

DIGITAL BILLBOARDS

*Planning and Public Safety Committee Meeting
Tuesday, August 18th, 2020*

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LEXINGTON



Digital Billboards Agenda

- Timeline of Activity
- Current Billboard Regulation in Kentucky and Lexington
- Key issues in Digital Billboard Regulation
- Previously Proposed Regulation
- Subcommittee's Findings
- Market Update
- Next Steps
- Questions



Timeline

- Former Councilmember Stinnett brought the topic to Council in 2017.
- Planning presented to Environmental Quality and Public Works Committee in Spring 2017 and again in spring 2018.
 - SCOTUS decision: *Reed v. Gilbert* (Content Based Ruling)
- Special Subcommittee formed with stakeholders but never formally met.
- 2019: Councilmember Plomin revitalized Subcommittee and met in June 2019 with stakeholders and again in October 2019 with city staff.



Kentucky Billboard Regulation

- In 2016, Kentucky legislature passed regulation 603 KAR 10:021
- Law governs digital billboards in Kentucky:
 - Cannot be larger than 672 sq. ft.;
 - Cannot have more than one face per facing or have extensions;
 - Interior angles between facings not to exceed 45 degrees;
 - Must be static for 8 seconds and not blink, scroll or contain animation;
 - Be equipped with auto-dimmers;
 - Have 2,500 ft. between digital devices in one direction;
 - Have 500 ft between digital and static devices; and
 - Exchange 6 billboards for 1 new digital device; 5 devices for 1 one conversion.



Current Lexington Billboard Regulation

- Digital Billboards not permitted
- Advertising signs (billboards) allowed in B-3, B-4, I-1 and I-2 zones.
- Must abut a federal or state highway.
- Shall not exceed 40 ft. in height and 400 sq. ft. in area.
- Not permitted within 150 ft. of any residential zone.
- Must be set back 20 ft. from street right-of-way.
- Generally, no closer than 500 ft. from another billboard.
- State regulation requires 2,500 ft. between digital devices in one direction.



Key Issues

- Brightness of signs
- Message hold times
 - Transition method
 - Transition duration
- Identify specific locations suitable for electronic billboards.
- Provisions for public/community benefit messaging- MOU

