



To: Mission Planning Commission
From: Danielle Murray, City Planner
Date: November 21, 2016
Re: Case # 16-07 Sign Code Changes

Background

Over time, staff has received various comments and complaints about signs in the commercial districts of the City. Sometimes these complaints have been about the maintenance of permanent signs or awnings, but more often they have involved the location and appearance of temporary signs and/or window signs. In 2012, in an attempt to encourage voluntary compliance with the existing sign code, staff began providing reminders of sign code requirements with the annual business license renewal process. In early 2015, in response to increased feedback by the community and City Council, staff proposed a process to **conduct an inventory of existing signs, examine the current sign code regulations**, and to **propose possible changes** before beginning an **expanded sign code enforcement** effort.

Sign Code Regulation

Mission regulates signs through Sign Code Ordinances in Chapter 430 of the Land Use Regulations or Zoning Code of the Municipal Code. The Sign Code defines the various types of signs allowed and explains the physical conditions for their installation including:

- 1) Where they may be installed
- 2) Limitations on size and number
- 3) How long they may be in place
- 4) If a sign permit is required prior to installation

Signs are a form of speech and expression and, as such, are protected by the First Amendment to the Constitution. Various court cases across the country have affirmed a City's power to regulate signs only in a content-neutral fashion. Generally, that means cities may make rules about the **"time, place and manner"** of signs as long as those rules don't make any distinction based on what the sign says. The First Amendment does not protect false claims or otherwise unlawful activity.

As a component of the zoning code, state statute requires that changes to the sign code be reviewed by the Planning Commission and receive a public hearing before being referred on to the City Council for final adoption. The City's sign code is developed in consultation with legal counsel and has been reviewed by the City's land use attorney.

Sign Code Enforcement

In Mission, sign permits are required for most but not every sign type. When they are required, permit applications are reviewed and issued by the City Planner. Historically, sign

code enforcement has also been conducted by the planner, primarily on a complaint driven basis. Occasional special sweeps to address seasonal sign issues (elections, tax preparation, post storm event repairs, etc) have also been conducted. Recently, the role of Neighborhood Services staff has been expanded to include a more direct role in building and zoning issues. This realignment will allow for an increase in the capacity to provide regular, proactive sign code enforcement.

As with any enforcement activity, staff attempts to gain voluntary compliance first through informal communication and education. If voluntary compliance is not possible, the more formal process of issuing citations to appear in court can be implemented under the current code. In some specific circumstances signs can be removed by staff or abated by a professional contractor. Penalties such as fines can only be assigned by the municipal judge, and multiple court hearings are often required. Involuntary enforcement generally takes more staff resources and may not be as effective in resolving a problem in the long term.

Sign Code Change Process

In consultation with the City Council staff developed the following steps to assess and document the current situation, educate local business and property owners, and evaluate the strengths and weaknesses of our existing sign code. The goal is to create a sign code enforcement program that is fair and predictable for Mission residents and merchants and that can be sustained with available staff resources.

- Conduct a sign audit to document what signs are already “on the ground” and in permit files. Visit every commercial property in the city, including apartment complexes and churches, to inventory the existing signs. To do this the City acquired a temporary software subscription that could be accessed from mobile devices by the Neighborhood Services Officers.
- Create a comprehensive inventory database of the audit information.
- Analyze audit data for patterns and trends. Determine how many possible sign code violations exist and what general categories they fall into. (i.e. signs without permits, signs in wrong locations, sign duration violations, sign numbers, sign size)
- Solicit input regarding the best ways to address issues identified. Are sign code changes needed to achieve the preferred outcomes? Staff has communicated with the City Council as audits, analysis, and proposed code changes were developed. A letter summarizing the proposed changes and inviting comment on them was sent to every business currently holding an occupation license. The entire text of the proposed changes and a brief memo describing them was also posted to the City’s website. Staff held two meetings in November with business and property owners to explain the proposed changes and solicit feedback. Comments have been summarized and are included in the packet for Planning Commission and City Council review.
- Communicate intentions to the community. Continue education efforts for businesses and local sign companies through various media and personalized correspondence.

- Design a system of continuous sign code enforcement that can be consistently implemented across the entire city.

Sign Inventory and Code Analysis

The sign inventory documented **817 signs** throughout Mission. The four most common sign types were: wall signs (315), window signs (199), temporary signs (91), and monument signs (87). Full descriptions of each sign type are presented in the attached handout and specifically discussed in the following pages. In commercially zoned areas, the typical business has only **two or three signs**.

