



**City of North St. Paul
Planning Commission
Regular Meeting Agenda**

**September 16, 2021
6:30 PM**

The Planning Commission Meeting will be conducted on **September 16, 2021** at 6:30 p.m. The meeting location is the City Council Chambers of City Hall, located at 2400 Margaret St., North St. Paul.

The Planning Commission will also be meeting by interactive TV under Minn. Stat. 13D.02. Members of the public are permitted to attend the meeting in person, however, it is encouraged to participate in the meeting remotely. Instructions can be found below.

The **September 16, 2021 Zoom meeting can be accessed**

via: <https://tinyurl.com/NSPplanning>

(from a PC, Mac, tablet, iPhone or Android device)

Meeting ID: 821 4097 2224

Password: 362656

or by phone at 1-929-205-6099, meeting ID 821 4097 2224, password 362656.

**You can also watch the meeting on our YouTube channel here
tinyurl.com/NSPYouTube**

The Planning Commission Zoom meeting will be 'open to the public' to listen in, but will be muted from contributing at all times with the exception of a Public Hearing and open to the public forum.

Please join the meeting early to test your audio and video settings. If you join via a device and your audio is not working, you may need to use the dial-in phone number option in order to be heard.

I. Call to Order

II. Roll Call

COMMISSION

Elaine Barton, Commission Chair

Patrick Blee, Commissioner

Erik Brenna, Commissioner

Rick Gelbmann, Commissioner

John Monge, Commission Vice-Chair

Lisa Wong, Commission City Council Liaison

Andrew Wise, Commissioner Allan Worm, Commissioner

STAFF

Eric Zweber, Planning Consultant
Lisa Ritchie, Planning Secretary

III. Adopt Agenda

IV. Approval of Minutes

- A. Approval of August Meeting Minutes

V. Meeting Open to the Public

Note: This is a courtesy extended to persons wishing to address the commission who are not on the agenda. A completed public comment form should be presented to the Planning Commission Secretary prior to the meeting; presentations will be limited to 3 minutes. This session will be limited to 15 minutes.

VI. Public Hearings

- A. Century Avenue Collision Center Conditional Use Permit for Outdoor Storage

VII. Commission Business, Action Items & Recommendations

VIII. Old Business

- A. Sign Code Update
- B. Review/Finalize Redevelopment Task Force_2 volunteers needed. Monday evenings (6:30)

IX. Reports from Staff

- A. Update from Kari Erpenbach

X. Reports from Council Liaison

XI. Reports from Commissioners

XII. Adjournment

The next regularly scheduled Planning Commission meeting is October 7th

**CITY OF NORTH ST. PAUL
PLANNING COMMISSION
REGULAR MEETING MINUTES
THURSDAY, AUGUST 5, 2021
6:30 P.M.**

North St. Paul City Hall – Council Chambers
2400 Margaret Street

I. CALL TO ORDER

Chair Barton called the meeting to order at 6:30 p.m.

II. ROLL CALL

COMMISSION

Elaine Barton, Commission Chair
Patrick Blees, Commissioner ABSENT
Erik Brenna, Commissioner
Rick Gelbmann, Commissioner
John Monge, Commission Vice Chair
Lisa Wong, Commission City Council Liaison
Andrew Wise, Commissioner
Allan Worm, Commissioner ABSENT

STAFF

Eric Zweber, Planning Consultant
Planning Secretary, Lisa Ritchie

III. ADOPT AGENDA

Motion to adopt agenda by Commissioner Gelbmann, and seconded by Commissioner Monge, with all present voting aye (5-0). Motion carried to adopt the August 5, 2021 Agenda.

IV. APPROVAL OF MINUTES

A. Planning Commission Meeting Minutes from June 3, 2021

Motion to approve Minutes by Commissioner Monge, and seconded by Commissioner Brenna, with all present voting aye (5-0). Motion carried to approve the June 3, 2021 regular meeting minutes as submitted.

B. Approval of July 15, 2021 Joint EDA/Planning meeting

Motion to approve Minutes by Commissioner Monge, and seconded by Commissioner Gelbmann, with all present voting aye (5-0). Motion carried to approve the July 15, 2021 Joint EDA/Planning Commission meeting minutes as submitted.

V. MEETING OPEN TO THE PUBLIC

There were no comments.

VI. PUBLIC HEARINGS

-None.

VII. COMMISSION BUSINESS ACTION ITEMS & RECOMMENDATIONS

A. Task Force for the Update of the 2013 Redevelopment Master Plan

City Planner Eric Zweber reviewed a proposal for a Task Force to provide recommendations for an update to the 2013 Redevelopment Master Plan. He added the Task Force would consist of two Planning Commissioners, two EDA Members, City Council Members and representatives from City Staff. He asked whether any Planning Commissioners would like to volunteer for the Master Plan Task Force.

Commissioner Gelbmann requested clarification regarding time commitment.

Mr. Zweber stated it is anticipated that there will be a minimum of 6 monthly meetings, with the potential of 9 monthly meetings. He added there might be a few months where there are 2 meetings.

Commissioner Monge stated he is interested as long as the meetings start after 6:30 p.m. on weeknights.

Mr. Zweber stated he is confident the meetings will be held in the evenings.

Chair Barton stated Commissioners could serve as alternates if there are more than 2 volunteers.

Mr. Zweber stated, when the Task Force is set up, the regular Planning Commission meetings will include a "Report from Task Force Liaison".

Commissioner Wise stated he is interested in volunteering.

Mr. Zweber stated two volunteers can be appointed, and any additional volunteers identified as primary and alternate volunteers. Chair Barton agreed.

Chair Barton stated there are not a lot of details yet about the amount of commitment that will be required.

Planning Secretary Lisa Ritchie requested clarification regarding Open Meeting Law requirements (12:18)

Chair Barton stated that will not be an issue as long as there is no quorum.

Mr. Zweber stated he will send out a request to the Planning Commission as a survey, or bcc, and interested Commissioners can respond.

Chair Barton stated Commissioners Gelbmann, Brenna and Wise have expressed an interest in volunteering for the Task Force.

Mr. Zweber agreed to send out the information to all interested volunteers to determine conflicts and availability.

B. Review the Need for Sign Code Amendments

Mr. Zweber reviewed issues related to a potential Sign Code amendment. He added no action from the Planning Commission is requested. He noted cities generally have three options: do nothing, which is not recommended; go very simple with the changes, specifically location, size, and zoning district; and spend more time creating a more nuanced Zoning Code.

Mr. Zweber stated a 2015 Supreme Court case allowed off-premise public message signs by different categories: religious institutions, non-profit organizations, and government. He added, before this court case, cities could not regulate non-commercial speech more than commercial speech. He noted the Supreme Court noted sign structures can be addressed, but content cannot be regulated.

Mr. Zweber stated a 2017 decision of the 9th District Court decided cities can regulate commercial speech but still be content neutral. He added an example of this would be political signs and real estate signs in people's yards, which look the same but have different content.

