

August 29, 2007

Mayor Allen Joines and Members of City Council
City of Winston-Salem
P. O. Box 2511
Winston-Salem, NC 27102

RE: ZONING TEXT AMENDMENT UDO-178

Dear Council Members:

The attached report of the Planning Board to the City of Winston-Salem City Council is sent to you at the request of the Council Members.

When the text amendment is scheduled for public hearing, you will be notified by Renee Henderson, City Secretary, of the date on which the City Council will hear this petition.

Sincerely,

A. Paul Norby, FAICP
Director of Planning

Attachment

pc: Renee Henderson, City Secretary
Gayle Anderson, 601 W. Fourth Street, Winston-Salem, NC 27101
Rob Simon, 526 S. Stratford Road, Winston-Salem, NC 27103
Jim Moury, 1816 Silas Creek Parkway, Winston-Salem, NC 27103
Maurice Redd, 102 Laura Avenue, #A, Winston-Salem, NC 27105
Melynda Dunnigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106
George Bryan, 1001 Reynolda Road, Winston-Salem, NC 27104
Robert Vorsteg, 3620 Marlowe Avenue, Winston-Salem, NC 27106

ACTION REQUEST FORM

DATE: August 29, 2007
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by City Council

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by City Council to amend Chapter B of the *Unified Development Ordinances* to revise the regulations for on-premises signs to establish a uniform one minute interval for copy changes to all electronic message boards (UDO-178).

PLANNING BOARD ACTION:

MOTION ON PETITION: DENIAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

**UDO-178
STAFF REPORT**

DOCKET # UDO-178
STAFF: Kirk Ericson

REQUEST

This UDO text amendment is proposed by the Winston-Salem City Council to amend Chapter B, Article III of the UDO to amend the requirements for the rate of electronic message signs within the City of Winston-Salem.

BACKGROUND

UDO-164, a text amendment which comprehensively revised the on-premises sign regulations for Winston-Salem and Forsyth County, was adopted by the Winston-Salem City Council in May 2007. Among the various regulations created in UDO-164 were regulations controlling the rate of change for electronic message signs. The rate at which electronic message signs are allowed to change became a major point of discussion during the ordinance adoption process. The ordinance adopted by the City included two distinct rates of change for electronic message signs. Large entertainment uses such as theaters, exhibition buildings, and stadiums were given a maximum rate of change of once per eight seconds, while all other uses had a maximum rate of change of once per two minutes. While logical reasons exist for having a rate of change which varies according to use, the City Council has decided that a uniform rate of change would be more desirable at this point in time. Accordingly, the Council has proposed a maximum rate of change of one change per minute for electronic message signs, regardless of use, within the City's zoning jurisdiction.

ANALYSIS

The last written recommendation of Planning staff, which appeared prior to the March 2007 Planning Board Public Hearing, recommended a maximum rate of change of once per thirty seconds for electronic message signs. Staff still believes this is an appropriate recommendation; however, staff also recognizes that the eight second rate of change recommended by the Planning Board (March 8, 2007) was a reasonable compromise given all the issues involved in the sign ordinance revision. Staff notes that a uniform maximum rate of change would also be easier for the Inspections Division to enforce than the rate of change which varied by use as adopted in May 2007.

RECOMMENDATION

APPROVAL OF PREVIOUS STAFF OR PLANNING BOARD RECOMMENDATION

PUBLIC HEARING

Kirk Ericson presented the staff report.

FOR:

Gayle Anderson, 601 W. Fourth Street, Winston-Salem, NC 27101

- We weren't sure whether to sign up "for" or "against" but I will explain how we feel about the electronic sign issue.
- We are in favor of leaving the timing at eight seconds rate of change.
- The people who have purchased these signs have primarily done so because they need to be able to display a message that changes so that the traveling public can see a changing message.
- If they didn't need the changing message, they would have invested in a stationary sign instead of an electronic changing sign and saved themselves a great deal of money.
- It is only fair to allow these businesses to continue to use their signs as changing signs, at least for a period of time so they can get the value of their sign.
- To deny them that right would be a taking of their sign.
- Please reaffirm to the City Council your decision to recommend an eight-second change.

Rob Simon, 526 S. Stratford Road, Winston-Salem, NC 27103

- I'm disappointed at the way things got turned around.
- I'm concerned for those of us who have investments and were permitted without restrictions when we made these investments in our signage
- I hope you folks will just turn around and say, that you listened to everybody until you were blue in the face and these were your recommendations and you stick by them.

