



MEMORANDUM

TO: Chairman Rodriguez and Members of the Fredericksburg Planning Commission
FROM: Dori Martin, Assistant City Attorney, and Marne Sherman, Development Administrator
DATE: March 11, 2021 (for the March 24, 2021 Planning Commission Meeting)
SUBJECT: Amending the Unified Development Ordinance to Specify the Size, Number, Place, and Manner of Display of Temporary Signs

ISSUE

Should the UDO be amended to update the regulations governing the use of temporary signs?

RECOMMENDATION

Review additional written comment and vote to recommend approval of the attached ordinance to City Council.

ACTION DEADLINE

Virginia Code § 15.2-2285(B) states:

“No zoning ordinance shall be amended ... unless the governing body has referred the proposed amendment ... to the local planning commission for its recommendations. Failure of the commission to report 100 days after the first meeting of the commission after the proposed amendment ... has been referred to the commission, ..., shall be deemed approval,”

The City Council referred this amendment to the Commission on February 9, 2021. The next Planning Commission meeting was February 10. One hundred days after that date would be May 21. If the Commission wishes to take action, it would need to do so by its May 12 meeting.

PLANNING COMMISSION PUBLIC HEARING – MARCH 10, 2021

On March 10, 2021, the Planning Commission opened the public hearing and there were no speakers or written comments submitted. The public hearing was held open until the March 24 meeting to receive written comments. A general discussion took place covering the timing of the proposed ordinance, content neutrality, time limits on displays and permitting requirements, potential enforcement burdens, and signs in the right-of-way.

DISCUSSION

The City currently regulates the display of temporary signs through its zoning regulations. Today, the display of temporary signs is largely prohibited, except that one sign up to 6 square feet in area is permitted (1) on property with an active building permit, and (2) on property that is for sale or rent. Additionally, temporary signs are permitted on all properties up to 60 days before and 10 days after a federal, state, or local general or special election.

Many residents, however, display temporary signs on their property despite the prohibition, to show their support for various messages, ideas, or organizations, such as “Hate Has No Home,” “Save Our Schools,” and “Fredericksburg Food Co-op.” The COVID-19 pandemic has brought new purposes for temporary signs, with residents and businesses displaying signs as a way to thank first responders, show support for postal workers and other essential employees, and congratulate new graduates from a safe distance. These types of messages are forms of speech that are protected by the First Amendment, and should be given the same treatment under the City ordinance as those types of signs that are exempted.

Therefore, with these principles in mind, updating the temporary sign ordinance is recommended to ensure that property owners and residents have sufficient access to this important method of speech, by permitting a maximum aggregate signage area for temporary signs, paired with reasonable restrictions on height, location, number and physical condition, in order to strike a regulatory balance that protects the public interest.

Council Work Session and Initiation.

City Council considered the proposed amendments at its work session on January 12, 2021. During this meeting, Council offered feedback, which has been incorporated into the draft ordinance. This feedback included suggestions to add language to address signage in the historic district and to provide more flexibility for yard signs on private residential lots. Council subsequently initiated the text amendment process on February 9, 2021 (Resolution 21-12).

Code Amendments.

City Code section 72-59.3 (F), which outlines the exemption for temporary signs, would be repealed and replaced. Additionally, section 72-59.4, “Prohibited Signs,” and section 72-84, “Definitions,” would be updated to be consistent with the new regulations and provide some additional clarity as to the different types of signs that are regulated by the City.

Section 72-59.3 (F), Temporary Signs

The *current ordinance* prohibits all temporary signs, except for

- One sign is permitted on property with an active building permit; up to 6 square feet in residential districts and 32 square feet everywhere else;
- One sign is permitted on property for sale or rent; up to 6 square feet in residential districts and 32 square feet everywhere else;
- Up to 32 square feet of signage is permitted beginning 60 days before any election and ending 10 days after that election.

