



4:45 p.m.

Workshop in the County Council Chambers.

5:30 p.m.

Call to order

Opening remarks/Pledge – Leslie Larson

Review and approval of agenda.

Review and approval of the minutes of the January 8, 2015 meeting.

5:35 p.m.

Regular Action Items

(1) **Title 17.07.030** – Kennels.

(2) **Discussion:** Title 17.23 – Signs

(3) **Discussion:** General Plan

(4) **Training:** Conditional Use Permit Webinar

Board Member Reports

Staff reports

Adjourn



Item

Page

1. Ronald Jensen Subdivision 2nd Amendment 2

2. Title 17.07.030 – Kennels. 2

DRAFT

1 **Present:** Stephanie Nelson, Chris Harrild, Josh Runhaar, Rob Smith, Leslie Larson, Jason Watterson,
2 Lane Parker, Brady Christensen, Jon White, Tony Baird

3
4 **Start Time:** 05:30:00

5
6 **Smith** welcomed and **Watterson** gave opening remarks

7
8 **05:31:00**

9
10 **Agenda**

11 Approved with no changes.

12
13 **Minutes**

14 Approved with no changes.

15
16 **05:33:000**

17
18 **Consent Agenda**

19
20 **#1 Ronald Jenson Subdivision 2nd Amendment (Susanne Moore)**

21
22 Susanne Moore is requesting a recommendation of approval to the County Council to separate an existing
23 residence from agricultural property and an adjustment of the subdivision boundary on 77.22 acres of
24 property in the Agricultural (A10) Zone located at approximately 2207 South Highway 23, south of
25 Mendon.

26
27 **Paul Pierson** I just want to know what is going on because this is right in our back yard and what the
28 plan is.

29
30 **Harrild** there are two things happening, first, they are going to divide this piece so it is separate from the
31 larger agricultural piece. Second, all the legal descriptions for the parcels were inaccurate and drawn
32 incorrectly on the original plat so they are also correcting those boundaries. There will be no additional
33 homes.

34
35 *Larson motioned to approve the consent agenda; Christensen seconded; Passed 5, 0.*

36
37 **05:38:00**

38
39 **Regular Action Items**

40
41 **#2 Title 17.07.030 – Kennels**

42
43 **Harrild** reviewed the changes to Title 17.07.030 – Kennels with the Commissioners. Setbacks were
44 discussed. Based on the information staff was able to identify that a kennel has a typical loudness of 110-
45 124 decibels. From a distance of 50 feet, the corresponding loudness of the kennel is 90 decibels. This
46 decrease continues the farther you get from the site. The provided chart references typical occupational
47 noise levels that pose a safety risk. When talking about sound pollution for neighborhoods/residential
48 areas it is approached as a nuisance and not strictly a safety issue. However, the activities identified
49 provide an idea of how loud certain items may be. For example, a chain saw, rock concerts/concerts, etc.
50 At 500 feet it would be 70 decibels – the approximate maximum level where hearing damage is not likely
51 to occur. The calculations also do not account for vegetation, screening, or other obstructions.

1 In pursuing the use of setbacks as a method to address impacts, a likely minimum based on noise levels of
2 approximately 70 decibels would require a minimum of 13.68 acres for a kennel. It became apparent that
3 while that may work, it doesn't appear to be a fair or appropriate measure and so staff started looking for
4 other ways to mitigate reasonably expected impacts. Following a multi-county and city review, the
5 approach of both a setback and performance standard was considered. Currently there is a setback
6 requirement of 50 feet for animal confinement from natural water ways and 20 feet away from any
7 dwellings.

8 The current definition of Animal Confinement is vague enough to include pigs, other livestock, or dogs,
9 and it may be best to revise it.

