



Memorandum Department of Planning & Public Works

To: Planning and Public Works Committee
From: Aimee Nassif, Planning and Development Services Director
Date: July 31, 2008
RE: City of Chesterfield Section 1003.168.D.7 (Temporary Signs-Development Related): A request to amend the City of Chesterfield Zoning Ordinance Section 1003.168.D.7 for Temporary Signs-Development Related to amend the criteria for Subdivision Direction Signs, Subdivision Promotion Signs and to add criteria for Display House Signs.

Summary

Staff was directed to propose language to revise the requirements related to temporary signage. The specific temporary signs under review are: subdivision promotion signs, subdivision directional signs, and display house signs. The requirements for these types of signs are currently found in Section 1003.168.D.7 (6) and (7). In addition, Staff has added criteria for Display House signs thereby creating subsection (8).

This project went before the Planning Commission on July 28, 2008. The Planning Commission recommended approval by a vote of 6-0 with the following amendment:

Add the following language to Section 1003.168.D.7.(6)

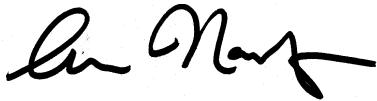
- (d) (1) All subdivision direction signs, display house promotion and subdivision promotion signs shall be removed from the site on which they are located within one (1) year of the date the authorization was issued for said sign. Application for one (1) year extension may be made through the Department of Planning at any time within the last thirty (30) days of expiration.

The above referenced language is currently found in the existing language in the Zoning Ordinance. Staff's recommendation originally was to provide language addressing time limitations for subdivision direction signs however the language was inadvertently omitted. The language prepared by Staff is as follows:

- (d) ***All Subdivision Direction Signs shall be removed within one (1) year of the date the authorization was issued for said sign. Applications for an extension up to a one (1) additional year may be submitted to the Department of Planning and Public Works at least 30 days prior to the expiration of the original authorization.***

Attached please find a copy of the proposed language, the existing language, and Planning Commission report. Attached is also a letter from the City Attorney regarding temporary signs.

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



STEWART, MITTLEMAN, HEGGIE & HENRY L.L.C.

ATTORNEYS AT LAW

August 4, 2008

Mr. Michael Geisel
Director of Public Works
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017

Re: Subdivision Direction Sign Ordinance

Dear Mike:

We have reviewed the proposed language for regulation of subdivision direction signs, as you have requested. Following is our opinion regarding the proposed language.

Under Federal law, a government entity may not absolutely restrict expression of speech because of its message, its ideas, its subject matter, or its content. Gilleo v. City of Ladue, 774 F. Supp. 1559, 1561 (E.D.Mo. 1991), aff'd, Gilleo v. City of Ladue, 986 F.2d 1180 (8th Cir. 1992). However, speech may be regulated under narrow guidelines. Generally, commercial speech may be regulated to a much greater extent than non-commercial speech. Metromedia, Inc. v. San Diego, 453 U.S. 490, 505-06, 69 L. Ed. 2d 800, 101 S. Ct. 2882 (1981). The First Amendment protects commercial speech only if the speech in question concerns lawful activity and is not misleading. The government may restrict otherwise protected commercial speech if 1) the restriction seeks to implement a substantial governmental interest; 2) the restriction directly advances that interest; and 3) the restriction reaches no further than necessary to accomplish the given goal. Central Hudson Gas and Electric Corp. v. Public Service Commission, 447 U.S. 557, 563-66, (US, 1980). The goals of municipal aesthetics and traffic safety are considered to be substantial governmental interests and acceptable goals for a municipal ordinance to advance. Metromedia, 453 U.S. at 507-08.

A purported time, place, and manner restriction is constitutionally permissible so long as it is, "justified without reference to the content of the regulated speech. . . ." Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984). Therefore, the threshold inquiry focuses upon whether the provision at issue is a content-based restriction.

