

603 KAR 10:021. Electronic advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2)

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise electronic advertising devices.

Section 1. General Conditions Relating to Off-Premise Electronic Advertising Devices. (1) An electronic advertising device visible from the main travelled way on an interstate, parkway, national highway system, or federal-aid primary highway shall be prohibited in a protected area unless the device is located in an urban area or urbanized area.

(2) An advertising device in a protected urban area shall be:

(a) A legal, but not a nonconforming, static advertising device in existence or approved pursuant to a permit issued within one (1) calendar year prior to the effective date of this administrative regulation that is proposed for conversion to an electronic advertising device;

(b) Within 660 feet of right-of-way; and

(c) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices.

(3) An electronic advertising device in an urbanized protected area shall be:

(a)1. Within 660 feet of right-of-way; and

2. Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices; or

(b) Compliant with a variance that has been granted by a local governing body such as a planning and zoning commission.

(4) An off-premise electronic advertising device shall not be converted to an off-premise static advertising device prior to receiving a permit pursuant to 603 KAR 10:010.

(5) An electronic advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(6) The erection or existence of an electronic advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Is erected or maintained upon a tree;

(i) Is erected upon or overhanging the right-of-way;

- (j) Has a facing larger than 672 square feet;
- (k) Has more than one (1) face per facing;
- (l) Is a non-billboard electronic advertising device; or
- (m) Is mobile, temporary, or vehicular.

(7) An on-premise advertising device shall not affect spacing requirements for an off-premise electronic advertising device.

(8) An electronic advertising device shall not contain extensions to the face.

(9) Interior angles between two (2) facings of an electronic advertising device shall not exceed forty-five (45) degrees.

(10) The name of the owner of an electronic advertising device shall be legible from the main traveled way and shall not be larger than twenty (20) square feet. The owner's name shall be shown without other owner information and shall not be considered a message.

(11) The message on an electronic advertising device shall:

- (a) Be static for at least eight (8) seconds;
- (b) Change from one (1) message to another in less than two (2) seconds;
- (c) Not blink, scroll, or contain animation or video; and
- (d) Be programmed to freeze in a static display if a malfunction occurs.

(12) An electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(13) Spacing between off-premise advertising devices per visible direction of travel on interstates, parkways, national highway systems, or federal-aid primary highways shall be at least:

- (a) 2,500 feet between off-premise electronic advertising devices; or
- (b) 500 feet between an off-premise electronic advertising device and an off-premise static advertising device.

Section 2. Exchange of Billboards for Permit. (1) An exchange of six (6) existing off-premise advertising devices shall be required for one (1) new off-premise electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal aid primary highway.

(2) An exchange of five (5) existing off-premise advertising devices shall be required for the conversion of an existing legal static advertising device in an urban area or an urbanized protected area to an off-premise electronic advertising device.

(3) An off-premise advertising device to be exchanged shall be:

- (a) Situated in an unpermissible location in a protected area;
- (b) Visible from a scenic highway;
- (c) Currently nonconforming as established in Section 5 of this administrative regulation or pursuant to local regulations; or
- (d) Illegal.

(4) An advertising device proposed for an exchange for a permit shall be no less than fifty (50) square feet per facing.

(5) An advertising device proposed for exchange that meets the requirements of subsections (3) and (4) of this section shall be approved by the department prior to exchange.

(6) The owner of an exchanged advertising device shall receive credit by the department for each advertising device removed after the effective date of this administrative regulation.

(7) If an advertising device is removed by an owner in order to obtain a permit under this administrative regulation, but the permit is denied by the department, the department shall credit the owner for the removed device pending the outcome of the appeal or until a permit is filed for another advertising device.

(8) If the permittee voluntarily removes an advertising device and receives credit toward a permit for an electronic advertising device, the permittee waives any right or claim to any additional compensation from the department for that device.

Section 3. Off-premise Electronic Advertising Devices on Interstates and Parkways. (1) Electronic advertising devices shall only be erected or maintained in a protected area of an interstate or parkway that:

(a) Is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

(b) Was zoned commercial or industrial and included a commercial industrial land use on September 21, 1959.

(2) An electronic advertising device shall be no closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

Section 4. Off-Premise Electronic Advertising Devices on National Highway System and Federal-Aid Primary Highways. An electronic advertising device visible from a national highway system or federal-aid primary highway shall be erected and maintained in:

(1) A commercial or industrial zone; or

(2) An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

Section 5. Nonconforming Electronic Advertising Devices. (1) A nonconforming electronic advertising device in a protected area shall not require a permit and shall continue to exist if the device:

(a) Has not been abandoned or discontinued;

(b) Has been subjected to only routine maintenance as established in subsection (7) of this section;

(c) Is in compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at permitting; and

(d) Remains substantially the same including the structure as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming electronic advertising device shall be submitted electronically to the department pursuant to the following table:

| Dept. of Highways' District # | Submittal Year | Submittal Period* |
|-------------------------------|----------------|-------------------------------|
| 1 & 7 | Odd | January 1 - April 30th |
| 2 & 4 | Even | January 1 - April 30th |
| 3 & 9 | Odd | May 1st - August 31st |
| 6 & 8 | Even | May 1st - August 31st |
| 5 & 11 | Odd | September 1st - December 31st |
| 10 & 12 | Even | September 1st - December 31st |

*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming electronic advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(f) Rebuilding a destroyed advertising device.

(8) Non routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location of the structure; or

(e) A change in the direction of the face.

(9) Non routine maintenance on a nonconforming electronic advertising device shall constitute a violation of this administrative regulation and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 6. On-Premise Advertising Devices. (1) An on-premise advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise electronic advertising device shall be erected on the property where the business is located and:

(a) Inside the activity boundary line; or

(b) No farther than 400 feet from the activity boundary line.

