

GLADSTONE PLANNING COMMISSION MINUTES

Council Chambers October 29, 2019

1. **Meeting called to Order– Roll Call.** Chair McGee called the meeting to order at 7:00 p.m.

Commissioners present were: Chase Cookson
J.N. Hernandez*
Alicia Hommon
Gary Markenson
Jennifer McGee, Chair
Katie Middleton
Kim Murch
James New*
Bill Turnage

Also present: Jean Moore, Mayor Pro Tem
Padriac Cochran, City Attorney
Alan Napoli, Building Official/Com Dev Administrator
Austin Greer, Asst to the City Manager/Planning Administrator
Cheryl Lamb, Administrative Assistant

Not present: Mike Ebenroth
Larry Whitton

2. **Pledge of Allegiance to the United States of America.**
3. **Approval of Previous Meeting Minutes (October 7, 2019).** Chair McGee asked if there was a motion to approve the minutes from the October 7, 2019 meeting.

Mr. Cookson moved to approve the minutes; Ms. Hommon seconded. The minutes were approved, 7–0. (*not present for vote)
4. **Other Business.** None.
5. **WORK SESSION:** on the new sign regulation for the City of Gladstone. File #2019–007. City's legal counsel will explain the legal complications and answer questions.

Mr. Napoli introduced Padriac Cochran, the City attorney. Mr. Cochran wrote the memo in front they had in front of them. He would go into more detail about the legal aspects of the sign code and would answer questions from the Commissioners. After his presentation, Mr. Napoli would

review the sign code and ask for input on changes. He shared that after they work session, it will go before the City Council in their Open Study session in January, 2020. After Council reviews it, it will come back to the Planning Commission for a Public Hearing. It should be finalized by spring of next year.

Mr. Cochran reminded the Commission that the last time he appeared before them was to talk about small wireless facilities. He felt one of the main takeaways from that was we don't have much authority. This was a very similar talk.

Mr. Cochran shared that in 2015 the Supreme Court decided "Reed versus the City of Gilbert". In the law there is a saying that "bad facts make bad law." This was a "bad facts make very bad law" situation. In Reed v. Gilbert, Reed was the pastor of a church in the city of Gilbert, Arizona that did not have a permanent place of worship. Each Sunday, he would go out and set temporary signs directing people to where they should go. The City of Gilbert, enforcing their sign code which prohibited this, was sued by Reed and the ACLU assisted. The ruling that came down was, if a person has to read a sign to see if a regulation of the city applied, that regulation most likely fails. What most sign codes currently say are things like real estate signs. You can't tell if it's a real estate sign until you read it. Or, garage sale signs; or various other specifically temporary signs; all which have to be read to see if the current regulations apply. While the Reed court essentially overturned fifty (50) years of jurisprudence from six (6) of the circuit courts, it did give us some slight, very narrow areas where we can still regulate.

Mr. Cochran said the non-extensive list is on page two (2) and includes regulating the size of signs, the location where signs may be placed specifically allowing cities to say that no signs may be posted on public property, which most cities already do. Rules distinguishing between lighted and non-lighted signs; rules distinguishing between signs with a fixed message or electronic message boards; rules distinguishing between signs on commercial and residential property; rules for on premise and off-premise signs, similar to commercial versus residential; rules restricting the total number of signs allowed per mile of roadway. Finally, rules imposing time restrictions on signs advertising a one-time event.

That list of non-extensive things comes from the concurring opinion of Justice Alito. The last one, item 8 (on attached memo) hasn't been discussed post-Reed, but the dissent in that case called out Alito saying, "how can we have a rule imposing time restrictions on signs advertising a one-time event without reading the sign to see when the one-time event took place." It's really a list of seven that Alito handed down.