Mr. Zweber stated some communities are getting creative about regulating signs without regulating content. He added tonight's discussion is to introduce the issue, and to determine whether the Planning Commission would like to do a basic review of the Sign Code and be done or get into more specific concerns about different types of signs.

Mr. Zweber stated asked for feedback and comments from the Planning Commission regarding issues that they believe are not addressed well in the existing Sign Code. He added, for instance, there are no clear regulations for use of digital display boards, and clarification about what constitutes a sign, even if it does not have a message. He noted this would include flag banners, waving sales, and spotlights, which can all be easily regulated.

Mr. Zweber stated he would bring the Commission's feedback to the Acting City Manager for review and discussion regarding scope and cost, and potentially lay out a review schedule.

Commissioner Gelbmann stated this is a complicated issue, and he would like to spend time looking at what the purpose is, and what the City is trying to achieve by modifying the Sign Code. He added that will go a long way in terms of providing guidance with process and goals. He noted there may be some definitions, for instance a flag vs. a sign, that could be included, and the existing Sign Code does not address digital signs very well.

Chair Barton stated the City has a lot of regulations that are not organized very well. She added finding the regulations section is difficult, and there is a lot of repetition, and it will be helpful to get it in a better format. She noted there has been confusion about how many signs are allowed, particularly in residential districts where the total amount of allowable signage is 2 square feet, which conflicts with the body of the Ordinance. She expressed support for keeping it simple, and not trying to define every type of sign.

Mr. Zweber stated he read through the Sign Code and noticed inconsistencies with setback requirements, which should be kept simple. He added some issues would be the consequences of having a simple Code, and whether nonconforming signs are grandfathered in.

Chair Barton stated enforcement will also be important with potential Ordinance amendments. She added the more complicated it is, the harder it will be to enforce. She noted she drove around that day and looked at signs in the community.

Mr. Zweber agreed it is difficult to enforce a complicated Sign ordinance, especially when it is enforced on a complaint basis.

Commissioner Wise stated existing signs may not be in conformance with the new Ordinance, if the changes are significant. He added that makes him lean more toward a less intensive scope.

Mr. Zweber stated signs are not viewed differently than any other nonconforming structure, and they are grandfathered in when the rules change. He added the nonconformity, if anything, is to the benefit of the sign owner as adding a new message does not expand the nonconformity.

Chair Barton asked, with regard to permits, whether people should have to go through the permit process for certain signs, and whether a review would be required. She added signs are legal at the time they were installed, and she does not support making changes that what has been allowed in the past would not be allowed going forward.

Chair Barton asked about signage in the downtown area. Mr. Zweber stated signage is regulated based on Zoning district and not use. Commissioner Monge stated it would be nice to have a clear Sign Ordinance for new businesses.

Mr. Zweber stated he discussed this issue with the City Attorney, to ensure that any changes are legal and enforceable. He added, under the current Ordinance, the square footage requirement stays the same, but the number of signs is changeable. He noted that can be a very complicated review for businesses with multiple signs.

Chair Barton stated signs are allowed downtown, but it is just a question of whether it makes sense and what is the purpose.

Mr. Zweber agreed, stating sign purpose leads to issues of impact. He added, for example, some signs are illuminated, or they face a certain direction; they may be digital and constantly changing. He noted types of signs are difficult to regulate as they may be appropriate only in certain zones.

Commissioner Monge stated most signs in the downtown area are flat on buildings. Commissioner Gelbmann stated the current Code has requirements for how far out a sign can project from the building.

Mr. Zweber stated he will provide ideas for a purpose statement at the next meeting, as well as a few potential processes for consideration. He added engagement with the business community should be considered.

Commissioner Gelbmann asked whether inflatable signs will be included. Mr. Zweber confirmed that they will be included. Chair Barton stated those types of signs are all over, and City Code prohibits anything that moves in the wind, including flags. She added she likes the grid for Mixed Use Districts that identifies types of signs, where they are allowed, and allowable sign area.

Commissioner Gelbmann stressed the importance of understandability, with so many different categories. He added that gets back to the issue of purpose and impact.

Chair Barton stated she is talking about the format but not the content. She added it needs to be updated because it is not enforceable, and not enforced.

Commissioner Gelbmann stated people will be less likely to violate the sign Ordinance if they understand its purpose. (microphone off, 42:27)

C. Review of the Comprehensive Plan Residential Densities

Mr. Zweber reviewed standards for residential densities, which are set by the Met Council to determine acreage and must be met by the Comprehensive Plan. He requested the Planning Commission's comments and feedback on this issue.

Chair Barton stated, in the last iteration of the zoning text changes, the R-1 minimum lot size was reduced from 7,920 square feet to 6,250 square feet. She added this number was higher than that which was listed in the Comprehensive Plan for the R-1 District. She asked whether it should be left where it is because of the maximum in the Comprehensive Plan.

Mr. Zweber stated the R-1 district has a minimum density of 6,250 square feet, and lots that size create a density greater than 5.5 dwelling units per acre, so it would have to be changed, based on net density. He added the Met Council identifies this as "net residential density", and they determine what can and cannot be netted out of the gross area. He noted wetlands, streams and other bodies of water can be netted out, but stormwater infrastructure and storm pond that require a setback, as well as parks and open space, cannot be removed.

Mr. Zweber stated the Metropolitan Council is requesting median density in multi-family residential areas. He added Commissioner Worm had asked whether it is possible to have 50-foot-wide lots with the City's existing lots which are typically 125 feet long. He noted a lot that is 50 feet wide and 125 feet deep is 6,250 square feet, and he thought that was the direction the Commission wanted to go. He noted lot widths of 63 feet would be required for a total of 7,920 square feet, with 125-foot-long lots.

Chair Barton asked, with these proposals, if density is calculated the same way for all districts. She added it is a simpler way of doing it. She noted she wanted to clarify that this is not something that will stand out, and whether the Met Council is okay with it. She noted this has the potential of reducing the number of non-conforming lots in older areas of the community, that used to be zoned R-1B.

Commissioner Gelbmann asked whether this meets Comprehensive Plan standards based on the total area of R-1 zoning in North St. Paul, in terms of how it is viewed by the Metropolitan Council. He asked whether the City has flexibility within the range of what has been set, that it could be higher or lower depending upon what the City is trying to accomplish.

Mr. Zweber stated the Metropolitan Council is concerned about whether the Zoning Ordinance influences density, and whether the Code allows a developer to create more density than North St. Paul's lot configuration will allow. He added the City Code must allow the density range between 3-5.5 units per acre in North St. Paul. He noted this can be problematic because it could require a variance.

Commissioner Brenna stated he recognizes why the Metropolitan Council wants to see higher density. He asked why a community might want to see lower density, closer to 3 units per acre.