(3) An on-premise advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit on the property shall be considered within the activity boundary line.

(4) An on-premise electronic advertising device that complies with this administrative regulation shall only be erected:

(a)1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances pursuant to KRS 177.860(4).

(5) If further than fifty (50) feet outside of the activity boundary line, an on-premise electronic advertising device shall not exceed:

- (a) Twenty (20) feet in length, width, or height; and
- (b) 150 square feet in area, including border and trim and excluding supports.
- (6) More than one (1) on-premise electronic advertising device shall not be located at a distance greater than fifty (50) feet outside of the activity boundary line.
- (7) If taking measurements for the placement of an on-premise electronic advertising device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.
- (8) An on-premise electronic advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside of the activity boundary line of the business being advertised.
- (9) If taking measurements for the placement of an on-premise electronic advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.
- (10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:
 - (a) Identify a business or businesses conducted at the location; or
 - (b) Include a display area used to advertise on-premise activities.
- (11) An on-premise electronic advertising device erected for a shopping center, mall, or other combined business location may either:
 - (a) Identify each of the individual businesses conducted at the location; or
 - (b) Include a display area used to advertise on-premise activities.
- (12) An on-premise advertising device shall not:
 - (a) Move, or have moving or animated parts;
 - (b) Be erected or maintained on a tree; or
 - (c) Be erected upon or overhanging the right-of-way.
- (13) An on-premise electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.
- (14) An on-premise electronic advertising device shall not affect the spacing requirements of a device as established in KRS 177.863(2)(d).
- (15) Extensions of a facing up to fifteen (15) percent shall be allowed on an electronic advertising device:
 - (a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the advertising device as established in KRS 177.863(3)(a); or
 - (b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the advertising device in subsection (4)(b) of this section.
- (16) An on-premise electronic advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 7. Scenic Highways and Byways. (1) After designation of a scenic highway by the Transportation Cabinet, additional off-premise electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for an electronic advertising device located on a scenic byway as an electronic advertising device located on a scenic highway.

(3) Only routine maintenance shall be performed on an off-premise electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers. (1) The requirements of this section shall ap-

ply to off-premise electronic advertising devices on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of nonconforming electronic advertising devices, a permit shall be required from the department for a device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for an electronic advertising device permit shall be made on a completed Application for Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the electronic advertising device meets the permit requirements of this administrative regulation.

(b) If the electronic advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for an electronic advertising device shall be submitted electronically to the department pursuant to the following schedule:

| Dept. of Highways' District # | Submittal Year | Submittal Period* |
|-------------------------------|----------------|-------------------------------|
| 1 & 7 | Odd | January 1- April 30th |
| 2 & 4 | Even | January 1- April 30th |
| 3 & 9 | Odd | May 1st- August 31st |
| 6 & 8 | Even | May 1st- August 31st |
| 5 & 11 | Odd | September 1st – December 31st |
| 10 & 12 | Even | September 1st – December 31st |

*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit a renewal within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) An electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for an electronic advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved electronic advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) A change or upgrade in the technology related to the electronic advertising device;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(12) The permit for an off-premise electronic advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 9. Notice of Violations; Appeals. (1) The department shall notify the owner of an electronic advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 10 of this administrative regulation.

Section 10. Penalties. (1) The owner of an electronic advertising device who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013;

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Transportation Cabinet on the cabinet's Web site at: <http://maps.kytc.ky.gov/PAFOA/>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. (41 Ky.R. 2458; Am. 42 Ky.R. 371; 173; eff. 11-5-2015.)



Environmental Quality & Public Works Committee

April 18, 2017

Summary and Motions

Chair Farmer called the meeting to order at 1:00 p.m. Committee Members Stinnett, Moloney, Gibbs, Evans, F. Brown, Mossotti, Plomin, Bledsoe and Scutchfield were present. Council Members Kay and Henson were also in attendance as non-voting members.

I. Approval of Committee Summary – February 21, 2017

A motion was made by CM Scutchfield to approve the February 21, 2017 Environmental Quality & Public Works Committee Summary & Motions, seconded by CM Stinnett. The motion passed without dissent.

II. Traffic Calming Reed Lane: Lafayette HS Streets

CM Henson gave a brief summary explaining how this came into committee when she was approached by Lafayette High School about the hazards in front of the school as it relates to pedestrians. Jeff Neal with Traffic Engineering presented the item. He said existing conditions include a wide open street in front of the high school, poor parking arrangements, poor pedestrian connections, and poor before and after school circulation which leads to chaos. Neal said they approached an engineering consulting firm to determine what course to take. He said they will remove 3 spaces on West Vista and 5 spaces on Southport Drive to make for shorter crossing distance. They are also adding speed tables and ADA ramps which allow for safer crossing.

CM Bledsoe commented that she was at Lafayette High School a couple of weeks ago and had to park in the grass on the Vista side. She said there is a lack of parking available and with them taking additional spots she asked if there will be a way to increase parking for visitors. Neal said they are losing 11 spaces, but those spaces should not have been allowed in the beginning. CM Henson added that at the intersection of Southport and Lafayette Parkway, they are parking in the intersection. She said now they have taken out those spaces so this will not occur. She said there is event parking in the back; and with the GE plant closing, the school is hoping to get that parking. Neal said that if there was not an objection, they would like to begin construction this summer. CM Farmer asked if funding was available. Neal said they have \$50,000 with \$20,000 in reserve.

CM Stinnett asked if they have met with the neighborhood and talked to residents in the adjacent areas. Neal said CM Henson met with the Neighborhood Association and they sent a letter of support for this project and there is also a letter of support from the principal of Lafayette High School. CM Stinnett asked if the actual homeowners were notified of the change. Neal said yes they were. CM Stinnett asked if there was any feedback and Neal said

only positive feedback such as the letters of support. CM Stinnett said he appreciates them handling it properly.