10 The intent in amending this piece of ordinance is to improve the consistency of Planning Commission
11 decisions. There is a history of the Planning Commission denying large kennel requests. It would be
12 helpful for all involved if the ordinance reflected the existing pattern evident in the decisions of the
13 Commission. Initially the Commission considered limiting the number of dogs allowed, however, that
14 also appeared to be an inadequate measure. With the proposed amendment, staff suggests that noise
15 levels from a kennel shall not exceed 10 decibels above the ambient noise levels at the property line. This
16 allows applicants consider mitigation measures and identify a plan to mitigate impacts. A minimum 50
17 foot setback is also recommended to help with mitigation of odor issues. Additionally, a home based
18 kennel must be secondary to a single family dwelling. That is in contrast to a commercial kennel, which
19 would be a primary use, but still allow a caretakers residence if necessary.

20 There is also language in the ordinance that provides flexibility to the Commission and to staff in
21 determining if the application qualifies as a home based kennel or a commercial kennel. If the applicant
22 does not like staff's determination then they can come before the Planning Commission. A commercial
23 kennel is something like Four Paws and is usually located in a commercial zone. A home based kennel is
24 located in the agricultural or residential area. Staff rarely gets a complaint about a family that has 5 to 6
25 dogs but does receive complaints regularly for people who have 30 to 40 dogs. Staff is starting to see a
26 slow uptick in the number of applications for kennels because cities are really starting to crack down on
27 animals within city limits.

28 It appears that a performance based system will best help to deal with the nuisance issue. For some
29 people 1 dog is a nuisance but for others 20 dogs might not be a nuisance. Applications would require a
30 sound assessment to help determine how the kennel is going to impact or not impact the neighbors.
31 Perhaps we can raise the limit of the number of dogs that can be permitted administratively so that those
32 with a smaller number of dogs don't have to go to an extreme length to prove they are not a nuisance.
33 However, there still needs to be a nuisance component to the ordinance. The performance based standard
34 focuses back on the impacts and how to best mitigate them. There is a separate piece of code that
35 requires a kennel license has to be for 4 dogs. Staff would suggest that up to 6 dogs, Household Pets,
36 may be approved administratively. As long as there is no overnight boarding at the home it could be
37 approved administratively. If they are over 6 dogs, that is when a sound study must be completed and
38 Commission approval obtained. If you put an administrative level of authority in to the ordinance then it
39 allows those who have 4 to 6 dogs a way to be able to actually do the kennel permit for a home based
40 business. If they want more dogs then that, then the burden of proof is on the applicant and they need to
41 show that there are no more detrimental effects that can't be mitigated. All the applications will depend
42 on context. Staff will make the necessary revisions for review at the next meeting.

43
44 **06:37:00**

45
46 **Staff Reports**

47
48 **Harrild** there will be a webinar on conditional use permits. Jason Watterson can address the specifics.

49
50 **Watterson** my company is actually holding the webinar for most of the local governments in the state.
51 There will be quarterly land use webinars. They are recorded and can be viewed at other times if you

1 cannot make the live session. Jim Wright's the attorney from the Ombudsman's office will be presenting
2 and he is very knowledgeable about conditional use permit process.

3
4 **Runhaar** We don't believe Cherry Peak will be opening this year but haven't confirmed that. Their
5 building is not completed. We are actually looking at shutting their site down for noncompliance with
6 building code. The other thing is Autonomous Solutions, we haven't heard from them. I have tried to get
7 a hold of their attorney but will try again. I want to see what their plan is and if they decide to do nothing
8 we will issue a notice of violation, and if they continue to do nothing a final notice will be served.

9
10 **Larson** you should issue a first notice anyway.

11
12 **Runhaar** we are trying to be nice but they have been before this Board. We will move ahead and issue
13 the initial notice.

14
15 **Larson** I listened to a snippet of an interview with Kathy Robison and she stated one of her first priorities
16 was to designate zones for RU2 and RU5. We might want to meet with her because I don't believe we
17 wanted those designated on a map.

18
19 **Runhaar** no, I don't think that is what she necessarily wants but she does want requirements for those
20 zones.

