

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS

1. **PLN- ZOTA-24-00008: AMENDMENT TO ARTICLE 17 FOR DIGITAL BILLBOARDS** – a text amendment to Article 17 to define and regulate digital billboards in the B-3, B-4, I-1, I-2, and CN zones.

INITIATED BY: Urban County Council
PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **No Recommendation.**

The Staff Recommends: **Approval of the Staff Alternative text** for the following reasons:

1. The proposed text amendment allows for the expansion of the use of electronic billboards within the most intense zones, where standard billboards have already been found to be appropriate.
2. The proposal incorporates spacing and separation requirements to ensure that there is not an undue concentration of the uses within a particular area, and that the signs are an adequate distance from residential zones.
3. The proposal includes prohibitions on distracting features such as dynamic content, animations, flashing content, or rapidly changing messages, which create distractions and unsafe driving conditions.
4. The proposed text creates standards for the sign’s construction that ensure the impact of the sign is directed towards the roadway, and not the adjoining parcels.

Staff Presentation – Mr. Daniel Crum presented the staff report and proposed text amendment. Mr. Crum highlighted the existing billboard regulations stating that they are permitted in the B-3, B-4, C-N, I-1, and I-2 and the various updates and changes that have taken place over the last two years, including the Digital Marquee text amendment and the Convention Center electric signage. Mr. Crum presented a map of Lexington and the locations of billboards along with what zones each were in and noted a significant concentration of billboards on New Circle Road.

Mr. Crum stated that the Urban County Council initiated this text amendment and noted their proposed text. In it, they propose the creation of the “Digital Billboard” definition, would be subject to the same standards as regular billboards, including separation requirements, no flashing or animations, a minimum message duration, and luminance maximums. Mr. Crum continued and presented the Staff alternative text changes that include: prohibition on being incorporated into non-conforming signage, no digital billboards in the CN zone, clarification of spacing standard from all billboards, and requirement to utilize blocking or louver construction to reduce the signs viewing angle. When discussing the research that went into the Staff alternative text, Mr. Crum indicated that digital billboards have a much bigger impact on the surrounding area and a lot of thought and care should go into where these digital billboards are placed. Additionally, Mr. Crum noted the safety concerns that can stem from digital billboards and indicated that they can be distracting, noting that the proposed eight seconds per advertisement or image was in line with the national average and would help alleviate unwanted distractions.

Mr. Crum concluded by stating that Staff is recommending Approval of the Staff Alternative Text and could answer any questions from the Planning Commission.

Commission Question – Mr. Bill Wilson asked if the eight second duration was a minimum or could the duration be longer. Mr. Crum indicated that was correct and the duration could be longer.

Mr. Wilson asked about the safety issues that stem from digital billboards. Mr. Crum pointed Mr. Wilson to a document in Granicus and stated the takeaways included an increase in the attention to digital billboards and that there were cities that had taken those into account and made them work.

Mr. Pohl asked how the approval of digital billboards serves the objectives of the Comprehensive Plan. Mr. Crum stated that in the Comprehensive Plan there is a larger conversation on allowing people reasonable use of their land and increased economic development and balancing that with the safety and interests from the public. Mr. Crum indicated that the Comprehensive Plan speaks to those ideas and noted that there was not one particular part of the Comprehensive Plan that was cited and Staff was responding to the language and direction from the Urban County Council.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Mr. Pohl followed up by asking who would benefit from this activity. Mr. Crum stated that he thought that any property owner that could utilize the digital billboard or any business looking to advertise. Mr. Crum reiterated that Staff was looking at the safety issues they could address.

Mr. Pohl stated that he thought the benefit would clearly go to the landlords or business owners, but would not generally be a benefit to the public.

Mr. Frank Penn stated that this was not the first time the Planning Commission has dealt with digital billboards over the last 15 years and asked if the Planning Commission had a say on the content that could be displayed. Mr. Crum stated that the Planning Commission was limited to time, manner and place restrictions and the Commission could not regulate the content, such as an advertisement for Louisville Men's basketball.

