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Planning Commission Staff Report

Meeting Date: January 10, 2022

From: Mike Knight, Assistant City Planner

Location: City of Chesterfield

Description: **P.Z. 16-2021 City of Chesterfield (Unified Development Code – Article 4 and Article 10)**: An ordinance amending Article 4 and Article 10 of the Unified Development Code pertaining to signs.

SUMMARY

The Unified Development Code (UDC) was approved and adopted by the City of Chesterfield City Council in June of 2014. The purpose of the UDC is to promote public health, safety and general welfare, while recognizing the rights of real property owners and providing administrative procedures and development standards. The purpose of this petition is to discuss the potential revision to the regulations of the UDC pertaining to signs; in Article 4, Section 405.04.050 Sign Requirements and Article 10, Section 405.10.040 Signage Terms.

HISTORY

The Unified Development Code contains municipal regulations for residential and non-residential/commercial signs. Although the regulations in code (UDC) are static, sign technology and legalities are ever evolving. It is important to continually adapt and update the City's Sign Code regulations to conform to recent legal decisions, address changes in technology, and provide a clear set of codified standards with a clear submission and approval process for residential and commercial properties. The City of Chesterfield remains well poised to address future sign issues by continuing to review and modernize the City's Sign Code regulations within the UDC.

In regulating signs, it is important to understand the distinction between content-based regulations and content-neutral regulations. Content-based regulations of speech target the content of a message, whereas content-neutral regulations target the time, place, and manner that speech occurs.

PUBLIC HEARING

A Public Hearing was held on November 8th, 2021. At that meeting, City Staff discussed possible issues as they relate to content neutrality (Article 4, Section 405.04.050 of the UDC) and identified potential resolutions and methodology to address the identified issues. Although there was general consensus from the Planning Commission to move forward with the methodology chosen by City Staff, the Planning Commission also outlined a few additional items for discussion. These items include providing the definition of a “Sign” in the City’s Unified Development Code, regulation of profanity, how signs relate to seasonal displays on residential property, and the communication between the City’s sign regulation and subdivision trustees.

Sign Definition

Article 10 of the City’s Unified Development Code provides signage terms. The definition provided for a sign is found in the language below.

SIGN: 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.

Profanity

In consultation with the City Attorney the regulation of defamatory conditions, including profanity as it relates to signs, would not be regulated through the City’s Unified Development Code but through Title II of the City Ordinance: Public Health, Safety and Welfare.

Seasonal Displays on Residential Property

The City currently does not recognize seasonal displays on residential properties as signs. As previously represented at the Public Hearing, City Staff is proposing updated language that identifies and defines temporary signs as they relate to residential properties.

Communication

It was acknowledged that communication of sign regulation as it relates to City Code updates and information relative to content-neutrality would be beneficial for subdivision trustees as a bridge of communication to Home Owner’s Associations. Staff is working towards adding this item to an upcoming Subdivision Trustee Symposium agenda and developing a comprehensive list of e-mail addresses to potentially formulate an informational mass-communication.

NEXT STEPS

At the November 8th Public Hearing, the Planning Commission confirmed the provided methodology to address the identified issues. On January 10, 2022 Staff will present to the Planning Commission the implementation strategy utilizing the methodology confirmed at the Public Hearing. Staff will demonstrate through presentation form not only where the updates will occur in code but why they are

being made through this zoning petition request. **No action is being requested at the January 10th Planning Commission meeting.** Once the implementation strategy is confirmed by the Planning Commission, the item will join a Planning Commission Agenda for vote. After a vote is taken by the Planning Commission, this project will be presented before the Planning and Public Works Committee for a recommendation to the City Council. Attached to this report please find the November 8th Public Hearing report and Links to both Section 405.04.05 and Section 405.10.040 of the City's Unified Development Code.

Attachment:

1. Public Hearing Report

Links:

1. [UDC Article 04-05 Sign Requirements](#)
2. [UDC Article 10-04 Signage Terms](#)



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Public Hearing Report

Meeting Date: November 8, 2021

From: Mike Knight, Assistant City Planner

Location: City of Chesterfield

Description: **P.Z. 16-2021 City of Chesterfield (Unified Development Code – Article 4 and Article 10)**: An ordinance amending Article 4 and Article 10 of the Unified Development Code pertaining to signs.

SUMMARY

The Unified Development Code (UDC) was approved and adopted by the City of Chesterfield City Council in June of 2014. The purpose of the UDC is to promote public health, safety and general welfare, while recognizing the rights of real property owners and providing administrative procedures and development standards. The purpose of this petition is to discuss potentially revising the regulations of the UDC pertaining to signs; in Article 4, Section 405.04.050 Sign Requirements and Article 10, Section 405.10.040 Signage Terms.

HISTORY

The Unified Development Code contains municipal regulations for residential and non-residential/commercial signs. Although the regulations in code (UDC) are static, sign technology and legalities are ever evolving. It is important to continually adapt and update the City's Sign Code regulations to conform to recent legal decisions, address changes in technology, and provide a clear set of codified standards with a clear submission and approval process for residential and commercial properties. The City of Chesterfield remains well poised to address future sign issues by continuing to review and modernize the City's Sign Code regulations within the UDC.

Discussed on the next page are three landmark court proceedings and the findings that involve the ability of a municipality to regulate signs. These cases involve the First Amendment of the US Constitution as it applies to sign regulation.

City of Ladue v. Gilleo (1994): This case challenged the legality of a Ladue, Missouri city ordinance restricting the placement of signs in residential yards. The finding affirmed the Supreme Court's belief that a city cannot infringe upon the free speech rights of its inhabitants without a compelling reason to do so. In this case the city's desire to reduce clutter in residential areas was found not to be compelling enough to justify a ban on signage. The outcome confirms the right to free speech on signage in residential lots.

