



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** September 21, 2021

**TO:** Board of Supervisors

**FROM:** Leslie B. Johnson *Leslie B. Johnson*  
Zoning Administrator

**SUBJECT:** Status Update on Adopted Zoning Ordinance Amendment (ZOA) ZO-19-479 – Signs

### Introduction

This memorandum provides an update on the major revisions to the sign regulations adopted by the Board on March 19, 2019. A copy of the Signs ZOA staff report is included as Attachment 1, and a link to the March 19, 2019 [Board Item](#) is included. This status update is in response to a follow-on motion in which the Board:

Directed staff to report to the Planning Commission and Board within 18 months after the enactment date of the Sign Ordinance to recommend amendments to the ordinance, if such changes are necessary. This report should include available compliance data such as the number of complaints received since the enactment date, and other information deemed pertinent as determined by the Zoning Administrator.

This amendment repealed and replaced the previous Article 12 (now Article 7 under the new Zoning Ordinance), partly in response to the U.S. Supreme Court's 2015 ruling, *Reed vs. Town of Gilbert (Reed)*. The amendment rewrote the regulations of signs to be content-neutral, while also more uniformly regulating signs in all zoning districts and deleting redundant or outdated provisions. This effort was identified as a Phase I amendment, with a second phase (Phase II) to focus on a broader review of sign policies.

### Background

In its 2015 ruling in *Reed*, the U.S. Supreme Court held that when a municipality regulates signs based on the message, the regulations are content-based, presumptively unconstitutional, and unlikely to survive the judicial test of strict scrutiny. Following the *Reed* decision and after extensive public outreach by County staff and input from the public, the Board unanimously adopted [ZO-19-479](#) on March 19, 2019, and it which became effective on March 20, 2019.

While the ZOA focused on revising the regulations for content neutrality, there were a number of topics revised that were considered major issue areas:



- Definition of a sign
- Exemption of public uses
- Vehicle signs
- Administrative provisions for building-mounted signs for schools
- Yard signs and minor signs for nonresidential land uses
- Off-site directional signs
- Freestanding sign height in residential districts
- Electronic display signs in all districts

This memo addresses the major topic areas and discusses certain considerations for future amendments based on implementation of the regulations since the effective date of the amendment, and contains an analysis of complaints received by the Department of Code Compliance (DCC).

**Complaint Data**

DCC enforces the sign regulations by responding to and investigating complaints. When a complaint is received, DCC staff investigates following standard enforcement protocols. If the sign is found to be compliant with the Zoning Ordinance, the complaint is closed as unfounded. In the case of a violation of the sign regulations, a Notice of Violation (NOV) is issued requiring compliance within a set amount of time. Compliance often means removal or modification of the sign.

As shown in Table 1 below, between March 26, 2019, and August 9, 2021, DCC received 322 complaints related to signs. These complaints generally fell into the broad categories listed in Table 1. Certain complaints mentioned multiple issues, but only one category was selected based on the main concern identified in the complaint:

<b>Table 1: Sign Complaints Received from 3/26/19 – 8/9/21</b>				
Nature of Complaint	Total #	Resolved by Compliance <sup>1</sup>	Closed as Unfounded <sup>2</sup>	Under Review <sup>3</sup>
Minor Signs During Construction	86	61	22	3
Signage in a Residential District	76	43	32	1
Prohibited Sign Type	73	44	27	2
Location of Signs	17	4	12	1
Signs on an Actively Marketed Property	13	4	9	0
Too Much Signage	11	9	2	0
Electronic Signs	9	4	4	1
Other	37	23	12	2
<b>Total</b>	<b>322</b>	<b>192</b>	<b>120</b>	<b>10</b>

<sup>1</sup> The sign was found to violate the Zoning Ordinance and the violation was resolved through removal, relocation, reduction in size, or other action to comply with the regulations.

<sup>2</sup> Upon investigation, the sign was found not to violate the Zoning Ordinance. Oftentimes, the sign was no longer located on the property.

<sup>3</sup> A DCC investigator is currently working on the investigation and had not closed the complaint at the time of data collection.

- **Minor Signs During Construction:** The majority of complaints received involved construction signs, typically those relating to a builder's or contractor's sign being placed on a property before the commencement of construction or remaining on the property following the completion of construction. Approximately 90% of the complaints received on this topic were submitted for properties in the Dranesville District. Other complaints involved these signs exceeding the maximum allowable sign area of four-square feet or height of four feet for a single-family dwelling unit undergoing construction.
- **Signage in a Residential District:** The second greatest number of complaints related to signage in a residential district, predominantly signs in association with dwellings. These complaints often mentioned signs being too large or too numerous on a property. While the Ordinance does not regulate content, 18 of the complaints in residential districts either directly mentioned in the complaint or upon inspection were found to be related to signs displaying a political message. 33 of the complaints in this category were received from August to November of 2020 during the presidential election campaign. Nine of these complaints mentioned signs in a residential district advertising a commercial business.
- **Prohibited Sign Type:** Several complaints (73) related to a prohibited sign type being located on the property. [Section 7100.5](#) includes general prohibitions, prohibitions based on materials or design, and prohibitions on location. A majority of the complaints fell under the prohibitions based on materials or design, with complaints related to moving or windblown signs (also known as "feather flags") being most often reported.
- **Location of Signs:** This complaint type predominantly included reports of freestanding signs associated with nonresidential uses in residential districts where the sign is located less than five feet from a property line; 12 of the 17 complaints received were submitted on the same day on properties in the same neighborhood.
- **Signs on Property Actively Marketed for Sale, Rent, or Lease:** Complaints were also received for signs on properties actively marketed for sale, rent, or lease. [Subsection 7100.4.B](#) includes regulations on the number of signs, the size of signs, and the time following the sale by which the sign must be removed. Complaints often mentioned for sale signs continuing to be posted well after the sale of the home was completed, as well as for sale signs being erected prior to a home being listed. Another common complaint listed off-premise commercial signs remaining posted throughout the week, with the complainant noting that the signs are "realtor" signs. The allowance for these types of signs to be located off the premise was added to the ZOA at the request of the Northern Virginia Association of Realtors to accommodate open house signs, and they are permitted, on a content-neutral basis, only for display as a yard sign on residentially zoned lots from noon on Fridays through noon on Mondays.
- **Too Many Signs or Size of Signage on Nonresidential Development:** Several complaints were received for too much signage, referencing either the number of signs on a property or the size of the signs. This complaint type includes signs on properties developed with nonresidential uses in residential districts, but does not include complaints for signs on residentially developed lots, as those are captured under the Signage in a Residential District category.

- **Electronic or Illuminated Signs:** Nine complaints were received for electronic signs and illuminated signs. These complaints typically mentioned flashing lights, colors, and potential safety issues for drivers.
- **Other:** Many complaints related to other topics, such as signage associated with uses in commercial districts, the content of signs, or included a broad statement such as “unpermitted sign” without enough context to categorize the basis of the complaint.

While complaints were received in all nine magisterial districts, the most complaints received were in the Dranesville District with 136 (42%) in total, and 77 related to minor signs displayed during construction. The Mason District had the next greatest number of complaints with 70 in total (22%); 41 of these complaints involved prohibited sign types. The remaining seven magisterial districts received relatively few complaints in comparison, with the Springfield District receiving 32 complaints and the Braddock District receiving 26 complaints. The Hunter Mill, Lee, Mount Vernon, Providence, and Sully Districts each received fewer than 20 complaints. A breakdown of the complaint type by Magisterial District is included in Table 2, and a graph showing the overall number of complaints received per Magisterial District is provided in Figure 1 below.