CM F. Brown asked how many meetings were had with Lafayette High School and asked how involved they were. He said he can see there is a letter from the principal but asked if there was any other contact and if they attended the meetings. He said this does impact their parking so we need to make sure students and parents know about this.

A motion was made by CM Plomin to approve the Traffic Calming Reed Lane: Lafayette HS Streets item, seconded by CM Scutchfield, the motion passed without dissent.

III. Electronic Billboards

CM Stinnett gave a brief introduction regarding the state law changes that affect local municipalities regulating electronic billboards. Paul Schoninger with Council Office presented the item. Schoninger reviewed current regulations and how other cities regulate this. He also reviewed what Lexington is doing to review the current ordinance. He said there are 2 zones in Lexington that allow for electronic billboards; one is a B-2B zone which would be the Lexington Convention Center and the other is a B-3 zone or highway service zone which would include an indoor or outdoor stadium/arena like Whitaker Bank Ballpark. He said there are 480 municipalities that permit or regulate electronic billboards and Lexington, Louisville and Owensboro are included. He reviewed the regulatory issues with e-signage and lastly he reviewed the LFUCG actions regarding e-signage. He said with the Supreme Court ruling on content-neutral signage, our sign ordinance is being reviewed in the Planning and Public Safety committee. He said there is an internal group that is looking at the entire signage ordinance, including the electronic component.

CM Stinnett said he would like both sign ordinances to be parallel. Craig Bencz with Division of Planning said the 2 ordinances are on the same track and they are looking at electronic signage as part of the comprehensive rewrite of the sign ordinance. CM Stinnett, to clarify, said this one is just billboards – not other electronic signs and he asked if there was a way to distinguish between the 2 ordinances. CM Stinnett asked if our current ordinance distinguishes between a billboard and other types of signage. Jim Duncan with Division of Planning said billboards are a separate type of sign and are only permitted at certain locations in certain zoning districts. CM Stinnett asked about the state law changes and if this just changes the federal highway locations or can this be changed for all zones in the community. Traci Wade with Division of Planning said billboards in Kentucky are defined as advertising signs and by state regulation they are only allowed on federal highways. She said in Fayette County that is most of our arterial roadways. CM Stinnett asked about New Circle Road and Wade said that would not be federal highway, but Harrodsburg Road and Nicholasville Road would be.

CM Evans said there are a couple of billboards on New Circle Road so she is wondering how those would relate. She said she thinks it would be a good idea to have electronic signage

because they would be more aesthetic. Wade said our zoning ordinance does regulate them on state and federal highways so the state highways would have the same requirements.

CM Plomin asked about the 320 billboards and the 3 different types. She asked what the combination is percentage-wise between electronic billboards and other billboards. Bryan Sayre with Lamar Advertising said they are not looking to change everything to electronic. He said the biggest thing is that the state is on board and they are looking to get the city involved. He said they are not looking to put new boards up; they are only looking to convert existing boards. He said it would be about 10-20% electronic. Sayre said they can also be used as a medium for notifying the public about crimes and missing persons which can be posted immediately. CM Plomin asked about the price placement and Sayre said it depends on location.

CM Mossotti asked if they will have final determination on content and how it will look. Sayre said again that he is not looking to put up new boards, but to convert existing ones. He said as far as artwork goes they have artists who are available to make any type of art. Sayre said it will not scroll, flash, or show video. CM Mossotti asked how much time is given when purchasing ad space for the billboard. Sayre said normally they would do a month, but with digital you can do a week or a day.

CM Gibbs said he is not supportive of billboards; he said he does not like the distraction. CM Gibbs asked if they have data on distracted drivers and Sayre said the study shows it was 1.26 seconds and anything over 2 seconds is a distraction. Sayre said this one is 1.2 seconds. CM Gibbs said they are all distracting and he asked what the benefit is to this. Sayre said that public service benefits and so does Big Brothers Big Sisters. CM Gibbs asked for data showing how many people have been killed each year as a result. Sayre said he does not believe there is any data that shows this. CM Gibbs asked to see good examples. He commented on the recent Supreme Court decision to keep the message simple and asked how we regulate that. Duncan said part of the complexity of reviewing the sign ordinance is trying to decide what content is and what free speech is and what is protected and what should be regulated. CM Gibbs said that his concern is that we will have really complex billboards out there and not be able to regulate that aspect. Sayre said this will be just like a static board. CM Gibbs said if you know it will change you will keep an eye on it longer.

CM F. Brown asked if this will enhance or improve state law. Sayre said they are trying to follow state law. CM F. Brown said he knows they are distracting and he sees a safety issue. He said he would like to see an inventory on signs in Fayette County and the roads where these are located.

CM Moloney asked about lighting and location. He said he doesn't mind them being on a highway, but they bother him more in town and around buildings. He said we have enough problems with traffic issues and distracted driving. Sayre said they will not flash, they will not scroll and they will not show video.

CM Scutchfield asked how billboards are regulated under our current sign laws. Wade said

billboards are permitted in the B-3, B-4, I-1 and I-2 zones only. She said they are located on federal highways and there are spacing requirements. CM Scutchfield asked about the sign in front of Rupp Arena and Wade said the sign in front of Rupp or Whitaker Bank Ballpark are electronic message display systems that are specifically allowed for that use. CM Scutchfield said the recent case law allows us to regulate with different parameters given what the state has said. She asked if we can put them on other streets besides state and federal highways. Wade said she does not think we can go beyond what the state regulates. CM Scutchfield asked if we chose to go electronic with only one advertisement, could they do that. Sayre yes and that would be the same as a static billboard.

