

Oakwood, Ohio

March 6, 2019

The Planning Commission of the city of Oakwood met in regular session at 4:30 p.m. in the council chambers of the city of Oakwood, 30 Park Avenue, Oakwood, Ohio 45419.

The Chair, Mr. Andy Aidt, presided and the Clerk, Ms. Lori Stacel, recorded.

Upon call of the roll, the following members responded to their names:

MR. ANDREW AIDT .....	PRESENT
MRS. HARRISON GOWDY .....	PRESENT
MRS. E. HEALY JACKSON.....	PRESENT
MR. GREG LAUTERBACH .....	PRESENT
MR. STEVE BYINGTON.....	PRESENT

Officers of the city present were the following:

Mr. Robert F. Jacques, City Attorney  
 Mrs. Jennifer S. Wilder, Personnel and Properties Director  
 Mr. Ethan M. Kroger, Code Enforcement Officer

The following visitors were present:

No visitors present.

Mr. Aidt called the meeting to order at 4:30 p.m. He asked if there were any questions or concerns with the minutes from the January 2, 2019 meeting. There being none, it was moved by Mrs. Gowdy and seconded by Mr. Byington that the minutes of the Planning Commission meeting held January 2, 2019 be approved as submitted and the reading thereof be dispensed with at this session. Upon a viva voce vote on the question of the motion, the same passed unanimously and it was so ordered.

Mr. Aidt explained that the only agenda item is Application #19-2, to consider a proposed text amendment to the sign regulations of the Zoning Code submitted by the city of Oakwood.

Mr. Jacques stepped forward to present the staff report and referenced a PowerPoint presentation. He explained that staff has comprehensively rewritten the entire sign chapter in order to address possible constitutional concerns with the current code. Specifically, the goals of the rewrite are to properly define and regulate the use of electronic changeable copy (digital) signs; to ensure compliance with the First Amendment and *Reed v. Town of Gilbert*, 576 U.S. \_\_\_\_, 135 S. Ct. 2218 (2015), by shifting from regulations that may be construed as content-based to regulations that are content-neutral; and general revisions to clarify terms and provisions that could be construed as unconstitutionally vague.

Mr. Jacques asked the Planning Commission to follow the decision standard as listed in Section 1003.6(B) of the Oakwood Zoning Code. The Code states "Text amendments shall be reviewed for consistency with the purposes of (the Zoning Code), the Comprehensive Plan, and interests of the city of Oakwood as a whole."

The City has considerable latitude to make changes involving the time, place, or manner of displaying signs, without regulating content. In the event that the Planning Commission wishes to request changes, the following is a list of areas that can be changed with little or no legal significance: 1) any provisions involving time (hours of display, hours of darkness, frequency of electronic copy sign changes, etc.); 2) square footage requirements; 3) height or width requirements; 4) setback or other location requirements; 5) any provisions involving coverage percentages; 6) reasonable color requirements; and 7) the types of signs allowed in a particular zoning district.

The purpose of the sign code is to preserve the character of distinct neighborhoods; to promote ease of locating/identifying buildings; to avoid motorist distractions and traffic/safety hazards; to maintain property values, avoid nuisances, and minimize "sign clutter"; and to protect public peace, health, safety, welfare, convenience, and comfort. The challenge is to accomplish these purposes while protecting the rights of free speech and expression.

The various sign types were then reviewed to acquaint the Planning Commission members with the terminology.

Mr. Jacques reviewed the concerns with the existing sign ordinance. The existing ordinance defines 36 "functional types" of signs, with other categories interspersed in unusual locations, and many of these sign definitions are contradictory. The definitions have inconsistent inclusion of dimensional requirements and number requirements. The 1997 Business District Design Guidelines, which are a separate non-codified document, do not contain specific information and are overly relied upon.

Mr. Jacques then reviewed the proposed structural changes to the sign ordinance. The overall structure of the sign chapter has been reworked to add efficiency and clarity, while not making unnecessary changes to existing practices.

