

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, November 16, 2009. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, Debra Filla, Julie Cain, Lou Rasmussen, Greg Peppes, and Mike Gill

Councilmembers absent: James Azeltine

Staff present: Scott Lambers, City Administrator Mark Klein, Asst. Planning Director
Patty Bennett, City Attorney Joe Johnson, Public Works Director
Franki Shearer, Asst. City Attorney Deb Harper, City Clerk
Richard Coleman, Comm. Dev. Director Pam Gregory, Asst. City Clerk

Others Present: None.

Discuss Informational Signs

Mayor Dunn called the work session to order at 6:10 P.M. Introductions were made by those present.

Opening Remarks

Assistant City Attorney Franki Shearer stated there had been complaints and concerns from citizens regarding the City's regulations as they relate to informational signs, in particular, political signs. Through the course of these concerns the American Civil Liberties Union [ACLU] has become involved and their attorneys have been in contact with the City's legal staff regarding the informational sign ordinance. City staff has begun the process of modifying the ordinance.

In the City's current sign ordinance, there is a section entitled "Temporary Signs" with a sub-category entitled "Informational Signs." The ordinance provides that a maximum of one informational sign per event, issue, candidate or belief is allowed for any particular lot. The maximum sign area is 5' square feet. There may be one sign all year; however, there will be an unlimited number allowed 50 days or less prior to a public election. No signs shall be placed closer than 5' feet to the edge of the pavement or curb of the street. They are allowed within all zoning districts.

The main issue is the City cannot regulate signs on the basis of their content. By categorizing signs such as political signs, for sale signs, garage and estate sale signs, they have to look at the content to understand which rules and laws apply. This presents a problem in regards to the First Amendment.

Councilmember Rasmussen noted the reason they have a provision to not allow signs closer than 5' feet to the edge of the pavement or curb was because most people don't know where the right-of-way is located. He felt they needed to keep this simple.

Ms. Shearer clarified not all of the suggestions were based upon ACLU recommendations; some were staff recommendations.

City Administrator Scott Lambers stated the reason they prohibit signs in the right-of-way was not only because of residential area issues, but also issues along major streets and thoroughfares. If the City doesn't prohibit this, people are entitled to place them in the median and elsewhere.

Councilmember Rasmussen thought the ordinance would still be violated and they should just comply with ACLU regulations.

Ms. Shearer thought they should make it clear in the ordinance if their intention was to have no temporary signs allowed in the right-of-way.

Councilmember Gill was against banning all signs in the right-of-way. He thought their concern was for political signs. Other signs for events such as neighborhood garage sale, pool party, etc., are placed in common areas and maintained by homes associations. Most of these common areas are in the right-of-way. Real estate signage needs to be visible from the street. He concurred with Councilmember Rasmussen that they should keep this simple and place them within a certain number of feet from the curb.

Ms. Shearer stated in order for them to allow neighborhood garage sale and pool party signage, they would have to allow political signage as well because they can't regulate the content.

City Attorney Patty Bennett clarified that if signs are located on the common area behind the right-of-way, it wasn't an issue.

Councilmember Gill thought they could modify it to allow placement within the right-of-way as long as there was permission from the landowner. He thought the City has a reversionary interest to the center line of the street if and when that street is ever vacated. This is a real estate interest that runs with the deed.

Ms. Bennett clarified that when the right-of-way is vacated, it returns to the adjacent landowner.

Councilmember Filla wanted an explanation of a public right-of-way. Mr. Lambers stated a right-of-way is a stretch of land in a subdivision that will typically be 10' feet x 10' feet from the curb. Usually a sidewalk is on one side with utilities and street lights on the other.

Mr. Lambers clarified that if they allow signs in a right-of-way, they would need to add a provision for removal if they become view conflicting.

Ms. Shearer indicated they could add language that would require permission from adjacent property owners.

Councilmember Gill thought since he was responsible for maintaining his own right-of-way, he had technical legal interest and could file a trespass claim if someone placed signage on his curb. Mr. Lambers disagreed and stated the right-of-way is City owned.

