

ORDINANCE NO. 126 - 2023

AN ORDINANCE AMENDING ARTICLE 8-19(d) AND ARTICLES 17-11(I)(2) AND 17-18 OF THE ZONING ORDINANCE TO ALLOW ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO DISPLAYS (DYNAMIC CONTENT) IN ASSOCIATION WITH A CIVIC CENTER IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE. (LEXINGTON CENTER CORPORATION).

WHEREAS, the applicant, Lexington Center Corporation, has initiated a text amendment to Article 8-19(d) and Articles 17-11(i)(2) and 17-18 of the Zoning Ordinance to allow additional electronic message display signage including video displays (dynamic content) in association with a civic center in the Lexington Center Business (B-2B) zone; and

WHEREAS, the Planning Commission has reviewed and considered a text amendment to Article 8-19(d) and Articles 17-11(i)(2) and 17-18 of the Zoning Ordinance to allow additional electronic message display signage including video displays (dynamic content) in association with a civic center in the Lexington Center Business (B-2B) zone, and the Planning Commission did recommend APPROVAL of the staff alternative text by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 8-19(d)(13) of the Zoning Ordinance be and hereby is created to read as follows:

Article 8-19. Lexington Center Business (B-2B) Zone.

(d) *Conditional Uses.* (Permitted only with Board of Adjustment approval.)

13. Sign with Dynamic Content, provided such use conforms to the requirements of Article 17-11(i)(2)(c).

Section 2 – That Article 17-11(i)(2) of the Zoning Ordinance be and hereby is amended to read as follows:

(2) In addition to the other signs permitted in this zone, five (5) wall-mounted electronic message display system signs shall be permitted in conjunction with civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity

of 15,000 persons. Such signs may be mounted on the wall of the civic center or any connected or adjoining structure under common ownership with the civic center. Such wall-mounted signs shall be permitted and regulated as follows:

- (a) Two (2) electronic message display system signs, not exceeding two hundred (200) square feet each, shall be permitted. Such signs may not be erected on the same exterior façade or wall unless separated by at least two-hundred fifty (250) feet.
- (b) Two (2) electronic message display system signs, not exceeding fifty (50) square feet each, shall be permitted. Such signs may not be erected on the same exterior façade or wall unless separated by at least two-hundred fifty (250) feet.
- (c) One (1) sign, not exceeding eight hundred (800) square feet, shall be permitted, which may be either:
 - i. an electronic message display system sign, or
 - ii. a sign with dynamic content, if permitted as a conditional use under Article 8-19(d).
- (d) Use of electronic message display systems shall be permitted only if the sign complies with the following requirements:
 - i. Image and Duration of Message:
 - a. There shall be no moving or scrolling messages, special effects, or animations. Static or fixed images or content shall remain static or fixed for a period of not less than eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
 - b. Notwithstanding the foregoing, use of video display method shall only be permitted following issuance of a special event permit by the local government.
 - ii. Location:
 - a. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device.
 - b. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.
 - iii. Luminance:
 - a. The sign shall be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance. Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette County.
 - b. The sign shall not display content or be illuminated after 11 p.m. local time, Sunday through Thursday, after 12 a.m. (midnight) local time on Friday or Saturday, nor before 7 a.m., any day, except that the sign may display content or be illuminated when the civic center exhibition halls or arena are open in connection with an event.

Section 3 – That Article 17-18 of the Zoning Ordinance is hereby amended and

renumbered to read as follows:

Article 17-18. Definitions.

The following definitions unique to this Article are listed below

- (a) *A-Frame or Sandwich Board*: A free-standing, movable sign, not secured or attached to the ground or any building or structure, composed of a sign panel and supporting structure or one or more panels which form both the structure and sign face, and which is intended to be placed in a sidewalk or pedestrian way. A-frame signs shall not include trailer signs with or without wheels affixed.
- (b) *Abandoned Sign*: Signage that has been neglected and fallen into disrepair.

- (c) *Above-Canopy Sign*: A sign mounted to the top edge of the roof of a canopy, constructed of metal or similar rigid and solid materials, that projects vertically from the canopy to form the free-standing letters or graphics of the sign.
- (d) *Area of a Sign*: Shall be defined and computed as follows:
 - (1) *Free-Standing or Projecting Signs*:
 - (a) Any double-faced sign shall have only one face, the largest, counted in calculating the area.
 - (b) Any sign with three or more sign faces shall have the area calculated by summing the area of the sign faces and dividing by two.
 - (c) Any sign that is considered 3-dimensional in shape shall have the area calculated by projecting the sign onto a vertical plane and summing the area of the sign face for all sides of the sign designed to attract attention or to communicate information that can be seen at any one time by a person from one vantage point.
 - (d) If the sign is composed of one or two individual cabinets, the area around and enclosing the perimeter of each cabinet or module shall be summed and totaled to determine the area. The perimeter of the measurable area shall not include embellishments such as pole covers; framing; decorative roofing, etc.; provided there is no written copy on such embellishments and such embellishments are clearly incidental to the sign itself.
 - (e) If the sign is composed of more than two sign cabinets, or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single contiguous geometric figure shall be the area of the sign. The measurable area shall not include embellishments such as pole covers; framing; decorative roofing; etc., provided there is no written copy on such embellishments and such embellishments are clearly incidental to the sign itself.
 - (2) *Wall Signs*. The area shall be within a single continuous perimeter composed of any straight-line geometric figure which encloses the extreme limits of the copy, including vertical and horizontal spacing between individual letters, logos, etc.
- (e) *Attraction Board*: Copy is changed manually.
- (f) *Awning Sign*: Applied directly to the surface of an awning; defined as a shelter supported entirely on a wall and made of non-rigid material supported by a frame.
- (g) *Banner Sign*: Made of non-rigid material with no enclosing framework.
- (h) *Billboard*: Signage intended for lease to a variety of businesses, organizations, and/or individuals. In such case, the sign itself shall be an income generator and a commercial use of the property.
- (i) *Building Frontage*: The horizontal, linear dimension of that side of a building which abuts a street, parking area, or other unenclosed circulation area open to the general public. Where more than one use occupies a building, the building frontage shall be the front width of the portion of the building occupied by that use.
- (j) *Bulletin Board*: Allows the manual change of copy and is used to notify the public of noncommercial events or occurrences such as religious services, political rallies, civic meetings, or similar events.
- (k) *Canopy Sign*: Applied directly to the surface of a canopy; defined as a permanently roofed shelter covering a sidewalk, driveway, or similar area. Canopies may be supported by a building, columns, poles, braces, or a combination of both.
- (l) *Construction Sign*: A temporary sign located on an active construction site
- (m) *District Identification Sign*: Any type of sign or other graphic, located on public or private property, which establishes the identity of a unique and distinct

community by way of its size, configuration, height, or location: and which has no direct commercial advertising value.

