by posting or affixing a copy of the citation on the front door of the property or in some other conspicuous place on the real property where the violation is located. Such posting shall be done at least ten (10) calendar days before a hearing date along with a declaration of service by posting executed by the person posting the citation. For the purposes of this ordinance, if the citation is served by posting, service shall be deemed effective on the date the citation is posted on the property and shall not affect the validity of the citation or of any subsequent proceedings.
- c) **Personal Service.** If needed, enforcement may attempt to located and personally serve the responsible person and obtain the signature of such person on the citation. If the responsible person refuses to sign the citation, the failure or refusal to sign shall not affect the validity of the citation or any subsequent proceedings.

Section 8. Compliance with a Citation

Upon receipt of a citation, the responsible person must immediately do the following:

- a) **Remedy the violation(s) on or before the correction date noted in the citation.**
- b) **Schedule an appointment with the code enforcement officer to verify violation(s) have been corrected.**
- c) **Pay the fine to Kendall County within the allotted time. All fines assessed shall be payable to the “Kendall County Treasurer”. Payment of the fine will not excuse or discharge the cited violation(s) nor shall it bar further enforcement by the County. The fine can be forgiven if the responsible person corrects the violation(s) before the hearing.**

Section 6-9. Instituting Administrative Adjudication Proceedings.

- a) Any Code Enforcement Officer or designee of the County may institute an administrative adjudication proceeding with the Code Hearing Unit by forwarding a copy of the complaint and all relevant supporting materials to the Code Hearing Unit.

- b) When a Code Enforcement Officer observes a Code violation, the Officer may file a formal complaint by noting the violations on a violation notice and report on a form approved by the Code Hearing Unit.
- c) The written complaint shall contain, at a minimum, facts sufficient to inform the respondent of the violations alleged, including the order allegedly violated.
- d) The violation notice and report form shall contain a file number and a hearing date noted by the Code Enforcement Officer in the blank spaces provided for that purpose on the form. The violation notice and report shall state that failure to appear at the hearing on the date indicated may result in determination of liability for the cited violation and the imposition of fines and assessment of costs as provided by the applicable County ordinance. The violation notice and report shall also state that upon a determination of liability and the exhaustion of or failure to exhaust procedures for judicial review, any unpaid fines or costs imposed will constitute a debt due and owed to the County.
- e) A copy of the violation notice and report form shall be served on the respondent either personally or by certified mail with return receipt, postage prepaid, sent to the address of the respondent. If the name of the respondent property owner cannot be ascertained or if service on the respondent cannot be made by mail, service may be made on the respondent property owner by posting, not less than twenty (20) days before the hearing is scheduled, a copy of the violation notice and report form in a prominent place on the property where the violation is found.
- f) **In lieu of a personal appearance at the hearing, the Kendall County Board may provide for the voluntary payment of a determinate fine in accordance with a schedule of fines approved by ordinance as permitted by State statute.**

Section 7 10. Subpoenas. (Re-lettered b and after)

- a) At any time prior to the hearing date at the request of the Code Enforcement Officer, the attorney for the County, the respondent, or the attorney for the respondent, the Hearing Officer may issue subpoenas directing witnesses to appear and give testimony at the hearing.
- b) A subpoena issued under this ordinance shall identify:**
 - 1. The person to whom it is directed.**
 - 2. The documents or other items sought by the subpoena, if any.**
 - 3. The date for appearance of the witness and the production of the documents or other items described in the subpoena.**
 - 4. The time for the appearance of the witnesses and the production of the documents or other items described in the subpoena.**
 - 5. The place for the appearance of the witnesses and the production of the documents or items described in the subpoena.**
- c) In no event shall the date identified for the appearance of the witness or the production of the documents or other items be less than seven (7) days after the service of the**

subpoena.

- d) If the respondent or the respondent's attorney fails to appear on the date set for the hearing, the Hearing Officer may find the respondent in default and shall proceed with the hearing and accept evidence relating to the existence of a Code violation.

Section 8 11. Representation At Hearings.

The case for the County may be presented by a Code Enforcement Officer or by the State's Attorney or his/her designee. In no event, however, may the case for the County be presented by an employee of the Code Hearing Unit. The case for the respondent may be presented by the respondent or the respondent's attorney. If the respondent is a corporation, it may appear through any officer, manager, or supervisor of the corporation. **An attorney who appears on behalf of any person shall file with the Hearing Officer a written appearance on a form provided by the County for that purpose.**

Section 9 12. Hearing Procedure.

