

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: Amendments to Eugene Sign Code

Meeting Date: October 24, 2012
Departments: City Attorney's Office
www.eugene-or.gov

Agenda Item Number: A
Staff Contact: Jerry Lidz
Contact Telephone Number: 541-682-8447

ISSUE STATEMENT

The City Council will hold its second work session on proposed amendments to the City's Sign Code, EC 9.6600 to 9.6680. The amendments would consolidate several exemptions from the permit requirements, set size limits for exempt signs and specify a time limit for the City to act on a sign permit application.

BACKGROUND

Impetus for amendments. Eugene's Sign Code generally requires a property owner to obtain a permit to install a sign on the person's property. The code contains 24 exemptions from that requirement – for example: addresses, murals, parking lot signs, public signs. Last year, the American Civil Liberties Union (ACLU) notified the City that, in the ACLU's opinion, some of the exemptions were based on the signs' content and therefore unconstitutional. In addition, the ACLU expressed concern that the lack of a deadline for City staff to process a sign permit application could, theoretically, allow the City to discriminate against signs with a disfavored message by delaying action on the application.

Although the City Attorney's Office disagreed with those contentions, neither the City Attorney nor planning staff was committed to the current code's approach to the exemptions. Discussions with the ACLU have resulted in a proposal that addresses the ACLU's concerns without impairing the City's ability to protect public safety and prevent unregulated proliferation of signs. The ACLU has agreed that, with the proposed amendments, the sign code would not violate the state or federal constitution.

The draft amendments address the specific concerns raised by the ACLU and are not a general revision of the Sign Code.

Draft ordinance. The proposed amendments to the Sign Code would:

1. Eliminate the specific exemptions for conference and convention banners, contractor signs, flags, real estate signs and temporary activity signs. Instead, there would be two general exemptions: (a) on a property used for a single-family residence or a duplex -- two freestanding signs or banners, or one of each; and (b) on all other properties -- one freestanding sign or banner. (A "banner" is a sign made of non-rigid material that is not enclosed by a frame; a flag is one kind of banner.) Each of those signs could not exceed 12 square feet. The "exemption" means those signs are exempt from permit and fee requirements.

(The reason for allowing two exempt signs on residential properties and only one on properties used for commercial, industrial or other purposes is that a range of signs are already available by permit in commercial and industrial zones. The size of the exempt signs –12 square feet– in the proposed ordinance is the same as the current Sign Code’s exemptions for “signs during elections” and “real estate signs.” The proposed amendments would retain the first of those exemptions but replace the latter.)

2. Make some minor wording changes to some of the other exemptions to make it clear that they are not based on the sign’s content.
3. Require the City to act on a sign permit application within three weeks of receipt of a complete application.

Because the Sign Code is in Chapter 9, consideration of the amendments follows Land Use Code amendment procedures. The City Council initiated the code amendment process at its May 29 meeting. The Planning Commission held a public hearing and deliberated on the proposed amendments on June 19. The City Council previously held a work session on July 11 and a public hearing on July 23, 2012.

The discussion at the July 11 work session focused on the size of the exempt signs described in paragraph #1 above, especially on residential properties. The council expressed its hope that members of the public would address that subject at the July 23 public hearing. Should the maximum size of these residential signs be 12 square feet, nine square feet, six square feet or some other size? Also, should the maximum be different for a free-standing sign than for a banner/flag?

At the July 23 hearing, four people testified. Two representatives from the ACLU testified in support of the proposed size – up to 12 square feet – of the exempt signs in the draft ordinance. One of those witnesses expressed concern that 12 square feet is smaller than the typical size of a United States flag, which is 3 x 5 feet, and stated that the ACLU would support increasing the allowable size of exempt signs to 15 square feet. The ACLU opposes limiting the size to anything less than 12 square feet. A third witness, a commercial property owner, expressed his opinion that the City had no right to regulate a non-hazardous sign that expressed a political, non-commercial opinion. In his view, the Sign Code should allow more than one exempt sign on commercial property (in addition to others allowed by permit), and the exempt signs should not be limited to 12 square feet. A fourth witness supported an exemption for signs 12 square feet or even larger.

RELATED CITY POLICIES

The City’s Sign Code is in EC 9.6600 to 9.6680. EC 9.6600 describes the purposes of the Sign Code; EC 9.6610 contains the exemptions that are the primary subject of the proposed amendments.

The Sign Code is part of the City’s Land Use Code; the proposed amendments are “Type V” amendments, so the procedures and criteria for legislative amendments apply. The amendments must be consistent with applicable statewide planning goals and with the applicable provisions of the Metro Plan. To the limited extent those criteria are relevant to the proposed amendments, they are addressed in draft findings in Attachment B.

