

MEMORANDUM

TO: Newberg Planning Commission

FROM: Doug Rux, Community Development Director

SUBJECT: Supplemental Material DCA22-0001 Portable & Temporary Signs

DATE: May 9, 2022

Attached is supplemental material for DCA22-0001 Temporary and Portable Signs. It includes public comments submitted by noon on May 9, 2022.

This material augments the Staff Report distributed on May 5, 2022.

Doug Rux

From: Kenneth Bunn <Kbunn@MIV-Home.com>
Sent: Thursday, May 5, 2022 4:12 PM
To: Doug Rux
Subject: The Zoom meeting May 12th at 7:00 pm. Is there a password to access the meeting and will citizens be allowed comments?

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Letter to be read in the public Zoom Meeting May 12th to protest the amendments to the Sign Code regarding temporary and portable signs

I'm writing today to share my strong disapproval of the proposed changes to the existing City of Newberg sign code.

I understand that over the recent year, political tensions over the recalls and elections have been ramped up and the city has been called to police and remove signs per the current city code.

I support the current signage code and believe, if followed keeps our city clean and free of hazards on the public sidewalks. I believe it is important to limit the number of signs displayed for election/recall and the length of time they may be displayed.

This is in our best interest of our citizens and neighborhoods to keep our city clean and reduce the divisive signs and flags that we have been experiencing over the past year. At the same time, I understand the time and resources needed to enforce the current code. I would support a system of fines for breaking the code, rather than deleting the code or reducing the restrictions in order to reduce the hours required to enforce.

I vote to keep the code as written and it has served the city well.

No need to change!

It has worked well for the 40+ years I have lived here in Newberg.

If this information is needed to allow this letter to be read, and I not would prefer it, then my name and address are:

Kenn Bunn

2514 Roger Smith Dr
Newberg OR 97132

Doug Rux

From: John Newman <john.floyd.newman@gmail.com>
Sent: Monday, May 9, 2022 11:54 AM
To: Doug Rux; PLANNING
Subject: DCA 22-0001: Proposed Code Amendment- Temporary and Portable Signs

This email originated from outside the City of Newberg's organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Doug and members of the Newberg Planning Commission,

I have looked over the above DCA 22-0001 Code Amendment and would like to offer these comments, concerns, observations for your consideration in your public hearing on May 12, 2022:

2. Allow 2 flags

Why put a limit on flags on private property? Why not let the property owner make this choice?

3 Number of signs on property

Again why limit the number of signs on private property? In an election cycle there may be a need to have more than 2 signs to support views of the property owner. Please let common sense determine the number of signs on a private lot.

c.d. 5/12/2022 The Planning Commission HELD a public hearing, TOOK public testimony and...

How could your original notification say you have HELD the meeting before the date of the meeting??? Has a decision already been made? This may in part be why there were no reported public comments! :)

THIS IS OUR KEY PART:

Section 2 Section 15.435.090

A. Why limit to 2 portable signs on street frontage? Why not let homeowners use common sense on numbers on private property?

Temporary Signs NMC 15.435.100

PLEASE DO NOT strike out "B" Elections section. The two added signs are already allowed with your other adjustments above and below. These four signs should be enough for property owners to express their views in an election cycle.

If this is taken out then 2 signs are likely too few for sharing home owner views.

I suspect a lot of the problems recently have been caused by the number of elections we have had in close proximity to each other. In a normal election cycle these election signs would be spaced out over many months.

Thanks for your kind consideration of this request. Thanks for allowing us to share our concerns and observations.

Sincerely yours,

John and Bonnie Newman
517 Villa Rd.
Newberg, OR 97132

5/9/2022

To the Planning Commission:

The following are my comments on Resolution 2022-380 regarding amendments to the Development Code regarding signs.

I will summarize my different points here before providing details:

- 1) Code regarding when a sign in the public ROW is allowed in C-3 and C-4 zones
- 2) Issues created by selective enforcement
- 3) Misinformation by the City regarding the Sign Code
- 4) Need to redefine Minor Freestanding and Portable Signs so they don't overlap
- 5) Misunderstanding about what a flag is
- 6) No need to remove political events from the Code
- 7) Code regarding signs for home occupations
- 8) Code regarding sign maintenance
- 9) Inconsistency with 15.435.110(D)

Hours when signs are allowed in the C-3 and C-4 public ROW

I think there is a serious issue with 15.435.110(C)(6) which I raised to Staff shortly after it was adopted 7 years ago as well as to organizations that would be affected by it if it were enforced. This section is in regard to when a portable sign is allowed to be displayed. The typical scenario is an A-frame sign on the sidewalk downtown. The Code reads: "The sign owner must have the sign removed during hours when the business being advertised is closed. In addition, signs must not be present between the hours of 2:00 a.m. and 5:00 a.m."