Mr. Penn asked who makes the decision on what is displayed on the digital billboard and mentioned items such as political messages and hate speech. Mr. Crum stated that there are limits to free speech in general and adult content and hate speech could be regulated

Ms. Tracy Jones, Department of Law stated that unless the content is some kind of hate speech, the Planning Commission cannot tell owners what they can and cannot put in the content of a sign.

Mr. Penn asked if adult entertainment stores could be advertised on digital billboards and Ms. Jones said that the business itself could advertise, but the type of activities that go on there could not be shown.

Mr. Jim Duncan stated that he understood what Mr. Penn was getting at but that everything that Mr. Penn had mentioned can already be put up on a static billboard.

Mr. Nicol stated that he was interested in allowing non-conforming signs the opportunity to upgrade to a single digital sign that would allow for more businesses to advertise on a single billboard and would benefit the community by cleaning up multiple signs. Mr. Nicol suggested using the Board of Adjustment as the avenue to apply for a non-conforming sign to be upgraded.

Mr. Crum indicated that there would need to be more discussions with the Department of Law over Mr. Nicol's proposal and if that would be within the Board of Adjustment's purview.

Ms. Jones chimed in and stated that Mr. Nicol's proposal could lead to some complications and that any change like that would lead to even more work for the already busy Board of Adjustment.

Ms. Judy Worth while referencing the map provided by Staff asked what zones were recommended on the Imagine Nicholasville Road and how that might relate to this text amendment. Ms. Wade stated that there was a proposal to add housing within corridor nodes, but if a property already had a billboard and it is rezoned to the CN or a residential zone, the billboard could remain, but becomes non-conforming.

Mr. Johnathon Davis stated his concern for digital billboards being hacked and asked if there was a mechanism that the Planning Commission could add to ensure that the digital billboards were not connected to the internet. Ms. Jones stated that she understood his concern, but there was not a lot that the Planning Commission could do to stop that.

Mr. Michler stated he thought there were more reasons in the Comprehensive Plan to disapprove this than to approve it and it appeared to him that Staff was calling for a concentration of digital billboards near residential development around the corridors. Additionally, Mr. Michler mentioned the digital signs at the University of Kentucky, and the traditional billboards over the Chevy Chase shops. Mr. Michler asked what the rationale was for the 150 foot tall sign on S. Upper Street. Mr. Crum stated that the University of Kentucky is exempt from local zoning regulations and as such there is nothing the Planning Commission could do to restrict UK's signage. Mr. Crum stated that the corridor area already has existing billboards present and does not change the arterial corridor in a negative way.

Mr. Michler also asked the rationale for the 150-foot distance requirement from residential zones. Mr. Crum stated that the distance requirement is relative to the existing separation with standard billboards. He added that the Planning Commission could consider modifying that distance for digital billboards.

Mr. Michler stated that while it was not his area of expertise, he did some research on billboards and they have either very long ground leases or easements and asked if Staff had done research on that. Mr. Crum stated that was an interesting point, but Staff had not looked into that and it would most likely be difficult to regulate since those are private agreements.

Chairman Forester asked if Staff had been in contact with any person from Lamar, the sign company, and Mr. Crum indicated that they had not because it was initiated by the Urban County Council. Mr. Forester concluded by saying that he had a contact if Staff needed it.

Mr. Penn stated his concern with the luminance of digital billboards and mentioned there could be very bright lights in a very concentrated area, like the Distillery District, and anything the Planning Commission could do to prevent that would be helpful.

Public Comment – Amy Clark, stated her opposition to digital billboards. Her concerns included: the intensity of the use of digital billboards, enforcement issues, upgrading current static billboards, and how digital billboards might disproportionately affect impoverished portions of Lexington.

Walt Gaffield, stated his concerns with digital billboards related to distracted driving, the locations of potential digital billboards, and the conflict with building housing on corridors where the ordinance would allow digital billboards.