COUNCIL OPTIONS

This is a work session at which the council may give direction to the City Manager about further changes to the draft ordinance.

Options on the specific topics discussed at the July work session and public hearing are:

1. Adopt the number of exemptions (two for single-family or duplex residential properties, one for others), types of signs (freestanding signs or banners) and maximum size (12 square feet) allowed for exempt signs under the draft ordinance.
2. Increase the allowable size of exempt banners to 15 square feet to accommodate flags, while retaining the proposed size limit for an exempt freestanding sign at 12 square feet.
3. Set the allowable size at something less than 12 square feet.
4. Limit the number of exempt signs on residential properties to one.
5. Some combination of the above options

CITY MANAGER'S RECOMMENDATION

None.

SUGGESTED MOTION

None. Final action is scheduled for November 26, 2012. If the council would like amendments to the proposed ordinance, it would be helpful to get direction at this work session.

ATTACHMENTS

- A. Draft ordinance
- B. Draft findings

FOR MORE INFORMATION

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ORDINANCE NO. _____

AN ORDINANCE CONCERNING SIGN STANDARDS AND AMENDING SECTIONS 9.0500, 9.6610, 9.6615 AND 9.6630 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 9.0500 of the Eugene Code, 1971, is amended by deleting the definition of “Flag.”

9.0500 **Definitions.** As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

~~[Flag. The official flag or banner of any governmental entity.]~~

Section 2. Sections 9.6610, 9.6615 and 9.6630 of the Eugene Code, 1971, are amended to provide as follows:

9.6610 **Exemptions to Sign Standards.**

(1) *Use of the signs listed in subsection (2) of this section does not affect the number or types of signs otherwise allowed under EC 9.6000 through 9.6680 of this land use code.*

(12) Except as provided in subsection [(2)] (3) of this section, the following signs are exempt from the requirements of EC 9.6600 through 9.6680, and are exempt from the requirement to obtain a sign permit *if they are located on private property outside of vision clearance areas:*

Addresses. Number and street name of any size. (Addresses are regulated per EC 8.005(21) Numbering of Structures and Premises and Fire Code 901.4.4 Premise Identification.)

Banners. *One banner, not to exceed 32 square feet in size, may be installed on the exterior wall of a hotel, motel, convention center or auditorium in lieu of the freestanding sign exempt under this section.*

~~[Conference and Convention Banners. One banner may be installed on the exterior wall of a hotel, motel, convention center or auditorium where an event is being held. The banner may be installed up to 7 days before the event and may remain in place up to 3 days after the event. It shall be a flat wall mounted sign, and may be up to 120 square feet in surface area.~~

~~[Contractor Signs. One sign per contractor while a development permit is active and work is proceeding on the premises.~~

~~[Flags. Up to 3 flags may be flown or displayed on each development site.]~~

Hand Held Signs. Hand carried signs of 9 square feet or less in area, worn or carried by an individual.

Historical Agency Plaques. Plaques or historical markers placed by historical agencies or organizations recognized by the city.

Message Boards. One sign per business for the purpose of communicating to persons on the development site, such as a drive through menu sign or building directory. Such a sign may be up to 6 feet in height and up to 40 square feet in area.

Murals. Painted wall highlights, wall decorations and other murals.

Non-Residential Property Signs. One freestanding sign or banner for each development site that is not used primarily for a single family dwelling or duplex. The sign may not exceed 12 square feet in size per face. The maximum height of a freestanding sign under this exemption is 6 feet.

Parking Lot Signs. Signs up to 3 square feet in area and up to 5 feet in height constructed or placed within a parking lot for the purpose of directing traffic, parking, and towing. (Towing signs are regulated per EC 5.540 Signs Required for Parking Facilities Before Citing or Towing Unauthorized Vehicles.)

Public Signs. 1) Signs constructed or placed in a public right-of-way by or with the approval of a governmental agency having legal control or ownership over the right-of-way; 2) Signs owned or constructed under the direction or authorization of the city, including, but not limited to, signs installed within parks and at natural resource areas within the NR Natural Resource Zone and PRO Parks, Recreation and Open Space Zone to account for entrances, trail signs, and markers; and 3) Signs placed by a public utility for the purpose of providing information concerning a pole, line, pipe or other facility belonging to the public utility.

~~[Real Estate Signs. One sign per street frontage, 12 square feet or less in area, located on the development site while the property is for sale or lease.]~~

Residential Property Signs. Two signs for each development site used primarily for a single family dwelling or duplex. The signs are limited to the following types: freestanding sign or banner. Each sign may not exceed 12 square feet in size per face, with a maximum of two faces. The maximum height of a freestanding sign under this exemption is 6 feet, and it must be separated by at least 8 feet from any other freestanding sign on the same development site.

