



# MEMORANDUM

**Date:** 12/8/14

**To:** Newberg Planning Commission

**From:** Steve Olson, Interim Planning & Building Director

**RE:** Additional public comments  
DCA-14-001 – Development Code Amendment re Portable Signs

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We received some additional public comments today about the proposed development code amendment for temporary & portable signs. The comments are attached.

Please accept the following as public testimony for the Development Code Amendment regarding temporary and portable signs at the December 11, 2014 Planning Commission meeting.

My comments follow the agenda in order which should make the references easier to identify.

Umbrellas: I think that it would be ill-advised to exclude umbrellas used in conjunction with outdoor seating from the sign code. If there are reasons to limit the size and quantity of signs in general (and it has been accepted that there are) then it shouldn't matter if the sign is flat or if it is shaped as an umbrella. The visual impact will be similar.

It was suggested by a Commissioner that if there was a problem with an umbrella, he expected that the Code Enforcement Officer could work it out with the owner. I think this is highly unlikely. The business owner is unlikely to change or remove an umbrella that has already been purchased and installed and is in compliance with the NDC.

Portable signs attached to other than trees and utility poles: I would not have considered the support for a street light to be termed "utility pole" but if that is a generally accepted term for it then my concern is unwarranted.

Consideration should be given as to why there was a prohibition on attaching a portable sign to a utility pole. Would not the same logic apply to attaching it to a pole that supports a sign? If so, then 15.435.090C should be revised to include a sign pole. For example, change "No portable sign shall be attached to a tree or utility pole" to "No portable sign shall be attached to a tree, to a utility pole, or to any other permanent structure" or to "No portable sign shall be attached to a tree, to a utility pole, or to any other permanent pole".

"Permanently affixed": if the Planning Commission has the same interpretation of this term as Staff has, then it needn't be clarified further.

"legal holiday": I think that it was an excellent suggestion by a Commissioner that the holidays be enumerated. I looked at the listing of Federal Holidays at OPM.gov and found this list:

New Year's Day

Birthday of Martin Luther King, Jr.

Washington's Birthday

Memorial Day

Independence Day

Labor Day

Columbus Day

Veterans Day

Thanksgiving Day

Christmas Day

Do these days match with the intent of 15.435.100D? The following are days where flag flying may be much more appropriate and typical than some of the days listed above:

Presidents' Day

Peace Officer's Memorial Day

Armed Forces Day

Flag Day

I suggest that the specific days should be listed and that the Commission should agree on exactly which days are appropriate.

Sign permit; maximum size: I suggest that you ask Staff how large of a sign could be permitted under the proposed rules for some of the larger lots in town, such as the large car dealers or Fred Meyer's. I suspect that they could be fairly large.

I don't think that it is clear that the 40 square foot limit (15.435.090B2) still applies under the sign permit program. The proposed 15.435.105C2 should include either an explicit size limit or a statement such as: "Signs under the sign permit program may not exceed the size limitations of 15.435.090B and 15.435.100".

Free speech: I raised the issue regarding the sign criteria based on the report of the committee. They recommended that those five items would be the criteria, not the coordination of them. I have no concern about free speech issues with the proposed text (15.435.105C3).

"Clear area": Staff mentions that the standard "could be confused with the 'clear area' definition related to aviation". I think the use of the word "confused" is incorrect here. The online version of the NDC explicitly states that this IS the definition! Browse to 15.435.110B3 and point at the highlighted "clear area" and it will pop up the following text:

"Clear area" means a land area required to be clear of obstructions per FAA regulations for airports and airspace.

This is the definition also found at 15.05.030.

I believe that Staff's interpretation of "clear area" illustrates very well that it IS unclear. I must repeat my concern that this allows a sign to entirely block one sidewalk at a corner as long as it allows the clear area on the other sidewalk. I don't believe that this is appropriate or intended.

“Nonbusiness hours”: Staff raises the question of whether not this needs to be clarified. I think that it certainly needs clarification regarding which business’ hours are being referenced. Is it the business where the sign is located or the business that is being advertised on the sign?

Property owner granting permission: While I think that the language “shall grant permission” is clear when taken in full context, clarification would be very simple and desirable. As long as you are revising the Code, the opportunity should be taken to make it more understandable. A simple change would be to change “shall grant permission” in 15.435.110B7 “has granted permission”. Staff has provided a reasonable alternative (subject to my comments below).

I believe that there is a very significant problem in that Code that I had not noticed before. As it stands now, the Code reads:

The property owner abutting the right-of-way shall grant permission for any sign, other than a public sign, that is placed within that right-of-way fronting the property owner’s lot.

The problem arises when one looks up how the NDC defines “public sign”:

“Sign, public” means any sign that is placed within public right-of-way by or under direction of a governmental agency.

By definition, ANY sign placed in the public right-of-way is a “public sign”. Such a sign would NOT require the property owner’s permission. I suspect that what was intended in 15.435.110B7 was to exempt only the signs placed under the direction of a government agency.

Permission for signs outside C-3 and C-4 zones: There are numerous issues here that are significant enough that they really do need to be addressed actively. I have yet to hear any argument or opinion that property owners outside of C-3 and C-4 zones should not have the same right as others to prohibit a sign in front of their property. Staff is correct that changing “6” to “7” is an effective way to resolve this. I would suggest that it would be more appropriate to change the “6” to “8” unless there is a good argument to exclude 8:

If more than one sign is located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (E) of this section.

I would expect that this rule is just as appropriate in the non-C-3/4 zones as it is within them.

If it is agreed that all 8 standards should be met, a better solution may be to change 15.435.110C2 to: “The standards of subsection (B) of this section are met”. With this change, if subsection (B) is changed in the future, C2 doesn’t have to be revised.

Garage Sale, etc. signs: I believe that my comment here was misinterpreted based on Staff’s response. I certainly recognize that these signs cannot be treated any differently than other similar signs. I was using them as examples of signs that are prohibited by the NDC but are very commonly observed. I think that the Commission needs to consider carefully if prohibiting them is appropriate.

As I mentioned in my previous testimony, I think it would be valuable and appropriate for the Commission to consider each of pictures that I provided of non-conforming (in my interpretation) signs. Does the Commission agree that they should all be prohibited as shown? If not, then the appropriate Code changes should be considered.

I recently took the following pictures of more signs that I believe violate 15.435.110C (signs in right-of-way outside C-3/4 zones) as an illustration. I am not arguing here whether or not these signs should be allowed. I am only asking that the Commission consider the implications of our current Code.



Sign forfeiting: I agree that allowing the general public to confiscate signs would be inappropriate. I think that Staff's proposed language is a significant improvement. I would suggest, though, that the Commission consider allowing the owner of the property abutting the right-of-way to confiscate the sign. There could be a requirement to hold it for a short period of time (e.g. 3-5 days) to allow the owner to retrieve it.

Consider how the present regulations work. If I own property downtown and I see someone putting a sign on the sidewalk in front of it, I have no legal ability to remove it. I have to contact the City (during the limited business hours) and have the Code Enforcement officer handle it. It seems far more effective and efficient to allow me to remove the sign. After all, my approval was required for its placement. I should be in a good position to claim that the sign is unauthorized.

Thank you again for your consideration of these comments.

Robert Soppe

12/8/2014