21
22 **Staff and Commission** discussed the need/revision for a working general plan. It doesn't have to be a
23 200 page document. If done correctly it can be a short concise document. The cost of providing services
24 needs to be considered. It will give direction of what the cost/revenue difference is and will give a better
25 an idea of where development should go. Staff prepared and presented the numbers for what it costs to
26 build roads/homes in more remote areas of the county and that information appears to be discounted.
27 However if someone from outside of the county/valley were to come in and present a fiscal analysis for
28 road construction cost/development cost it bears more weight. While the county was involved in
29 Envision Cache Valley, it is too broad of a plan to apply. The plan needs to be more specific and
30 meaningful to the county and they need to be able to be implemented. The land use plan and
31 transportation plans go hand in hand. It's very hard to have a transportation plan that doesn't work with
32 land use. The county's plan for development right now is we go to the end of the road and put a house
33 down. That means there is about 1/2 of road of no other development. The county can't keep doing that.
34 The county loses more money trying to service those types of homes/developments and it can't keep
35 going and have the county remain solvent. The county has already spent nearly \$15,000 in maintenance
36 costs on the road to Cherry Peak and the ski resort hasn't even opened. The county was required to fix
37 the roads and culverts down below and couldn't require the ski resort to do that because it was outside
38 their scope. Every time a snow plow has to go up there it costs roughly \$700. Staff has made
39 recommendations in the past based on the cost of development and the Commission didn't like that and
40 asked staff not to do that anymore. Staff can prepare documents that give the cost of development but
41 people have to be willing to stick to the decision to also consider development based on cost. The other
42 sticking point is that people own land where they own land and it's not always adjacent to cities.
43 Commissioners would like to see a short concise document on what things cost so that when they go to
44 make decisions they can weigh the entire financial burden on the County as a development cost. That
45 would also help new members coming onto the Board to understand the cost of development for the
46 County.

47
48 **07:19:00**

49
50 **Adjourned**

17.07.030: Use Related Definitions

7200 BOARDING FACILITY: A series of stables, barns, paddocks, and/or other shelters and exercise facilities in which livestock including cattle, sheep, goats, swine, horses, mules, poultry, etc. are fed, exercised, and/or cared for on a short or long term basis for a fee.

7210 HOUSEHOLD PET: Animals ordinarily kept in a dwelling for personal use and not for commercial purposes. This includes up to six (6) adult dogs.

7220 HOME BASED KENNEL: Any establishment, accessory to a dwelling unit and/or adjacent to a neighboring parcel under the same ownership, at which seven (7) or more adult dogs are boarded, groomed, bred, raised, and/or otherwise kept. This excludes a single, incidental litter in a 12 month period. A home based kennel must comply with the following requirements:

1. A home based kennel shall consist of no more than 12 adult dogs. More than 12 dogs may be permitted as a home based kennel if it is otherwise shown by the applicant that:
 - a. Impacts can be mitigated by distance, vegetation, geography, and/or structures.
 - b. The kennel is secondary to the home and not primarily for commercial purposes.
2. All kennel facilities must be a minimum of 50 feet from the property boundary.
3. Noise levels from the kennel shall not exceed 10 decibels (dBA) above the ambient noise levels at the property line. A sound level impact and assessment report prepared and signed by a qualified professional must be provided at the time of application to support the same.

7230 COMMERCIAL KENNEL/ANIMAL SHELTER: Any establishment at which the boarding, grooming, breeding, raising, and/or otherwise keeping of 13 or more adult dogs or cats is the primary use of a legal parcel as determined by the Director or Planning Commission, or the requirements of a home based kennel cannot be met. A commercial kennel/animal shelter must comply with the following requirements:

1. All kennel facilities must be a minimum of 50 feet from the property boundary and a minimum of 20 feet from a Caretaker's Residence.
2. Noise levels from the kennel shall not exceed 10 decibels (dBA) above the ambient noise levels at the property line. A sound level impact and assessment report prepared and signed by a qualified professional must be provided at the time of application to support the same.

