

Sign Ordinance Amendments

**To Allow Onsite Advertising to be Painted
on Structures and to Give M-1 Property
Owners the Same Sign Variance
Opportunity as B-2 Property Owners**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

May 13, 2014

SIGN ORDINANCE AMENDMENTS

Sections 11-7-2, 3, 6, 6.1, 7, 9, 12, & 14

Staff is proposing to modify several sections of the Sign Ordinance for the following two objectives: 1) to allow property owners the ability to have onsite advertising painted on structures, and 2) to give M-1 zoned property owners having no street frontage the same ability as is currently allowed for B-2 property owners, in the same situation, the opportunity to apply for a variance to allow off-premises advertising for their use.

With regard to the first objective, currently, the Sign Ordinance prohibits onsite advertising to be painted on structures. In several sections of the ordinance it states, “except as otherwise permitted, all permanent signs shall be for on premises advertising use and, when affixed to walls or other vertical façade features, **shall be attached rather than painted upon facades** so as to be easily removed upon vacancy or change of occupancy” (emphasis added). This prohibition, although stated differently over the years, has been a part of the Sign Ordinance since at least 1973. However, as one travels around the City, especially in the downtown area, older buildings reveal the City at one time permitted on-site advertising to be painted on structures. Some of these remaining advertisements include the former Denton’s business, the former Wetsel Seed Co. Inc. business, and still operating today at 459 Noll Drive, the W. A. Hartman Memorials business.

What brings the proposed amendment to the table today began last fall when staff learned that a group of citizens was planning to paint an advertising sign on the Our Community Place (OCP) building at 17 East Johnson Street. In an effort to prevent this violation, staff visited the site to communicate that such a practice was prohibited. However, upon arrival, staff discovered the OCP logo had already been painted on the building even though a sign permit had not been applied for or issued. (In fact, staff has learned there are no sign permits on record for any sign on OCP’s property. Regardless of the outcome for the amendment to allow painted advertising on structures, staff will soon work toward ensuring all signs on OCP’s property conform to the regulations of the Sign Ordinance. It appears OCP may have more violations than the one recently painted logo sign.) Although staff informed OCP they would have to rectify their violation, after further discussion regarding the general practice of painting advertising on structures, staff decided to hold off on the official violation notification and to research the matter further to determine whether this was a practice the City should continue prohibiting.

Research included speaking directly with representatives of the Cities of Lynchburg, Roanoke, Staunton, and Winchester, all of which permit this practice. Each municipality explained that few businesses within their jurisdictions choose to display this type of signage and noted it rarely causes problems. One concern with removing this prohibition was how to apply control mechanisms when individuals want to incorporate advertisement within murals. The City of Roanoke specifically noted they have had to deal with this matter. Determining the line between when a mural becomes a “sign” and when it should simply be considered “art” can be difficult, and cause a great deal of

debate. (See the U.S. Court of Appeals 4th Circuit case *Wag More Dogs, LLC v Cozart*, adjudicated in Arlington County, Virginia in 2012, where the court affirmed the district court's opinion that, more or less, a mural can be considered an advertising sign and can be regulated.) To clarify this issue, staff is proposing that any mural incorporating any associations to products or services available or advertising a use shall be considered a sign. Once a mural or other art becomes defined as a sign, the entire square footage of the piece shall be counted toward the allotted sign area for the property or business.

To allow signs to be painted on structures requires modifications to several sections of the Sign Ordinance including: amending the existing definitions of "flat sign," "freestanding sign," "sign," and "sign area" within 11-7-2 Definitions; making a minor amendment within Section 11-7-3 General Regulations for All Signs; and eliminating the appropriate language within the corresponding special regulations sections for the B-1, B-1A and B-2, M-1, R-5, and MX-U zoning districts, Sections 11-7-6, 6.1, 7, 12, and 14, respectively. The specific changes are shown on the additional sheets following this report.

Staff does not believe this type of signage should be treated any differently than any other permitted signage and does not anticipate negative impacts from such a change. Staff recommends approving the proposed amendments.

With regard to the second objective of the proposed Sign Ordinance amendments, as quoted earlier, several sections of the Sign Ordinance specifies that "except as otherwise permitted, all permanent signs shall be for on premises advertising use..." meaning signage can only promote uses occurring on the site. Currently, Section 11-7-9, which is simply titled, Variances, allows for B-2 properties having no public street frontage, the ability to request a variance from City Council to allow an off-premises freestanding sign to advertise for their use. Staff is proposing to offer the same variance opportunity to M-1 property owners.