The *proposed ordinance* removes these situational exceptions, and instead permits a certain amount of temporary signage based on zoning district, as follows:

- In Residential districts and on residential properties in other districts, up to 20 square feet of signage is permitted. Of that, 6 square feet may be up to 6 feet in height, and the remaining 14 square feet may be no taller than 4 square feet in height.

- In the Commercial-Downtown, Old and Historic Fredericksburg, and Gateway Overlay districts, except for residential properties, one sign up to 20 square feet in area is permitted. Freestanding signs shall be no more than 8 feet in height or the maximum height permitted for freestanding signs in §72-59.6, whichever is less.
- In any other district, except for residential properties, one sign is permitted, with dimensions based on lot frontage. On lots with 150 square feet of frontage or less, one sign up to 20 square feet is permitted, and on lots with more than 150 feet of frontage, one sign up to 32 square feet is permitted. Freestanding signs shall be no more than 8 feet in height or the maximum height permitted for freestanding signs in §72-59.6, whichever is less.
- In all districts, the location of freestanding signs shall comply with §72-59.5(B), and the height of building mounted signs shall comply with §72-82.8(H).
- In all districts, temporary signs shall be non-illuminated.

Section 72-59.4, Prohibited Signs

The proposed ordinance makes some minor editorial changes to improve clarity and consistency of language, as well as the following substantive revisions:

- Subsection G is deleted to remove temporary signs from the list of prohibited signs.
- Current subsection H is revised to prohibit signs that are in poor or physically deteriorated conditions as well as signs that are structurally unsafe.
- Current subsection Q is amended to specify that official notices required by law are permitted.
- Current subsection R, which prohibits signs that violate zoning district height limits, is deleted, as this item is merely a reiteration of existing law.

Section 72-84, Definitions

Staff proposes to add new definitions for certain types of signs that are regulated by City ordinance but not currently defined, specifically, “temporary signs” and “pennant strand signs.” Additionally, this amendment clarifies the definition of “portable sign” to provide clarity and avoid confusion between portable signs and temporary signs.

ATTACHMENTS:

Draft Ordinance

City Council Resolution 21-12



MOTION:

DRAFT

SECOND:

Regular Meeting

Ordinance No. 21-__

RE: Amending the Unified Development Ordinance Chapter 72-59, “Signage” and Section 72-84, “Definitions,” to define “temporary signs,” and related terms, and to specify the time, place, and manner of display of temporary signs.

ACTION: APPROVED; Ayes:0; Nays: 0

First read: _____ **Second read:** _____

I. Introduction.

Temporary signs on private property constitute a venerable means of communication that is both unique and important. Displaying a sign from one’s own property often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. In the residential context, temporary yard signs are a particularly cheap and convenient form of communication. A special respect for individual liberty in the home has long been part of our culture and our law; that principle has special resonance when the government seeks to constrain a person’s ability to speak there.

While signs are an important form of expression protected by the First Amendment Free Speech Clause, their physical characteristics, including size, height, number, condition, and location can have an effect on the public health, safety, and welfare, which legitimately calls for reasonable regulation. Unlike oral speech, signs take up space and may obstruct views, distract motorists and pedestrians, displace alternative uses for land, and detract from the appearance of the City.

It is widely accepted that governments may regulate the physical characteristics of signs within reasonable bounds and absent censorial purpose. Content-neutral, reasonable time, place, and manner regulations are permitted, so long as they further a substantial governmental interest, are narrowly tailored, and leave open alternative forms of communication.

Therefore, with constitutional principles in the forefront, the City Council proposes to strike an appropriate regulatory balance that preserves ample channels of communication by means of visual display, while still reducing and mitigating public health, safety, and welfare concerns commonly associated with temporary signs.

