



PLANNING COMMISSION AGENDA

Regular Meeting

7:00 P.M. on Tuesday, March 12, 2019

Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, California

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

2. ADMINISTRATIVE

2.a. Review of agenda items.

2.b. Declaration of Conflict of Interest.

2.c. Vice Chair Peter Cloven to report at the City Council meeting of March 19, 2019 (alternate Chair Bassam Altwal).

3. PUBLIC COMMENT

4. MINUTES

4.a. Approval of the minutes for the November 13, 2018 Planning Commission meeting.

4.b. Approval of the minutes for the December 11, 2018 Planning Commission meeting.

5. PUBLIC HEARINGS

5.a. **ZOA-01-19, Municipal Code Amendment, City of Clayton.** A City-initiated Ordinance for the purposes of making a recommendation to the City Council regarding amendments to temporary noncommercial signs within Chapter 15.08 – Sign Provisions of Title 15 in the Clayton Municipal Code.

Staff Recommendation: Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 01-19, recommending City Council approval of an Ordinance amending the City's Sign Provisions for temporary noncommercial signs.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff.

8.b. Commission.

9. ADJOURNMENT

9.a. The next regularly-scheduled meeting of the Planning Commission will be held on **March 26, 2019**.

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7300. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
Clayton Planning Commission Meeting
Tuesday, November 13, 2018

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Chair Bassam Altwal called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair Bassam Altwal
Vice Chair Peter Cloven
Commissioner William Gall
Commissioner Carl Wolfe

Absent: Commissioner A. J. Chippero

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Commissioner William Gall to report at the City Council meeting of November 20, 2018.

3. PUBLIC COMMENT

Shonece Barney inquired about the status of the St. John's Episcopal Church Preschool Use Permit.

Assistant Planner Sikela responded that staff is in the process of reviewing the Use Permit application materials and, at the conclusion of staff's completeness review, staff will provide correspondence of its status.

4. MINUTES

Approval of the minutes for the August 14, 2018 Planning Commission meeting.

Vice Chair Cloven moved and Commissioner Wolfe seconded a motion to approve the minutes, as amended. The motion passed 4-0.

5. PUBLIC HEARINGS

- 5.a. **SPR-04-18, Site Plan Review Permit, Aaron Kalt, 199 Mountaire Parkway, APN: 119-381-004.** A request for approval of a Site Plan Review Permit to allow a previously-constructed retaining wall located in the City's right-of-way. The location of the retaining wall extends from the front right corner of the subject property into the City's right-of-way, running parallel with the exterior side property line, to the rear corner where it turns 90 degrees and continues along the rear property line. The retaining wall measures a maximum of approximately 41 inches in height and 88 feet in length. Pursuant to California Environmental Quality Act (CEQA) Guideline Section 15303(e) – New Construction or Conversion of Small Structures, the project is categorically exempt from CEQA.

Assistant Planner Sikela presented the staff report.

The public hearing was opened.

Mike Murphy, 187 Mt. Wilson Way, expressed support of the project approval.

Robert Brenneman, 194 Mt. Wilson Way, submitted a letter representing his and his wife Loretta Brenneman's support of project approval and also verbally expressed support of project approval.

Wendy Murphy, 187 Mt. Wilson Way, expressed support of project approval.

Aaron Kalt, the applicant, indicated the following:

- The sideyard and public right-of-way area where the wall is located was very unimproved with overgrown juniper trees and dirt.
- The neighbors have supported his work on trying to improve his sideyard and the public right-of-way

Vice Chair Cloven indicated that the project has greatly improved the sideyard area and asked Mr. Kalt if he was aware that he might need a permit.

Chair Altwal asked Mr. Kalt if he was aware, when he started constructed the project, that he was doing construction in the public right-of-way.

Mr. Kalt responded with the following comments:

- He was not aware that he needed a permit for the project or that the project was being constructed in the public right-of-way.
- He thought that his project would be no problem since there are a multitude of examples in the Dana Hills subdivision of retaining walls and fences that are placed in the same location as his project.

Commissioner Gall asked Mr. Kalt if the fence is also located in the public right-of-way along with the retaining wall.

Mr. Kalt responded that the fence is located on his property.

Chair Altwal asked if he was doing any work on the project currently.

Mr. Kalt responded that he has not done any work on the project since being contacted by the City.

The public hearing was closed.

Commissioner Gall indicated that, when he read the staff report, it appeared that the City might be setting precedent to allow private improvements in the City's right-of-way.

Assistant Planner Sikela responded that the City Council was concerned about the subject private improvements being built in the City's right-of-way so, in order to provide a courtesy to the applicant as well as to avoid setting a precedent, the City Council allowed this project to encroach into the City's right-of-way but will not allow future encroachments.

Commissioner Gall praised the applicant for his hard work in trying to work with the City on this issue.

Commissioner Wolfe asked if the City Council already approved the encroachment of the project into the City's right-of-way, and what is the Planning Commission rendering a decision on tonight.

Director Gentry responded that the City Council has the purview to allow encroachments to occur in the City's right-of-way whereas the Planning Commission's review of this project was triggered by the fact that the retaining wall is required to have a building permit and is visible from public streets and sidewalks. If a retaining wall needs a permit and is visible from public areas, a Site Plan Review Permit before the Planning Commission is required.

Vice Chair Cloven asked are there other retaining walls in the City that are encroaching into the City's right-of-way similar to the subject retaining wall.

Director Gentry replied that the City's code enforcement responds on a reactionary complaint basis and does not have the staffing and resources needed to perform proactive code enforcement.

Chair Altwal indicated he understood the City's Council's direction that no future private encroachments in the City right-of-way would be allow and asked if this project is considered a "future" encroachment.

Assistant Planner Sikela responded that, since the encroachment of the project into the City's right-of-way occurred prior to and was the impetus for the City Council's decision, the project would not constitute a future encroachment.

Commissioner Wolfe asked if staff receives a complaint regarding another existing private encroachment elsewhere in Clayton, will the property owner be required to remove it.

Director Gentry responded that, if the property owner can demonstrate that the private encroachment is already existing and is not new construction, the private encroachment can remain. However, if the private encroachment is a new construction project, the private encroachment would not be allowed.

Chair Altwal asked if the applicant has to obtain a Use Permit for the extra one foot of fence height.

Assistant Planner Sikela indicated that a condition of approval has been included requiring the applicant to obtain what is called an Administrative Use Permit in order to have the fence height approved by the City.

Chair Altwal asked if the applicant was penalized with a fine by the City for this project since it was non-permitted.

Director Gentry responded that the City did not fine the applicant but that the Contra Costa County Building Department would have extra fees since the project was constructed without permits.

Commissioner Gall asked if the applicant will have to take out an insurance policy to protect the City from liability implications as part of entering into an encroachment agreement with the City.

Commissioner Wolfe indicated he was in favor of project approval.

Chair Altwal asked if an additional a condition of approval can be included requiring the applicant to maintain adequate landscaping in the area of project that encroaches into the City's right-of-way.

Vice Chair Cloven indicated that requiring the applicant to maintain the right-of-way area of the project is setting a dangerous precedent requiring property owners Citywide to maintain right-of-way areas adjacent to their property.

Director Gentry indicated that the City does not have the resources to maintain these right-of-way areas that are adjacent to private property areas.

The public hearing was re-opened.

Mr. Kalt asked if the retaining wall was lowered to under three feet in height, thereby not needing a building permit, would that avoid having to enter into an encroachment agreement with the City and to secure insurance coverage protecting the City.

Director Gentry responded that it is the location of the retaining wall in the City's right-of-way, and not the height of the retaining wall, that is triggering the requirement for an encroachment agreement and insurance policy.

The public hearing was closed.

Vice Chair Cloven moved and Commissioner Gall seconded a motion to approve Site Plan Review Permit SPR-04-18, with the findings and conditions of approval recommended by staff. The motion passed 4-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff

None.

8.b. Commission

None.

9. ADJOURNMENT

9.a. The meeting was adjourned at 7:53 p.m. to the regularly-scheduled meeting of the Planning Commission on November 27, 2018.

Submitted by
Mindy Gentry
Community Development Director

Approved by
Bassam Altwal
Chair

Minutes
Clayton Planning Commission Meeting
Tuesday, December 11, 2018

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Chair Bassam Altwal called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair Bassam Altwal
Vice Chair Peter Cloven
Commissioner A. J. Chippero
Commissioner William Gall

Absent: None

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Commissioner A. J. Chippero to report at the City Council meeting of December 18, 2018.

3. PUBLIC COMMENT

None.

4. MINUTES

- 4.a. Approval of the minutes for the August 28, 2018 Planning Commission meeting.

Commissioner Gall moved and Vice Chair Cloven seconded a motion to approve the August 28, 2018 Planning Commission minutes, as submitted. The motion passed 4-0.

5. PUBLIC HEARINGS

- 5.a. **UP-02-18, Use Permit, St. John's Episcopal Church, 5555 Clayton Road, APN: 118-101-025.** A request for approval of a Use Permit to allow a preschool to operate at St. John's Episcopal Church. The preschool is proposed to operate Monday through Friday from 6:30 a.m. to 6:00 p.m., offering full day and half day programs using four existing on-site classrooms and a play area for a maximum of 60 children ranging from 2 to 5 years of age.

Assistant Planner Sikela presented the staff report.

Commissioner Gall had the following questions:

- How will the trash and recycling enclosure be addressed? Assistant Planner Sikela responded that the City's trash and recycling is handled by Republic Services who would review and approve the trash enclosure along with the City of Clayton to ensure that the enclosure meets all of Republic Service's requirements as well as any enclosure-related stormwater regulations where pertinent and applicable.
- Did staff receive any public comments from the neighbors regarding the proposal? Assistant Planner Sikela responded that no comments were received by staff.
- Would the on-site kitchen involved with the food preparation for the students qualify as being a commercial kitchen? Director Gentry responded yes, based on the uses proposed for the on-site kitchen, it would qualify as a commercial kitchen.
- Would the trash/recycling enclosure have to be plumbed for sanitary sewer? Assistant Planner Sikela responded yes, the trash/recycling enclosure would have to be plumbed for sanitary sewer.
- Is there another vehicular access to the subject property site other than from Clayton Road? Assistant Planner Sikela responded that the only access to the subject property was from Clayton Road.