Complaint Type	Magisterial District								
	BR	DR	HM	LE	MA	MV	PR	SP	SU
Minor Signs During Construction	1	<b>77</b>	1	0	1	<b>2</b>	0	2	<b>2</b>
Signage in a Residential District	<b>13</b>	14	1	2	4	1	<b>7</b>	<b>24</b>	<b>2</b>
Prohibited Sign Type	5	19	2	1	<b>41</b>	0	3	2	0
Location of Signs	0	2	1	1	13	0	0	0	0
Signs on Actively Marketed Property	1	11	0	0	1	0	0	0	0
Too Much Signage	2	7	0	2	2	1	2	1	<b>2</b>
Electronic Sign	1	0	0	1	2	0	0	0	<b>2</b>
Other	3	6	<b>7</b>	<b>10</b>	6	<b>2</b>	2	3	1
<b>Total</b>	26	136	12	17	70	6	14	32	9

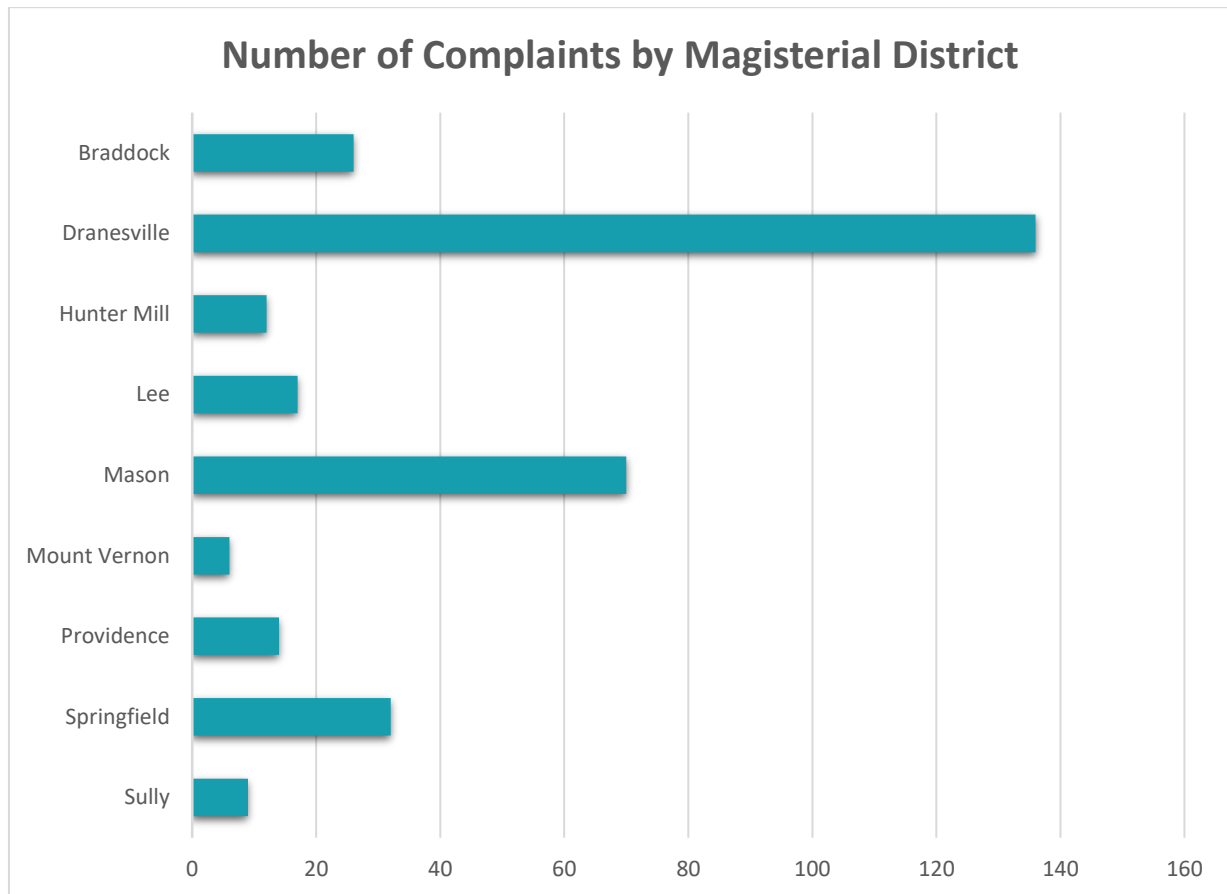


Figure 1: Complaint Data by Magisterial District

**Summary of Major Issue Areas**

The following topics were identified during the ZOA process as major issue areas and, based on implementation of the regulations and complaint data since the adoption of the ZOA, the following issues are presented for the Board’s consideration.

**Yard Signs and Minor Signs for Nonresidential Land Uses:** Extensive changes from the prior regulations were made to regulations of minor signs, which were identified as “temporary signs.” Minor signs include any sign that is designed to be easily moved and is typically not permanently attached to a structure or the ground, such as a banner, window sign, or yard sign. These signs are typically more temporary in nature, but for most of the minor sign types, no display time limits were included for ease of enforcement. A display time limit would require a permitting process to track the duration of the sign; otherwise, it would be a challenge to enforce with no way for staff to prove when the sign was first posted and that it remained posted for the specified duration. Specifically, the following types of minor signs were often the subject of a complaint:

**Yard Signs:** Regulations adopted as part of the ZOA allow yard signs on a lot developed with a residential use. These signs are limited to a cumulative total of 12 square feet, with no single sign exceeding four square feet or four feet in height. Based on content-neutrality, the message of the sign cannot be regulated. For example, these

signs can display messages related to political affiliation, a sports team logo, or a variety of different content, as long as the signs meet area and height limitations. During an investigation of a complaint, DCC is able to measure the signs and can determine if they met the size limitations. For these sign types, compliance was often attained through the removal of signage that did not conform to the regulations.

**Staff Recommendation:** At this time, staff believes the yard sign regulations with regard to size and number of signs are an appropriate and effective tool in regulating signs on residential properties. While staff does not recommend any changes at this time, we will continue to monitor whether another approach, such as imposing a total maximum sign area for lots developed with residential dwellings, would be appropriate.



Figure 2: Examples of Yard Signs

**Signs During Active Construction or Alteration:** One sign (limited to four square feet and no more than four feet in height) is permitted for an individual single-family dwelling unit undergoing construction, improvement, or renovation. The sign cannot be displayed prior to commencement of the improvement or renovation work and must be removed within seven days of completion of the work, or within six months (whichever is less). This regulation was the subject of the most complaints received since the new regulations went into effect. In an effort to educate the building community on these limitations, staff has issued an [interpretation](#) (Attachment 2) highlighting and clarifying these regulations. In addition, outreach on these regulations is being conducted with the Northern Virginia Building Industry Association (NVBIA) and NAIOP, the Commercial Real Estate Development Association, as well as the Custom Builders Council.

**Staff Recommendation:** Staff recommends codifying the interpretation in the future Phase II amendment to the Sign Ordinance by clarifying what constitutes the commencement of construction for this purpose.



*Figure 3: Example of a Sign During Active Construction or Alteration*

**Minor Signs for Nonresidential Land Uses and Freestanding Sign Height in Residential Districts:** Minor signs are permitted on properties developed with nonresidential land uses, and the maximum permitted signage varies based on the location of the property. A maximum of 32 square feet of building-mounted and freestanding minor signs are allowed if a lot has frontage on a major thoroughfare. A maximum of two signs up to four feet in height are permitted if the signs are freestanding. For all nonresidential uses in a residential district that do not have frontage on a major thoroughfare, building-mounted and freestanding minor signs are limited to a maximum of 24 square feet, and the limit of two freestanding signs up to four feet in height also applies. The ZOA expanded the allowance for minor signs to nonresidential uses, resulting in an increase in allotted signage. In addition to minor signs, permanent freestanding signs for nonresidential uses in residential districts are limited to 40 square feet and no more than eight feet in height. A majority of the nonresidential uses in residential districts require approval of a special exception by the Board or a special permit by the Board of Zoning Appeals (BZA). During review of the application, staff or the community can identify any sign that may be of concern, and the Board and BZA may limit the size, location, height, type, and duration of any sign through development condition.



*Figure 4: Example of a Freestanding Sign*

**Staff Recommendation:** As previously discussed, complaints have been received related to the presence of too many signs and on the size of signs for nonresidential development in residential zoning districts, and staff has received comments recommending that the maximum sign area be tied to lot size. However, staff does not recommend any changes at this time, but will continue to monitor these complaints and will have these be a focus area during upcoming outreach and education efforts. As with residential dwellings, an amendment limiting the overall maximum signage for nonresidential uses in residential districts, inclusive of minor signs and freestanding signs, could be considered to further limit the cumulative impact of signs in residential districts.

**Off-Premise Signage:** Off-premise, or off-site, signs are prohibited in the adopted regulations, although certain provisions allow for wayfinding and branding programs operated by the County or County partners in Commercial Revitalization Districts and areas designated as activity centers in the Comprehensive Plan. In addition, off-premise commercial signs are prohibited when displayed 12:01 PM Monday through 11:59 AM Friday but are allowed to be displayed from noon on Fridays through noon on Mondays. This regulation allows signs (such as those advertising an open house or mentioning a business having a sale) to be located on a separate private property, subject to the applicable minor sign provisions. This does not, however, allow signage in the right-of-way, which is prohibited by State Code.