- a) The Hearing Officer will begin the Officer's call by introducing himself or herself to the respondents and other attendees. Opening remarks should include informing the citizens as to the nature and manner of the proceedings. Opening remarks may include information about the order that cases will be called, the need to maintain proper decorum, continuances, acceptable and unacceptable defenses, and the fees and range of potential fines.
- b) The Hearing Officer may grant continuances only upon a finding of good cause. Continuances shall not be granted as a matter of course.
- c) All testimony shall be given under oath or affirmation.
- d) Upon the timely request of any party to a hearing, any person who the Hearing Officer determines may reasonably be expected to provide testimony which is material and which does not constitute a needless presentation of cumulative evidence, shall be made available for cross-examination prior to a final determination of liability.
- e) The record of all hearings before the Hearing Officer shall include: all documents admitted into evidence at the hearing; a copy of the notice of violation and hearing; and a copy of the findings and decision of the Hearing Officer.
- f) The record of a hearing before the Hearing Officer may include a record of the testimony presented at the hearing, which may be by means of a tape recording, transcription or other appropriate means. The Code Hearing Unit shall not be responsible for providing recording services or equipment. Any party desiring to record the testimony presented at the hearing shall provide its own court reporter, transcriber, or recorders at that party's own expense **regardless of the decision of the Hearing Officer.** The Hearing Officer may reasonably limit where the court reporter, transcriber, or recorder may be placed in the hearing room. **If the party or the court reporter, transcriber or recorder is unwilling to follow reasonable limitations, then the Hearing Officer may remove the court reporter, transcriber or recorder.**

Section 10 13. Evidence At Hearings.

The Hearing Officer shall preside at the hearing, shall hear testimony, and shall accept any evidence relevant to the existence or non-existence of a Code violation on the property indicated. The Code Enforcement Officer's signed violation notice and report form shall be prima facie evidence of the existence of the Code violation described in the form. The strict rules of evidence applicable to judicial proceedings do not apply to hearings authorized under this **Section Ordinance. Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.** The Hearing Officer can take notice of all orders and regulations enacted by Kendall County.

Section 11 14. Findings, Decision, and Order.

At the conclusion of the hearing or **any reasonable time thereafter within five (5) working days after the conclusion of the hearing**, the Hearing Officer shall make a determination on the basis of the evidence presented at the hearing as to whether a Code violation exists. The determination shall be in writing and shall be designated as the Hearing Officer's findings, decision and order. The findings, decision and order shall include the Hearing Officer's findings of fact, a determination of whether a Code violation exists based on the findings of fact, and an order imposing a fine or other penalty, directing the respondent to correct the violation, or dismissing the case if the violation is not proved. If the Hearing Officer determines that the respondent is liable for the cited violation, the Hearing Officer shall enter an order imposing sanctions that are provided in the Code for the violations proved, including the imposition of fines and the recovery of the costs of the proceedings. Costs may be recovered in the same manner as fines and penalties. A copy of the findings, decision and order shall be served by personal service or by any method provided for service of the violation notice and report form under Section **6-9 of this ordinance**. The payment of any penalty or fine or costs of the proceedings and the disposition of that money shall be in the manner provided by this **Section Ordinance. In the issuance of a final determination of liability, a Hearing Officer shall inform the respondent of the respondent's right to seek judicial review of the final determination.**

Section 12 15. Payment of Penalties, Fines and Costs.

All fines and other monies paid to Kendall County in accordance with this Article shall be remitted to the Kendall County Treasurer. In order to ensure that Code violations are remedied or fines are paid in a timely manner, the Hearing Officer, upon issuing a final determination of liability, may further require a respondent found to be in violation to post with the County a compliance bond or, as appropriate, to consent to the granting and recording of a lien against property (per 55 ILCS 5/5-41050). Bonds and liens shall be approved by the State's Attorney as to form. Whenever it is necessary for the County to make repairs or otherwise expend funds to mitigate a Code violation for which a bond was posted, or whenever fines or costs remain unpaid after a respondent has exhausted or failed to exhaust judicial review procedures, the Hearing Officer may, after giving the respondent notice and an opportunity to be heard, issue an order permitting the County to draw against the bond in an appropriate amount, or to foreclose the lien. The Hearing Officer shall order the bond or the property or proceeds from the property, less the costs incurred by the County, returned to the respondent upon proof of compliance with the applicable Code

provisions and the payment of the assessed fines or costs.

Section 13-16. Violation of Findings, Decision and Order.