- (n) *Double-faced Sign*: Two (2) faces either set parallel or up to a 45-degree angle. Any two sign faces set at an angle greater than 45 degrees shall be considered two (2) separate signs.
- (o) *Dynamic Content*: Moving or changing imagery such as video, animations and special effects. Dynamic content shall be displayed for no less than eight (8) seconds in duration. Signs with dynamic content may utilize video display method only following issuance of a special event permit by the local government.
- (p) *Electronic Message Display System*: A sign with copy or images which includes, but is not limited to reflective disc, direct illumination, rotating veils, light emitting diodes (L.E.D.s), or liquid crystal diodes (L.C.D.s), and is controlled by means of a central computer or video control system and which has no audible sound.
- (q) *Flashing or Blinking*: Intermittent or sequential illumination for the purpose of attracting attention to the sign.
- (r) *Free-standing Sign*: Attached to the ground by columns, poles, braces, or other means and not attached to any building.
- (s) *Government Sign*: Temporary or permanent, erected by government employees or officers in the performance of their professional/elected duties.
- (t) *Height of a Sign*: The vertical distance measured from the highest point of the sign, including the frame and any embellishments and the established grade at the nearest adjacent street.
- (u) *Historic Marker*: A sign or emblem which commemorates or identifies an event, past ownership of property, or age of a building.
- (v) *Illegal Sign*: Does not meet the requirements of this zoning ordinance and has not been identified as a legal, nonconforming sign.
- (w) *Illuminated Sign*: Emits or reflects artificial light from any source.
 - (1) Directly illuminated: Lighted by an unshielded light source (including neon tubing) which is visible as a part of the sign and where light travels directly from the source to the viewer's eye.
 - (2) Indirectly illuminated: Light source projects light onto the exterior of the sign surface or onto the building where the sign is located.
 - (3) Internally illuminated: Light source is within the sign, with a transparent or translucent background or cover which silhouettes letters or designs.
- (x) *Incidental Sign*: Not exceeding two (2) square feet in area.
- (y) *Landmark Sign*: Any type of sign or other graphic that helps create a unique location by way of its size, configuration, height, or location and exhibits distinctive stylistic features.
- (z) *Limited Duration Sign*: A non-permanent sign that is displayed on private property for more than 30 days, but not intended to be displayed for an indefinite period.
 - (aa) *Luminance*: The light that is emitted by or reflected from a surface, measured in nits.
 - (bb) *Marquee Sign*: Used in conjunction with a theatre, is attached to the building, and projects from the building.
 - (cc) *Menu Board*: Free-standing signs placed at properties where there is a drive-thru lane, walk-up window or drive-up curbside.
 - (dd) *Menu Box*: A wall-mounted sign, primarily designed for the display of menu items and prices in conjunction with a restaurant.
 - (ee) *Mobile Sign*: Affixed to a frame having wheels or capable of being moved. Mobile signs do not have a permanent foundation and cannot withstand the

windload stress requirements of the adopted building code as they are designed to stand free from a building. The removal of wheels from such a sign or temporarily securing a sign of this type shall not prevent it from being classified as a mobile sign within this definition. This includes signage placed in a truck bed or on a trailer designed to be pulled behind a vehicle.

- (ff) *Monument Sign*: Attached to a permanent foundation or decorative base and not attached to or dependent for support from any building, pole, post, or similar upright.
- (gg) *Nit*: A photometric unit of measurement describing luminous intensity (candelas) per unit area. Expressed in SI units, one nit is equal to one cd/m².
- (hh) *Nonconforming Sign*: Legally erected but does not comply with the current regulations for the zone in which it is located.
- (ii) *Non-illuminated Sign*: Does not emit or reflect artificial light from any source.
- (jj) *Projecting Sign*: Attached to a building, extends more than 24 inches.
- (kk) *Roof Sign*: Projects above the cornice of a flat roof or the ridgeline of a gabled or hipped roof. In determining the top edge of the roof, calculation shall not include cupolas, pylons, chimneys, or other projections above the roofline.
- (ll) *Rotating or Moving Sign*: Any portion of which moves by mechanical means or the wind; does not refer to changing copy with an electronic message display system.
- (mm) *Sign*: Any copy, including material used to differentiate the copy from the background, which is applied to a surface as a means of identifying, advertising, announcing, or illustrating products, services, and/or events.
- (nn) *Sign Clearance*: The vertical distance between the lowest point of any sign and the grade at the base of the sign.
- (oo) *Sign Copy*: Any word, figure, number, symbol, or emblem affixed to a sign.
- (pp) *Sign Setback*: The horizontal distance between any street right-of-way and a sign. The measurement shall be taken at the closest point between the right-of-way and any part of the sign.
- (qq) *Sign Surface*: That part of the sign on which the message is displayed.
- (rr) *Square Foot*: A unit of area equal to one foot by one foot square.
- (ss) *Street Frontage*: Property line that lies adjacent to street right-of-way.
- (tt) *Subdivision Entrance Sign*: A permanent free-standing or wall sign located at the primary entrance(s) to a residential subdivision or unified business development, as represented on a development plan.
- (uu) *Temporary Sign*: Any sign or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, plywood, or other light materials, with or without frames, and/or intended to be displayed for a limited period of time only.
- (vv) *Traffic Directional Sign*: A non-commercial sign of an instructional nature, such as "parking," "exit" or "entrance," displayed solely for the convenience of the public.
- (ww) *Under-Awning or Under-Canopy Sign*: A small sign, limited to four (4) square feet, attached to and suspended from the underside of a canopy or awning and having a clearance of not less than eight (8) feet.
- (xx) *Video Display Method*: A method of display on a sign characterized by real-time full-motion imagery of at least television quality.
- (yy) *Vehicle Signage*: Signage painted directly on a vehicle or attached magnetically.
- (zz) *Wall Sign*: Attached parallel to and extending not more than twenty-four (24) inches from the wall of the building; and includes painted, individual letter and cabinet signs, signs on a mansard, or on a parapet not exceeding six (6) feet in

height; and provided the parapet extends on at least three sides of a building and signs erected on or against the side of a roof but not projecting above the roof line. No copy shall be permitted to be displayed on the sides of the sign which are perpendicular to the wall face.

(aaa) *Window Sign:* Attached to or located within three (3) feet of the interior of a window and which can be seen through the window from the exterior of the structure.

Section 4 – That this Ordinance shall become effective upon the date of its passage.

PASSED URBAN COUNTY COUNCIL: November 2, 2023



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: November 9, 2023–1t

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Recd by _____

Date: _____

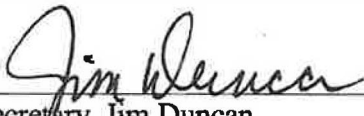
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE – a petition for a Zoning Ordinance text amendment to allow additional electronic message display signage including video displays (dynamic content) in association with a civic center in the Lexington Center Business (B-2B) zone.

Having considered the above matter on **September 28, 2023** at a Public Hearings and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL OF THE STAFF ALTERNATIVE TEXT** for this matter for the following reasons:

1. The proposed text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone in a manner not currently allowed in the Urban County. Such signage will support the tourism industry, will not be unduly distracting, will not distract from the overall community aesthetics, and will support the legitimate needs of the civic center which has changing events and activities on a daily basis.
2. The use of dynamic content on an electronic message display center should only be permitted by a conditional use permit in the B-2B zone. The Board of Adjustment, in conduct of their normal duties, will be able to determine through a public hearing if a dynamic content electronic message display center sign will not have an adverse influence or negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

ATTEST: This 13th day of October, 2023.



Secretary, Jim Duncan

LARRY FORESTER
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Evan Buckley, attorney.**

OBJECTORS

- Amy Clark, 628 Kastle Road

OBJECTIONS

- Stated she wished for more time to review to Staff alternative language.

VOTES WERE AS FOLLOWS:

AYES: (8) Barksdale, Davis, Meyer, Michler, Nicol, Owens, Pohl, and Worth

NAYS: (0)

ABSENT: (2) Forester and Wilson

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Approval of the Staff Alternative of PLN-ZOTA-23-00002** carried.