**Staff Recommendation:** A number of complaints have been received on the topic of off-premise commercial signs. These complaints mostly relate to the sign not meeting the display time limitation, as the sign remained posted throughout the week. While this will be discussed during outreach and education meetings, staff does not recommend any changes at this time, as this standard was added to address a concern raised by the Northern Virginia Relators Association during the previous ZOA public hearing process. More importantly, depending upon the outcome of the upcoming U.S. Supreme Court of *City of Austin v. Reagan National Advertising of Texas*, involving



regulation of off-premises vs. on-premises signs (discussed below), regulations related to off-premise commercial signs may need to be reconsidered.

**Definition of a Sign:** Prior to the ZOA, the definition of a sign included language where devices and structures that are “visible from the public right-of-way or from adjoining property” were considered a sign. As the Zoning Ordinance did not define “public right of way,” this language was removed; the adopted and current [definition of a sign](#) now uses the language “visible from any public or private street.” There were concerns at the time of adoption of the ZOA that these changes could negatively impact certain properties that were allowed signage under the previous provisions which exempted signs that were not visible from the public right-of-way or from adjoining property. No issues have been reported since the regulations took effect.

**Staff Recommendation:** No changes are recommended at this time.

**Exemption of Public Uses:** Prior to the ZOA, public uses, including Fairfax County Public Schools (FCPS) and the Fairfax County Park Authority (FCPA), were exempt from most Sign Ordinance regulations. During adoption of the ZOA, the Board exempted property owned by the County, FCPS, and FCPA from the minor sign provisions of [subsection 7100.4](#). By exempting these entities, minor signs helping advertise school and park programs such as after school programs and summer concert series, can be erected without subject to limitations. With this exemption, there have been no issues identified by FCPS and FCPA, and no complaints were received.

**Staff Recommendation:** No changes are recommended at this time.

**Vehicle Signs:** Changes to the Sign Ordinance included the deletion of a 25-foot setback requirement for vehicle signs from any public street line and instead included broader regulations that allow vehicle signs, provided that the vehicle is operable and parked at its associated place of business within a designated parking space. The area of the vehicle sign is not counted towards the maximum allowed sign area for a property. No complaints have been received on this topic.

**Staff Recommendation:** No changes are recommended at this time.

**Building-Mounted Signs for Schools:** During the amendment outreach, there was discussion about building-mounted signs in association with schools. This includes “spirit” or “accolade” signs that commemorate academic or athletic achievements, such as “Cross Country State Champions 2020.” The adopted regulations allow lettering or numbers permanently attached to or painted on the façade of a building or of any school, college, or university, limited to a maximum of ten percent of the area of the façade on which they are placed. In addition, the regulations prohibit illumination of these signs. In consultation with FCPS, no issues have been identified at this time. However, FCPS will continue to monitor the ten percent maximum to ensure that this limitation is appropriate as additional achievements are commemorated over time. One complaint has been received regarding signage in association with a private school,

and that complaint is currently under investigation. It is unclear if the complaint is related to a building-mounted sign or a freestanding sign.

**Staff Recommendation:** No changes are recommended at this time.

**Electronic Display Signs:** The ZOA added electronic display signs as a new sign type with associated use standards. These standards limit each lot to one electronic display sign with the size limited to 50 percent of the maximum allowable area of that freestanding sign. The message or copy of an electronic sign may not move or change more frequently than once every eight seconds; the change must be instantaneous without rolling, fading, or the illusion of movement, and it may not flash or vary in brightness. Limitations on background color and nighttime level brightness also apply. As discussed previously, only nine complaints have been received relating to electronic display signs, and the adopted regulations appear to appropriately regulate these sign types.

**Staff Recommendation:** No changes are recommended at this time. However, this topic has been identified as one that should be highlighted during upcoming outreach and education efforts to ensure businesses and other nonresidential uses, especially those in residential districts, are aware of the limitations.

### **Other Topics**

The following topics were not previously identified as major topic areas, but have been identified as topic areas needing additional discussion during outreach efforts:

#### **Signs Displayed on a Property Actively Marketed for Sale, Rent, or Lease**

Certain provisions relate to signs that are displayed on a lot or property that is actively marketed for sale, rent, or lease. Specifically, one building-mounted or freestanding sign is permitted (with two signs on a corner lot when each sign faces a different street frontage). The sign must be removed within seven days of settlement. Signs are limited based on the proposed or existing development as follows:

- Single-family detached or attached dwellings: six square feet and six feet in height
- Multifamily: 12 square feet and eight feet in height
- Nonresidential uses, and residential properties with at least 20 acres: 32 square feet and eight feet in height

- **Staff Recommendation:** Several complaints have been received on this topic, specifically mentioning the sign not being removed in a timely manner. Based on these complaints, staff has identified these regulations as a topic to highlight during upcoming outreach and education efforts.

**Signs During Active Construction for New Residential Developments with Three or More Dwelling Units:** Similar to the provisions allowing limited additional signage for active construction or alteration projects for single-family dwellings, additional signage is allowed for construction of new residential developments containing at least three dwelling units. One sign up to 60 square feet and ten feet tall is allowed, and for those lots on multiple road frontages, one additional sign up to 32 square feet and eight

feet tall is permitted per street frontage. These signs must be located at least five feet from all lot lines and removed within 14 days of completion of construction. No sign may be displayed for more than two years from issuance of the first building permit; however, a sign permit may allow continued display of the sign if construction has not been completed and permits are still active.

- **Staff Recommendation:** As part of the Phase II amendment, staff recommends revisiting these provisions and analyzing whether three dwelling units is the appropriate threshold, and whether there should be consideration of adding a requirement that these lots must be contiguous.

### **Training and Outreach**

Following adoption of the Signs ZOA, staff began outreach and education efforts. By the time many in the community became aware of the new regulations, the COVID-19 pandemic had begun, which created economic impacts to many small businesses and resulted in a proliferation of signage. Now that the County is beginning to see signs of an economic recovery, staff believes it is appropriate to resume education about the Sign Ordinance regulations through a joint effort between DPD and DCC. Outreach and education efforts will begin this fall, and staff will report on these efforts as part of the introduction to the Signs Phase II amendment. Staff is developing an outreach and education program that will include presentations on the existing regulations and solicitation of feedback that could be considered during the Phase II amendment. In addition to general community engagement meetings, staff will solicit input from other stakeholders, including the Fairfax County Chamber of Commerce, the Northern Virginia Association of Realtors, the Small Business Commission, and retail shopping center owners. A detailed [Sign Ordinance website](#) is available, as well as an [FAQs page](#), and presentation materials and additional publications will be added to the website as they are developed.

### **Phase II Amendment**

In addition to potential changes as discussed above, the Phase II amendment is anticipated to include consideration of the following topics:

- Expansion of the ability to request a Comprehensive Sign Plan (CSP) application in commercial areas (currently this request is limited to Planned Districts)
- Inclusion of review standards and submission requirements for all CSP applications
- Clarification of sign regulations for mixed-use development and multifamily buildings
- Review of roof-mounted sign regulations
- Consideration of signage standards for mobile pickup parking spaces and drive-through uses

Following the initial outreach, it is anticipated that staff will bring an overview of the Phase II amendment to a Board of Supervisors Land Use Policy Committee for preliminary discussion in the spring/summer of 2022. Work on the ZOA will continue through the end of 2022.

September 21, 2021

Page 12

**Upcoming U.S. Supreme Court Case**

On November 10, 2021, the U.S. Supreme Court is scheduled to hear an argument in *City of Austin v. Reagan National Advertising of Texas*, which concerns whether Austin's city code includes unconstitutional content-based regulations, as it makes a distinction between on-premise signs (which may be digitized) and off-premise signs (which may not). The Fifth Circuit Court of Appeals previously found that Austin's sign ordinance violated *Reed* by allowing digital billboards on-site and prohibiting digital billboards off-site. Staff will monitor this case to determine whether any ordinance change is needed as a result of the Supreme Court's decision.

Staff is available to discuss this topic in more detail. Please feel free to contact Casey Judge if you have any questions.

**ATTACHMENTS:**

Attachment 1 – Zoning Ordinance Amendment on Signs Staff Report

Attachment 2 – Interpretation of Minor Signs Permitted During Active Construction or Alteration on Single-Family Residential Lots

cc: Planning Commission  
Bryan J. Hill, County Executive  
Rachel Flynn, Deputy County Executive  
Elizabeth D. Teare, County Attorney  
Barbara Byron, Director, Department of Planning and Development  
Jack W. Weyant, Director, Department of Code Compliance  
Jill Cooper, Director, Department of Clerk Services  
David Stoner, Deputy County Attorney, OCA  
Cherie Halyard, Assistant County Attorney, OCA  
Andrew Hushour, Assistant Zoning Administrator, DPD  
Carmen Bishop, Assistant Zoning Administrator, DPD  
Casey Judge, Principal Planner, DPD



**FAIRFAX  
COUNTY**

# **STAFF REPORT**

V I R G I N I A

## **PROPOSED ZONING ORDINANCE AMENDMENT**

**Article 12, Signs, and Related Provisions**

### **PUBLIC HEARING DATES**

**Planning Commission**

December 5, 2018 at 7:30 p.m.