Commissioner Chippero had the following question and comment:

- Will the subject property continue to be used for the temporary Christmas tree lot during operation of the preschool? Assistant Planner Sikela responded that, during a site visit to the subject property, it was observed that the temporary Christmas tree lot and existing play area did not appear to interfere with the operation of each other and that adequate on-site parking already existed to accommodate any vehicles that might be involved in either use.
- The applicant should ensure that vehicles driven by people using the subject property to vote during the elections do not impact the available parking for people involved with the preschool.

Vice Chair Cloven indicated that there should be a distinct separation between the play area and other non-student areas such as the voting areas and Christmas tree lot.

Chair Altwal explained if the church's preschool improvements involve a construction budget in excess of \$161,000, the facility would then qualify as a "public accommodation" and additional regulations would be applicable to the children's areas of the preschool such as, but not limited to, separate bathrooms and specific dimensional thresholds related to accessibility and paths of travel. Director Gentry indicated that the construction budget is not under the Commission's purview. The Commission is restricted to only the land use component of the proposal while any additional Americans with Disabilities Act requirements and other applicable regulations would be reviewed by the Contra Costa County Building Department in tandem with other agencies, where pertinent.

The public hearing was opened.

Pat Covey, 7 Xavier Place, indicated that her property is located directly adjacent to and west of the project site and that she has concerns about traffic and noise that might be generated by the proposed use.

One of the applicants, Paul Henshaw, had the following comments:

- We spoke to our neighbors about the proposal.
- We tried to locate the play area in a way so as to reduce noise impacts to neighboring properties.
- We have locking gates that are located between the areas where the children will be and other areas of the property outside of the children's areas.
- A teacher will accompany the children at all times to all areas of the subject property that are involved with the preschool use.
- We are looking a discontinuing using the subject property for voting and for the temporary Christmas tree lot.
- All areas of the subject property involved with the preschool use, including the kitchen, will be inspected by the State.
- The Director of our preschool has many years' experience in the operation of preschool facilities located on church properties.

The public hearing was closed.

Vice Chair Cloven had the following comments:

- I am a member of the Clayton Valley Presbyterian Church and we have a preschool on the church property.
- There is a long waiting list for quality daycare in Clayton.
- As long as the proposal complies with all applicable regulations, I support additional daycare and preschool resources for the families of Clayton.

Chair Altwal had the following comments:

- The applicant needs to be very diligent in addressing all Americans with Disabilities Act requirements including, but not limited to, paths of travel, accessibility to on-site areas, and adequate parking.
- I concur with Vice Chair Cloven's comments.

Vice Chair Cloven moved and Commissioner Chippero second a motion to approve use Permit UP-02-18, with the findings and conditions of approval recommended by staff. The motion passed 4-0.

- 5.b. **ENV-01-08, DP-01-08, MAP-02-09, TE-02-18, Development Plan and Vesting Tentative Map Time Extensions, Creekside Terrace Mixed Use Project, City of Clayton, 1005 and 1007 Oak Street, west side of Oak Street between Center Street and High Street (APNs: 119-050-008, 119-050-009, and 119-050-034). Review and consideration of a one-year extension of the Creekside Terrace Development Plan and Vesting Tentative Map until January 6, 2020. This request is in accordance with Sections 17.28.190 (Development Plan) and 16.06.030 (Subdivision Map) of the Clayton Municipal Code.**

Director Gentry presented to staff report.

Chair Altwal inquired if there was a way to approve an extension for the entitlements that would be greater than one year? Director Gentry responded that the Clayton Municipal Code only allows extensions in one-year increments.

Vice Chair Cloven had the following questions:

- Is the project site located on City-owned land? Director Gentry responded yes the project site is located on City-owned land.
- Who paid for the plans and entitlements initially? Director Gentry responded that a private developer originally started the entitlement process and submitted the application materials but then went bankrupt. Following the private developer's bankruptcy, the City stepped in when, at that time, the Redevelopment Agency existed and that is where the funding came from to carry the project forward.
- So is it in the City's best interest to approve the extensions and continue carrying the entitlements forward with the hopes of selling the properties and entitlements to a private developer? Director Gentry responded that was correct and that, from the City's perspective, this project is seen as an economic development opportunity which, at some future time, could be sold to a private developer.
- Would this project impact the riparian corridor of Mitchell Creek? Director Gentry responded that the plan is to retain the natural condition of the riparian corridor of Mitchell Creek.

Commissioner Chippero expressed support of approving the extension and indicated that the project would complement and the Town Center and would be an improvement over the existing modular buildings that are currently located on the project site.

Frank Gavidia, 104 Gold Rush Court, had the following comments:

- With the entitlements that have been extended for this project, our vision for the Town Center is being limited to one specific type of development.
- These entitlements have been extended for eight years.
- The City should allow for more flexibility in what type of development occurs in the Town Center to encourage projects that are more Clayton-friendly.
- The City should not be carrying the cost of keeping these entitlements going and paying for project-related demolition.
- The City should do a better job marketing the project and have the developer that buys the property pay for the project-related costs.
- We want to avoid rubber-stamping the project and limiting our choices of what types of development are constructed in our community.
- We need to avoid a situation where there is a development constructed in the Town Center that is not compliant with the City's vision.
- The Fulcrum project is an example of something that was zoned differently than the project that was proposed.
- Developers need to comply with the City's vision, not the other way around where the City accommodates a developer's vision.

Chair Altwal had the following comments:

- A developer can proposed anything at any time and the City would review the proposal accordance with the applicable regulations.
- Extending these entitlements does not prevent another developer from coming to the City with any type of proposal.
- The City cannot predict what type of development may be proposed for a particular property in Clayton.

Shawn Robinson, representing the Clayton Community Church, had the following comments:

- He is neither for nor against the decision rendered by the Planning Commission tonight regarding the subject entitlement extensions.
- The Clayton Community Church has purchased property directly adjacent to and west of the project site.
- Wanted to go on record saying that we are not opposed to having a thoroughfare going through the Clayton Community Church property, as long as a developer pays for it.

Vice Chair Cloven indicated that any project would be reviewed in accordance with the development process even if we continue to approve the extensions of the subject entitlements.

Chair Altwal asked will project-related demolition come back before the Planning Commission for review. Director Gentry indicated that no, the project-related demolition would not come back before the Planning Commission as the project-related demolition would require only an administratively-approved permit from the County in addition to the fact that lead and asbestos testing has already been completed and the City has prepared bid documents in order to accept formal proposals from contractors to perform the demolition.

Commissioner Chippero moved and Commissioner Gall seconded a motion to adopt Planning Commission Resolution No. 05-18, thereby extending for one year the Creekside Terrace Development Plan and Vesting Tentative Map through January 6, 2020. The motion passed 4-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff.

Director Gentry indicated the following:

- Former Planning Commissioner Carl Wolfe has been elected to the City Council and so, as a result, the City has posted the vacancy and application process for City Councilmember Carl Wolfe's now-vacant position on the Planning Commission.
- The Planning Commission applications are due by 5:00 p.m. on Thursday, January 10, 2019 and the City Council will be conducting interviews and render their decision at the City Council meeting of January 15, 2019.
- The Tuesday, December 25, 2018 Planning Commission meeting will be cancelled.

8.b. Commission – None.

9. ADJOURNMENT

- 9.a. The meeting was adjourned at 8:03 p.m. to the regularly-scheduled Planning Commission meeting on January 8, 2019.


Submitted by
Mindy Gentry
Community Development Director

Approved by
Bassam Altwal
Chair

PLANNING COMMISSION STAFF REPORT

Meeting Date: March 12, 2019

Item Number: 5.a.

From: Mindy Gentry 
Community Development Director

Subject: Ordinance to Amend the Sign Provisions for Temporary Noncommercial Signage (ZOA-01-19)

Applicant: City of Clayton

REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance amending Title 15 "Building and Construction", Chapter 15.08 – Sign Provisions of City of Clayton Municipal Code, more specifically amendments to temporary noncommercial signs (ZOA-01-19) (**Attachment A**).

PROJECT INFORMATION

Location: Citywide

Environmental: This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Public Notice: On February 16, 2019, a public hearing notice was published in the Contra Costa Times and on February 27, 2019 a public hearing notice was posted at designated locations in the City.

BACKGROUND AND DISCUSSION

Following Planning Commission's recommendation, the City Council, on May 16, 2017, introduced Ordinance No. 475 updating Clayton Municipal Code (CMC) Section 15.08 - Sign Provisions to incorporate best practices and to comply with the recent United States Supreme Court Case *Reed vs. Town of Gilbert, Arizona*. This court case provided a jurisdiction's sign code must be content-neutral. Therefore, one of the required revisions to the Clayton Sign Ordinance was to amend Section 15.08.040.G, which allowed political signs to not exceed three (3) square feet in area, with one (1) sign per property for each candidate, party, or issue. The staff-proposed draft amended code removed reference to political signs as well as allowing temporary noncommercial signs with an aggregate limit of thirty (30) square feet of signage per parcel, with no limitation on the number of individual signs per candidate, party, or issue.

At the May 16, 2017 City Council meeting, the Council expressed its concern regarding the proposed change for temporary noncommercial signage from a maximum of three (3) square feet per parcel to an aggregate of up to thirty (30) square feet in area per parcel (**Attachment B**). At the time, it was noted the thirty (30) square-foot limit was a staff policy recommendation, pursuant to the City Attorney's office advice that eighty (80) square feet had been upheld by the courts. The Council ultimately decided to reduce the size of temporary noncommercial signs to three (3) square feet and directed the Planning Commission to consider the revisions due to the community's concerns regarding visual clutter during political campaign season. The Ordinance was eventually adopted with this revision by the Council on July 18, 2017 (**Attachment C**).

