

1. Requested Motion:

Meeting Date: June 21, 2010

- Provide policy direction to staff and the LPA regarding revision to LDC Chapter 30 (signs) as follows:
- (1) Approach the establishment of limits upon the total number of signs and the total maximum area of signs conservatively when drawing analogies between the number of signs and maximum area of signs currently allowed by LDC Chapter 30 and the mechanics of the draft revisions; and
 - (2) Explore, and include options in the draft revisions for implementing, all possible approaches to requiring nonconforming signs to come into compliance.

Why the action is necessary:

Overhaul of LDC Chapter 30 for legal sufficiency implicates policy decisions where new mechanisms will not be clearly analogous to current mechanisms.

What the action accomplishes:

Allows Council to provide general direction to staff and LPA to facilitate and expedite the hearing process.

2. Agenda:

- Consent
 Administrative

3. Requirement/Purpose:

- Resolution
 Ordinance
 Other

4. Submitter of Information:

- Council
 Town Staff
 Town Attorney

5. Background: The Town's sign ordinance, codified as Land Development Code (LDC) Chapter 30, was originally adopted to replace the Lee County sign ordinance in September 1999. Several amendments were made to LDC Chapter 30 since that time. The efforts of dedicated members of the community over the years of 1997-1999 in encapsulating local aesthetic ideals into the requirements of the sign ordinance were herculean. Unfortunately, during the initial period of gently encouraging voluntary compliance for existing nonconforming signs, staff and the Town Attorney were made aware of gaping legal problems with the ordinance's mechanics. Repairing these issues will involve, at times, the exercise of some policy discretion in making the limits applied under the new mechanics as similar as possible to the aesthetic ideals embodied in the current ordinance. The attached memo explains one example of such a situation. The memo also generally describes four basic mechanisms by which existing signs may in some circumstances be able to be required to be removed or replaced.

6. Alternative Action: For (1), generally direct staff and the LPA to be more open-handed with limits to the maximum number and area of signs; for (2), direct staff and the LPA not to consider one or more of the options.

7. Management Recommendations:

Provide policy direction to staff and the LPA as indicated in the requested motion above.

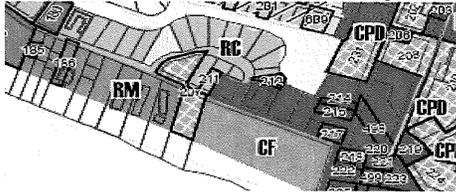
8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved Denied Deferred Other

**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Mayor and Town Council

Through: Terry Stewart, Town Manager

CC: Jim Humphrey, Town Attorney

From: Frank Shockey, Community Development Director

Date: June 14, 2010

RE: Policy direction to LPA and staff for sign ordinance revisions

The draft of sign ordinance revisions prepared by staff attempts not to alter the policy direction of the current sign ordinance with regard to sign height and the limits to sign area. Changes to the mechanism by which the policy is carried out are, at times, inextricably bound up with the limits to sign area, and the effective limit on the number of signs that could be put on a given parcel of land. Instead of regulating the number and size of "identification signs" and "political signs" and "business information signs," for example, the new draft uses a typology that groups signs according to the time, place, and manner in which they are displayed.

Staff seeks general direction for staff and the LPA in considering how to make the outcome of the changes in the draft ordinance match the policy behind the current ordinance. Would Council prefer that staff and the LPA err on the side of greater restriction (i.e. fewer signs, less sign face area) or lesser restriction (i.e. more signs, more sign face area) when there is no clear analogy between the signs allowed by the current ordinance and the signs that would be allowed under the draft ordinance?

Fixing the problems with the mechanisms in the current ordinance has required the removal of many improper exceptions that allowed signs displaying particular content in situations when a sign with different content would be

prohibited. These signs were presumably allowed because past LPAs and Town Councils felt that it was important to allow property owners to achieve the purposes for which such signs would be displayed. To make the outcome as similar as possible to the outcome that would result from applying the limitations of the current ordinance, the height limit of five feet for free-standing signs is maintained in the new draft, and the area limits are as close as possible to the same area limits when some analogy is evident.