Enclosures: Application
 Council Resolution
 Staff Report
 Planning Commission Recommended Text
 Applicable excerpts of minutes of above meeting

GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

1. APPLICANT INFORMATION:

Name: Lexington Center Corporation

Address: 430 W. Vine Street

City, State, Zip Code: Lexington, KY 40507

2. ATTORNEY (Or Other Representative) INFORMATION:

Name: John Rhorer, Dinsmore & Shohl, LLP

Address: City Center, 100 W. Main Street, Suite 900

City, State, Zip Code: Lexington, KY 40507

Email: john.rhorer@dinsmore.com

3. REQUESTED TEXT CHANGE:

Zoning Ordinance Amendment to Article 17

Sec. 17-11. - Signs permitted by specific zone.

(i) **Lexington Center Business Zone (B-2B).** Permitted signs may be free-standing or wall mounted, as specified; such signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated; painted wall signs shall be prohibited. No free-standing sign permitted under this section shall exceed twenty (20) feet in height, nor project into the right-of-way more than twelve (12) inches.

(1) Wall-mounted signs, canopy or awning signs, under-canopy or under-awning signs, above-canopy signs and banner signs shall be permitted as regulated in the B-2 and B-2A zones.

(2) In addition to the other signs permitted in this zone, ~~four~~^{five} (4⁵) wall-mounted electronic message display system signs shall be permitted ~~in conjunction with~~ civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity of 15,000 persons. Such signs may be mounted on the wall of the civic center or any connected or adjoining structure under common ownership with the civic center. Two (2) such signs, not exceeding two hundred (200) square feet, shall be permitted. Two (2) additional signs may also be erected, not exceeding fifty (50) square feet each. One (1) sign, not exceeding eight-hundred (800) square feet, shall be permitted, but only if the sign complies with the following additional requirements:

(a) Image:

(1) Sign may include dynamic or changing content, such as moving or scrolling messages, special effects, animations, and video, if:

a. such content is at least eight (8) seconds in duration; or

b. such content is authorized by special event permit

(2) Dynamic content permitted hereunder shall not constitute or be considered flashing or blinking.

(3) Static or fixed images or content shall remain static or fixed for a period of not less than eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

(b) Location:

(1) The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;

(2) The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.

(c) Luminance or Screen Brightness: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.

(d) The sign shall not display content or be illuminated at 11 p.m. local time, Sunday through Thursday, nor before 7 a.m., any day, except that the sign may display content or be illuminated when the civic center exhibition halls or arena are open in connection with an event.

~~Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center.~~

Note: Remaining sections remain unchanged

4. DESCRIBE THE JUSTIFICATION FOR MAKING THIS CHANGE: (Use attachment if necessary.)

See attached letter of justification.



Legal Counsel.

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www.dinsmore.com

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John.Rhorer@dinsmore.com

April 28, 2023

Members of the Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

Re: Proposed Text Amendment
Zoning Ordinance 17-11(i)

Dear Members of the Planning Commission:

Dinsmore represents Lexington Center Corporation ("LCC"), owner of several properties located within the Lexington Center Business Zone (B-2B), including Central Bank Center and Rupp Arena at Central Bank Center.

LCC seeks your approval of a text amendment to the Urban County Government's Zoning Ordinance, specifically with respect to the Lexington Center Business Zone, to allow for one additional Electronic Message Display System sign, the size of which shall not exceed 800 square feet. The primary purpose of the sign is to notify the public of events and attractions being held at Central Bank Center, but it will also become an independent dynamic visual attraction using technology that is commensurate with the recent \$300,000,000.00 renovation of Central Bank Center.

Presently, the Zoning Ordinance permits the Central Bank Center complex a total of four (4) Electronic Message Display System signs, two (2) of which may not exceed two hundred (200) square feet, and two (2) of which may not exceed fifty (50) square feet. Two of these signs are currently in use, both of which are attached to the Hyatt Regency Hotel façade (one on the north, one on the south). The restricted size of the signs presently permitted, as well as limitations on their design and functionality, prevent LCC from adequately communicating its offerings with the public.

Over the past three years, with the assistance of its financial partners at the LFUCG, Commonwealth of Kentucky, University of Kentucky and Visit Lex, LCC has spent over \$300 million renovating its entire downtown campus, including a) the installation of a visually compelling exterior shell for Rupp Arena; b) the construction of a brand new Convention Center with 100,000 square feet of exhibition space, 16 meeting rooms, a 25,000 square foot ballroom and 45,000 square feet of pre-function space; c) a

brand new catering kitchen; d) a garage containing over 500 covered parking spaces; e) four hospitality suites (having 35,000 square feet of pure social space in the aggregate) to be used by the University of Kentucky during UK events and by patrons of the Central Bank Center at other times; f) the purchase and installation of a striking piece of modern art previously on display at Ashland, Henry Clay's estate; and g) renovations and upgrades to the nationally recognized Rupp Arena.

For those who have not been able to visit/tour our new facilities, an incredible experience awaits you. The interior spaces contain original Kentucky-themed artwork, modern and high-tech lighting fixtures, terrazzo flooring and dramatic naturally illuminated open spaces. The pedestrian staircase, which takes the public from High Street to Main Street between the Hyatt and Rupp Arena, is a feature of the new facilities which has been long-desired. There is also an outdoor terrace which overlooks the Mary Todd Lincoln House and will overlook Town Branch Park.

The additional sign permitted under the proposed text amendment is vital to the success of the new Central Bank Center. It will be the final layer of icing on a multi-layer cake and will proudly and boldly announce the Center's existence, encourage patrons to attend events at Rupp Arena, entice convention and exhibition planners and sponsors to hold their events at the Convention Center, and invite the general public to come downtown and enjoy all that Lexington has to offer.

Interestingly, back in 1979, LCC sought a text amendment to the sign ordinance regulating "Civic Center Signs" which would allow for electronic message display signs. Except for time and temperature displays, those types of signs were not then permitted in the downtown area. While acknowledging that "flashing signs" were not particularly aesthetically pleasing, the Planning Staff recommended approval of LCC's text amendment, finding that electronic message signs were "compatible with the intent of the Lexington Center Business zone to promote the economic health of the community and promote tourism." (Perhaps not so coincidentally, the current 2019 Comprehensive Plan recognizes that "Downtown is the urban epicenter of commerce and entertainment", and LCC would argue that Central Bank Center is the epicenter of that epicenter). In 1979, the Planning Staff further found that an electronic message sign system "when used in conjunction with a civic center providing convention facilities and large scale athletic and cultural events overrides the adverse aesthetic impact which could result." The Planning Commission adopted the recommendation of the Staff and approved the amendment to the ordinance.

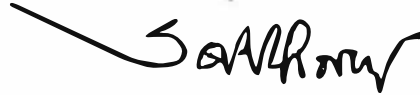
Here we are 43 years later. We are in a new century. It is time to modernize LCC's signage just as it has modernized all of its facilities. We ask that the sign ordinance for the Lexington Center Business Zone be amended to enable LCC to better fulfill its stated purpose set forth in its original Articles of Incorporation—"To act as an agent and instrumentality of the City of Lexington, Kentucky...for the planning, promotion, construction and development of a civic and convention center complex in downtown Lexington..." and its stated purpose in its current Articles of Incorporation—"...to alleviate

Members of the Lexington-Fayette Urban County Planning Commission
April 28, 2023
Page 3

the burdens of government through the promotion, management and development of the convention and civic center known as the Lexington Civic Center.”