CM Evans agreed with CM Stinnett and said it would be worth separating the two types of signage. She said New Circle Road wouldn't need to be changed to electronic signs because there are neighborhoods behind there and there will be concerns. She said we do need to look into this further. Agreeing with CM F. Brown, she said we need an inventory and we need to know where these are located.

CM Bledsoe said they are billboards now; the only difference is they will be lit. She asked if the lights will be brighter than they are now. Sayre said no, the electric billboards are not as bright. He said the ones we have now are probably worse. CM Bledsoe said the concern would be seeing them change more often during the day and that is the distraction. She said she would like to see them used for Amber Alert and other public safety emergencies which could be posted immediately. Sayer said there have been over 800 children found due to an Amber Alert on a billboard.

CM Stinnett asked if all their billboards are lit. Sayre said about 85%. CM Stinnett asked how they determine if they are lit or not and Sayre said it depends on location. CM Stinnett commented on taking a billboard out and putting a new one in and asked who determines which ones to take out and which to keep. Sayre said that is how the state law is written and it would be his company who determines this. CM Stinnett asked if they have billboards in Louisville and Sayre said they do. CM Stinnett asked if they are all electronic in Louisville. Sayer said no and he does not want to go all electronic here either. CM Stinnett asked how many in Louisville are electronic and Sayre said out of 500 billboards, only 5 are digital.

CM Farmer asked Bencz if he was involved in the rewrite of the sign ordinance. Bencz said yes he is helping with the coordination of that effort. CM Farmer asked if it would be done in 6 months and Bencz said it should be done by fall. CM Farmer asked if the two types of signage could be separated. Bencz said they are taking a comprehensive look at the sign code and it would be their preference to look at this issue as part of that re-write, but if the direction of the committee is to take other action, they will. CM Farmer commented that this might be considered a manifest destiny of the freedom of speech and asked if we would be able to say no to it. Tracy Jones with Law Department said in the review of the ordinance they are looking at the regulation of content and we can't regulate that. She said if we get into a situation asking what is said or who said it, we will have difficulty getting around that case.

CM Scutchfield said since this is a comprehensive look at the sign ordinance, she asked if this should be in Planning and Public Safety committee since that committee is looking at the entire sign ordinance. CM Stinnett said it did not originally include billboards and he said he and Commissioner Paulsen agreed that the 2 types of signage could go on parallel tracks because he does not want this one issue to bog down the comprehensive review of the entire ordinance. CM Scutchfield said this will bog down the comprehensive review if we are holding back on this.

Amy Clark spoke on the item. Beauty, safety, and tree canopy are her concerns.

No further comment or action on this item.

IV. Division of Water Quality Projects Report

Charlie Martin presented the Division of Water Quality Projects Report and gave an overview of projects completed in the last 6 months; projects underway; and projects that begin in the next 6 months.

CM Stinnett asked about #82 Town Branch Commons and if \$366,226 is how much they are asking Kentucky Infrastructure Authority for. Martin said this is going to Gresham to do the design work. He said that would come out of the Water Quality Management fee, but no funding is being devoted to it; it is all about sanitary. He said they have not done any work on the storm water project. CM Stinnett asked if this will come out of the storm water fee money. Martin said yes, if we were paying that bill. He said Gresham has a larger contract and \$275,000 is sanitary and \$366,226 is the storm water component. He said we have not paid any bills from the \$366,226 so we have the opportunity to change that to a different fund if we need to. CM Stinnett asked about # 89 and if that will include Allen Drive. Martin said yes it would. CM Stinnett asked about the un-sewer areas, Martin said it was put on the back burner for two reasons. One reason is because the grant money we were getting came from the tobacco settlement and we are not getting that any more. The second reason is because the consent decree came along and they were overwhelmed with problems from existing customers that dealing with new customers was not there.

CM Moloney asked about the 2.5 acres near I-75 and if that is outside Urban Services Boundary (USB). Martin said no, but it is on the cusp; just inside. CM Moloney asked about the \$420,000 we are paying and why the appraisal was so high. Martin said there were competing appraisals, but he found an exactions agreement from 2016 for that area. He said we had already basically agreed to this price.

CM Plomin asked what areas would need more hours. Martin said it was #35 West Hickman Trunk B and C, behind Clearwater and Fiddler Creek.

CM Stinnett commented on the 2 acres we are purchasing and asked if it would be less expensive to go outside USB. Martin said it is all a guess. He said the consent decree does not give us much leverage in purchasing. CM Stinnett asked if this was the best choice for the site

and that is why it was chosen or was it chosen because it is inside the USB. Martin said it was in the plan that was approved by Council, but it is also platted as a pump station site.

CM F. Brown asked about imminent domain and if that is a possibility. Martin said we have used that in the past. Martin said in this particular instance we had competing appraisals. He said when he has a Council Resolution that establishes a price point of \$235,000 per acre for roadway in front of the parcel, it isn't worth arguing. CM F. Brown asked if they do look at that imminent domain angle and Martin said yes.

CM Farmer said it sounds like you are more interested in trying to complete the task under the consent decree as it was arbitrated to rather than trying to change anything about it. Martin said they do both, but at some point you start running out of time. He said then you start balancing between missing the deadline and the financial penalties that the consent decree allows for under that. He said the penalties section allows for \$5,000 per day for 30 days and it escalates over time. CM Farmer asked if we stay in contact with EPA on our progress and Martin said we do. Martin said they gave us a minor scheduling modification in February. He said with the new administration, he doesn't know the people he is talking to like he used to. CM Farmer thanked Martin for fostering a great relationship between Council and KIA.

No further comment or action on this item.

V. Items Referred to Committee

No further comment or action on this item.