Any respondent, having received notice and an opportunity for a hearing as provided in this Article, who fails to subsequently comply with the findings, decision and order of the Hearing Officer, including failure to respond to the issuance of a subpoena, shall, if the order is not stayed by a court of competent jurisdiction prior to its effective date, be guilty of contempt. Contempt shall be punishable by a fine of not less than Two Hundred Dollars (\$200) and not more than Five Hundred Dollars (\$500) for each offense, with each day that the violation continues being considered a separate and distinct offense. **The fine shall increase Twenty-Five Dollars (\$25) per violation until the maximum amount is reached.** In a prosecution under this **Article Ordinance**, it shall not be a defense that a person came into compliance with an order, sought judicial review of the order, or made efforts to comply with an order subsequent to its effective date.

Section 14-17. Election of Remedies.

In no case may the Code Hearing Unit conduct an administrative adjudication proceeding for alleged violations of the Code where the requested remedy is a punishment of imprisonment. However, the provisions of this Article shall not preclude the County from seeking the remedy of imprisonment in a court of law, including imprisonment for failure to comply with the order of the Hearing Officer.

Section 15-18. Administrative Hearing Not Exclusive.

Notwithstanding any other provisions of this Article, neither the authority of the Code Hearing Unit to conduct administrative adjudication procedures nor the institution of such procedures under this Article shall preclude the County from seeking remedies for Code violations through the use of any other administrative procedure or court proceeding.

Section 16-19. Administrative Review.

The findings, decision and order of the Hearing Officer shall be subject to review in the Circuit Court of the County. The Administrative Review Law and the rules adopted pursuant thereto shall apply to and govern every action for the judicial review of the final findings, decision and order of the Hearing Officer. Where the Circuit Court upholds the findings, decision and order of the Hearing Officer following administrative review, the County may request and the Circuit Court may require that the respondent pay all costs incurred by the County in the administrative review process.

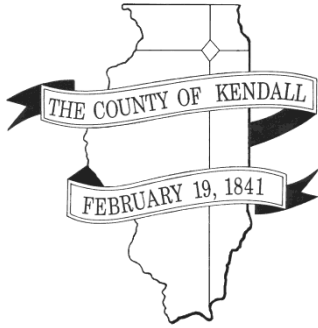
Section 17-20. Sanctions, Transfer or Conveyance of Property.

The order to correct a code violation and the sanctions imposed by a County against a respondent property owner as the result of a findings or a Code violation under this **Section Ordinance** shall attach to the property, subject to the interests of all lien holders of record, as well as to the owner of the property, so that the owner cannot avoid the finding of a code violation against the owner by conveying or transferring the property to another. Any subsequent transferee or owner of property takes the property subject to the findings, decision and order of the Hearing Officer under this Section if a notice consisting of a copy of the order to correct a Code violation and imposing any sanctions and costs, if applicable,

and a description of the real estate affected that is sufficient to identify the real estate has been filed in the office of the Recorder by the County prior to the transfer or conveyance to the subsequent transferee or owner.

Section 18 21. Collection of Unpaid Fines or Other Sanctions.

- a) Any fine or other sanction or costs imposed, or any part of any fine or other sanction or costs imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the State Administrative Review Law is a debt due and owed to the County and, as such, may be collected in accordance with applicable law. Any subsequent owner or transferee of property takes subject to this debt if a notice has been filed pursuant to Section ~~11~~ 14, above.
- b) After expiration of the period within which judicial review under the Administrative Review Law may be sought for a final determination of the Code violation, the County may commence a proceeding in the Circuit Court of the County for purposes of obtaining a judgment on the Hearing Officer's findings, decision and order. Nothing in this Section prevents the County from consolidating multiple findings, decisions and orders against a person or property in such a proceeding.
- c) Upon commencement of the action, the County shall file a certified copy of the findings, decision and order, which shall be accompanied by a certification that recites facts sufficient to show that the findings, decision and order were issued in accordance with State Statutes (55 ILCS 5/5-41005 to 41060) and this Article. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines or other sanctions and costs imposed by the findings, decision and order does not exceed Five Thousand Dollars (\$5,000).
- d) If the court is satisfied that the findings, decision and order were entered within the requirements of the applicable State Statute and this Article and that the respondent had an opportunity for a hearing under this **Article Ordinance** and for judicial review as provided in this Article:
 - 1) The court shall render judgment in favor of the County and against the respondent for the amount indicated in the findings, decision and order plus court costs. The judgment has the same effect and may be enforced in the same manner as other judgments for the recovery of money.
 - 2) The court may issue other orders or injunctions, or both, requested by the County to enforce the order of the Hearing Officer or to correct a Code violation.



DEPARTMENT OF PLANNING, BUILDING & ZONING

111 West Fox Street • Room 316

Yorkville, IL • 60560

(630) 553-4141

Fax (630) 553-4179

MEMORANDUM

To: PBZ Committee
 From: Matthew H. Asselmeier, AICP, Senior Planner
 Date: June 5, 2017
 Re: PBZ Ordinance Comparison

At the May 24th, Ad-Hoc Zoning Ordinance Committee meeting, Staff was requested to create a comparison table of the ordinances under the jurisdiction of the Planning, Building and Zoning Department.