~~[Holiday]~~ **Seasonal** Decorations. ~~[Holiday-]~~ Lights and decorations in place during the period between November 15 and January 15.

Signs During Elections. Signs 12 square feet or less in area, located on

private property during the period from 60 days before to 5 days after any public election to be held in Lane County, Oregon.

Signs on Historic Property [Signs]. Signs constructed or maintained on historic property, as defined in this land use code, which signs are otherwise subject to regulation because of their location on historic property.

Stadium Signs. Signs located within a sports stadium which are intended for viewing primarily by persons within such stadium, where the stadium is enclosed by a site obscuring fence or wall at least 6 feet in height.

~~[Temporary Activities Signs. Signs located on the lot where the temporary activity is occurring and which are not in vision clearance areas or the public right of way.]~~

Traffic Directing Signs. The owner or lessor of private property may construct 1 sign at each entrance to the property and at each entrance to a building on the property for the purpose of providing direction to vehicular or pedestrian traffic. Except for signs painted on paved surfaces, each sign shall not exceed 3 square feet of surface area and shall be no more than 30 inches in height, if located in a vision clearance triangle as defined in EC 9.6780 Vision Clearance Area. If the sign is located outside a vision clearance triangle, then the sign shall be no more than 5 feet in height.

Transit Signs. Signs identifying transit stops, facilities, and bus routes only. Transit signs shall not include commercial advertising at bus stops or on transit-oriented street furnishings.

Vehicular Signs. Any sign permanently or temporarily placed on or attached to a motor vehicle, where the vehicle is used in the regular course of business for purposes other than the display of signs, except taxis whose signage is regulated by EC 3.345 Public Passenger Vehicle Services - License and/or Permit Required.

Vending in Downtown Activity Area. Signs, including portable signs, for **activities authorized by** Downtown Activity permits issued ~~[per]~~ **for** private commerce on public property ~~[(Administrative Rule R-3.336)]~~.

Vending Machine Signs. Any sign which forms an integral part of a machine used to dispense goods to consumers.

Wall Signs, Small. Wall signs with no interior illumination, a surface area of 6 square feet or less and which are 8 feet or less above grade, intended for persons already on the development site.

Warning Signs. Any public notice or warning required by a valid and applicable federal, state or local law, regulation, or ordinance, and emergency warning signs erected by a governmental agency, utility company or a contractor doing authorized or permitted work within a public right-of-way.

~~[Use of the signs listed in this subsection does not affect the number or type of~~

signage otherwise allowed under EC 9.6000 through 9.6680 of this land use code.]

- (23) No sign is exempt from the provisions of:
- (a) EC 9.6615 Prohibited Signs,
 - (b) EC 9.6620 Nonconforming Signs, or
 - (c) EC 9.6640 General Provisions,
- unless specifically exempted under one of those provisions.

9.6615 Prohibited Signs. Except where qualified as a nonconforming sign, the following signs are unlawful and are declared to be nuisances:

- (1) Any sign constructed or maintained which, by reason of its size, location, movement, coloring or manner of illumination may be confused with or construed as a traffic control device or which hides from view any traffic control device.
- (2) Any sign written or placed upon or within a motor vehicle with the primary purpose of providing a sign not otherwise allowed by the sign standards.
- (3) Any sign constructed, maintained or altered in a manner not in compliance with the sign standards.
- (4) Balloons and banners (pursuant to EC 9.6605 Reconciliation, [~~flags, conference and convention~~] banners[;] **exempt under EC 9.6610(2)** and signs permitted as public signs are not included within this prohibition);
- (5) Decorative laser signs, search lights, and flashing signs, except electronic message centers;
- (6) Inflatable signs other than balloons;
- (7) Portable signs, except as authorized by a permit within the Downtown Activity Zone and warning signs as permitted by EC 9.6605 Reconciliation;
- (8) Strings of lights not permanently mounted to a rigid background or otherwise qualified as [~~holiday~~] **seasonal** decorations; and
- (9) Signs in the public right-of-way not authorized by a governmental agency.

