

II.A.

**Memorandum
Department of Planning & Public Works**



To: Planning and Public Works Committee
From: Aimee Nassif, Planning and Development Services Director
Date: July 22, 2010
RE: Human or Living Signs

Summary

At the May 20, 2010 Planning and Public Works Committee Meeting Staff was asked to research the issue of human or living signage and provide draft language regarding the regulation or prohibition thereof.

The main purpose behind regulating or prohibiting human/living signs is safety. The majority of individuals who are outside holding up signage to advertise for a business establishment or commercial enterprise actually do so in the right of way. This can be a visual distraction to pedestrians and vehicular traffic resulting in injury to drivers, pedestrians, and individuals holding signage.

Chesterfield's Approach to Signage

Since incorporation in 1988, the City of Chesterfield has maintained a general position on signage which is that signage shall not cause any public health, welfare, or safety concerns and signage shall not have a negative impact on our environment and community. For these reasons, the City's sign code regulations, found in Section 1003.168 of the Zoning Ordinance is comprehensive regarding what is and what is not permitted. These requirements have evolved over the years to address issues and concerns as they have arisen. An excerpt from the Zoning Ordinance is provided below:

1003.168. Sign regulations--General.

1. Purpose.

(1) The purpose of the sign regulations is to preserve the public health, convenience, welfare and/or safety within the City of Chesterfield by maintaining the high aesthetic quality of the community while at the same time recognizing the importance of signage in:

a) Fostering the economic viability of the community, and;

b) Providing safe and concise directional information designed to facilitate traffic flow.

What is a sign?

Section 1003.020 of the Zoning Ordinance defines a sign as, "Any device, structure, fixture, or placard that uses any graphics, symbols, written copy, and/or illumination to advertise, direct, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public." For purposes of discussions herein, the City also defines Advertising Signs as, "A sign intended to attract general public interest concerning a commercial enterprise, product, service, industry, or other activity not conducted, sold or offered on the same premises upon which the sign is erected."

In an effort to prevent sign clutter and promote public health and safety, the City has detailed regulations pertaining to the number of, size, and location for advertising or information signs. Only a limited type of advertising or information signs is permitted off-site from the business and this is generally restricted to public information signs which convey public, not-for-profit or civic information or subdivision directional signs.

Reference City of Chesterfield Zoning Ordinance Section 1003.168.D.

Signs placed in the rights-of-way such as bandit signs, advertising signs and so on, pose a safety concern regardless of the traffic volume which travels that particular roadway. In response to concerns regarding public welfare, health and safety, the City of Chesterfield recently adopted legislation re-stating the City's prohibition of signage from being located within the rights-of-way except traffic control signage. ***Reference Chesterfield City Code Article I. Sec. 26-3. Signs Placed in Rights of Way – Prohibited.***

Human or Living Signs

The specific type of signage which poses current concerns are human or living signs. This is a style of advertising in which an individual holds up a sign to promote goods, services, or sales by a commercial establishment. Alternatively, these individuals may use thematic costumes, such as a mascot costume, for the business as part of the way to attract business.

While this is a common style of advertising practiced by commercial or retail businesses, it is not widely regulated in city ordinances or codes. However, due to concerns with aesthetics and safety, more and more municipalities are enacting legislation strictly prohibiting or restricting this type of advertising.

The City Code currently does not define human or living signs but they are generally defined as a sign held by or attached to a human being where the human being may be dressed in costume, both, for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product.



Over the past year, we have seen an increase in the number of human or living signs in front of businesses and along rights-of-way. This has been especially evident in the Chesterfield Valley along Chesterfield Airport Road. With more and more businesses utilizing this style of signage and as we have seen an increase of individuals standing off-site in the rights-of-way, safety concerns have dramatically increased.



Picture taken at Boone's Crossing and Chesterfield Airport Road on Monday, July 12, 2010

City of Wildwood

While not many municipalities currently address living or human signage, the City of Wildwood recently passed an amendment to their Sign Code prohibiting these types of signs.

City of Wildwood-Section 415.420-8

"Living signs of any kind, including those types used as advertising devices for businesses, organizations, or other entities, are prohibited."

Prohibit or Restrict?