We look forward to the public hearing regarding this matter and request your favorable consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. R. Rhorer, Jr.", written in a cursive style.

John R. Rhorer, Jr.

JRR:anh

25954156.1



Legal Counsel.

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John.Rhorer@dinsmore.com

June 15, 2023

Members of the Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

Re: PLN-ZOTA-23-00002

Dear Members of the Planning Commission:

Lexington Center Corporation ("LCC") has submitted PLN-ZOTA-23-00002 concerning a proposed text amendment to Zoning Ordinance 17-11(i). PLN-ZOTA-23-00002 is currently scheduled for consideration at the June 22, 2023 Planning Commission public hearing. The Planning Commission staff recommended postponement during the June 1, 2023 Zoning Committee meeting, and the Zoning Committee adopted this recommendation. LCC concurs with this decision and respectfully requests that the Planning Commission postpone consideration of PLN-ZOTA-23-00002 until the public hearing scheduled for July 27, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Rhorer, Jr.", written over a thin horizontal line.

John R. Rhorer, Jr.

JRR:jmm



Legal Counsel.

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John.Rhorer@dinsmore.com

July 26, 2023

Members of the Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

Re: PLN-ZOTA-23-00002

Dear Members of the Planning Commission:

Please accept this correspondence in supplement to the Justification Letter dated April 28, 2023, which accompanied the above-referenced ZOTA petition submitted by Lexington Center Corporation ("LCC").

LCC seeks approval of a text amendment to Section 17-11(i) of the Urban County Government's Zoning Ordinance ("Ordinance") in order to expressly permit LCC's Central Bank Center to maintain one (1) additional electronic message display system sign, not to exceed eight-hundred (800) square feet in size, which is capable of displaying both static and dynamic content. As discussed in my earlier letter, the primary purpose of the proposed sign is communication and public engagement—to convey information about and promote events and attractions offered at the Central Bank Center, Rupp Arena and the Lexington Opera House. These events and attractions are often unique in scope and character and provide unrivaled, widespread community value. LCC seeks the ZOTA because the signage presently permitted under the Ordinance, which has been basically unchanged for decades, is inadequate due to limitations on size and functionality.

Following submission of its ZOTA petition in late April, LCC appeared at the Planning Commission's Zoning Committee meeting on June 1, 2023. At that meeting, Planning Staff provided a written report on LCC's proposal, recommending postponement of PLN-ZOTA-23-00002 pending additional research, analysis and discussion. LCC representatives subsequently met with Planning Staff on June 28, 2023 (in the latest of many productive ZOTA discussions dating back to the fall of 2021), and the Zoning Committee is scheduled to address the ZOTA petition at its meeting on August 3, 2023. This letter is intended to specifically address matters raised by Planning Staff and to further support the ZOTA proposed by LCC.

At the outset, it is important to acknowledge that Planning Staff's report underscores the significance of the Statement of Intent found in Section 17-1 of the Ordinance, which provides as follows:

The intent of this Article is to provide sign standards and restrictions which allow for the legitimate needs for identification of agricultural, residential, professional office, business, and industrial activities while at the same time promoting signage which does not unduly detract from the overall aesthetics of the community; which reduces intrusions and protects property values; which provides for improved public safety by minimizing the undue distraction of the motoring public; which provides for the protection and enhancement of the tourist industry by promoting a more harmonious and pleasing community image; which is equitably provided in terms of the nature and scale of the activities to be identified and of non-conforming signs; and which generally enhances and strengthens the economic stability of Lexington-Fayette Urban County.

The Statement of Intent provides guideposts to aid in the careful consideration of proposed changes to the Ordinance. As Planning Staff noted, "[a]ny new signage should not have an adverse influence or negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County." LCC, of course, fully agrees with Planning Staff, and is confident its proposed sign will be a positive addition to downtown Lexington, as further discussed herein.

LCC's proposed ZOTA focuses on a unique sign application, and particularly that sign's ability to display dynamic (video) content under certain defined parameters. Dynamic content is necessary and appropriate in this case to effectively showcase LCC's world-class venues and events to a modern audience. It will also place Lexington on par with other cities, such as Louisville, that allow similar venues to utilize signs with dynamic content.

Notably, LCC's proposed use of video in connection with its new sign is refined and limited based on existing provisions of Section 17-11(i). For example, the proposed amendment relates to signs used "in conjunction with civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity of 15,000 persons." This refines Section 17-11(i)(2) to more clearly apply *only* to LCC's signage as intended by this subsection. It also uses the same "in conjunction with" language as Section 17-11(i)(6)'s provision regarding an indoor theater's use of a 300 square foot marquee, which the Planning Commission approved in July 2022. Similarly, LCC's proposed ZOTA incorporates Section 17-11(i)(6)'s duration, location, and luminance standards. These limitations are designed to ensure seamless integration with the surrounding community.

LCC does not anticipate any negative impact on public safety. Studies in this area are limited and certainly vary in result, but several have either been inconclusive or have plainly indicated that changing electronic message display system signs are not unduly distracting to motorists. For example, a study sponsored by the Federal Highway Administration produced “results [that] did not provide evidence indicating that CEVMS, as deployed and tested in the two selected cities [Reading, PA and Richmond, VA], were associated with unacceptably long glances away from the road.” Perez, et al., “Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS)” (2012).

Closer to home, Dr. Eric D. Kelly, Ph.D., FAICP, considered LCC’s signage in his expert report prepared for LFUCG in the recent case *The Lamar Company, LLC v. LFUCG*, 5:21-cv-00043 (E.D. Ky.). Dr. Kelly indicated that distracted driving concerns associated with LCC’s current electronic message display system signage are mitigated by the numbers of pedestrians in the area around Central Bank Center (500 to 2000 per day) and low driving speeds (14 to 15 miles per hour, on average). The same reasoning applies to the additional signage proposed in the ZOTA – the considerable foot traffic and slow vehicular speeds around Central Bank Center minimize any impact on public safety. This principle is demonstrated at the corner of South Limestone and Avenue of Champions, where the University of Kentucky maintains a 1,500+ square foot sign with changing static digital images, and where no notable increase in traffic or pedestrian incidents has occurred.

Additionally, the size and design of the sign proposed by LCC are intended to enhance the aesthetics of the community and promote a legitimate need for identification of activities in Zone B-2B. With the help of its partners, including the Lexington-Fayette Urban County Government, LCC has recently completed a \$300 million renovation of Central Bank Center, upgrading to a state-of-the-art Convention Center and transforming Rupp Arena into a truly modern event destination. Modern, adaptable signage with static and dynamic capabilities will showcase these venues in a way that is commensurate with the scale and nature of their unique offerings.

The proposed sign will also promote wayfinding in Zone B-2B, which is particularly important to ensure a positive experience for Central Bank Center’s out-of-town guests attending events like large-scale conventions and concerts. Moreover, the size of the proposed sign, which will not exceed 800 square feet, is proportional to the façade on which it will be placed, and provides ideal viewing from the expansive landscape of Triangle Park, which the sign will overlook. The proposed signage will engage visitors and residents alike and provide valuable information regarding upcoming opportunities for cultural, athletic, economic, educational, and civic enrichment.