17.10.050 [A][2]: Supplemental Standards – To be deleted

2. Animal Confinement:

- a. All areas used for animal confinement shall be set back fifty feet (50') from any natural waterway. (Setback is set by 17.18.050 [A][3][a])
- b. All areas used for animal confinement shall be set back twenty feet (20') from any dwelling unit. (Added to 7230 Commercial Kennel/Animal Shelter)

17.07.040: General Definitions

Add:

DOG, ADULT: A dog is considered an adult when it is six (6) months of age or older.

CAT, ADULT: A cat is considered an adult when it is six (6) months of age or older.

Delete:

ANIMAL CONFINEMENT: Any structure used to house animals or restrict their habitation to a particular area. (This term is only used in 17.10.050[A][2] which is to be deleted)

DRAFT

Amendments to 17.09 | SCHEDULE OF ZONING USES RE: Kennels

Index	Description	Base Zone							Overlay Zone	
		RU2	RU5	A10	FR40	RR	C	I	ME	PI
6150	Animal Shelter	N	N	N	N	N	C	C	N	-
7200	Boarding Facility	C	C	C	N	C	C	N	N	-
7210	Household Pet	P	P	P	P	P	P	P	-	-
7220	Home Based Kennel	C	C	C	N	C	C	N	-	-
7230	Commercial Kennel/Animal Shelter	N	N	N	N	N	C	C	-	-

DRAFT

17.23.010 Purpose.....1
 17.23.020 Sign Standards1
 17.23.030 Exemptions3
 17.23.040 Prohibited Signs4
 17.23.050 Maintenance of Signs.....5
 17.23.060 Enforcement5
 17.23.070 Nonconforming Signs.....5

Revise to reflect existing best practices
Revise to reflect existing state and federal law

17.23.010: Purpose - Rewrite

The purpose of this chapter is to regulate the location, size, placement, and certain features of signs in order to increase safety to life and property, to reduce unnecessary distractions along public road rights of way, and to assure the continued attractiveness of Cache County while allowing for the appropriate identification of property and businesses.

17.23.020: Sign Standards – Rewrite and revise chart

The following table contains the minimum sign standards which shall apply to all proposed signs:

SIGN STANDARDS	ZONE – <u>add RU2 and RU5</u>					
	A	FR-40	C	IM	ME	RR
<u>FREE STANDING SIGNS – Review area maximums</u>					<u>Per-Development Agreement</u>	<u>Per-Development Agreement remove from chart, add note to text ‘As per permit.’</u>
Maximum Sign Area	12 square feet	12 square feet	60 square feet	60 square feet		
Maximum Height	10 feet	10 feet	20 feet	20 feet		
Minimum Setback from <u>Road-Right-of-Way-Line Presumed ROW, or 3’ from edge of presumed ROW</u>	All signs located so no part of the sign extends beyond property lines and located so as to be outside any clear view area.	All signs located so no part of the sign extends beyond property lines and located so as to be outside any clear view area.	All signs located so no part of the sign extends beyond property lines and located so as to be outside any clear view area.	All signs located so no part of the sign extends beyond property lines and located so as to be outside any clear view area.		

SIGN STANDARDS	ZONE <u>– add RU2 and RU5</u>					
	A	FR-40	C	IM	ME	RR
Approval Procedure	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.		
BUILDING SIGNS – <u>Review area maximums</u>						
Maximum Sign Area (total sign area per building)	20% of wall area not to exceed 24 square feet	Not to exceed 12 square feet	20% of wall area not to exceed 60 square feet	20% of wall area not to exceed 60 square feet		
Maximum Height	No portion of a building sign shall extend above the eave of the building	No portion of a building sign shall extend above the eave of the building	No portion of a building sign shall extend above the eave of the building	No portion of a building sign shall extend above the eave of the building	Per Development Agreement	Per Development Agreement
Approval Procedure	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.	Permitted Use shall receive a zoning clearance, sign sticker, and building permit.		
DIRECTIONAL SIGNS – <u>Review area maximums</u>						
Maximum Sign Area	10 square feet	10 square feet	10 square feet	10 square feet		
Maximum Height	10 feet	10 feet	10 feet	10 feet		
Minimum Setback from <u>Road Right-of-Way Line Presumed ROW, or 3' from edge of presumed ROW</u>	All directional signs shall be located so no part of the sign extends beyond property lines and located so as to be outside any clear view area					