An issue arises when one considers such events as the Old Fashion Festival (as well as several other events). If the Code were enforced, signs promoting the OFF would not be allowed prior to the event or on the days of the event before and after the OFF is closed. I sincerely doubt that was the intention of the Commission when the Code was clarified 7 years ago. My recommendation is to replace "the business being advertised" with "the business being advertised and the business where the sign is located". The end result is that a downtown business could advertise the OFF (or the other events) during the hours when the downtown business is open, just as it could advertise its own business. If the use of "and" here causes confusion, the entire sentence could be replaced with: "The sign may only be displayed during the hours when the business being advertised or the business where the sign is located is open".

Issues created by selective enforcement

I believe that a lot of the issues regarding enforcement of the Code last year had to do with both a misunderstanding of the Code as well as the selective enforcement. Numerous citizens were concerned about how the Code is so rarely enforced and then it became a priority when there was a contentious political matter that was being debated with signs. To some, it appeared that the City was taking a political stand by selectively enforcing the Code. Rather than change what is allowed (which won't resolve the issue of selective enforcement) I think that the City should be more accurate about what is and is not allowed and also be more consistent with enforcement of the existing Code.

I visited the Farmers' Market last week and took a walk around downtown afterwards. After seeing a few non-compliant signs, I started counting. I counted no fewer than 16 signs that were in violation of NMC. They generally fell under violations of signs in unallowed parts of Hancock (15.435.110(B)), more than one sign per frontage (15.435.090(A)), and signs advertising businesses during hours when they are closed (15.435.110(C)(6)). Based on years of experience of walking around downtown Newberg, this was not unusual. I think it is understandable if a citizen objects to their political sign being removed for violating the Code when these violations occur regularly and visibly downtown and the Code is very rarely enforced.

I have filled out a complaint about one location that has numerous signs that cover more of the window than is allowed in violation of numerous parts of 15.435.070 since 15.435.020(A)(3) does not apply. I was told by Code Enforcement that this wouldn't be enforced because "These window signs are not anything that will get someone killed, injured, or poisoned and are not detracting from anyone's quality of life or the peaceful enjoyment of their property". I don't question if that is the case, but when IS it the case with violations of the Sign Code?

I should note that Code Enforcement used a "guesstimate" of the amount of coverage of the windows (despite my providing clear and detailed measurement of it) in deciding what was correct.

I have mentioned to the City Manager another location with the same over-coverage of windows by signs. I have not filled out a complaint as I have no reason to believe it will be acted on.

I suggest that the Commission consider carefully if there is any point to revising the Code if there is no willingness to enforce it by Code Enforcement.

Misinformation by the City regarding the Sign Code

I think it is difficult to expect citizens to follow the Sign Code when the City publishes false statements about it. If you go to the City's site at <https://www.newbergoregon.gov/planning/page/newberg-sign-ordinances-and-election-signs?fbclid=IwAR06ulU3ALnA8L6P8vHPVtn8QYL-bG7H1qH75ypHQd3WG-INotgQwzl8OnQ> you'll find the statement: "No signs are permitted in the right-of-way, except downtown (C-3 District)". I have had numerous citizens cite that to me as evidence that signs in the ROW in residential zones are not allowed. I presume that the Commission is aware of the fact that this statement is false. In particular, 15.435.110(D) allows two portable signs per street frontage with some restrictions.

I brought this issue to the attention of the previous City Attorney years ago as well as to Doug Rux (with a link to the site) last year. As of 5/8/2022 this error still is on the City's site. Again, how can citizens be expected to follow the Code when the City publishes inaccurate information about it?

I suggest that the Commission recommend that Staff change the web site to be consistent with NMC. I'll suggest the following wording to replace that statement: "Signs are permitted in the right-of-way in some locations, with restrictions. Please refer to NMC 15.435.110 Signs within the public right-of-way".