There are two different approaches to human or living signs which the City can take. Cities may either prohibit this type of signage or allow it with certain restrictions. Cities such as Avondale, Arizona and Wildwood, Missouri prohibit human or living signs in their municipalities. However, other cities have decided to permit these signs with restrictions. These include such cities as Cedar Park, Texas, Frisco, Texas, Maple Valley, Washington, Sunnyvale, California, and Tustin, California. If the goal is to eliminate this type of signage from any area or district in Chesterfield, then Staff recommends creating language to prohibit this practice.

Option A: Living or Human Signs Prohibited

To prohibit this type of signage, Staff would recommend that language be added to the City Code to define what qualifies as a living or human sign and then language would be included in the Sign Code Section of the City Code to include these types of signs as "prohibited". Language to this regard would be presented as provided below:

1003.168E. Sign regulations--Exempt and prohibited signs

Prohibited signs. All signs not expressly permitted under this ordinance or expressly exempt from regulation hereunder in accordance with the above section are prohibited within the City of Chesterfield. Such signs shall include:

- (1) Abandoned signs.
- (2) Balloons.
- (3) Electronic message centers.
- (4) Off-premises signs.
- (5) Portable signs, unless used to convey public, not-for-profit, or civic information.
- (6) Projecting signs.
- (7) Rooftop signs.
- (8) Signs attached or painted on vehicles parked and visible from the public right-of-way unless said vehicle is used in the normal day-to-day operations of a business.
- (9) Signs affixed to bus stop shelters or other similar structures.

(10) Living or Human sign.

In addition, language would be added to Section 1003.020 "Definitions" in order for a definition of living or human signs to be included in the City Code. Said definition would read as follows:

(104a) Living or Human Sign. A living or human sign is a sign held by or attached to a human for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product. This can also include a person dressed in costume for the purposes of advertising or drawing attention to an individual, business, commodity, service, activity or product.

Benefits to a Prohibition

~There are many benefits associated with strictly prohibiting living or human signage. First, this would eliminate the sign clutter and distraction that is created and any public health and safety concerns to vehicular and pedestrian traffic would be eliminated. In addition, enforcement would be much easier if this practice was not allowed as opposed to if it were with restrictions.

Caution in establishing a Prohibition

~It is important to understand the ramifications that a prohibition on this activity may have on other types of living or human signs which may not be a nuisance or public safety concern, and those which we are not permitted by law to prohibit.

For instance, if living or human signs are not permitted then this would include bake sales, school car washes, school fundraisers, church picnics, Girl Scout cookie sales and other non-profit, charitable type advertising for events. If the intention is to still allow these types of signs then it is important to include language in the City Code which provides an exception to the general prohibition without calling out in detail what the verbiage on the signs may or may not contain. The U.S. Supreme Court established that regulating actual content on a sign violates First Amendment right to freedom of speech. In addition, the U.S. Supreme Court has afforded people the right to peacefully picket or protest and no City regulation may interfere with that.

If the decision is made to prohibit living or human signs while taking into account the issues described above, Staff would recommend the following language be included in City Code:

1003.168E. Sign regulations--Exempt and prohibited signs

Prohibited signs. All signs not expressly permitted under this ordinance or expressly exempt from regulation hereunder in accordance with the above section are prohibited within the City of Chesterfield. Such signs shall include:

(10) Living or Human signs associated with a commercial or retail business or activity.

Option B: Living or Human Signs Permitted with Restrictions

There are several options related to permitting these types of signs with restrictions. **The majority of municipalities across the country which I was able to find who do address living or human signs tend to allow them with restrictions in lieu of having an outright prohibition.**

In Tustin, California for example, human signs are permitted on private property and public parkways and sidewalks and are prohibited from being within 200 feet of any intersection. This was one of the only cities I found which also restricted the size of the sign that can be held by an individual at 3 square feet. Tustin's City Code also states that human signs must yield to pedestrians and not twirl or gyrate. *Reference Chapter 4, Sign Regulations. Section 9403, Sign Permit Requirements.*

Frisco, Texas addresses human signs in their City Code in the following manner:

"Human Sign. A sign held by or attached to a human being who stands or walks on the ground, onsite at a business location. A human sign includes a person dressed in costume, both, for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product.