Mr. Zweber stated the Met Council understands that density is good as long as it is above 3 units per acre and the City can support the regional infrastructure system. He added the creation of affordable housing is an important component of the Comprehensive Plan. He noted the Metropolitan Council stipulates requirements for medium and high density must be met before focusing on low density development.

Commissioner Brenna stated many communities to the east have properties that have 5-acre lots in residential areas.

Mr. Zweber stated lots of that size would need to have their own septic system, and the Met Council will not provide sewer within the period up until 2040. He added they cannot be less than 5 acres, because otherwise they would not be suitable for urban development.

Mr. Zweber stated there are still a lot of 40-foot-wide nonconforming lots, but there are lots that are less than 60-feet-wide, or less than 7,920 square feet. He added many properties are increasing to 40% impervious surface.

Chair Barton stated impervious surface is a very important issue and requirements should not be lowered in some areas.

Mr. Zweber stated there are large lots in some areas of the community and 50% impervious surface would be a lot.

Commissioner Gelbmann asked a question regarding homeowner's associations. (1:18:22)

Mr. Zweber stated many communities have homeowner's associations, and open space requirements are added into the whole development.

Chair Barton stated she does not believe it will create any issues other than the potential for additional impervious surface. She added there are certain areas, particularly streets with alleys, where the lots are smaller.

VIII. OLD BUSINESS

-None.

IX. REPORTS FROM STAFF

Mr. Zweber stated there are no upcoming applications with public hearings. He added the North High School addition has not been addressed as they have an extension through the end of September to provide time for a traffic and parking study at the high school. He noted the high school is paying for half of the costs of the traffic study, which will be completed by the end of the month, and the study results will determine whether the plan could be re-designed.

Mr. Zweber stated the Planning Commission can continue the Sign ordinance discussion at its September meeting.

X. REPORTS FROM COUNCIL LIAISON

City Council Liaison stated Mr. Zweber referred to Minnesota Safe Routes to School in his email. She added that is a State program for funding of pedestrian and bicycle infrastructure in the public right of way.

Mr. Zweber stated City Engineer Morgan Dawley has additional information on the program, and additional information will be available for Planning Commission review.

Councilmember Wong stated she attended National Night Out events and spoke with residents who had a lot of comments about Richardson School. She added there is confusion about who is enforcing parking regulations, and concerns about children crossing the street there.

Commissioner Gelbmann asked what is being constructed in the Target parking lot. Council Member Wong stated she believes it is a rain garden. Mr. Zweber confirmed this.

Commissioner Gelbmann asked about the restaurant situation.

Council Member Wong interest has been expressed by two restaurants that want to move into North St. Paul, but nothing has been finalized.

Chair Barton asked about the old Subway store on 7th Avenue. Mr. Zweber stated no one has submitted a request for sign permit.

XI. REPORTS FROM COMMISSIONERS

Commissioner Monge asked whether the Bruggeman Homes development is still in the works. Commissioner Wong stated that did not go through. Chair Barton stated the developer did not meet requirements.

Ms. Ritchie stated City Staff is working with CivicClerk software portal to post meeting information. She added Commissioners should have received an email last Friday.

Chair Barton stated she received an email, but she had already signed up for City alerts.

Commissioner Wise stated he received the email with links but could not open it.

Ms. Ritchie stated these issues are still being addressed with CivicClerk and should be resolved before the next meeting.

XII. ADJOURNMENT

There being no further business, motion to adjourn by Commissioner Monge, and seconded by Commissioner Brenna, with all present voting aye (5-0). Motion carried to adjourn the meeting at 8:02 p.m.

The next regularly scheduled Planning Commission Meeting is Thursday, September 2, 2021 at 6:30 p.m.

Members, please notify any planned absences to: Lisa Ritchie
Planning Commission Secretary
lisa.ritchie@northstpaul.org
651-747-2400

**To**

Honorable Mayor Furlong and City Council

Date

September 16, 2021

Agenda Placement # VI.A

Public Hearings

Subject

Century Avenue Collision Center Conditional Use Permit for Outdoor Storage

Background/Facts

The applicant Jim Cihon is the owner of Century Avenue Collision Center and is requesting the review of a Conditional Use Permit for outdoor storage to expand an existing fence for additional storage space within the MU-3 district. Currently, Century Avenue Collision Center has 4,800 square feet of existing outdoor storage space without record of a CUP for this outdoor storage. They are proposing an about 4,800 square foot expansion, totaling 9,600 square feet of outdoor storage space. The applicant is scheduled to have their existing asphalt lot replaced this year and plan to remove the existing fence to make the repaving process easier for the asphalt contractor and then relocate to add the additional storage space. Like other businesses in the area, Century Avenue Collision Center is experiencing an increase in thefts and damage to the cars on their property. The property has ample amount of space towards the rear of the facility where the proposed fence extension is located. This will accommodate a larger storage area where the cars can be relocated and will mitigate future thefts in the area.

Recommendation:

Staff recommends conditional approval of the requested Conditional Use Permit to allow for additional outdoor storage space, subject to the following conditions of approval:

Attachments

1. Century Collision CUP - Staff Report and Attachments

Respectfully submitted,
Eric Zweber, Sr. Planner

MEMORANDUM

Date: 9/16/2021
To: Planning Commissioners
From: Eric Zweber, AICP, City Planner
CC: Brian Frandle, Interim City Manager
Re: Outdoor Storage Conditional Use Permit for expansion of existing fence and additional storage space at Century Avenue Collision Center (2501 Division St. N)

BACKGROUND

The applicant Jim Cihon is the owner of Century Avenue Collision Center and is requesting the review of a Conditional Use Permit for outdoor storage to expand an existing fence for additional storage space within the MU-3 district. Currently, Century Avenue Collision Center has 4,800 square feet of existing outdoor storage space without record of a CUP for this outdoor storage. They are proposing an about 4,800 square foot expansion, totaling 9,600 square feet of outdoor storage space.

The applicant is scheduled to have their existing asphalt lot replaced this year and plan to remove the existing fence to make the repaving process easier for the asphalt contractor and then relocate to add the additional storage space. Like other businesses in the area, Century Avenue Collision Center is experiencing an increase in thefts and damage to the cars on their property. The property has ample amount of space towards the rear of the facility where the proposed fence extension is located. This will accommodate a larger storage area where the cars can be relocated and will mitigate future thefts in the area.