The Planning, Building and Zoning Department is responsible for administering the following ordinances; the letter in parentheses corresponds to the references in the following tables:

1. Building Code (B)
2. Historic Preservation Ordinance (H)
3. Inoperable Motor Vehicle Ordinance (IMV)
4. Junk and Other Waste Matter Ordinance (J&WM)
5. Stormwater Management Ordinance (Storm)
6. Subdivision Control Ordinance (Sub)
7. Zoning Ordinance (Z)

Enforcement Procedure

B	H	IMV	J&WM	Storm	Sub	Z
Step 1. Processed in Matter Prescribed for Ordinance Violations	Step 1. PBZ Department Sends 30 Day Notice to Owner of Record by Certified Mail, Return Receipt, and Postage Prepaid Request; 30 Days is Measured from Date of Receipt.	Step 1. 7 Day Notice Given to Owner	Step 1. Notice of Between 2 and 10 Days Given to Owner, Occupant or Both.	Step 1. Provide 30 Day Notice to Enter Property for Inspection	Step 1. Processed in Matter Prescribed for Ordinance Violations	Step 1. File Copy of Complaint with SAO or Code Hearing Unit

Step 2a. Case Turned over to SAO	Step 2. Historic Preservation Commission Files a Petition in the Circuit Court for Kendall County to Remedy the Issue.	Step 2. Sheriff's Office Removes Vehicle and Parts	Step 2. Follow-Up Investigation	Step 2. Maximum 10 Day Notice to Enter Property for Re- inspection		Step 2. Serve Notice of Hearing to Property Owner at Least 20 Days Prior to Hearing
Step 2b. PBZ Sub- Committee Reviews the Matter			Step 3. Complaint of Violation Filed in the Circuit Court of the 16 Judicial Circuit			

Fine

B	H	IMV	J&WM	Storm	Sub	Z
Min \$50 Max \$1,000	Min \$25 Max \$500	Min N/A Max \$200	Min \$10 Max \$500	Min \$25 Max \$750	Min \$50 Max \$500	Min N/A Max \$500
Each Day is a Separate Violation	Each Day is a Separate Offense Unauthorized Demolition- No Building Permit for the Subject Property can be Issued for 5 years. Owner, Tenant, Architect, Planner, Surveyor, Engineer, Realtor, Attorney, Builder, Contractor or Agent Involved with a Violation	Each Day is Separate Violation	Each 24 Hour Period is a Separate Offense	Each Calendar Day is a Separate Violation Stormwater Management Permit May Be Revoked. Stop-Work Order May be Issued. Injunctive Relief	Each Day is Separate Violation	Each Week is a Separate Offense Compliance Bonds and Liens Can be Imposed if Approved by SAO Contempt of Hearing Min \$200 Max \$500 Each Day is Separate Violation Hearing Decision Can Be Appealed to Circuit Court

	could be Guilty of a Separate Offense					Site Plan Offenses-First Offense Min \$100 Max \$1,000
	County May Take Other Action Including Requiring Restoration of a Structure to Pre-Violation Conditions					Site Plan Offenses-After First Offense Min \$500 Max \$1,000
						Each Day is a Separate Offense
						County May File Lien for Site Plan Violations, Revoke all Permits, and Seek Injunctive Relief

Notes

1. The Zoning Board of Appeals cannot hear violations cases; the PBZ Sub-Committee (serving as the Building the Board of Appeals) can hear violations cases.
2. A person violating the Subdivision Control Ordinance cannot have an illegal subdivision recorded in the Recorder of Deeds Office.
3. An inoperable vehicle is also considered junk and other waste matter.
4. In addition to the PBZ Department, any citizen or the Sheriff's Department can file an affidavit of a violation of the Junk and Other Waste Matter on Private Property Ordinance. The citizen or Sheriff's Department may file the complaint in Circuit Court.
5. The Land Cash Ordinance does not have an enforcement provision.
6. The above procedures and fines do not include any procedures and fines that could be imposed on individual special use permits.