During the 2018 municipal election, the maximum size and aggregate area of signage related to temporary noncommercial signs was raised as an issue when a property owner received a courtesy notice of violation based on the adopted Ordinance. At the time, the City Manager determined to suspend the enforcement of Section 15.08.040.G of the Sign Ordinance until the matter could be revisited by the City Council.

At its meeting on February 5, 2019, the City Council considered and discussed the policies regarding temporary noncommercial signage as it related to individual sign size as well as aggregate sign size (**Attachment D**). The City Council provided staff with the following direction: 1) limit individual sign size to sixteen (16) square feet, and 2) no aggregate size limit.

Staff is now returning to the Planning Commission with these amendments for temporary noncommercial signs within Section 15.08 – Sign Provisions as directed by the City Council (**Attachment E**).

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted to date, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 01-19, recommending City Council approval of an Ordinance amending Chapter 15.08 – Sign Provisions to allow temporary noncommercial signs up to sixteen (16) square feet in area with no aggregate size limit.

ATTACHMENTS

- A. Planning Commission Resolution No. 01-19, with attachment:
 Exhibit 1 – Draft Ordinance Amending Chapter 15.08 – Sign Provisions
- B. Excerpt of the Minutes from the May 16, 2017 City Council Meeting
- C. Ordinance No. 475
- D. Excerpt of the Staff Report and Minutes from the February 5, 2019 City Council Meeting
- E. Redline Changes to Chapter 15.08 – Sign Provisions

ATTACHMENT A

**CITY OF CLAYTON
PLANNING COMMISSION
RESOLUTION NO. 01-19**

**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING MUNICIPAL CODE
TITLE 15, "BUILDING AND CONSTRUCTION", CHAPTER 15.08 SIGN PROVISIONS
(ZOA-01-19)**

WHEREAS, the City wishes to amend its temporary noncommercial signage regulations to allow individual signs up to sixteen (16) square feet in area and to not limit the aggregate sign area displayed at one time; and

WHEREAS, this Ordinance will ensure that City residents and others are able to exercise one's constitutional right to free speech subject to the City's substantial interests in aesthetics and otherwise ensuring the general health, safety and welfare; and

WHEREAS, this Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on March 12, 2019, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to amend the Sign Provisions to allow individual temporary noncommercial signs up to sixteen (16) square feet in area and to not limit the aggregate sign area displayed at one time; and

WHEREAS, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict with and are in general conformance with the City of Clayton General Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code Sign Provisions, attached hereto as Exhibit 1 and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 12th day of March, 2019.

Planning Commission
Resolution No. 01-19

APPROVED:

ATTEST:

Bassam Altwal
Chair

Mindy Gentry
Community Development Director

ATTACHMENTS

Exhibit 1 – Draft Ordinance No. 485 Amending the Sign Provisions

EXHIBIT 1

ORDINANCE NO. 485

**AN ORDINANCE AMENDING CHAPTER 15.08 OF THE CLAYTON MUNICIPAL
CODE REGARDING SIGN PROVISIONS**

THE CITY COUNCIL

City of Clayton, California

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the City Council wishes to amend its temporary noncommercial signage regulations to allow individual signs up to sixteen (16) square feet and to not limit the aggregate sign area displayed at one time; and

WHEREAS, the Planning Commission on March 12, 2019 held a duly-noticed public hearing on the matter and recommended approval to the City Council; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, this Ordinance will ensure that City residents and others are able to exercise one's constitutional right to free speech subject to the City's substantial interests in aesthetics and otherwise ensuring the general health, safety and welfare; and

WHEREAS, the City Council has reviewed all written evidence and oral testimony presented to date on this matter.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES
ORDAIN AS FOLLOWS:**

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment to Clayton Municipal Code Section 15.08.040.G. Clayton Municipal Code Section 15.08.040.G is hereby amended to read in its entirety as follows:

G. Temporary noncommercial signs on private real property, provided each individual sign displayed does not exceed sixteen (16) square feet in area, with no limit on the aggregate signage displayed at one time.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 4. CEQA. The City Council hereby determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Section 5. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 6. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a noticed public hearing during a regular public meeting of the City Council of the City of Clayton, California held on April 2, 2019.

Passed, adopted, and ordered posted by the City Council of the City of Clayton, California at a regular public meeting thereof held on April 16, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

TUIJA CATALANO, Mayor

ATTEST

JANET CALDERON, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of the City of Clayton held on April 2, 2019, and was duly adopted, passed, and ordered posted at a regular public meeting of the City Council held on April 16, 2019.

Janet Calderon, City Clerk

ATTACHMENT B

7. PUBLIC HEARINGS

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 475 updating the Clayton Municipal Code, Title 15 Building & Construction, Section 15.08 – Sign Provisions, to comply with the United States Supreme Court’s recent decision in *Reed vs. Town of Gilbert, AZ*, to prohibit mobile billboards, and to incorporate other best practices.

Mindy Gentry, Community Development Director, presented the report noting the United States Supreme Court recently ruled in the case *Reed vs. Town of Gilbert, Arizona* the provisions of a municipality’s sign code must be content-neutral. Portions of the Town of Gilbert’s sign code was struck down by the U.S. Supreme Court due to its sign code subjecting ideological, political, and directional signs to size, location, and length of display time regulations. The court was clear that, as long as the regulation is not based on a sign’s message, local governments may regulate the size, lighting, location, timing, and number of signs.

The majority of the proposed sign code changes are definitions in order to clarify and create regulations that do not distinguish between sign content such as ideological, political, or directional. Staff also recommends prohibition of mobile billboards; although this has not been an issue locally, prohibition is in the interest of the public for the safe movement of vehicular traffic, reduction of air pollution, and to maintain the aesthetic appearance of the City. Staff further recommends some clean-up language to the addition and deletion of zoning districts that have been removed or added since the last Sign Code update; consistency in height for monument signs, pole signs, commercial entry signs and noncommercial signs; and consistency with the prohibition of all signs in the public rights of way, with the exception of City-sponsored events.

Councilmember Pierce recalled last time the Sign Ordinance was updated there was a long drawn-out discussion about the size of what is now termed “temporary noncommercial signs,” i.e., political signs, and others that are posted around town. Councilmember Pierce noted the proposed Ordinance has changed the size limit to thirty (30) square feet, whereas previously it was restricted to three (3) square feet. If the size of these signs is increased for posting on residential and non-commercial properties, there will be a public outrage as Clayton’s current size restrictions are widely supported and admirably differentiate this city from others during election times.

Ms. Gentry responded that type of provision must be applied across the board severely restricting other types of signage by community organizations. She also noted thirty (30) square feet was a policy decision staff recommended pursuant to legal counsel advice that eighty (80) square feet was upheld in the courts; however, it is still possible the City Council has the ability to make a policy decision in terms of the square footage.

Councilmember Pierce indicated she would like to restrict that sign size, perhaps to four (4) feet at a maximum. Councilmember Shuey also recalled that historical discussion and would like to make a policy decision to reduce that sign size maximum, even though he noted it could be a legal risk. City Attorney Mala Subramanian advised the proposed reduction in sign size could be considered too small.

Councilmember Catalano inquired if banner sizes were also included in the proposed Sign Code Ordinance. Ms. Subramanian confirmed that banners are exempt in this section and covered under another section of the Clayton Municipal Code. She further indicated that a size modification suggested from 80 sq. ft. to 3-4 sq. ft. is a significant change to the proposed Ordinance, and therefore the Ordinance must go back to the Planning Commission for its review of the proposed modification as the provision is a part of the Zoning Code; the Commission can then make its recommendations to the City Council.

Councilmember Pierce added during a campaign season, Councilmembers receive a number of phone calls inquiring on where signs can be placed; she noted the current process of obtaining permits for the rights of way signs appear to be working.

Mayor Diaz opened the Public Hearing for public comment.

Dan Hummer, Stranahan resident, agrees with limiting the size of political signs.

Russ Remoy, 1843 Yolanda Circle, shared his concerns about high-density housing changing the character of Clayton. Mayor Diaz advised him those concerns would be allowed during the next item on the agenda.

Mayor Diaz closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to refer this item back to the Planning Commission for its further review on the sign size limit change to retain the existing 3 sq. ft. aggregate limitation in the Sign Provisions Ordinance (Passed; 5-0 vote).

- (b) Public Hearing to consider a proposed City-initiated General Plan Amendment to modify the determination of residential developable acreage and density calculations and to not require a minimum density on residentially designated property with sensitive land areas and the Introduction and First Reading of Ordinance No. 476 adding Section 17.22 – Residential Density Calculations for Residential with Sensitive Land Areas to Title 17 Zoning of the Clayton Municipal Code describing and determining how General Plan densities are calculated for proposed residential projects with sensitive land areas.

Community Development Director Mindy Gentry presented the staff report noting as a real life example, the proposed Silver Oak Estates subdivision project will discussed tonight as to why these amendments are being proposed. However, she noted that project is not on the agenda therefore staff recommends the ensuing discussion not focus on the merits or details of that project; it is merely a real-world example to illustrate the beneficial necessity of the proposed amendments.

