

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, June 28, 2011
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Nick Harris, Vice Chair
Scott Churchill
Mark Gamba
Russ Stoll

STAFF PRESENT

Katie Mangle, Planning Director
Ryan Marquardt, Associate Planner
Damien Hall, City Attorney

COMMISSIONERS ABSENT

Chris Wilson

1.0 Call to Order – Procedural Matters

Chair Batey called the regular meeting to order at 6:35 p.m.

2.0 Planning Commission Minutes

2.1 April 26, 2011

Chair Batey corrected Line 115 on Page 4 to read, "...~~REF~~ **Riffle** Award..."

- She was also concerned that the discussion about the Natural Resource Regulations Amendments was done in a worksession format, which did not attribute the comments to specific speakers. She believed several parts were misleading in that they implied that some things were the consensus of the Planning Commission, when it was only the view of one or two people. She asked that everyone read Pages 12 and onward and send comments to Alicia Stoutenburg, Administrative Specialist II, so that a different version could be considered at a future meeting.

Katie Mangle, Planning Director, asked that the Commissioners send their comments by Friday, July 8, 2011.

3.0 Information Items

Ms. Mangle stated an online poll had been sent about what aspects of the Planning Commission notebooks they wanted to have available online, ones that were not needed as a paper version, but no one had responded. Staff would be resending the poll.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Joint Session Items

5.1 City Council Study Session
Summary: Residential Development Standards
Staff Person: Katie Mangle

The Commission attended this joint worksession prior to the regularly scheduled Commission meeting. The minutes for this discussion are captured in the minutes for the City Council meeting.

6.0 Worksession Items

6.1 Summary: Draft Electronic Sign Code Amendment Staff Person: Ryan Marquardt

Ryan Marquardt, Associate Planner, presented an overview of the draft Electronic Sign Code amendments via PowerPoint. He reviewed key points and answered questions from the Commission as follows:

- The objectives were to allow some limited electronic display signs in the downtown area, limit the size of electronic display signs outside of downtown, add controls for display type and brightness, coordinate the City's and ODOT's sign permit programs, and to keep the scope of the amendments somewhat limited in order to move quickly through the process.
 - He reviewed the proposed size limits for display signs and displayed examples to visually illustrate the changes. He clarified that in downtown, the electronic sign portion would be limited to 25% of the sign face with a maximum of 20 sq ft.
 - He reviewed the areas where electronic display signs would be allowed outside of downtown, where the electronic portion was also limited to 25% of the sign's size, but the overall size of that electronic portion could be up to 50 sq ft.
- Regarding illumination, the proposed limit was 5,000 NITs for the daytime and 500 NITS for the evening, a NIT being a surface brightness unit of measurement.
 - The City did not have a way to measure NITs, but would ask sign companies to provide documentation regarding this at the time of the sign permit.
 - Sign companies know about NITs, which are an industry standard. The City of Salem's comprehensive sign code uses NITs as a standard. Most jurisdictions dealing with electronic display signs use NITs and have different brightness allowances for day and night time. Staff would be contacting the City of Salem to see how they measure and verify NITs.
- Regarding type of display, a static display sign could display one message for 10 to 15 seconds and then change quickly to another message; it could not dissolve, fade, flash, or scroll to change the message.
 - Whether the fading type of transition drew the eye more than the quick, slide-to-slide transition proposed could be discussed further. He believed Salem's code allowed the dissolve, fade, flash, scroll types of transitions as long as they occurred in less than 2 to 5 seconds.
 - ODOT standards did not have a lot to do with the type of display. Their regulations focused more on the type of message being displayed than on the manner in which it was being displayed. He would check to see if the ODOT sign regulations had anything about rate of change so that could be incorporated into the City's permit process.
- The City's current Sign Code standard was no more than 1/2-footcandle of light trespass from a sign across the property line, and this standard would be in place whether it was an internally illuminated cabinet sign or an electronic display sign.
 - Light trespass to the right-of-way would have to be verified. The issue was glare, not traveling light.
- The current Sign Code had regulations about revolving or changing signs, which referenced the old style of signs that used to spin around, and the regulation was that it could not change more than 6 times per minute, which was a 10-second rate of change. That 10-second standard had been applied to electronic display signs as well.

- It was suggested that reducing the rate of change would make the sign less flashy while still getting the message out. Limiting the rate of change downtown to once per minute was preferable.
- Regarding nonconforming signs, one provision would allow the addition of an electronic readerboard sign as long as the sign would not go any further out of conformance.
 - It was suggested that if one wanted to add an electronic readerboard, they should start moving that sign toward compliance.
- If the Commission agreed with the proposed amendments, the earliest Commission hearing would probably be in late August, which would allow City Council to hear it in early October. Attachment 2 noted the draft schedule. Normally, after Council passed an ordinance, it would be 30 days before it took effect, but this could become effective immediately. This schedule would not jeopardize the fall hearing date for the '76 Station sign.
- At Council's worksession last week, it was stated that another LED billboard sign permit was submitted, and Council was very supportive of moving forward with Code amendments as quickly as possible.