Need to redefine Minor Freestanding and Portable Signs so they don't overlap

I think there is a significant issue with the definitions of Minor Freestanding and Portable signs. The City Manager agreed with me on this last year, but it doesn't appear to have been addressed. I provide the definitions here:

"Sign, portable" means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; signs connected to A- or T-frames; menu and sandwich board signs; umbrellas, balloons, flags, or banners containing signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said sign is permanently affixed to the vehicle and said vehicle is licensed for movement on public streets.

"Sign, freestanding" means any sign supported by structures or supports that are anchored in the ground and that are independent from any other building or structure. Freestanding signs are of two types:

I ask you to consider the typical sign used in residential neighborhoods (political, open house, yard sale, etc.) that has one or two metal spikes that push into the ground to support the sign. Does such a spike "permanently attach" the sign to the ground? I think it would be quite a stretch to claim that it does. Is it "designed to be transported"? I think not. Therefore, the sign fits the definition of a portable sign.

On the other hand, do the spikes make the sign "anchored in the ground"? I would think that this is clearly the case. It's not sitting ON the ground and it IS anchored in place. I think it is clear that such a sign is also a freestanding sign. I sincerely doubt that the Code is intended to allow such a common sign to be treated as both a portable and a freestanding sign.

I usually try to recommend very specific ways to resolve the issues that I raise. I'll not be doing that on this issue as I think it is more complicated than I care to deal with. Regardless, I urge the Commission to have Staff come up with revised definitions for portable and for freestanding signs such that it is clear that the common sign I mentioned is very clearly only one of those two types. My opinion is that it should be considered to be exclusively a portable sign, but the Commission may prefer freestanding. In any case, a reasonable person should be able to read the Code and correctly determine which it is. That's not the case now.

Misunderstanding about what a flag is

In the Background for this Resolution, there appears to be a lack of understanding of what a flag is under NMC. Specifically: “Increase the total number of flags a person can fly from 1 to 2 to allow for the flying of a personal flag along with old glory, for example a state flag and old glory, or the flag of a person’s nation of birth and old glory” and “Add a section to allow for extra flags to be flown when Old Glory is flown at half-staff to allow for the celebration of the life of exceptional Americans”. I have to assume that this Commission understands that a flag need not have anything to do with “Old Glory”, a “state flag”, or any other display that we commonly think of as flags.

To be more specific, I’ll cite the definition of “flag” from the NMC:

“Flag” means fabric that is attached to a pole on one end only that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

Clearly that has no reference to the content of what is on the display (consistent with the Oregon and U.S. Constitution). For example, a flag could merely state “buy my hamburgers”, “Vote for Fred”, or any other advertising slogan.

I think such misinformation (even if merely implied) is counter-productive. A citizen reading the Background would very likely get the mistaken impression that a “flag” has to do with a political entity when that is not at all the case in NMC. I suggest that these statements should be removed from the Background.

To be very clear, I have no objection to the recommended change from allowing one flag to allowing two flags. My objection is that the Background will create further misunderstanding among the citizenry.

I appreciate the input from the Police Department regarding the regulations on flags. I suggest that without clarification, their recommendation further pushes the misunderstanding about what a flag is in NMC. I would suggest that if the Commission cares to address the issue about the US Flag Code, the statement should be specific about what is being covered as well as incorporating the entire Flag Code, not merely one specific part. I’d suggest something such as: “If the American Flag is included in a display, the US Flag Code shall be respected”.

No need to remove political events from the Code

I think that the Background reinforces a misunderstanding of the NMC and is therefore counter-productive. Specifically, item 4 states: “The sign code will respect peoples first amendment rights and be based on form and quantity not content”. That implies that the existing code does otherwise when, in fact, it does not. The only part of the Code that could be construed as being “political” is 15.435.100(B) which allows additional temporary signs prior to an election. As is appropriate, there is

nothing in that regulation that in any way restricts the content of the signs. It merely allows additional signs when citizens often want additional signs, specifically before an election.

The suggested revisions are more restrictive on political signs than is in the current NMC. Presently, I can have one portable sign at any time and two additional temporary signs in the 90-day period before a public election, for a total of three signs. As I read the recommended changes, they would only allow me to have two signs. I ask the Commission why it is appropriate to allow fewer signs prior to an election.

