

- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS

1. **PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY)** – petition for a Zoning Ordinance text amendment to Article 17: Signage Regulations to allow digital (electronic message display) marquee signs in the Lexington Center Business (B-2B) Zone.

INITIATED BY: Big Picture Ventures, LLC

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Postponement.

The Staff Recommends: Approval of the staff alternative text, for the following reasons:

1. The proposed staff alternative text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone to allow an increase in signage opportunity, while also complementing the surrounding land use and can help promote the surrounding attractions.
2. The proposed staff alternative text amendment provides greater limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

This is a continuation of a public hearing from the Planning Commission meeting held on April 28, 2022.

Staff Text Amendment Presentation – Mr. Hal Baillie updated the commission information that has changed since the April 28, 2022 meeting. Mr. Baillie gave a brief overview of the previous suggested text presented by the applicant in April, as well as the staff alternative at that time. He highlighted three previous concerns from the April meeting including the size of the sign, the oversight of the sign, and the duration of the message presented on the sign.

Mr. Baillie presented the updated Staff recommended text that sought to address those concerns from the last meeting. First, staff shifted the per-theater sign from the previous 24 square feet to 30 square feet. This allows the applicant to reach the maximum size requirement with 10 theaters. Additionally, staff changed the language having to do with the oversight of the signage to match the state statute associated with digital signage.

The final element that Mr. Baillie highlighted was the duration of the images. Initially, the staff alternative language said that the duration could not go less than 45 seconds. The revised staff alternative reduces that time to 20 seconds. Mr. Baillie displayed reasons why the Staff thought that the applicant's proposal of 8 seconds was inappropriate, including that the suggestions from the applicant for 8 seconds was using regulations designed for vehicles that are going faster and little pedestrian activity that could potentially be distracting to drivers. These regulations are much better suited for highways and interstates, but not downtown areas.

Mr. Baillie continued giving Staff's justification for a 20 second duration, stating that this is much more in line with the current Zoning Ordinance, it is in keeping with best practices on complex downtown streets, and it allows for signs to be absorbed while staying focused on the roadway. Additionally, Mr. Baillie displayed a mathematic equation that Staff also used as justification for the 20 seconds they recommended.

Mr. Baillie ended his presentation by saying that Staff is recommending the amended staff alternative that he presented today.

Commission Questions – Bruce Nicol asked for clarification on the size issue and if the applicant was happy with that change. Mr. Murphy indicated from the audience that he was and Mr. Baillie stated that that was his understanding as well. Mr. Nicol joked that he tried to do the math on the equation that Mr. Baillie presented and got 6 seconds, which Mr. Baillie indicated was incorrect.

Mr. Michler asked about what time the signs would stop displaying and more specifically if it was the business's decision when to stop displaying the messages. Mr. Baillie indicated that Staff did not put a restriction of time of operation in their recommendation because it is associated with the business operation rather than sign usage. Any type of cap on a specific time would get into conditional zoning restrictions, rather than Zoning Ordinance text

Mr. Pohl asked if there was a limitation on how high the sign can be mounted. Mr. Baillie stated that there were limitations that included the sign has to project out from the building and the sign cannot be above the building itself.

Applicant Presentation – Dick Murphy, attorney for the applicant, starting his presentation by giving some background on Mr. Krikorian and his business ventures that lead him to develop Lex Live.

Mr. Murphy said that since the last meeting approximately six weeks ago, Staff and he have had productive discussions and agree on everything except one issue, the duration of messages. Mr. Murphy asked the Planning Commission for 8 seconds because it is the industry standard norm for digital signage. Additionally, Mr. Murphy confirmed that this text amendment only relates to on premise signs, not off-premises signs.

Mr. Murphy indicated that their intention with this text amendment is to display still images, not videos or any type of moving images.

Mr. Murphy said that he appreciated the Staff's research on this, but cited a number of private and government agencies that use the 8 second interval that the applicant is requesting. Mr. Murphy also cited data that there was no correlation between electronic signage and distracted driving. Mr. Murphy stated that they wanted signage that was effective and safe.

Mr. Murphy presented to the Planning Commission a video he took of the Lexington Opera House digital marquee and recorded how many advertisements that were shown in 45 seconds. He stated that it was a significant amount of ads in a short amount of time, and reiterated that he wanted to show the Commission that two and half blocks away from their location, a digital marquee with even more advertisements is operating in Lexington. He also presented a video of the digital sign directly across the street at the Hyatt outside of Rupp Arena.

Mr. Murphy listed a number of cities including Charlotte, Fort Worth, and Atlanta and gave what their duration for digital signage was, and while there was variation, he indicated that the average was about 8 seconds, and is what the applicant was requesting.

Mr. Murphy ended his presentation saying that the applicant agreed with the Staff's revised language, with the exception of the interval, asking to change the interval from 20 seconds to 8 seconds.

Commission Questions – Mr. Nicol pointed out that Mr. Murphy was citing data that was meant for highways, not busy downtown streets. Mr. Nicol also pointed out that in our own Ordinance for signs, it says 15 seconds is appropriate, and asked if those 12 seconds are really worth the trouble here. Mr. Murphy responded citing data from the International Sign Association that found an example of the 15 second duration at Wildhealth Ballpark. Mr. Murphy continued, pointing out the intervals at the Opera House and at Rupp Arena.

Mr. Nicol responded asking why he keeps bringing up, the Opera House and Rupp Arena, as they are not regulated under this Ordinance and asked if bringing them up is about fairness or anything else. Mr. Murphy said that it had to do with that to some extent, but their main point is that these type of signs are already here and are safe and work well.