Ms. Gentry advised the proposed Silver Oaks Estates project consists of 59 units which are comprised of seven single family homes, 28 town homes and 24 "Green Courts" in the terminus of Lydia Lane. The currently proposed project has been through various stages in the entitlement process since 2010. Due to City staff attrition and cursory review of the project, in 2016 it became apparent the proposed townhomes and green courts were not in conformance with the City's General Plan. The General Plan designation for the property is Single Family Medium Density which calls for 3.1 to 5 units per acre with a product type of single family detached homes. Consequently, the current General Plan would allow 43 to 70 units on the property. Although the proposed 59 units fits within that overall allowed density, the various single family detached product types do not; therefore, the proposed attached product type would only fit within one of three Multifamily General Plan land use designations. If the project applicant wanted to further pursue the proposed product type, a General Plan Amendment to multifamily low density would be required, resulting in a minimum unit count of 106 units, an increase of 47 units on the property above the proposed 59 units. Alternatively, if the project applicant tried to fit the proposed single family detached homes on the site resulting in a small lot single-family development of detached homes, it would likely occur with a zero lot line and/or minimal setbacks. Given the physical constraints of the property, it is questionable whether the parcel is large enough to even fit a detached

ATTACHMENT C

ORDINANCE NO. 475

AN ORDINANCE AMENDING CHAPTER 15.08 OF THE CLAYTON MUNICIPAL CODE REGARDING SIGN PROVISIONS

THE CITY COUNCIL

City of Clayton, California

THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS FOLLOWS:

WHEREAS, the City Council wishes to update its sign regulations to comply with the U.S. Supreme Court's decision in *Reed v. Town of Gilbert* and to incorporate other current best practices; and

WHEREAS, the City Council further wishes to eliminate mobile billboard advertising within the city in order to promote the safe movement of vehicular traffic, to reduce air pollution, and to maintain the aesthetic appearance of the city as recognized in *Showing Animals Respect & Kindness v. City of West Hollywood* (2008) 166 Cal.App.4th 815 and other applicable law; and

WHEREAS, this Ordinance will ensure that City residents and others are able to exercise one's constitutional right to free speech subject to the City's substantial interests in traffic safety, aesthetics and otherwise ensuring the general health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment. Chapter 15.08 of the Clayton Municipal Code is hereby amended to read in full as set forth in Exhibit A, attached hereto and incorporated herein by this reference. As set forth in Section 15.08.020 of Exhibit A, the graphic attached as Exhibit B to this Ordinance shall be inserted into Section 15.08.020 in any codification of this Ordinance or the Clayton Municipal Code.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 4. CEQA. The City Council hereby determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Section 5. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 6. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a noticed public hearing during a regular public meeting of the City Council of the City of Clayton, California held on July 18, 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton, California at a regular public meeting thereof held on August 1, 2017, by the following vote:

AYES: Mayor Diaz, Vice Mayor Haydon, Councilmembers Catalano, Pierce and Shuey.
NOES: None.
ABSENT: None.
ABSTAIN: None.

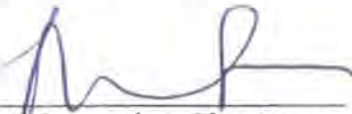
THE CITY COUNCIL OF CLAYTON, CA


Jim Diaz, Mayor

ATTEST


Janet Brown, City Clerk

APPROVED AS TO FORM



Malathy Subramanian, City Attorney

APPROVED BY ADMINISTRATION



Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of the City of Clayton held on July 18, 2017, and was duly adopted, passed, and ordered posted at a regular public meeting of the City Council held on August 1, 2017.



Janet Brown, City Clerk

EXHIBIT A

Chapter 15.08 SIGN PROVISIONS

Sections:

15.08.010	Purpose Statements
15.08.020	Definitions
15.08.030	Permit Procedures
15.08.040	Exempt Signs
15.08.050	Prohibited Signs
15.08.060	General Sign Requirements and Standards
15.08.070	Regulations for Special Signs
15.08.080	Computation of Sign Area and Height
15.08.090	Maintenance
15.08.100	Non-conforming Signs
15.08.105	Substitution
15.08.110	Enforcement

15.08.010 Purpose. The purpose of this chapter is to provide standards for the height, size, location, and appearance of building and street graphics, in order to:

- A. Encourage sound signing practices as an aid to business and to inform the public. Signage is to be used primarily for identification, not for advertising.
- B. Create an attractive economic and business climate.
- C. Preserve and improve the appearance of the city as a place in which to live and work and as an attraction to nonresidents who come to visit or trade.
- D. Protect and enhance the rural atmosphere of the city.
- E. Minimize adverse effects on public and private property.
- F. Prevent excessive and confusing sign displays.
- G. Reduce hazards to motorists and pedestrians.
- H. Enable the fair and consistent enforcement of sign regulations.
- I. Promote the public health, safety, and general welfare.

15.08.020 Definitions.

- A. **Address Sign:** A sign listing the street address and, in the case of a residential use, the name of the occupants of the premises.
- B. **Animated Sign:** A sign that conveys its message or attracts attention through moving, rotating, changing, or flashing lights or components.
- C. **Awning:** A hood or cover that projects from the wall of a building and is composed of rigid or non-rigid materials.
- D. **Awning Sign:** A sign or graphic attached to or printed on an awning (see Sign Illustrations).
- E. **Banner:** A temporary commercial, noncommercial, or community event sign of lightweight fabric, plastic, paper, or similar material that is mounted on a building or street light pole (see Sign Illustrations).

- F. **Billboard:** A sign that directs attention to a product, place, activity, person, institution, business, or subject that is not entirely related to the premises on which the sign is located.
- G. **Building Marker:** A sign indicating the name of a building, date of construction, and incidental information about its construction, which is cut into masonry or made of bronze or other permanent material.
- H. **Building Sign:** A permanent sign attached to a building or other structure that is an integral part of a building. A building sign includes an awning sign, a projecting sign, a suspended sign, a wall sign, and a window sign, an address sign, and a building marker.
- I. **Canopy (or Marquee):** A permanent roof-like shelter extending from part or all of a building face over a public right-of-way and constructed of some durable material such as metal, wood, glass, or plastic.
- J. **Commercial Center Entry Sign:** A sign located at the entry to a shopping center, business area, or office park identifying the center, area, or park and identifying the businesses located therein.
- K. **Commercial Sign:** Any sign with an image or message which primarily concerns the commercial or economic interests of the sign sponsor or intended audience, or which proposes a commercial transaction.
- L. **Community Event Sign:** A banner advertising a City of Clayton community event as defined by the City Council in its policies pertaining to the usage of signage in the public right-of-way per Resolution 46-2007 or any subsequent revisions thereafter.
- M. **Directory Sign:** A sign or set of similarly designed individual signs displayed in sequence that lists tenants or occupants within a building or business center, and is designed or be viewed primarily by pedestrians (see Sign Illustrations).
- N. **Flag:** Fabric, banner, or bunting containing distinctive colors, patterns, or symbols.
- O. **Ground Sign (or Freestanding Sign):** A permanent sign supported by one or more uprights, poles, or braces in or upon the ground or placed upon a planter, wall, retaining wall, or other structure that is not an integral part of a building. A ground sign includes a monument sign, a pole sign, a kiosk sign, commercial center entry sign, directory sign, multiple address sign, neighborhood/district entry sign.
- P. **Incidental Sign:** An informational sign, whose purpose is secondary to the use of the lot on which it is located, such as "no parking", "entrance", "loading only", "telephone", and other similar directives.
- Q. **Interior Sign:** A sign located in the interior of a building, mall, court, standing or enclosed lobby intended for interior viewing only.
- R. **Kiosk Sign:** A sign located on a small freestanding structure which has three (3) or more surfaces.
- S. **Mobile Billboard:** Any vehicle, or wheeled conveyance which carries, conveys, pulls, or transports any sign or billboard for the primary purpose of advertising. Mobile billboard shall not include (1) any vehicle which displays an advertisement or business identification of its owner, so long as such vehicle is engaged in the usual business or regular work of the owner, and not used merely, mainly or primarily to display advertisements; (2) buses; or (3) taxicabs.
- T. **Monument Sign:** A type of ground sign constructed upon a solid appearing base or pedestal (see Sign Illustrations).

- U. Multiple Address Sign: A sign or set of similarly designed individual signs displayed in sequence placed at the entrance of a private residential street or area that lists the street address and names of the occupants of the residences along the street or within the area.
- V. Mural: A work of art, containing no commercial message, applied to and made an integral part of an exterior wall.
- W. Neighborhood/District Entry Sign: A sign identifying a neighborhood or district (see Sign Illustrations).
- X. Noncommercial Sign: Any sign displaying a message that is not commercial.
- Y. Noncommercial Location Sign: A sign identifying a noncommercial use.
- Z. Nonconforming Sign: A sign legally existing at the time of the effective date of this Chapter which does not conform to the provisions of this Chapter.
- AA. Off-Site Sign: A sign directing attention to a business, service, product, or entertainment that is not sold or offered on the site where the sign is located, including billboards and other outdoor advertising signs.
- BB. On-Site Sign: A sign directing attention to a business, service, product, or entertainment that is sold or offered on the site where the sign is located.
- CC. Parapet or Parapet Wall: That portion of a building wall that rises above the roof level or eave line.
- DD. Pennant: A sign of lightweight fabric, plastic, or similar material that is attached to a pole at one edge (see Sign Illustrations).
- EE. Permanent Sign: Any sign intended for use for a period greater than thirty (30) calendar days.
- FF. Personal Property Sale Sign: A temporary commercial sign advertising a sale of personal property.
- GG. Pole Sign: A type of ground sign mounted to or hanging from a pole or similar structure (see Sign Illustrations).
- HH. Portable Sign: A sign not permanently attached to the ground, building, or other permanent structure and designed to be transported, including but not limited to: signs designed to be transported by means of wheels; signs in the form of A-frames or T-frames; menu or sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked in or visible from the public right of way, unless said vehicle is used in the normal day-to-day operations of the business. Portable signs do not include mobile billboards.
- II. Projecting Sign: A sign extending from a building face or wall so that the sign face is perpendicular or at an angle to the building face or wall (see Sign Illustrations).
- JJ. Real Estate Sign: A commercial sign advertising the sale, lease, or rent of property and the identification of the firm handling the sale, lease, or rent.
- KK. Residential Open House Sign: A temporary commercial sign advertising an open house for a house for sale.
- LL. Roof Sign: A sign erected upon or above a roof or parapet of a building or structure. A sign mounted on a vertical extension of a wall that extends above a roof structure is considered a wall sign.
- MM. Sign: Any name, identification, description, symbol, display, illustration, or device, including any structure, machine (including vending machine), component parts and paint, viewable by the general public that directs attention to a product, place, activity, person, institution, or business.

