



UDO Text Amendment



Tracking Information (Staff Only)

Case Number:	Date: 10/05/09	Article: 11 Sign Standards
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Applicant

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Signature/Date By: Lewis A. Cheek

Requested Change

Describe what you want to change in the ordinance and why:

See attached text amendment proposal and justification.

Fees (Staff Only)

Date:	Staff:	Account: Account:	Fee:
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**AN ORDINANCE TO AMEND PROVISIONS OF THE UNIFIED DEVELOPMENT
ORDINANCE REGULATING NONCONFORMING OFF-PREMISE SIGNS
(TC09-_____)**

WHEREAS, the Durham City Council (Durham Board of County Commissioners) is charged with the responsibility of enacting ordinances and laws which promote the health, safety and welfare of the general public; and

WHEREAS, the Unified Development Ordinance presently prohibits alteration of existing off-premise signs as defined in Section 11.2.8.B.2 of the Unified Development Ordinance (hereinafter, "Billboards"), prohibits construction of new Billboards, and prohibits the relocation and/or reconstruction of Billboards; and

WHEREAS, it has come to the attention of the City Council (Board of County Commissioners) that other jurisdictions have allowed the use of digital changeable copy technology in conjunction with the posting of public service messages concerning crime, emergency alerts, severe weather alerts, traffic hazards and other matters of public interest; and

WHEREAS, it has also come to the attention of the City Council (Board of County Commissioners) that the billboard industry desires to improve and landscape certain Billboards in conjunction with the privilege of relocating and/or reconstructing such Billboards; and

WHEREAS, agreements between the City (County) and members of the billboard industry to accomplish the relocation and/or reconstruction of Billboards are permitted under N.C.G.S. § 160A-199 and N.C.G.S. § 153A-143; and

WHEREAS, it appears to the City Council (Board of County Commissioners) that the posting of public service messages and improving and landscaping Billboards benefits the general public and promotes the health, safety and welfare of the community;

NOW, THEREFORE, be it ordained that Article 11, Sign Standards, is amended to delete section 11.2.8B, to delete the second paragraph of section 11.3.5, and to insert the following as a new section, 11.2.9, to include the following provisions:

Section 1. Creation of Billboard Overlay District. The Billboard Overlay District shall be composed of the area 100 feet from the edge of the right of way along the following highways: NC 147 (from the northern boundary of Research Triangle Park to I-85); US 70 (from I-85 interchange to the Durham-Wake County line); US 15-501 (from the Durham-Orange County line to I-85); US 501 (from the I-85 interchange north to the Durham-Person County line); I-85 (the area outside of the Major Transportation Corridor overlay); and the proposed multi-lane facility between US 70 and NC 147 (STIP Project Number U-0071).

Section 2. Mandatory Billboard Registration. Within ninety (90) days of the effective date of this Ordinance, owners of Billboards located within the City's (County's) planning jurisdiction shall register such Billboards with the City (County) Manager (or designee) and upon

registration, such Billboards shall be designated as “Registered Billboards.” No Billboard may be registered unless such Billboard has an existing valid permit from the North Carolina Department of Transportation on the date of registration.

Section 3. Removal, Relocation and Reconstruction of Registered Billboards. Registered Billboards may be removed and relocated, removed, reconstructed and relocated, or removed and reconstructed, within the Billboard Overlay District. Relocation must be to a non-residentially zoned lot within the Billboard Overlay District. No Registered Billboard may be relocated or reconstructed without the owner having first obtained a permit from the City (County) Manager (or designee), which permit shall constitute the relocation or reconstruction agreement authorized by NCGS § 160A-199 or N.C.G.S. § 153A-143 as to the Registered Billboard identified in the permit. Any Billboard that has not been properly registered shall not be eligible for relocation and/or reconstruction if it is removed.

Section 4. Issuance of Permit for removal/relocation/reconstruction of Registered Billboard. The Planning Department shall issue a permit for the relocation and/or reconstruction of a Registered Billboard, provided that the Registered Billboard shall meet the following standards:

- A. Number. The total number of relocated and/or reconstructed Billboards shall not exceed the number of Billboards that are authorized as Registered Billboards pursuant to this Article.
- B. Size. No relocated and/or reconstructed Registered Billboard shall exhibit a face panel size greater than the size of the face panel of the Billboard prior to its being relocated and/or reconstructed.
- C. Separation. A relocated and/or reconstructed Registered Billboard shall meet the following separation requirements:
 - i. A minimum of **one thousand (1,000) linear feet** between Registered Billboards on the same side of the road, unless the relocated and/or reconstructed Registered Billboard replaces a Billboard on the same lot that is constructed on multiple poles. A Billboard is located on the same side of a road as another Billboard if the Billboard structures are adjacent to the same side of the road and the Billboard faces are oriented to the same direction of traffic.
 - ii. A minimum of **five hundred (500) linear feet** from any locally or nationally designated historic district, unless the relocated and/or reconstructed Registered Billboard replaces a Billboard on the same lot that is constructed on multiple poles.
 - iii. A minimum of **two hundred (200) linear feet** from any residentially zoned or used property on the same side of the road, unless the relocated and/or reconstructed Registered Billboard replaces a Billboard on the same lot that is constructed on multiple poles.