Jim Moury, 1816 Silas Creek Parkway, Winston-Salem, NC 27103

- The sign ordinance is like buying a truck that you expect to be allowed to drive at 35 mph and the City Council then says you can only drive it at 1 mph, rendering your new purchase nearly worthless.
- The City has invested a lot of money in electronic signage downtown and at the Coliseum, even on City buses, changing every second (sic).
- If these forms of communication are good enough for the City, they should be good enough for its citizens.
- My EMS replaced my marquee sign which is how I communicated with my customers in the past. That marquee sign has been there for many years and no one has every questioned how often I changed the message until now.
- The first amendment of the constitution gives my customers the right to receive what I say on my sign.
- I use my sign for more than just commercial purposes. I display time and temperature which my mail lady says is invaluable to her. I display messages that are inspirational to people recovering from addiction. After the Virginia Tech tragedy, I displayed the VT logo with an inspirational message to show support for that community. I display supportive messages for my next door neighbors, the National Guard Armory, when I know we have troops returning from Iraq.
- I've also signed up to become a member of the Amber Alert community since my sign has the ability to show life-like messages of missing children.
- On the Fourth of July I displayed a waving flag all day.
- The first amendment prohibits Congress from passing any law abridging the freedom of speech. That means you can't tell someone what letters, numbers or words to display or

what colors or fonts to use, what size the letters can be, nor how often I can say what I want to say.

- The City's argument that the signs are unattractive doesn't hold water. They are apparently attractive enough for convention centers, coliseums, buses, and crosswalks.
- Many customers and passers-by have commented on how much they like the sign.
- It sounds as if our local government would like to live in a gated community. Perhaps that is where they should live.
- The argument that the signs are a distraction and safety hazard doesn't hold water either. Several national studies have shown that there is no conclusive proof that message signs are a distraction to drivers or cause traffic accidents.
- AAA has said publicly that they are far more concerned about distractions inside the cars like cell phones, text messaging, DVDs, etc.
- Our local government is here to serve our community. A healthy small business community provides the base from which our city is built.

Maurice Redd, 102 Laura Avenue, #A, Winston-Salem, NC 27105

- My sign is a scrolling sign that does not stop.
- It scrolls continuously.
- I installed the sign based on a lot of studies and after gathering a lot of information from other agents and traffic studies.
- I don't think my sign is unattractive or disruptive.
- I am a small business and don't have a lot of unlimited resources.
- If I'd known this was coming, I would never have installed the sign.
- Hopefully you all will agree that businesses which have already established their signs could be grandfathered in some way.

AGAINST:

Melynda Dunnigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106

- I'm not solidly in favor of the one minute change rate, but think it's a better alternative than the eight second rate.
- There may be other options that are better than this.
- There's been a lot of confusion about the eight-second rule, the DOT standard that's being used as justification. I talked to DOT and it isn't a time interval standard. It is a standard having to do with the length of a message. They want the total length of a message to be eight seconds or less because as you're driving at a highway speed, you only have eight seconds to read a message. That message can be broken up into two separate screens that are separated by a pause.
- The person I spoke with at DOT said they actively discourage breaking up messages into two screens because it creates a message with a change in it and they think frequently changing messages are a hazard.
- I don't think there's any good justification for this eight second rule.
- If you're going to try to base this rule on something, there should be a rule where under normal driving conditions you should not see any changes on a message board because the changes are distracting.
- The sign owners feel that in order to get the value out of their signs they need to have more than one change. I think you need to balance the question of what is more important? Is sign owners being able to benefit from their signs more important than the

safety of the traveling public? I think the answer is that safety for the public is more important.

- You've heard that there is absolutely no evidence that electronic signs are dangerous. I've looked through all that evidence. I think it's true to say that there is no definitive study that's shown a direct cause and effect relationship between electronic signs and some kind of traffic crash rate. But this is a lot like the debate that was held over smoking and cancer several decades ago. There are certain areas of research where it's very difficult to separate out all the contributing factors to some event. That's the way it is in traffic safety studies. They are still doing the research and there's a lot of evidence from studies that is suggestive of a cause and effect relationship.
- The study which the Highway Administration is doing now will be out in about a year.
- I think common sense tells us that more frequently changing messages propose more of a hazard than messages that change at a slower rate or don't change at all.
- That's why I think the one minutes is certainly preferable to the eight seconds.
- There have been some cases that showed relationship between signs and crashes. One of those was in Wisconsin, but the DOT. There was 123% increase in side-swipe crash rate along a segment of I-94 near an electronic message sign that was installed in front of Milwaukee County Stadium. The City of Milwaukee was not sued over any of these crashes, but I think they could have been. I think there's a negligence and liability issue for cities which allow these frequently changing message signs.
- There was a suit in Texas against an airline that had an electronic message sign which flashed arrival and departure times. A driver stopped to read the sign and caused a multiple car pile-up. The drivers which were injured sued the airline and prevailed. The jury found that the sign was a contributing factor and was negligence on the part of the airline.
- There's no good reason that I can see for recommending an eight-second copy change interval and considerably more justification for a one-minute standard.
- If you recommend the eight-second standard, I hope you will be honest about it and give the justification for why you do so.

George Bryan, 1001 Reynolda Road, Winston-Salem, NC 27104

- Showed photograph of Stratford Road.
- I represent the Winston-Salem Neighborhood Alliance which represents over 20 neighborhoods which are concerned about this.
- We had over 570 people sign a petition that expressed concern. This is not a small-scale concern about our community, its beauty, its distraction.
- There are three issues we have to look at.
- The distraction to drivers is one of them.
- The beauty and the way the community comes across is another.
- Around these signs are our neighborhoods where neighbors sit and enjoy their homes. The light from these signs does impact our lives.
- The concern is not what is on the signs or whether they change, but rather how frequently they change messages.
- If you consider all 20+ signs in this photograph (displayed earlier), use the eight-second change rate, and all the sign owners cannot change their signs at the same times, you are basically giving drivers and neighbors a change rate of 150 changes a minute on this stretch of road.