The Supreme Court has held that a restriction on speech is content-based when the message conveyed determines whether the speech is subject to the restriction. Whitton v. City of Gladstone, 54 F.3d 1400, 1403-04 (8th Cir. Mo. 1995). In Gladstone, the Court held that an ordinance containing durational limitations

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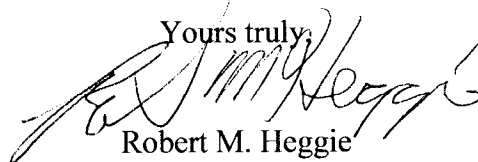
OF COUNSEL
Joseph R. Niemann

which were applicable only to political signs is a content-based restriction, since the message conveyed determined whether the restriction on speech applied. Id. The Court held that the regulation was content-based because it made impermissible distinctions based solely on the content or message conveyed by the sign. The words on a sign defined whether it was subject to the durational limitations in the regulation. Id. Although Gladstone's justification for enacting the durational limitations was to curtail the traffic dangers which political signs posed and to promote aesthetic beauty, Gladstone had not seen fit to apply such restrictions to identical signs displaying non-political messages which present identical concerns. Id. at 1409.

Content-based restrictions must be necessary to serve a compelling interest and must be narrowly drawn to achieve that end. Id. As noted above, the goals of municipal aesthetics and traffic safety are considered to be substantial governmental interests and acceptable goals for a municipal ordinance to advance. Metromedia, 453 U.S. at 507-08. To pass the "narrowly-drawn" criteria, the content-based restriction must be the least restrictive alternative available. Gilleo, supra at 1183-84.

Here, the proposed ordinance is a content-based regulation on commercial speech. If the ordinance applied to all temporary signs, and not to subdivision direction signs, then the City would be able to apply reasonable time and place restrictions on the signs, so long as the proposed restriction reaches no further than necessary to accomplish the given goal of advancing the governmental interest. However, since the restriction is limited in this ordinance to subdivision direction signs, the restrictions apply based on the content of the signs, and therefore must 1) advance a compelling governmental interest; and 2) be narrowly-tailored to advance that interest. Aesthetics and safety are a legitimate compelling governmental interests. Limiting the number of subdivision directions signs to no more than four for each development at any given time and allowing the placement of signs elsewhere within the City in conformance with all other provisions of the section tailors the restriction to the governmental interests. The draft language concerning the two-year time-limit to these signs was constitutionally problematic, as it applies a different standard for these signs than for all other temporary signs. Deleting that language alleviates the constitutional concerns with the proposed ordinance.

Please call if you have any further questions in this regard.

Yours truly,

Robert M. Heggie





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Planning Commission Staff Report

Meeting Date: July 28, 2008

From: Aimee Nassif, Planning and Development Services Director

Subject: Zoning Ordinance Amendment

Project Name: City of Chesterfield Zoning Ordinance Section 1003.168.D.7.(6), (7), (8), and (9) Temporary Signs-Development Related

Proposal Summary

Staff was directed by the Planning and Public Works Committee to propose language to revise the requirements related to temporary signage. The specific temporary signs under review include: subdivision promotion signs, subdivision identification signs, and display house signs. The requirements for these types of signs are currently found in Section 1003.168.D.7.(6) and (7). In addition, Staff has added criteria for Display House signs thereby creating subsection (8).

History

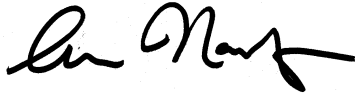
Over the past several years the number of residential subdivisions in the City of Chesterfield has been on the rise. With the construction of these new residential developments has come an increase in the number of off-site subdivision promotion signs and subdivision directional signs. The current language regulating these types of signs is difficult to read and interpret and provides complications in terms of administration and enforcement. The criteria that were updated included:

- Section (6) (c) "Location-Subdivision Direction Signs" and (7) (d) "Location-Subdivision Promotion Signs" was amended to increase readability and provide clarification as to where signs can be located.
- Language allowing the placement of subdivision promotion and identification signs in the City limits for residential developments that are not located in the City was removed.
- Language regarding Sign Maintenance was added to sections (6) (j) and (7) (g).
- Language addressing Display House Signs has been included.