Mr. Michler said he appreciated a lot of the issues being settled before the meeting, but asked how many important messages advertised does the applicant think he has to show in a minute. Mr. Murphy said that because they have 10 theaters and a variety of other events going on, such as e-sports, they need as many possible messages out as they can.

Mr. de Movellan asked if Mr. Murphy had a sample of what they would like to display. Mr. Murphy indicated that he did not at this time.

Mr. de Movellan also asked a question about the sign at closed hours, because there are multiple businesses in Lex Live including a theater and bowling alley, would the sign be turned off when the theater is closed or will it be closed when the other business are closed. Mr. Murphy consulted Mr. Krikorian and stated that all the businesses close at the same time.

Finally Mr. de Movellan asked staff what businesses qualify as a theater. Mr. Baillie responded stating that theaters are not specifically defined in the Zoning Ordinance, but usually defined as a stage with a projected screen in which there are stadium seating.

Ms. Worth pointed out that the studies Mr. Murphy highlighted were from 2012 and 2014 and asked if there had been any more recent studies. Mr. Murphy indicated that there was not from what he had seen.

Staff Rebuttal – Mr. Baillie started the rebuttal by the thanking the applicant for working with staff for making it a collaborative process. Mr. Baillie reiterated the staff position with the location being downtown, with pedestrians, various turn signals, lights, and signs, Staff is looking to implement a "best practices" policy and be as safe as possible. Mr. Baillie highlighted a number of court cases where judges have indicated that these signs can create inattentiveness and some distraction. Staff wants to make sure that this is the safest ordinance possible and allows for the incorporation of these new technologies effectively.

Mr. Baillie elaborated on the different elements of signage including speed, interval, complexity and size as well as reiterating staff's point that the regulations Mr. Murphy is highlighting are meant for highways or interstates. Mr. Baillie mentioned the

Opera House's frequency of ads was not effective because you are getting so many ads in a short amount of time that the driver cannot fully comprehend what they are seeing in such a short amount of time.

Mr. Baillie briefly mentioned the justification for the decrease from 45 seconds to 20 second intervals because there was more scientific research, although he did mention that the 45 seconds was a good transition point. The 20-second duration would allow the applicant more opportunities to advertise what is going on at the facility.

Mr. Baillie ended his rebuttal saying that the Zoning Ordinance right now is regulated at 15 seconds for the B-3 zone and that a 20 second duration is backed up by research and deals with Lexington's current context in the best way.

Applicant Rebuttal – Mr. Murphy stated that they have about 10 movies a week that can change weekly and they have to get that information out there. Mr. Murphy reiterated his assertion that there is no statistical data that suggests that there is a correlation between digital signage and an increased risk of accidents.

Mr. Murphy ended saying that the 8 second interval was safe, works and complies with all governmental and private sign agencies.

Commission Questions – Mr. Bell asked the applicant if signage is changing and in what ways that is happening and if what is happening in Lexington is different from anywhere elsewhere the applicant has a theater. Mr. Krikorian responded that in his theaters, all the digital signage was approved over the last ten years. Mr. Krikorian said that there are a number of different movies playing currently, some that will be coming soon, as well as other events that you might not be aware of. He stated that these signs are important to show people what is going on.

Mr. Bell also asked if this project was unique, and Mr. Krikorian said that it was. He stated that the theater being downtown is unique, as well as Lexington in general being unique.

Ms. Barksdale stated that her biggest concern with the longer intervals, would they try to put more advertisements on the screen, and asked the applicant if there are limitations on what can be on the screen.

Mr. Baillie answered the question saying that the city staff could not limit the content because that goes into free speech. Mr. Baillie gave more information on the research that staff did on how long it takes to see and comprehend a sign or advertisement at around 5 seconds when you first see the message and start to absorb it.

Mr. Nicol asked staff if there was a reason why they did not recommend 15 seconds, which is in the current Ordinance and instead recommended the 20 seconds in the staff alternative. Mr. Baillie answered that while staff did look to see if they could find justification for the 15 seconds which was based on older studies. The 20 seconds had much better backing and research. The calculation at 20 seconds has surer footing than the 15 seconds.

Ms. Wade gave more support to Mr. Baillie stating that the 15 second interval was put in place 20 years ago and that the 20 seconds is a more precise measurement than the 15 seconds. Ms. Wade also noted that there is more research now than there was then.

Mr. Pohl referred to Mr. Murphy's presentation where he said there was no link between signage duration and accidents, on the other hand staff is stating 20 seconds is necessary to diminish accidents. Mr. Pohl asked how the Planning Commission can balance those two lines of thinking. Mr. Baillie responded saying that Mr. Murphy said that there was no statistical change, not that there was no evidence. Mr. Baillie continued saying that there were many studies that show digital signage increased inattention and that inattention leads to an increased chance of accidents. Mr. Baillie indicated that through staff's research, 20 seconds was appropriate for drivers to take in their environment, see the signs and do so in the safest possible way.

Applicant Rebuttal – Mr. Murphy briefly stated that in their discussions with Ruggles Signs, they indicated based on their experience, the longer the interval, the longer people sit and look, the longer cars stop and wait for the next slide. He also indicated that the formula that staff presented does not lead to effective signage.

Motion – A motion was made by Mr. Nicol, seconded by Ms. Worth, and failed 4-5 (de Movellan, Bell, Pohl, Davis, and Barksdale opposed) (Forester and Meyer absent) to approve the Staff alternative for **PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY).**

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2. **PLN-ZOTA-22-00009: AMENDMENT TO ARTICLE 8-20 TO PERMIT BANQUET FACILITIES IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE** – a petition for a Zoning Ordinance text amendment to allow banquet facilities as a principal permitted use in the Highway Service Business (B-3) zone.

INITIATED BY: Cervantes and Associates, LLC

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