

CITY OF SHOREWOOD
CITY COUNCIL WORK SESSION MEETING
MONDAY, FEBRUARY 14, 2022

5755 COUNTRY CLUB ROAD
COUNCIL CHAMBERS
6:00 P.M.

MINUTES

1. CONVENE CITY COUNCIL WORK SESSION MEETING (Held via interactive technology/videoconferencing)

Mayor Labadie called the meeting to order at 6:01 P.M.

A. Roll Call

Present. Mayor Labadie; Councilmembers Johnson, Siakel, Gorham, and Callies; City Attorney Shepherd; City Administrator Lerud; Planning Director Darling; and Director of Public Works Brown;

Absent: None

B. Review Agenda

Siakel moved, Gorham seconded, approving the agenda as presented.

Roll Call Vote: Johnson, Callies, Siakel, Gorham and Labadie voted Aye. **Motion passed 5/0.**

2. SIGN ORDINANCE

Planning Director Darling stated that staff was directed to provide a review of any necessary changes to the Zoning Ordinance related to election signage at the January 24, 2022 meeting. She noted that included in the packet was language from the State statute as well as the Shorewood City Code. She explained that what staff is hoping to accomplish is to strip down the proposal just to the most important issues to minimize any impact that changes to the signage may cause. She stated that staff would like to move the ordinance towards content neutrality and have a clear time period for enforcement of election signage and add a substitution clause to allow more opportunity for non-commercial speech signs outside of the election time period. She reviewed the improvements that staff are proposing as outlined in the staff report. She noted that a new public hearing would need to be held by the Planning Commission before any changes could be adopted. She stated that in order for this to be in place prior to the election, the ordinance would need to be approved and published prior to May 1, 2022.

Councilmember Callies stated that she had already spoken with Planning Director Darling regarding some of her questions. She stated that overall, she agrees with what is being proposed and thinks it is helpful to have this meeting prior to the public hearing so the Council can try to winnow down what is being considered by the Planning Commission. She noted that in her opinion, a distance of ten feet from the street surface is too much for many neighborhoods in the City. She stated that she would like to see the City stick with the five foot distance that is located elsewhere in the ordinance for non-commercial speech signs. She stated that she understands why the City wants to have consistency for all types of elections, however, she thinks it is too drastic of a change from the current language. She reviewed the time period between the primary and general election for the school board and noted that 46 days for the other type of public

CITY OF SHOREWOOD WORK SESSION COUNCIL MEETING MINUTES

FEBRUARY 14, 2022

Page 2 of 6

elections is not really keeping it the same for the type of elections because the time period between the primary and general election for some, is longer than that time period. She stated that she would like to keep it at one-hundred days as it is in the current ordinance. She asked where signs like 'Happy Birthday' or 'Black Lives Matter' would fit into the ordinance and why the City was doing a substitution clause.

Planning Director Darling stated that regarding the setback being too large, the City has the ability to alter that particular setback. She stated that she thinks five feet may be too close in some situations and gave the example of situation where there are improved shoulders adjacent to the paved roadway, unless they alter the setback to be from the improved roadway which takes into account shoulders. She stated that regarding the time period for signage being one-hundred days, as long as it is clearly written and can be enforced so it does not allow one-hundred days before every primary and every election, she thinks that would be acceptable. She explained the substitution clause which allows any sign that is allowed in any district to be substituted, so you can substitute out the non-commercial speech message for whatever the allowed message is on the permitted or listed sign. She gave the example of address signage as one that is allowed at two square feet, so most of the 'Black Lives Matter' or "Blue Lives Matter' signs would fit into that square footage allowance, so they would be allowed to have that on the property as a substitute for the address sign.

City Attorney Shepherd gave a brief explanation of the substitution clause and noted that it is a mechanism that helps the City address some of the issues that arise in the sign ordinance especially in light of recent case law. He referenced the most recent Supreme Court case of Reed v. Gilbert and noted that what needs to be considered is that there can be no content based regulation but the City can have reasonable time, place, and manner restrictions, such as setback from the road. He stated that there are things in the Code that still need to be worked on to ensure that the City is complying with the content neutrality issue.