James Crawford, 12620 SW Foothill Dr, Portland, OR, reminded that he had been trying to get a sign into conformance by amending the Sign Code with the support of the Commission. He discussed the following issues, describing how they related to the '76 Station sign as noted.

- Regarding the use of the word 'static', changing the message as proposed, but even every hour would not affect the gas station. In preparing the proposed changes, they were considering the downtown, and the signs the Commission wanted to achieve based on the downtown guidelines, such as avoiding flashing, changing text, etc.
 - The Advantis Credit Union had a preexisting, nonconforming, reinstalled sign that cycled every 10 seconds with multiple messages. One stopped at the traffic light caught all of these messages with the timing of the lights. Part of how these scrolling, changing signs worked was to get as many messages as possible out there while someone was stopped at the light. Limiting changes to once every 5 minutes would be drivers only got one message at the light.
 - This was different than something like the '76 Station, where the change in prices could be limited to every 6 hours, or something like a hotel where 'vacancy' or 'no vacancy' would be displayed.
 - It seemed that static displays needed to be a longer duration, and a new definition was needed for the rotating Walgreens type of sign.
 - Having a display duration of an hour could be a disincentive for electronic signs, and even billboard-type electric signs. Advertisers on the billboards would be severely limited in how often their ad could be cycled.
 - A static display ought to be of a long enough duration that it would be unchanging to the average person waiting for a bus or at a light.
 - The '76 Station sign was a static display, but 'automatic changing signs' in the definitions sounded more like the Walgreens store's sign. He understood this to be the Commission's intent for the downtown.
- Regarding sign brightness, reducing the signs from 5,000 NITs in the daytime to 500 NITs in the evening was a common standard. However, depending upon the color of the display, the perception of brightness and glare were different, as white appeared brighter than red, for example.
 - Standardizing that the lettering had to be red would allow the 500 NITs standard to hold. When driving along McLoughlin Blvd/Hwy 99W, all the electric signs seemed to be red.
- Mr. Kanso's '76 Station sign did not have controls to change the brightness of the sign. The change in brightness occurred either automatically or not at all.

- Amending the Sign Code as it applies broadly on McLoughlin Blvd in downtown could open it up to a different kind of sign than intended, such as the Walgreens type sign. Redefining what static and changeable text meant could be a better way of establishing the two standards, so what was good along Hwy 224 was different from what was good along McLoughlin Blvd and downtown.
- The '76 Station proposal was to be able to change a cabinet sign from either incandescent or fluorescent to more efficient LED lighting without being penalized.
 - Under the current code, one could not technically illuminate the cabinet with LED lighting; it had to be illuminated with fluorescent or incandescent lighting. In addition, the current code would not allow one to rewire the sign in order to change out from fluorescent or incandescent lighting to LED.
- He clarified that the original '76 Station sign was 25 ft tall and had an am/pm minimart sign on top of the Arco sign. When they rebranded, the new sign eliminated all reference to the grocery store on the property and reduced the sign to 20 ft, so it was still more than the 15-ft maximum, but they were moving closer to conformance, as requested by the Commission.

Discussion by the Commission and staff regarding the draft electronic sign code amendment continued as follows:

- The proposed amendments would affect all existing signs. The current Sign Code stated that nonconforming signs were allowed to stay nonconforming, except for the changing [of lighting] and some safety related standards about not having signs rotate quickly. Currently, that nonconformity was not allowed to carry over, which remained the same in the draft proposal.
- Salem had different NIT levels for each color, and staff would speak with them to ascertain the reasoning behind that differentiation. If Milwaukie were to differentiate the amount of illumination based on color, they would probably consider trying to make all of the signs monochromatic.
- Areas were indicated in the industrial zones where display signs would be expressly allowed in the Sign Code. Billboards would be allowed where a really large building exists with 20% of the building face was large enough to have a billboard, or where a lot of property frontage exists. Freestanding signs, such as billboards, require a lot of lineal street frontage. The roof sign exemption was more likely in the industrial zone. The last few billboard-type signs were permitted because enough frontage existed and the heights still fell within the maximum height limits. Properties zoned residential had restrictive sign allowances, so essentially, only a condominium or subdivision could put up a large, freestanding sign. The current Sign Code would not allow a billboard in a residential area, such as along Lake Rd. The market for potential billboards would be along Hwy 224, McLoughlin Blvd, and possibly in the Business Industrial Zone.
- Concern was expressed about focusing only on ODOT-controlled roads because billboards could be proposed in other areas, such as along King Rd, a high traffic road, and along the Lake Rd to Harmony Rd corridor, where people sit in traffic.
 - ODOT control might go away at some point, as the legislature was currently looking at some changes to ODOT's sign regulations. Milwaukie should rely mostly on its own regulations as far as what was allowed for size, height, etc., and not depend on the ODOT regulations to back them up.
- **Vice Chair Harris** supported increasing the time between text changes to 3 hours.
- **Chair Batey** favored requiring 6 hours between text changes, but was uncertain what was reasonable.
- Concern was expressed about taking away the inalienable right to use the sign as planned by limiting text changes to every 6 hours.