**Board of Supervisors**

February 5, 2019 at 4:00 p.m.

**PREPARED BY  
ZONING ADMINISTRATION DIVISION  
DEPARTMENT OF PLANNING AND ZONING  
703-324-1314**

November 19, 2018

ABH



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

## STAFF COMMENT

The proposed Zoning Ordinance amendment is phase one of a two-part effort to amend the existing sign ordinance. This amendment includes a repeal and replacement of Article 12, Signs, by deleting redundant or outdated provisions; rewriting existing regulation and proposing new regulation of signs and/or their characteristics in a content-neutral manner; reorganizing existing and new provisions in a more user-friendly format to include graphics; and establishing more uniform regulation of signs in all zoning districts. In addition, related sign provisions found throughout the Zoning Ordinance are also proposed for amendment accordingly. The proposed amendment is identified on the 2018 Priority 1 Zoning Ordinance Amendment Work Program as an initiative under the Zoning Ordinance Modernization (zMOD) Project, and was carried over from the 2017 Work Program. While the second phase of amendments associated with zMOD will include a broader review of sign policies, the primary purpose of this phase of the amendment is to rewrite the existing provisions found in Article 12, Signs, of the Zoning Ordinance into content-neutral language in response to the United States Supreme Court's 2015 ruling in *Reed vs. Town of Gilbert (Reed)*.

### **BACKGROUND & OUTREACH**

In its decision in *Reed*, the U.S. Supreme Court drew a distinct line concerning the use of content-based sign regulations. In *Reed*, the town of Gilbert, Arizona's sign ordinance assigned different size and posting requirements to political, ideological, and directional signs. The Court held that where a locality defines sign categories on the basis of the message expressed, the regulation is "content based" – no matter the sign's purpose or viewpoint – and thus is presumptively unconstitutional, and can only survive if it passes strict scrutiny review, a very high bar to cross. For a regulation to survive "strict scrutiny," it must further a compelling governmental interest, be narrowly tailored to achieve that interest, and must leave open ample alternative channels of communication. The town's sign ordinance failed the strict scrutiny test because it could not show a compelling governmental interest that justified the differences in regulations based on a sign's message.

As many other jurisdictions around the country are doing, Fairfax County is undertaking this phase of the Article 12 amendment to ensure that the County's sign regulations comply with *Reed*. Therefore, throughout the draft process and during all outreach efforts to date, staff has stressed that the purpose of this amendment is largely to ensure content neutrality. Since this effort requires a review and significant rewrite of the entire sign ordinance, staff has also taken the opportunity to streamline the text and make the regulatory document more user friendly. To this end, every section has been rewritten in some degree but staff's goal was to keep as much of the actual regulations – types of permitted signs, sizes, etc. – intact. However, there are some concepts for which this approach was not possible due to lack of clarity in the existing provisions, such as those related to minor, i.e. temporary, signs, or lack of any regulatory framework at all prior to the *Reed* decision, such as the case for electronic display, i.e. digital, signs. Therefore, the proposed amendment provides new text and options for these areas, which will require some action by the Board. These are discussed in more detail in the major issue areas section below.

In developing this proposed amendment, staff has conducted extensive outreach with individual Board members, the Planning Commission, affected County agencies, citizen and business groups,

and other interested stakeholders. The proposed amendment was discussed at the Board of Supervisors Development Process Committee (DPC) meetings on October 3, 2017; December 12, 2017; and March 13, 2018, and with the Planning Commission's Land Use Process Review (LUPR) Committee on February 7 and September 12, 2018. Additionally, DPZ has worked with staff members from Fairfax County Public Schools and the Fairfax County Park Authority. Staff presented the amendment and received input from the zMOD Citizen Advisory Group and Land Use Attorney Advisory Group, meeting with each group twice, and also met with a group of Chamber of Commerce representatives to discuss the amendment and receive their feedback. The topic has been presented at four DPZ Open Houses in 2017 and 2018, where citizens received information about the potential changes, staff responded to questions and where attendees were advised as to how to provide input, should they desire. The proposed changes were also presented to various citizens' associations/district councils and the amendment is listed on the zMOD website.

Staff will continue to conduct outreach and consider input from interested stakeholder groups following the Board's authorization on October 30, 2018, and throughout the public hearing process. Staff will be meeting with the Planning Commission's LUPR Committee again on November 28, 2018, and meetings are also scheduled to present the proposed amendment to the Mason District Council and the Braddock District Land Use & Environmental Committee. Staff will soon be scheduling meetings with the Land Use Aides Committee, Faith Communities in Action and additional meetings with the Park Authority.

## **PROPOSED AMENDMENT**

In an effort to explain and discuss the proposed new sign regulations in easy to understand terms, the staff comment is organized as follows: (1) an overview that explains all proposed changes in four broad categories; (2) identification of provisions organized by new Section number; (3) discussion of major and/or new issue areas with staff recommendations; and (4) a detailed listing of all corresponding changes to other Articles of the Zoning Ordinance. In addition to the proposed text found at the end of the staff comment, staff has also prepared a "crosswalk" document that identifies each provision in the existing Sign Ordinance and gives, where applicable, the new ordinance section where the provision can be found, as well as some brief commentary as to why changes were made to the regulation. The crosswalk document has been created as an accompanying document to the staff comment and can be found on the DPZ webpage for the Sign Ordinance Amendment at: <https://www.fairfaxcounty.gov/planning-zoning/zmod/sign-provisions>

### **I. Overview & Explanation of Changes**

While there are many proposed changes to the existing Sign Ordinance, the changes found in the proposed draft Ordinance fall into four distinct categories:

1. A re-write of the existing provisions for content neutrality and clarity.

For example, Par. 13.B. of Section 12-203, includes provisions for signs within an office park and states:

*"One (1) freestanding building identification sign may be permitted for each detached building*

*which houses a principal use within an office park. Such sign(s) shall be limited to identifying the name of the building and/or the individual enterprises located therein, the address, trademark or identifying symbol or any combination thereof. No such sign shall exceed twenty (20) square feet in area or eight (8) feet in height or be located closer than ten (10) feet to any lot line.”*

The underscored text in the above provision is an example of a content-based regulation because the message of the sign is the basis for the regulation and, thus, it is recommended for deletion. Staff has reviewed each provision for similar language and has attempted to rewrite provisions with appropriate, clear language while keeping their original intent.

2. The proposal of new regulations.

While the majority of the existing regulations have been rewritten, there are some topical areas for which this approach was not possible due to the legal challenges presented by *Reed* (off-site/directional signs); a lack of clarity in the existing provisions (minor signs); or the absence of any regulatory framework at all prior to *Reed* (electronic display signs). Certain sections of the existing ordinance, particularly Sections 12-103, Temporary Signs, and 12-104, Prohibited Signs, were challenging to rewrite since many of the regulated sign types, such as political campaign signs and temporary signs for non-residential uses, were content-based. Therefore, these sections contain the most number of changes, as well as more significant policy changes that are being recommended by staff. Concerning entirely new regulation, staff is also proposing changes related to permanent signs in residential districts and the regulation of electronic display signs.

3. A reorganization of all provisions in a more user-friendly format with a new section of defined terms and appropriate graphics.

As proposed, the draft Sign Ordinance has been streamlined, much in the same fashion as is proposed for the entire Zoning Ordinance as part of the zMOD project. The existing Ordinance has been reorganized with redundant or duplicative provisions deleted. The provisions are organized into three separate parts: Part 1, General Provisions; Part 2, Sign Regulations by Use and District; and Part 3, Special Approvals. The draft Ordinance is also significantly shorter (approximately 16 pages). In addition, a new “Definitions” section has been added, with all sign types and necessary technical terms defined and located in the Article for convenience. Staff has also prepared a limited number of graphics to accompany the text, with the idea that more graphics could be added as part of any future amendment to be completed as part of zMOD.