I think the real issue with the “election event” has to do with the uncertainty of when an election will occur, as arose last year. As you must be aware, a recall election occurred on January 18 of this year. Based on the NMC, the “election event” began on October 20, 2021, 90 days prior. The issue was that it wasn’t known whether or not there would be an election in January until signatures were submitted and counted in December. That created a “grey area” through the end of October, all of November, and the start of December where it may have been an “election event” but that wasn’t known at the time. I suggest that this is easily resolved.

I suggest changing 15.435.100(B) text from “any public election” to “any scheduled public election” to simply resolve this issue. I think it reasonable to conclude that the January 18 election wasn’t “scheduled” until the County Clerk declared a date for it. Until then, it would not be an “election event” under my recommended revision.

Code regarding signs for home occupations

The Background mentions: “to allow for a wide range of purposes like marketing home business”. I think it appropriate to address a conflict in NMC regarding Home Occupations with regard to signs.

I refer to 15.415.060(A) and (B) regarding Home occupation:

A. Signs shall comply with the standards of NMC 15.435.010 et seq.

B. There is no display that will indicate from the exterior that the building is used in whole or in part for any purpose other than a dwelling.

How could one have a sign advertising their home occupation, even if compliant with (A), that doesn’t violate (B)? Wouldn’t any such sign indicate that the building is used in part for something other than a dwelling? I have always taken (B) to prohibit any advertising of the presence of a home occupation business and have followed it carefully.

I suggest that the Commission request that Staff provide language that resolves this conflict.

Code regarding sign maintenance

I have observed that Newberg rarely addresses issues in the Sign Code, so I feel compelled to raise an issue that has been raised before and was disregarded. It has not been an issue because of lack of

enforcement, but I don't think that's an appropriate way to construct a Code. I refer to NMC 15.435.085(F) which reads:

"F. Sign Maintenance. All electronic message centers shall be kept in a good state of repair. Any burned out lights or LEDs shall be replaced as soon as possible."

I suggest a very simple change of "possible" to "practical". Clearly the City doesn't really want to require that businesses with EMCs employ all "possible" measures to detect and to replace burned out lights or LEDs. That would require monitoring 24x7, replacement parts on hand, and access to someone who can immediately replace the failed item. I do hope that this Commission and the City in general don't want that requirement. I'm suggesting a very simple change that may avoid future problems if this part of the Code is enforced.

Inconsistency with 15.435.110(D)

Lastly, I'll raise an issue that I think needs to be resolved. NMC 15.435.110(D) allows two portable signs per street frontage under some circumstances. 15.435.090(A) states: "A. Number. Not more than one portable sign may be located on any one street frontage, except temporary signs allowed per NMC 15.435.100." That needs to be updated to reflect 15.435.110(D), with consideration to other changes that the Commission may make. At present, 090(A) is incorrect in that two signs are allowed by 110(D). Under the recommended changes, it is not clear if 090(A) includes the two that are allowed in the ROW by 110(D) or are in addition to those two. The lack of clarity should be resolved.

In closing, I'll summarize my recommendations:

- 1) In 15.435.110(C)(6) replace "the business being advertised" with "the business being advertised and the business where the sign is located" or replace the sentence entirely.
- 2) Consider carefully if there is any point to revising the Code if there is no willingness to enforce it by Code Enforcement.
- 3) Recommend that Staff change the web site to be consistent with NMC. Suggested language is above.
- 4) Request that Staff provide updated definitions for Freestanding Signs and for Portable Signs.
- 5) Remove the text in the Background that mischaracterizes what a "flag" is in NMC
- 6) If the Commission wishes to add a reference to the US Flag Code, use something more appropriate such as "If the American Flag is included in a display, the US Flag Code shall be respected".
- 7) Change 15.435.100(B) text from "any public election" to "any scheduled public election.
- 8) Request that Staff provide language to clarify whether or not signs are allowed to advertise a Home Occupation.
- 9) Change "possible" to "practical" in 15.435.085(F).
- 10) Correct 15.435.090(A) to be consistent with 15.435.110(D) and to be clear whether it is in addition to (D) or constructs a total limit.

I thank the Planning Commission for consideration of my comments.

Robert Soppe

rs@CompProbSolv.com