- **Damien Hall, City Attorney**, replied that Milwaukie would not be the only jurisdiction to extend that time. ODOT rules did not allow any sign that flashed or changed with the caveat that they only regulate outdoor advertising signs that could be viewed from ODOT rights-of-way. He did not know where the threshold was of First Amendment speech versus distracting drivers, but he could make a good argument that they were not limiting people's First Amendment speech by allowing them to post whatever they wanted on the side of the road, but restricting the time schedule for change.
- Concern was voiced about the taking aspect when changing regulations for preexisting signs as the amendment could affect their income level. They could argue that they relied on the 10-second rule when building their sign. The amendments would greatly change the original calculations.
- **Mr. Hall** explained it would not be a taking of property in the classic sense as they still had a billboard and could still sell the space, and make economic use of that property, which in this case was the sign. When the Commission came to some consensus about the policy, he could research existing case law to see whether First Amendment rights would be impacted.
- Changing text might not be as distracting as changing graphics, but the City was not allowed to regulate content or images. Only the time, place, and manner relative to the signs could be regulated.
- **Commissioners Churchill and Gamba** agreed with Vice Chair Harris' concept of limiting changes to once every 3 hours.
- **Vice Chair Harris** explained that a 3-hour change would allow a restaurant to change between breakfast and lunch or lunch and dinner.
 - **Mr. Marquardt** agreed that was a logical suggestion; however, regulating on a 3-hour cycle was difficult. With a 10-second change, staff could go out to see if it was 10 seconds, even once per day, could be check. While 3 hours was a fine time, it was more difficult to enforce due to the multiple site visits needed to see if the text was changing.
 - 3 hours would be a long time period for signs showing the time and temperature. The City could not differentiate time and temperature signs, because that would be addressing content.
 - Perhaps different time durations for text changes could be applied to smaller signs. Signs conveying time and temperature would fit within the smaller suggested size.
- More research would be done regarding NITs and the relevancy of using that as a current unit of measure. Sign companies would be contacted to see how readily they could provide the NITs information during a sign permit process.
 - Further information was also requested about how whatever measure they decided upon would be measured and enforced; not just the sign company's ability to provide the measurement, but how the City would be able to measure it.
 - Staff would also explore whether certain signs were subject to international dark sky standards. If hooding could be required on the sides, requiring it on top should be allowed as well.

The Commission consented to move the Electronic Sign Code Amendments proposal forward.

7.0 Planning Department Other Business/Updates

Ms. Mangle announced that the Planning Commission meetings would start being videotaped and cable broadcast the second meeting of July. This would help with the appeals process, and enable the community to better understand what the Commission does and the decisions being made. This option was included in the City's contract with Willamette Falls Television.

Restoration project would happen.

- **Ms. Mangle** explained that the grant was only for the northernmost aspect of the park. It could be phased, so even though outstanding issues exist, they did not need to be resolved for the northernmost area around Johnson Creek to be implemented. JoAnn Herrigel, Community Services Director, would present a briefing to the Commission.
- **Mr. Marquardt** added that the Johnson Creek Watershed Council was moving ahead with their permits in that area as well. They were trying to stay on track for working in July and August, but part of the problem was that the water levels were so high that a lot of the work would need to wait for a while.

9.0 Forecast for Future Meetings:

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| July 12, 2011 | 1. TBD |
| July 26, 2011 | 1. Public Hearing: Electronic Sign Code Amendment <i>tentative</i>
2. Public Hearing: CSU-11-05 Royalton Place <i>tentative</i> |

Ms. Mangle confirmed that no public hearing would be held on the Sign Code July 26. She noted no items were scheduled for the July 12 meeting.

Vice President Harris moved to cancel the July 12, 2011 Planning Commission meeting. Commissioner Gamba seconded the motion, which passed unanimously.

Meeting adjourned at 7:41 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Stoutenburg, Administrative Specialist II



Lisa Batey, Chair