Councilmember Filla felt if they allowed signs in the right-of-way they should require permission. She felt too many signs looked cluttered. Mayor Dunn concurred.

Mayor Dunn liked the recommendations from the Legal Department of keeping the signs in good repair, prohibiting obscene material, and time restrictions.

Ms. Shearer stated whatever restrictions they place on political signs would need to also apply to temporary signs.

Councilmember Rasmussen felt they didn't have sufficient staff to handle sign compliance and reiterated that the ordinance would be violated. He felt he should have the right to remove a sign from the public right-of-way on his property. Mayor Dunn felt they needed an ordinance in place and staff could enforce compliance.

Ms. Shearer reiterated they were recommending that no signs be allowed in the right-of-ways.

Ms. Bennett indicated the City has control of the right-of-ways and they hadn't checked into regulations regarding private property owners removing signs from them.

Councilmember Gill didn't want to prohibit for sale signs in the right-of-way and felt they should be allowed within a certain number of feet from the curb.

Mayor Dunn asked if they should indicate the difference between the medians and a certain number of feet from the curb.

Councilmember Cain referred to real estate signage and indicated 15% of homes nationwide are sold because of yard signage.

Ms. Bennett thought they needed to define temporary signage. Staff was defining it based upon materials, such as cardboard and other material boards. They could develop different regulations for permanent signage.

Ms. Shearer indicated they could exempt metal signage as temporary.

Mayor Dunn felt by requiring homeowner permission and keeping signs off of the medians, it would ease several issues. She concurred that they should allow signage within a certain number of feet from the curb.

Ms. Bennett thought staff wouldn't know if people had permission to place the signage unless someone complained. The ACLU allows a maximum size of any one temporary sign to be 4' x 4'.

Mayor Dunn confirmed with Ms. Bennett that the City's current size limit for political signage is five square feet and they are allowed one per event, issue, or candidate.

Ms. Shearer noted they are required to apply size regulations to all temporary signs.

Councilmember Filla was concerned large signage could be a traffic and safety hazard. Ms. Bennett thought the ACLU would argue that cars parked in the street could be a safety hazard as well, but are allowed.

Mayor Dunn clarified for Councilmember Rawlings that they were suggesting people seek permission from their homes associations for signage placed in common areas outside the medians.

Ms. Shearer confirmed that homes associations could have their own regulations, as long as the regulation is stricter than what the City imposes.

Councilmember Rawlings asked if temporary meant a certain timeline. Ms. Bennett thought staff wouldn't be able to determine how long a sign had been in place. She reiterated they would define temporary signage by the materials.

Ms. Shearer thought they could enforce that signage be maintained in good repair easier than enforcing a certain length of time.

Public Works Director Joe Johnson confirmed that all islands are located in the public right-of-way unless on a private street.

Councilmember Gill thought they should include a provision that no right-of-way signage be allowed without permission from the person that has the duty to maintain the property. He concurred with Ms. Bennett that they should focus on size rather than the number of signs and total square footage. He preferred that they have an absolute number of days for the signage to remain in place. Ms. Bennett thought the homeowner could document a timeline; however, it would be almost impossible for the City to document it.

Mayor Dunn concurred that they should require permission and wanted a definite timeline given.

Ms. Shearer noted there have been court cases that have upheld a 60 or 90 day time limit as long as it wasn't tied to an election date. Ms. Bennett indicated they could replace the sign every 90 days and would still be in compliance.

Ms. Shearer reiterated that whatever maximum size they allow, would need to apply to all temporary signs.

Mayor Dunn reiterated her desire to prohibit obscene material.

Ms. Shearer indicated the main issue they needed to discuss with the ACLU was size regulations. She received consensus from the Council that they be no more than 48 total square feet, or a maximum of 16 square feet for any one sign.

There being no further business, the meeting was adjourned at 7:22 P.M.

Pam Gregory, Recording Deputy City Clerk