The main area most cities are trying to regulate and what this sign codes will be regulating is construction and building materials of signs. That is very easy to do with the monument signs; the large signs you see outside of Prospect Plaza or in front of a subdivision. The large signs that are anchored in the ground that are always going to be there; we can deal with those. The issue and the hardest part of this will be the temporary signs. Most temporary signs are the

exact same sign with different stuff on front. If you think about your political signs; there was a case recently in the state of Missouri, where the city of Bel-Nor got sued because someone had three (3) signs in his front yard during the political season. Mr. Cochran recalled a Jason Candor sign; a black lives matter sign, and one other sign. He went all the way up to the 8th Circuit Court of Appeals and he won because, in that case, the city had an ordinance that had two (2) definitions; one was sign and one was flag. The flag one, the flag could be for institutions or state governmental entities, which made it content-based. That meant that they treated signs differently based on their content. That meant the entire ordinance was invalid. What we are having to do is walk a very tight rope between what every city has done for the past eighty (80) years in regulating signs and what we now have to try to do going forward mainly focusing on- not the content at all, can't look at the content at all- but on building materials and size of signs; and trying to craft some regulations that will specifically deal with mainly temporary signs, because those are some of the troublemaker signs that you see in the city. He believed Mr. Napoli had provided them all with the sign code that they have been drafting over a very significant period of time.

He asked them to note that the key points to look at in these sign codes now are the definitions. The definitions are the key. In the Reed v. Gilbert case, the city sign code had 47 definitions and 23 of them were content-based. The city's current sign code has even more definitions than that and even more that are content-based. What they have tried to do in the draft sign code that they have seen is relate everything that you would think of for content and instead move it to building materials and how the sign is placed. Two (2) he could remember are the basic definition of monument sign; instead of having fifteen (15) different types of monument signs all of them relating to the content on the monument sign they instead now have one type of monument sign. Another one to think about would be our temporary signs. Instead of having various definitions on real estate signs, on political signs, on garage sale signs, on all of the types of temporary signs. Instead what the sign code attempts to do is to take a somewhat novel approach and instead regulate temporary signs, not based on their content, but based on the qualifying event that allows someone to post a sign. For example, in the current sign code they have qualifying special events which would include times when there are ballot initiatives, time when there are elections, times when your house is on the market, times when you have a birthday. For commercial, it would be times when you are having sales x, y & z, allows someone to put a sign out. We don't care what's on the sign at all. They could come in and it could be the period before an election and they could say they are putting a sign out and we would say ok. We would never care if that sign had anything to do with that election at all. If it's during this time period, you can put one of these temporary signs out. If you are a business and you have an outside special event for your grand opening. We don't care if the temporary sign says grand opening on it or what it says on the sign. We just care that the qualifying event is occurring that allows the person to put the sign up.

Mr. Markenson asked if there was a time limit on this, like for an election in August that you have to put it up; can't put it up; six months ahead of the election and keep it up three months afterwards.

Mr. Cochran said to craft a definition that would allow that to occur, a time period to take it down specifically in the definitions would be near impossible without referencing content. They would have to rely on the 8th of the non-extensive list of examples of how we could regulate and really hope that Justice Alito carried the day. But, instead what we have done, during the time period of the qualifying event you come in, you fill out an application and say "I'm coming in to get my political signs" for the time period, the political event lasts from xy to xy. When that time period would end, we would know via the permit, not via the sign, that the sign would be removed. He told them that regulating political signs is going to be the trickiest part of all of this.

Mr. Markenson asked if he needed a permit to put up a political sign.

Mr. Cochran said you don't need a permit, but for more than one . . . he asked Mr. Napoli what the current sign code said.

Mr. Napoli replied that residential has a size limit and commercial has a size limit.

Mr. Cochran said that right now the way they are handling it is that political signs, due to the nature of litigation, and if anyone remembers the reported case on political signs in the state of Missouri is the City of Gladstone. Typically, unless it is getting deteriorated, which would be a health and safety hazard because it could blow off into the right-of-way while somebody is driving by or walking by, you don't try to touch it. He is being very honest.

Mr. Markenson asked if you need a permit.

Mr. Cochran replied that you don't need a permit for a political sign in residential.

Mr. Murch asked what happens if it's on public property.

Mr. Cochran said if it's on public property you can't put it on there. You can't put anything on public property unless you are a telecommunications company.

Mr. Markenson said he assumed that included the right-of-way also.

Mr. Cochran confirmed the right-of-way, the parkway between the sidewalk and the street; can't have signs in there. They couldn't have them along N Oak in the right-of-way. That is prohibited period. The Supreme Court said they can control their own property when it comes to the speech conveyed on it.

Mr. Napoli asked if anyone had any other questions for Mr. Cochran.

Mr. Cochran added that this was a 5/4 decision. The Court has changed a little bit since then. There was hope originally that someone would take a test case back up and try to show the absurdness of the ruling, but that is looking less and less likely.