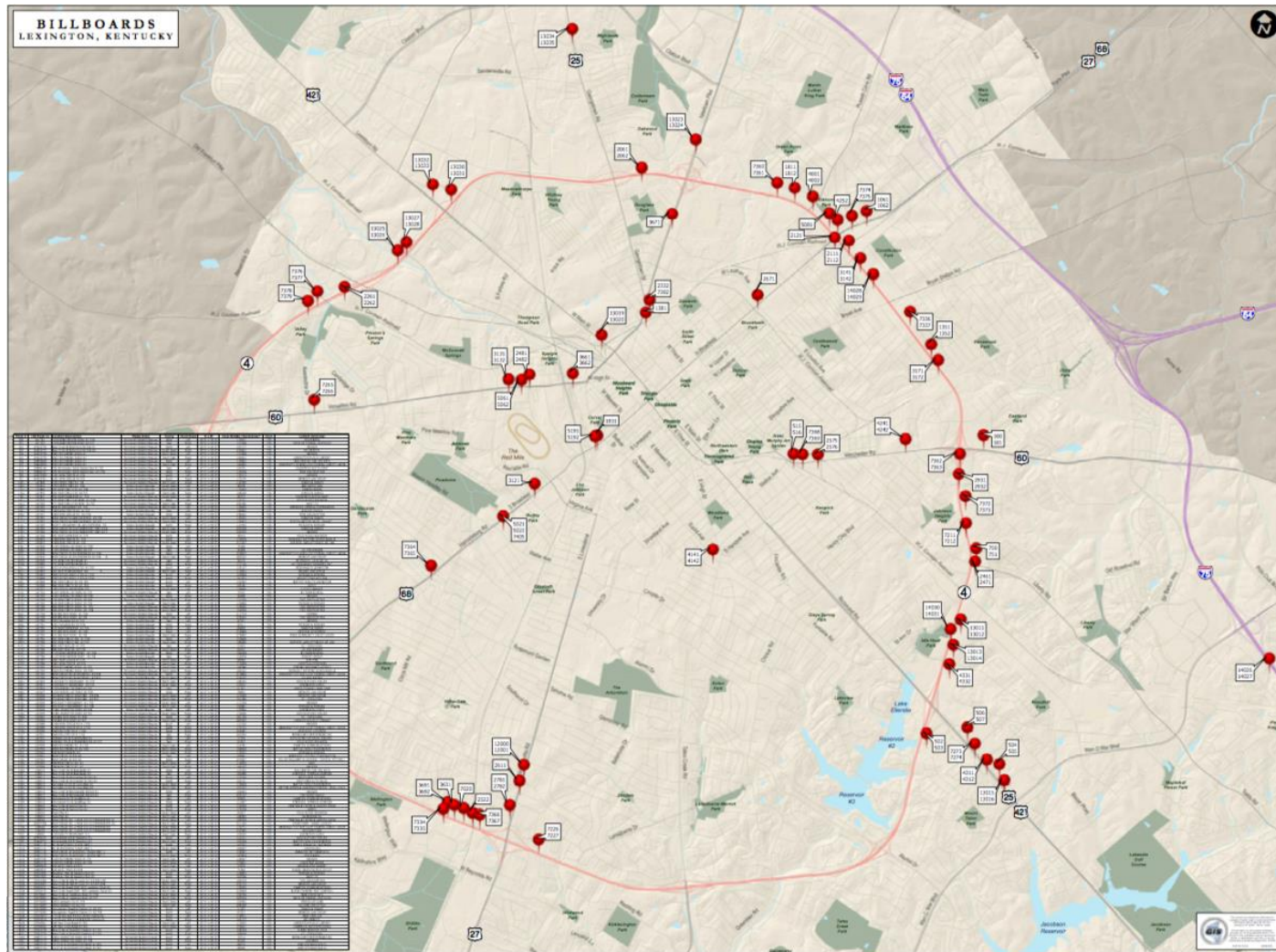
- Pros:
 - Clean look/ modernize city.
 - Community and government benefit- emergency and weather events, public health awareness.
 - Andrea James- Special Projects Coordinator
 - Pat Dugger- Director of Emergency Management
 - Lexington Police Department
 - Reduction of overall number of boards.

- Cons:
 - Possible distractions.
 - Brightness (Automatic dimming standards address this).
 - Possible oversight needs- staffing for permitting and enforcement.



