



CITY OF  
**TOPEKA**

**MINUTES**

## **TOPEKA PLANNING COMMISSION**

**Monday, May 20, 2019**

**6:00PM – Municipal Building, 214 SE 8<sup>th</sup> Street, 2<sup>nd</sup> floor Council Chambers**

**Members present:** Brian Armstrong, Corey Dehn, Marc Fried, Carole Jordan, Wiley Kannarr, Corliss Lawson, Ariane Messina, Katrina Ringler, Matt Werner (9)

**Members Absent:** (0)

**Staff Present:** Bill Fiander, Planning & Development Director; Mike Hall, Current Planning Manager; Kris Wagers, Administrative Officer; Mary Feighny, Legal

**Roll Call** – Vice Chair Brian Armstrong called the meeting to order and Chairperson Katrina Ringler arrived just before roll call. At roll call there were 8 members present for a quorum. Mr. Werner arrived before the approval of the minutes.

### **Approval of Minutes from March 18, 2019**

Mr. Kannarr asked for an amendment to the minutes. Motion by Mr. Kannarr to approve with amendment; **second** by Mr. Armstrong. **APPROVED** (6-0-3 with Jordan, Lawson and Werner abstaining)

### **Approval of Minutes from April 22, 2019**

Motion by Mr. Armstrong to approve; **second** by Ms. Lawson. **APPROVED** (6-0-3 with Fried, Jordan, and Messina abstaining)

### **Declaration of conflict of interest/ex parte communications by members of the commission or staff –**

None

### **Public Hearings**

**Z19/03 by Charles T. & Margarita M. Lopez** requesting to amend the District Zoning Classification from O&I-1 Office and Institutional District to M-1 Two Family Dwelling District on property located at 2715 SE Indiana Avenue.

Ms. Ringler called the case and Mr. Hall presented the staff report and staff recommendation for approval.

Ms. Ringler declared the **public hearing open**.

**Marty Flanagan** with Topeka Genealogical Society at 2717 SE Indiana came forward to express concern about the possible future impact the re-zoning might have on their property. Their property is zoned O&I1 and with this re-zoning it will be surrounded by R-1 and R-2 zoning. She also noted that there is a shared driveway between 2717 and 2715 SE Indiana so property lines and previous agreements will need to be researched.

Mr. Armstrong asked staff of the zoning change is likely to affect 2717 and Mr. Hall stated there is no direct or anticipated effect. Mr. Fiander noted that the neighborhood plan for Central Highland Park proposes mixed use land use for that part of the block which includes the genealogical society, so it is, in essence,

**APPROVED 6/17/2019**

protected. The only way they would lose their zoning would be if they (the owners) applied to re-zone. Mr. Fiander stated there is no intent to rezone 2717 as a result of the rezoning of 2715.

With nobody else coming forward to speak, Ms. Ringler declared the **public hearing closed**.

Staff confirmed for the commission that the driveway issue is a civil matter; it does not affect potential re-zoning and re-zoning would not affect the ownership of the driveway.

**Motion** by Mr. Dehn to recommend approval to the Governing Body of the reclassification of the property from O&I Office and Institutional District to M-1 Two Family Dwelling District. **Second** by Ms. Messina.

**APPROVAL (9-0-0)**

### **ACZR18/02 Visual Code Update III (Sign Standards)**

Consider amending the Topeka Municipal Code (TMC) Title 18 (Comprehensive Plan-Signs-Subdivisions-Zoning) as follows:

Repeal and replace the entirety of Chapters 18.10, 18.15, 18.20, and 18.25 (Division 2.Signs) with Chapter 18.10 (Division 2.Signs) concerning the use of signs by businesses, institutions, and other entities for their identification.

Mr. Fiander introduced the case, noting that work on the update began in November 2017 and thanking those who have worked on it. Work on the update has included a visual appeal survey that received 960+ responses, 2 public meetings, a committee that met numerous times, multiple presentations and discussions at Planning Commission meetings, input on “best practices” from consultant Mark White of White & Smith, LLC, and more.

Mr. Fiander noted this is the first sign code update of its kind for Topeka in 50+ years. The major intent and impetus has been to improve the city’s visual/aesthetic appeal, which is in keeping with the Greater Topeka Partnership’s **Momentum 2022**. It is also a response to court decisions, especially US Supreme Court case Reed v. Town of Gilbert (Ariz.) which requires sign regulations to be content neutral; signs are to be regulated by time, place and manner rather than content.