Mr. Markenson said he sees some definitions of dancing balloons and human signs, but he doesn't see any regulation on them, just definitions.

Mr. Napoli said he included definitions to define most types of signs. It doesn't mean they are allowed or not allowed. He just put definitions of what people see so, if it comes up there is something there that says that would be considered a dancing balloon or flag. Definitions of what they are, but not necessarily that they are allowed or not allowed. Most of those are your temporary signs.

Ms. Middleton asked, as far as changes for the City, what are they planning.

Mr. Cochran said it will be a complete entire revision of the sign code, top to bottom.

Mr. Napoli added it is currently in the Building and Construction Ordinance, all the sign ordinances. With this change and what they are going to they have decided to move it into the Zoning and Planning Code going from Title IX to Title VII. They are looking at and what he and Austin have talked about is when a new project comes in or someone is doing a big remodel our conversion is to start requesting a master sign plan. For example, they get a Walmart who bought land and they are building something. When they come in with their zoning plan they will have a plan showing where all the signage is, including the sizes. We don't care what's on it, but where they will have their monument sign and where their other signs will be. They can stick with that and it will be approved through the zoning process. They will ultimately have an ordinance number for it. If they deviate from the plan, they would have to come back through the Planning Commission and go through City Council as well. That way if they want to change it and put a new sign up they can go ahead and do it and get their permit. They don't have to worry about if the sign is smaller or bigger, they have their areas that they are looking to place their signs and they follow the master plan.

Ms. Middleton said that was about enforcing the permanent signs so there wouldn't be much; and wondered about the temporary signs.

Mr. Napoli said he would get into the temporary signs later as he goes through the ordinance. That will be the biggest change that is happening in the whole sign code. When he gets to it he will go through the whole section and the whole process of how we are handling it now and how we are going to handle it.

Mr. Cochran said the monument signs, due to the very nature of them, are kind of easy to regulate under a construction and size parameter instead of content-based parameter. It truly is the temporary signs that Reed effects and makes very difficult to regulate. Also, when he said if you have to read the sign it automatically fails; that's not 100% true legally. If you have to read the sign, then it has to go through what is called strict scrutiny. When the Supreme Court or any court is looking at something to see whether or not it is constitutional, there are levels of scrutiny; there's strict scrutiny, there's intermediate scrutiny, and rational-basis scrutiny. Strict scrutiny is the hardest to pass. It is very rarely passed. To pass strict scrutiny, you have to have a compelling governmental interest and the law is narrowly tailored to further that interest and that interest alone. That was the argument as soon as Clarence Thomas latched on to the fact that all of this is content-based, the argument that the cities tried to put forward through various briefings was that esthetics of the city are a compelling government interest. That argument was completely thrown out by the court. The majority said esthetics is not a compelling government interest. The only compelling government interest is essentially health and safety. When you are looking at this and wondering about how this could clutter up every street in town; North Oak could be awash in temp signs; it could be and kind of is at times. That is because one of our specific mandates from the Supreme Court is that we cannot regulate based on esthetics; overall city esthetics.

Mr. Murch asked about grandfathered signs. He thought he saw a conflict in there but now can't find it.

Mr. Napoli said when they get to down to that they will talk about it. He said the first section talks about general items, the applicability, the enforcement, about the permits. All permanent signs require permits. All temporary signs will require permits, but there are some exceptions throughout there. Permanent signs, if they meet the requirements in there, they can get a permit. If they are outside of those bounds or want to go to a master sign plan for a development or an existing development, it will come through Planning Commission first and then to City Council. On temporary signs, if they have a valid building permit they don't have to have an additional temporary sign. Most temporary signs for building say "coming soon" so they have some signage going with it. They felt since they had a building permit and are working on a project they could have some temporary signs. With the hotel coming in, you'll see some temporary signs there. When The Heights was going up there were some temporary signs around there. Temporary signs, other than those instances, are required to give us some information. As Padriac stated it will be part of a qualifying event. They will have to get a Special Event permit to do temporary signs. Temporary signs are good for 30 days. You can have a total of three (3) per calendar year. They can run consecutively if they want. If someone came in on November 1st and they wanted to get two (2) signs, they can get one that runs November 1st to November 30th. They can't skip weeks; it's a continuous 30 days. If they want to run the next one and run it from December 1st to December 31st, or they can get the second one to start in

January of the next year, which would be a new permit. They could run a temporary sign permit for 90 days. After that, they are done.