Steering the appropriately moderate course between allowing more or larger signs than the current ordinance, and limiting signs to smaller sizes and/or lesser numbers than the current ordinance, is unavoidably a policy function. The nature of the decisions to be made will be tied in specific ways to parts of the mechanism of the new draft. For example, in the draft revisions, general limitations on the total area (“each parcel of land is allowed XX square feet of sign area”) and number of signs (“each parcel of land is allowed a total of XX signs”) apply to temporary signs in commercial areas. The current ordinance allows several different types of temporary signs, each displaying particular content, on each frontage. In the case of this example, it is difficult to guess whether Council would prefer to allow only one 16-square-foot temporary sign and presume that a property owner who wants to display more than one those types of content (or any other content) will decide how to prioritize, or would prefer to allow more than one temporary sign without any limitation based on the content. If we simply replace the multiple different 16-square-foot signs allowed as defined based on content by allowing the same number of 16-square-foot signs free of any content restriction (or by allowing one larger sign), and do likewise in every similar situation, things can get way out of control very quickly. This is the crux of the matter. We cannot use content as the basis for control except for being more restrictive as to commercial messages than for noncommercial messages. We must use time, place, and manner as the basis for control, and doing so will require policy decisions like the one described above.

Staff and the LPA can go through the draft revisions, identifying which content-free mechanisms replace the content-based allowances of the current ordinance, and try to make the limits conform to what would be allowed in the current ordinance, but the new mechanisms are not always obviously analogous to the old and there is no evident way to make them so. At the least, however, staff and the LPA need some general direction as to which side of the slippery slope they should choose when making the draft revisions conform exactly to the limitations of the current ordinance is impossible. Staff is suggesting that Council direction be for staff and the LPA to be conservative about these limits.

Then, at public hearing, Council will be free to consider whether to be more open-handed.

Following Council direction at the June 7 meeting, staff has explored several options for mechanisms to require those existing signs that do not conform to the requirements of the current ordinance, and probably will not conform to the requirements of any revisions, to be brought into compliance. The primary types of mechanisms are listed below, with very brief discussion:

- (1) **Amortization.** The notion of amortization is that the owner of a nonconformity is given a period of time during which they are on notice of a change in the rules that will require the removal of the nonconformity, in order to recoup the value of the nonconformity. What that value is and how long it takes to recoup the value is almost inevitably a subject of controversy. Doing amortization properly is a complicated problem, made more complicated by (recent) state statutes. If Council desires, staff and legal counsel can explore with the LPA the possible applications of amortization in the Town's situation.
- (2) **Destruction/voluntary removal.** If a nonconformity is destroyed, badly damaged, or voluntarily removed, it can be required to be replaced only in compliance. In other words, when a hurricane blows away signs that do not comply, their replacements can be required to comply. This would require taking a strong stance during the time of woe following that hurricane, which may be difficult. A previous Council amended LDC Chapter 30 after a hurricane to allow nonconforming signs that were damaged and destroyed to be replaced without coming into compliance. Also, an appropriate standard for the amount of damage to trigger this requirement would have to be set, and a mechanism for measuring it created.
- (3) **Abandonment.** Signs that are not serving their purpose anymore and have been left in disuse by overt, intentional actions of their owners could be considered abandoned and be required to be removed and only replaced in compliance.
- (4) **Nuisance.** Signs that are inherently dangerous to the public health, safety, and welfare because, for example, they are falling apart and their debris could injure passers-by, or because they obstruct traffic control devices, could be declared nuisances and be required to be removed.

Some combination of these strategies would be the most appropriate method of doing away with nonconforming signs, but the exact combination is a policy decision. Although amortization may be the only method that could reach to absolutely every nonconforming sign (in the absence of a major hurricane), Council should consider carefully the risk involved. At Council direction, staff, the LPA, and legal counsel can prepare language for Council to consider in implementing all or a combination of these strategies. Staff is suggesting the Council direct staff and the LPA to explore the merits of all of these strategies (and any others available) and include options for Council consideration in the draft revisions. Then, at public hearing, Council can consider which options to include.