Finally, the proposed sign will support a harmonious and pleasing community image that enhances tourism and generally strengthens the Urban County economy. As observed by Dr. Kelly, “convention centers, conference centers, arenas and large stadiums” like Central Bank Center should be permitted to utilize promotional electronic

Members of the Lexington-Fayette Urban County Planning Commission
July 26, 2023
Page 4

message display signage in a way that is "unique" to such facilities, clearly in recognition of the unique roles these facilities play in our communities. LCC will use the proposed sign in conjunction with the Central Bank Center to promote events unique to its facilities, as well as its sponsors and partners, in a manner that will generate tourism and enhance economic stability. The sign will convey that Lexington is an active and welcoming city offering a vibrant athletic, artistic, and cultural experience.

LCC looks forward to further discussing these and other matters relating to PLN-ZOTA-23-00002 at the next Zoning Committee meeting on August 3, 2023, and at the hearing of the Planning Commission scheduled for August 24, 2023. We continue to respectfully request your favorable consideration of PLN ZOTA-23-00002.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Rhorer, Jr.", written in a cursive style.

John R. Rhorer, Jr.

JRR:jmm

Sec. 17-11. - Signs permitted by specific zone.

(i) *Lexington Center Business Zone (B-2B)*. Permitted signs may be free-standing or wall mounted, as specified; such signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated; painted wall signs shall be prohibited. No free-standing sign permitted under this section shall exceed twenty (20) feet in height, nor project into the right-of-way more than twelve (12) inches.

(1) Wall-mounted signs, canopy or awning signs, under-canopy or under-awning signs, above-canopy signs and banner signs shall be permitted as regulated in the B-2 and B-2A zones.

(2) In addition to the other signs permitted in this zone, ~~four~~^{five} (4⁵) wall-mounted electronic message display system signs shall be permitted in conjunction with~~for~~ civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity of 15,000 persons. Such signs may be mounted on the wall of the civic center or any connected or adjoining structure under common ownership with the civic center. Two (2) such signs, not exceeding two hundred (200) square feet, shall be permitted. Two (2) additional signs may also be erected, not exceeding fifty (50) square feet each. One (1) sign, not exceeding eight-hundred (800) square feet, shall be permitted, but only if the sign complies with the following additional requirements:

(a) Image:

i. Sign may include dynamic or changing content, such as moving or scrolling messages, special effects, animations, and video, if:

(i) such content is at least eight (8) seconds in duration; or

(ii) such content is authorized by special event permit

ii. Dynamic content permitted hereunder shall not constitute or be considered flashing or blinking.

iii. Static or fixed images or content shall remain static or fixed for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

(b) Location:

i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;

ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.

(c) Luminance or Screen Brightness: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be

equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.

(d) The sign shall not display content or be illuminated after 11 p.m. local time, Sunday through Thursday, nor before 7 a.m., any day, except that the sign may display content or be illuminated when the civic center exhibition halls or arena are open in connection with an event.

~~Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center.~~

(3) Traffic directional signs and menu boards shall be permitted as regulated in the B-1 zone.

(4) A-frame or sandwich board type signs shall be permitted and regulated as in the B-2 and B-2A zones.

(5) Temporary signs. One temporary sign per street frontage shall be allowed subject to the following conditions:

(a) Shall be limited to window or wall signs only.

(b) Shall not exceed fifty (50) square feet per sign where non-rigid materials are used.

(c) Shall not exceed thirty-two (32) square feet per sign where rigid materials, such as wallboard or plywood, are used.

(d) Shall comply with the applicable regulations for the zone in which they are located.

(e) Temporary signage may be displayed once every three (3) months for up to fourteen (14) continuous days.

(6) In conjunction with an indoor theater, one marquee, not to exceed thirty (30) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

(a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.

(b) Location:

i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;

ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.

(c) Duration of message: The sign shall remain static for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

(d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.

(e) The marquee sign shall not display messages or be illuminated when the use is closed.



STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC
MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE
LEXINGTON CENTER BUSINESS (B-2B) ZONE**

APPLICANT: LEXINGTON CENTER CORPORATION

PROPOSED TEXT: (Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

ARTICLE 17: SIGN REGULATIONS

Article 17-11. - Signs permitted by specific zone.

(i) **Lexington Center Business Zone (B-2B)**. Permitted signs may be free-standing or wall mounted, as specified; such signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated; painted wall signs shall be prohibited. No free-standing sign permitted under this section shall exceed twenty (20) feet in height, nor project into the right-of-way more than twelve (12) inches.

(1) Wall-mounted signs, canopy or awning signs, under-canopy or under-awning signs, above-canopy signs and banner signs shall be permitted as regulated in the B-2 and B-2A zones.

(2) in addition to the other signs permitted in this zone, ~~four~~ five (45) wall-mounted electronic message display system signs shall be permitted in conjunction with ~~for~~ civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity of 15,000 persons. Such signs may be mounted on the wall of the civic center or any connected or adjoining structure under common ownership with the civic center. Two (2) such signs, not exceeding two hundred (200) square feet, shall be permitted. Two (2) additional signs may also be erected, not exceeding fifty (50) square feet each. One (1) sign, not exceeding eight-hundred (800) square feet, shall be permitted, but only if the sign complies with the following additional requirements:

(a) Image:

i. Sign may include dynamic or changing content, such as moving or scrolling messages, special effects, animations, and video, if:

a. such content is at least eight (8) seconds indurations; or

b. such content is authorized by special event permit

ii. Dynamic content permitted hereunder shall not constitute or be considered flashing or blinking.



iii. Static or fixed images or content shall remain static or fixed for a period of not less than eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

(b) Location:

i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device:

ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.

(c) Luminance or Screen Brightness: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.

(d) The sign shall not display content or be illuminated at 11 p.m. local time, Sunday through Thursday, nor before 7 a.m., any day, except that the sign may display content or be illuminated when the civic center exhibition halls or arena are open in connection with an event.

~~Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center.~~

- (3) Traffic directional signs and menu boards shall be permitted as regulated in the B-1 zone.
- (4) A-frame or sandwich board type signs shall be permitted and regulated as in the B-2 and B-2A zones.
- (5) Temporary signs. One temporary sign per street frontage shall be allowed subject to the following conditions:
 - (a) Shall be limited to window or wall signs only.
 - (b) Shall not exceed fifty (50) square feet per sign where non-rigid materials are used.
 - (c) Shall not exceed thirty-two (32) square feet per sign where rigid materials, such as wallboard or plywood, are used.
 - (d) Shall comply with the applicable regulations for the zone in which they are located.
 - (e) Temporary signage may be displayed once every three (3) months for up to fourteen (14) continuous days.
- (6) In conjunction with an indoor theater, one marquee, not to exceed thirty (30) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no



more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

- (a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.
- (b) Location:
 - i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;
 - ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.
- (c) Duration of message: The sign shall remain static for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
- (d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.
- (e) The marquee sign shall not display messages or be illuminated when the use is closed.

STAFF REVIEW:

The applicant, Lexington Center Corporation (LCC), is a not-for profit corporate agency of the Lexington Fayette Urban County Government established in 1974 to manage and maintain Rupp Arena, Lexington Opera House, Lexington Convention Center, The Shops at Lexington Center and Triangle Park. To further their mission, the LCC has filed a Zoning Ordinance text amendment to Article 17: Signage Regulations to allow for an additional electronic message display signage for civic center uses in the Lexington Center Business (B-2B) Zone. With their letter of justification, the LCC indicates that the purpose of the additional signage is to notify the public of events and attractions being held at Central Bank Center, but also to become "an independent dynamic visual attraction." The applicant states that the additional sign is vital to the success of the Central Bank Center.

