



PLANNING COMMISSION MEETING MINUTES

7:00 PM May 9, 2024
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present:, Tim Faber, Darren Johnson, Jim Kaemingk, and Blair Scott

Absent: Khush Brar and Hollie Lyons with notice

Staff Present: Gudde, Planning Director and Samec, Planner, Mark Sandal, Public Works

3. APPROVAL OF MINUTES

A. April 25, 2024 Scott motion / 2nd Kaemingk 4-0

4. PUBLIC HEARING

A. Amendment to LMC 19.33 – Sign Code

Gudde addressed the Commission and gave an overview of the proposed amendment to the Lynden Sign Code.

Some sections of the City's sign code were inconsistent with recent case law, staff has been working closely with legal counsel, Luke Phifer, to develop the proposed amendment. Generally, the proposed amendment does not alter the character of signs – that is the size, shape and location of signs used in the city - but close attention was given to the following topics:

- Inclusion of a substitution clause.
- Inclusion of an exclusionary clause.
- Clear directions on temporary signs including political speech.
- Revision to portions of the special exemptions section that are not legally defensible.
- Clarify the difference between off-premise signs (billboards) and shared plaza signs.

In addition to the amendment to Title 19, the sign related definitions found in Title 17 were updated.

Staff is aiming to have the code in place by late summer – ahead of the sign activity that will be generated by the presidential and local elections this fall.

Staff also briefed the Commission on important reminders from MRSC:

Local governments have greater authority to regulate commercial speech than they have to regulate noncommercial speech.

Cities may not limit the displaying of political signs to only a certain window of time prior to an election. However, courts have held a requirement that political signs be removed within 10 days of the relevant election was permissible, so long as the requirement was reasonable and applied to all temporary signs.

That governments can still regulate noncommercial signs in a content-neutral approach, using such factors as location, size, height, use of materials, size, lighting, moving parts, type of structure (freestanding, banner, inflatable etc.) and portability.

If you have to differentiate the type of sign being regulated by reading the sign's content or knowing the sign message's author, then the regulation is probably unconstitutional.

Staff addressed the memo from Bob Carmichaels office dated May 8, 2024, regarding regulating temporary signs after *Reed v. Town of Gilbert*.

The memo mentions that in the 2015 *Reed v. Town of Gilbert* case, the United States Supreme Court held that content-based sign regulations –regulations that treat various categories of signs differently based on the information they convey – are presumptively unconstitutional. This is the case even if the motives for the regulation are benign and the regulation does not discriminate between different viewpoints. Such laws will only be upheld if they are narrowly tailored to serve a compelling government interest (strict scrutiny), which is a difficult standard to meet.

Lynden's current sign code contains many such content-based regulations including, but not limited to, those addressing Grand Opening and Going Out of Business Signs (LMC 19.33.075), Political Signs (19.33.050(C)(3)(b)), and Real Estate Signs (19.33.070(B)). One of the objectives of the current revision of Lynden's sign code is to ensure the City's code complies with *Reed* and the cases that have followed it.

The redlines shown within the document include revisions and general reorganization of existing language. The update will help to make the document more user friendly.

Over the years, staff have seen very few complaints regarding the sign code. If a concern arose, it was typically regarding the size of a sign or the requirement to landscape the base of a freestanding sign.

Below is a brief overview of the proposed changes:

- The table of contents has been updated to reflect the new sections.
- Updated definitions under LMC 19.33.020 and in Title 17 where they overlap.

Staff asked for the Commission to look at the definition of Temporary Signs and determine what approach Lynden wants to adopt to define and regulate temporary signage. Either by listing specific materials to provide greater clarity (current drafted language) or simply by focusing on the types of construction, materials, placement or installation which is broader but more subjective.

- Moved the Sign Permit Administration and Process to the beginning (19.33.030) to better inform the applicant of the process from the very beginning. This section includes permitting, exemptions and exceptions, design review, fee, approval and variances.
- 19.33.035, outlines signs that are prohibited in the City.
- 19.33.040 spells out the general provisions including owner responsibility, maintenance, abandoned signs, design elements, safe installation, clearance and Sign illumination. Sign illumination (H) is new and includes regulations for illuminated signage.
- 19.33.050, 060, 063, 065, addresses regulations specific for each zoning district regarding allowable sign area, maximum sign height.
- 19.33.090 outlines standards for specific sign types that do not vary from zone to zone. These sign types include directional signage size and height, freestanding signs with regards to the number of signs permitted, setback and landscaping, fuel signs, HOP's. The current code has a lot of redundancies and uses the same language under each zoning category. Creating this section puts it all in one place.

Section 19.33.090 also provides new language for multi-business complex signs and mural signs, projecting signs, reader board signs and sandwich board signs
See below.

- Multi-Business Complex Category: We blended the previous “Multiple-business complex” and “Multiple tenant building” categories into a new “Multi-Business Complex” category. In addition to blending the two categories, we created language allowing for Multi-Business Complex Directory Signs to be placed on any lot within same complex.

- (19.33.090(E)(1) and 19.33.035(D)). In the past staff has run into issues regarding signage being considered “off-premises”. This will allow a business complex to legally share a directory sign.
 - Mural Signs: Created standards for mural signage. This section outlines 9 required criteria. Mural signs are only permitted in the HBD zone and must be approved by the DRB.
 - Reader Board Signs (including electronic signs). This section was revised to allow such signs only in the CSL, CSR and PU zones, unless associated with a CUP (ie: schools and churches). Specific regulations were added to clearly outline use.
 - Sandwich Board Signs: This section was revised to include clear criteria. Sandwich Board signs are currently allowed in the HBD and with this draft has been expanded to the CSL, CSR and PU zones.
- 19.33.100 – Temporary Signs. This section created general requirements regarding the duration, number of temp signs permitted, repair, location, safety and permissions, private property, sign area, height and temp banners.

The rest of the revisions include legal items relating to: message substitution, interpretations, enforcing official, removal of signs, non-conforming signs and severability.

Speaking in Opposition: None

Johnson motioned to close the public hearing. Seconded by Kaemingk and the motion passed, 4-0.

Commissioner discussion:

The Commission discussed NITS (unit of brightness) levels of signage and the ability to reduce if necessary. The Commission wants to be respectful of residential neighborhoods when a non-commercial use is adjacent. For new uses, Staff has the ability to address lighting / glare while processing a SEPA and or Conditional Use Permit.

Discussed the definition of temporary signs. The Commission prefers listing specific materials in order to provide greater clarity, especially with the legal concerns regarding subjectivity.

Briefly discussed political signage. As with any law implicating an important civil right like freedom of expression, consistent and nondiscriminatory application of regulations, municipalities cannot selectively enforce their regulations against only certain types of

signs. If you allow political campaign signs you would need to allow other temp signs as well.

The Commission was in favor of the proposed changes and supports the definition of temporary signs as proposed in the draft. It is always a good idea to have a legal scrub and to make the document more user friendly.

No further comments from the Commission. Appreciates all of the work associated with the amendment.

Scott motioned to recommend to the Lynden City Council the approval of the amendment to LMC 19.33 and LMC 17.01.030 regarding the sign code. Seconded by Johnson, and the motion passed 4-0.

5. ADJOURNMENT

Johnson motioned to adjourn the meeting at 8:40. Seconded by Kaemingk and the motion passed, 4-0.