SIGN STANDARDS	ZONE <u>– add RU2 and RU5</u>					
	A	FR-40	C	IM	ME	RR
Approval Procedure	<p>Conditional Use and: (1) shall provide evidence, and must maintain a valid business license for a business located in the unincorporated Cache County, (2) an agreement with the owner of the property where the directional sign is proposed to be located and (3), receive approval from County Road Department or UDOT, as applicable.</p>				Per-Development Agreement	Per-Development Agreement

17.23.030: Exemptions

The following signs shall be exempt from the requirements of this chapter:

- ~~A. Church or other institution signs; provided such signs are erected and contained on the property where the church or institution is located, do not have interior illumination, and do not exceed thirty two (32) square feet in area.~~
- ~~B. Dead end road sign; provided such signs are two feet by three feet (2' x 3'), six (6) square feet or smaller, and located entirely on private property.~~
- ~~C. Election signs; provided such signs favoring or opposing a candidate or issue to be voted on in an election conform to Utah Code Annotated section 20A-3-501(7), for distance from any building being used as a polling place. Election signs may be erected three (3) weeks prior to the election and must be removed within one week following the election. No election sign shall be placed within or on publicly owned property or road right of way; all election signs must be authorized by the owner of property on which the election sign is placed.~~
- D. Revise For sale/for rent signs. Temporary signs located on the premises shall be placed on the property for no longer than six (6) months, and used for the purpose of selling or renting property. Signs for selling or renting a residence shall be no larger than two feet by three feet (2' x 3') or six (6) square feet; signs for selling or leasing farm ground shall be no larger than four feet by eight feet (4' x 8') or thirty two (32) square feet.

- ~~E. Interior signs. Signs visible only from the premises on which they are located or visible off the premises only through a window or windows from which they are set back at least ten feet (10').~~
- ~~F. No trespassing signs. Signs that are two feet by three feet (2' x 3'), six (6) square feet or smaller, and located entirely on private property.~~
- ~~G. Residential identification signs; provided such signs are limited to no more than six (6) square feet in area; the display is limited to street numbers, street name, and the name of the resident(s); and provided such sign does not project beyond the property boundary.~~
- ~~H. Seasonal agricultural produce. Signs for the sale of seasonal agricultural produce, provided such signs are placed for a period not to exceed four (4) months and are located entirely on the property where the produce is being sold.~~
- ~~I. Special events; provided such signs shall be placed no earlier than three (3) weeks prior to the event, shall be removed no later than one week following the event, shall not exceed sixteen (16) square feet in area, shall be safely affixed, shall not be placed within or on publicly owned property or road rights of way, shall be authorized by the owner of the property on which the sign is placed, and shall not project beyond the property boundary.~~
- ~~J. Traffic control signs. All signs required for traffic control as prescribed in the manual of uniform traffic control devices or applicable state law and placed by the county, state or federal agency with authority over that road and road right of way.~~
- ~~K. Traffic warning, direction and regulation signs. Temporary or permanent signs for the purposes of traffic warning, regulation and/or direction on which the displayed message is solely for traffic warning, regulation and/or directional information authorized and placed by the county, state or federal agency with authority over that road and road right of way.~~
- ~~L. Window signs. Signs located inside an enclosed building while remaining visible through a window where the area of such signs does not exceed twenty percent (20%) of the area of the window or two (2) square feet, whichever is less.~~
- ~~M. Required sign. Any sign required by federal, state or local law to be a certain dimension or size.~~
- ~~N. Community identification sign. Signs identifying communities may be up to forty (40) square feet.~~