- NN. Sign Area: The area within a perimeter which forms the outside shape, including any frame, and forms an integral part of the display, but excluding the necessary supports, poles, or uprights on which the sign may be placed. If the sign consists of more than one section or module, all areas visible from any position at one (1) time will be totaled.
- OO. Sign Face: The visible portions of a sign including all characters and symbols, but excluding structural elements not an integral part of the display.
- PP. Sign Illustrations: Examples of various signs in pictorial format incorporated into Section 15.08.020 of the Clayton Municipal Code.
- QQ. String Pennant: A lightweight plastic, fabric, or other material, whether or not containing a message or symbols, suspended from a rope, wire, or string in series, usually designed to move in the wind.
- RR. Subdivision Marketing Pole Pennant: A single piece of lightweight plastic, fabric, or other material, whether or not containing a message of any kind that is temporarily suspended from a pole and is designed to move in the wind to promote the sale of newly subdivided lots and/or newly constructed dwellings.
- SS. Subdivision Marketing Signs: Temporary commercial signs, including ground signs, wall-mounted signs, pole signs, pennants, and real estate signs, designed to promote the sale of newly subdivided lots and/or newly constructed dwellings (see Sign Illustrations).
- TT. Suspended Sign: A sign attached to and located below any permanent eave, roof, or canopy (see Sign Illustrations).
- UU. Temporary Commercial Sign: Any commercial sign intended for use for a period of less than thirty (30) days.
- VV. Temporary Noncommercial Sign: Any noncommercial temporary sign displaying an ideological, political or other noncommercial message, that is constructed of paper, cloth, canvas, light fabric, cardboard, wallboard or other similar lightweight materials, with or without frames which is designed or intended to be displayed for a limited period of time.
- WW. Wall Sign: A sign not exceeding six (6) inches in thickness that is painted on, attached to, or erected against the wall of a building or structure with the exposed face of the sign parallel to the plane of said wall (see Sign Illustrations).
- XX. Window Sign: A sign displayed on window glass (including the glass of doors) or within three (3) feet of a window, designed to be viewed from the exterior of the window (see Sign Illustrations).

15.08.030 Permit Procedures.

- A. City Review - General. City review and approval is required for all signs except those specified by this Chapter as exempt or prohibited. No City review or approval is required for a change of copy on an existing permitted sign that is in full compliance with the requirements and standards of this Chapter. In addition to meeting the requirements of this Chapter, all signs shall comply with all applicable California Building Code requirements. No sign shall be constructed, placed, erected, or modified unless such construction, placement, erection, or modification is authorized by the owner, or his or her representative, of the property upon which the sign is to be placed. Application for sign review and approval shall be accompanied by written authorization from the

property owner, or his or her authorized representative, for placement of the proposed sign or signs.

B. City Review and Approval. The City shall review and approve signs according to the following procedures:

1. **Administrative Review and Approval.** The following signs shall be reviewed and approved administratively by the Community Development Department if they conform to the general sign requirements and standards of Section 15.08.060 and the regulations for special signs of Section 15.08.070.
 - a. Directory signs provided the sign does not exceed ten (10) square feet in area, nor a height of six (6) feet.
 - b. Any sign proposed for a property consistent in terms of size, number, and location with a previously-approved master sign plan, unless otherwise specified in an applicable master sign plan.
 - c. All building and ground signs proposed for individual businesses that are located on a property that have a previous approval for similar signage, and the proposed sign(s) are consistent in terms of size, number, and location with the previous approval. (This provision does not apply to a Corner Lot or Through Lot where signage is being proposed along multiple property frontages)
2. **Exception.** Any sign proposal considered within the parameters of this subsection that in the judgment of the Community Development Director may not comply with the intent or purpose of this Chapter may be referred to the Planning Commission for consideration.
3. **Planning Commission Review and Approval.** The following signs shall be reviewed and approved by the Planning Commission in accordance with Chapter 17.64 of the Clayton Municipal Code.
 - a. Master sign plans.
 - b. Neighborhood/district entry signs.
 - c. Commercial center entry signs.
 - d. Subdivision marketing sign program.
 - e. Noncommercial locational signs.
 - f. Directory signs that exceed ten (10) square feet in area and six (6) feet in height.
 - g. All building and ground signs for individual businesses that are located on a property that have not had previous approval for signage, involve signage on multiple frontages, and/or involve an increase in the previously-approved signage area, increase in the number of signs, or substantially change the location of signage.
 - h. Any sign proposal that, in the judgment of the Community Development Director, may not comply with the intent or purpose of this Chapter.
4. **Variance.** A variance shall be required from the Planning Commission for any deviations from the general sign requirements and standards of Section 15.08.060 or the regulations for special signs of Section 15.08.070 of this Chapter according to the procedures set out in Chapter 17.52 of the Clayton Municipal Code.

15.08.040 Exempt Signs. The following signs shall not require review and approval by City:

- A. Address signs, provided the sign does not exceed two (2) square feet in area.
- B. Public information, identification, civic event, and directional signs erected by a public agency or public utility.
- C. Incidental signs.
- D. Legal notices posted by law.
- E. Building markers, provided the sign does not exceed four (4) square feet in area and is not illuminated.
- F. Signs displayed by private individuals, when required by law or regulations of any governmental agency.
- G. Temporary noncommercial signs on private real property, provided the aggregate signage displayed at one time does not exceed three (3) square feet in area per parcel.
- H. Wall signs indicating the historical significance of a site or building, provided the sign does not exceed four (4) square feet in area and is not illuminated.
- I. Signs displayed in the interior of a building, mall, court, stadium, or enclosed lobby more than three (3) feet from an exterior window or door and intended for interior viewing only.
- J. Multiple address signs, provided the individual signs do not exceed four (4) inches by twenty-four (24) inches.
- K. Residential open house signs for a home sale in accordance with the standards of Section 15.08.070 of this Chapter.
- L. Flags, provided they are not used in a commercial manner or to advertise a business or its location.
- M. Murals containing no commercial message, provided the mural has intrinsic artistic value or appeal regardless of the business in the building on whose wall the mural is painted. Murals shall take into consideration the overall architecture of the building and shall not be placed on decorative surfaces or finishes. The colors and materials used shall be reasonably harmonious with those in the area.
- N. Personal property sale signs, in accordance with the standards of Section 15.08.070 of this Chapter.
- O. Real estate signs in accordance with the provisions of Section 15.08.070 of this Chapter.
- P. Portable signs in accordance with the provisions of Section 15.08.070 of this Chapter.
- Q. Banners and pennants in accordance with the provisions of Section 15.08.070 of this Chapter.
- R. Community event signs not exceeding twenty-four (24) square feet in area.

15.08.050 Prohibited Signs. The following signs are prohibited anywhere in the City:

- A. Animated signs.
- B. Flags used in a commercial manner or to advertise a business or its location.
- C. Signs that by color, wording, design, location, or illumination resemble or conflict with any traffic-control device or with safe and efficient flow of traffic.
- D. Signs that obstruct the free and clear vision of or create confusion for motorists or pedestrians.
- E. Signs with lighting detrimental to surrounding property or prevents peaceful enjoyment of residential uses.
- F. Banners and pennants, except as provided in Section 15.08.070 of this Chapter.
- G. Roof signs.

- H. String pennants.
- I. Balloons and similar inflatable signs.
- J. Permanent signs mounted on fences or deck/balcony railings.
- K. Portable signs except as provided in Section 15.08.070 of this Chapter.
- L. Temporary signs are prohibited in the public right-of-way except for signs for City-sponsored community events in location(s) approved by the City.
- M. Signs located on private property without the property owner's approval.
- N. Off-site signs except for:
 - 1. Temporary noncommercial signs.
 - 2. Residential open house signs.
 - 3. Garage or yard sale signs.
 - 4. Signs attached to trees, shrubs, or other natural features.
- O. Mobile billboard operating on a street or other public place within the city in which the public has the right of travel.

15.08.060 General Sign Requirements and Standards.

- A. Signs in the R-10, R-12, R-15, R-20, R-40, R-40-H, M-R, M-R-M, M-R-H, PF, and A Districts - Sign Permits. A sign permit is required in the R-10, R-12, R-15, R-20, R-40, R-40-H, M-R, M-R-M, M-R-H, PF, and A Districts for all non-exempt signs as follows:
 - 1. Noncommercial locational signs in accordance with the standards of Section 15.08.070 of this Chapter.
 - 2. Neighborhood/district entry signs in accordance with the standards of Section 15.08.070 of this Chapter.
 - 3. Subdivision marketing sign program in accordance with the standards of Section 15.08.070 of this Chapter.
 - 4. No other non-exempt signs are allowed in these districts.
- B. Signs in the L-C District - Sign Permits. A sign permit is required in the L-C District for all non-exempt signs as follows:
 - 1. Noncommercial locational signs in accordance with the standards of Section 15.08.070 of this Chapter.
 - 2. Neighborhood/district entry signs in accordance with the standards of Section 15.08.070 of this Chapter.
 - 3. Master sign plan in accordance with the standards of Section 15.08.070 of this Chapter.
 - 4. Commercial center entry signs in accordance with the standards of Section 15.08.070 of this Chapter.
 - 5. Subdivision marketing sign program in accordance with Section 15.08.070 of this Chapter.
- C. Signs in the L-C District - Standards. Ground and building signs relating to on-site commercial activities are authorized in the L-C Districts in accordance with the following standards:
 - 1. The aggregate sign area of any combination of ground signs and building signs for a building or a business shall not exceed one (1) square foot per lineal foot of building frontage or store frontage. Exempt signs, directory signs, commercial center entry signs, pennants, and portable signs are not subject to this aggregate sign limit.