- (1) *Time.* No sign permit required. Human signs may be displayed 24 hours each and every continuing day.
- (2) *Place.* Human signs shall be located on private property where a sale, event, promotion, or the like is taking place. Human signs may not be off-location from where a promotion, sale, event, or the like takes place.
- (3) *Manner.* Human signs may not hold or carry wind devices, flags or balloons. Human signs shall only be persons who stand or walk on the ground on private property. Podiums, risers, stilts, vehicles, roofs, or other structures or devices shall not support a human sign."

If the decision is made to restrict living or human signs, Staff would recommend the following language be included in City Code:

(104a) Living or Human Sign. A living or human sign is a sign held by or attached to a human for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product. This can also include a person dressed in costume for the purposes of advertising or drawing attention to an individual, business, commodity, service, activity or product. *(this is the same definition provided in Option A above)*

Staff is also recommending the following language:

1003.168D.3 Sign regulations--Temporary signs and attention getting devices.

Advertising/informational signs (on-premises). The following provisions shall govern the erection of all temporary advertising/informational signs and appurtenances with respect to size, height, location and construction.

(Items 1-6 omitted in this report)

- 7) *Living or Human Signs associated with a commercial or retail business or activity are permitted in front of the business in which the advertising is for. The maximum size of a sign that may be held by an individual is 3 square feet. These signs do not require municipal zoning authorization and are not permitted off-site.*

**** The language on the previous page specifies living or human signs related to a commercial or retail business in order to ensure that we are still allowing charity organizations to have signs, as well as to ensure that we are not violating protections granted to picketers and protestors as established by the federal courts.**

Benefits to Permitting these Signs with Restriction

~By restricting living or human signs to on-premises only, you greatly reduce public health and safety issues with vehicular or pedestrian traffic. Requiring these signs to be on-premise only means that living or human signs could only be found on the lot in which the commercial or retail business is located. In addition, a size limitation on the size of the sign that may be held would reduce the level of distraction and sign clutter that may result.

Caution in Permitting these Signs with Restrictions

~The main concern with permitting these types of signs would be enforcement. Imagine if living or human signs were permitted but not off-site. Generally people holding these signs move and walk around so they may wander off-site of the development. Enforcement could become problematic when we receive a complaint of an off-site sign, we respond and the individual relocates and then after we leave, they slowly wander off the site again. This could also cause problems for us in explaining to these individuals where the "boundary line" of what constitutes being off-site lies. In addition, no signs of any kind are permitted within the rights-of-way. Therefore, the same type of code enforcement difficulty would exist in explaining to sign holders that they are not standing in the appropriate location.

Recommendation

After review and research on this issue, Staff recommends that a definition be added to the City Code to define these types of signs. In addition, Staff recommends that the City enact legislation which would restrict living and human signs as provided below and as described in Option B above.

(104a) Living or Human Sign. A living or human sign is a sign held by or attached to a human for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service, activity, or product. This can also include a person dressed in costume for the purposes of advertising or drawing attention to an individual, business, commodity, service, activity or product.

Staff is also recommending the following language:

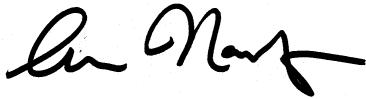
1003.168D.3 Sign regulations--Temporary signs and attention getting devices.

- 7) Living or Human Signs associated with a commercial or retail business or activity are permitted in front of the business in which the advertising is for. The maximum size of a sign that may be held by an individual is 3 square feet. *These signs do not require municipal zoning authorization and are not permitted off-site.*

This option would allow businesses to still advertise provided they do so, on site. In addition, by officially defining this activity as "signage" it then is prohibited to be in the right-of-way. In addition, because human or living signs are defined as being related to a commercial business or commercial activity, the restrictions in place would not preclude any civic organization, community event, or not-for-profit activity from taking place.

If approved, Staff will prepare the appropriate legislation for consideration at an upcoming City Council meeting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aimee Nassif". The signature is fluid and cursive, with a long horizontal stroke at the end.

Aimee Nassif,
Planning and Development Services Director

Cc: Michael G. Herring, City Administrator
Rob Heggie, City Attorney
Michael O. Geisel, Director of Planning and Public Works