Councilmember Callies stated that she finds the substitution clause a bit confusing, not because of the way Planning Director Darling has written it, but because it is a confusing principle. She noted that the City could be put at risk if it did not have the ability to substitute this type of sign and understands that it is a good thing to have and feels it is of benefit to citizens.

Councilmember Gorham stated that he was also confused by the substitution clause because from reading it, it appeared that you could substitute a campaign sign for a 'Black Lives Matter' sign which means it would then be restricted by the timeframe. He stated that it looks like it refers to a different subdivision so you have to do that bit of digging to understand it. He stated that he would like to see the distance be closer, such as five feet. He asked about Section 3, Subd. C.(3) where it states, 'No portion of any sign shall be located within five feet of any property line, except as permitted in b.(1)(d) of this subdivision.' He stated that this says five feet, but the subdivision it references says ten feet and noted that he felt this was a strange way to word it.

Councilmember Siakel stated that she agreed that there are a lot of situations in the City where ten feet does not make sense. She asked if there could be a distinction between a County roadway versus a side street. She stated that for the most part, five feet, in Shorewood, seems to make sense and would like to see if there would be a way to differentiate between the type of street for five feet versus ten feet. She gave the example of a sign in her yard being back ten feet and explained that it would never be seen. She stated that she agreed with the comment made by Councilmember Callies regarding school board election signs going from one-hundred to forty-six days and understands why the City would want to align that number.

CITY OF SHOREWOOD WORK SESSION COUNCIL MEETING MINUTES

FEBRUARY 14, 2022

Page 3 of 6

Mayor Labadie stated that she agrees that there are portions of the City where ten feet would make signs not visible. She asked if Public Works Director Brown had any concerns from a Public Works standpoint with a five foot setback versus a ten foot setback. Public Works Director Brown stated that the City could specify a setback from a corner because that is typically where you get into most site distance issues. He suggested that there be something similar to the landscaping ordinances where there is a site triangle requirement at the intersections.

Mayor Labadie stated that she does not want to get to the point where the City is out actively policing signs and has become an enforcer. Councilmember Siakel stated that the City has not done this in the past and noted that she was not sure why this issue has become such a big deal. She stated that she understands updating the ordinance because of some of the things such as the Supreme Court decision, but does not think this should be punitive. She stated that if someone wants to be able to put up a sign in their yard, she feels they should be able to do that.

Councilmember Callies asked about the statement made earlier by Planning Director Darling when she talked about distance from the improved roadway versus the street surface. She stated that, to her, that sounds like the same thing. She stated that she believes that there have been complaints in every election so she understands the City has to have something in the Code, but in her opinion, the less said, the better.

Mayor Labadie stated that this came about because of complaints during the last election. She explained that she would like this ordinance to get to the point where anyone can understand it clearly. She stated that she feels the current language was not easily understood, which is where Councilmember Callies explanation that 'less is more' would be beneficial.

Councilmember Siakel asked what the specific complaints were and suggested that perhaps the discussion needed to focus on those specific areas. She stated that if the goal is to simplify it and make it easily understood, she would say that saying something has to be five feet from an 'improved road surface' is probably confusing for most people.

Public Works Director Brown stated that they did check on some signs based on complaints that were received and explained that all the complaints they received were based on setback concerns. He stated that he thinks road surface is adequate language and is easy for anyone to check.

Planning Director Darling stated that during the last election, the City had complaints in two different areas of the City where signs were placed so close to the road and in such number that the callers were frustrated by having an overwhelming amount of signs right up to the street. She explained that in previous years the complaints were, in general, about too much signage and noted that what the City can enforce, is setbacks.