Noise
Ordinance

**KENDALL COUNTY, ILLINOIS
ORDINANCE NO. 13-18**

**ORDINANCE REGULATING NOISE OUTSIDE THE CORPORATE LIMITS OF ANY
CITY, VILLAGE OR INCORPORATED TOWN IN KENDALL COUNTY, ILLINOIS**

WHEREAS, the County of Kendall has the authority pursuant to 720 ILCS 5/47-5 to declare what shall be public nuisances and to abate the same with respect to the territory within the county and outside the corporate limits of any city, village, or incorporated town; and

WHEREAS, pursuant to the Illinois County Code 55 ILCS 5/5-12001, the County of Kendall also has the authority to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses and to regulate and restrict the intensity of such uses, for the purpose of promoting the public health, safety, morals, comfort and general welfare, and conserving the values of property throughout the county; and

WHEREAS, the County of Kendall seeks to control noise in its residential districts for the purpose of protecting the public health, safety, morals, comfort, and general welfare of its residents, and;

WHEREAS, the County of Kendall seeks to conserve the value of property throughout the county, and to prevent noise pollution in that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

NOW, THEREFORE, BE IT ORDAINED by the County Board of the County of Kendall, State of Illinois that hereafter Residential Zoning Districts which lie outside of

the corporate limits of any City, Village or Town and lying within the corporate limits of Kendall County, Illinois shall be subject to the following:

ARTICLE I - Title:

This ordinance shall hereinafter be known as the "Kendall County Noise Control Ordinance" and may be so cited.

ARTICLE II – Definitions & Rules of Construction:

Except as specifically stated herein, the definitions of terms used in this Ordinance shall have their regular and usual meaning as indicated by common dictionary definition. However, all definitions of acoustical terminology used in this chapter shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. Words importing the singular number may extend and be applied to several persons or things. Words importing the plural number may include the singular. Words importing gender may be applied to both male and female.

ARTICLE III - Applicability:

This Ordinance's noise regulations shall apply in unincorporated Residential Zoning Districts, except where otherwise exempt under this Ordinance. Any person, including, but not limited to, the subject property's owner, agent, tenant, visitor and/or other occupant of the property who violates any provisions of this Ordinance, shall be liable for such noncompliance as further set forth herein.

Notwithstanding the above, a property owner shall be held liable for a violation under this ordinance if the County establishes by a preponderance of the evidence that he/she is legally accountable for the conduct giving rise to the violation, acquiesced to the conduct, and/or knew or should have reasonably known of the conduct occurring or that the conduct was likely to occur.

A Person for the purpose of this Ordinance shall be any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, or any legal successor, representative, agent or agency of the foregoing.

ARTICLE IV – Measurement / Weighted Sound Level:

Measurement of sound for the purpose of this Ordinance shall be obtained using a device that utilizes the proper frequency sound weighting. Weighted Sound Level is the sound pressure level decibels as measured on a sound level meter using the A weighing network. The level so read is designed dB(A) or dBA.

ARTICLE V – Prohibited Activity:

(A) During Day Hours:

No person shall make, continue, or cause to be made the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty (60) dBA when measured at any point within such receiving residential land; provided, however; that point of measurement shall be on the property line of the complainant. Further, no person shall permit any sound as described herein to be made in or upon any house, premises or property owned or possessed by them or under their management and or control.

(B) During Night Hours:

No person shall make, continue, or cause to be made the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty five (55) dBA when measured at any point within such receiving residential land; provided, however, that point of measurement shall be on the property line of the complainant. Further, no person shall permit any sound as described herein to be made in or upon any house, premises or property owned or possessed by them or under their management and or control.

(C) Sound emissions in violation of (A) and (B) above are hereby declared to be a public nuisance.

(D) For the purposes of determining violations of (A) and (B) above within attached multiple family structures/multiple unit developments such as apartments, condominiums and townhomes, the point of measurement shall be the outer property line of the multiple family structures/multiple unit developments and not at the dividing walls between individual units in said structures.

ARTICLE VI - Exemptions:

The following exemptions to violation of this Ordinance shall apply:

(A) Emergency Operations: Emergency short term operations which are necessary to protect the health, safety and welfare of the citizens, such as emergency utility and street repair, fallen tree removal or emergency fuel oil delivery shall be exempt, provided that reasonable steps shall be taken by those in charge of such operations to minimize noise emanating from the same. Emergency operations by fire and rescue services and police agencies shall also be exempt.

(B) Noises Required by Law: The provisions of this chapter shall not apply to any noise required specifically by law for the protection or safety of people or property.

