

Planning Commission Staff Report

Meeting Date: 5/29/14



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| Case: | 14AMEND1002 |
| Project Name: | LDC Text Amendment – Relocation of non-conforming on-premises signs when government exercises eminent domain over property |
| Applicant: | Louisville Metro Council |
| Jurisdiction: | Louisville Metro |
| Case Manager: | Michael Hill, AICP, Planning Coordinator |

REQUEST

- Land Development Code Text Amendment
 - Section 8.1.4.C
 - This proposed option would allow property owners to relocate an existing non-conforming sign elsewhere on their property, rather than requiring removal of and compensation for the sign, in cases where eminent domain is exercised.

CASE SUMMARY/BACKGROUND

In Resolution No. 30, Series 2014 the Louisville Metro Council requests the Planning Commission hold a public hearing and forward a recommendation to Louisville Metro Government regarding a proposed amendment to Section 8.1.4 of the Land Development Code which would allow for the relocation of non-conforming on-premises signs when government exercises eminent domain over property upon which the sign is located and requires its removal. The Metro Council Resolution is attached at the end of this report.

This amendment would only apply in situations where a government entity or public utility agency exercises their authority to use eminent domain to take private property to be used for public use. It is possible that in this situation the land on which an existing non-conforming sign is located would change from private property to public property or public right-of-way. Currently, the Land Development Code does not address this situation and the property owner's only option is to remove the sign and negotiate a compensation agreement with the government entity or utility agency. This amendment would give the property owner the option of relocating the existing sign, without alterations, elsewhere on private property in accordance with the Land Development Code signage requirements.

Without this amendment non-conforming signs would not be allowed to be relocated without being altered to come into partial or complete compliance with current Land Development Code regulations. Signs that are already in conformance with LDC regulations may be relocated in accordance with applicable LDC regulations and would not need to utilize this proposed amendment.

A representative from the Kentucky Transportation Cabinet responded to this proposal by saying, "The KYTC would allow these on-premise non-conforming (as defined locally) devices to be removed from the proposed right-of-way and be re-erected if the new device meets the requirements for on-premise signs, as stated in 603 KAR 3:080 (state statutes regulating advertising devices)."

On 4/25/14 the Planning Committee of the Planning Commission reviewed this proposal and recommended several changes to the text (changes highlighted on page three of this report.)

APPLICABLE PLANS AND POLICIES

These amendments to the Land Development Code are in accordance with the following Goals and Objectives of Cornerstone 2020.

1. Marketplace Strategy – Goal D1 – Business Climate
 - a. Create and sustain a climate which stimulates business and economic growth in Jefferson County.
2. Marketplace Strategy – Business Climate – Objective D1.2
 - a. Promote economic growth through community planning that will enable businesses to realize their economic goals.
3. Plan Element B. – Marketplace – Provide a positive culture for attracting and sustaining businesses within Louisville and Jefferson County.

NOTIFICATION

Notification of the Planning Commission public hearing has been conducted in accordance with KRS 100 requirements.

STAFF CONCLUSIONS

This amendment would provide an additional option for property owners, who are forced into this situation due to eminent domain proceedings, to consider regarding the potential removal or relocation of an existing non-conforming on-premises sign. This amendment would allow the property owner to make a decision that they believe is in the best interest of their business, either: 1) Remove the sign and receive compensation, or 2) Relocate the sign on their property and receive no compensation for the sign.

PROPOSED TEXT AMENDMENTS

Section 8.1.4 Nonconforming Signs

*(**Bold/underlined** and ~~strikethrough~~ text represents recommended changes to the original Metro Council proposal made by the Planning Committee of the Planning Commission at their 4/25/14 meeting.)*

C. ~~Where condemnation by~~ **When** the federal, state or local government **or public utility** has caused the taking of property on which any legal nonconforming on-premises sign is located (Example: the widening of a public right-of-way), that nonconforming on-premises sign may be relocated to an area of the remaining property so long as no ~~just~~ compensation has been received for the value of the nonconforming sign and the sign is not further altered to make the sign less in conformance with this regulation. **The new location for the relocated sign shall be approved by the Planning Director, or designee.** Any property owner who intends to relocate a nonconforming on-premises sign under this provision shall present ~~conclusive~~ evidence to the permitting authority that no compensation for the nonconforming sign has been received **from the governmental entity or public utility** ~~as a result of the subject condemnation proceeding~~ and that no alterations **to the advertising portion of** ~~to~~ the sign will be undertaken so as to make it less in conformance with this regulation. The permitting authority, ~~after reviewing and approving~~ **upon determining** that the ~~necessary~~ evidence **submitted** satisfies the requirements herein, shall issue a new permit for the relocation of the nonconforming sign on the property.

METRO COUNCIL RESOLUTION

RESOLUTION NO. 030, SERIES 2014

A RESOLUTION REQUESTING THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING AND FORWARD A RECOMMENDATION TO THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT REGARDING A PROPOSED AMENDMENT TO SECTION 8.1.4 OF THE LAND DEVELOPMENT CODE WHICH WOULD ALLOW FOR THE RELOCATION OF NONCONFORMING ON-PREMISES SIGNS WHEN THE GOVERNMENT EXERCISES EMINENT DOMAIN OVER PROPERTY UPON WHICH THE SIGN IS LOCATED AND REQUIRES ITS REMOVAL.