17.23.040: Prohibited Signs – Update

- A. All off premises advertising signs larger than ten (10) square feet advertising a commercial business, goods or services offered at a place other than the location of the sign.
- B. **Update** All animated signs and all flashing signs that have on and off phases.
- C. All signs that include streamers, banners, balloons and similar wind activated materials.
- D. Obsolete signs advertising for longer than thirty (30) days a discontinued business, service or activity; or directional signs for a business, service or activity which has changed the location to which it directs. An obsolete sign does not retain nonconforming status.
- E. Signs resembling or imitating traffic control signs or other government signs.
- F. **Update** Signs placed on unlicensed, inoperable or immovable vehicles or trailers which are parked in one location for more than three (3) consecutive days in any week for the purpose of displaying the sign. This prohibition does not apply to licensed vehicles used in the regular course of business with a primary purpose other than advertising.
- G. Signs erected or placed which partially or completely obstructs the view or the face of another sign.

- H. Update Signs with direct rays of light which penetrate a property used for residential purposes or which may cause a glare, impair the vision of, or otherwise interfere with the driver of any motor vehicle.
- I. ~~A sign erected or placed in excess of two feet (2') in height and less than seven feet (7') in height on a corner lot within a triangular area formed by the road right of way lines and a line connecting them at points forty feet (40') from the intersection of the road right of way lines (clear view zone).~~

17.23.050: Maintenance of Signs

~~Signs regulated by this chapter shall be maintained in good visual and structural appearance at all times. The county, or any of its officers or employees, shall not be liable for negligence for failure of the owner or the person responsible for maintaining any sign to keep such sign in good condition or be responsible for damages caused by defective conditions.~~

17.23.060: Enforcement

~~Any person, whether acting as owner or occupant of the premises involved, contractor or otherwise who violates or refuses to comply with any of the provisions of this chapter shall be guilty of a class C misdemeanor. A separate offense shall be deemed to be committed on each day that the offense occurs or continues. Violations may result in the following actions:~~

- A. ~~If an unsafe or dangerous sign is not repaired or made safe within five (5) working days after giving said notice, the county may issue a citation and the person having charge, control or benefit from such sign shall pay the fine within thirty (30) calendar days, after written notice is mailed to such person.~~
- B. ~~If an illegal sign is not made conforming within thirty (30) calendar days after giving said notice, the county may issue a citation, and the owner or person having charge, control or benefit of any such sign shall pay the fine, within thirty (30) calendar days after written notice is mailed to such person. Failure to pay shall be deemed a class C misdemeanor.~~
- C. ~~The county shall require each non-maintained or abandoned sign to be removed from the building or premises when such sign has not been repaired or put into use by the owner, person having control, or person reserving benefit from such sign within thirty (30) calendar days after notice of non-maintenance or abandonment is given to the owner, person having control, or person receiving benefit from such sign.~~

17.23.070: Nonconforming Signs

A nonconforming sign shall not be altered, reconstructed, raised, moved, placed, extended, or enlarged, unless said sign is changed so as to conform to all provisions of this chapter.

- A. Add detail "Alterations" shall be defined as changes which result in a modification to the outside dimensions of the sign cabinet. Any sign that is located within or projects into the public right of way shall be made conforming when a change of ownership, lessee or use occurs.
- B. ~~Nonconforming signs which have been allowed to deteriorate or which have been damaged by fire, explosion, act of nature, act of a public enemy, or damaged by any other cause to the extent of more than fifty percent (50%) of its assessed value shall, if repaired or rebuilt, be repaired or rebuilt in conformity with the regulations of this chapter.~~
- C. ~~Minor repairs and maintenance shall not necessitate conformance to the requirements of this chapter.~~



Sign Ordinances and the First Amendment

Sign ordinances have received nationwide attention lately as several well-publicized cases raised successful challenges on First Amendment grounds. This memorandum discusses some of the basics of designing a sign ordinance that meets the requirements of the First Amendment.