- (C) **Powered Equipment:** Powered equipment, such as air conditioners, lawn mowers, small lawn and garden tools, riding tractors and snow removal equipment which is necessary for the maintenance of property, is kept in good repair and maintenance, and which equipment, when new, would not comply with the standards set forth in this chapter, shall be exempted. Good repair for the purpose of this exemption shall be when the equipment at issue is in a condition that meets factory specifications and is properly maintained to prevent any excessive or unusual noise. However, the use of radios or other sound/entertainment devices on such equipment shall not be exempted if listened to at a level otherwise violating the terms of this Ordinance.
- (D) **Community Events:** The term "community events" shall include such things as parades, festivals, drum corps shows, sports events and Fourth of July celebrations, which are sanctioned or sponsored in whole or in part by local governments, schools or charitable or service organizations.
- (E) **Agricultural Noise:** Specifically excluded from the provisions of this Ordinance is noise generated by agricultural equipment on land zoned and/or used for agricultural purposes.
- (F) **Motor Vehicles:** Nothing herein shall be construed as a limitation on the operation of duly registered motor vehicles as defined in the Illinois Motor Vehicle Code, which are not in violation of 625 ILCS 5/12-602.
- (G) **Work performed by a public body:** Any work performed by or on behalf of a public body, including that which is performed by subcontractors, shall be exempted. Such activities may include, but are not limited to, routine maintenance work, road and bridge construction and emergency repairs.
- (H) **Motorcycles:** Nothing herein shall be construed as a limitation on the operation of duly registered motorcycles as defined in the Illinois Motor Vehicle Code.
- (I) **Construction Sites:** Construction noise that occurs between the hours of 7 A.M. and 8 P.M. shall be exempted. However, if in the opinion of the Kendall County Planning, Building and Zoning Department, equipment or activities employed in the performance of construction exceeds the allowable decibel levels within this code, the Kendall County Planning, Building and Zoning Department may require noise mitigation methods be implemented and used at the construction site to mitigate noises which exceed the requirements herein.

ARTICLE VII- Enforcement:

Enforcement of this ordinance shall be performed by the Kendall County Sheriff's Office and any and all complaints of violations of this ordinance shall be directed to them. The Kendall County State's Attorney's Office shall be authorized to prosecute any violations of this Ordinance.

ARTICLE VIII – Notice to Property Owner:

- (A) Whenever a violation of this Ordinance occurs, the owner of the property shall be given notice of the violation in accordance with the following provisions:
- (1) If the owner's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section, if the person cited for the conduct giving rise to the violation is the owner, then the address provided to the Kendall County Sheriff's Office at the time of citing shall be deemed to be that person's known address; or
 - (2) If the owner's address is not known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to the owner's address as provided to the County Clerk and/or County Supervisor of Assessments Office; or
 - (3) If the owner's address is not known, and is not on record as provided above, then by publication for 3 successive weeks in a newspaper of general circulation within Kendall County.
- (B) Notice served under this Ordinance is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

ARTICLE IX - Penalty:

- (A) It shall be unlawful to violate any of the terms and provisions of this ordinance. Any person, firm or corporation violating any of the said terms and provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and be punished by fines as follows:
- (1) For the first offense, the minimum fine shall be \$50.00 and the maximum fine shall be \$500.00; and
 - (2) For any subsequent offense occurring within two years of the prior offense, the minimum fine shall be \$100.00 and the maximum fine shall be \$1000.00; and
- (B) The violation of this ordinance, or any part thereof, on more than one (1) day shall constitute separate offenses; and

- (C) In addition to any penalty provided by this Ordinance, the Kendall County State's Attorney is authorized to initiate action to obtain injunctive relief in the Circuit Court, including, but not limited to, the issuance of a temporary restraining order and preliminary injunction, in order to abate any such nuisance condition as enumerated in this Ordinance.

ARTICLE X - Severability:

The articles, provisions and sections of this Ordinance shall be deemed to be separable and if any portion of this Ordinance is deemed invalid, such determination shall not affect the validity of the remainder.

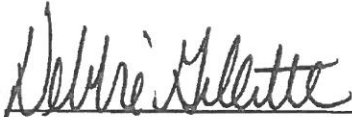
ARTICLE XI - Effective Date:

This Ordinance and the regulations contained therein shall be in full force and effect on and after the date signed below.

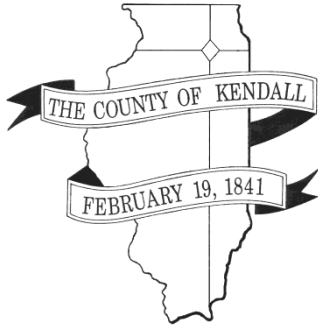
ADOPTED and APPROVED this 17th day of September, 2013.



John Shaw, County Board Chairman

Attest: 

Debbie Gillette, County Clerk



DEPARTMENT OF PLANNING, BUILDING & ZONING

111 West Fox Street • Room 316

Yorkville, IL • 60560

(630) 553-4141

Fax (630) 553-4179

MEMORANDUM

To: Planning, Building and Zoning Committee
From: Matthew H. Asselmeier, AICP, Senior Planner
Date: February 8, 2017
Re: Noise Regulations

At the November 30th meeting of the Ad-Hoc Zoning Ordinance Committee, the Committee requested Staff to explore appropriate regulations related to noise.