Sponsored by: Councilman James Peden

WHEREAS, The Legislative Council of the Louisville/Jefferson County Metro Government ("Metro Council") acknowledges that in response to continual growth throughout Louisville Metro, federal, state and local governments have had to acquire through condemnation private property fronting public rights-of-way to satisfy increasing demand for wider rights-of-way, and,

WHEREAS, the Metro Council further recognizes that when federal, state and local governments exercise their respective authority under eminent domain to acquire private property to widen public rights-of-way, legal nonconforming on-premises business signs located on properties that front those public rights-of-way are often required to be removed against the wishes of the property owner despite receiving compensation for the loss of value of said sign; and

WHEREAS, the Metro Council wishes to consider allowing those private property owners with legal nonconforming on-premises business signs affected by an impending condemnation proceeding to relocate those signs on the remainder parcel of property so long as no compensation for the value of the sign is received by those

property owners and the affected sign is not structurally altered to make the sign less in conformance with applicable sign regulations;

NOW, THEREFORE, BE IT RESOLVED BY THE METRO COUNCIL AS FOLLOWS:

Section 1: The Metro Council requests that the Planning Commission hold a public hearing regarding an amendment to Section 8.1.4 of the Land Development Code as set forth below in Section 2 herein, and to make a recommendation to the Metro Council regarding whether the proposed amendment should be approved or disapproved, and stating the reasons for its recommendation.

Section 2: In acting pursuant to Section I of this Resolution, the Metro Council requests that the Planning Commission consider the following proposed amendment to Section 8.1.4 of the Land Development Code:

8.1.4 Nonconforming Signs

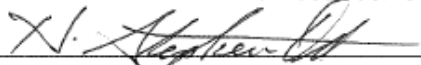
A. Any sign legally in existence on the effective date of any zoning regulation, which does not permit such signs may continue in existence as a matter of right. A nonconforming sign may be maintained and repaired on the same property so long as the area, height, placement of movable parts, and luminosity are not altered to make the sign less in conformance with this regulation. Development sites with a non-conforming sign(s) may not install any additional freestanding signs if an existing freestanding sign is more than twenty (20%) percent nonconforming or any additional attached signs if an existing attached sign is more than twenty (20%) percent nonconforming even if one or more would otherwise be allowed by other provisions of this chapter (Exemption: Existing nonconforming signs designated as a significant sign (see definition in Section 8.1.2) by the Sign Review Board are exempt from the restriction in the proceeding sentence). Nonconforming in this instance deals with area and height dimensions only. Non-conforming freestanding signs that meet the situation listed above shall be brought into 100% compliance before a second freestanding sign can be permitted. The following uses of underground space may be permitted upon the granting of a Conditional Use Permit.

B. At such time as any structural element of a nonconforming sign is replaced, the sign must be brought into compliance with the requirements of current regulations,

except that a nonconforming on-premises sign may be replaced by another nonconforming on-premises sign (exception, this provision does not apply to incidental and temporary on-premises signs), provided that all nonconformance in area, height, size, and setback is reduced by fifty percent (50%) of the difference between the existing nonconforming sign and what the regulation allows. Exception: No reduction in nonconformance shall be required for the replacement of signs, awnings, canopies and marquees that were damaged by a weather event or accident (i.e. vehicular accident) unless the damage results from neglect of maintenance or other willful act of the property owner. Replacement of structural elements in this context means the disassembly and subsequent re-assembly or the substantial alteration of the pole, base, or frame. For awnings and canopies any change to the frame shall be considered as a structural change. The replacement of material covers shall not be considered a structural change.

C. Where condemnation by the federal, state or local government has caused the taking of property on which any legal nonconforming on-premises sign is located (Example: the widening of a public right-of-way), that nonconforming on-premises sign may be relocated to an area of the remaining property so long as no just compensation has been received for the value of the nonconforming sign and the sign is not further altered to make the sign less in conformance with this regulation. Any property owner who intends to relocate a nonconforming on-premises sign under this provision shall present conclusive evidence to the permitting authority that no compensation for the nonconforming sign has been received as a result of the subject condemnation proceeding and that no alterations to the sign will be undertaken so as to make it less in conformance with this regulation. The permitting authority, after reviewing and approving that the necessary evidence satisfies the requirements herein, shall issue a new permit for the relocation of the nonconforming sign on the property.

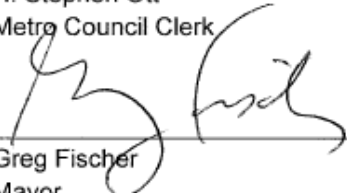
Section 3: This Resolution shall take effect upon passage and approval.



H. Stephen Ott
Metro Council Clerk




Jim King
President of the Council



Greg Fischer
Mayor

Approved: 4/14/14
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney
By: _____