A motion was made by CM Plomin to adjourn, seconded by CM Evans. The motion passed without dissent.

The meeting was adjourned at 2:21 p.m.

K.T. 5.1.17



Environmental Quality & Public Works Committee

April 24, 2018

Summary and Motions

Vice-Chair F. Brown called the meeting to order at 1:02 p.m. Committee Members Stinnett, Moloney, Gibbs, Evans, Worley, Mossotti, Bledsoe, and Plomin were present. Chair Farmer was absent. Council Members Smith and VM Kay were also in attendance as non-voting members.

I. Approval of Committee Summary – February 20, 2018

A motion was made by CM Plomin to approve the February 20, 2018 Environmental Quality & Public Works Committee Summary, seconded by CM Mossotti. The motion passed without dissent.

II. Glass Recycling

Dowell Hoskins-Squier, Commissioner of Environmental Quality and Public Works presented the item. She said about 60% of recyclables sent to the Materials Recovery Facility (MRF) is coming from Lexington and 40% is coming from other communities. She reviewed the collection types which include single stream curbside, single stream + glass, and drop off location without curbside collection. She listed the various end uses for glass which include glass cullet, feedstock cover for landfill, feedstock for fiberglass, and trench bedding. She discussed the market value for recycled glass and reviewed the options for consideration.

CM Moloney said he has concerns and he said the sand material is always going to be needed. He said we could use some of the money in the landfill fund to buy equipment which could be paid off in 6 years. He said Lexington needs to take a lead on this because surrounding counties come here since we are a recycling city and there is an opportunity for us to take the next step. He said we have options and he would like us to continue to review the options because there are not many things we can pay for and get money back on. He said having this equipment will be very helpful for the community.

CM Plomin asked how many counties were included and if they are contiguous. Hoskins-Squier named surrounding counties. CM Plomin asked what the revenue was. Hoskins-Squier said they share the revenue with affiliates. Barry Prater with the MRF said our revenue is derived from processing fees, marketing fees, as well as our share of the sale of materials. He said last year our portion of the revenue was about \$2.3 million. CM Plomin asked if there were any plans or a timetable. Hoskins-Squier said we have no plans to add additional recycling pick-up locations, but we can look into it. CM Plomin said the residents outside the Urban Service Boundary do not pay for recycling and the private services do not include recycling.

CM Gibbs commented on scenario 3 about the market-ready cullet and how we would get the glass; he asked if it was home pick-up or drop-off. Hoskins-Squier said in order to have a lower contamination rate, it should be source separated. Prater said providing that the \$4M equipment is in place, you could get it from our material and derive it from the 50%, but when we put in that much of an investment, we will have to go to other sources for material because right now we are only processing 4,000 tons of glass a year. He said to cost justify this, we need about 10,000-15,000 tons of material. He commented on Lexington being a leader on this and said Kentucky does not have a glass processing facility and the closest one is in Dayton, OH. He said there would be tremendous reckoning with the state of Kentucky because they promote the recycling of glass, but there are no markets to get rid of it. CM Gibbs asked about scenario 2 regarding source separated collection and expressed a concern for the inconvenience to citizens who have to drop it off if trucks won't pick up.

VM Kay commented on the market ready cullet and the price of golf course sand being \$24-30 a ton. He asked why there is a market of \$175 a ton for highly processed glass. Prater said the processed glass could be used for various things besides golf course and he is not sure where the concept of replacing golf course sand came from because the sandblasted material is very similar to a bead. VM Kay asked if the \$175 was based on an estimate from the market. Prater said for the most part, that would be the market price. VM Kay said there was a time when the glass

product we had was marketable and the market changed significantly. He questioned the possibility that the same thing could happen to the cullet which is now \$175 a ton and asked if in 2 or 3 years it might be worth less. Prater said we have never marketed glass and we have never received money for glass. He said the market could change and we have no way of controlling that. VM Kay said scenario 3 would also require separating the glass and having drop-off centers and he has concerns that we would not get the same kind of participation at a drop-off center that we get with curbside. Hoskins-Squier said part of the cost is the secondary processing equipment and we would be purchasing the processing equipment that whoever we send this 50% contaminated glass to; they have that equipment to further process the glass and clean it. She said we can continue the curbside collection and still end up with a marketable product. VM Kay asked if the recommendation today would be status quo. Hoskins-Squier said status quo or source separated because of the wear and tear on the equipment that the glass is creating and the downtime we experience because of this that decreases the efficiency and the ability to process the other commodities we make a profit on such as aluminum cans and paper. VM Kay asked if we would stop putting glass in with everything else and take it to a drop-off location. Hoskins-Squier that is correct.

CM Mossotti commented on scenario 3 and said CM Moloney had mentioned taking this money out of the landfill fund and asked if that was correct. CAO Hamilton said they will speak with Law Department and get an answer. CM Mossotti said that will help determine which direction to go with this. She said horse farms would be prospective clients for this. She said something we could look into is charging a bottle fee like other states do. Prater said this goes back to extended producer responsibility which is a national debate as to who is responsible for the cost and burden of solid waste – manufacturer, retailer, consumer, or government. He said in this case, Kentucky is unfunded unlike other states that are doing this. CM Mossotti asked if the General Assembly has ever been approached about this and Prater said he could not say.

CM Worley said he discourages drop off points because it would force people to drive across town and it will decrease participation. He said from an environmental standpoint, using gas to get to a drop off location is not environmentally friendly. He said option 3 seems like an exciting thing and Lexington could become an example in the state and it could be a great revenue producer for us. He said we should review the market and do a market study to see how many other communities would send their glass to us and what communities could be involved.

CM Moloney would like to leave this in committee to review the options and have Law and Commissioner Hoskins-Squier come back with answers.