Zoning

R1- Single Family Residential	MU1- Downtown Mix Use
R2- Mix Residential	MU2- Transitional Mix Use
R3- Multiple Family Residential	MU3- Corridor Mix Use

Overlays

Downtown District Overlay
Shoreland Overlay
Parks
Water
City Boundary

GENERAL STAFF REVIEW

Conditional Use

- *The use is consistent with the general purposes and intent of the Comprehensive Plan;*
- *The use will not adversely affect the health, safety, or general welfare of the city;*
- *The use is compatible with present and future land uses in the surrounding area and reasonably related to the overall needs of the city;*
- *The use or appearance of the use is compatible with adjacent properties;*

- *The use can be adequately supported by public urban services including the water supply, transportation system and capacity, police and fire protection, utilities, and sanitary waste disposal and stormwater disposal systems;*
- *The use will not create an excessive burden on existing parks, schools, and other public facilities which serve or are proposed to serve the area;*
- *The use will be sufficiently compatible or separated by distance or screening from adjacent residentially zoned land;*
- *The use is in harmony with the general purposes and intent of this chapter and the zoning district in which the applicant intends to locate the proposed use;*
- *The use will not create an intrusion of excessive noise, glare, or general unsightliness; and*
- *If applicable, the proposed use is consistent with officially adopted city plans and overlays.*

Zoning Ordinance Section 154.004 (F) allows City Council to approve, with recommendation from the Planning Commission, an expansion of a conforming use within the MU-3 zoning district provided that the expansion meets the ten (10) criteria listed above. Detailed analysis of these criteria and other Zoning Ordinance requirements are described below.

Planning Commission Consideration

Consistency with the City Plans

- *154.004 (F)(2) Conditional Use Permit Standards (i) The use is in harmony and consistent with the general purposes and intent of the Comprehensive Plan.*
- *154.004 (F)(2) Conditional Use Permit Standards (viii) The use is in harmony with the general purposes and intent of this chapter and the zoning district in which the applicant intends to locate the proposed use*
- *154.004 (F)(2) Conditional Use Permit Standards (x) If applicable, the proposed use is consistent with officially adopted city plans and overlays*

The 2040 Comprehensive Plan guides the subject property as Corridor Mixed Use, which encourages the combination of retail development with a variety of housing, offices, live-work spaces, employment activities, and other complementary uses. The improvements to Century Avenue Collision Center will allow them to protect private property and remain competitive in the short term.

Outdoor Storage is listed as a Conditional Use within the MU-3 Zoning District that the subject property is located in.

Health, Safety, and General Welfare

- *154.004 (F)(2) Conditional Use Permit Standards (ii) The use will not adversely affect the health, safety, or general welfare of the city.*

The additional space will allow Century Avenue Collision Center to provide more security to the cars and other tools and instruments parked on the lot. The additional space will not change the operations or affect the health, safety, and general welfare of the City.

Compatibility with Surrounding Context

- *154.004(F)(2) Conditional Use Permit Standards (iv) The use or appearance of the use is compatible with adjacent properties*
- *154.004(F)(2) Conditional Use Permit Standards (vii) The use will be sufficiently compatible or separated by distance or screening from adjacent residentially zoned land*
- *154.004(F)(2) Conditional Use Permit Standards (ix) The use will not create an intrusion of excessive noise, glare, or general unsightliness*
- *154.010(E)(3) General Architectural requirements (g) Protection of views. Buildings shall be designed and oriented so as not to detract from one another or to unduly restrict views to open spaces, plazas and vistas.*

Century Avenue Collision Center is located within a large mixed-use area. The site is bounded by MN Highway 120 to the east, Henry St N to the west, 13th Ave E to the north, and 12th Ave E to the south. Beyond the rights-of-way, MN Highway 36 and residential areas are located to the north, and additional residential districts and the downtown are located to the south and west. Although Century Avenue Collision Center is not in a residential district, they are directly east from a senior housing development that is considered a residential use. With such uses nearby, Century Avenue Collision Center is proposing a six (6) foot tall vinyl fence with privacy slats. This is similar to the existing fence they will be replacing and will ensure proper screening from the nearby mixed use and residential properties. Century Avenue Collision Center is not proposing any additional screening. The proposed fence meets the screening and fencing requirements for outdoor storage, however, staff is concerned that a chain link fence with plastic slats can be maintained appropriately over time.

Proposed Uses

- *154.004(F)(2) Conditional Use Permit Standards (iii) The use is compatible with present and future land uses in the surrounding area and reasonably related to the overall needs of the city*
- *154.004(H)(2) Site Plan Review Standards (h) The proposal is in harmony with the general purposes and intent of this chapter and the zoning district in which the applicant intends to locate the proposal.*
- *154.007(C)(1) Permitted, Conditional, and Interim Uses refers to Table 6 for allowed uses within the residential districts.*

The principal use of the property is automobile service or repair, however the applicant is not expanding the building. They are proposing to expand the outdoor storage; which is the accessory use. Any conditions need to be related to the expansion of the accessory use of outdoor storage. The proposed fence is located in the western portion of the site and will replace the existing fence to enlarge their current storage area. Currently, Century Avenue Collision Center uses this area for storage but will allow for additional storage to limit the parking in the front of

the property where more thefts are happening. Moreover, by enlarging the fence area, it will mitigate people using the extra space as an unofficial roadway between the 12th and 13th Avenues. The use or appearance is compatible with adjacent properties and will not create a burden on other public facilities. The proposed storage expansion is consistent with all other provisions of the Zoning Ordinance.

Below is a photograph of the existing fence (red) and proposed fence (green).



Century Avenue Collision Center Dimensional and Setback Requirements

- 154.007(C)(3) refers to Table 4 for the lot requirements within the residential districts.

Requirement	MU-3	Century Avenue Collision Center
Minimum Lot Size	35,000 Sq. Ft.	1.28 ac (55,756 Sq. Ft.)
Minimum Lot Width	120 Ft	~230 Ft
Front Yard Setback	25 Ft	~80 Ft
Rear Yard Setback	Zero (0) Ft	~45 Ft
Side Yard Setback	Zero (0) Ft	~87 Ft
Maximum Height	Five (5) stories or 55 Ft	one story

The lot meets the size and width requirements for the MU-3 Zoning District.

Proposed Fence Requirement

- *154.010 (A) (5) Non-encroachments (e) A wall, fence or hedge may occupy part of the required front, side or rear yard subject to meeting traffic sight distance requirements.*

In the MU-3 zoning district there are no setback requirements for the rear or side yard, therefore, there are no rear or side yards. The proposed fence will be located within 18 feet of the property line.

Utilities and Municipal Services

- *154.004(F)(2) Conditional Use Standards (v) The use can be adequately supported by public urban services including the water supply, transportation system and capacity, police and fire protection, utilities, and sanitary waste disposal and stormwater disposal systems*
- *154.004(F)(2) Conditional Use Standards (vi) The use will not create an excessive burden on existing parks, schools, and other public facilities which serve or are proposed to serve the area*
- *154.010(A) Development Standards (9) Utility installations. All on site utility installations shall be placed underground.*

The proposed use will not generate any additional demand on parks, schools, or other similar public facilities.

Landscaping

The applicant has not proposed a landscape plan.

- *154.010(F)(3) Tree requirements (a) Number of trees. Trees must be planted within the property lines and in a location as not to interfere with sight line visibility at maturity. The minimum number of trees of any given site shall be as follows: (iii) MU-2 and MU-3 Districts. Whichever is greater: one tree per 1,000 square feet of gross building floor area or one tree per 50 lineal feet of site perimeter.*

The landscape requirement is for the principal use of auto service. This request does not change the principal use, there it does not apply. The applicant has not proposed a landscape plan.

