



Lexington-Fayette Urban County Council

TO: Kevin Stinnett, Councilmember
Councilmember-At-Large

FROM: Paul Schoninger
Research Analyst

DATE: March 17, 2017

SUBJECT: Electronic Signage

This is in response to your recent request for information pertaining to the issue of electronic/digital signs and billboards. In this memo I'll attempt to summarize the procedure used to amend the signage text within the Zoning Ordinance; describe the process the Administration is going through to review and possibly amend the signage text in light of the Council Planning & Public Safety Committee discussion re the US Supreme Court decision *Reed v Gilbert Texas* about content neutral signage; and finally to identify some of the issues, challenges and opportunities related to electronic/digital signage.

Both the Council and the Planning Commission can initiate a text amendment to the Zoning Ordinance. If the Council initiates the amendment and provides draft amendment language the Planning Commission has 60 days to study the proposal, hold a public hearing and recommend action back to the Council. The Council can approve, amend or reject the recommendation with or without a public hearing on the matter.

After the February 2017 Council Planning & Public Safety Committee discussion on content neutral signage, Commissioner Paulsen organized an internal group to examine the existing signage text in light of the *Reed v Gilbert* Supreme Court decision. It is also my understanding that the review will include electronic and digital signage opportunities and issues. I believe the first meeting is March 28. It is anticipated that this group will complete its work sometime this fall.

By their nature, signs and billboards are intended to attract attention, including the attention of vehicle drivers. The effects of signs and billboards on safety, particularly the safety of drivers, passengers, pedestrians and cyclists, as well as the effects of these billboards on nearby residents and businesses, are valid reasons for controlling their location and size. In addition to safety, public welfare and community character are also valid reasons for regulating signs. A municipality can regulate signs visible to the public through its zoning ordinance, using reasonable and objective standards that protect the public's health, safety, welfare and community character.

As the use of digital technology in signs has grown, communities have become increasingly concerned about the technology's impact on driver distraction and safety, and the environmental issues relating to both the energy consumption of digital signage and increased light pollution. Beyond the issues of safety and the environment, digital signs also have an impact on the community as these brightly illuminated and changeable signs can become an unwanted focal point in the landscape.

Digital technology, if appropriately regulated, can also provide numerous benefits to its users and the community. Digital signage can allow multiple advertisers to share one sign structure and allow sign displays to be quickly and remotely changed. It can also provide clear and predictable regulations for potential sign advertisers. Commercial entities aren't the only beneficiaries of digital sign technology either. For many municipalities, the new technology provides a venue for communicating community events, information about municipal activities, emergency notifications, and other public service announcements. Further, the potential for driver distraction, disabling glare and light trespass can be reduced through proper controls.

There have been a few recent federal and state actions that impact digital signage and billboards. In 2007, the Federal Highway Administration relaxed a rule against digital billboards, saying they don't violate the 1965 Highway Beautification Act's ban on "intermittent," "flashing" or "moving" lights.

In 2014 the US Department of Transportation released a comprehensive study declaring that digital billboards do not pose a safety risk to passing motorists. The report is titled "Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS)." The study concluded that drivers do indeed look at digital billboards longer than they do at static billboards. Glance duration toward digital billboards averaged 0.379 seconds, while glances at static billboards were at 0.335 seconds. Both of these measurements fall below the 2-second benchmark, which would constitute a hazard, according to the National Highway Safety Administration.

In 2015 the Kentucky General Assembly passed legislation (attached) that would allow electronic billboards on interstate, defense and federal-aid primary highways in the State. The legislation requires an exchange of 6 existing standard billboards for every new electronic billboard permitted as well as an exchange of five standard billboards signs for every existing sign converted to electronic.

There are numerous issues that could be considered when developing regulatory controls over digital signage and billboards, including:

- Consider where digital signs would be appropriate
- Evaluate sign size in relationship to vehicle speed, location, adjacent land uses and roadway geometry
- Establish controls on brightness of the digital sign as well as protections against disabling glare and light trespass by requiring a illumination study
- Require automatic dimming according to ambient light characteristics
- Consider how often a sign message should change, its 'dwell time' as frequent message changes may be distracting to drivers

- Consider how the image should be permitted to change;
- Consider prohibiting digital signs in historic districts, other scenic corridors, etc.
- Consider limiting hours of operation
- Consider how to utilize public service announcements
- Whether approved by conditional use or by special exception
- Employ enforcement measures to ensure that the conditions of municipal approval are observed; and
- Evaluate whether redundant numbers of signs can be combined into a single digital sign, thereby reducing visual clutter

In addition the American Association of State Highway and Transportation Officials (AASHTO) recommends controlling variable daytime and nighttime luminance intensities, frequency of message changes, sequential messages, animated messages, length of number of messages (such as telephone numbers) as well as personalized messages (which can display messages that are prompted by cellphone linkage to individual vehicles).

Further in the March 2011 *Planning* the magazine of the American Planning Association an article “Digital Billboards, Distracted Drivers” set forth some of the ways billboards can be made less distracting: keeping the sign from being too bright, lengthening the static image time, and keeping messages simple.

Numerous governments include digital signs within their respective sign regulations. A recent amendment to Pittsburgh’s zoning code states that no electronic sign may exceed 0.3 foot candles illumination above the ambient light level to prevent distraction and interference with traffic signals. In addition the amendment sets a dwell time of at least 10 seconds and prohibits animation of any kind.

In Panama City, FL the local ordinance sets limits on sign size, placement and brightness

Easy Goshen PA regulates digital signs by limiting dwell time to 10 seconds, by prohibiting animation and requiring transition times to less than 1 second. Brightness controls are required and the display is not permitted to distract from traffic signals.

Several cities while allowing digital signs have restricted them from scenic areas such as gateway corridors, approaches to/from the airport, residential areas, parks, schools and vistas of historic, scenic or locally significant areas.

Numerous municipalities allow for digital billboards with the requirement that existing traditional billboards be removed. Tampa requires that up to 10 billboards be removed for every new digital billboard erected. St. Paul, MN has a 6 to 1 swap. Orlando utilizes a 4 to 1 swap. Discussed earlier Kentucky requires a swap of 5 or 6 to 1.

Over the last 10 years numerous municipalities and states have implemented moratoriums or bans on digital signage. The bans have been established in Alaska, Hawaii, Maine, Montana, Vermont, Gilbert, AZ, Largo, FL, Durham, NC, and Amarillo, TX. The moratoriums have been established in Pima County, AZ, Pinellas County, FL, St. Louis, MO, and San Antonio, TX. Several of these bans and moratoriums have subsequently been lifted.

In addition some communities that banned digital billboards are seeing their actions struck down after constitutional challenges from billboard companies. Last year, a state superior court judge struck down as unconstitutional a digital billboard ban in Franklin Township, N.J.

Other communities are relaxing restrictions. Clay County, Fla., recently lifted a ban on new digital billboards that had been in place since 2004. Peoria, Ariz., is moving toward allowing the signs after the state Legislature removed a prohibition on new digital billboards along state highways.

If, after reviewing this memo and attached materials, you have any questions, comments or need clarification, please don't hesitate to contact me.

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c: Dina Melvin