No further comment or action on this item

III. Electronic Billboards

CM Stinnett introduced the item saying this is electronic billboards, not electronic signage. Derek Paulsen, Commissioner of Planning, reviewed the billboard regulation and discussed the key issues. He reviewed the appropriate orientation and proximity between these billboards. He talked about the brightness of these billboards and reviewed the appropriate light levels. He said the billboard must have installed an ambient light monitor and he reviewed some of the cautions which include distracted driving. He reviewed the next steps which include additional discussion, Planning Commission review, and the Bluesheet process.

Tom Fahey, with Lamar Advertising, spoke about the item and said there are no reports that show distracted driving is caused by digital billboards and they have done several studies. He said the Federal Highway Commission has issued a report that shows there is no distracted driving caused by digital billboards. He said this will not be an issue that will put the public in any danger.

VM Kay asked CM Stinnett if people in the community have expressed an interest in electronic billboards and if this proposal is meant to solve a problem or address an issue. CM Stinnett said this was put in committee because state law changed. CM Stinnett said an advantage to this would be for public safety to be able to put up messages instantly across the city. VM Kay asked if this will improve the way we do advertising as a community. CM Stinnett said it will add to the growing list of improvements throughout the community. VM Kay expressed concern that the community may not want these.

CM Gibbs said he has reservations about this and he is not convinced we need to move forward with this. He said there might be a need for emergency situations, but they do not improve our landscape. He said the studies on this are mixed and these are distracting despite what the studies show. He said this would be difficult to enforce and he does not want to move forward as he does not see the advantage to this.

CM Evans said she would like to see ordinances from other cities where this has been implemented. She asked if we would take a vote whether we want these here or not. Paulsen said that is up to Council. He said there are options moving forward and you could put this is a subcommittee to get more information about how the public feels. He said a lot of issues that have come up deal with the regulation and he understands there will be a lot of discussion people will want to have on this and questions that will need to be answered. CM Evans asked CM Stinnett if he has an idea on how to proceed. CM Stinnett said based on feedback, he would like to work with a subcommittee to bring a draft back and then get input from the public.

CM Bledsoe said there is a Public Safety argument to be made and it would be nice to have another option when there is an alert. She said there is a demographic that might see an option for this. She said it is hard to get consensus on what this community wants or does not want. She said a billboard can't be as distracting as a cell phone.

CM Moloney asked if these can be put up on federal highways and said the state passed a law that state owned highways are exempt from a lot of things. He asked if they would be allowed to put up an electronic billboard with this law in place. Paulsen said that is a question for Law Dept. CM Moloney said there might be some areas along the interstate that are state owned properties. Paulsen said currently billboards are allowed in (4) zones which have to abut a state or federal highway.

CM Mossotti asked what the timeline is. CM Stinnett said over the summer we can look at this, but he is open. He said maybe we can have a rough draft presented after summer recess.

CM Stinnett said the only people who have electronic billboards in this community is us and we were grandfathered in with Rupp Arena; we own that property and they have electronic message boards. He said one of the benefits is to business owners who would see advertising costs go down because you can do more advertising at once. He said for every 1 digital billboard they will have to remove other billboards which would remove clutter. He said UK can already do these and they do not need our permission because our zoning ordinance exempts them. He said the school system is the same way and we cannot do anything about it, but they are trying to be good partners. He said we will work on a subcommittee and go from there.

CM Gibbs said if we have public hearings we will know how the citizens feel. He said he is not sure that if these go up, others will come down because there is no guarantee. He said cell phones are distracting, but so are these signs.

VM Kay asked about the procedure of the subcommittee and if it will be part of this committee. CM Stinnett said it has not been decided yet; it could be a work group or subcommittee and we need to talk about the best way to move forward. VM Kay said that might help us to determine which committee it should be in.

CM Mossotti suggested this be in Planning and Public Safety committee.

CM Evans said she would like to be included in the further discussion of this because she is not on the Planning & Public Safety committee but she has an interest in this.

No further comment or action on this item

IV. MS4 Update – Pursuing Illicit Discharges to Resolve an Enforcement Action

Charlie Martin, Director of Water Quality and Jennifer Carey, MS4 Coordinator, presented the item. Martin said the purpose for the update is that they have a pending enforcement action with the state near Spurr Road that was releasing sewage while they tried to get it closed up. He said the state's proposal is to develop a Standard Operating Procedure to mitigate future problems. He said they also propose a penalty of \$17,500 or complete a Supplemental Environmental Project (SEP) with a minimum investment of \$35,000. Carey said this presentation will keep them in compliance and they are recommending a pilot program. Martin said the state is offering us the opportunity to do a Supplemental Environmental Project; something we are not required to do, but is environmentally beneficial.

CM F. Brown asked if he was looking for the committee to approve a resolution to take to the work session. Martin said they would like the endorsement of the committee so he can do a bluesheet.

CM Mossotti asked if there were other potential areas down the road besides Highlands. Carey said there are several subdivisions where there are older, deteriorating pipes. CM Mossotti said she likes the idea of a buy-in and getting neighbors involved. She asked if this is the first time we are doing this, if this will be the precedent and if this how we will handle all of these situations down the road or if there will be something different. Martin said once the work is done and the report is prepared they would submit it to the state and come back to this committee with findings. He said in order to expand the program, it would take an ordinance change and budget requirements and they would not be able to move forward without some direction. CM Mossotti asked if what we are going forward with would be applicable to other areas in the city. Martin said he believes so and they continue to collect data to target where problems are so our resources are devoted appropriately. CM Mossotti asked if this was a pilot project to see if we get a positive reaction before moving forward to other neighborhoods experiencing similar problems. Carey said yes.

A motion was made by CM Moloney to approve the Update Pursuing Illicit Discharges to Resolve an Enforcement Action - pilot program item to the full council, seconded by CM Worley, the motion passed without dissent.