Outdoor Storage

- *154.010(D) Supplemental regulations (32) Outdoor Storage (a) Outdoor storage shall be located outside of the front yard setback and shall not be placed between the principal building and the abutting street.*
- *154.010(D) Supplemental regulations (32) Outdoor Storage (b) Outdoor storage shall be completely screened from any adjacent street, sidewalk, public walkway, or public park.*

- *154.010(D) Supplemental regulations (32) Outdoor Storage (c) Outdoor storage shall be screened from abutting residential uses with a wall, solid fencing, evergreen hedge, or equivalent material. All screening shall be six feet in height. Screening along district boundaries, where present, may provide all or part of the required screening*

Century Avenue Collision Center is located in a mixed-use district and abuts additional mixed-use and residential properties, as well as public right of ways to the north, south and east sides of their property. The proposed fence will provide additional storage space for cars and machinery operated by Century Avenue Collision Center. The fence will be located outside of the front yard setback and towards the west side of the property and existing principal building. In order to screen the outdoor storage from the surrounding properties and public right of ways, Century Avenue Collision Center is proposing a six (6) foot tall chain link fence with vinyl slats which will serve as a screen to abutting residential and mixed-use properties.

Drainage/Natural Resources

- *154.010(F) Landscaping Standards (9) Drainage, access & utility easements. No landscape material other than grass, or retaining walls, shall be placed within a drainage, access or utility easement. Rock or riprap may be allowed upon review and approval by the Zoning Administrator provided the proposed material does not interfere with drainage, access or utilities.*

There are no major changes to the drainage/natural resources of the site. The proposed conditions of approval includes obtaining the appropriate stormwater and natural resources permits from the applicable agencies including the City, MPCA, and RWMWD.

Streets and Sidewalks

- *154.010(E)(3) General Architectural requirements (e) Pedestrian ways. Buildings shall be designed with proper provision and orientation for a pedestrian system to serve and link development.*

There are no alterations proposed to existing pedestrian ways within the adjacent public rights-of-way.

Parking

- *154.010(J)(3) General Parking Standards. (a) Minimum size regulations. Each space shall contain a minimum area of not less than 180 square feet, exclusive of access drives, a width of not less than nine feet and a depth of not less than 20 feet. Each space shall be adequately served by access drives as determined by the Zoning Administrator. All loading spaces shall be sufficient to meet the requirements of each use and shall provide adequate space for storage and maneuvering of the vehicles they are designed to serve. Parking ramps and underground parking may be allowed to have some reduction in the dimensions stated above.*

The existing parking is located to the north of the principal building. The expanded outdoor storage is to the south and the west incorporating a currently unimproved portion of the site. The

expanded outdoor storage area has no impact on the existing parking for Century Avenue Collision Center.

The applicant is not changing the principal use, therefore there are no changes to the parking requirements for the proposed use.

Access and Circulation

The application does not propose modifications to the existing accesses to the site.

Lighting

There are no changes proposed to their existing light fixtures.

Engineering Comments:

The City Engineer has preliminary reviewed the application. The Engineering concerns are included in the proposed conditions of approval and will be reviewed during the building permit process.

RECOMMENDED ACTION

Based on the findings described in this report, staff recommends the following actions:

Conditional Approval of the requested Conditional Use Permit to allow for additional outdoor storage space, subject to the following conditions of approval:

1. The applicant is responsible for and shall provide copies of all applicable permitting for the project prior to grading permit (mass grading) and/or building permit issuance, including but not limited to RWMWD and Minnesota Pollution Control Agency (MPCA) NPDES stormwater construction, City Erosion and Sediment Control Plan, MPCA/Metropolitan Council sanitary sewer extension, and Minnesota Department of Health watermain extension permits, as applicable.
2. The screening fence shall be a six (6) foot tall chain link fence with vinyl slats. The vinyl slats shall be inspected annually and any damaged or deteriorated slating shall be replaced within 30 days of inspection.

ZCU-21-5

Zoning-Conditional Use

Status: Active**Date Created:** Aug 29, 2021**Applicant**

Jim Cihon
jlmjss@comcast.net
2501 Division St N

North St Paul, MN 22019
651-777-6055 or 612-750-5446 (cell)

Location

2501 DIVISION ST N
NORTH SAINT PAUL, MN 55109

Owner:

CIHON MATTESON PARTNERSHIP
2501 DIVISION ST NORTH ST PAUL, MN 55109

Notice to Applicant**Application for Conditional Use Permit****Applicant First Name**

Jim

Applicant Last Name

Cihon

Address

2501 N Division st

City

North St Paul

State

MN

Zip Code

55019

Phone Number

612-750-5446

Email Address

jlmjss@comcast.net

Are you the property owner?

Yes

Are you a developer?

No

Property Information**Title Information**

Abstract

Property Description

Commercial

Address and/or legal property description

2501 N Division St, North St Paul, MN 55109

Parcel Identification Number (PID)

122922140003

Size of Property in Acres

1.28 acres

Application is hereby made for a Conditional Use Permit for the following project:

Expand an existing fence for storage area

Provide the applicable Zoning Code Section Reference.

--

Provide a detailed narrative of your project.

We are scheduled this summer to have our existing asphalt lot replaced due to deterioration. We are requesting a Conditional Use Permit to increase the size of our existing fenced area. Like other businesses in the area, we have experienced a large increase in thefts of batteries, catalytic converters, and tires and wheels of vehicles on our property. We have ample space behind our facility to accommodate a larger storage area. Currently part of that area is being used by numerous people as a unofficial roadway between 12th and 13th Avenues. It has been brought to our attention by the asphalt contractor that removing the existing fence would make the repaving process easier.

We are proposing enlarging our fenced area as indicated on the attached maps and paving the enclosure. We are proposing replacing the existing fence with a new cyclone fence with privacy slats in the fence similar to what we currently have. We would put an additional gate on the south side of the fenced area.

Per my conversations with Morgan Dawley and Eric Zweber, the diagrams I previously submitted on the city website were adequate for the project which has been attached to this application.

Per the attached map, the yellow dotted line represents the property line. The red solid line represents the current fence and the solid green line represents the expanded fencing we are requesting the conditional use permit for.

Is the proposal consistent with the general purposes and intent of the Comprehensive Plan?

Yes

Will the proposal adversely affect the health, safety, or general welfare of the City?

No

Is the proposal compatible with present and future land uses in the surrounding area, and reasonably related to the overall needs of the City?

Yes

Is the proposal or appearance of the project compatible with adjacent properties?

Yes

This land use request is adequately supported by the above services:

Yes

Will this proposal create an excessive burden on existing parks, schools and other public facilities which serve or are proposed to serve the area?

No

Will the use be sufficiently compatible or separated by distance or screening from adjacent residentially zoned land?