Number of Signs by Zoning District	Signs	
	#	%
Residential Districts (<i>R-x, RP-x, DND</i>)	52	6%
Light Commercial Districts (<i>C-1, CP-1</i>)	32	4%
Downtown Districts (<i>MS1, MS2</i>)	444	54%
Office Districts (<i>C-O, CP-O</i>)	55	7%
Heavy Commercial / Industrial Districts (<i>All other districts</i>)	234	29%
TOTAL	817 signs	

Pole Signs

There are currently **23** pole signs within the City. The installation and replacement of pole signs has been prohibited since September 2003. Existing pole signs are regulated as non-conforming uses and investment is limited to maintenance only, with the intent being the eventual elimination of all pole signs.

POLE SIGN

A sign which is supported by one (1) or more poles, uprights or braces in the ground so that the bottom edge of the sign face is more than ten (10) feet above the ground.

Since 2009, nine (9) existing pole signs have been removed throughout the City. This was accomplished through a combination of voluntary compliance with zoning code enforcement notices, City abatement, or normal business practices. Pole sign regulations were last amended in 2009 to allow existing pole signs in the vicinity of Johnson Drive and Metcalf Avenue under certain conditions. There are three signs that continue to meet these conditions (Village Inn, Johnny's BBQ, and Popeye's).

At the Community Development Committee's December 2015 meeting, the Committee communicated a preference to continue the prohibition on pole signs and to explore implementation of ordinance changes that would establish a deadline for property owners to actively remove all pole signs within the City. Additional discussion surrounding pole sign code revisions asked the following questions.

Decision Points (Time, Place, Manner)

- Does the City Council still desire to implement these changes in the near future, or include them in a larger discussion of sign code revisions?
- Should the City require by ordinance that pole signs be removed by a certain date (an amortization policy)? If so, how long should businesses have to remove these signs?



Temporary Signs

The results of the sign inventory show **91** temporary commercial signs were in place throughout Mission during the sign inventory, with about one-quarter (23) of those being used for purposes related to real estate and project development (purposes treated differently under our sign code).



Number of Temporary Signs by Zoning District	Signs	
	#	%
Residential Districts <i>(R-x, RP-x, DND)</i>	10	11%
Light Commercial Districts <i>(C-1, CP-1)</i>	40	44%
Downtown Districts <i>(MS1, MS2)</i>	7	8%
Office Districts <i>(C-O, CP-O)</i>	4	4%
Heavy Commercial / Industrial Districts <i>(All other districts)</i>	30	33%
TOTAL	91 signs	

Temporary signs can be used for any purpose under our code, but often are used to fulfill one of the following needs:

- Political signs
- Contractor projects
- Special events
- Garage sales
- Sales and promotions



The current sign code does not require a sign permit for temporary signs, allows an unlimited number of signs but restricts the overall square footages, and limits any one sign's duration to 60 days before the sign must be removed for at least 60 days. Signs which advertise property for sale are limited in duration to the period of time for which the property is on the market for sale.

While these are reasonable restrictions, they are very difficult to enforce. Staff would have to proactively monitor properties for the appearance of temporary signs, document them when seen, and spend time comparing current signs to historical signs or documenting that a sign has been in place for longer than 60 days. Proving that someone is using more than the gross allowable square footage would require staff to locate and measure each individual sign. The typical policy solution to these type of concerns is to require permits - but that may be seen as too burdensome for these signs.



Beyond issues with these restrictions, temporary signs are being used throughout the City in ways that were not intended when the code was authored. It would be difficult for enforcement alone to resolve concerns about temporary signage within the current code.

For example, in the City’s business districts, many of the signs inventoried were used purely to identify or draw attention to a business - rather than to recognize a sale or some other special or temporary event. While our code should not make any distinctions between these uses, these needs would be more appropriately satisfied by permanent signage. However, temporary signs often come at a lower cost to produce, provide greater flexibility to the business, and allow for more sign space than would otherwise be allowed to an individual business.



Similarly, the sign code allows signs advertising a property for sale or lease to remain until that property is leased or sold. However, in the case of larger multi-family developments, there is virtually always *some* level of vacancy that triggers this exception in our code. Additional discussion surrounding temporary signs asked the following questions.