CM Gibbs asked if this was just \$35,000. Martin said we are only committing to spend a minimum of \$35,000 and if it is hugely problematic, he will report that. He said all we are committing to now is \$35,000 to execute a pilot program as opposed to writing a \$17,500 check and getting nothing out of it. CM Gibbs asked if that would replace 15 lines. Martin said that depends; that is one of the problems with replacing laterals even when people have to do it. He said you could end up tearing up the yard and working in people's yards is very sensitive and costs could be all over the place. He said the report at the end is important because it will show costs and hurdles that you have to overcome to make this program viable and solve the root problem which is a sewer pipe that LFUCG does not own and it is leaking which contaminates streams and no one is doing anything about it.

V. Proposed Public Works Skills Academy

Elodie Dickinson, Workforce Development Manager, presented the item. She provided a background and discussed internships available. She said the reason this item was brought to this committee was because in talking about snow removal last year, there was talk about the lack of CDL drivers. She said there are at least 26 vacancies in the city that require a CDL license and they are working with streets and roads. The idea is to train interns to obtain CDL permits and licenses to garner a workforce. Rob Allen, Director of Streets and Roads, also spoke on the item and talked about the proposal and what the program would consist of and he reviewed the project curriculum. He said this item has been vetted through Risk Management. He discussed the project liability and the admission requirements. Lastly, he reviewed the next steps including a marketing plan and CDL classes. Dickinson asked the committee for their support of an MOU for ResCare because they are the employer of record. She expressed appreciation for the Administration's support of the project.

CM F. Brown asked if we need a resolution to move forward with this. Allen said we are asking for support when the bluesheet comes through.

CM Moloney expressed appreciation and said this is something we have needed for years.

A motion was made by CM Moloney to Approve Proposed Public Works Skills Academy item and move forward to the full council, seconded by CM Bledsoe, the motion passed without dissent.

CM Bledsoe said this is exactly what we talked about how to expand CDL options and how to partner with outside organizations to do things the city needed which was to license people to do work we have for the constituents. She said she is supportive.

CM Plomin commented on the 26 vacancies and what total number of positions these were out of. Allen said it was out of the Divisions of Environmental Quality and Public Works which would only be 5 divisions. He said this is a pilot program and if it works, it can be expanded to include other types of training. He said it is more complex than they can get into today, but if the program is expanded to last for a year, there is an opportunity to look at an apprenticeship certificate from the state that is accredited throughout the country. CM Plomin asked if there were vacancies because there is not organized access to training. Dickinson said there is a cost for training if you go to a for-profit and it is about \$3,500 per class.

VM Kay said this is a good idea and it is well-implemented. He said if there are employment opportunities that come at the end of this that would not require a criminal background check; he hopes the program would accept people who have felonies in their background. He said as much as possible, we want to allow people to re-enter the workforce and this is a good program for them. Allen said this was a result of our litter collection program and some of the barriers to the folks who were ready to re-enter the workforce and they have worked with HR and Law to determine who they can accept and they are trying to connect to a wide range of candidates.

A vote was taken on this motion.

VI. Items Referred to Committee

No further comment or action was taken on this item

A motion was made by CM Plomin to adjourn, seconded by CM Mossotti. The motion passed without dissent.

The meeting was adjourned at 2:54 p.m.

KT 5.7.18



**Planning and Public Safety Committee
Electronic Billboards Subcommittee
June 27, 2019**

Chair Plomin called the meeting to order at 4:00 p.m. Council Member Angela Evans, Eve Wallingford, James Duncan, Jeff Neal, Pat Dugger, Andrea James, Chad Edwards, Kendra Thompson, Mary Wilson, Kurt Recker, Eddie Bowman, Brian Maynard, Chad Edwards, Criag Hammond, Lane Boldman, Ricky Sizemore, Mark McCoy, Leigh Ann Thacker, Christel Long, Brian Erwin, Kip Cornett, representative from Public Safety, and Mary Willson were all present.

Chair Plomin began the meeting by describing how this item came to committee and she described the work that had been done on this prior to the subcommittee being formed. She introduced Kurt Recker, General Manager of Lamar Advertising, who provided the subcommittee with a presentation. He explained the difference between a static billboard and digital billboard. He described the helpful ways in which digital billboards can service the community including matching organ donors, emergencies, crime, missing persons, etc. and he explained that these billboards offer real-time support. He said that public safety is helped by using these billboards to educate about opioids and provide awareness. He said some billboards are donated to advertise the drug take back events. He explained that these will operate under state regulations and in areas already approved by LFUCG.

Andrea James, Special Projects Coordinator in the Mayor's Office, explained some general benefits including community conversation, increased parent/child conversation, establish community priority, wider community reach, and strategic placement. She explained what initiatives other cities have in place. She spoke about the benefits of digital billboards for Opioid Useage Disorder (OUD) and Substance Useage Disorder (SUD) initiatives as this demonstrates continued and ongoing interest in the pressing community issue.

Patricia Dugger, Director in Public Safety, said this provides a tool for getting warning, education and emergency messages out and in multiple languages to alert many groups of multiple.

Mary Wilson expressed concern that these are just an escalation of existing billboards and used for advertising. She explained that Louisville does not permit these and she described a situation where billboards got around that and when Louisville asked for them to be removed, the company sued. She also pointed out that it costs millions of dollars to remove a billboard.

The meeting adjourned at 4:45 p.m.



**Planning and Public Safety Committee
Electronic Billboards Subcommittee
October 9, 2019**

Chair Plomin called the meeting to order at 3:00 p.m. Council Member Jake Gibbs, Council Member Jennifer Reynolds, Eve Wallingford, Miguel Lucero, James Duncan, Jeff Neal, Tracy Jones, James Marx, Traci Wade, and Kendra Thompson were in attendance.