Yes

Is the use in harmony with the general purposes and intent of this Chapter and the zoning district in which the applicant intends to locate the proposed use?

Yes

Will the use create an intrusion of excessive noise, glare, or general unsightliness?

No

If applicable, is the proposed use consistent with officially adopted City plans and overlays?

Yes

Description to Display on the Permit

--

Application Submittals

Upload your site plan.



CACC Fence project.jpg

Uploaded by Jim Cihon on Aug 29, 2021 at 10:28 am

Upload your proof of ownership



proof of ownership 2501 N Division.jpg

Uploaded by Jim Cihon on Aug 29, 2021 at 10:36 am

Upload a map or plat showing the lands proposed to be changed and all lands within 350 feet of the property boundaries.



Fence measurements.jpg

Uploaded by Jim Cihon on Aug 29, 2021 at 11:46 am

Adjacent Property Owners

First Name Dignicare Properties N St Paul, LLC	Last Name --
Address 2710 13th Ave E, North St Paul MN 55109	
First Name Carmel Co. LLC	Last Name --
Address 8164 Hill Trl N, Lake Elmo, MN 55042	
First Name Thomas	Last Name Jalonack
Address 12709 Fontana St, Leawood KS 66209	
First Name Heritage Nat'l Bank (Old Nat'l Bank)	Last Name --
Address PO Box 80615, Indianapolis IN 46280	

Application Fee Statement

Signature James E Cihon 08/29/2021	Title Property Owner
---	--------------------------------

Attachments

No attachments

History

Date	Activity
Aug 27, 2021 at 8:21 am	Jim Cihon started a draft of Record ZCU-21-5
Aug 28, 2021 at 8:31 am	Jim Cihon altered Record ZCU-21-5, changed ownerPhoneNo from "" to "6127505446"
Aug 28, 2021 at 8:31 am	Jim Cihon altered Record ZCU-21-5, changed ownerStreetName from "2501 DIVISION ST" to " DIVISION ST"
Aug 28, 2021 at 8:31 am	Jim Cihon altered Record ZCU-21-5, changed ownerStreetNo from "" to "2501"
Aug 29, 2021 at 11:47 am	Jim Cihon submitted Record ZCU-21-5

Date	Activity
Aug 29, 2021 at 11:47 am	approval step Staff Review was assigned to Lisa Ritchie on Record ZCU-21-5
Aug 29, 2021 at 11:47 am	approval step City Planner Review was assigned to Eric Zweber on Record ZCU-21-5

Timeline

Label	Status	Activated	Completed	Assignee	Due Date
 Staff Review	Active	Aug 29, 2021 at 11:47 am	-	Lisa Ritchie	-
 City Planner Review	Active	Aug 29, 2021 at 11:47 am	-	Eric Zweber	-
 Public Hearing Notice	Pending	-	-	-	-
 City Planner Review	Pending	-	-	-	-
 Zoning Conditional Use Permit Fee	Pending	-	-	-	-
 Planning Commission Review	Pending	-	-	-	-
 Escrow Balance Review	Pending	-	-	-	-
 City Council Review	Pending	-	-	-	-
 Upload Council Resolution Supporting the Permit	Pending	-	-	-	-
 Escrow Balance Review	Pending	-	-	-	-
 Zoning Conditional Use Permit	Pending	-	-	-	-
 Conditional Use Inspection/Review	Pending	-	-	-	10/28/2022

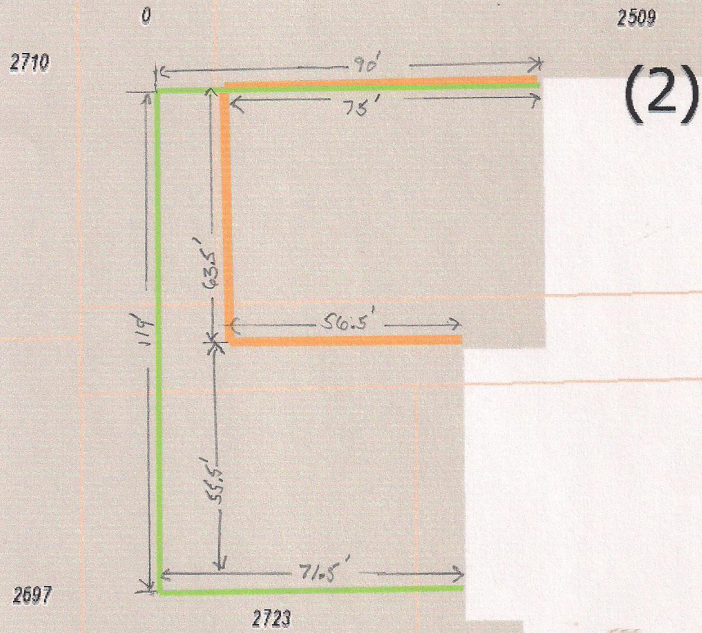


Find address or place

currently 4,763.5 sq' fenced

proposed total 9,683 sq' fenced

(90)



Photographs of the Existing Century Avenue Collision Center Site



Table 10. Signs - Mixed Use Districts

District		Max sign height	Window signs	Wall signs	Monument sign max sign face	Projecting sign max sign face	Free-standing signs max sign face	Awning/canopy signs	Sq. ft. max aggregate or total sign area
MU-1	0- 10,000 sq ft	25 ft	20% of the window glass area.	10% of the wall area or 80 sq ft whichever is less.	Institutional Use: 75 sq ft	12 sq ft, 3 ft width max	(1) sign is allowed per building street frontage. 30 sq ft.	Max Length: 25 ft Min Clearance: 8 ft Max Max Height: 12 ft Min Depth: 3 ft Max Depth 6 ft	150 sq ft
	10,000-20,000 sq ft			10% of the wall area or 90 sq ft whichever is less.	Institutional Use: 100 sq ft		(1) sign is allowed per building street frontage. 60 sq ft.		200 sq ft
	OVER 20,000 sq ft			10% of the wall area or 100 sq ft whichever is less.	Institutional Use: 150 sq ft		(1) sign is allowed per building street frontage. 90 sq ft.		250 sq ft
MU-2	0- 20,000 sq ft			10% of the wall area or 90 sq ft whichever is less.	40 sq ft		(1) sign is allowed per building street frontage. 60 sq ft.		200 sq ft
	OVER 20,000 sq ft			10% of the wall area or 100 sq ft whichever is less.	80 sq ft		(1) sign is allowed per building street frontage. 90 sq ft.		250 sq ft
MU-3	0- 50,000 sq ft	25 ft	20% of the window glass area.	2 sq ft for every linear foot of front of bldg. Max 150 sq ft	100 sq ft	12 sq ft, 3 ft width max	(1) sign is allowed per building street frontage. 100 sq ft.	Max Length: 25 ft Min Clearance: 8 ft Max Max Height: 12 ft Min Depth: 3 ft Max Depth 6 ft	200 sq ft
	50,000-100,000 sq ft			2 sq ft for every linear foot of front of bldg. Max 200 sq ft	150 sq ft		(1) sign is allowed per building street frontage. 120 sq ft.		250 sq ft
	100,000 - 200,000 sq ft			2 sq ft for every linear foot of front of bldg. Max 250 sq ft	150 sq ft		(1) sign is allowed per building street frontage. 140 sq ft.		300 sq ft
	OVER 200,000 sq ft			2 sq ft for every linear foot of front of bldg. Max 300 sq ft	200 sq ft		(1) sign is allowed per building street frontage. 160 sq ft.		400 sq ft