Mr. Markenson asked for clarification on temporary signs. Residential property; they will never have to get a permit for a sign whether it's for a "for sale" sign or political sign.

Mr. Napoli said that was correct. We don't do that now anyway.

Mr. Markenson said if a church wants to invite people for an Easter brunch or something and put up a sign.

Mr. Napoli said that was a little bit different. Churches and not-for-profits get temporary signs; we just don't charge them for them.

Mr. Markenson asked if they have to get a permit.

Mr. Napoli replied yes. Some of them will put out signs on a Sunday morning to come to service there. He isn't running around on a Sunday morning to pull signs. They are usually gone by Monday morning anyway; they just have it out for that day. There are a few you will see pop up on a weekend.

Mr. Markenson asked about a commercial property, like Hy-Vee who wants to advertise their Steak Special on Thursday nights and they want to put a sign in front of their store.

Mr. Napoli said they would have to get a temporary sign permit.

Mr. Markenson asked what if they put it in their window.

Mr. Napoli said that would fall under the window and, if it meets the window requirements for the signage in the window at 50%; if they don't take up more than 50% of the area, they could put it on the window. They would have a sign permit for the window signs. Those tend to be more permanent in nature, but yes, some of those do change but not as frequently as your temporary signs you usually see outside.

Mr. Napoli discussed time limits. If they apply for a sign permit and it's been approved, they have 90 days to get the permit or it becomes invalid. The documents they need to submit are site plans showing where it is, what they are doing. They are reviewed and there are fees for them. Right now temporary sign permits are \$100 and special event permits are \$50. All special events, and he is working on that ordinance, will be at least \$100. That won't affect the Commission at all because they will get a special event for the temporary sign. It's \$100 for 30 days.

Mr. Markenson mentioned that there are no fees in there now.

Mr. Cochran said they don't ever want to put a fee in an ordinance. That way, if it has to be changed especially now that it is in the zoning code, there would need to be a public hearing to change a fee and then go to the Council. Instead, you put it on a schedule of fees that is approved every year by the City Council by resolution.

Mr. Napoli said they will have to change the fees on the special event permits. They may be doing something that they have to get temporary permits. Typical inspections, depending on the type of permit signs. We have requirements for nuisances; unsafe and abandoned signs. He pointed out on page 10 under non-conforming signs permitted is actually number 7. Non-conforming signs that are deemed to be in violation of this chapter shall be taken down and removed within one year of adoption.

Mr. Murch thought he had seen it in another spot and why he thought he saw a conflict.

Mr. Napoli said it is right below it under 7.195.109.4 Nonconforming signs; not permitted. The following *signs* which existed as of the date of this adoption of the ordinance from which this chapter was derived and were then in full compliance with City codes and ordinances prior to such date shall be brought into compliance with this chapter within one (1) year of its adoption.

1. *Permanent signs* incorporating animations, changeable copy, and electronic messaging that are not in accordance with Section 7.195.401.4.
2. *Permanent signs* with moving or flashing lights around or behind the sign.
3. *Permanent signs* with a *sign face* that changes color more than once every ten (10) minutes.
4. *Permanent or temporary signs* affixed to the glazed area of a window or door in excess of fifty (50) percent.

The one above deals with non-conforming signs permitted. The other one is not permitted. If it is deemed in violation of the chapter it would have to be removed; non-conforming. The other one is giving them a year. Businesses that currently have 100% signs over their windows, they would have one (1) year to bring it into compliance at 50%. Those four (4) items there are the ones that aren't permitted. Those will have one year. He will look at those two sections and make sure they are clarified and not conflicting.

Mr. Murch asked what the current enforcement criteria was.

Mr. Napoli said we send letters, notices. We will send a copy of the sign ordinance to them. We'll send them a notice of our change and what they need to do. They will get a letter telling them the timeframe they have to do it by.

Mr. Murch asked if it was seven (7) days.

Mr. Napoli replied they will have a year.

Mr. Murch said in general.

Mr. Napoli said in general, most of them will be within ten (10) days.

Mr. Murch asked about temporary events and the event is over by the time.