- D. Setback. A relocated and/or reconstructed Registered Billboard shall be set back no less than ten (10) feet from the edge of the right of way to the center pole of the Registered Billboard.
- E. Height. The height of a relocated and/or reconstructed Registered Billboard shall be consistent with the requirements of 19A NCAC 2E.0203(1)(f).
- F. Structural Limitations. A relocated and/or reconstructed Registered Billboard shall be constructed entirely out of steel, and supported by a steel monopole. A relocated and/or reconstructed Registered Billboard may have either one or two faces. However, the total number of faces on such Registered Billboards may not exceed the existing number of faces currently owned by a Billboard owner.
- G. Landscaping. In order to provide for aesthetic enhancements consistent with the purposes of the Unified Development Ordinance, every relocated and/or reconstructed Registered Billboard must be landscaped within ninety (90) days of completing a permitted relocation and/or reconstruction, pursuant to the following conditions:
- i. There shall be a defined landscaped area at the base of the Registered Billboard, and parallel to each face of the Registered Billboard, consisting of at least seventy-five percent (75%) of the total advertising surface area of the Registered Billboard.
 - ii. The required landscaped area shall contain materials such as, but not limited to, vegetative ground covers, perennials, shrubs, and ornamental trees covering at least 50% of the defined landscaped area within five (5) years or at maturity, whichever is sooner. A plan of the landscaped area with the name, quantity, and spacing of plant materials shall be submitted to the City (County) Manager (or designee) for approval prior to relocation and/or reconstruction of a Registered Billboard.
 - iii. At least 25% of the total landscaping material shall reach a maintainable height, at maturity, of no less than 75% of the distance between the bottom of the Registered Billboard and the ground immediately below.
 - iv. Immediately adjacent to each end of the Registered Billboard, there shall be placed a canopy tree with minimum size at installation of 2.5 inch caliper.
 - v. The Registered Billboard owner shall be required to maintain all required landscaping for the duration of the existence of the Registered Billboard.
 - vi. Notwithstanding the foregoing, in the event that the owner of a Registered Billboard believes that compliance with the foregoing landscaping requirements is impractical, such owner may petition the City (County) Manager in writing, in which case the City (County) Manager shall

consider such petition within thirty (30) days and if the City (County) Manager agrees, then owner shall be relieved from its obligation to satisfy the foregoing landscaping requirements and shall, instead, be required to deposit into a County or City fund dedicated to the beautification of gateways into Durham, an amount equal to the reasonable cost of complying with the above landscaping standards. A Registered Billboard owner shall provide with the petition a statement of the reasonable cost for such landscaping signed by a duly-licensed Registered Landscape Architect.

- H. Lighting. Light emitted from any relocated and/or reconstructed Registered Billboard shall be confined to the Billboard area and in no case shall light emitted from a relocated and/or reconstructed Registered Billboard be allowed to shine directly onto or into a residentially zoned or used parcel.

Section 5. Digital Changeable Copy Billboards.

- A. Notwithstanding the foregoing, and subject to the terms of this Ordinance, upon the issuance of a permit as specified in this Article, an owner of a Registered Billboard may either replace face panels on such Registered Billboard with digital changeable copy technology or install digital changeable copy technology (hereinafter, "Digital Changeable Copy Billboards") in connection with the relocation and/or reconstruction of a Registered Billboard, subject to the following conditions:
- i. An owner of Registered Billboards may not replace more than twenty-five percent (25%) of the total display area of its Registered Billboards (measured in square footage) with digital changeable copy technology;
 - ii. Digital Changeable Copy Billboards shall display one eight-second public service announcement within every sixty (60) second period. For purposes of this section, a public service announcement shall be any announcement for which no charge is made and which promotes programs, activities or services of federal, state, or local governments or the programs, activities or services of non-profit organizations, and announcements regarded as serving community interests, excluding time signals and routine weather announcements;
 - iii. Digital Changeable Copy Billboards shall display continuously a public emergency message for two hours or until such time as the public emergency message is no longer reasonably necessary, whichever is shorter. For purposes of this section, a public emergency message shall be Amber Alert and Silver Alert emergency information, information about terrorist attacks, natural disasters, public infrastructure failures and public safety emergencies. Owners of Digital Changeable Copy Billboards shall adopt a protocol with the City of Durham Police Department (Durham