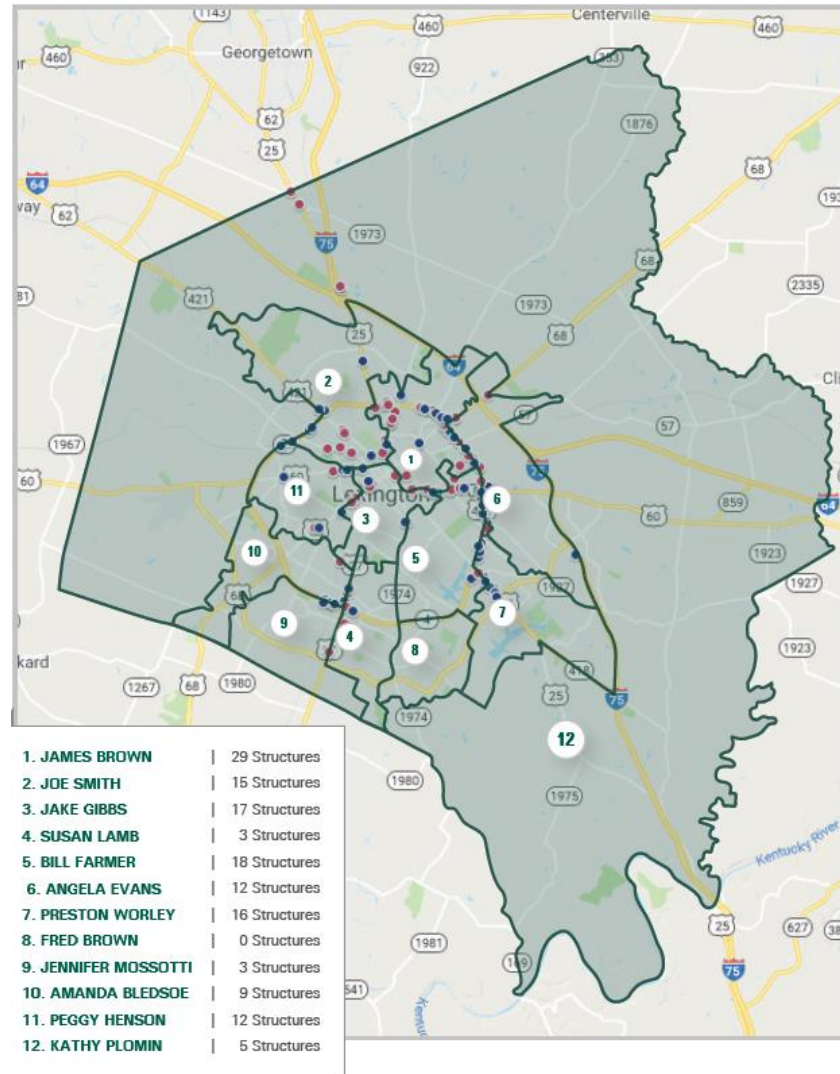
Proposed Regulation

- Digital billboards must comply with all aspects of the sign ordinance with regards to the location, size and siting of non-digital billboards.
- Proposal of a “cap and replace” system.
 - Cap number to be determined by Subcommittee.
 - Lamar Advertising proposed cap of 129 billboards (removal of 6 structures).
- Kentucky has a take-down ratio policy.
 - If a digital billboard is installed, 6 regular billboards would have to be decommissioned for a billboard located within an interstate, parkway, or national highway system, and 5 regular billboards would have to be decommissioned for a conversion of a billboard in an urban area.
 - In other words, a 6:1 and 5:1 removal of current billboards policy.





Billboards by District (2018)





Subcommittee's Findings in 2019

- *Thomas vs. Bright*, 937 F.3d. 721 (6th Cir. 2019).
 - Sixth Circuit case that analyzes the distinction between on-premise and off-premise signs. Tennessee law was challenged when a party wanted to post something on a sign that was not taking place on the property and the property owner challenged the law.
 - 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 the sign was taking place on the premises or elsewhere. The Court further notes that aesthetics is not a compelling governmental interest for regulation.
- What this means is a couple of things:
 - First, Lexington's current sign ordinance precludes digital billboards. In order to allow them, the ordinance would have to be amended. To do that presents a list of questions and concerns in which great caution would need to be applied, so that no distinctions between on premise and off premise signs are incorporated.
 - Additionally, there were some legal concerns that if the city were to pass the measure and require more conforming billboards to be taken down in Lexington then the government may need to pay the landowner for the lease and property.



Market Update

- Supreme Court denied appeal to hear *Thomas vs. Bright*.
 - Decision by lower courts is currently “law of the land”.
- In April 2020, U.S. District Court ruled that that Kentucky’s Highway Beautification Act is unconstitutional.
 - *L.D. Management Company vs. Kentucky Transportation Cabinet*.
 - Decision related to KRS 177.860 and 177.890 and KAR 603 10:002 and 10:010.
- This court decision prompts legislative action to remedy.
 - In the interim, markets are “lighting up”.



Next Steps

- Councilmember Plomin originally planned to remove the item earlier in the year because of stagnant court cases. Without action from the courts, there could be no movement on the matter.
- If the Committee desires to move forward, PPS Committee can either send a proposed text amendment on the matter to the full Council to be initiated or refer issue to the Planning Commission.
 - If the Council initiates a text amendment to the zoning ordinance, 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 frame it chooses.

Questions?



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