

**AGENDA REQUEST FORM**

**FOR:** Council Meeting of June 7, 2022

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**FROM:** City Attorney Kit Williams

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

AN ORDINANCE TO AMEND § 174.02 PERMIT APPLICATION/ISSUANCE OF THE *UNIFIED DEVELOPMENT CODE* BY DELETING SUBSECTION 8 FROM SUBSECTION (A) APPLICATION

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**APPROVED FOR AGENDA:**



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City Attorney Kit Williams  
Approved

May 10, 2022  
Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Mayor Jordan**  
**City Council**

CC: **Susan Norton**, Chief of Staff  
**Jonathan Curth**, Development Services Director  
**Jesse Masters**, Development Review Manager

FROM: **Kit Williams**, City Attorney

DATE: **May 10, 2022**

RE: **Amending §174.02 (A) Permit Application/Issuance**

Jesse Masters recently brought to my attention an application for a sign permit issue. The codified Sign Ordinance (**Chapter 174** of the *U.D.C.*) has had to be amended and modified several times as the Courts have continued to present new tests and new requirements for sign regulations to meet in order to remain constitutional. I am still reviewing and studying an important sign ordinance case recently decided by the United States Supreme Court. This decision was much more favorable to cities than I had feared, so I do not think the City will need as many major changes to Fayetteville's Sign Chapter for it to remain constitutional and enforceable.

However, I would like to proceed to fix a fairly minor, but important, subsection of what is required to obtain a valid sign permit. The first seven requirements **§174.02 (A) Permit Applications/Issuance** are reasonable and constitutional. However, the 8<sup>th</sup> and final requirement should be repealed because it could be argued that it grants too much discretion to City officials to refuse to grant the permit.

The United States Supreme Court has made it clear that a government official charged with issuing a sign permit may not have almost any discretion in the decision whether or not to issue a sign permit under evolving constitutional analysis of the First Amendment. This subsection appears to grant too much discretion to safety remain as part of the approval part of the sign application. For

example, this section states that “the applicant must show full compliance with all applicable code provisions, including necessary approvals by responsible bodies such as the Planning Commission. Some of the code provisions referred to are the “Commercial Design Standards (§166.14), Design Overlay District (§161.21), Business License...” First, I should note that those are incorrect code section references, but more importantly all such design standards in our code allow much discretion to the Planning Department or Planning Commission in their application. Such governmental discretion is not allowed pursuant to First Amendment Court decisions.

The other seven requirements appear proper and constitutional to me. The City may regulate the size, number and location of signs, require safe construction and proper electrical installation if desired. What is prohibited would be to allow a governmental official or body to have the discretion to approve or disapprove a requested sign for viewpoint discrimination or vague aesthetic considerations. Thus, we need to repeal §174.02 (A)(8) to remove potential unfettered discretion when permitting a new sign. This constitutional requirement of clearer test to approve or deny a sign application is similar to my concern of the too vague term “rude” when restricting comments by the public during City Council Meetings.

I have discussed this issue with Development Services Director Jonathan Curth and Development Review Manager Jesse Masters who have agreed that this requirement should be removed to better preserve the remainder of our regulations. The eighth application factor is not really needed, nor has the City used it to deny a sign permit in the past. Although this requirement has caused no prior harm, it should be repealed to protect our Sign Chapter and better conform to the current Court decreed requirements for sign regulations.

After proper study of the United States Supreme Court’s decision in the sign ordinance case, I will likely need to request a few further amendments to bring our sign ordinance into compliance with the latest Supreme Court decision. Some of you may remember when I had to request that the City Council amend our Solicitation/Panhandler regulations because of an earlier U.S. Supreme Court decision in a sign ordinance case.

Rogers resisted changing their regulations, so persons asked me why I thought we had to change. After Rogers was successfully sued in Federal Court about their regulations, it was apparent why I sought the City Council’s help to prevent litigation against Fayetteville. This is another time I am seeking your help to avoid possible future litigation by maintaining our Sign Ordinance’s constitutional compliance.

- (B) *illuminated signs.* All illuminated signs shall, in addition, be subject to the provisions of the electrical code, and the permit fees required thereunder.
- (C) *Fees.* Every applicant, before being granted a permit hereunder, shall pay to the Zoning and Development Administrator's Office the permit fee set forth in Chapter 159.
- (D) *Maintenance of Premises.* All freestanding signs and the premises surrounding the same shall be maintained by the owner thereof in a clean, sanitary, and inoffensive condition, and free and clear of all obnoxious substances, rubbish and weeds.  
(Code 1965, §§17B-3(a), (c), (e), 4(b); Ord. No. 1893, 12-19-72; Ord. No. 2198, 2-17-76; Ord. No. 2790, 1-18-82; Code 1991, §§158.05, 158.20, 158.22, 158.24, 158.38; Ord. No. 3925, §4, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4972, 1-16-07)

**174.02 Permit Application/Issuance**

- (A) *Application.* Applications for initial sign permits shall be made upon forms provided by the Zoning and Development Administrator and shall contain or have attached thereto the following information:
  - (1) *Applicant Identification.* Name, address and telephone number of the applicant.
  - (2) *Location.* Location of building, structure, or lot to which or upon which the sign or other advertising structure is to be attached or erected.

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- (3) *Position.* Position of the sign or other advertising structure in relation to nearby buildings or structures.
- (4) *Blueprints/Drawings.* Two (2) blueprints or ink drawings of the plans and specifications and method of construction and attachment to the building or in the ground.
- (5) *Person Erecting Structure.* Name of person, firm, corporation, or association erecting structure.
- (6) *Consent of Owner.* Written consent of the owner of the building, structure, or land to which or on which the structure is to be erected.
- (7) *Electrical Permit.* Any electrical permit required and issued for said sign. Application requesting electrical permit for proposed sign must accompany sign application.
- (8) *Full Compliance with Applicable Code Provisions.* If the proposed sign is subject to the provisions of the Commercial Design Standards (§166.14), Design Overlay District (§161.21), Business License or other code provisions, the applicant must show full compliance with all applicable code provisions, including necessary approvals by responsible bodies such as the Planning Commission.

incorrect site →

to be removed ←

- (B) *Issuance of Sign Permit.* It shall be the duty of the Zoning and Development Administrator or designee, upon the filing of an application for an erection permit, to examine such plans and specifications and other data and the premises upon which it is proposed to erect the sign or other advertising structure, and if it shall appear that the proposed structure and sign are in full