County Sheriff's Department) for display of such public emergency messages;

- iv. Any relocated and/or reconstructed Registered Billboard utilizing digital changeable copy technology shall not be located within one thousand (1,000) feet on the same side of the road from any other relocated and/or reconstructed Registered Billboard with digital changeable copy technology; and
- v. Any Digital Changeable Copy Billboard shall meet the following display requirements:
 - (1) All images shall be displayed for not less than eight (8) seconds, in accordance with 19E NCAC .0203(4)(a)(ii).
 - (2) The images and messages displayed shall be complete in themselves, without continuation in content to the next message or image, or to any other Billboard.
 - (3) The transition between images shall be instantaneous and without special effects, and in accordance with the requirements of 19A NCAC .0203(4)(a)(iii).
 - (4) The display shall not be configured to resemble a warning or danger signal, official signage used to control traffic, or configured to cause a viewer to mistake the Billboard for a warning or danger signal.
 - (5) No electronic animation, movement, scrolling, flashing text, or streaming video shall be permitted.
 - (6) All Digital Changeable Copy Billboards shall be designed and equipped to freeze the device in one position or to immediately discontinue the display if a malfunction occurs in accordance with 19A NCAC 2E.0203(4)(a)(vi).
 - (7) No Digital Changeable Copy Billboard may be brighter than is necessary for clear and adequate visibility and shall not exceed a maximum of seven thousand five hundred (7,500) candela per square meter (cd/m^2) during daylight hours and one thousand (1,000) cd/m^2 during non-daylight hours. No Digital Changeable Copy Billboard shall display such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device, or signal or is distracting to drivers. All Digital Changeable Copy Billboards shall be equipped with both a dimmer control and a photocell that automatically adjust the intensity of the display according to natural ambient light conditions.

Section 6. That any person violating the provisions of this ordinance shall be subject to the penalties set forth in Article 15.

Proposed Text Amendment Justification

Text Amendment to allow improvement and limited relocation of existing billboards

There are four primary reasons why the applicant asks for a change in the appropriate sections of the Durham Unified Development Ordinance (the "UDO") applicable to billboards.

First, the Durham Comprehensive Plan (the "Comp Plan") contemplates and supports it. Policy 4.2.3b. states that through the UDO, "develop different design standards for attractive nonresidential signage appropriate to each development Tier." The applicant requests this text amendment in order to upgrade the appearance of billboards in each Tier throughout Durham County. In terms of the number of billboards, under the proposed text amendment, there will be no additional billboards allowed above the number currently existing with valid NCDOT permits.

Second, new digital billboard technology was not contemplated over 25 years ago, when the existing Durham billboard rules were enacted. This new digital technology represents a change in circumstances that warrants a revision to Article 11 of the UDO.

Third, and closely related to the advent of new digital billboard technology, the Comp Plan recognizes the need to provide Durham citizens with public service and public safety announcements. Comp Plan Goal 12.4 states that Durham should "(p)rovide an effective program of emergency management to maintain a safe environment for Durham's citizens." In addition, Comp Plan Objective 12.4.1 states that Durham should "(e)stablish and maintain an appropriate level of emergency management in Durham." Under summary of issues, the Comp Plan states in item #1 that "(n)ew technology can improve the effectiveness of staff [emergency] resources ..." Durham has the opportunity to authorize digital billboards and utilize a digital billboard network in emergency situations. One of the benefits of such a digital network is to allow emergency, public service and public safety messages to be changed and displayed in real-time, depending upon current and changing conditions.

Fourth, there have been changes in state law that present conflicts with Article 11 of the UDO. For example, the N.C. Supreme Court's decision in LAMAR v. Stanley County, decided in December 2008, held that NCDOT regulations that allow for limited relocation of billboards trump a local zoning ordinance providing that nonconforming outdoor advertising signs shall not be moved or replaced, similar to provisions in Article 11 of the UDO. Another N.C. Supreme Court case, Morris Communications v. The Board of Adjustment for the City of Gastonia, stated that a local zoning ordinance is preempted by the NCDOT's regulations governing outdoor advertising to the extent the local ordinance conflicts with NCDOT's regulations. NCDOT's regulations provide that the damage threshold to require removal of a nonconforming billboard is 50% (19A NCAC 2E.0225(f)). In contrast, the prior Durham Zoning Ordinance, in Section 12.9.4 (2), required removal of a billboard if 25% of the value of it were damaged. This 25% standard was maintained in the UDO, even though the UDO was adopted on Jan. 1, 2006, more than two years after the Morris decision. Accordingly, it appears that sections of Article 11 of the UDO conflict with specific NCDOT regulations. The applicant's proposed text amendment would resolve those conflicts.

In conclusion, the applicant's proposed text amendment also will aid Durham's local economy and generate increased tax revenues from Durham's billboards.