SIGNAGE REGULATIONS

Article 17 of the Zoning Ordinance regulates signage by zoning category, permitting specific sign types, illumination, size, height and location for each zone across the Urban County. Similar to other land use regulations, the intensity and amount of signage increases as the activity and land use permitted within a zone intensifies. For example, residential zones are permitted the least amount of signage, while business and industrial zones are permitted the most. The Lexington Center Business (B-2B) zone permits free-standing signs, wall signs, projecting signs, canopy or awning signs, window signs, banner signs, A-frame signs, marquee signs and electronic message display



signs. The current regulations permit a total of four (4) electronic message display signs for a civic center which contains an exhibition hall and an arena for athletic and cultural events; two (2) of the signs may be a maximum of two hundred (200) square feet which, and the remaining two (2) signs are limited to a maximum of fifty (50) square feet each. These regulations provide for up to five hundred (500) square feet of electronic message display signage only for a civic center, which is in addition to all of the other types of signs permitted within the B-2B zone for all uses. Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center (Article 17-11(i)(2)).

Electronic message display systems are defined within the Zoning Ordinance as a sign with copy or images which includes, but is not limited to reflective disc, direct illumination, rotating veils, light emitting diodes (L.E.D.s), or liquid crystal diodes (L.C.D.s), and is controlled by means of a central computer or video control system and which has no audible sound (Article 17-8(o)). This form of signage is only allowable in the Highway Service Business (B-3), Downtown Business (B-2), Downtown Frame Business (B-2A), and Lexington Center Business (B-2B) zones. The regulation of the size and operation of the electronic message display system form varies based on the context and form of development or land use with which they are associated, but use of dynamic content or video has never been allowed by the Zoning Ordinance.

An electronic message display system within the B-3 zone is allowable as part of a permitted free-standing or wall-mounted billboard or sign for an indoor or outdoor stadium or arena having a permanent seating capacity in excess of five thousand (5,000) persons for athletic and cultural events. Within this zone the electronic message display system cannot exceed fifty percent (50%) of the total sign area of the permitted sign, and no moving or scrolling messages are permitted. Messages displayed may be changed not more frequently than every fifteen (15) seconds (Article 17-11(g)(7)).

Within the B-2 and the B-2A zones, electronic message display systems are allowable in addition to the other permitted signs. These allowable signs include: a wall-mounted electronic message display center boards for civic centers, which contain exhibition halls and an arena for athletic and cultural events; for hotels and motels containing conference centers and restaurants; for television and radio system signal distribution centers and studios; and for banks, securities and commodities brokers, credit institutions, savings and loans, and investment companies. The total surface area shall not exceed eighty (80) square feet per sign. One electronic message display center shall be permitted per street front, with a maximum of two signs (Article 17-11(h)(7)).

In addition to the current allowance for a civic center within the B-2B zone, marquee signs were recently added to the Zoning Ordinance in 2022. An indoor theater is allowed to erect a marquee sign utilizing an electronic message display system. Such a sign is limited to a maximum of thirty (30) square feet per theater, with an overall maximum of three hundred (300) square feet. A marquee can only use the electronic message display illumination if the sign does not utilize scrolling or moving messages, special effects or animations; does not interfere, imitate or resemble a traffic control device; is not located adjacent or across a right-of-way from a residential zone; limits the duration of the image or message to an 8-second hold time; utilizes auto-dimming technology and is turned off when the business is closed (Article 17-11(i)(6)).



TEXT AMENDMENT PROPOSAL

The applicant proposes a text amendment to allow one additional electronic message display sign of up to eight hundred (800) square feet for the civic center, for a total of 1,300 square feet of electronic signage for the site. The applicant desires the ability to display not only electronic images and messages, but also dynamic or changing content, to include moving, scrolling, special effects, animation and video when such content lasts eight (8) seconds or longer or if authorized by a special event permit. The applicant offered similar restrictions to the recently adopted text amendment for marquees, including static message duration of at least eight (8) seconds; no interference with traffic signals or other devices; spacing from a residential zone; luminance or brightness controls for auto-dimming; and limited hours of operation.

Although the applicant proposes some language similar to the recently approved marquee sign regulations, the proposal far exceeds what is permitted in any other zone and for any other land use – specifically the size and use of dynamic content or video on the sign.

EVALUATION

With the development or incorporation of new forms of signage, it is necessary to maintain consistency with the established regulations, which allows for consistent application across the community, while also establishing new language that reflects best practice focused on the protection of the health, safety and welfare of our community. By blending the two, there is a continuity of community character, while also allowing for the incorporation of new technologies. New signage regulations must also be supported by the intent statement of the Zoning Ordinance and be aligned with the legitimate needs for wayfinding within the Urban County.

While the applicant has styled the proposed text amendment based on recent changes to Article 17, the staff remains concerned regarding the introduction of dynamic and video content, the lack of definitions for “dynamic content” and “luminance,” the potential safety conflicts related to constant changes on a sign, the impact on adjacent land uses, and the impact on tourism. Lastly, the applicant has not explained the reasoning behind the significantly larger sign proposal or the legitimate need for video content. The staff would like to research best practices and other ordinances that regulate this type of signage.

The Staff Recommends: Postponement, for the following reasons:

1. The proposed text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone in a manner not currently allowed in the Urban County. Additional research and analysis is necessary regarding the implications of introducing dynamic content to any sign. Any new signage should not have an adverse influence or negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.
2. Additional time is necessary to research best practices and other ordinances that regulate the proposed signage type, including size, location, timing/duration, lighting, and related definitions.
3. The applicant should provide justification for the proposed size of the sign and identify the legitimate need for dynamic content over static content.

TLW
5/31/23
Planning Services/Staff Reports/ZOTA/2023/PLN-ZOTA-23-00002 B-2B Signage.doc



**SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT****PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC
MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE
LEXINGTON CENTER BUSINESS (B-2B) ZONE****STAFF REVIEW:**

Since the Zoning Committee met in June, the staff and applicant have met several times to discuss the application. The applicant, Lexington Center Corporation (LCC), has submitted a supplemental justification statement to address the concerns expressed in the initial staff report and the Committee meeting. The applicant and the staff have reviewed multiple sign regulations from other communities, and best practice guidance from the United States Sign Council.

The applicant states that the additional sign is vital to the success of the Central Bank Center, and in their supplemental justification elaborated by stating that dynamic content is necessary to effectively showcase LCC's world-class venues and events to a growing community and tourists. The applicant also discussed with the staff additional details about how they propose to utilize the sign on a daily basis to support the activities and events that occur inside of the civic center, arena and convention center spaces, and not as an advertising device for off-site activities.

TEXT AMENDMENT PROPOSAL

The applicant continues to seek approval of a text amendment that would allow for greater digital signage in conjunction with the civic center land use. The additional signage proposed is of a new type, utilizing the most recent digital technology which can display dynamic content and full video display.

After conducting additional research, the staff concluded that incorporating these new sign types for a civic center within the downtown has merit, but greater scrutiny is required. In comparable communities, digital signage is permitted under limited circumstances. These communities limit the following factors: size, height, mounting type (freestanding or attached to a wall), illumination and location within a specific downtown zone or entertainment district. In addition, the United States Sign Council has published a model sign code for on-premise signage which recommends that digital signage with video content only be permitted within downtown commercial zones and only with a special use permit (aka conditional use permit), or special permission granted by a board or committee.