Mr. Napoli said if the event is over, two things will happen. One, they will get the sign picked up or we will send someone out to take it up for them and we will bill them for it. For example, if a car dealership has a special event and a sign says "our 25th birthday". They have the 90 day permit, they are doing it all summer long. When that time is up, they will get notice saying the time is up and the permit is expired and needs to be renewed. They will have ten (10) days to do it. If they don't do it in ten (10) days the City will address it and remove it and the owner will most likely get a summons for court too. Any costs the City incurs will be billed to that owner. If he doesn't pay it will be a lien on the property or on the tax on the property.

Mr. Murch asked about a special event that is shorter than ten (10) days and they get a letter. The event is over, they take the sign down and they didn't pay a fee.

Mr. Cochran said they would be in compliance within the time frame allowed.

Mr. Murch said without paying for a permit.

Mr. Cochran replied yes.

Mr. Napoli confirmed. He said we have to give due notice.

Mr. Murch asked who issues the due notices; Alan or if it's the whole building code team.

Mr. Napoli replied it would be his department that handled it. One thing they will note in the letter regarding a sign that says "special savings this week" after they do their ten (10) days. We send them a notice that states that if a sign is put up again without a permit, please note we will remove it at your cost. You will be notified in the first letter that you needed a permit so the second time it happened; the sign will just be removed.

Mr. Murch asked if the cost for removal is in the schedule.

Mr. Napoli confirmed it is in the schedule.

Mr. Cochran stated that if somebody is violating the sign code they can still be cited and taken to municipal court and pay a fine for violation of the code.

Mr. Murch asked about the ten (10) day notice.

Mr. Cochran said the ten (10) day notice, even if it occurs and you still take it down in the ten (10) days or after the ten (10) days, you can still end up in municipal court for a violation because you still violated on it on day one (1). That's been done with nuisance and that is one of the ways that they have been handling that as well.

Mr. Murch asked if they didn't give a cease and desist for the period of time.

Mr. Napoli said that usually, if it's the first time they've done it we send a notice. If they care of that in ten (10) days they drop it. They don't deal with it. But if they keep doing it every month, he puts it out for ten (10) days, we send a letter. He's a compulsive offender but fits within that scope. We will be more severe with him and start writing summons on him right away. The first time, everybody has a first time; everybody doesn't realize or know it. We will work with them on the first time. It is the ones that become repeat offenders.

Mr. Markenson said it seemed to him that the primary impact would be on the commercial properties.

Mr. Napoli agreed they would have the biggest impact.

Mr. Markenson asked if they will have a public hearing on this before it's adopted.

Mr. Napoli said it will be a public hearing at the Planning Commission and with City Council.

Mr. Markenson said it will be just like the zoning change.

Mr. Napoli confirmed and said it will be advertised in the paper. No letters will be mailed, but it will be advertised as a public hearing.

Mr. Markenson said he would hate to surprise people.

Mr. Napoli said it will be a public hearing. A lot of them we will notify. We are hoping to be able to get some information out. We may even send some letters out. He hasn't decided 100% how we will do that yet. He hopes to eventually have a part time person who works with businesses on code enforcement. He will have that person work with the businesses to let them know these changes are coming. He doesn't know if that person will be onboard before the ordinance is approved. He will come up with something so the businesses aren't sidetracked. When it first comes out, we will work with them, probably all of next year.

Mr. Napoli shared that emergency measures would be if something happened to a sign and it was knocked over or blown over and someone ran into it we can address it. There is an appeal process to go through the Board of Zoning and Adjustments. They have ten (10) days to appeal the decision or any determinations that were made.

He continued with definitions. Several of them are regarding temporary signs but he defined what types of temporary signs there may be. It is more informative than anything else. By the time this gets adopted there will probably be 10–20 more types of signs we've never heard of before.

Chair McGee asked about the definition of a dancing balloon sign and if that would include holiday inflatable decorations and if they would count as a sign.

Mr. Napoli said they would not. Theoretically it falls under what it would be, but it's in residential and we're not requiring permits.

Mx. Hernandez mentioned there was possible a typo under bandit signs.

Mr. Napoli made the correction. He started on temporary signs and the types that are prohibited. There are signs that are by a street where they could potentially cause a traffic accident or cause a reaction like, "stop, look, slow, caution." If a business has signs that say "stop, look, turn now" those are dangerous and will be addressed.

Mr. Cochran said those would pass strict scrutiny as they had discussed. It was compelling government interests to make sure that people weren't running their cars into each other or to buildings because they see a "stop, look, turn now" sign. That is literally the one thing that was specifically brought up as content-based that would pass strict scrutiny.