Mr. Fiander gave an overview of “points of emphasis”: with the proposed sign code update, maximum sign sizes will generally be proportionate to property and building size, and the discrepancy between zoning districts will be softened. All new free-standing signs will be required to be monument signs; with a few exceptions, new pole signs will not be allowed. Temporary signs will be accommodated; portable message centers are proposed to be phased out.

Mr. Fiander explained that abandoned signs are not dealt with in the current code, but the proposed update does address them. Regarding signs made non-conforming by the proposed update; staff is not proposing a sunset but have provided an option for that. Mr. Fiander also noted that a change in size of existing signs would trigger full or partial compliance requirements.

Commissioners agreed that it would be best to start off reviewing options provided by staff. These options are a direct result of comments and requests made by commissioners at the March, 2019 Planning Commission meeting. The options are included in the agenda packet (“Sign Code Options” document).

### **Highway Sign Exceptions**

Mr. Hall presented the options and answered questions. Mr. Fiander explained that increasing the radius to 800 feet (rather than 700 feet) is staff’s attempt to accommodate more properties without having to move from a nodal to a linear pattern.

Mr. Armstrong and Ms. Messina stated they have no problem with the 100’ increase (**Option B**) and

there **was consensus amongst the commissioners that Option B be adopted.**

### **Signs for Construction Projects**

Mr. Hall reviewed the options and commissioners agreed they prefer **Option A** and asked staff to **more clearly define “construction”**.

### **Non-Conforming Signs**

Mr. Hall presented the options and he and Mr. Fiander answered questions, especially clarifying what would trigger the requirement of an existing sign to come into conformance with the new code. It was noted that the table doesn't exactly match the wording in the draft code and staff will make the necessary corrections to the code draft.

Ms. Messina asked when we might expect to see a visible change if Option A is codified. Staff suggested that someone who works in the sign industry might have a better grasp on that. Mr. Armstrong pointed to the section of Option A that requires properties to bring their signage into compliance if they apply for or are approved for COT economic incentives. He noted that this would likely speed up the process of bringing non-conforming signs into compliance. Later Virginia Baumgartner of Luminous Neon, a member of the sign code committee, came forward and provided some insights. She noted that we see fewer “mom and pop” businesses; many are national chains who typically change their branding every 5-10 years. While some locally owned/non-franchise businesses (for example, The Pad) might not make changes to their sign for a number of years, she would anticipate seeing a substantial difference within 15-20 years.

Each of the options were discussed, and Mr. Fiander gave additional information about what constitutes a “change of use” in Option B.

Mr. Armstrong noted that in Option A, paragraphs 3 & 4, he is more comfortable with using “and” than or, so (paragraph 3) “shall at a minimum achieve partial compliance by reducing its corresponding sign area **and** height by at least 34%”; (paragraph 4) “shall at a minimum achieve partial compliance by reducing its corresponding sign area **and** height by at least 34%”. This will mean there is no risk of having a huge sign face on a relative short sign, or having a very small sign face on a quite tall pole. Following additional discussion there appeared to be consensus amongst commissioners that it should be “and” rather than “or”.

Mr. Kannarr asked if Option C could be changed to a 20 year amortization period rather than the 10 years given in the option. He suggested that in 20 years all signs should be required to be brought into compliance with the new regulations or, if there is a valid reason, given an exception (i.e. for historic purposes). Staff explained that the May 20 Mike Hall Memo (handout) proposes adding a section about “Historic Signs” so this would be possible. Ms. Feighny noted that from a legal standpoint, 20 years is a generous time allowance.

Following additional discussion, it was agreed that general consensus would be to adopt Option A, changing the “or” in paragraphs 3 & 4 to “and”, and adopting Option C, changing the 10 year amortization period to 20 years.

### **Abandoned Signs**

Mr. Hall reviewed the options, noting that the current code does not require “abandoned” signs to be removed; it only requires that they be well maintained. Mr. Fiander and Mr. Hall spoke to and answered questions about examples in the draft handbook. Ms. Messina asked if, from a real estate perspective, it's better to leave a sign in place if it's in good repair. Mr. Fiander noted the “24 month” clause and noted that if a building is up for sale for more than 24 consecutive months, a perspective owner would understand that it will require investment and repairs will be more than simply installing a new sign. In

addition, prospective buyers would understand this requirement and be aware before buying. If the building is not up for sale, Mr. Fiander explained that the city would need to notify owners of the new regulations and may end up having to remove signs ourselves if the owners cannot.