Considering the best practices recommended for such situations and the knowledge that every community has its own special character and desired development, staff believes that the downtown business zones, specifically the Lexington Center Business (B-2B) zone, is particularly situated to allow for unique or special signage in relation to the renovated civic center. The civic center is a specific land use within the downtown core that attracts tourists, visitors, and the community to ever-changing events and activities on a daily basis. This type of land use warrants electronic message



display system signage that can change its images and messages to serve the community's needs frequently.

The staff recognizes that pedestrian activity is higher and average traffic speeds are lower within a downtown district or zone. This circumstance tends to limit the negative impact on public safety. In essence, the slower vehicle speeds of about 15 miles per hour allow for longer glances at electronic message display systems without negatively impacting other people within the public right-of-way or creating an undue distraction.

However, the question of dynamic content and video display usage of such a sign should receive a more detailed review. For this reason, the staff recommends that a larger wall-mounted sign be permitted for up to 800 square feet, but if dynamic content is desired, a conditional use permit would need to be approved by the Board of Adjustment. In a similar vein, if full video display is desired, it would only be permitted if the local government issues a special event permit for the site. The local government would be responsible for crafting any conditions for such a permit, such as closure of an adjacent public street, limiting the operation for such video display to a particular event date, among other considerations.

In addition to the proposed sign regulations, several new terms are in need of definition in Article 17. Those new terms include: dynamic content, luminance, nit and video display method. These new definitions will provide clarity in order to distinguish between the different functions allowed on electronic message display centers. A standard electronic message display center will hold an image or message for at least 8 seconds. A dynamic content electronic message display center will be allowed to scroll, animate, use special effects and change images more frequently, but full video displays (like television) will not be permitted. A video display electronic message display sign will allow real time full-motion imagery like a television. This may include displaying a game or full length feature film when a special event permit has been issued for the site.

EVALUATION

As mentioned in the original staff report, signage regulations should be consistent across zones, be supported by the intent statement of the Zoning Ordinance and be aligned with the legitimate needs for wayfinding within the Urban County.

The proposed signage expansion in only the B-2B zone is consistent in that it utilizes luminance and display limitations already established within the past year for marquee signage downtown. In addition, the proposed new sign is directly linked to the civic center, arena and conference center which serve as a tourism attraction for the community in the center of downtown Lexington. Allowing for an attractive and functional sign that supports the stated intent of Article 17: Sign Regulations are of utmost importance. The proposed sign will support the legitimate needs of the civic center, will not be unduly distracting, will not detract from the overall aesthetics of the downtown business zones around the civic center, and will protect and enhance the tourism industry. By regulating a larger electronic sign with dynamic content as a conditional use, to be reviewed by the Board of Adjustment, the community can be assured that public comment will be considered in determining the appropriateness of such a sign and if it will remain harmonious with the community identity and create a pleasing community image.

PROPOSED STAFF ALTERNATIVE TEXT is attached for further review and consideration.



The Staff Recommends: Approval for the following reasons:

1. The proposed text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone in a manner not currently allowed in the Urban County. Such signage will support the tourism industry, will not be unduly distracting, will not distract from the overall community aesthetics, and will support the legitimate needs of the civic center which has changing events and activities on a daily basis.
2. The use of dynamic content on an electronic message display center should only be permitted by a conditional use permit in the B-2B zone. The Board of Adjustment, in conduct of their normal duties, will be able to determine through a public hearing if a dynamic content electronic message display center sign will not have an adverse influence or negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

TLW/JD
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Article 17-11. - Signs permitted by specific zone.

(i) **Lexington Center Business Zone (B-2B).** Permitted signs may be free-standing or wall mounted, as specified; such signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated; painted wall signs shall be prohibited. No free-standing sign permitted under this section shall exceed twenty (20) feet in height, nor project into the right-of-way more than twelve (12) inches.

(1) Wall-mounted signs, canopy or awning signs, under-canopy or under-awning signs, above-canopy signs and banner signs shall be permitted as regulated in the B-2 and B-2A zones.

(2) In addition to the other signs permitted in this zone, ~~four~~ five (45) wall-mounted electronic message display system signs shall be permitted in conjunction with ~~for~~ civic centers which contain exhibition halls having a minimum of 85,000 square feet of total floor space and an arena for athletic, artistic and cultural events having a minimum permanent seating capacity of 15,000 persons. Such signs may be mounted on the wall of the civic center or any connected or adjoining structure under common ownership with the civic center. Such wall-mounted signs shall be permitted and regulated as follows:

(a) Two (2) such electronic message display system signs, not exceeding two hundred (200) square feet each, shall be permitted. Such signs may not be erected on the same exterior façade or wall unless separated by at least two-hundred fifty (250) feet.

(b) Two (2) additional electronic message display system signs may also be erected, not exceeding fifty (50) square feet each, shall be permitted. Such signs may not be erected on the same exterior façade or wall unless separated by at least two-hundred fifty (250) feet.

(c) One (1) sign, not exceeding eight-hundred (800) square feet, shall be permitted, but only if the sign complies with the following additional requirements, which may be either:

i. an electronic message display system sign, or

ii. a sign with dynamic content, if permitted as a conditional use under Article 8-19(d).

(d) Use of electronic message display systems shall be permitted only if the sign complies with the following requirements:

i. Image and Duration of Message:

i. Sign may include dynamic or changing content, such as moving or scrolling messages, special effects, animations, and video, if:

a. such content is at least eight (8) seconds in duration; or

b. such content is authorized by special event permit

ii. Dynamic content permitted hereunder shall not constitute or be considered flashing or blinking;

a. There shall be no moving or scrolling messages, special effects, or animations. Static or fixed images or content shall remain static or fixed for a period of not less than eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

- a. Notwithstanding the foregoing, use of video display method shall only be permitted following issuance of a special event permit by the local government.
- ii. Location:
 - a. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;
 - b. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.
- iii. Luminance or Screen Brightness:
 - a. The sign ~~must~~ shall be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance. Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette County.
 - b. The sign shall not display content or be illuminated at 11 p.m. local time, Sunday through Thursday, nor before 7 a.m., any day, except that the sign may display content or be illuminated when the civic center exhibition halls or arena are open in connection with an event.

~~Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center.~~

- (3) Traffic directional signs and menu boards shall be permitted as regulated in the B-1 zone.
- (4) A-frame or sandwich board type signs shall be permitted and regulated as in the B-2 and B-2A zones.
- (5) Temporary signs. One temporary sign per street frontage shall be allowed subject to the following conditions:
 - (a) Shall be limited to window or wall signs only.
 - (b) Shall not exceed fifty (50) square feet per sign where non-rigid materials are used.
 - (c) Shall not exceed thirty-two (32) square feet per sign where rigid materials, such as wallboard or plywood, are used.
 - (d) Shall comply with the applicable regulations for the zone in which they are located.
 - (e) Temporary signage may be displayed once every three (3) months for up to fourteen (14) continuous days.
- (6) In conjunction with an indoor theater, one marquee, not to exceed thirty (30) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

- (a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.
- (b) Location:
 - i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;
 - ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.
- (c) Duration of message: The sign shall remain static for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
- (d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.
- (e) The marquee sign shall not display messages or be illuminated when the use is closed.