Request

Attached is a copy of the proposed amendment along with the current language. Staff requests action on the Ordinance Amendment for Section 1003.168.D.7.(6), (7), and (8)

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

Attachments

1. Attachment A

**AMENDING SECTION 1003.168.D.7 TEMPORARY SIGNS-DEVELOPMENT
RELATED (for both subsection (6) Subdivision Direction Signs and (7)
Subdivision Promotion Signs)**

AND ADDING A NEW SECTION 1003.168.D.7(8) for Display House Signs

(6) *Subdivision direction signs.*

- (a) For the purpose of these regulations a Subdivision Direction Sign is a sign placed at some location outside the limits of a residential subdivision intended to inform and direct the general public to an approved or pending development within the City of Chesterfield. Subdivision Direction Signs may not be erected until a site plan or preliminary plat has been approved for the subject development. The message upon the sign shall be limited to the name of the subdivision, the name of the developer, insignia, price range, a directional arrow, and written directions.
- (b) Signs may have one (1) face, a face on each side of the sign board, or be V-shaped (not to exceed an interior angle of sixty (60) degrees) and contain two (2) faces.
- (c) Subdivision Direction Signs may be erected on properties at any of the corners of intersecting streets, highways or roads, subject to the following criteria:
 - 1) Location:
 - i) Within the area bounded by the street right-of-way lines, a line connecting two (2) points from the street right-of-way lines one hundred thirty (130) feet from the point of intersection of the street right-of-way lines, but not including the area within the sight distance triangle; or
 - ii) Subdivision Direction Signs may be erected beyond a point located not closer than one hundred thirty (130) feet, but not farther than two hundred thirty (230) feet from the point of intersection of the street right-of-way lines, as measured along the right-of-way line.
 - iii) In the case of non-symmetrical intersections, the limits established for sign placement shall be

measured from the prolongation of the right-of-way lines on the opposite side of the street.

- iv) No Subdivision Direction Sign shall be erected within the sight distance triangle or otherwise be placed to obstruct vehicular sight distance.
 - 2) Subdivision Direction Signs shall be located no closer to the street right-of-way line than permitted under the requirements for structure setbacks of the applicable zoning district.
 - 3) Guy wires shall not be utilized to anchor the sign.
 - 4) Subdivision Direction Signs shall not be located closer than twenty (20) feet to any other sign.
- (d) Not more than four (4) Subdivision Direction Signs, each authorizing the placement of a single Subdivision Direction Sign at a location, will be authorized for each development, at any given time. Each development is allowed not more than four (4) sign locations concurrently. Upon expiration of a permit for a Subdivision Direction Sign at a given location, application can be made to place the same or similar Subdivision Direction Signs at other locations within the City, in conformance with all other provisions of this section. For the purposes of this Section, multiple plats or phases of contiguous development shall be considered a single development without regard to ownership.
- (e) A limit of one (1) sign per Development shall be allowed at an intersection.
- (f) Additional Subdivision Direction Signs may be located along the same side of the street.
- (g) Each sign face shall have a decorative border of a minimum width of one and one-half (1 1/2) inch.
- (h) No single sign shall exceed thirty-two (32) square feet or be less than sixteen (16) square feet in outline area. The total permitted sign area allocated for an individual development shall not exceed ninety-six (96) square feet.
- (i) A municipal zoning authorization shall be obtained from the City of Chesterfield, Department of Planning and Public Works for the placement of all Subdivision Direction Signs. Applicant must provide

a written consent authorizing the removal of said sign upon permit expiration.