Table 11. Signs - Residential Districts

District	Institutional use sign (parks, playgrounds, churches, libraries, municipal bldgs, etc)	Max total sign area allowed	Max sign height	Monument sign max sign face	Sq. ft. max aggregate or total sign area
R-1	60 sq ft	2 sq ft name plate	6 ft	—	Residential: 2 sq ft
R-2					name plate Institutional: 60 sq ft
R-3		24 sq ft		24 sq ft	Residential: 24 sq ft Institutional: 60 sq ft

(Am. Ord. 783, passed 4-16-2019; Am. Ord. 792, passed 6-2-2020; Am. Ord. 799, passed 7-20-2021)

Sign Ordinances and the First Amendment

Published: June 14, 2021

This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.

First Amendment principles

The First Amendment protects signs as speech, and as a result courts closely review attempts to regulate signs. In 2015, the U.S. Supreme Court decided a seminal case that changed how courts review the validity of sign ordinances (*Reed v. Town of Gilbert* ([pdf](#)), 135 S. Ct. 2218 (2015)).

Prior to this decision, courts generally presumed sign ordinances were valid and considered the intent behind the adoption of the ordinance. They would only strike down ordinances where they found evidence that the city “adopted (the sign regulation) to suppress speech with which the government disagreed.” This is commonly known as content-based speech.

Since *Reed*, courts now presume that sign ordinances that restrict speech (either expressly or implicitly) are unconstitutional.

As a result, courts look first to the effect of the sign ordinance — whether the ordinance regulates signs differently based on the content or message of the sign — before conducting their analysis of the constitutionality of the ordinance.

Based on the court's determination, the court will apply one of two standards of review to the challenged ordinance. One is a content-based standard, the other is a content-neutral standard.

Content-based

If the ordinance draws distinctions based on the message communicated by the sign, the court reviews these ordinances more harshly than if the ordinance regulates signs and their placement without regard to content.

The *Reed* decision created a two-step analysis to determine if the ordinance restricts speech:

1. Does the ordinance language refer to the content or the message of the sign?
2. If not, then is there evidence showing the city adopted the regulation specifically because of disagreement (or agreement) with the message expressed by the sign?

In *Reed*, the Town of Gilbert's sign code required permitting for signs, but then listed out categories or types of signs exempt from permitting, including “political signs,” “ideological signs,” and “temporary directional signs.”

The ordinance in *Reed* also placed different physical restrictions on the separate types of signs.

The Supreme Court found this ordinance to be content-based because the regulation “on its face” looked to the message on the proposed sign to determine how the city would regulate it.

If a court finds the city expressly regulated, or intended to regulate a message or content, then the court applies a more rigorous level of review to those ordinances. This heightened level of review is called “strict scrutiny.” The court will only uphold the ordinance if:

- It furthers a compelling government interest, and
- It is narrowly tailored.

Courts have found few governmental interests represent justifiable “compelling interests.” As a result, in practice, few, regulations survive strict scrutiny.

Content-neutral

For sign ordinances that do not regulate the message or content of signs (commonly called “content-neutral”), courts apply a lower standard of review to the reasonableness of regulations. Courts generally uphold regulations that further a significant government interest, as long as reasonable alternative channels for communication exist. As a result, courts usually uphold ordinances considered content-neutral.

Courts generally uphold regulations that meet the criteria below. They are often referred to as reasonable time, place, and manner restrictions. These ordinances:

- Do not reference the content of the sign.
- Are narrowly tailored to serve a significant governmental interest (rather than compelling interest).
- Leave open ample alternative channels for communication of the information.

To help avoid challenges when adopting sign ordinances, cities should:

- Not regulate based on content.
- Not favor commercial speech over noncommercial speech.
- Further substantial government interests, such as traffic safety or aesthetics, without regulating more than necessary to accomplish their objectives.
- Leave ample alternative channels for communication, such as limiting the size of signs but still allowing signs.

(*Advantage Media, LLC v. City of Eden Prairie*, 456 F.3d 793 (8th Cir. 2006); *Hensel v. City of Little Falls*, 992 F. Supp.2d 916 (D. Minn. 2014).)

Commercial speech versus noncommercial speech

Courts treat commercial speech differently than noncommercial speech and do not afford it the same level of protection. Commercial speech enjoys some First Amendment protection but not as much protection as noncommercial speech (*Central Hudson Gas & Elec. v. Public Svc. Comm’n*, 447 U.S. 557 (1980)).

Courts have defined commercial speech as speech that proposes a commercial transaction. Understanding commercial speech versus noncommercial speech can get confusing.

Commercial speech is:

- Initiated by a person or company that engages in commerce or is selling something.
- Targets commercial audiences or audiences that are actual or potential consumers.
- Communicates a message commercial in nature, such as advertisements.

Noncommercial speech, on the other hand, includes messages that do not promote commercial products or services, such as a message that has ideological or political content.

Drafting a sign ordinance

Signs can pose distinct problems that are subject to a city's police power. Examples include taking up space, obstructing views, distracting motorists, and displacing alternative uses for land. So, cities can regulate signs, but they must do so cautiously.

The guidelines below may help cities draft ordinances to avoid the First Amendment concerns surrounding sign regulation.

[View a sample sign ordinance from the City of Hopkins](#)

Provisions to include

Statement of purpose

Include a section in the ordinance to explain the public purpose for the sign ordinance and how the city intends to apply the ordinance. It should state clearly that the city does not intend to have content-based restrictions or content-based enforcement. Cities find it a best practice to lay out the governmental interests spurring the regulations in this section.

Substitution clause

Adding a "message substitution clause" may avoid claims that an ordinance favors commercial signs over noncommercial messages. A substitution clause provides that for every commercial sign allowed, any noncommercial message could be legally substituted.

Substitution clauses help protect against allegations of discrimination (based on content) because they always allow a noncommercial message on any sign. Ordinances may sometimes inadvertently define signs in terms of advertising. As a result, it may be interpreted as allowing only commercial messages.

A substitution clause may correct these mistakes by providing a catch-all allowance of noncommercial messages notwithstanding other provisions. This is a sample substitution clause:

"Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs."

Severability clause

A severability clause provides that if a court finds any provision of the ordinance invalid, the remainder of the ordinance stands on its own. This clause may prevent a flaw in one part of the ordinance from invalidating the entire ordinance.