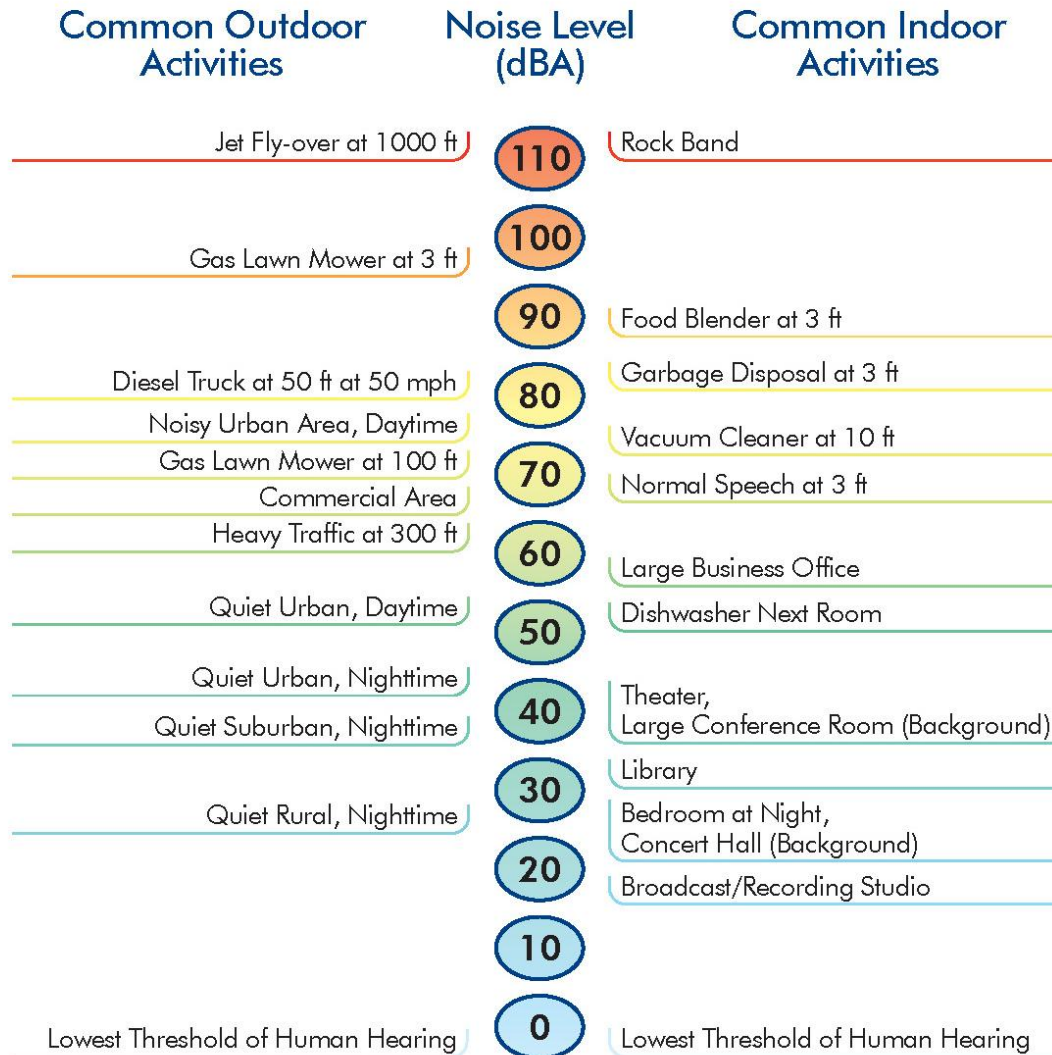
The main purpose of regulating non-agricultural related noise is to protect the peace and quiet of residential neighborhoods and structures and to protect certain uses from harmful or disruptive sounds (i.e. preventing a loud noise like mine blasting from interfering with classes at an elementary school).