Reed v. Town of Gilbert (2015): A case in which the United States Supreme Court clarified when municipalities may impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny that should be applied to content-based restrictions on speech. In Reed, the Court established two tests to determine whether a sign regulation is content-based. First, a sign restriction is considered content-based if an individual must read the sign to understand how the sign restriction applies (e.g., to distinguish a political sign from an advertising sign). Second, a sign restriction is considered content-based if the underlying purpose of the sign restriction is to control certain subject matters. The Supreme Court found that the Town of Gilbert's sign regulations included content-based restrictions on free speech. The restrictions imposed on Clyde Reed and the organization he represented were unconstitutional, as they could not pass the strict scrutiny test.

Willson V. City of Bel-Nor (2019): The City of Bel-Nor's ordinance limited each residential parcel to one yard sign and one flag. The ACLU of Missouri filed a lawsuit on behalf of Bel-Nor homeowner Lawrence Willson, for violating Bel-Nor's ordinance for placing political signs in his yard. The ACLU submitted this case to court in 2018. The case was appealed to the Eight Circuit United States Court of Appeals. In May 2019, the Court of Appeals found an injunction should have been granted because Bel-Nor's ordinance is likely unconstitutional.

In regulating signs it is important to understand the distinction between content-based regulations and content-neutral regulations. Content-based regulations of speech target the content of a message, whereas content-neutral regulations target the time, place, and manner that speech occurs. Understanding these landmark decisions is important for ensuring the sign code remains content-neutral, thus only regulates signage based on time, place and manner.

RECOMMENDATION

In seeking to review and modernize the UDC sign code for the City of Chesterfield, it is important that any updates are written as content-neutral regulations. The purpose of the November 8th Public Hearing is to have a discussion on the City's current sign code and how content neutrality is being used, and confirm the approach city staff will take to begin any updates to the UDC with content-neutral regulations. In the following examples of the existing sign code, staff has examined possible issues as they relate to content neutrality (Article 4, Section 405.04.050 of the UDC). Each issue includes a potential resolution and methodology to address the identified issue.

Perceived Issue #1 – Differing Regulations for Non-Commercial Speech

Sign regulations for temporary signs are found in Article 4 of the UDC. The city code states that a temporary public information sign shall not exceed 32 square feet in outline area not to exceed the duration of a year. It also states a political sign shall not exceed 16 square feet in outline area and shall be removed 7 days after the election. For reference below are definitions of both signs found in Article 10 of the UDC.

SIGN, POLITICAL: Any sign which is designed to influence the action of the voters for the passage or defeat of a measure appearing on the ballot at any national, state, or local election or which is designed to influence the voters for the election or defeat of a candidate for nomination or election at any national, state or local level.

SIGN, PUBLIC INFORMATION: A sign used for public events, promotion of civic causes or activities for charitable or not-for-profit purposes.

The potential issue with the current code as written is that both signs are examples of temporary non-commercial signs, yet are regulated by different metrics (a political sign versus a public information sign). Some may perceive this regulation as one that is not content-neutral.

Perceived Issue #1 – Proposed Resolution

One way to modernize the current code for this specific issue is to remove the specific regulation for the political signs, and public information signs and clarify a new sign type as “Temporary Sign without a Commercial Message”. City staff also recommends removing the definitions of the user specific signs in Article 10 and providing new definitions for a “Temporary Sign” and “Non-commercial message”. To better regulate the use of temporary signs in a content-neutral manner, staff recommends regulations to temporary signs based on location. The temporary signs may be regulated differently depending on their location in a residential or a non-residential zoning district.

Regulating these signs differently with respect to zoning district is an acceptable update to the code as it fits the content neutral requirement of regulation based on time, place or manner. It is also important to note that a temporary sign without a commercial message may not be held to a more strict standard than a temporary sign with a commercial message.

Perceived Issue #2 – Regulations of specific wording

Throughout the sign code there are multiple examples of specific wording or messaging that the City’s sign code requires to be utilized for specific signs. One example would be that a service station with a canopy may have no more than one sign which may include the name and logo of the business and one sign which may include the words "self-service" and "full service" attached on each of any two sides of

the vertical face of the canopy. In this case the city is regulating the content of the sign by dictating the specific wording and or graphics to be utilized.

Perceived Issue #2 – Proposed Resolution

One way to modernize the current code is to allow an additional sign on a service canopy or similar requirement for a different type of sign, but not dictate the graphic messaging or specific wording to be utilized.

Perceived Issue #3 – Restrictions based on the message content

Like Issue #2, the current sign code allows exceptions to certain restrictions based on the content of the message. An example is that the City’s sign code has an exemption allowing a sign to be illuminated by intermittent light source to display stock market quotes. Allowing a separate lighting criterion for the stock market quotes vs any another other message is regulating based on the content of the signage being displayed.

Perceived Issue #3 – Proposed Resolution

In circumstances such as these, staff proposes to simply remove any exceptions or restrictions based on message content.

NEXT STEPS

The purpose of the Public Hearing is for city staff to articulate to the Planning Commission ways to modernize the City’s current sign code with respect to content-neutral regulations. If Planning Commission confirms/agrees with the proposed solution methodology, staff will draft updated regulations to be presented for consideration at a future Planning Commission meeting. **No vote will be taken at the November 8th Planning Commission meeting.**

Links:

1. [UDC Article 04-05 Sign Requirements](#)
2. [UDC Article 10-04 Signage Terms](#)