Mr. Napoli continued with permanent signs. One of the things he wants to do with permanent signs is to address landscaping around them; the existing signs too. They do have requirements on landscaping and existing landscaping. They are working with some of the businesses that are doing some improvements to improve their landscaping, or if they didn't have landscaping because they had been there long before there were landscaping requirements. One of those would be Hy-Vee. They will be doing some upgrading and refreshing of their signage. Their monuments signs are faded and dull. They will be refreshing those. They will be doing some landscaping around them. They have removed a lot of trees as some of them were dead and dying. Next spring you will see a lot of new landscaping there.

Ms. Middleton asked how they would enforce prohibiting some of the lewd pornographic stuff if you can't do content-based.

Mr. Cochran said that is another area that most people have felt strongly enough that they can use content-based for lewd or pornographic signs.

Mr. Murch asked what they could do about fraudulent signs.

Mr. Cochran replied that fraudulent in this case would be fraudulent on a sign. For example, the way it has been defined in other cities that have passed strict scrutiny would be a flat out one line would be putting up a sign that says "the City of Gladstone" on it that isn't our sign. That would be a fraudulent sign.

Mx. Hernandez asked if an example of a fraudulent sign would be if someone decided to put incorrect day of election on a sign.

Mr. Cochran said that would be another fraudulent sign that would pass strict scrutiny because, again, there is a compelling government interest to make sure people know when elections are held.

Mr. Murch said that misleading data could be on a monument sign in a plaza where three (3) of the businesses are no longer there but yet they are on the monument sign. By definition of fraudulent, we would say that's a fraudulent sign.

Mr. Cochran replied that it would be a non-conforming sign. In that case, when it came to a monument sign that had somebody's business up there that was up there for too long, we would probably give them a little bit of leeway to get that sign down.

Mr. Murch asked if they would take that section of sign out and leave it empty.

Mr. Napoli said they would put up a blank cover; a white blank cover.

Mr. Cochran said there were quite a few strip malls right now that have vacant spots in them that have the white cover over them.

Mr. Markenson asked what would be a sign without a sign face.

Mr. Napoli asked if he remembered the sign at the apartments on North Oak where there was a tattoo place and AA Loans. At one time that sign didn't have anything and you could see the light bulbs in there and the metal frame and you could look right through it. That is a sign without a sign face.

Mr. Murch said that where the new laundromat is going still has the old QuikTrip sign. There's the metal framework.

Mr. Napoli said they are working on that. They are going to be lowering it and using it. He is waiting for drawings on it. He is planning on trying to use it. If not, he's going to completely remove it. He's going to try to use it and lower down so it meets our requirements.

Mr. Napoli continued with permanent signs. There is illumination, LED, they talked about landscaping. There are several tables in there dealing with residential, what they can and can't do; if permits are required; amount they can have; it's pretty standard. Monument signs; most of those will be subdivision entry signs in most cases. Those will require permits. Incidental signs, no permits. Then he got into commercial. Commercial was broken down into four (4) areas; standard commercial and manufacturing districts. Those include your planned districts and your manufacturing districts. The next section goes down to permanent signs in the mixed use districts. Those are districts that have been zoned MXD such as The Heights, the Innovation Center; the hotel is going into mixed use. Those are mixed use districts. You will see more and more of those slowly coming forward over time. Then you get into permanent signs in the downtown area. He asked Mr. Greer if there is a defined map yet for the downtown area.

Mr. Greer said no.

Mr. Napoli said they are still finalizing it. There will be a map that eventually defines the downtown area. We don't have one now. He asked Mr. Greer for the basic area for downtown.

Mr. Greer replied that it is from 72nd Street to 69th and N Oak to Campbell.

Mr. Napoli said that is the general area. There will be a more defined map so people will know what the downtown area includes. Permanent signs are pretty much standard. Most businesses won't have issues. There will be temporary signs there and he will talk more about those now. Temporary signs should be non-illuminated and not be more than 8 sf No single temporary sign shall be greater than 3 sf.

Mr. Murch asked if we could do whatever we want on City property for a sign.

Mr. Cochran replied that yes, zoning codes do not apply to the City itself.

Mr. Murch asked if buildings the city leases to commercial businesses could put up any kind of sign they want.

Mr. Cochran said no, because they aren't the government.

Mr. Murch replied that the building is owned by the government.