2. Monument signs (ground signs) shall not exceed eight (8) feet in height, and the size of such signs may be no greater than sixty percent (60%) of the allowable aggregate sign area for the building frontage to a maximum of twenty-four (24) square feet.
 3. Pole signs (ground signs) shall not exceed eight (8) feet in height, and the size of such signs may be no greater than sixty percent (60%) of the allowable aggregate sign area for the building frontage to a maximum of twenty-four (24) square feet.
 4. Kiosk signs (ground signs) shall not exceed twenty-four (24) square feet in area (all faces) and shall not exceed seven (7) feet in height.
 5. Projecting signs (building signs) shall not exceed twelve (12) square feet in area and shall maintain a vertical clearance of at least eight (8) feet.
 6. Suspended signs (building signs) oriented toward pedestrian areas or walkways shall not exceed six (6) square feet in area and shall maintain a vertical clearance of at least eight (8) feet above the surface of a walkway, sidewalk, or pedestrian path.
 7. Suspended signs (building signs) oriented toward street traffic and/or parking lots shall maintain a vertical clearance of at least eight (8) feet above the surface of a walkway, sidewalk, or pedestrian path, and may not be displayed over vehicular access. The size of such a suspended sign may be no greater than sixty percent (60%) of the allowable aggregate sign area for the building frontage to a maximum of twenty (20) square feet.
 8. Window signs (building signs) shall not cover more than forty (40) percent of the glazed area of an individual window panel or more than twenty (20) percent of the aggregate glazed area on any one building frontage or store frontage.
 9. Wall Signs (building signs) - one (1) square foot per lineal foot of building or store frontage.
 10. Awning Signs (building signs) - one (1) square foot per lineal foot of building or store frontage.
- D. Signs in the PD District. Signs in the PD District shall conform to the standards or signs for uses defined in the applicable General Plan designation. For signs in areas designated residential, cultural center, institutional, school, or open space by the General Plan, the requirements and standards for signs in the R-10, R-12, R-15, R-20, R-40, R-40-H, M-R, M-R-M, M-R-H, PF, and A Districts shall apply. For signs in areas designated commercial by the General Plan, the requirements and standards for signs in the L-C District shall apply unless otherwise specified by a master sign plan.

15.08.070 Regulations for Special Signs.

- A. Neighborhood/District Entry Signs. Neighborhood/district entry signs are allowed in all districts subject to the following standards:
 1. The sign shall include only the name of the neighborhood or district.
 2. Lettering shall not exceed eighteen (18) inches in height.
 3. The top of the letters shall not exceed six (6) feet in height.
- B. Commercial Center Entry Signs. Commercial center entry signs are allowed in commercial districts subject to the following standards:
 1. One (1) sign may be located near each main vehicular entrance to the shopping center, business area, or office park fronting on a public roadway.

2. The sign may be a pole sign or monument sign.
 3. The sign shall not exceed eight (8) feet in height.
 4. Lettering shall not exceed twenty-two (22) inches in height.
- C. Banners. Banners for new or relocated businesses are allowed temporarily in commercial districts subject to the following standards:
1. Banner in lieu of permanent sign:
 - a. The banner shall be secured on all sides.
 - b. The banner may only be displayed for up to thirty (30) days, with up to an additional thirty (30) day extension if approved administratively by the Community Development Department.
 - c. The banner must conform to the sign area dimensions and location of Section 15.08.060 C of this Chapter.
 2. Promotional banner. A second banner in addition to that noted above may be allowed subject to the following standards:
 - a. The banner may be a wall, window, or suspended sign.
 - b. The banner may only be displayed for up to thirty (30) days.
 - c. The banner may be no larger than the banner as approved per Section 15.08.070 C1 and must conform to the sign area dimensions of Section 15.08.060 C of this Chapter.
- D. Pennants. Pennants are allowed in commercial districts subject to the following standards.
1. Only one (1) pennant may be displayed by any one (1) business.
 2. The pennant shall be secured to a pole on one (1) side and shall be hanging.
 3. The pennant shall not exceed two (2) feet in width or four (4) feet in length.
 4. The pennant shall be made in a professional manner and workmanship of fabric, plastic, or similar material designed to withstand at least six (6) months of outdoor exposure. Paper pennants shall not be allowed.
 5. The bottom of a pennant shall be at least eight (8) feet above the surface of a walkway, sidewalk, or pedestrian path. A pennant may not be displayed over a street, driveway, or vehicular access.
- E. Portable Signs. Portable signs are allowed in commercial districts subject to the following standards:
1. Only one (1) portable sign may be displayed by any one (1) business.
 2. The sign shall only be in the form of an A-frame, sandwich board, menu board, or umbrella.
 3. The sign shall not exceed three (3) feet in height or two (2) feet in width per face, except for an umbrella.
 4. The sign shall be displayed only during the hours the business is open to the public and shall be removed during non-business hours.
 5. The sign shall be displayed immediately adjacent to the business it advertises.
 6. The sign shall not be displayed in a public right-of-way nor shall it obstruct a pedestrian walkway.
 7. The sign shall be constructed out of a stable and rigid material (i.e., PVC is not considered an acceptably rigid material).
- F. Residential Open House and Personal Property Sale Signs. Residential open house and personal property sale signs are allowed for residential uses subject to the following standards:

1. A total of one (1) on-site sign and up to six (6) off-site signs.
 2. Only one (1) off-site sign may be displayed at any one intersection for each residential open house or personal property sale.
 3. The signs shall not exceed three (3) feet in height or two (2) feet in width.
 4. The signs shall only be displayed up to one (1) hour before, during, and up to one (1) hour following the residential open house or personal property sale.
 5. The signs shall not be displayed in a public right-of-way nor shall they obstruct a pedestrian walkway, except signs shall be allowed behind the sidewalk or behind the curb if there is no sidewalk.
 6. No signs shall be displayed on private property without the prior consent of the property owner.
 7. Balloons, flags, pennants, animated devices, and similar objects are prohibited. (see Section 17.16.020E of the Municipal Code for further regulations for Personal Property Sales).
- G. Noncommercial Locational Signs. Noncommercial locational signs are allowed in all districts subject to the following standards:
1. The signs may include building signs and ground signs.
 2. The aggregate sign area may not exceed twenty-four (24) square feet for a lot up to forty thousand (40,000) square feet in size. For lots larger than forty thousand (40,000) square feet, sign area may be increased subject to specific Planning Commission review and approval.
 3. No ground or pole sign shall exceed eight (8) feet in height.
- H. Real Estate Signs. Real estate signs are allowed in all districts subject to the following standards:
1. Only one (1) on-site real estate sign may be displayed on a front or side yard frontage. An additional real estate sign may be displayed on a rear yard frontage.
 2. Real estate signs in residential districts shall not exceed six (6) square feet in area. Real estate signs in commercial districts shall not exceed twelve (12) square feet in area.
 3. The sign may be in the form of a pole sign or a wall sign.
 4. The sign shall not exceed six (6) feet in height.
 5. The sign shall be removed within ten (10) days of the lot or building(s) being sold, leased, or rented.
 6. Real estate signs located off-site of the subject property (e.g., at nearby intersection, public landscape, public property, public right of way) are not allowed.
- I. Subdivision Marketing Sign Program. Subdivision marketing signs are allowed in residential districts subject to the approval of a subdivision marketing sign program in accordance with the following standards:
1. The program may include a combination of temporary ground signs, wall signs, subdivision marketing pole pennants, and real estate signs.
 2. All subdivision marketing signs shall be displayed within the boundaries of the subdivision.
 3. Subdivision marketing pole pennants shall not exceed twenty-five (25) feet in height or be located closer than every fifty (50) feet.

4. All subdivision marketing signs shall be removed within thirty (30) days of the opening of escrow for sale of the last home in the subdivision.
 5. The dimensions of any sign shall not exceed eight (8) feet in length, nor eight (8) feet in height, nor a total area of sixty (60) square feet.
- J. Master Sign Plan. At the discretion of the City or one or more property owners, a master sign plan may be established for a shopping center, business area, office park, or similar identifiable geographic area. Such master sign plan may impose sign requirements and standards addressing the number, height, area, color, or other sign characteristics in a manner more restrictive than that allowed by the general sign requirements and standards of Section 15.08.060 of this Chapter. Such a master sign plan may be established to promote an enhanced sense of identity, aesthetic value, or other feature. A master sign plan will not only identify and describe those sign characteristics that are more restrictive than those allowed by the general sign requirements and standards of Section 15.08.060 of this Chapter, but also the purpose or goal for which the master sign plan is established.

15.08.080 Computation of Sign Area and Height. The following principles shall govern the computation of sign area and height.

- A. Computation of Area of Individual Signs. The sign area of a sign face (which is also the sign area of a wall sign or other sign with only one (1) face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative wall when such wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
- B. Computation of Area of Multi-Faced Signs. The sign area for a sign with more than one (1) face shall be computed by adding together the area of all sign faces visible from any one point. When two (2) sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than forty-two (42) inches apart, the sign area shall be computed by the measurement of one (1) of the faces.
- C. Computation of Height. The height of a sign shall be computed as the distance from the grade at the edge of the public way along which a sign is placed or oriented to the highest point of the sign, or any structural or architectural component of the sign. When the grade at the edge of the public way is higher than the site on which the sign is placed, that portion of the sign below the grade at the edge of the public way shall not be included in determining the sign's overall height.
- D. Computation of Total Permitted Sign Area. The total area of all individual signs permitted on a lot shall be computed according to Section 15.08.060 C of this Chapter. Property fronting two (2) or more streets are allowed the permitted sign area specified in Section 15.08.060 C for each such street frontage.

15.08.090 Maintenance. All signs shall be maintained in good repair and shall be cleaned, painted, and replaced as necessary to present a neat appearance at all times.

15.08.100 Nonconforming Signs.

- A. Except for regular maintenance, no non-conforming sign shall be altered, modified, added to, or increased in area, unless the entire sign is brought into conformity with the requirements and standards of this Chapter.
- B. Any non-conforming sign that is damaged or destroyed to the extent of fifty (50) percent or more of its estimated market value shall not be replaced or repaired except by a sign that conforms to the requirements and standards of this Chapter.
- C. Any non-conforming sign relating to a business that has not operated for six (6) consecutive months shall be removed.