- You have to think of all of us and not just the business owners. You have to think of these businesses together and what the frequency will be.
- The signs will not all be in sync and change at the exact same eight-second point. So the impact is far greater than one sign changing every eight seconds.
- We really encourage you to think about this carefully and come back to a longer period of time. Certainly take into account the businesses. But consider the public as well.

Robert Vorsteg, 3620 Marlowe Avenue, Winston-Salem, NC 27106

- I'd like to ask who speaks for the common good?
- Although this one-minute interval is far from my desire, I certainly support it over an 8 second alternative.
- An appeal for safety tends to fall on deaf ears.
- Let's remember that many of your decisions rest on considerations that do not rise to the level of truth. Your best judgments are based for the most part on your assessment of relevant facts as more or less pertinent and as more or less important in the way they promote or impede the interests of concerned parties. But that's not the whole of it. You still have to consider the common good. How do you do that in a case where safety is a concern?
- In this case your common sense already knows that a new distraction cannot be optimum. It presents at least some degree of risk. How much risk we can't measure. But we do know that the risk must rise with the frequency of the changing message.
- Should we err on the side of increasing the risk or increasing the safety by lowering the risk?
- That's the choice you have to make.

WORK SESSION

During discussion by the Planning Board, the following points were made:

1. Looking at the picture displayed by Mr. Bryan, Jerry Clark noted that even with a one-minute interval, the public will see approximately 20 changes in a minute. That's still a whole lot. Where do you cut it off?
2. Paul Mullican noted that we are basically rehashing what we discussed before. We voted on eight seconds the last time and voted accordingly. We should stick with what we sent down the last time because we spent a lot of time and effort thinking that through.
3. Clarence Lambe agreed with that although for different reasons. It was a compromise between a dichotomy of opinion and no one was perfectly pleased, but it was a compromise. To pick out just one thing really invites an opportunity to reopen the investigation of all aspects of the sign ordinance. If for no other reason, I would agree that we should go forward with the same recommendation that we made before.
4. Lynne Mitchell: It was difficult and frustrating then. It's difficult and frustrating now. I'm still not thrilled with it now. There's a real tension between the old and the new. If in time science comes out and shows that there is a safety connection

with this, then we can consider an amendment because then we have definitive information. At this time we don't.

- 5. Carol Eickmeyer thanked Ms. Dunnigan for asking the Board to express why they were going to vote the way they were. I am going to be voting for the eight-second rule, partly from the other side of it. I think if our streets start pulsating with 20 signs changing every 8 seconds, several things will happen. We will know that it isn't safe and there will be a public outcry to change this. People will ignore them the same way they ignore advertising on web sites. I think when that happens it will be less attractive for a business to spend a billion dollars on a massive sign. I also think that we are at the very beginning of trying to figure out what signage is going to look like over the next ten or fifteen years. It seems irrelevant to me about the interval at this point at the rate that the technology changes. While I don't exactly support the idea of pulsating streets, 20 years ago we were there with neon signs. As a community, we decided against that. I think this will force the issue much more vibrantly, perhaps more quickly than slowing it down to a minute.

MOTION: Paul Mullican moved reaffirmation of the eight seconds as sent by the Planning Board initially.

SECOND: Jerry Clark

VOTE:

- FOR: Jerry Clark, Wesley Curtis, Carol Eickmeyer, Arnold King, Arthur King, Clarence Lambe, Lynne Mitchell, Paul Mullican, Brenda Smith
- AGAINST: None
- EXCUSED: None

A. Paul Norby, FAICP
Director of Planning

UDO-178
AN ORDINANCE AMENDING CHAPTER B (ZONING)
OF THE *UNIFIED DEVELOPMENT ORDINANCES* (UDO)
REGARDING ELECTRONIC MESSAGE SIGNS

Be it resolved, by the City Council of the City of Winston-Salem, North Carolina that the *Unified Development Ordinances* (UDO) is hereby amended as follows:

Section 1. Section 3-2.1(F)(2)(b) entitled, “Changes Per Day,” of Chapter B entitled, “Zoning,” is hereby revised to read as follows:

- (b) Changes Per Day. An Electronic Message Sign shall change no more than once per ~~minute~~two (2) minutes, with the exception of Electronic Message Signs used in conjunction with Stadiums, Coliseums, or Exhibition Buildings; Indoor or Drive in Theaters; or Recreational Services, Indoor, Limited to SIC 792 (Theatrical Producers), which shall change no more than once per eight (8) seconds. Changes shall be complete and shall not contain any scrolling, flashing, or similar transitional effects between static messages.

Section 2. This ordinance shall be effective upon adoption.