



# STAFF REPORT

## Planning Commission

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### ORDINANCE #2432

**PC Date:** October 4, 2022

**Case Planner:** Stacy Wasinger

**CC Date:** November 21, 2022

**Location:** City wide

**Applicant:** City of Commerce City

**Address:** 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022

### Case Summary

**Request:** Commerce City is requesting to replace Article VIII and amend Article XI of the Land Development Code (LDC) to revise the sign code regulations to better meet the needs of the City.

**Project Description:** The proposed ordinance modernizes and updates the terminology and regulation of Article VIII for compliance with content neutrality. Definitions have been updated and portions of the regulations re-organized, as well as modernizing language to address changes in technology. No major change to sign allowances or types has been proposed with this update.

**Staff Recommendation:** Approval

**Attachments for Review:** *Checked if applicable to case.*

- Existing Sign Regulations (Article VIII)
- Annotated Outline of Proposed Changes
- Proposed Article VIII and Article XI

### Background Information

The Land Development Code (LDC) (Ordinance #1798) was adopted by City Council in January 2009 and went into effect on March 1, 2009. This Land Development Code was a comprehensive update to the Commerce City Zoning Ordinance, which included a wide variety of topics dealing with development and land use, such as application types, zoning districts, use standards, subdivision procedures, design standards and signs.

Since 2010, the Planning Commission and City Council have reviewed and approved a variety of updates to the Land Development Code. Some of these updates are topic specific (floodplain, marijuana, and oil and gas) while others have been general or “housekeeping” in nature, which work to advance the goals and desires of the community. Article VIII, which encompasses sign regulations, has only had minor updates since initial adoption of the LDC.

This particular amendment falls within a specific topic: Revising the sign regulations to meet criteria established by recent Supreme Court decisions, including *Reed v. Town of Gilbert* (2015) and *City of Austin v. Reagan National Advertising of Austin* (2022). As part of this update, portions of the sign regulations require reorganization in order to be clearly content neutral. Also included in the update are limited updates to definitions, ministerial changes, and modernizations.

## Request and Analysis

In coordination with the City Attorney’s Office, Community Development has engaged consultants Gerald E. Dahl, Murray Dahl Beery & Renaud LLP and Martin Landers, Plan Tools LLC, to provide updated sign code regulations. Due to the nature of changes and extent required to update the code to content neutrality, the entirety of Article VIII is proposed to be replaced.

The proposed structure of Article VIII includes the following Divisions:

|            | Existing                        | Proposed                      |
|------------|---------------------------------|-------------------------------|
| Division 1 | General Provisions              | General Provisions            |
| Division 2 | Signs Allowed Without A Permit  | Administration and Procedures |
| Division 3 | Signs Allowed With A Permit     | General Sign Requirements     |
| Division 4 | Standards Related To Sign Types | Permanent Sign Standards      |
| Division 5 | Standards Related To Use        | Temporary Sign Standards      |
| Division 6 | Miscellaneous Provisions        | N/A                           |

The annotated outline provided in the consultant information attached contains additional detail on the overall changes made. Due to the extensive restructuring, a redline of the existing code and proposed changes is not feasible but the annotated outline describes the changes. This outline includes the section, title, and a brief description of changes (see Figure 1). A redline version of Article XI Definitions is provided to show those proposed updates. The remainder of Article XI is not proposed to be revised.

*Figure 1: Excerpt from Annotated Outline*

| DIVISION/SECTION    | TITLE/SUBJECT             | RECOMMENDATION/COMMENT   |
|---------------------|---------------------------|--|
| <b>Article VIII</b> | <b>Sign Regulations</b>   |  |
| <b>Division 1</b>   | <b>General Provisions</b> | Create and/or update sections on the purpose, intent, application, and enforcement of the sign regulations. Include non-conformities and prohibitions.   |
| Sec. 21-8100        | Purpose                   | Add a new Purpose section. Create new purpose statements as needed for comprehensiveness and <b>Reed</b> compliance, i.e., the purpose subsection should provide a balanced and fair legal framework for the design, construction, and placement of signs.   |
| Sec. 21-8110        | Intent                    | Reformat current Sec. 21-8100 Intent, creating a list of numbered intent statements. Review each statement and sort as a purpose or intent statement as applicable, moving any purpose statements to new Sec. 21-8100 Purpose above. Modify or create new intent statements as needed for comprehensiveness and <b>Reed</b> compliance, i.e., the intent subsection should provide for the proper control of signs in a manner consistent with the First Amendment guarantee of free speech and the advancement of compelling governmental interests. Include additional intent statements to support regulation of off-premise signs consistent with 2022 <b>City of Austin</b> decision. |

General procedures and permit requirements, as well as applicability, have remained primarily the same under the revised Article VIII proposal. Minor changes or updates have been made to certain sections for ministerial conformance. For instance, proposed Sec. 21-8150 concerning enforcement has been streamlined to be in conformance with other city code procedures and LDC requirements. Non-conforming sign requirements in Sec. 21-8130 are updated for consistent with other non-conforming regulations in the LDC. Minor changes have been made to the Comprehensive Sign Program (LDC Sec. 21-8220 of the proposed Article VIII) and Minor Modifications (LDC Sec. 21-8230 of the proposed Article VIII) to be consistent with minor modifications overall, including to allow Director approval of minor changes within the approval criteria set forth. Revised Sign Installation (Sec. 21-8340) and Sign Maintenance (Sec. 21-8350) sections reorganize and clarify existing code provisions. These updates make this portion of the code more use-friendly and consistent with other portions of the LDC.