4. The establishment of more uniform regulation of signs in all zoning districts.

In the current Ordinance, the sign provisions are generally organized depending on whether the principal land use is residential, commercial, or industrial and, further, whether a use requires special permit or special exception approval. As a result of the *Reed* decision, an ordinance construct based on the uniformity of sign provisions among land uses is more appropriate – meaning that it is difficult to argue that one particular land use is entitled to specific amounts and types of signs, different from another, on the basis of that land use itself. While the use impacts of these land uses may differ, the impact of the accessory use of a sign for each land use is generally consistent. That being said, it is within the parameters of *Reed* to regulate signs based on time, place, and manner and



to establish a uniform policy and organize sign regulations based on their location, i.e., their zoning district. Therefore, it is appropriate and practical to regulate different types, amounts, sizes and heights of signs depending on zoning district, as the land use impact of a sign in a residential district, which may be in close proximity or adjacent to residential uses, is different than a sign in a commercial or industrial district.

## **II. Section Highlights**

### **Part 1, Section 12-100, General Provisions**

#### **12-101 Purpose & Intent**

This section has been edited for conciseness and includes a statement that the purpose of the regulations, in part, is to ensure free speech is protected.

#### **12-102 Definitions**

The current ordinance defines a “sign” in Article 20, which also includes a subset of definitions of freestanding, building-mounted and portable signs; there is also a separate definition for the sign related term “raceway.” For enforcement and permitting purposes, it is appropriate to have a new, distinct “Definitions” section within the Ordinance itself; therefore, the existing sign definitions in Article 20 are proposed to be deleted and this new section added. Highlights of this section include:

- The current definition for a “sign” has mostly been retained but staff has eliminated the qualifier that a “sign” is anything visible from an adjacent property. (*Discussed below as a major issue area.*)
- Revised definitions of the terms “building-mounted sign” and “freestanding sign”; deletion of the terms and definitions of “portable sign” and “raceway.”
- Definitions for all relevant terms, such as “vehicle sign” and “window sign,” to include new terms/concepts such as “electronic display sign” and “minor sign.”

#### **12-103 Applicability**

This section sets forth the statements of applicability of the proposed Ordinance regulations. The section includes:

- A provision stating that the regulations apply to all signs in Fairfax County but, unless otherwise stated, exempts those signs on property owned by, or those signs required or sponsored by Fairfax County; the Commonwealth of Virginia or any of its political subdivisions; or the United States. Note that the provision reads that signs sponsored by Fairfax County are exempt “unless otherwise stated.” As proposed, staff is recommending that public uses, to include most County facilities such as a school or park, be subject to the proposed regulations. This is a major departure from the current Ordinance, which largely exempts public uses from most sign regulation. (*Discussed below as a major issue area.*)
- A provision stating that the proposed regulations do not regulate or restrict signs based on content.
- A provision clarifying that the regulations do not apply to, authorize, or prohibit signs placed in a public right-of-way; meaning, they only apply to signs posted on private property.

### 12-104 Administrative Provisions

This section sets forth all administrative provisions related to signs, such as when permits are required; what actions and/or structures are deemed to be signs and which are not; and other structural requirements for signs. It merges several similar sections of the current Ordinance into a single section. Highlights include:

- Adding the changing of the message on an electronic display sign to the list of actions that is deemed not to be a sign.
- Changes the provision that certain flags are deemed not to be a sign, by deleting reference to specific flags.
- Changes to the provisions exempting signs displaying address numbers in accordance with the County Code, by uniformly allowing 2 square feet for such purposes regardless of use and requiring that such signs associated with a residential building be building-mounted.
- Revised provisions regulating vehicle signs, which allow such signs only when located on a vehicle that is operable, parked at its associated place of business and within a parking space. *(Discussed below as a major issue area.)*
- A new provision that exempts non-illuminated lettering or numbers permanently attached or painted on the façade of a building of any school, college, or university, up to 10% of the façade on which they are placed. *(Discussed below as a major issue area.)*
- Changes to the provision allowing signs erected in a Commercial Revitalization District by a public agency or an appropriate organization, by deleting limits on sign type, size, and mounting height, requiring that such signs be approved by the Board, and allowing such signs to also be erected within activity centers as shown on the adopted Comprehensive Plan.

### 12-105 Minor Signs

Minor Signs, previously referred to as “temporary signs,” presented the most challenges for staff regarding content neutrality. It should be noted that several of the current provisions found in this Ordinance section are signs made by a “constituted governmental body,” most of which are not currently regulated and staff is not proposing new regulation in this area. For this reason, many of these provisions were eliminated because they are redundant given that new Section 12-103.1 already exempts constituted governmental bodies from these regulations. Highlights include:

- An increase in the maximum size of a sign located on a property that is actively marketed for sale, rent or lease, and is developed with or planned for development of, a single-family detached or attached dwelling unit, from 4 square feet to 6 square feet.
- A reduction in the minimum required setback of any sign for a new residential, commercial, or industrial development that is under construction or existing buildings in such developments that are being altered, from 10 feet to 5 feet from any lot line.
- A reduction in the number of signs permitted for a new residential, commercial, or industrial development that is under construction or existing buildings in such developments that are being altered, from 2 signs to 1 sign, except for those lots containing multiple road frontages.
- An increase in the maximum height for any sign for an individual single-family dwelling unit that is undergoing construction, improvement or renovation, from 3.5 feet to 4 feet.
- A new sign type identified as a “yard sign,” for any lot developed with a residential use. Yard signs are proposed up to 12 square feet in total area, with a maximum sign size of 4 square feet for any individual sign and a maximum height of 4 feet. *(Discussed below as a*

*major issue area.)*

- Provisions and regulations allowing for Minor Signs for all non-residential land uses based on road classification. For uses located on a lot with frontage on a major thoroughfare, Minor Signs up to 40 square in total area are allowed per lot, with a maximum sign size of 24 square feet. A single freestanding sign would be allowed as part of this total area, with a maximum height of 4 feet. For all other non-residential land uses, building minor signs are allowed up to 24 square in total area per lot. *(Discussed below as a major issue area.)*
- A new sign type, an “A-frame sign,” for all non-residential land uses, limited to a maximum of 16 square feet, 4 feet in height, and a requirement that the sign must be located within 25 feet of a building or site entrance that provides access to the use.

### 12-106 Prohibited Signs

Despite the challenges presented by this section due to content neutrality issues, staff was able to retain most of the provisions found in the existing Ordinance. However, staff is proposing that prohibited sign types be better organized into broader type categories, thereby providing more explicitly stated legal justification for each prohibited sign type. Noteworthy changes to this section include:

- Categories of prohibitions based on: general standards; materials or design; and location.
- A clear prohibition on roof signs has been expressly stated, whereas in the current ordinance it can be interpreted to be prohibited.

### 12-107 Nonconforming Signs

Other than minor edits for clarifying and streamlining, this section received only minor changes. The term “nonconforming sign” has been included in the Definitions section and the Board may wish to consider whether grandfathering provisions will be included as part of any adoption of a new ordinance. Highlights found in this section include:

- A new provision requiring that the property owner bears all responsibility to establish the nonconforming status of a sign and/or of the existing physical characteristics and location of such sign.
- Increase in the maximum number of days’ notice, from 15 to 30 days, that the Zoning Administrator must give a property owner to remove a nonconforming sign that has been demolished or destroyed by more than 50 percent of its appraised value, or is located on a property that becomes vacant and is unoccupied for at least 2 years.

### Part 2, Section 12-200, Sign Regulations by Use and District

These regulations are for permanent signs that are accessory to any land use found in all zoning districts, which may include both residential and non-residential land uses. To eliminate problematic distinctions, staff has organized the provisions into two sections: Section 12-202, Signs in a Residential District; and Section 12-204, Signs in Commercial and Industrial Districts. These sections prescribe a set amount of signage for a select number of land uses, with non-residential land uses generally being allotted the same types and amounts of signage regardless of the particular use.

### 12-201 Calculation of Sign Area

This section combines related provisions found in several different sections of the current Ordinance, all of which have been retained. Most of the changes are minor in nature to clarify existing regulation that is technical in nature and difficult for users to understand. The only highlight is the proposed change in how freestanding sign height is calculated: by measuring the vertical distance from the uppermost extremity of the sign to the lowest point of adjacent grade, rather than to the average ground level at the base as required in the current Ordinance.