Decision Points (Time, Place, Manner)

- Should the City require a permit for temporary signs?
- How long should signs be allowed to stay out? Should the City impose any other form of time restriction, i.e. limiting temporary signs to certain events each year?
- Is the quality of these signs an issue that the code should address?
- Should we change how we count or limit signs? Should we focus on the number of signs per tenant or per parcel, rather than the aggregate size?



Window Signs

The current sign code only allows window signs in the Downtown District - generally, the Johnson Drive corridor from Lamar Avenue to Nall Avenue. Such signs are intended to communicate with pedestrians walking through the district, at a slower speed than vehicle traffic. Accordingly, they are limited in size to 10% of the window glass of the facade. The current code also specifies that they should be affixed to the glass in a permanent manner rather than as copy that is changed frequently. A sign permit is required for a window sign. Window displays and lettering that identifies a business, address, or hours of operation are exempt from the sign code.

However, a large number of properties have window signs without permits and or are located outside of the downtown and are technically out of conformance with the current code. For many businesses, permanent or rotating window signage is a common business practice. Many surrounding/peer communities either limit window signs to a certain area percentage (often 50%) or exclude them from sign regulation entirely. Additional discussion surrounding window signs asked the following questions.

Decision Points (Time, Place, Manner)

- Should we allow and provide specific criteria for these signs?
- Where should these signs be allowed? Should the Downtown District be treated differently than other areas of the City?
- Should the code prescribe any “quality” requirements for these signs, such as that they must be printed on durable materials?





New / Emerging Sign Practices to Regulate

Mission currently does not have a significant number of vehicular signs or people hired to act as sign holders in the public right of way. In the past, mobile, dedicated sign trucks have circulated town on public streets and parked in underused or vacant parking lots visible to major thoroughfares. While regulating these types of advertising are difficult, many communities and people view them as a nuisance.

Decision Points (Time, Place, Manner)

- Should the city be proactive in enacting regulations to prohibit these signs?

Other Legal Concerns

In June of 2015, the U.S. Supreme Court issued a decision in *Reed v. Town of Gilbert* that rules unconstitutional many of the categories used by cities to regulate signs. These concerns are not unique to the City of Mission; indeed, they affect most cities in the United States.

In addition, the Kansas Legislature recently prevented cities from regulating the placement or number of *political* signs posted for the period of time surrounding an election. The position of the League of Kansas Municipalities is that this law is unconstitutional under *Reed* as a content-based discrimination in speech; however, this has not yet been tested before a court.

The City considered the proposed sign code revisions in consultation with our city attorney to address these conflicts with case law and state law. Significant interpretation or testing of the impacts of the *Reed* decision is not yet available, however our land use attorney is comfortable with the proposed changes.

Proposed Sign Code Changes

In February 2016 Staff presented final analysis of the inventory and asked for direction to prepare code changes to respond to identified problems. Council's direction to staff at the worksession and subsequent committee meeting was to:

- Continue to prohibit pole signs throughout the City
- Require pole signs to be removed within a certain number of years
- Establish stricter regulations for temporary signage

- Expand the allowance of window signs by right, subject to reasonable restrictions

In addition, staff also considered any other necessary changes to the code to improve enforcement, to address other issues identified through the inventory, or to comply with recent case law. Attached is a redline copy of the proposed code changes as well as a table showing the impact by zoning district and sign type. If adopted as proposed, very little of the existing sign code standards will change. Most businesses will continue to be allowed the same number, size and type of signs as they are now. The changes in the proposed code that are most likely to impact business are as follows:

- Allow marquee signs by right in three additional commercial zoning districts
- Allow monument signs by right in the Main Street District 1 and Pedestrian Oriented Business District zoning districts under certain conditions
- Allow window signs anywhere in Mission with a limit on coverage of windows in the downtown district of 50% of the window glazing
- Allow electronic signs for the display of prices for fuel
- Require sign permits for temporary signs
- Limit the posting of temporary signs to no more than three 60-day periods per year per business
- Prohibit costumed characters as attention attracting devices
- Eliminate all pole signs by December 31, 2023 through an amortization process.
- Streamline the approval process for electronic time/temperature instruments
- Standardize the processes of placing liens against properties that have been abated by the City

Staff Recommendation

The Planning Commission should consider the proposed final draft of code changes and open the required public hearing for any comment. At the conclusion of the meeting, the Commission should continue the public hearing to their January 23, 2017 meeting to accommodate any changes to the proposed code the Commission may recommend and to allow for additional public comment after the holidays. Staff recommends adoption of the code changes as currently proposed.