II. City Code Amendment.

City Code Chapter 72-59, "Signage," is amended as follows:

1. Section 72-59.3, "Exempted signs," Subsection F, "Temporary signs," is amended as follows:

F. Temporary signs:

- 1) *In any Residential (R) and PD-R districts, and on residential use properties in other districts, one or more non-illuminated signs, totaling 20 square feet is permitted. If freestanding, up to 6 square feet of signage may be up to 6 feet in height. The remaining 14 square feet is limited to 4 feet in height. The location of freestanding signs shall comply with §72-59.5(B). The height of building mounted signs shall comply with §72-82.8(H).*
- 2) *In the C-D, Old and Historic Fredericksburg, and Gateway Overlay districts, except for residential use properties, one non-illuminated sign, up to 20 square feet in area is permitted. Freestanding signs shall be no more than 8 feet in height or the maximum height permitted for freestanding signs in §72-59.6, whichever is less. The location of freestanding signs shall comply with §72-59.5(B). The height of building mounted signs shall comply with §72-82.8(H).*
- 3) *In any other district, except for residential use properties, one non-illuminated sign, up to 20 square feet in area on lots with 150 feet of frontage or less, and up to 32 square feet in area on lots with more than 150 feet of frontage. Freestanding signs shall be no more than 8 feet in height or the maximum height permitted for freestanding signs in §72-59.6, whichever is less. The location of freestanding signs shall comply with §72-59.5(B). The height of building mounted signs shall comply with §72-82.8(H).*

- 1) ~~On property with an active building permit: one sign, up to six square feet in area, and up to six feet in height if freestanding, in any R and PD-R districts; or 32 square feet, and eight feet in height if freestanding, in any other district;~~
- 2) ~~On property for sale or rent: one sign, up to six square feet in area, and six feet in height if freestanding, in any R and PD-R districts; or 32 square feet in area, and eight feet in height if freestanding, in any other district. ; and~~
- 3) ~~Beginning 60 days before a federal, state, or local primary, general, or special election, and ending 10 days after that election: in addition to any other signs permitted by this article, up to 32 square feet of signage in area, up to eight feet in height.~~

2. City Code section 72-59.4, "Prohibited signs," is amended as follows:

All signs and sign structures that are not specifically exempted or permitted by § 72-59 are prohibited, specifically including:

- A. Signs that violate any provision of United States or Virginia law.
- B. Signs that obstruct a door, fire escape, or building opening intended for light, air or access to a building.
- C. All signs, *including* pennants *strands*, streamers, floating and stationary balloons, strings of flags, sail/feather signs, inflated devices, and signs held by ~~a~~ persons, that are in motion by any means, including fluttering or rotating.
- D. Signs displaying animation, flashing or intermittent lights, or lights changing degrees of intensity, including electronic variable message signs except as otherwise permitted in § 72-59.5, Design standards.
- E. Signs that obscure a governmental sign, and signs likely to be mistaken for governmental signs.

- F. Signs that are likely to cause a pedestrian or vehicular traffic hazard.
- ~~G. Temporary signs, except as specifically permitted by § 72-59.8, Banners.~~
- ~~H.G.~~ Signs that are structurally unsafe *or in poor, physically deteriorated condition.*
- ~~I.H.~~ Portable signs.
- ~~J.I.~~ Signs that emit smoke, flame, scent, mist aerosol, liquid, gas, or sound (other than a customer/business employee intercom).
- ~~K.J.~~ Any sign displayed on a ~~stationary or moving~~ motor vehicle or trailer when the vehicle or trailer is used primarily for the purpose of and serving the function of a portable sign, except when the vehicle or trailer is ~~not loading or unloading or parked in an area that is not adjacent to a public street. road or is loading or unloading.~~
- ~~L.K.~~ Signs representing or depicting specified sexual activities, specified anatomical areas, or sexually oriented goods, and signs containing obscene text or pictures as defined by the Code of Virginia.
- ~~M.L.~~ Off-premises advertising signs, except as specifically permitted by § 72-59 or another section of the City Code.
- ~~N.M.~~ Roof signs.
- ~~Ø.N.~~ Signs erected on public property, including rights-of-way, other than those approved by an authorized City official in writing, required by law, or permitted under Code of Virginia, § 24.2-310. These signs may be immediately removed and disposed of by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
- ~~P.O.~~ Any sign or illumination that causes any direct glare into or onto any building other than the building to which the sign is located.