Article 17-18. Definitions.

- (o) *Electronic Message Display Systems*: A sign with copy or images, which includes, but is not limited to reflective disc, direct illumination, rotating veils, light emitting diodes (L.E.D.s) or liquid crystal diodes (L.C.D.s) and is controlled by means of a central computer or video control system and which has no audible sound.
- (p) *Flashing or Blinking*: Intermittent or sequential illumination for the purpose of attracting attention to the sign.
- (ii) *Rotating or Moving Sign*: Any portion of which moves by mechanical means or the wind; does not refer to changing copy with an electronic message display system.

Proposed new definitions

- (?) *Dynamic Content*: Moving or changing imagery such as video, animations and special effects. Dynamic content shall be displayed for no less than eight (8) seconds in duration. Signs with dynamic content may utilize video display method only following issuance of a special event permit by the local government.
- (?) *Luminance*: The light that is emitted by or reflected from a surface, measured in nits.
- (?) *Nit*: A photometric unit of measurement describing luminous intensity (candelas) per unit area. Expressed in SI units, one nit is equal to one cd/m².
- (?) *Video Display Method*: A method of display on a sign characterized by real-time full-motion imagery of at least television quality.

Article 8-19. Lexington Center Business (B-2B) Zone.

(d) *Conditional Uses.* (Permitted only with Board of Adjustment approval.)

13. Sign with Dynamic Content, provided such use conforms to the requirements of Article 17-11(i)(2)(c).

1. **PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE** - a petition for a Zoning Ordinance text amendment to allow additional electronic message display signage including video displays (dynamic content) in association with a civic center in the Lexington Center Business (B-2B) zone.

REQUESTED BY: LEXINGTON CENTER CORPORATION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Approval of the Staff alternative text.

The Staff Recommends: Approval of the Staff Alternative, for the following reasons.

1. The proposed text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone in a manner not currently allowed in the Urban County. Such signage will support the tourism industry, will not be unduly distracting, will not distract from the overall community aesthetics, and will support the legitimate needs of the civic center which has changing events and activities on a daily basis.
2. The use of dynamic content on an electronic message display center should only be permitted by a conditional use permit in the B-2B zone. The Board of Adjustment, in conduct of their normal duties, will be able to determine through a public hearing if a dynamic content electronic message display center sign will not have an adverse influence or negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

Staff Text Amendment Presentation – Ms. Traci Wade presented and summarized the staff report and recommendations for this text amendment. Ms. Wade stated this text amendment is to update sign regulations in the B-2B zone to allow for a larger sign at the new Central Bank Center and Convention Center. Ms. Wade stated that the applicant would like to have greater digital signage that can display dynamic content and full video to showcase upcoming events and other content.

Ms. Wade went over the current regulations, stating that it currently allows an electronic message display system with LED's or LCD's that is controlled by means of a central computer system with no audible sound. Currently they are allowable in the B-3, B-2, B-2A, and B-2B zones. In the B-2B zone, a civic center is allowed 500 square feet of electronic signage. Ms. Wade showcased photographs of the current electronic signage associated with the convention center that have been used for a number of years. Additionally, Ms. Wade noted the changes in the past year for marquee signs using electronic message display systems, including that the sign must be static, for at least eight (8) seconds.

Ms. Wade indicated that staff believes that the downtown business zones, specifically the Lexington Center Business (B-2B) zone, is particularly situated to allow for unique or special signage in relation to the renovated civic center. The civic center is a specific land use within the downtown core that attracts tourists, visitors, and the community to ever-changing events and activities on a daily basis. This type of land use warrants electronic message display system signage that can change its images and messages to serve the community's needs frequently.

The staff recognizes that pedestrian activity is higher and average traffic speeds are lower within a downtown district or zone. This circumstance tends to limit the negative impact on public safety. In essence, the slower vehicle speeds of about 15 miles per hour allow for longer glances at electronic message display systems without negatively impacting other people within the public right-of-way or creating an undue distraction.

Ms. Wade stated that after reviewing various sign regulations in different cities, Staff found that any use of video was recommended within downtown commercial zones and only with a special use permit. After conducting additional research, the staff concluded that incorporating these new sign types for a civic center within the downtown has merit, but greater scrutiny is required. Due to Staff's research, Ms. Wade indicated that dynamic content and video board use could be appropriate in this zone if the Staff alternative language is implemented.

Ms. Wade explained that the new electronic message display system sign could be no bigger than 800 square feet, use of dynamic content would have to be approved by the Board of Adjustment, and full video for a special event must be permitted by the Mayor's Office. Ms. Wade stated that this change allows for the Board of Adjustment and the Mayor's Office to determine what would be appropriate for the screens. Additionally, Ms. Wade indicated that the sign would have to be turned off at 11:00 PM (or the end of an event) every night to ensure there was no light pollution or nuisance.

Ms. Wade continued giving the proposed new definitions of "dynamic content", "luminance", "nit", and "video display method" stating that Staff thought it was important to create these definitions to be make the Ordinance

more modern and to clarify the regulations. Ms. Wade shared exhibits from the applicant depicted the proposed signage.

Ms. Wade concluded her presentation by stating that Staff is recommending approval of the staff alternative text, and could answer any questions from the Planning Commission.

Commission Questions – Mr. Pohl asked if the architect was involved on the placement and size of the screen in the photographs that Ms. Wade presented. Ms. Wade stated that would be a question better suited for the applicant.

Mr. Owens asked if this application was something that was continued from before he started back on the Planning Commission, and Ms. Wade indicated that the Zoning Committee had been hearing about this for a few months, but there has not been a full presentation until now.

Ms. Worth asked if the screen would include sound for video, and Ms. Wade stated that would be up to the Mayor's Office to determine if sound could be played for special events.

Applicant Presentation – Evan Buckley, attorney for the applicant, stated that Staff and the applicant had been working diligently on this application and are in full agreement with the Staff's recommendations. Mr. Buckley gave a brief overview of the Lexington Center Corporation stating that it is a non-profit comprised of a board of community leaders and noted the recently completed renovation to the Lexington Center. Mr. Buckley indicated that this text amendment would allow for the screens that would make the Lexington Center a truly modern development.

Mr. Buckley answered Ms. Worth's question about sound and indicated that the video board would not have sound at all. Additionally, Mr. Buckley answered Mr. Pohl's question about the design and indicated that the frame was built to maintain and hold the screen.

Mr. Buckley concluded and stated he could answer any questions from the Planning Commission.

Public Comment – Amy Clark, 626 Kastle Road, stated that there has not been enough time to review the Staff alternative and urged the Planning Commission continue this item to take a better look at the language and more citizen participation.

Commission Comment – Mr. Owens wanted to clarify his earlier question, and stated that his confusion was about an earlier text amendment from last year.

Mr. Pohl stated he thought the large sign could have a better design and its position in the center is unfortunate.

Ms. Worth asked if Mr. Pohl was going to ask for a postponement to have the architect review the design more, and Mr. Pohl indicated that he did not think it was worth it at this time, unless another commissioner felt as strongly as he did.

Mr. Davis asked if the design was going to be finalized, or if that would be down the line. Ms. Wade indicated that would be finalized at the Board of Adjustment, and today the Planning Commission is just voting on the text amendment.

Action – A motion was made by Mr. Nicol, seconded by Mr. Owens and carried 8-0 (Forester and Wilson absent) to approve the Staff alternative text for PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE for the reasons provided by Staff.