I. General First Amendment Principles

The law regarding signs ordinances is different than most other land use provisions, because sign ordinances implicate the greater protections of the First Amendment of the United States Constitution. Most city decisions, if challenged in court, are subject only to *rational-basis* review. That means a city decision will generally be upheld if there is any rational basis to it at all.

If the First Amendment is involved, the review is not so easy. The First Amendment protects signs as speech, and courts will look very closely at any attempts to limit non-commercial speech. This highest level of review is called *strict scrutiny*. Courts will look very closely on these limitations to make sure that the city is not giving disparate treatment based on the message content or the identity of the speaker.

Restrictions on commercial speech (advertising) do not receive same level of scrutiny as those on non-commercial speech. However, the First Amendment is still implicated so the level of scrutiny is still elevated, and is known as *intermediate scrutiny*. Under this standard, regulation will be upheld so long as it is narrowly tailored to accomplish a legitimate government purpose and is no more restrictive than necessary. Thus, even content neutral restrictions must be drafted carefully so as to be no more restrictive than necessary to accomplish a legitimate purpose.

Intermediate scrutiny can present a number of challenges with the practical implementation of sign ordinances. Cities should be particularly careful with broadly sweeping regulations. For example, complete bans or moratoriums on all signs might be difficult to justify as narrowly tailored to accomplish a legitimate government purpose.

Cities should also be careful about the practical effects of making fine distinctions or exemptions to otherwise valid rules. Consider a regulation that prohibits all moving or flashing signs for reasons of public safety, because they are distracting to drivers, but which exempts such signs for city and park facilities. It might be difficult to show that this regulation is narrowly tailored to accomplish a legitimate government purpose because allowing flashing signs in some situations takes away the credibility of the public safety concern.

With this background in mind, there are several steps that cities can take when drafting ordinances.

II. Provisions All Sign Ordinances Should Have

All sign ordinances should be drafted to take into account the First Amendment principles discussed above. Therefore, it is recommended that every sign ordinance contain the following provisions.

A. A Statement of Purpose.

The statement of purpose is a guide to how the ordinance was drafted and should be applied. It should establish that the ordinance should not be read to include content-based restrictions. It should also include a statement of the government purposes and describe how the ordinance is narrowly tailored to meet those purposes.

It may also help to draft findings of fact that discuss the governmental interests that the ordinance is addressing and how the ordinance addresses them.

B. A Substitution Clause.

The City must ensure that it does not treat some types of non-commercial speech differently than other types of speech. One way to ensure this is to include a clause that provides that for every type of sign that is allowed, any non-commercial message could be legally substituted.

C. Severability Clause.

Ordinance should specifically state that in the event that any provision of the ordinance is found to be invalid, the remainder of the ordinance is intended to stand on its own and still be valid. This may prevent a court from invalidating an entire ordinance because of a constitutional flaw in part of it.

D. Acknowledgement of election season pre-emption as found in Minnesota Statute.

Minnesota Statute provides:

211B.045 Noncommercial signs exemption.

In any municipality, whether or not the municipality has an ordinance that regulates the size or number of noncommercial signs, all noncommercial signs of any size may be posted in any number from August 1 in a state general election year until ten days following the state general election.

Sign ordinances must comply with this state law.

However, it is also important not to apply the converse of this regulation by only allowing some types of non-commercial speech during this designated time. The most common example are ordinances prohibiting political yard signs except during election season. These ordinances are almost certainly unconstitutional content-based restrictions if other types of yard signs are allowed.

Ordinances should make clear that providing non-commercial speech this extra latitude during election season does not impose any additional restrictions or prohibitions

outside of that period. Otherwise-valid content-neutral restrictions on time, place, manner, or size may still apply the rest of the year.