There was discussion about what the term “covered” means (Option A, #1). Ms. Baumgartner returned to the podium and explained some of the options that might be used to accomplish this. She recommends replacing the word “covered” with “re-faced”.

Ms. Messina stated she would be okay with either Option A or B. Following additional discussion, there appeared to be consensus that the preference would be Option A, but using #2 & #3 from Option B. The grace period would be #5 in Option A.

### **Portable Message Centers**

Mr. Hall explained that since the Commission last discussed these in April, the owner has come into Planning & Development and applied for permits for his 50+ signs. During this process it was found that the existing signs do not meet our electrical code, so while a permit may be provided, the signs cannot be lit without first being brought up to code. Mr. Hall added that flashing lights are prohibited since they can appear to be a traffic control device and therefore confusing to drivers.

Ms. Messina noted that while she agrees the signs must be compliant with current codes and flashing lights can be dangerous and therefore prohibited, she likes these signs and thinks of them as being rather unique to Topeka, “a Topeka culture”.

Mr. Fried referenced the visual appearance survey and noted that more than 95% of those responding found them either somewhat or very unappealing. He stated that the recommendation to do away from them is based on that, with the intent of the sign code update being to make our city look better than it did yesterday. Visual appeal is tied to civic pride and local economic spending.

The various options (A, B, C) were reviewed. Ms. Lawson and Mr. Fried noted that enforcing Option B would be difficult with only one person to provide zoning code enforcement for the entire city.

Following additional discussion about the various options and the possibility of a grace period for 24 months rather than 12, it was agreed that the public should be heard on the matter.

Ms. Ringler declared the **Public Hearing open** and invited people in the audience to speak to any aspect of the proposed sign code update.

**Patrick Barnes** came forward to speak against disallowing portable message centers. He stated he is an attorney who has experience with the sign code. He expressed concern that the City is targeting Shawn Holthaus’s business, Rent A Sign, which rents portable message centers to the public. He stated that nobody had specifically asked Shawn or his customers what they think about portable message centers.

Mr. Barnes stated that he could speak to many “inaccuracies” he feels like he has heard in the discussion, but the biggest thing is that there is, he says, only one person in the community that is proposed to be eliminated - Mr. Holthaus’s company. He questioned whether that’s a fair use of government power and authority.

Ms. Ringler asked staff about how the survey that was taken was publicized, as well as other ways the public was notified and invited to be involved and provide feedback. Mr. Fiander noted that the public survey was the most successful survey we’ve had to date. There were two public meetings that were widely advertised; Planning staff identified businesses using the portable message centers along collectors and arterials (“major streets”) and sent notices directly to them. Planning also sent notices to schools and churches, which are heavy users of portable message centers. The proposed sign code update has been on the Planning Commission agenda multiple times, and these are open to the public.

Staff feels that they have provided many opportunities for people to talk to them about the proposal, and Mr. Hall stated that there has been direct communication between himself and Mr. Holthaus. It is staff's belief that they've provided overwhelming opportunity for stakeholder engagement.

Mr. Barnes returned to the podium and stated that there has been confusion about the permitting process and that's why Mr. Holthaus's signs have not been permitted; he was told at one point that permits are needed. The process has now been clarified and he has applied for the required permits.

**Randy Wheat** came forward to speak against disallowing portable message centers. He stated he has just begun acquiring signs and hopes to rent them out to the public. He anticipates being able to purchase and rent out around 50 portable message center signs fairly quickly. Mr. Wheat stated he feels the signs work well for small businesses and churches who can't afford larger, more expensive signs.

**Chris Deister** came forward to speak in support of the sign code update. He spoke to how we all want to strive for the elevation of our city and have it be attractive to both those who come in and those who are already here. Mr. Deister supports temporary signs if they are well-made, well-maintained, and in fact temporary. He spoke to the fact that if we make rules, we need to provide staff with the resources to enforce them.

Mr. Deister noted with the digital world comes cultural change. He stated that "phone booth manufacturers" are now out of business because we no longer need phone booths, and in fact with the advent of GPS on our phones, signage has largely been (and will be) rendered unnecessary for wayfinding.

**Virginia Baumgartner** of Luminous Neon came forward and suggested that permit applications should have a start and end date so that it is clear when they need to be removed.