The proposed ordinance includes four sign classifications: prohibited; exempt; temporary; and signs requiring permits. The sign types would be reduced to wall, monument, window, awning/canopy, lawn, and projecting. Signs would be regulated in a clear, linear progression by using the following classifications: district; sign type; and installation as a primary or secondary sign. Mr. Jacques then provided examples of these types of signs as reference.

Mr. Lauterbach asked how someone dressed in a costume for marketing purposes would be addressed.

Mrs. Wilder explained that this situation could be considered as displaying signs in the public right-of-way.

Mr. Jacques added that this individual could also be considered an attention-getting device, which is prohibited under both the existing and proposed ordinance.

Mr. Aidt inquired about parking control signs.

Mr. Jacques explained that parking control signs are limited to one sign per entry and one sign per exit, but the sign shall not contain a business name or logo.

Mr. Lauterbach asked why there is not a sign duration requirement on temporary signs.

Mr. Jacques explained that it is almost impossible to regulate all signs with a time limit due to enforcement challenges. There are also constitutional issues with using time limits on political signage. Time limits were only included on sign types that need them.

Mr. Jacques then reviewed the following specific proposed changes to the existing regulations:

- Clear provisions have been provided for signs with "Electronic Changeable Copy".
- Real estate signs have been re-categorized as temporary signs, subject to the same regulations as any other temporary sign and to be counted in the aggregate square footage of all temporary signs on a property. The current law is content-based, treating real estate signs as a separate category of sign subject to their own requirements.

- Awning signs are now permitted to extend over public rights-of-way (sidewalks), as long as they provide adequate clearance. The current law prohibits this, but this condition exists in the Community Business District and possibly other locations where buildings abut sidewalks.
- Permanent ground signs for residential properties are prohibited. The current law includes a loophole, which staff believes was unintended, that allows these for any property in a residential district.
- Address signs (such as house numbers) are treated as unregulated “exempt” signage, as long as they are limited to two square feet per sign, with a maximum combined area of six square feet. The current law is self-contradicting, allowing only one sign per property, but stating that address signs may be placed on no more than two sides of a structure.
- Additional signs have been added to the “prohibited” list. Signs on parked vehicles and visible from any public right-of-way where the apparent purpose is to advertise would be on this list, as well as signs that are untruthful or misleading.
- Additional signs have been added to the unregulated “exempt” list, such as governmental flags and holiday décor, but the holiday décor cannot function as an advertisement.
- “Marquee signs” have been deleted as a permitted sign type. While there are none currently in Oakwood, they are permitted under current law.
- For non-residential uses in residential zoning districts, a requirement has been added that any sign illumination must be turned off between 11 p.m. and 6 a.m. unless the business or institution is still open during those hours. The current law has no such requirement.
- A “sunset provision” has been added for pole signs, allowing them to remain in place for up to 10 years after the effective date of the ordinance before requiring them to be replaced with conforming signs. The current law prohibits pole signs, but there are at least three in Oakwood. The sunset provision ensures their eventual removal, while allowing ample time for compliance without imposing a significant burden.
- Reliance upon the 1997 Business District Design Guidelines has been reduced by moving specific business sign requirements into the Zoning Code. The current law includes very few specific requirements for signs in business districts such as dimensional requirements or locations. Instead, it requires that the 1997 design document be followed. Unfortunately, that document does not state many clear requirements, and uses vague words.

Mrs. Jackson suggested that those affected by the pole sign “sunset provision” should have been notified.

Mr. Jacques explained that the meeting notification was published in the *Oakwood Register*, on the city website and in meeting press releases.

Mr. Byington commented that it would be impossible to notify all property owners affected by some aspect of a comprehensive re-write. The Planning Commission should take individual concerns into account when making a recommendation to City Council, as the Planning Commission is appointed to represent the interests of all Oakwood property owners.