Mr. Cochran said yes, and zoning can also apply to the actual person that operates the building. That would be The Heights. The City technically owns the building that The Heights is on; owns

the property. But they still have to comply with our sign code because they lease and occupy the building. For example, the City's wayfinding signs do not have to comply. Technically, the City could build City Hall in a residential district if it wanted. That is a quirk to zoning law in Section 89.120 of Missouri statutes.

Mr. Markenson asked if the state is exempt from our zoning.

Mr. Cochran said yes, the state is.

Mr. Markenson asked if school districts were exempt.

Mr. Cochran replied they were getting into an area of law that gets litigated very typically. School districts can be under some circumstances, just like counties can be under some circumstances. For counties and school districts there are about ten (10) cases for each that all kind of go different ways on different things. To give it to you in a five minute brief time period would be too much.

Mr. Napoli continued with Commercial under Manufacturing. Temporary signs not denoted in this section shall be prohibited. Temporary signs shall be non-illuminated, not more than 32 sf, only one (1) per premise, tract, lot or parcel at any one time. Inflatable devices shall be limited to 40 feet in height including the supporting or attached structure building or equipment. Mixed use districts are the same; same height, use, etc. Downtown area; temporary signs not denoted in this section shall be implied as to be prohibited. Temporary signs shall be non-illuminating, totaling not more than 32 sf, only one (1) per premise, tract, lot or parcel at any one time. Downtown area business hours; one temporary sign may be allowed per business not greater than 3 sf, non-illuminating and only out during hours of operation. That would be an A-frame sign showing "today's special". Those can be out as long as they aren't on a sidewalk impeding pedestrian traffic. It needs to be on their property. It can be out during business hours; when closing at night it should be brought inside. Business can do that as long as they aren't over 3 sf. Both sides can have signage on it if they want.

Mr. Murch asked to go back to the window signs. He asked how you can restrict to business identification and merchandise if you would have to read the content in order to have that restriction.

Mr. Napoli replied that was a conversation he would need to have with Mr. Cochran so they can clarify that. He did note that. That is one they will have to look at and address. One other thing he wanted to note on the business hour sign. That sign would not require a permit as long as it stays within the 3 sf. He will make sure he has noted that in the code. That is just for the downtown areas.

Mr. Murch asked if a window and a door were considered the same thing when it comes to glass coverage.

Mr. Napoli said if there is glass glazing in the door it would apply.

Mr. Murch asked about the see-through stuff and if any of that addressed; like what is on the buses at the airport.

Mr. Napoli asked if it was on seats

Mr. Murch said any kind of moving sign.

Mr. Napoli replied no.

Mr. Murch said it was showing up more and more on buildings and glazing and he asked if that was a sign. From the outside there is a graphic, but from the inside you can look through.

Mr. Napoli said that would still be considered signage. They would have to address those. What they can do is they can come and get a master plan. For example, if McDonald's wants to have a full window sign, they can apply for a master plan. It goes through the process and gets approved as the master plan for that building, they can do it. They would have to go through the process of doing a master signage plan for that.

Mr. Murch asked if there were exceptions to the 50% rule. He asked because he saw where North Oak is advocating all the businesses do Christmas-themed decorations starting the end of this month and that might cover more than 50% of the window.

Mr. Napoli said that is something they would have to discuss. That may be something they deal with differently. He has some ideas how to do it but they may have to take a look at it. It may fall that they do a special event like we do for Gladfest that would cover that. He doesn't know yet. That is something new that just came up this year. He doesn't know what it will look like or how they want to deal with it.

Mr. Cochran asked if it was a window display.

Mr. Murch said it could be anything that they want.

Mr. Cochran said a window display wouldn't be; if you think about Macy's.

Mr. Murch said if they put a sleigh with reindeer on it, it would cover more than 50%.

Mr. Cochran asked if it is a sign or is it an actual sleigh with reindeer behind their window. If it is an actual sleigh with a reindeer behind your window, that's not a sign.

Mr. Napoli said that was something they will have to look at and see how it goes. They will have to play with that this year. It is the first time it has come up. He doesn't even know what it will look like.

Mr. Murch asked if they addressed fluorescent at all.

Mr. Napoli replied that all lighting for signage is supposed to be LED.

Mr. Murch asked if fluorescent would be allowed.