This is a sample severability clause:

"If any section, subsection, sentence, clause, or phrase of this Sign Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this

Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.”

Election season preemption

A city’s sign ordinance should acknowledge the election season preemption required by state law (Minn. Stat. § 211B.045). Under this law, municipalities must allow noncommercial signs of any size or number during election season, which runs from 46 days before the state general primary until 10 days after the state general election.

The statute does not define noncommercial sign. One Minnesota case does, however. It says a “noncommercial opinion sign” is one which “does not advertise products, goods, businesses, or services and which expresses an opinion or other point of view.” (Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994), cert. denied, 514 U.S. 1036, (1995).)

Courts consider campaign signs a subset of noncommercial opinion speech. Outside of “election season,” including during non-general election years, a city’s local sign ordinance governs. However, even if not election season, local sign ordinances should not have the effect of prohibiting opinion speech.

Time, place, and manner regulations

Best practices suggest cities should:

- Adopt sign ordinance regulations based on time, place, and manner concerns, not on content (City of Ladue v. Gilleo, 512 U.S. 43 (1994)).
- Refrain from favoring commercial speech over noncommercial speech (Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994)).

Examples of content-neutral restrictions include regulations based on size, brightness, zoning district, spacing, and movement.

Provisions to avoid

Unfettered discretion

Cities should avoid drafting ordinances that provide discretionary approval by the city staff (Hensel v. City of Little Falls, 992 F. Supp.2d 916 (D. Minn. 2014)).

Ordinances that give staff discretion to grant or deny have the potential to favor some messages or messengers over others. This is true whether or not an abuse of that discretion occurred. Sign ordinances should have transparent and objective permit requirements. They should make the decision to grant or deny ministerial, as opposed to subjective, in nature.

So, for example, cities should avoid provisions allowing staff discretion to deny permits, even if the application satisfies all specific ordinance requirements. Also avoid provisions that treat signs as conditional or special uses.

Exemptions or favoritism

Cities should avoid exempting certain groups or messages, such as church signs or official flags, from permit requirements in the ordinance. Courts construe these types of exemptions as content-based discrimination because a decision is made based on the text, or content, of the sign (Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015)).

Including specific exemptions in sign ordinances often has the effect of “watering down” the proof that the regulation furthers a substantial government interest. For example, if an ordinance includes a prohibition on temporary signs but allows a long list of exemptions, it suggests the city is not really concerned about temporary signs.

Over-defining signs

Cities should avoid drafting ordinances in ways in which noncommercial speech inadvertently gets treated less favorably than commercial speech. For example, some cities have run into trouble by defining a “sign” as “advertising.” A court’s analysis would be as follows:

- The city ordinance defines signs as advertising devices.
- The ordinance allows signs as defined.
- The ordinance, by its definition of signs as advertising, prohibits all other types of signs.

This arguably prohibits noncommercial speech, violating the First Amendment.

Include procedural protections

Cities that require permitting should include certain procedural safeguards in their ordinance, such as:

- Specifying the time within which the city will grant or deny a permit, keeping in mind judicial preference for brevity in the response time (*FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990)).
- A requirement that, if the city denies the permit, the applicant has access to prompt judicial review.

Common sign ordinance issues

Off-premise advertising (billboards)

Off-premise advertising consists of commercial signs that advertise for a business located somewhere else than at the location where the sign is placed. Large, freestanding billboards create unique problems for land use planning and development precisely because their design intends for them to stand out from their surroundings.

Courts have found a legitimate local governmental interest in controlling the size and location of billboards, but not in controlling the sign’s communicative aspects. Indeed, billboards can distract drivers, posing real danger to both motorists and nearby pedestrians and justifying regulation (*Metromedia Inc. v. City of San Diego*, 453 U.S. 490 (1981); *Advantage Media, LLC v. City of Eden Prairie*, 456 F.3d 793 (8th Cir. 2006)).

In Minnesota, the court has upheld a sign ordinance that completely prohibited off-premise commercial advertising. But, it did so cautiously and only because the ordinance did not regulate noncommercial signs (*City of Cottage Grove v. Ott*, 395 N.W.2d 111 (Minn. App. 1986)). Because of the scrutiny applied in regulating speech, cities should use caution in adopting complete billboard prohibitions and work with their city attorneys.

Flags

Courts have recognized that the display of flags can constitute expressive conduct protected under the First Amendment as well (*Texas v. Johnson*, 491 U.S. 397 (1989); *Young v. City of*

Roseville, 78 F.Supp.2d 970 (D. Minn. 1999)).

Cities should use caution if regulating flags to avoid favoring some types of flags (particularly the United States flag) over other flags. Use of a substitution clause helps in these instances: if one type of noncommercial flag would be acceptable, any noncommercial flag should be allowed.

Yard signs, including political signs

Courts have deemed yard signs constitutionally protected (*City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *Goward v. City of Minneapolis*, 456 N.W.2d 460 (Minn. App. 2990)). Best practice suggests avoiding total bans on noncommercial lawn signs in residential areas, and using caution in adopting provisions that may favor some messages over others.

For example, exemptions from sign regulations for real estate signs or construction project signs favor commercial speech over noncommercial speech. However, general limitations on the number and size of signs have withstood constitutional challenges since such limitations have nothing to do with a sign's message, and they further governmental interests in protecting property values, preventing distractions for drivers, or avoiding clutter.

Electronic signs

Electronic signs present new challenges, especially with ever-changing technology capable of new levels of brightness, movement, flashing, and potential distraction. Most sign ordinances do not adequately address these issues and how they may impact traffic safety or aesthetics.

Courts have upheld regulations on electronic or flashing signs, so long as the regulations

- Are not tied to the content of the signs.
- Serve a substantial governmental interest.
- Leave open ample alternative channels for communication.

For example, courts have found that allowing non-electronic signs, or even operating the electronic sign in a non-flashing mode, represents ample alternatives (*La Tour v. City of Fayetteville, Ark.*, 442 F.3d 1094 (8th Cir. 2006); *State v. Dahl*, 676 N.W.2d 305 (Minn. App. 2004)).

Signs adjacent to highways

Minnesota law specifically regulates signs adjacent to highways. It says, in part, that it is unlawful to paint, print, place, or affix any object within the limits of any state highway, but provides for some specific signage that meets certain Department of Transportation criteria (Minn. Stat. 160.2715).

Furthermore, Minnesota's Outdoor Advertising Control Act prohibits advertising devices on private land without the consent of the owner or occupant; on public utility poles; on trees or shrubs; and by painting or drawing on rocks or natural features (Minn. Stat. Ch. 173).

[View Minnesota Department of Transportation information on billboard permits and guidance](#)

Seek further assistance

Because sign regulation is complex, cities should work with their attorney to draft and review sign ordinances.

Your LMC Resource

Jed Burkett

Loss Control/Land Use Attorney

(651) 281-1247 or (800) 925-1122

jburkett@lmc.org