Mrs. Gowdy asked if the City would notify people if the pole sign changes were adopted.

Mr. Jacques shared that if these changes are approved, the appropriate individuals would be notified by Code Enforcement Officer Ethan Kroger.

Mr. Aidt asked if there are standards on updates or changes to existing non-conforming pole signs, like if the City could require removal if a certain percentage of the sign needed replacement.

Mr. Jacques explained that there are rules like that, but the signs could remain indefinitely until they needed repairs to that degree. Staff considers it preferable to use a timed "sunset" provision. To help minimize the financial hardship, the sunset provision was pushed out to 10 years after the effective date of the ordinance before requiring signs to be replaced with conforming signs.

Mr. Lauterbach inquired about signs with two poles.

Mr. Jacques shared that a sign with two poles would be considered a monument sign or a ground sign, and would have to comply with the monument sign regulations.

Mrs. Gowdy asked if the current signs located at the new Russell Wealth Management development follow these proposed guidelines.

Mr. Jacques explained that Pointe Oakwood and Sugar Camp are located in the Multi Use Special Planning District (MUSPD) with different sign requirements. That district is unique in that it does not have normal zoning rules; everything is reviewed by the Planning Commission as a special use.

Mr. Byington asked if businesses will be required to move pole signs if there is a change of ownership.

Mr. Jacques said that he would need to research this further to know for sure, but generally a non-conforming use must cease after six months of inactivity. He added that either way, Mr. Kroger would work with the business directly.

Mr. Jacques continued his explanation of proposed changes:

- Projecting signs, or signs that are hung so they stick out perpendicular to the building, have been retained, but will now require a special use permit. The current law treats projecting signs as "freestanding signs," but freestanding signs are a type of detached ground sign and the regulations appear to be tailored more to ground-based signs. Since they are not very common, and could negatively impact the appearance of an area where all other signs are mounted parallel to the face of a building, city staff opted to require special use approval.
- The categories of "freestanding signs" and "ground signs" have been merged and renamed as "monument signs." The current law uses "freestanding" and "ground" interchangeably. The name "monument signs" suggests a sign of permanence and substance, and it also avoids any confusion as to what is a "ground sign" and what is a "lawn sign." Basic landscaping is now required to soften the base of monument signs. The current law does not include this requirement, although landscaping plans are required with most new developments.
- A new section has been added to address non-conforming signs. The current Zoning Code includes Title 13 which is entirely devoted to non-conformities, but it is geared more towards non-conforming uses and buildings such as setback requirements.

Mrs. Jackson asked if the "Hatcher" neighborhood sign is considered a monument sign.

Mr. Jacques confirmed that it is a monument sign. He went on to explain that this particular sign was located in the City right-of-way after permission was granted by the City.

Mrs. Gowdy asked if neighborhood signs are allowed in other subdivisions.

Mr. Jacques explained that these types of signs fall outside the sign code because they are in the City right-of-way. Small plaques on individual homes would be permitted, either as a wall sign or a memorial/cornerstone sign.

Mr. Jacques went on to explain that there were some changes that were also required to comply with Federal law. The "purpose" provision has been expanded to include the City's commitment to preserve, protect, and respect constitutional principles of free speech.

Mrs. Gowdy asked if "hate" signs are prohibited.

Mr. Jacques shared that "hate" signs can be dealt with in other ways, while taking the rights of free speech and expression into consideration.

Content-based language has been removed, as much as possible, in favor of content-neutral language. Regulations are focused on addressing the time, place, and manner of displaying signs, rather than regulating them according to content. This is a First Amendment consideration, bringing the code into compliance with *Reed v. Town of Gilbert*, 576 U.S. \_\_\_\_, 135 S. Ct. 2218 (2015). A provision has been added to authorize the Building Commissioner to vary the size requirements for temporary signs to ensure that signs are visible. Variances must not exceed 50%, and are to be based on visibility only. All sign definitions have been reviewed and rewritten for content-neutrality and to avoid vagueness.