~~Q.P.~~ Any sign, except official notices *required by federal, state, or local law*, which is nailed, tacked, posted or in any other manner attached to any pipe or utility pole, whether on public or private property of any description, or to any natural vegetation.

~~R.~~ ~~Any sign which extends above the zoning district height limits.~~

~~S.Q.~~ Any exterior permanent lighting either by exposed tubing or strings of lights, either outlining any part of a building or affixed to any architectural feature thereof.

3. City Code section 72-84, "Definitions," is amended as follows:

SIGN, FREESTANDING

A sign supported by upright structural members, braces, or ground anchorage and not attached to a building.

SIGN, PENNANT STRAND

A grouping or arrangement of triangular or irregular pieces of fabric or other material, whether or not containing a message of any kind, attached in strings or strands, and displayed in a manner that allows the pieces to flap in the wind.

SIGN, PORTABLE

~~A sign not permanently attached to the ground or a building, including any sign attached to a vehicle for advertising purposes when the vehicle is so parked as to attract the attention of the public. *that is designed to be transported, including, but not limited to signs designed to be transported by means of wheels.*~~

SIGN, PUBLIC ART

Items expressing creative skill or imagination in a visual form, such as painting or sculpture, which are intended to beautify or provide aesthetic influences to public areas or areas which are visible from the public realm.

SIGN, ROOF

Any sign that extends above:

A. The mean height level between the eaves and ridge of a building with a gable, hip, cone, gambrel, or shed roof; or

- B. The highest point of the roof surface or parapet of a building with a flat roof; or
- C. The highest point of the deck line of a building with a mansard roof.

SIGN, SAIL/FEATHER FLAGS

Sail sign, also called a "feather flag," is a type of banner typically constructed out of cloth, varying in size, shape, and color, that is attached to a staff or cord for the length of its vertical edge.

SIGN, TEMPORARY

A sign constructed of cloth, canvas, plastic sheet, wallboard, plywood or other light material, designed or intended to be displayed for a limited period of time, rather than permanently attached to the ground or a structure.

SIGN, VARIABLE MESSAGE

Any sign when the character or appearance of any element of the sign's face changes by any mechanical, electrical, electronic, or other device.

SEC. III. Effective Date.

This ordinance is effective immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21- duly adopted at a meeting of the City Council meeting held Date, 2021 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council



MOTION: GRAHAM

SECOND: DEVINE

**February 9, 2021
Regular Meeting
Resolution 21-12**

RE: Initiating Amendments to the Unified Development Ordinance to Specify the Size, Number, Place, and Manner of Display of Temporary Signs

ACTION: APPROVED: Ayes: 7; Nays: 0

City staff recommends amendments to the Unified Development Ordinance to revise the City's temporary sign regulations, permitting a maximum aggregate signage area for temporary signs, paired with reasonable restrictions on height, location, number, and physical condition, and adding or amending certain sign definitions. The purpose of these amendments is to ensure that restrictions on temporary sign placement are content neutral and strike an appropriate regulatory balance that promotes the free speech of residents while protecting public health, safety, and welfare.

In adopting this resolution, City Council has considered the applicable factors in Virginia Code § 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the proposed amendment.

Therefore, the City Council hereby resolves that:

- The City Council hereby initiates amendments to City Code Chapter 72, the Unified Development Ordinance, to amend regulations related to the use of temporary signs, as set forth in the draft ordinance dated February 4, 2021.
- The City Council refers this proposal to the Planning Commission for review, public hearing, and recommendation under the procedures set forth in City Code §72-22.1.

Votes:

Ayes: Greenlaw, Frye, Devine, Duffy, Graham, Kelly, Withers

Nays: None

Absent from Vote: None

Absent from Meeting: None

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 21-12, adopted at a meeting of the City Council held February 9, 2021 at which a quorum was present and voted.



Tonya B. Lacey, MMC
Clerk of Council