#### 12-202 Signs in Residential Districts

Current regulation prescribes allotments of signage for residential developments, such as a subdivision, as well as signs for agricultural uses. In addition, several non-residential uses located in a residential district are allowed varying amounts of signage via approval of special permit or special exception. These include country clubs, hospitals, and places of worship. The current regulations present a variety of content neutrality concerns, which has prompted staff to re-evaluate them from a land use perspective. As previously explained, a legal construct based on the uniformity of sign provisions among land uses is more appropriate since it is difficult to justify that one particular land use is entitled to a certain amount or type of signage as compared to another. Staff's position is that while the use impacts of unique land uses may differ, the impact of the accessory use of a sign for each use is generally consistent. Therefore, the highlights of this section include:

- The new provisions containing uniform regulations of all permanent building-mounted and freestanding signs for land uses when located in a residential district.
- As proposed, a total of 50 square feet of building-mounted sign area is allowed, and a single freestanding sign is allowed, up to 40 square feet in area and 8 feet in height. (*Discussed below as a major issue area.*)

#### 12-203 Performance Standards for Signs in Residential Districts

This new section includes several existing provisions that have been carried forward with policy changes, as well as the new regulations for electronic display signs. Highlights of this section include:

- A new uniform regulation for the minimum setback from a street for all freestanding signs, which has generally been reduced from either 5, 10 or 50 feet to 5 feet.
- Proposed performance regulations for changeable copy or electronic display signs when located as part of a freestanding sign. As proposed, one such sign is allowed per lot, with no more than 50% of the maximum allowable area of a freestanding sign devoted to changeable copy or electronic display. Specific use limitations for electronic display signs also include: a limit on the frequency of copy change – no more than once every 8 seconds, with the change being instantaneous; the background of the sign face cannot be white, off-white or yellow; and the display boards must include a photo cell to control brightness and automatically dim at sunset to a nighttime level of 40-100 nits. (*Discussed below as a major issue area.*)
- Modification of the illumination standard for all signs by removing the restriction that illumination must be white and not colored and just referencing that illumination of signs must conform to the performance standards for outdoor lighting in Part 9 of Article 14.

#### 12-204 Signs in Commercial & Industrial Districts

In the current Ordinance, sign requirements for commercial and industrial uses are spread throughout

several sections, and depend on a variety of factors, such as whether the use is in a sign control overlay district or on a particular roadway. To compound this confusion, when considering freestanding signs, there are great distinctions between development types: stand-alone businesses vs. shopping centers. For building-mounted signage, it is the same no matter the location or the development type, although commercial uses are permitted more than industrial uses. This resulted in a lot of redundant language, which the proposed amendment seeks to eliminate, and in doing so, entire sections are eliminated. The highlights of this section include:

- The uniform regulation of all permanent building-mounted and freestanding signs for land uses when located in commercial or industrial district, including those within a Sign Control Overlay District.
- An increase in the permitted amount of building-mounted sign area for industrial uses, from 1 square foot of sign area for each linear foot of building frontage, up to 1.5 square feet of sign area for each linear foot of building frontage.
- An increase in the size of a freestanding sign for each detached building that houses a principal use within an office park, from 20 square feet to 30 square feet.

#### 12-205 Performance Standards for Signs in Commercial & Industrial Districts

Similar to above section for residential districts, this new section carries forward several existing provisions with some minor changes, as well as the new regulations for electronic display signs. Highlights of this section include:

- A uniform minimum setback of 5 feet from any curb of a service drive, travel lane, or adjoining street, for all freestanding signs; this results in a reduction of the minimum setback for freestanding signs located in an office or industrial park, from 10 feet to 5 feet.
- Proposed performance regulations for changeable copy or electronic display signs when located as part of a freestanding sign. As proposed, one such sign is allowed per lot, with no more than 50% of the maximum allowable area of a freestanding sign devoted to changeable copy or electronic display. Specific use limitations for electronic display signs also include: a limit on the frequency of copy change – no more than once every 8 seconds, with the change being instantaneous; the background of the sign face cannot be white, off-white or yellow; and the display boards must include a photo cell to control brightness and automatically dim at sunset to a nighttime level of 40-100 nits. (*Discussed below as a major issue area.*)

#### 12-206 Other Permitted Signs

This is another new section that carries forward existing regulations for a select few land uses that are somewhat unique in that they either are allotted additional signage for some elements of their use or they do not easily fit into the district regulations found in Sections 12-203 and 12-205. The highlighted change in this section is the provision that clarifies that accessory service uses are allowed a single 15-square-foot building-mounted sign per individual use, and not a total of 15 square feet for all such accessory service uses located in a building.

### Part 3, Section 12-300, Special Approvals

#### 12-301 Administrative Comprehensive Sign Plan

While this is a new section, it includes the existing Ordinance provisions that allow the Zoning

Administrator to approve an alternative method of calculating building frontage in order to authorize a different allotment of building-mounted signs for uses in a multi-tenant building. The purpose of separating this existing provision into its own section is to allow the formal codification of this process as an “Administrative Comprehensive Sign Plan.” It also formally establishes the \$95.00 fee for the process, which is the same as the current fee for a sign permit.

#### 12-302 Special Permits

This section has been carried forward with only minor edits to clarify and simplify the language of the existing provisions.

#### 12-303 Special Exceptions

This section has been carried forward with only minor edits to clarify and simplify the language of the existing provisions. It also includes the existing special exception option for a hospital, which has been relocated for uniformity.

#### 12-304 Uses in P Districts

Another section that has been carried forward with most of the existing provisions edited to clarify and simplify language. However, the noted highlight of this section is the deletion of the off-site directional sign plan that is allowed in the PRC District and the Tysons Corner Urban Center with Planning Commission approval. Staff is recommending deletion of this provision since it would allow off-site directional signs, which are prohibited in the proposed draft Ordinance. (*Discussed below as a major issue area.*)

### **III. Major Issue Areas for Consideration**

#### Definition of Sign – Section 12-102

The current Zoning Ordinance defines a sign, among other things, as that which is “visible from the public right-of-way or from adjoining property.” Staff identified this language as being problematic, as the Zoning Ordinance does not define “public right-of-way” and the term itself is assigned different meanings among several County agencies. In addition, the second part of the current provision stating that a sign is also that which is visible from an adjoining property is restrictive, since most signs are likely visible from another adjoining property. For these reasons, staff is proposing language that seeks to clarify this matter but still provide a similar level of regulation as the current Ordinance. As proposed, a sign includes that which is “visible from any street” and deletes the visibility provision from an adjoining property. As defined in Article 20, a street includes “a strip of land intended primarily for vehicular traffic and providing the principal means of access to property, including but not limited to road, lane, drive, avenue, highway, boulevard, or any other thoroughfare.” This definition is broad enough to include public streets, private streets, and travel lanes that are private and interior to larger developments such as a mall or office park, thereby having the same effect as the current provision despite the deletion of the “adjoining property” language.

Recently, staff was made aware of concerns from a representative associated with Tysons Corner Center that the change in the definition would negatively impact certain sign exemptions granted to the development under the current definition, by which some signage on the larger mall property is neither visible from a public right-of-way or from an adjoining property. For this reason, staff included language in the advertisement that would allow the Board to consider changes to the

proposed definition to allow a more flexible visibility provision.

**Staff Recommendation:** While staff acknowledges that the proposed language could negatively affect some developments that are currently exempt from regulation, we continue to recommend the language found in the draft text as it provides the closest level of regulation as the current provision. In addition, some developments also can apply for a Comprehensive Sign Plan that could allow for additional signage.

#### Exemption of Public Uses – Section 12-103.1

The Zoning Ordinance defines a “public use” as “any area, building or structure held, used or controlled exclusively for public purposes by any department or branch of the Federal Government, Commonwealth of Virginia, or the Fairfax County government under the direct authority of the Board of Supervisors, the Fairfax County School Board or Fairfax County Park Authority...” Current policy has been that federal and state uses are completely exempt from the Sign Ordinance, and Fairfax County uses are exempt, except for a 6-foot maximum height for all freestanding signs and the requirement to obtain a building permit. Staff first raised the possibility of subjecting County uses to the proposed sign regulations in individual meetings with Board members in 2017, and the proposal is very similar to the policy change made in 2015 when the Board adopted the Noise Ordinance, subjecting all County uses to the new regulations. In addition, as previously discussed, in light of the *Reed* decision, an ordinance construct based on the uniformity of sign provisions among land uses is more appropriate – there is no arguable difference between a sign for a private school (currently regulated) and that of a public school (currently unregulated except for maximum height). For these reasons, staff is proposing that County public uses be subject to the minor sign provisions found in proposed Section 12-105, as well as the permanent sign provisions found in proposed Part 2, Section 12-200.

However, staff has received comments from both Fairfax County Public Schools (FCPS) and the Fairfax County Park Authority (FCPA), neither of which is in favor of eliminating the current exemption status. Of particular concern to the Park Authority is the limitation on the size, number and location of minor signs permitted for non-residential uses in a residential district. These signs are used to announce summer concert series, camps and other activities at the parks. The schools have raised concerns with the proposed height of permitted freestanding signs for non-residential uses in residential districts which is proposed to be limited to 8 feet in height. Many existing signs are taller than the currently permitted 6-foot maximum height and would not meet the proposed maximum height limitation of 8 feet. In addition, concerns were raised about the accolades posted on school facades and whether these accolades would be considered a sign. Staff has met with representatives of both agencies multiple times in the past year and to date, the minor sign provisions in particular have been modified in direct response to discussions that staff has had with these agencies and the current draft Ordinance reflects their input. In addition, the amendment has been advertised to give the Board the ability to consider extending the current exemption policy for all County uses.