Mike Brower, Southern Heights Neighborhood Association, stated their opposition because of safety concerns and the possibility of hacking the billboard.

Commission Question – Mr. Davis asked if there were protections for the A-R zone in this text amendment. Mr. Crum stated that there was not any additional considerations for agricultural zones and that the focus of this text amendment was protecting the residential zones.

Mr. Owens asked if the conforming billboards could be changed to digital. Mr. Crum indicated that they could as long as it was not within 500 feet of another static billboard, not within 2500 feet of a digital billboard, and met all the lumen and other requirements, then it would be allowable.

Mr. Owens asked if any of the billboards downtown could be made digital and Mr. Crum indicated that those billboards are non-conforming based on the zone.

Mr. Owens asked if there could only be a single advertisement on a digital billboard or could there be more than one, for example, segmented into four parts. Mr. Crum stated that the ordinance only regulates the size of the billboard at 400 square feet, so it could have multiple messages, but can only change every eight seconds.

Mr. Owens concluded by asking that all of these regulations are related to billboards and not wall mounted signs or digital marquees and Mr. Crum indicated that was the case.

Mr. Wilson asked for clarification on Mr. Owens' question about dividing the sign and asked how many messages the sign could be divided into. Mr. Crum indicated as many as they want as long as it stays within the 400 square foot maximum.

Public Rebuttal – Amy Clark, restated her opposition and insisted that the dynamic images will be a hindrance that is detrimental to public safety, and stated her desire for a height limit.

Walt Gaffield, stated that the Planning Commission should not be influenced because the Urban County Council sent this text to them.

Action – A motion was made by Mr. Nicol, seconded by Mr. Owens and failed 1-8-2 (Penn, Pohl, Worth, Z. Davis, Michler, J. Davis, Wilson, and Owens opposed) (Barksdale and Forester abstained) to approve PLN-ZOTA-24-00008: AMENDMENT TO ARTICLE 17 FOR DIGITAL BILLBOARDS with the alternative text recommended by Staff, adding language to allow non-conforming signs to be approved at the Board of Adjustment.

Action – A motion was made by Mr. Wilson, seconded by Mr. Owens and failed 3-8 (Penn, Pohl, Worth, Z. Davis, Michler, J. Davis, and Owens opposed) to approve PLN- ZOTA-24-00008: AMENDMENT TO ARTICLE 17 FOR DIGITAL BILLBOARDS with the alternative text recommended by Staff.

Action – A motion was made by Mr. Michler, seconded by Mr. Pohl and carried 8-3 (Nicol, Barksdale, and Wilson opposed) to disapprove PLN- ZOTA-24-00008: AMENDMENT TO ARTICLE 17 FOR DIGITAL BILLBOARDS for the following reasons:

1. Allowing digital billboards within Fayette County should not be permitted because, despite proposed mitigation, such use is inappropriate due to the aesthetic and nuisance impact of increased lighting on adjacent property owners, especially residential land uses.
2. The proposed text amendment is not in agreement with the 2045 Comprehensive Plan, Theme B, Protection Policy #10, which recommends reducing light pollution to protect dark skies. The illumination of a digital billboard will increase light pollution and nuisance to the general travelling public.
3. The request introduces additional roadway conflicts, reducing the efficiency and effectiveness of our roadway systems (Theme D, Goal #1), and creating less safe conditions (Theme D, Goal #1.d).
4. The proposed text amendment does not address numerous concerns, including the possibility of hacking or security of messages on a digital billboard, nor reduction of signage clutter by instituting swapping or removal provisions.
5. The proposed text recommends allowing digital billboards along federal and state highways in Corridor Business, Warehouse and Wholesale Business, Light Industrial, or Heavy Industrial zone. These zones are most common along corridors including New Circle Road, Nicholasville Road, Winchester Road and Richmond Road, which are the most heavily traveled corridors within Fayette County. Thus, higher levels of distraction caused by digital billboards could lead to additional injury and non-injury accidents along the most heavily traveled corridors.