In the Zoning Ordinance, Kendall County currently regulates noise through performance standards of uses. Examples include:

1. Noise from small wind energy systems shall not exceed 60 dBA as measured at the closest property line (this level may be increased during short-term events like severe wind storms).
2. Noise from wind farms shall not exceed 65 dBA as measured at five feet above the ground level at the property line coincident with or outside the project boundary. The noise level shall not exceed 50 dBA if it is determined that a pure noise tone is generated by the project (these levels may be increased during short-term events like severe wind storms).
3. Noise from banquet facilities shall not exceed 65 dBA at any point on receiving residential land except the property line during daytime hours (7:00 A.M. to 10:00 P.M.) and noise shall not exceed 55 dBA during nighttime hours (10:00 P.M. to 7:00 A.M.) Exceptions to the daytime dBA level exist for powered equipment necessary for the maintenance of the property.
4. Noise from non-agricultural sources at seasonal festivals shall not exceed 60 dBA as measured from the nearest occupied residential structure adjoining the property. In addition, no events shall start prior to 9:00 A.M. and must end by 10:00 P.M. Monday to Wednesday and 11:30 P.M. Thursday to Sunday.
5. Noise from truck and tractor amusement competitions and events shall not exceed 90 dBA as measured at the nearest property line, not including any residences located on the subject property. No events shall start prior to 9:00 A.M. and must conclude by 9:00 P.M. Events shall not exceed six consecutive days and events may only be held two times per calendar year on any particular property.

Mike Hoffman previously provided the following diagram of dBA levels:

LOUDNESS COMPARISON CHART (dBA)



Source: Shasta County, California; CalTrans.

The noise level of small wind energy systems, wind farms, banquet facilities, seasonal festivals, and truck and tractor amusement competition and events can be regulated through the special use and conditional use permit approval process based on the surrounding land uses. Similarly, outdoor shooting ranges and kennels are also only allowed by special use permit. Restrictions could be placed in individual special use permits requiring the installation of appropriate screening and buffering to dissipate noise as it approaches and crosses property lines or specifying hours of operation within each special use permit.

For uses that are permitted uses (i.e. banquet facilities in the B-3, B-4, M-1, and M-2 Districts, and seasonal festivals and truck and tractor amusement competition and events in the B-4 District) regulations specific to the uses are already in place. Noise issues in business and manufacturing

zoning districts could be addressed by amending the applicability article of the Kendall County Noise Control Ordinance to include Business and Manufacturing Zoning Districts that abut Residentially Zoned land.

Kane County, in 25-11-1-5 of their County Code of Ordinances, uses octave bands to determine appropriate dBA levels as illustrated in the following table:

Octave Band (Frequency Cycles Per Second)	Along Residential, Estate Or Farming District Boundaries	Along Business And Industry District Boundaries
0 to 75	72	79
75 to 150	67	74
150 to 300	59	66
300 to 600	52	59
600 to 1,200	46	53
1,200 to 2,400	40	47
2,400 to 4,800	34	41
Above 4,800	32	39

In determining whether a sound is unreasonably loud, they also use the following criteria:

- a. The proximity of sound to sleeping facilities;
- b. The land use, nature and zoning of the area from which the sound emanates and the area where it is received or perceived;
- c. The time of day of the sound occurs;
- d. The duration of the sound;
- e. Whether the sound is recurrent, intermittent, or constant;

Kane County exempts noise generated by agricultural uses on land zoned agricultural and used for agricultural purposes from these regulations.

Will County, in Chapter 133 of their County Code of Ordinances, requires that no electronically amplified sound may be heard beyond 75 feet from the property line from which it originates, if the property is zoned residential. Will County also provides an agricultural exemption

Also, at the November 30th meeting, discussion occurred about notifying prospective buyers of adjoining properties that a special use existed near their property and that the special use could result in noise. Unlike other jurisdictions, Kendall County is fortunate that the Kendall County Zoning Map clearly identifies properties with special uses. While the map does not state the specific special use(s) allowed on a given piece of property, a prospective buyer could view the map and identify the locations of properties with special uses. A prospective buyer and/or Realtor could obtain a copy of the special use permit and discover the restrictions included as part of the special use permit. Many jurisdictions only show the zoning of properties on their official zoning maps and do not identify which properties have special use permits.

When a person or business moves to a new city or county, they are responsible for finding out and following the regulations of that city or county. Kendall County has a Right to Farm Clause, building codes, zoning ordinances, speed limits, and many other regulations that residents, businesses, and visitors must follow when they engage in activities in Kendall County. The Kendall County Planning, Building and Zoning Department is not informed when a property goes under contract and may not be informed of the sale of piece of property unless a building or zoning permit is required for a new structure or use. Ultimately, the individual resident, business, and visitor are responsible for following the regulations of Kendall County.

To that end, Staff recommends the following:

1. Place reasonable restrictions on special and conditional use permits as they relate to the individual circumstances and characteristics of a neighborhood when addressing noise regulations.
2. Amend the applicability article of the Kendall County Noise Control Ordinance to include properties zoned business and manufacturing that abut residentially zoned land.

MHA