15.08.105 Substitution. In each instance and under the same conditions to which this Chapter permits any sign, a sign containing an ideological, political or other noncommercial message that is constructed to the same physical dimensions of the permitted sign shall be permitted.

15.08.110 Enforcement. Any person erecting, displaying, or maintaining a sign in violation of this Chapter is guilty of an infraction and shall be subject to enforcement and penalties set out in Chapters 1.12, 1.14, 1.16, and 1.20 of Title 1 of the Clayton Municipal Code.

ATTACHMENT D

Agenda Date: 2-05-2019

Agenda Item: 8b



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY ATTORNEY

DATE: FEBRUARY 5, 2019

SUBJECT: CONSIDER THE NECESSITY OF REVISIONS TO THE SIGN PROVISIONS ORDINANCE (CMC SECTION 15.08)

RECOMMENDATION

Consider options for revisions to the sign ordinance to address size limitations for temporary noncommercial signage and provide policy direction to staff to initiate the amendment process.

BACKGROUND

On May 16, 2017, the City Council introduced Ordinance No. 475 updating the Sign Provisions section of the Clayton Municipal Code (Section 15.08) to comply with recent case law and to incorporate other best practices. At the time, the recent United Supreme Court Case *Reed v. Town of Gilbert, Arizona* provided that a city's sign ordinance must be content-neutral. Therefore, one of the required revisions to the City's ordinance to comply with *Reed* was to amend Section 15.08.040G, which allowed political signs to not exceed three square feet in area, with one sign per property for each candidate, party or issue. This was revised in the proposed draft ordinance to remove the reference to political signs, making it content neutral, and to allow temporary noncommercial signs with an aggregate of thirty square feet of signage per parcel, with no limitation on individual sign size, and no limit on the number of individual signs per candidate, party or issue.

At the May 16, 2017 meeting, the Council noted its concern regarding the proposed change for temporary noncommercial signage from a maximum of three (3) square feet per parcel, to an aggregate of up to thirty (30) square feet in area of signage per parcel. At the time it was noted that thirty (30) square feet was a policy decision staff recommended pursuant to the City Attorney's office advice that eighty (80) square feet had been upheld by the courts. The Council decided to reduce the size to three (3) square feet and directed the Planning Commission to consider the revisions due to the community's concerns regarding visual

clutter during political campaign season. The Ordinance was eventually adopted by the Council on July 18, 2017 with this revision.

DISCUSSION

During the 2018 municipal election, the maximum size and aggregate area of signage related to temporary noncommercial signs was raised as an issue when a property owner received a courtesy notice of violation based on the adopted Ordinance. At the time, the City Manager determined to suspend enforcement of Section 15.08.040G of the sign ordinance until a future date when the City Council could reconsider the matter.

Below is an overview of relevant cases regarding the two elements of this sign regulation:

1. Per sign size; and
2. Aggregate sign area limits that courts have allowed and/or invalidated.

1. Per Sign Size

While some cases have invalidated restrictions on the number of signs per property (see *Arlington County Republican Committee v. Arlington County, Va.* (4th Cir. 1993) 983 F.2d 587 [invalidating two signs per lot]), the Ninth Circuit previously upheld an ordinance that limited individual political signs up to 16 square feet in area, implicitly limiting the number of signs as the ordinance also contained an aggregate sign limit. (*Baldwin v. Redwood City* (9th Cir. 1976) 540 F.2d 1360, 1368.) It has also invalidated an ordinance that limited sign size to four (4) square feet per sign. (*Verrilli v. City of Concord* (9th Cir. 1977) 548 F.2d 262, 265.)

Based on this, the City could adopt a per sign size limit of 16 square feet but it should be aware this limit is not without some risk. *Baldwin* is an older case from the 1970s and case law has become less favorable to municipalities over the years. If the Ninth Circuit revisited the issue, it might apply similar reasoning to *Arlington* and preclude per sign size restrictions.

In *Arlington*, the court explained that “we question whether the County needs to limit the number of signs on private property to protect aesthetics. As the Court noted in *Vincent*, ‘[p]rivate property owners’ esthetic concerns will keep the posting of signs on their property within reasonable bounds.’ 466 U.S. at 811, 104 S.Ct. at 2132. We also find persuasive the fact the County in this case could not show any specific aesthetic or traffic problems arising while the preliminary injunction was in force. In contrast, the district court found that after issuing the preliminary injunction, ‘additional signs posted were neatly displayed and not unreasonably numerous.’” (*Arlington* at 594.)

As *Arlington* is a Fourth Circuit case, it is not binding on the City of Clayton, which is bound by the Ninth Circuit of the United States Court of Appeals. However, the Council should be aware there is some risk that a future court might overrule *Baldwin* and determine that per sign limitations are invalid under similar reasoning.

Aggregate Size Limit

Limitations upon the aggregate area of political signs have also been permitted. For example, in *Baldwin v. Redwood City*, that City's ordinance limited the aggregate area of all signs on a single parcel to 80 square feet in order to reduce the accumulation of debris and minimize traffic hazards. (*Baldwin* at 1369.) However, a similar limitation of 64 square feet aggregate was struck down in *Verrilli v. City of Concord* because that City did not make any findings identifying the substantial public interests that could not have been protected by less restrictive regulations. (*Verrilli* at 265.) In addition, this limitation applied to all parcels, including a political campaign headquarters. Based on the outcomes of *Baldwin* and *Verrilli*, the safest approach is to assume that 80 square feet is the minimum aggregate size limit. If the sign is double sided, this would result in a 40 square feet sign. However, it is possible that a smaller amount is permissible with the appropriate record to support it.

CONCLUSIONS

Based on the above, the safest approach is to not have restrictions on individual sign size and to limit the aggregate area to 80 square feet or 40 square feet for a double sided sign. Alternatively, the City Council could place a restriction on individual sign sizes and reduce the aggregate, so long as it is comfortable with the potential risk of a challenge. In this regard, courts tend to protect property owners' rights given the core First Amendment issues at stake. This raises the bar for the City to defend its Ordinance. In addition, if the City is challenged and loses, it may be forced to pay the plaintiff's legal fees.

Lastly, the case law over the years has become less favorable to cities on infringement of First Amendment expressions, and a future court may overrule *Baldwin* given this shift. However, if the Council is willing to accept the risk, the Council could utilize a size limitation for residential parcels of sixteen (16) square foot per sign and thirty-two (32) square foot in aggregate with appropriate findings.

The Council cannot limit the number of signs per candidate, party or issue as previously provided in the sign ordinance as this is not content neutral and is impermissible under *Reed*.

Attachments

1. Minutes from May 16, 2017 City Council meeting
2. Minutes from July 18, 2017 City Council meeting
3. Sign Ordinance

Mayor Catalano inquired if the City Code would have to be updated for a pilot program. City Attorney Subramanian advised the program could come back as a resolution for the duration of a pilot program.

City Manager Napper commented inherent with the implementation of a pilot program, a number of fixtures will need installation, such as poles and street signage. In his experience with other cities once pilot programs are started it is difficult to have a termination date.

Vice Mayor Pierce indicated she will be opposing the motion as she feels there are other measures that should be taken prior to a pilot parking program, such a social media posts that recommend parking at the Mitchell Canyon entrance gate. Councilmember Wolfe recommended whatever goes out on social media should be of enforceable nature.

Mayor Catalano commented there are three actions that could be taken: 1. Permanently change the City Code to allow a preferential parking program; 2. Establish some type of pilot program, just for this street; and 3. Addressing lower level items like painting red the driveway wing tips, addressing social media to redirect the public to the Mitchell Canyon gate, post improved signage with greater enforcement. In her opinion she would like to begin with the third action.

A substitute motion was made by Vice Mayor Pierce, seconded by Mayor Catalano directing staff to try alternative methods prior to a pilot preferential parking program. The substitute motion failed (Failed, 2-3 vote; Diaz, Wan and Wolfe, no).

The vote was taken on the original motion to direct staff to prepare a Resolution implementing a pilot preferential parking permit program (Approved, 3-2 vote; Catalano and Pierce, no)

- (b) City Council consideration of the necessity for revisions to the City's existing size and number limitation regarding temporary noncommercial signage (Municipal Code 15.08.040 (G)).

City Attorney Mala Subramanian presented the staff reporting providing two options of consideration for the City Council: 1.) A per sign size; and 2.) Aggregate sign area limits. Ms. Subramanian also noted if challenged on this issue and unsuccessful these cases can be difficult to defend resulting in the possible requirement of attorney's fees to be paid to the plaintiff. She also pointed out the existing ordinance is currently written specifies if both sides of the sign are visible, the sign would be considered double-sided. For example, a 40 square foot sign visible on both sides amounts to an aggregate of 80 square feet.

Councilmember Wan clarified this is specifically about non-commercial temporary signs and does not address any other sign type in the Ordinance. City Attorney Subramanian confirmed that understanding is correct.

Mayor Catalano opened the matter to public comment.

Frank Gavidia, 104 Gold Rush Court, noted this issue is a big deal for him as 32 years ago he took an oath to the U.S. Constitution. That two hundred year old document has the First Amendment which guarantees all of us freedom of speech. As a young Marine he had an instructor once who served in Vietnam who spoke of stories when he came home to protestors and of course all of us went nuts and started to insult protestors. That

instructor said those protestors have a right to do what they do because of that document we all took an oath to. The City Council and Planning Commissioners took an Oath to that document. The words of that instructor stuck with him so much he cannot stand seeing protestors burning the flag but they have a right to do so because of the First Amendment. Last year this City had a contentious issue during election season when residents wished to display more than one sign for more than one candidate; soon there will be three seats open for City Council office. As the proposed Ordinance is written, a resident could display only one sign per candidate; that is not right. Mr. Gavidia watched the video when this Ordinance was passed recalling a complaint of sign blight. He does not think it is right to limit freedom of speech especially for something that is temporary. The First Amendment is pretty clear: freedom of speech, freedom of political speech. Some of us took an oath to protect that right with our lives and that is why this is important to him. Councilmember Diaz understands that; he took the same oath. Mr. Gavidia is sure the City Council will do the right thing on this.