Updated sign measurement figures have been included in Sec. 21-8300. These updates clarify and streamline measurement of sign types. Also included are measurements for sign types, such as canopy and projecting signs, that are not present or detailed in existing regulations. The Sign Design standards in Sec. 21-8310 have been primarily moved and reorganized from other sections of Article VIII to one location. This will aid in user interface and clarity.

No major changes to sign allowances or types have been proposed, but the structure and organization of the regulations have been revised. For instance, previous code provided allowances for real estate signs (LDC Sec. 21-8220). This type of regulation is content related. These types of signs will still be permitted under the revised regulations, but have been reorganized into temporary signage (LDC Sec. 21 Division 5 of the proposed Article VIII) to remove content related regulations. These regulations will permit signs when property is under development or for sale, with the same general allowances, but are classified differently. Similar changes have been made to sign types such as Address Signs, Ideological Signs, etc.

Each sign type in the proposed Article VIII updates includes a chart showing the provision of signage by use type. This distinction allows signage to be regulated by the needs of different use types. For instance, freestanding signs (LDC Sec. 21-8425 of the proposed Article VIII), previously called monument signs, have different allowances for residential uses (Table VIII-6a, Figure 2 below), commercial/industrial uses (Table VIII-6b), and institutional uses (Table VIII-6c). The current sign regulations also separate out allowances by use or zoning district. The revised tables are easy to read and content neutral for each sign type. This section does also include updated regulations that allow for increased height and sign area in locations adjacent to I-76 and I-270 or with provisions for solar power. Other provisions and regulations in this section are primarily the same but have been reorganized.

Figure 2: Example Use Chart for Residential Freestanding Signs

- (2) *Residential use standards.* In addition to the general standards in subsection (1) above, freestanding signs associated with residential uses are subject to the standards in Table VIII-6 a. below.

Table VIII-6 a. Freestanding Signs – Residential Use Standards

| Standard        | Subdivisions   | Multi-family   | Mobile Home Park   |
|-----------------|--|--|--|
| Permitted       | Yes  | Yes  | Yes  |
| Permit Required | Yes  | Yes  | Yes  |
| Max. Number     | 2 signs per major entrance/street frontage if used at either side of ROW; one if on median or island in center of entry street | 2 signs per major entrance/street frontage if used at either side of ROW; one if on median or island in center of entry street | 2 signs per major entrance/street frontage if used at either side of ROW; one if on median or island in center of entry street |
| Max. Area       | 50 sq. ft./sign  | 50 sq. ft./street frontage   | 50 sq. ft./street frontage   |
| Max. Height     | 6 ft.  | 6 ft.  | 6 ft.  |
| Min. Setback    | 10 feet, unless part of island median. Min. 5 ft. from curb or sidewalk.   | 10 feet, unless part of island median. Min. 5 ft. from curb or sidewalk.   | 10 feet, unless part of island median. Min. 5 ft. from curb or sidewalk.   |
| Illumination    | Internally or externally lit   | Internally or externally lit   | Internally or externally lit   |

In addition to the removal of content related provisions, some minor modernizations and updates have been included in this proposed Article VIII. For instance, additional regulation to electronic message boards (LDC Sec. 21-8330 of the proposed Article VIII) have been included. The existing regulation for these types of signage has not been updated since 2010 and technology has rapidly changed. These regulations include illumination, message change types, and maintenance. The modernization and updates of this variety are minor and intended to make the sign regulations more user-friendly.

Finally, updated to Article XI, Definitions, are proposed in keeping with the revised regulations. Definitions provide clarity to signage types and allowances. Any definitions proposed with this update are specifically intended to apply to signage and sign regulations. For instance, illumination definitions geared toward signage and electronic message signs have been revised.

Figure 3: Example Definition Update

- (222) **Illumination, External** shall mean lighting by means of a light source which is directed at a reflecting surface in such a way as to illuminate the sign from the front, or a light source which is primarily designed to illuminate the entire building facade upon which a sign is displayed. External illumination does not include lighting which is primarily used for purposes other than sign illumination; e.g., parking lot lights, or lights inside a building which may silhouette a window sign but which are primarily installed to serve as inside illumination.
- (223) **Illumination, Internal** shall mean lighting by means of a light source which is within a sign having a translucent background, silhouetting opaque letters or designs, or which is within letters or designs which are themselves made of a translucent material.

The draft sign regulations were circulated and reviewed by staff and members of the Development Review Team prior to previous study sessions held with Planning Commission on July 19, 2022 and City Council on September 26, 2022. Questions regarding legal non-conforming signs, temporary signs, and freestanding signs were discussed and addressed at the study sessions. Staff is supportive of the updated regulations. Per study session feedback, questions about temporary signage and non-conforming language have been reviewed and addressed by the consultant as needed.

## Staff Review and Recommendation

Based upon the analysis above, Staff recommends that the Planning Commission forward the requested amendments to the LDC to the City Council with a recommendation of approval.

## \*Recommended Motion\*

### **To recommend approval:**

I move that the Planning Commission recommend that City Council approve the proposed ordinance #2432 amending the Commerce City Land Development Code.

## Alternative Motions

### **To recommend approval subject to condition(s):**

I move that the Planning Commission recommend that City Council approve Ordinance #2432 subject to the following modifications:

*Insert proposed modifications*

### **To recommend denial:**

I move that the Planning Commission recommend that City Council not approve Ordinance #2432 for the following reasons

*List the reasons not met*