Mr. Napoli said only if it is LED. Existing signs don't have to change out unless they change their signage. They would have to put in all new LED. All new signs are requiring LED.

Mr. Murch asked if there could be front lighting.

Mr. Napoli replied as long as it is LED.

Mr. Turnage asked if holiday or Halloween lighting come under this.

Mr. Napoli replied in residential, no. Commercial is a whole different thing. They will have to see how that goes and how they want to address it.

Mr. Murch asked how they were going to address Hy-Vee and the semi that they park along the edge of their property with advertising on it. He wanted to know if that would be a movable sign because they move the semi; and they have an RV too.

Mr. Napoli said that is something they will have to address. They aren't supposed to park them there and they will have to address it with them.

Mx. Hernandez asked when this would go to public hearing.

Mr. Napoli shared that City Council still has to hear it through a work study, which will probably happen in January. They have a pretty full schedule for the rest of this year. Once it goes to them it will come to the Planning Commission for a public hearing. Then it will go to Council for a public hearing. It should be done by March/April and ready to go.

6. **Communications from City Council.** Mayor Pro Tem Moore shared that the City Council approved Woof's Play-n-Stay that the Planning Commission voted on. Also, that today was the groundbreaking on the hotel.

7. **Communications from City Staff.** Mr. Greer reminded the Commission that there will be a Planning Commission on Monday, November 4th. It is for a Special Use Permit. He believes this will be the last meeting of the year.
8. **Communications from Planning Commission Members.** Mr. Turnage asked when the brush disposal would be.

Mr. Napoli said it is the first weekend in November so it is this weekend, November 1st, 2nd, & 3rd.

9. **Adjournment.** Mr. New motioned to adjourn; Ms. Middleton seconded.

Chair McGee adjourned the meeting at 7:55 p.m.

Respectfully submitted,



Cheryl Lamb, Recording Secretary

Approved as corrected _____



Jennifer McGee, Chair

Approved as submitted ✓

MEMO

To: Gladstone Planning Commission

From: Padraic Corcoran

Date: 10/29/2019

Re: Sign Code Update and Content-Neutral Approach

Introduction

The Supreme Court's decision in Reed v. Gilbert fundamentally changed the way municipalities may regulate the use of signs. In Reed, the court decided that a sign code which was content-based "on its face," meaning that the code applied different standards depending on the topic or idea or message expressed, could not survive strict scrutiny and thus violated the 1st Amendment's protection of free speech. The sign code at issue in Reed was content-based "on its face" because it treated signs in 23 different categories, including, "Ideological Signs", "Political Signs", and "Temporary Direction Signs Relating to a Qualifying Event", differently based solely on the message expressed on the sign. The Court emphasized that if a sign code is content-based "on its face," it does not matter that the government did not intend to restrict speech or to favor some category of speech for benign reasons.

Further, sign codes that are facially content-neutral but are either; (1) justified by referencing the message on the sign, or (2) was adopted by the government because of a disagreement with the message conveyed, are also subject to strict scrutiny, a test that few, if any, regulations can survive.

While the ruling restricts sign codes from regulating based on a sign's communicative content, it gave municipalities guidance on how to craft sign regulations that are content-neutral or pass strict scrutiny. Examples of content-neutral regulations provided by the court include (1) regulating size; (2) building materials; (3) moving parts; and (4) portability. Also, a municipality may entirely ban the posting of signs on public property as long as the municipality does so in a content-neutral manner. Further, the court reasoned that a city might, in fact, regulate signs in a content-based manner if those signs dealt with protecting the safety of pedestrians, drivers, and passengers – such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses.

The guidance mentioned above comes directly from the majority opinion in the case, but it is not the only guidance provided by the court. Other members went on to give additional examples they believed would pass constitutional muster. The non-extensive list of examples was:

1. Rules regulating the size of signs
2. Rules regulating the locations in which signs may be placed
3. Rules distinguishing between lighted and unlighted signs
4. Rules distinguishing between signs with fixed messages and electronic signs with messages that change
5. Rules distinguishing between the placement of signs on commercial and residential property
6. Rules distinguishing between on-premises and off premises signs
7. Rules restricting the total number of signs allowed per mile of roadway
8. Rules imposing time restrictions on signs advertising a one-time event.

The essential rule post-Reed is that if a person must read the content of a sign to determine if a regulation applies, then the regulation is content-based and violates the 1st Amendment's protection of free speech.