Chair Plomin began the meeting by providing a brief background on this item and the work that has been done on it since it came to committee. She said this item was initially in the Planning & Public Safety Committee with a presentation in the spring of 2017 and again in the spring of 2018. She said a subcommittee was formed, but never officially met and in 2019 she revitalized the subcommittee and had the first meeting in June, 2019 with stakeholders as well a presentation by Lamar Advertising. She reviewed the current regulations in place which does not allow for digital billboards and the zoning requirements for regular billboards. She also reviewed the proposed regulation which says the digital billboard must comply with all aspects of sign ordinance with regards to the location, size, and siting of non-digital billboards.

At this time, Lamar has 99% of the market share of billboards. Plomin reviewed the "cap & replace" system being proposed which would require 6 regular billboards to be removed within an interstate, parkways, or national highway system. For conversion of a billboard in an urban area, 5 regular billboards would need to be removed. In Lexington, there are 135 billboards currently.

Gibbs expressed concern about the limit on the number of billboards and said there are several billboards that are non-conforming.

She discussed the current billboard locations and highlighted the districts with the most billboards. She explained a few of the key issues that have come to light which include the brightness of signs, message of hold times, transition method, duration, locations suitable for electronic billboards, provisions for public/community benefit messaging. She said the pros would provide a clean look, community and government benefit, and reduction of the overall number of boards. The cons would result in possible distractions, brightness, and the need for oversight/enforcement.

Gibbs stated that he is not in support of digital billboards and explained that they are not safe due to the distraction. He said many states do not allow these.

Plomin explained that a benefit to this would be that the city would have a slot on the rotation for each billboard which allow for alerts such as weather, emergency, Amber or Golden Alert, opioid PSA, etc. This would be a way to partner with the community and raise awareness of issues. This would be a static presentation, not an active video.

Reynolds commented on aesthetics and said this is an issue, but these can be beneficial for alerting the community.

The next steps include a recommendation to the Planning & Public Safety Committee. The committee can then send a proposed text amendment on the matter to the full council to be initiated or referred to the Planning Commission. If Council initiates a zoning ordinance text amendment (ZOTA), the Planning Commission has 60 days to review and act on it. If the Council refers it to the planning

Commission for review, then there is no time limit and the Planning Commission can review it, in whatever time it chooses.

Duncan said the Planning Division would not “champion” for these. He explained that Article 17 can no longer call billboard offsite advertising because it may be illegal (Reed vs. Gilbert) and it could open the door for all establishments to have on/off site advertising for their business (fast food, churches, schools, etc.). If there is no distinguishing, you can’t say that a certain place or type of establishment can or cannot advertise. You also cannot put a cap on commercial advertising. There will be formal opposition by the FCC, Fayette Alliance, Sierra Club and several other environmental organizations. We had to have special legislation to allow the Lexington Civic Center to have an electronic sign and Whitaker Bank Ballpark had one, but no longer does. On a positive note, Lamar advertising keeps their billboards in shape.

Jones mentioned that the city may have to pay out landowner’s leases with Lamar and their property if the city were to increase the number of billboards to be taken down, including conforming billboards.

Gibbs would like to see historical figures on the number of billboards in Lexington in recent history.

Plomin said she foresees 20 additional billboards that could be construct on current and future development plans in Lexington. This effort may be able to help reduce that number.

The meeting adjourned at 4:00 p.m.



MEMORANDUM

TO: Councilmember Kathy Plomin

FROM: Tracy W. Jones, Attorney Senior, Department of Law

RE: Sixth Circuit Case post-*Reed* addressing On-premise/Off-premise distinction

DATE: November 14, 2019

At a recent meeting of the digital billboard work group the issue of a new Sixth Circuit case interpreting the *Reed* case came up in discussion. This memorandum is to address that case and its holdings.

The case being discussed is *Thomas v. Bright*, 937 F.3d. 721 (6th Cir. 2019). This case is the first Sixth Circuit case that analyzes the distinction between on-premise and off-premise signs or billboards. In the case, the Tennessee law stated that a private owner could post a sign on his property without a permit so long as the sign addressed activities on the property on which the sign was located. That law was challenged when a party wanted to post something on a sign that was not taking place on the property. The property owner challenged the law. The Sixth Circuit court ruled that the law was a content-based regulation of free speech and an unconstitutional restriction on non-commercial speech under the First Amendment.



The Court said that the law was content based because it was necessary to examine content of the sign to determine if what was stated on sign was taking place on the premises or elsewhere. The government can only justify the law if there is a compelling governmental reason for the law. As an aside, the court said that aesthetics is not a compelling governmental interest. For further example, a law that said any off premise sign must be 500 feet from the nearest building would not be considered to be content based because the review is based on the distance of the sign from the nearest building not what is stated in the message on the sign.

There are some other cases in the Sixth Circuit that discuss the *Reed* case but the others do not address the off/on-premise distinction. What it means for the review in regard to the digital billboards is the following. First, the current ordinance precludes digital billboards (electronic messaging). So in order to allow them, the ordinance would have to be amended in some fashion. That presents a question with multiple considerations, such as, types of lighting, space from other businesses/billboards and residences, lapses of time between displays etc. These types of situations would most likely need to be addressed in an amendment to the ordinance. However, in doing so great caution would have to be applied, so no distinctions between on-premise and off-premise signs are incorporated, as they would run afoul of current law in the Sixth Circuit. Another consideration, addressing the off/on premise distinctions if a digital billboard amendment were proposed, would likely open the door to more digital billboards in more locations as restricting them would be very difficult based on this case.

Please contact me if you have further questions, I will be happy to discuss.