Councilmember Johnson stated that he did not see any regulations for overall non-commercial speech signs size. Planning Director Darling explained that during the election period, the City is not allowed to regulate the size of signs or the number of signs. Mayor Labadie suggested that the Council take a look at defining the edge of the road and determine how far back they would like to go.

Councilmember Callies stated that based on the discussion, she feels the Council has consensus to have signs be allowed five feet from the edge of pavement. Public Works Director Brown noted

CITY OF SHOREWOOD WORK SESSION COUNCIL MEETING MINUTES

FEBRUARY 14, 2022

Page 4 of 6

that the City has three gravel roadways so there may need to be some provision made for those. He stated that if the roadway is unimproved then it would be from the edge of the aggregate surface. Councilmember Callies stated that she believes the Council also had consensus on allowing one-hundred days for other types of elections, such as school board.

Councilmember Siakel noted that she sees Mr. Yelsey's hand raised and stated that this may be a good time to allow public input. Alan Yelsey, 26335 Peach Circle, stated that he agrees with most of the statements made by Councilmember Callies. He stated that he feels the five foot setback and allowing one-hundred days for elections other than the State mandated ones makes sense, although he would prefer a three foot setback. He stated that he does not like the substitution clause and does not feel it is stated clearly. He stated that the Council has not yet addressed the concern that caused many citizens to be unhappy which was what happens to signs outside of the election period. He stated that there is no language that clearly says you can put up any kind of signs that you want, in your lawn, with minimal or no restrictions. He stated that he feels this is free speech and would suggest that there be language that says for non-commercial signs, outside of the election period, here is what you are able to do. He stated that he believes it is illegal for the City to call out holiday signs or illumination of holiday signs and would ask that they be treated as any other non-commercial signage and not to restrict it in any significant way because that is also free speech. He reiterated that the substitution clause as it is, is unfathomable and would encourage the City to create simple language. He stated that he has raised the issue of right-of-way several times and it is still there because the City actually prohibits signs in the right-of-way. He stated that the City allows mailboxes and plantings, but does not allow signs and suggested that language also be corrected and make it clear that people can put up signs in the right-of-way with a setback. He stated that theft has also been an issue with signs and explained that he would love to see a clause that addresses that issue and makes it a misdemeanor in the City. He stated that the City may also want to limit hate speech.

Mayor Labadie asked City Attorney Shepherd or Planning Director Darling to address Mr. Yelsey's comments on right-of-way, hate speech, theft, holiday signs, and the three foot setback.

Planning Director Darling explained that, in general, staff would want to preserve the right-of-way for the purpose it was created for, which would be things like drainage projects and allow no private improvements. She noted that mailboxes have to be allowed in order to allow for mail delivery. She stated that improvements in the right-of-way require permits but signs are generally not something the City would issue permits for.

Councilmember Callies stated that it appears as though non-commercial speech signs are allowed in the right-of-way as permitted, which seems to address Mr. Yelsey's concern. Planning Director Darling explained that staff wrote this section to allow them during the election period, but not at any other time. City Attorney Shepherd stated that Council may want to make a distinction between non-commercial speech signs during the election period versus others.

Mr. Yelsey stated there is encroachment and right-of-way language included in the Code that says you cannot do what Councilmember Callies just stated can be done. He stated that the language conflicts and is confusing because it says nothing can be put into a right-of-way other than a mailbox and landscaping. He stated that most people do not know how large the right-of-way is on their property from the roadway.

City Attorney Shepherd stated that staff can look at other language that is purported to be conflicting with the right-of-way provision in the sign ordinance because the City does not want

CITY OF SHOREWOOD WORK SESSION COUNCIL MEETING MINUTES

FEBRUARY 14, 2022

Page 5 of 6

people to be confused about the restrictions or lack thereof. He stated that to address Mr. Yelsey's comment related to hate speech, that would be considered a content based restriction. He stated that tonight's discussion certainly addresses the election related provisions of the sign ordinance but as he noted earlier, there are other provisions of the sign ordinance that need amendment. He stated that the substitution clause is sort of a preservation clause that is recommended by the League of Minnesota Cities and preserves the ability of the residents to have non-commercial signs when there is otherwise conflicting regulations in the Code. He explained that he thinks it is important to have in the Code, but noted that staff could take a look at 'wordsmithing' it a bit to make it a bit more clear.