- (j) **Sign Maintenance.** The permittee of any approved Subdivision Direction Sign is required to maintain such signage in a safe and satisfactory manner. A sign is considered to be unsafe and in unsatisfactory condition if the sign contains peeling paint, and/or the sign surface or support structures is rotted, warped, damaged, faded, sun baked or deteriorated. If the City of Chesterfield determines repair is needed and the owner fails to repair said sign within 30 days of receiving notification of the disrepair, the City will remove such signs at the permittee's expense.

(7) *Subdivision promotion signs.*

- (a) For the purpose of these regulations, a Subdivision Promotion Sign is a sign which may be erected within a subdivision in progress and which is intended to inform the general public about the project. Subdivision Promotion Signs may not be erected until a site plan or preliminary plat has been approved for the subject development. The message upon the sign shall be relevant to the subdivision. Including the name of the subdivision, the name of the developer, insignia, price range and related information.
- (b) Subdivision Promotion Signs shall not exceed thirty-two (32) square feet. The maximum outline area of a subdivision promotion sign may be increased to sixty-four (64) square feet subject to approval by the Planning Commission as outlined in Section 1003.168.3(2) Sign Regulations.
- (c) Subdivision Promotion Signs shall not exceed ten (10) feet in height above the average existing finished grade at the base of the sign or above the elevation of the adjacent street.
- (d) **Location:**
 - i) Subdivision Promotion Sign(s), may be erected at each main entrance to a subdivision or at the entry to each individual plat of a subdivision.
 - ii) No Subdivision Promotion Sign shall be erected within the sight distance triangle or otherwise be placed to obstruct vehicular sight distance.

- iii) No Subdivision Promotion Sign shall be located within a street right-of-way, access easement or designated emergency access way.
- (e) Guy wires shall not be utilized to anchor the sign.
- (f) A municipal zoning authorization shall be obtained from the City of Chesterfield, Department of Planning and Public Works for the placement of all Subdivision Promotion Signs. Applicant must provide a written consent authorizing the removal of said sign upon permit expiration.
- (g) Sign Maintenance. The permittee of any approved Subdivision Promotion Sign is required to maintain such signage in a safe and satisfactory manner. A sign is considered to be unsafe and in unsatisfactory condition if the sign contains peeling paint, and/or the sign surface or support structures is rotted, warped, damaged, faded, sun baked or deteriorated. If the City of Chesterfield determines repair is needed and the owner fails to repair said sign within 30 days of receiving notification of the disrepair, the City will remove such signs at the permittee's expense.

(8) *Display House Signs*

- (a) For the purpose of these regulations a Display House Sign is a sign placed on a subdivision lot where a display house has been properly permitted by the City. The Display House Sign is intended to provide information to the general public related to the display home. In those instances where lots have not yet been permitted, Display House Signs shall only be permitted in those locations where construction has been authorized by an approved Display House Plat.
- (b) A single Display House Promotion sign may be erected on each lot on which a display house has been erected.

Current Section 1003.168.D.7(8) Real Estate Signs is hereby renumbered to Subsection (9)

Current Language

SECTION 1003.168.D.7(6) TEMPORARY SIGNS-DEVELOPMENT RELATED (Subdivision Direction Signs)