**Staff Recommendation:** The existing Zoning Ordinance sets forth a variety of regulations for all land uses – bulk requirements such as building heights and setbacks; density and floor area ratio; landscaping, screening, lighting and parking standards; requirements for site plan and permit review – and public uses are currently subject to all of these requirements, except for only the sign regulations. As a matter of consistent practice in this regard, as well as the uniformity discussion outlined above, staff continues to recommend that County public uses be subject to any adopted

Ordinance.

#### Vehicle Signs– Section 12-104.6C

As proposed in the draft Ordinance, vehicle signs are allowed when the vehicle is: (1) operable and (2) is parked at its associated place of business within a duly designated parking space. Under the current regulations, vehicle signs are allowed at their place of business *or on an adjacent property* but they cannot be located any closer than 25 feet to any “public street line.” The existing language is problematic for two reasons. First, it allows signs to be located off-site, which is expressly prohibited in the draft Ordinance. Second, when parked at its place of business, a vehicle sign is subject to a 25-foot setback, which staff believes is overly restrictive given that a business, upon receiving a Non-Residential Use Permit, is certified to meet all applicable parking standards with respect to both customer parking and the parking of business vehicles. Therefore, a separate parking standard, for purposes of sign regulation, is challenging from a regulatory perspective. However, as part of the direction given to staff at the time of authorization, the legal advertisement for the amendment includes an option for the Board to consider a setback for vehicle signs, up to 25 feet from a front property line.

**Staff Recommendation:** Staff believes the proposed regulation of vehicle signs as published in the draft text is appropriate. While the minimum setback provision has been deleted, the prohibition of parking vehicle signs on an adjacent property is more restrictive. Furthermore, the current Ordinance requires a buffer strip of 10 feet in between parking and a front property line. For new development, this has the effect of pushing parking spaces further back from the road and would be included in the 25-foot setback limit for vehicle signs found in the Ordinance today.

#### Administrative Provision for Building-Mounted Signs for Schools – Section 12-104.6D

The proposed policy requiring that public uses be subject to the Sign Ordinance has led to a number of discussions regarding the types and amounts of signs that can be found at facilities such as public parks and schools. A sign type associated with schools, particularly high schools, is what staff has termed “spirit” or “accolade” signage. These signs are typically building-mounted and commemorate academic or athletic achievements, such as “Baseball State Champions, 2016.” FCPS representatives have expressed concern that the building-mounted sign allotments proposed for non-residential land uses in any given zoning district are likely not sufficient to accommodate both traditional building-mounted signs for a school and spirit signage. As proposed, commemorative citations that are non-illuminated and permanently affixed to the façade of any school, college or university would not be regulated, assuming that the display is limited to no more than 10% of the area of the façade on which they are placed. However, it is noted that this proposed exemption can be applied to any school, college, or university, since the land use impacts between a public vs. private school would not differ for purposes of sign regulation. Limiting this exemption to these particular land uses is justified since these displays are often associated with and largely unique to schools, and not typically found in conjunction with other land uses. Similar provisions exist in the current Ordinance regarding hospitals, in that this particular land use is given additional signage on the basis of its uniqueness. Staff has included an advertising option to increase the exempted display area up to 25% of the façade, which will give the Board the ability to consider any amount between 10 and 25%.

**Staff Recommendation:** Given that the permission is extended to any school, college, or university, which typically occupy larger buildings, staff believes that the lower limit of 10% of the area of the



façade is appropriate. In addition, to the extent that existing schools, colleges, or universities are currently displaying this type of signage, those displays would become legal nonconformities upon adoption of the draft Ordinance and could continue to be displayed.

#### Yard Signs & Minor Signs for Non-Residential Land Uses – Sections 12-105.4 and 12-105.5

Staff is proposing extensive changes to temporary signs, which are now referred to as “minor signs” in the proposed Ordinance, for both residential and non-residential land uses. All of the minor sign types are set forth in new Section 12-105. While many of the sign types in this section are those customarily identified as being “temporary” by their intermittent and/or seasonal display, staff is not proposing display time limits for many minor sign types, including yard signs and minor signs for non-residential land uses. It is staff’s intent to make any new regulations easy to enforce. In the case of minor signs, especially banners and promotional signs for businesses, the regulation of display duration, type of sign, size, height, etc. are interrelated. For example, the maximum size of minor signs will likely inform whether display times are needed, the types of minor signs allowed (building-mounted or freestanding), and the total number of minor signs that can be displayed at one time on a lot. In addition, it is noted that any minor signs, which are typically temporary in nature, will be in addition to the permanent signs that a land use is allowed to display on a lot – to include a digital message board as a permanent freestanding sign, which allows a land use to regularly change messages in lieu of using minor/temporary signs. Regarding display duration, specifically, staff’s position is that prescribing a display duration for some minor signs is difficult to enforce and will require a permitting process to ensure compliance, which is a burden on both County resources and non-residential land uses. However, by forgoing a display duration, staff is proposing smaller signs and, in some cases, prohibitions on freestanding signs, which tend to have the most negative visual impact since they are typically displayed adjacent to a right-of-way.

For residential land uses, staff is proposing a new type of sign, a “yard sign,” Section 12-105.4, which would allow citizens the opportunity to display a limited number of small signs, such as campaign signs during election season or a yard sale sign. As proposed, a residential use on a lot is allotted a maximum of 12 square feet of total signage, with no single sign exceeding 4 square feet in area and a height of 4 feet. It is noted that there is no display duration, so signs could be displayed on a lot at all times. Furthermore, there is also no limit on the total number of signs, although the maximum sign size limited to 4 square feet is somewhat limiting in combination with the maximum of 12 square feet. However, the legal advertisement for the amendment allows some flexibility to increase the maximum square footage up to 16 square feet.

**Staff Recommendation:** Staff continues to recommend that a maximum of 12 square feet be adopted. Given that there is no limit on display duration or the number of signs allowed, staff believes that any amount over 12 square feet would be excessive.

Regarding minor signs for non-residential land uses (Section 12-105.5), earlier versions of the draft Ordinance allowed up to 24 square feet of minor signage for these uses and further required that the signs be building-mounted. However, based on stakeholder input received to date, staff is proposing a provision to allow more minor signage for non-residential land uses based on road classification. As proposed, on a land use located on a lot with frontage on a major thoroughfare, a total of 40 square feet of minor signage is allowed, with a maximum size of 24 square feet for any one sign, to include a single freestanding sign with a maximum height of 4 feet. The larger amount of signage

based on road classification allows more signs for land uses in those geographic areas of the County that present less adverse impact on adjacent residential land uses. It would also provide the opportunity for additional signage for most shopping centers as well as certain parks, two land uses identified as needing possibly additional sign area. However, staff strongly notes that the expanded regulation would also apply to a stand-alone land use, such as a restaurant, and that the increased sign area and freestanding provision could have negative visual impacts, especially in special districts such as the revitalization areas. To this end, staff has proposed that only a single freestanding sign be allowed and the maximum height of 4 feet is in keeping with the height proposed for residential yard signs.

For all other non-residential land uses, i.e. those not located on a major thoroughfare, minor signs up to 24 square feet in area are allowed and all signs must be building-mounted or mounted to a structure such as a fence or existing freestanding sign.

The advertisement allows the Board to consider a range to allow up to 60 square feet in total area, with no limits on the maximums size of any one sign or on the number of freestanding signs, and a maximum freestanding sign height up to 6 feet. This option has been included for all non-residential land uses, regardless of their location based on road classification, although the Board may choose to apply it to only those uses located on a property with frontage on a major thoroughfare.

**Staff Recommendation:** Staff recommends the language contained in the draft Ordinance. However, it is acknowledged that a uniform standard for all non-residential land uses would be preferred for ease of enforcement. This would result in elimination of the distinction based on road classification and would require a determination as to the appropriate size, number and limits of minor signs. To this end, staff believes the sizes, types and limits proposed in Section 12-105.5A are appropriate. It is noted that under the current Ordinance, most non-residential land uses are not allowed any minor signs, except when the use first opens or is permanently closing. As such, any amount allotted as part of the draft Ordinance results in an increase well beyond what the current Ordinance allows.