Mayor Labadie asked about the issue related to theft of signs. City Attorney Shepherd stated that he thinks theft of signs can be prosecuted as any other theft under State law. He stated that theft is not called out in the Code, but does not think it needs to be in order for it to be prosecuted. Public Works Director Brown noted that the City has had incidents of theft that the SLMPD has been involved in and noted that he believes that they were prosecuted as a misdemeanor.

Mr. Yelsey explained that he has had many signs stolen and noted that the owner of the sign is often the political party and sometimes it is the property owner. He stated that it would be nice to have a clause in the Code that clearly states it is a misdemeanor just to help preclude people from doing that. Councilmember Siakel noted that most people who are stealing signs are most likely not reading City Code. She stated that it will go back to going to the police department and filing a complaint.

Mr. Yelsey explained that many times it is kids doing the stealing and feels their parents need to know that this is a serious crime and not just fun and games like taking a pumpkin at Halloween.

Guy Sanschagrín, 27725 Island View Road, stated that he would like to touch on theft and vandalism of signs. He explained that he had many signs stolen and vandalized during the last election. He stated that he feels it is not just the 'law' but also what is done to communicate, enforce, and encourage people to follow the law. He stated that he is challenged by complaint based enforcement. He also gave the example of the Birch Bluff area and noted that he did not think any of those properties would be able to have signs on them because the hedges are right along the roadway even with a five foot rule. He stated that he feels Shorewood can do better than it did during the last election. He stated that it should not just be about enforcement and the law but should be about everyone coming together as a community to have a fair and just election.

Councilmember Siakel stated that anybody who has run for office has had some situation where a sign has disappeared and does not think that is unique to one candidate or one election. She stated that she would encourage people that want things to change, to start with themselves.

Mayor Labadie asked Councilmember Siakel to comment on the comment made regarding hedges in the Birch Bluff area. Councilmember Siakel stated that she feels the comment made by Mr. Sanschagrín is probably accurate, which is one of the reasons that she suggested five feet from the roadway. She explained that ten feet would make it very difficult for anybody on Birch Bluff and many other streets within the City. She noted that Mr. Yelsey brought up some points that probably should be discussed and suggested that the Council divide this topic and just focus on campaign signs tonight and cover the other points at a later time.

Councilmember Callies stated that she agreed that there should be two discussions and that tonight can focus on the campaign signs in order for that to be completed prior to the election.

CITY OF SHOREWOOD WORK SESSION COUNCIL MEETING MINUTES

FEBRUARY 14, 2022

Page 6 of 6

She stated that the Council can then deal with the other items that need to be updated at a later date.

Councilmember Gorham stated that the misdemeanor language does not feel to him like it belongs in City Code because it is not within their control of how it is enforced. He suggested that perhaps it is something that is noted in the Shore Report or the newsletter that theft activity is discouraged. Mayor Labadie stated that she also felt a letter in the Sun Sailor and/or on the Shore Report would be a good idea to remind people that vandalism and theft of signs is a punishable offense. She stated that she feels this may be a more appropriate route than modifying the actual Code language. She asked about the timeline for making these changes.

Planning Director Darling stated that she feels that there will be enough time to make these changes prior to the election season, if the public hearing is held in April.

3. ADJOURN

Siakel moved, Johnson seconded, Adjourning the City Council Work Session Meeting of February 14, 2022, at 6:58 P.M.

Roll Call Vote: Siakel, Callies, Johnson, Gorham, and Labadie voted aye. **Motion passed 5/0.**

ATTEST:


Sandie Thone, City Clerk


Jennifer Labadie, Mayor