Mr. Jacques provided details regarding the proposed electronic changeable copy sign provisions. A particular concern of the Planning Commission was the lack of clear code guidance on the topic of electronic/digital signage in the current code, which staff clarified in the new provisions.

Signs with "electronic changeable copy" will only be permitted for specific uses: places of worship, educational institutions and governmental facilities. Mr. Jacques provided a list of these facilities in Oakwood.

Mrs. Gowdy asked if preschools located in churches would be able to have electronic signs.

Mr. Jacques answered yes, and explained that the preschool would be considered an accessory use to the primary use of the church. One sign would be available per property, but could be used by both the primary use (church) and accessory uses (preschool).

Signs with "electronic changeable copy" must be monument signs, and only one "electronic changeable copy" sign may be placed on a particular property. These signs may only be placed on a property having at least 100' of street frontage. The signs must be set back at least 15 feet from the public right-of-way and from any lot line. The sign must be oriented perpendicular to the nearest street. If they are located near a corner, they may be oriented diagonally to be visible from both streets. Size requirements are the same as other monument signs, but the electronic display can take up no more than 50% of the sign face. The minimum character height is 5 inches. The sign must display an entire message at one time, without scrolling or movement, and transitions between messages must be instantaneous. Each message must be displayed for at least 10 minutes before changing. Each message must be displayed with a single copy color, and the background must be non-illuminated.

Mrs. Gowdy asked if the requirements could be changed to only allow black and white versus any color on the sign.

Mr. Jacques explained that the Planning Commission could place a condition that only black and white colors be allowed on electronic signs if they so choose.

Mrs. Gowdy commented that the church signs in Oakwood are all different, and one is much brighter than the others. She asked if there is a way to conform these different signs.

Mr. Jacques answered no, because they are already in existence and would be allowed to continue as a grandfathered use.

Mr. Jacques went on reviewing the proposed electronic sign provision. The Safety Department has discretion to prohibit the use of specific colors (red, amber, or green) if the sign is located where those colors would cause confusion with a traffic signal or where it otherwise poses a risk to public safety. Any "electronic changeable copy" sign must be turned off between 10 p.m. and 7 a.m., unless a special use permit is granted to allow different hours of operation. The signs must include an automatic dimmer that detects ambient lighting levels and adjusts the display brightness accordingly. The maximum daytime brightness is 5,000 nits, and maximum nighttime brightness is 125 nits.

Mr. Lauterbach pointed out that the proposed code includes provisions for signs using non-combustible materials. He was concerned with this provision because it could be interpreted to prohibit wooden signs.

Mr. Jacques shared that the Planning Commission can request that this be removed.

Mr. Lauterbach recommended that this requirement be removed because wooden signs should be acceptable.

Mrs. Gowdy asked if the color and/or brightness are adjustable on electronic signs.

Mr. Kroger shared that sign manufacturers can program many adjustments to electronic signs, including both color and brightness.

Mrs. Gowdy commented that she does not believe electronic signs are compatible in certain areas due to the existing street lighting.

With no visitors present to offer public testimony, the public hearing was closed and the Planning Commission began their deliberations.

Mr. Lauterbach shared that he is not a fan of electronic signs in residential districts.

Mrs. Jackson opined that electronic signs look too commercial, and do not fit in residential areas. To her, the signs are a marketing tool. The signs create a distraction to drivers, similar to reading a text message on a phone.

Mr. Aidt asked the other members of the Planning Commission if they would like to recommend that electronic signs are only permitted on major roads and not residential streets.

Mrs. Gowdy responded that facilities would then question why electronic signs are available for some and not others. She suggested eliminating electronic signs altogether because they are not compatible in any district.

Mr. Byington reminded the Planning Commission members that the proposed electronic sign provisions require that the sign stay on the same message for at least 10 minutes. He asked what the difference is between a wood sign with light shining upon it and an electronic sign with light coming from within it. He commented that it sounds like the perception is that these electronic signs will display quick messages.