With nobody else coming forward to speak, Ms. Ringler declared the **public hearing closed**.

Ms. Ringler asked staff if current sign permits have a start/end date. Mr. Fiander stated that currently there is not because they're 12 month permits that are renewable. If that changes, a more restrictive permit will be necessary.

Mr. Fried asked if portable message centers are a sub-set of temporary signs. Mr. Fiander explained they are not; they are in a category all to themselves. Currently, temporary signs are allowed "per event" rather for a certain number of days, which is hard to enforce or understand.

Mr. Fiander noted that there are additional changes proposed in a memo from Mike Hall and provided as a handout. The Commissioners approved Mr. Hall reviewing those proposed changes.

Mr. Hall explained that Ms. Baumgartner has read the proposed draft code in full and offered some recommendations about changes. Some are not substantive, so staff will work on those going forward.

Mr. Hall reviewed the items included in the memo, especially noting wording about historic signs and their being exempt from the dimensional standards in Section 18. Examples of signs that might be recognized as historic would be the Chief Drive-In sign, Gage Center, Bobo's, etc. Historic designation would ultimately be decided by the Topeka Landmarks Commission.

Mr. Hall also spoke very briefly about residential subdivision signs and off-premise signs or billboards.

Mr. Hall reported that staff has received feedback regarding the section on incidental signs and asked legal to review. The main change is that a non-illuminated incidental free-standing sign will not require a permit (e.g. real estate signs).

Mr. Fried expressed concern about frontage restrictions on temporary signs as they relate to political campaigns and whether we can restrict the number. Ms. Feighny stated that the proposed code states that state and federal law trumps the ordinance. Currently there is a state law prohibiting cities from regulating the number of political signs on private property so essentially political signs are exempt.

Mr. Fried asked if each of the proposed options in the memo needed to be voted on separately. Mr. Fiander suggested voting on those for which consensus may not have been absolutely clear. The first two (Highway Sign Exceptions and Signs for Construction Projects) appear to have clear consensus.

Ms. Ringler re-stated what she believed consensus to be for **Non-Conforming Signs** and Mr. Fried offered a **motion to adopt Option C, including Option A with changes to paragraphs 3 & 4, changing “or” to “and” and changing the 10 year time limit in Option C to a 20 year time limit. Second by Ms. Lawson. APPROVAL (9-0-0)**

Ms. Ringler re-stated what she believed consensus to be for **Abandoned Signs** and Ms. Lawson offered a **motion to adopt Option A, replacing #2 and 3 with #2 and 3 from Option B. Number 5 of Option A would be retained. Further, a more robust definition of the word “covered” as included in Option A, #1. Second by Mr. Dehn. APPROVAL (9-0-0)**

Regarding Portable Message Centers, there was additional discussion about how a compromise could be reached and it was ultimately suggested that Option C be adopted, adding a 24 month amortization period from the date of ordinance adoption. This would allow for the reasonable phasing out the signs.

**Motion by Mr. Dehn regarding Portable Message Centers, to adopt Option B & Option C with a phase-out period of 24 months. Second by Ms. Lawson. APPROVAL (8-1-0 with Mr. Fried dissenting)**

Ms. Ringler asked for further discussion or questions regarding the proposed amendments included in the May 20 memo from Mike Hall, and Ms. Jordan offered a **motion to accept the amendments in the May memo from Mike Hall regarding ACZR18/02 Visual Code Update III / Sign Code Update; second by Mr. Fried. APPROVAL (9-0-0)**

Ms. Ringler asked for further discussion or questions regarding the entirety of the code (ACZR18/02 Visual Code Update III) with the amendments just approved, and Mr. Armstrong offered a **motion to accept the ACZR18/02 Visual Code Update III / Sign Code Update with the already passed changes to Highway Sign Exceptions, Signs for Construction Projects, Non-Conforming Signs, Abandoned Signs, and Portable Message Centers, and the Mike Hall memo; second by Mr. Dehn. APPROVAL (9-0-0)**

#### **Communications to the Commission**

Mr. Fiander reported that the governing body approved CU19/03 by AT&T regarding the cell tower at 6<sup>th</sup> & Taylor.

Ms. Ringler asked when the sign code update might go to the governing body for consideration. Mr. Fiander explained that it will take some time to draft, so he expects it to be later this summer, perhaps mid to late summer.

**With no further agenda items, meeting was adjourned at 8:50PM**