E. Content Neutral regulations based on time, place, and manner.

As a general matter, sign ordinances should avoid regulating on the basis of content. Instead, regulations should be based on reasonable restrictions on time, place, and manner. Valid time, place, and manner restrictions are upheld by courts if they:

- (1) Are justified without reference to the content of the regulated speech;
- (2) Are narrowly tailored;
- (3) Serve a significant governmental interest; and
- (4) Leave open ample alternative channels of communication

III. Provisions All Sign Ordinances Should Avoid

A. Unfettered discretion.

Approval or permitting of signs should never be conditioned upon a discretionary approval by the city. Having discretion at all, regardless of how it has been applied, creates the potential for favoring some messages or messengers over others. Any permit requirements should be transparent and objective.

A very common provision in ordinances allows signs on public property only with approval by the City Council. This is very problematic and should be avoided.

B. Exemptions or favoritism for certain groups or types of signs based on content.

Another common provision in ordinances is to exempt certain groups or messages from permit requirements. For example, church signs and official flags are often exempted. This is content-based discrimination and should be avoided.

Note that this is different from providing exemptions based on valid time, place, or manner restrictions. For example, it is common and acceptable to exempt all signs under a certain size from permitting requirements.

C. Inadvertently treating non-commercial speech differently by defining “sign” as “advertising.”

Beware of over-defining terms. This occasional problem area is the combination of a few steps:

- (1) Signs are defined narrowly as bearing advertising messages.
- (2) A provision is made allowing the enumerated signs to get permits.
- (3) All other signs without permits are prohibited.

Courts have read these kinds of ordinances as impermissibly prohibiting all non-commercial speech.

On the flip side, ordinances that discuss only advertising signs may inadvertently fail to include non-commercial speech in time, place, and manner restrictions. For example, it could result in a sign ordinance that had no limits on the size and number of non-commercial speech billboards.

IV. Common Questions and Issues

A. Off-premise advertising.

Off-premise advertising consists of commercial signs that do not advertise for a business on the same premises as the sign. It is legal to forbid off-premise advertising, so long as the prohibition does not extend to noncommercial messages.

B. Flags.

Be cautious of regulations that might favor the some types of flag, particularly the United States Flag, over other flags. This is an example of the substitution clause; if one type of noncommercial flag would be acceptable, any noncommercial flag should be allowed.

C. Yard Signs.

A number of courts have held that yard signs are constitutionally protected and cannot be prohibited. Be especially cautious about provisions that favor some messages over others. The most common types that get special treatment are real estate or construction project signs.

V. Summary

First Amendment law can be very confusing even to experts. For purposes of drafting sign ordinances, cities should err on the side of caution or tread very carefully. Keep in the mind these basic rules of thumb:

- (1) Avoid regulations that depend on the content of the sign.
- (2) Do not favor commercial speech over noncommercial speech.
- (3) Provide clear procedures and follow them.
- (4) Explain the rationale and purpose of your ordinance.

There are exceptions to these rules, but they should be approached very cautiously and with legal advice.

This is by no means a comprehensive list of every argument that a plaintiff could make if bringing a lawsuit, but applying these principles will help in the majority of cases. For further assistance, feel free to contact LMCIT land use attorneys Paul Merwin at 651-281-1278 or Jed Burkett at 651-281-1247.

Discussion Items

Sign type
On-premise
Off-premise

Definitions
Digital signs
Functional characteristics
Safety
Aesthetics

Zoning Districts

Placement and Orientation

Sign Area

Illumination and Brightness
Context dependent

Message duration and transition
Check current research re: safety

Public services announcements

Permit digital billboards at a ratio of 2:1, 4:1?

Content neutrality rules

Clear standards for decision making

Appropriate time limits on decision making (maximum of 60 days)
Sign permits, variances, design review, and appeals.

Free speech law re: signs prohibits discrimination against non-commercial speech – cannot regulate non-commercial content

No approval of signs via CUP

PAS 527 (2004) Street Graphics and the Law (Model ordinance)

Different sign standard within a development? (ex. Cherry peak)