(6) *Subdivision direction signs.*

- (a) For the purpose of these regulations a subdivision direction sign is a sign intended to direct the general public to a subdivision under development. Subdivision direction signs may not be erected prior to site plan or preliminary plat approval.
- (b) Subdivision direction signs may be erected at any of the corners of intersecting streets, highways or roads within an area bounded by the street right-of-way lines, a line connecting two (2) points from the street right-of-way lines one hundred thirty (130) feet from the point of intersection of the street right-of-way lines, but not including the area within the sight distance triangle. The bottom of the sign shall be not less than two (2) feet above the elevation of the street pavement and the total sign shall not extend more than ten (10) feet above the elevation of the street pavement. However, in the event that the elevation of the street is lower than the average existing finished grade at the base of the sign, the bottom of the sign shall be no more than one (1) foot above existing finished grade at the base of the sign. The message upon the sign shall be limited to the name of the subdivision, the name of the developer, and insignia, price range, a directional arrow, and written directions. All signs shall be anchored at least by two (2) posts a minimum of four (4) inches by four (4) inches, painted white. No guy wires or angled braces shall be utilized to anchor the sign. Signs shall be located no closer than twenty (20) feet to any other subdivision direction sign on the same side of the street right-of-way; however, no sign shall be located closer to the street right-of-way line than permitted under the requirements of the applicable zoning district. A limit of one (1) sign per subdivision shall be allowed at an intersection.
- (c) Subdivision direction signs may be erected beyond a point located not closer than two hundred thirty (230) feet of the intersection of any two (2) or more streets measured along the right-of-way line of the street. Additional subdivision direction signs may be located along the same side of the street. Signs may have one (1) face, a face on each side of the sign board, or be V-shaped (not to exceed an interior angle of sixty (60) degrees) and contain two (2) faces.

- (d) A maximum of four (4) signs shall be permitted for subdivision under construction located totally, or partially, within the City of Chesterfield, or contiguous to and/or having primary access via an arterial road through the City. One (1) sign shall be permitted for a subdivision under construction within a two-mile radius of the City of Chesterfield.
- (e) A sign in excess of sixteen (16) square feet shall have a decorative border of a minimum width of one and one-half (1 1/2) inch. However, no single sign shall exceed thirty-two (32) square feet or be less than sixteen (16) square feet in outline area. The total permitted sign area allocated for an individual development shall not exceed ninety-six (96) square feet.

SECTION 1003.168.D.7(7) TEMPORARY SIGNS-DEVELOPMENT RELATED
(Subdivision Promotion Signs)

(7) *Subdivision promotion signs.*

- (a) For the purpose of these regulations, a subdivision promotion sign is a sign intended to inform the general public about the subdivision under development.
- (b) Subdivision promotion sign(s), may be erected at each main entrance to a subdivision or an individual plat of a subdivision after site plan or preliminary plat approval. Such sign shall not exceed thirty-two (32) feet in outline area nor exceed ten (10) feet in height above the average existing finished grade at the base of the sign or above the elevation of the adjacent street. No subdivision promotion sign shall be erected within the sight distance triangle. Information contained on the sign shall be pertinent to the subdivision.

Additionally, one (1) subdivision promotion sign may be permitted for each individual plat of ten (10) lots or more to be erected internal to the overall subdivision as determined by the Department of Planning.

The maximum outline area of a subdivision promotion sign may be increased to sixty-four (64) square feet subject to Planning Commission approval as outlined in Section 1003.168.3(2) Sign Regulations - General.

- (c) A display house promotion sign may be erected on each lot which a display house has been erected, provided that no one (1) sign

exceeds thirty-two (32) square feet in outline area per face and that the total area of signs on one (1) lot not exceed sixty-four (64) square feet in outline area.

- (d) A zoning authorization shall be obtained from the City of Chesterfield for the erection of all subdivision promotion, display house promotion and subdivision direction signs. In addition to the normal structural sign permit fee required by the City of Chesterfield Building Code, the applicant shall make a cash deposit with the Department of Planning of fifty dollars (\$50.00) for signs in excess of twenty (20) square feet in area, and of twenty-five dollars (\$25.00) for signs of twenty (20) square feet, or less, in area, together with a written consent authorizing the removal of said sign. If such sign is not removed within five (5) days of the expiration of its permit period the applicant shall forfeit said deposit to cover the cost of removal.
- (e) All subdivision direction signs, display house promotion and subdivision promotion signs shall be removed from the site on which they are located within one (1) year of the date the authorization was issued for said sign. Application for one (1) year extensions may be made through the Department of Planning at any time within the last thirty (30) days of expiration.