9.6630 Permit Application.

- (1) An application and related information shall be submitted by the applicant, in a manner prescribed by the city, together with a fee established by the city manager as provided by EC 2.020 City Manager - Authority to Set Fees and Charges. When a person begins construction of a sign requiring a sign permit before the permit is issued, the permit fee shall be doubled. Payment of a double permit fee shall not otherwise exempt the person from liability for other penalties prescribed for a violation of the sign standards.
- (2) No application shall be considered, nor a permit issued until the applicant has submitted a complete application, including a set of plans for the proposed sign and structural calculations where required. A complete application shall be an application where all required information is provided to allow the city to make a determination on the application. If a sign permit application is not determined complete by the city within 180 days of submittal, it shall expire.
- (3) ***The city shall grant or deny a sign permit application within 21 calendar days following receipt of a complete application.***
- (34) When required, the applicant shall submit proof that work will be done by a contractor licensed in compliance with local or state law to perform the specialized tasks required for construction of the proposed sign.

Section 3. The findings set forth in Exhibit A attached to this Ordinance are adopted as findings in support of this Ordinance.

Section 4. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Passed by the City Council this
___ day of _____, 2012

Approved by the Mayor this
___ day of _____, 2012

City Recorder

Mayor

EXHIBIT A

DRAFT
Findings

Sign Code Amendments (CA 12-1)

Eugene Code Section 9.8065 requires that the proposed ordinance comply with the following approval criteria (in bold and *italics*):

- (1) *The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

Goal 1 - Citizen Involvement. *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The proposed action does not amend the citizen involvement provisions. The process for adopting these amendments complies with Goal 1 because it is consistent with, and will not change the City's existing and acknowledged citizen involvement provisions.

The Planning Commission public hearing on the amendments was duly noticed. Notice of the public hearing was also published in the Register Guard. The City Council then held a duly noticed public hearing to consider approval, modification, or denial of the amendments. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the amendments are consistent with Statewide Planning Goal 1.

Goal 2 - Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The City's acknowledged land use code specifies the procedures and criteria to be used for decisions and actions related to land use applications. The amendments do not change the planning process, policy framework or information relied on in making decisions and actions related to land use applications. The record also shows that there is an adequate factual base for the amendments. There are no Goal 2 Exceptions required for the amendments. Therefore, the amendments are consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. *To preserve agricultural lands.*

The amendments do not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. To conserve forest lands.

The amendments do not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.

OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

The amendments do not create or amend the City's adopted inventory of Goal 5 resources, and does not amend any code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The amendments do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and does not amend the acknowledged UGB. Therefore, the amendments are consistent with Statewide Planning Goal 5.

Goal 6 - Air, Water and Land Resource Quality. To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendments do not affect the City's protections for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendments do not alter or affect the City's existing restrictions and approval criteria regarding development in areas subject to natural disasters and hazards. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendments do not alter or affect the City's provisions for recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Land Study (October 1992) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 9 and its Administrative Rule. The amendments do not affect the amount of land designated or zoned for commercial use and will have no direct impact on the existing supply of or any existing commercially designated land. Therefore, the amendments are consistent with Goal 9.

Goal 10 - Housing. *To provide for the housing needs of citizens of the state.*

Goal 10 requires that communities plan for and maintain an inventory of buildable residential land for needed housing units. The amendments do not impact the supply or availability of residential lands included in the City's documented supply of "buildable land" that is available for residential development as inventoried in the acknowledged 1999 Residential Lands Study. Therefore, Goal 10 does not apply to the amendments.

Goal 11- Public Facilities and Services. *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The amendments do not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. *To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented through the Transportation Planning Rule (TPR, OAR 660-12). TransPlan provides the regional policy framework through which the TPR is enacted at the local level. The amendments will not significantly affect any transportation facility. The level of development currently permitted through existing code and zoning regulations will remain the same. No change in the functional classification of streets will result from the amendments. In addition, no changes are proposed to the standards that implement the functional classification system. Therefore, the amendments are consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. *To conserve energy.*

The amendments do not affect any of the City's energy conservation measures or programs. Therefore, Statewide Planning Goal 13 does not apply.

Goal 14 - Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

The amendments do not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The amendments do not include any changes that affect the regulation of areas within the adopted Willamette River Greenway boundaries. Therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

The amendments do not include any changes related to coastal, ocean, estuarine, or beach and dune resources. Therefore, these goals are not relevant and the amendments will not affect compliance with Statewide Planning Goals 16 through 19.

(2) *The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.*

The amendments do not include any change in adopted land use designations or policy, nor does it change any requirements in the City's land use code concerning compliance with the Metro Plan and applicable refinement plans. There are no policies or other applicable provisions in the Metro Plan or adopted refinement plans that specifically serve as mandatory approval criteria in this instance or otherwise limit the expiration period for approved land use applications. Therefore, the amendments comply with the above criterion.

(3) *The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.*

The amendments do not establish a special area zone. Therefore, this criterion does not apply.