Mr. Lauterbach commented that the signs offer a different aesthetic appearance.

Mrs. Gowdy added that electronic signs project light.

Mrs. Jackson commented that the electronic signs are too commercial because of the way the lights reflect off of the sign.

Mrs. Gowdy opined that she does not like electronic signs because they look aesthetically different, and they have a different feel to them.

Mr. Byington questioned whether decisions are going to be based on a "feel".

Mrs. Jackson believes that the lights reflect differently off of an electronic sign.

Mrs. Gowdy shared that Oakwood is a collection of historic properties. The current sign code is strict because residents want the ambience of a historical district. Electronic signs do not fit in this ambience.

Mrs. Jackson stated that an electronic sign would be useful somewhere like Lane Stadium, but these signs are not necessary for a church or school. She added that she has concerns with the 10 minute message requirement. It is disingenuous to use this technology, but regulate the sign so it appears to be a different type of sign.

Mr. Aidt asked members of the Planning Commission if they have concerns with any of the other sign provisions.

Mr. Lauterbach asked how properties are identified as vacant versus the natural turnover of the property.

Mr. Jacques responded that vacant properties are when tenants move out, or a store goes out of business. At that point, blank sign faces can be installed to prevent these signs being considered off-premises signs.

Mr. Kroger added that, in those situations, he contacts the property owner to remove the sign.

Mr. Lauterbach asked if this applies to pole signs located on vacant properties or businesses that go out of business.

Mr. Jacques responded yes, if the sign pertains to a business that is no longer there. The face of the sign can be changed or removed.

Mrs. Jackson asked if the sunset provision could be changed to require that pole signs be removed when businesses leave.

Mr. Jacques answered that time is the simplest, clearest way to handle a "sunset." If the property changes ownership, it is hard to capture form and not substance. A sole proprietorship might transfer assets to an LLC and continue operations that way. Enforcement would be difficult.

Mr. Byington asked Mr. Jacques if there could be two different motions made if needed. He opined that the decision should not be based on aesthetics. Every sign is made from different material and has different fonts.

Mrs. Jackson said that in her opinion, electronic signs are marketing tools and she does not think they should be placed in residential areas. Electronic signs are used for marketing and not identification.

Mr. Byington responded that every sign, including non-electronic signs, are used as marketing signs.

Mrs. Gowdy commented that all marketing signs should be removed because they are not very effective anyway.

Mr. Byington asked for clarification on the motions. He said that he agrees with the removal of the sign requirement using non-combustible materials, but he does not agree with the removal of electronic signs.

Mr. Jacques said that one motion is sufficient. The votes will be documented in the minutes.

It was then moved by Mrs. Gowdy and seconded by Mrs. Jackson that application #19-2, for a proposed text amendment to the sign regulations of the Zoning Code submitted by the city of Oakwood, be recommended for approval to Oakwood City Council, with the removal of provisions regarding non-combustible materials and electronic changeable copy signs. The Planning Commission has considered the evidence and has reviewed the proposal for consistency with the purposes of the Zoning Code, the 2004 Comprehensive Plan, and the interests of the city of Oakwood as a whole, and finds that that same is consistent therewith, if the designated provisions are removed.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. ANDREW AIDT .....	NAY
MRS. HARRISON GOWDY .....	YEA
MRS. E. HEALY JACKSON.....	YEA
MR. GREG LAUTERBACH .....	YEA
MR. STEVE BYINGTON.....	NAY

There being three (3) YEA votes, thereon, said motion carried.

Mr. Aidt and Mr. Byington stated on the record that they were not opposing the recommendation of approval, but were opposing the deletion of the electronic sign provisions.

There being no further business, the Planning Commission adjourned. The public meeting concluded at 6:28 p.m.

  
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 CHAIR

ATTEST:

  
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 CLERK