Mayor Catalano closed public comments.

Vice Mayor Pierce noted that while she personally prefers the old sign ordinance provisions, we legally are not allowed to have the sign ordinance specify candidates, parties or issues with regard to what the sign is for. This Ordinance has to apply to any noncommercial sign, not just political ones. When the City Council was considering this item last year, it was meant to be no larger than 3 square feet per sign. She would like to try and keep the signs relatively small as she does not think residents will like 4x8 signs on private property. Her preference is a limited number of signs for each candidate to 3 square feet per sign; in our community these signs are almost always visible.

Councilmember Diaz agreed with Vice Mayor Pierce and does not want to see the sign blight and limit the sign size and one sign per candidate.

Vice Mayor Pierce clarified this subject only addresses signs on private property.

Councilmember Wan noted content neutral speech is not regulated if any restrictions are placed; he would challenge any restriction on favored speech. Unfavorable speech is what the First Amendment is about; it is about protecting what is unfavorable because speech is important. Any time we are going to restrict what someone can say or how they express themselves, he will be opposed.

Councilmember Wolfe noted he is not concerned with speech content but sign size, including two-sided signs.

Mayor Catalano also preferred the sign ordinance prior to 2017; she does not want to regulate speech either however she prefers the most restrictive in size.

City Attorney Subramanian confirmed the sign size could be limited to 16 square feet with an aggregate of 32 square feet with appropriate findings.

Councilmember Wan requested an example of the findings. City Attorney Subramanian provided some of the findings that were used in Redwood City which were upheld due to concerns about debris, littering, as well as traffic hazards.

Councilmember Diaz inquired on the length of time the sign could be posted and its removal. City Attorney Subramanian she is a little concerned if limitations within a certain period of time of an event as these are temporary noncommercial signs that are being discussed and it is not limited to political signs. The type of material was defined as a finding; if a sign started to decay in terms of debris and litter it could be removed.

Councilmember Diaz further inquired of when these signs would be removed?

Councilmember Wan commented based on what he has read it does not look favorable of when a sign would have to be removed. City Attorney Subramanian inquired for what is the time based limit on? The discussion is content neutral, temporary, noncommercial, not political speech.

Vice Mayor Pierce expressed her interpretation of a sign made of wood as permanent and her preference of a 90 day time limit for any temporary sign. If there is a reason that sign would have to be displayed longer, maybe it should be considered a permanent sign. She is also concerned with a 4x4 minimum sign size with a 30 foot aggregate; if it is a two-sided sign, it is restrictive and would limit speech.

Mayor Catalano inquired about the State Advertising Act indicating when signs can be put up and when they are required to be removed, encourages a particular vote in an upcoming election, can be put up no sooner than 90 days, removed no later than 10 days after an election, and up to 32 square feet. How does that Act fit into this? City Attorney Subramanian replied the State Advertising Act does not apply in Clayton as it applies to signs on the highway or certain proximity to the highway, and in addition she questions the legality of the Act as it is not content neutral.

City Attorney Subramanian added that someone could always use with a smaller sized sign as the limit being discussed is the maximum size.

Mayor Catalano shared it seems a lot of people do not want a lot of signs like in the neighboring city of Concord, so what she is hearing the minimum individual size sign could be 16 square feet and a resident could display as many candidates and ballot measures signs as they would like. She is unsure of the appropriate aggregate size to accommodate.

Councilmember Wan suggested no aggregate.

City Manager Napper noted the limitations being discussed are the maximums; if Council wishes to regulate the per sign size it would be expressed in terms of maximum size. However, with the concern of multiple candidates for multiple offices in an election and even multiple issues such as ballot measures that could be applicable, an aggregate limit could be problematic as it could be reached very quickly. There is the option of no aggregate. If you are the neighbor to someone who places signs all over their lawn in a shape or way you don't like, one may have a conversation with that individual or maybe others would to become self-limiting. From a staff perspective, the size of each sign should have limitations but tread a little more carefully on the aggregate limitation. At any given time when a ballot is full and someone wishes to support a write-in candidate plus additional ballot measures, it could become problematic in limiting free speech.

Councilmember Wolfe added that we are not just talking about political signage, but it could be about anything.

Vice Mayor Pierce inquired if there is any recourse on time limitations? Some of the materials being used for temporary signs with these days last a long time and realistically, if we are talking about a sign deteriorating that's not going to give us anything. City Attorney Subramanian advised it is currently defined as constructed of paper, cloth, canvas, light fabric, cardboard, wallboard or other substances of similar lightweight materials with or without frames which is designed or intended to be displayed for a limited amount of time.

Councilmember Wolfe advised that description is very vague. City Attorney Subramanian advised that was intentional to avoid limiting it to a period of time and event that could again be challenged.

Councilmember Wolfe inquired if we put a limit on the time what is the limit on when the sign would have to be removed and allowed to be displayed again?

City Manager Napper offered as an example to a temporary time limit, a sign could be displayed for ninety days and on day ninety-one that same individual displays a different sign that says the same thing differently or moves it slightly on their property. Such practices would be lawful and defeat any time limitation being contemplated.

Vice Mayor Pierce suggested an individual 4x4 maximum sign with the recommendation specifying no time limit or aggregate. City Manager Napper clarified the proposed ordinance amendment would be written as 16 square feet as opposed to restricting that size to a specified dimension of 4x4. City Attorney Subramanian advised it can be written as no more than 16 square feet with no aggregate and no time limit.

It was moved by Vice Mayor Pierce, seconded by Councilmember Diaz, to have staff prepare the draft Ordinance limiting the temporary noncommercial sign size to 16 square feet with no aggregate or time limit, with a hearing to the Planning Commission in the near future. (Passed 4-1 vote; Wan, no).

- (c) Council Member request to discuss consideration of the City possibly banning its use of glyphosate (Round Up) in its weed extermination services on City properties and in public rights-of-way.

Councilmember Wan opened the discussion noting various members of the public expressed concern for the use of Round Up by the City. He found it valuable to get information on the extent and nature of the City's current utilization, what safety measures are in place, and any possible alternatives. Another factor driving this item was a recent judgement involving the Benicia School District where a groundskeeper prevailed in a multi-million dollar injury case by the use of Round Up. Councilmember Wan noted he was not really proposing a ban per say, rather seeking a report of its use, liability and safety of the public and any consideration of alternative products. Councilmember Wan considered the document in the report is sufficient outlining the level of use with a remaining question of potential liability given the fact pattern of the previous ruling. After conducting his own research he has found there is no conclusive evidence and it is more of a judgement matter.

City Attorney Subramanian advised the potential risk exposure is in the Workers' Compensation situation in terms of our own employees and their utilization of the product; with safety protocols in place that will reduce the City's risk. Outreach has been made with the Municipal Pooling Authority which is looking into since they are the first line of defense for the City in these types of employee injury cases. She is unsure if Councilmember Wan is concerned with the risk exposure in terms of the public's exposure on public property; she thinks causation or any illness would be very difficult to prove.

Councilmember Wan inquired if the City's insurance would provide coverage if a claim were made by a member of the public. City Attorney Subramanian advised the City's insurance would be the first line of defense if a Workers' Compensation claim is filed by an employee of the City.

Councilmember Wan indicated he was pleased with the protocols and safety precautions used by the City provided by Maintenance Supervisor Jim Warburton.

ATTACHMENT E

- A. Address signs, provided the sign does not exceed two (2) square feet in area.
- B. Public information, identification, civic event, and directional signs erected by a public agency or public utility.
- C. Incidental signs.
- D. Legal notices posted by law.
- E. Building markers, provided the sign does not exceed four (4) square feet in area and is not illuminated.
- F. Signs displayed by private individuals, when required by law or regulations of any governmental agency.
- G. Temporary noncommercial signs on private real property, provided each individual sign displayed does not exceed sixteen (16) square feet in area, with no limit on the aggregate signage displayed at one time ~~does not exceed three (3) square feet in area per parcel.~~
- H. Wall signs indicating the historical significance of a site or building, provided the sign does not exceed four (4) square feet in area and is not illuminated.
- I. Signs displayed in the interior of a building, mall, court, stadium, or enclosed lobby more than three (3) feet from an exterior window or door and intended for interior viewing only.
- J. Multiple address signs, provided the individual signs do not exceed four (4) inches by twenty-four (24) inches.
- K. Residential open house signs for a home sale in accordance with the standards of Section 15.08.070 of this Chapter.
- L. Flags, provided they are not used in a commercial manner or to advertise a business or its location.
- M. Murals containing no commercial message, provided the mural has intrinsic artistic value or appeal regardless of the business in the building on whose wall the mural is painted. Murals shall take into consideration the overall architecture of the building and shall not be placed on decorative surfaces or finishes. The colors and materials used shall be reasonably harmonious with those in the area.
- N. Personal property sale signs, in accordance with the standards of Section 15.08.070 of this Chapter.
- O. Real estate signs in accordance with the provisions of Section 15.08.070 of this Chapter.
- P. Portable signs in accordance with the provisions of Section 15.08.070 of this Chapter.
- Q. Banners and pennants in accordance with the provisions of Section 15.08.070 of this Chapter.
- R. Community event signs not exceeding twenty-four (24) square feet in area.

15.08.050 Prohibited Signs. The following signs are prohibited anywhere in the City:

- A. Animated signs.
- B. Flags used in a commercial manner or to advertise a business or its location.
- C. Signs that by color, wording, design, location, or illumination resemble or conflict with any traffic-control device or with safe and efficient flow of traffic.
- D. Signs that obstruct the free and clear vision of or create confusion for motorists or pedestrians.
- E. Signs with lighting detrimental to surrounding property or prevents peaceful enjoyment of residential uses.
- F. Banners and pennants, except as provided in Section 15.08.070 of this Chapter.