#### Off-site/Directional Signs – Section 12-106

The current Ordinance allows off-site directional signs for some land uses but these provisions are all content-based, in that they require a specific message on the sign to ensure it is “directional” in nature. However, staff believes that the *Reed* decision simplifies the policy debate on this topic. If one cannot regulate content on signs, then the decision to allow any off-site signage is an all-or-nothing proposition. If off-site signs continue to be allowed, it would not be possible to stop a permit holder from allowing copy on the sign that may be unrelated to its intended use.

**Staff Recommendation:** Staff is proposing to eliminate all directional and off-site signs as part of the proposed draft Ordinance. Off-site signs are defined in the draft Ordinance and identified as a prohibited sign type in new Section 12-106. However, accommodations have been made for allowing wayfinding and branding programs by the County, or by those organizations in partnership with the County. These displays are proposed to be allowed in the Commercial Revitalization Districts and in those areas designated as activity centers in the adopted Comprehensive Plan.

#### Freestanding Sign Height in Residential Districts - Section 12-202.5B

These provisions contain the two proposed options for regulating permanent freestanding signs for non-residential land uses in a residential zoning district. Option 1 allows a freestanding sign up to 40 square feet in area and 8 feet in height. Option 2 allows for a range of freestanding sign sizes and heights, depending on lot size. As proposed: for a use on a lot smaller than 5 acres, a freestanding sign up to 16 square feet in area and 4 feet in height would be permitted; for a use on a lot of at least 5 acres but less than 20 acres, a freestanding sign up to 32 square feet in area and 6 feet in height would be permitted; for a use on a lot of at least 20 acres or more, a freestanding sign up to 40 square feet in area and 8 feet in height would be permitted. In addition, the advertisement for the amendment allows the Board to consider any height up to 20 feet for either option.

**Staff Recommendation:** While the potential increase in height would address issues raised by some Board members and public school representatives, staff continues to recommend Option 1, with a maximum freestanding sign height of 8 feet. This provision would apply to all non-residential land uses, including public schools - which are currently limited to a maximum freestanding sign height of only 6 feet. Staff's justification for an 8-foot maximum height is based on the potential incompatibility and negative impacts of taller, illuminated signs, including digital message boards, on neighboring residential land uses.

#### Electronic Display Signs in All Districts- Sections 12-203.3 & 12-205.4

The proposed Ordinance establishes electronic display signs, commonly referred to as "digital signs," as a new type of sign with appropriate definition and use standards. The current Ordinance does not explicitly regulate electronic display signs and all current County policy has been done largely through Zoning Administrator interpretation. Given the rise of the technology, especially as a sign type preferred by religious and educational institutions that are typically located in residentially zoned areas, the idea of formally codifying a set of regulations has appeared on prior versions of the Zoning Ordinance Amendment Work Program. Staff believes now is the appropriate time to address digital sign copy given the nexus between the concepts of copy and content.

Staff is proposing a new sign type, "electronic display signs," as defined in new Section 12-102, that allows an electronic message display *as part of a freestanding sign* in all zoning districts. In addition, specific use limitations for electronic display signs are also being proposed and include: a limit on the frequency of copy change – no more than once every 8 seconds, with the change being instantaneous; the background of the sign face cannot be white, off-white or yellow; and the display boards must include a photo cell to control brightness and automatically dim at sunset to a nighttime level of 40-100 nits. There are two different options for the Board to consider: Option 1 allows the electronic display sign on any freestanding sign, up to 50% of its maximum permitted area. For example, if a non-residential land use in a residential zoning district is allowed a 40-square-foot freestanding sign with a maximum height of 8 feet, then the electronic display can be up to 20 square feet, or 50% of the maximum area of 40 square feet. Option 2 allows the Board to consider the total area of a permitted freestanding sign to be digitized, but in order to reduce potential impacts, staff has included a height limit of 6 feet, regardless of zoning district, and the sign is required to be a "monument sign." For flexibility, the advertisement for Option 2 does allow the Board to increase the height of the monument sign up to 8 feet.

**Staff Recommendation:** Given the predominance of electronic display signs as a preferred sign type by land uses that are typically located in residentially zoned areas, staff is recommending Option 1

since it would reduce the potential negative land use impacts compared to Option 2.

### **Related Provisions**

In addition to the repeal and replacement of Article 12, Signs, there are proposed changes to various provisions found throughout other Articles of the Zoning Ordinance. These changes are proposed with similar intent and scope as those proposed for Article 12, in that provisions have been changed to ensure content neutrality or to eliminate unnecessary and/or duplicative provisions. In addition, a significant number of the proposed changes in the following Articles are editorial in nature and refer to the section numbers found in the new Article 12. A summary of all related changes is as follows:

- Articles 4 & 5: amends those sections identified in the proposed text, to delete the sign requirement for quasi-public athletic fields in the C-1 through C-8 Districts, and the I-1 through I-6 Districts; to delete the requirement for signs near the stacking area for drive-through pharmacies in the C-5 through C-8 Districts; and to make necessary editorial changes.
- Article 6: amends those sections identified in the proposed text, to delete the requirement for signs near the stacking area for drive-through pharmacies in the in the PDH, PDC, and PRC Districts; and to make necessary editorial changes.
- Article 7: amends the section specified in the proposed text to make necessary editorial changes.
- Article 8: amends those sections identified in the proposed text, to delete the reference to temporary signs for temporary farmers' markets, temporary portable storage containers, and open-air produce stands; and to make necessary editorial changes.
- Article 9: amends those sections identified in the proposed text, to delete the requirement for signs near the stacking area for drive-through pharmacies; and to make necessary editorial changes.
- Article 10: amends the section specified in the proposed text, to delete the sign provision for wayside stands; and to make necessary editorial changes.
- Article 14: amends the section specified in the proposed text to make necessary editorial changes.
- Article 16: amends the sections specified in the proposed text to make necessary editorial changes.
- Article 17: amends the section specified in the proposed text to make necessary editorial changes.
- Article 18: amends those sections identified in the proposed text, to include a new specific reference to the Sign Permit and Administrative Comprehensive Sign Plan fee of \$95.00; and to make necessary editorial changes.
- Article 20: amends the section specified in the proposed text, to delete the definition of raceway, sign, building-mounted sign, freestanding sign, and portable sign, and all references thereto.
- Appendix 7: amends those sections identified in the proposed text, to delete the provision that currently allows for certain signage within or in proximity to any commercial revitalization district boundary; and to make necessary editorial changes.

### **CONCLUSION**

Staff notes that this proposed Ordinance accomplishes its intended goals by: (1) deleting redundant or outdated provisions; (2) rewriting existing regulation and proposing new regulation of signs and/or their characteristics in a content-neutral manner; (3) reorganizing existing and new provisions in a more user-friendly format to include graphics; and (4) establishing more uniform regulation of signs in all zoning districts. Therefore, staff recommends approval of the proposed amendment as presented in the draft text and discussed above, to include **OPTION 1** where different options are presented. Furthermore, given the scope of the changes and the need to provide necessary outreach following adoption of the revised Ordinance, staff also recommends a delayed effective date of 60 days following adoption.



# County of Fairfax, Virginia

## CHAPTER 112.1 INTERPRETATION

**DATE:** September 9, 2021

**FROM:** Leslie Johnson, Zoning Administrator

**SUBJECT:** Minor Signs Permitted During Active Construction or Alteration on Single-Family Residential Lots

**ZO REF:** Subsection 7100.4.C(2)

[Subsection 7100.4.C\(2\)](#) of the Zoning Ordinance allows limited signage for individual single-family dwelling units undergoing construction, improvement, or renovation. Specifically, one sign not exceeding four square feet in area or a height of four feet is permitted. This sign cannot be displayed “before commencement” of the improvement or renovation work. Based on complaints received by the Department of Code Compliance, signs are often erected prior to what would be considered commencement of the improvement or renovation activity. Many reported instances involve the placement of a sign immediately following the purchase of the property, which often occurs six to eight weeks prior to commencement of construction. For the purposes of this specific provision, examples of commencement of construction include:

- Clearing, grading, or excavation work to prepare the site for construction
- Actively demolishing structures on-site or features internal to the dwelling as part of a renovation project
- The delivery and staging of materials or equipment on-site, including both internal and external staging (such as the placement of a dumpster on the property or storage of new cabinetry and associated hardware)
- Any other similar activity involving active engagement in improvements on the property

The sole act of issuance of a building permit **is not** considered commencement of the improvement or renovation work. Placement of a sign on the property prior to commencement of the construction, improvement, or renovation activity may result in issuance of a Notice of Violation.

CVJ