The current provision in the Code that applies to B-2 properties was added in 1998 at the request of a property owner. It was originally designed to allow B-2 lots that were granted a variance from the Subdivision Ordinance to not have public street frontage the ability to locate signage on property that had public street frontage. The regulations that exist today are primarily the same adopted during that time, except in 2011, by request of an applicant, the variance provisions were made more flexible by allowing any B-2 property that did not have public street frontage, such as those that were annexed into the City, the ability to request this variance.

To date, under this code, there have been at least three variances requested and all approved by City Council. The first was in 1999, which allowed the Port Crossing Shopping Center to locate signs off-premises on the same parcel that McDonald's is located on at 1091 Port Republic Road. The second occurred in 2008, when Roger and Patricia Simmons requested an off-premises sign for their building at 1101 West Market Street (now housing Harrisonburg 24/7 Family Fitness and other businesses) to locate on the adjoining lot at 1161 West Market Street, site of the Spotless Car Wash. The third occurred in 2011 when Michael's Auto Body simultaneously amended this section, as described above, to replace the already existing non-conforming off-premises sign that advertised their business, which is located at 3116 South Main Street, on the Valley Lanes property at 3106 South Main Street.

Staff believes the existing regulations controlling these variance-approved signs should be maintained. The regulations state that the sign shall be the only freestanding sign permitted for the off-premises use advertised, regardless of the number of uses; the sign area shall be determined by City Council, provided the area shall not exceed the amount of signage previously allowed for an

on-premises sign on the same lot; and the sign area calculated shall not count against the allowable sign area for the lot on which it is situated but shall be counted against the allowable signage for the lot served by the off-premises sign. In addition, City Council may impose such conditions regarding the location, character, and other features of the proposed sign as it deems necessary in the public interest.

Furthermore, the variance request currently requires a public hearing to be held per Section 15.2.-2204 of the Code of Virginia and that the applicant shall pay the cost of the public notice. Staff however, is proposing in this amendment to require an application fee of \$275.00, which is the same fee for applying for a Board of Zoning Appeals variance, rather than paying for the public notice.

Staff decided to propose this ordinance amendment for M-1 properties after Recycle Management, located at 1610 South Main Street with no public street frontage, inquired about locating a sign on the adjacent property at 1606 South Main Street, which has public street frontage. Because these properties are zoned M-1, it is not permitted. Staff, however, believes if a variance can be applied for on B-2 property, which is a more restrictive zoning district than M-1, the opportunity for such a variance should be available for M-1 properties in the same situation.

It should be understood that all M-1 properties already have the ability to locate off-premises signs on their property per Section 11-7-7 (6) so long as all the special regulations for the M-1 district are met, the general regulations for all signs are met, and that such signs meet the same setback as other principal structures and buildings of the M-1 district and further must be set back a minimum of 1,000 feet from any residential district. This provision was intended for billboard-type signs on M-1 property, although it is not limited to billboard signs; however, it is rarely taken advantage of because most property owners do not have unused available sign area or unused freestanding sign permissions as most property owners try to maximize their advertising capabilities for the on-site uses.

Staff recommends approving the changes to Section 11-7-9 to allow M-1 property owners that have no public street frontage the ability to apply for a variance to allow off-premises signage. The specific changes to Section 11-7-9 are shown on the additional sheets following this report.

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-2
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-2 Definitions be modified by amending the definitions as shown:

- Flat sign:* Any sign attached to, painted upon, and erected parallel to, the face of the outside wall of a building and supported throughout its length by such wall or building, not extending more than eighteen (18) inches from the building wall and which displays only one (1) sign face.
- Freestanding Sign:* A sign not ~~attached to or painted~~ on a building but which is affixed to the ground, and can be a pole, pylon, post or other detached sign. A sign attached to or painted upon a ~~flat~~ surface, such as a fence or wall not part of a building, shall be considered a freestanding sign.
- Sign:* An identification, description, illustration or device which is affixed to, painted upon, or represented directly or indirectly upon a building, structure, or land, rock, tree or other natural object, and which directs attention to a product, place, activity, person, institution or business. Murals directing attention to things as described herein shall be considered signs.
- Sign area:* That entire area composed of a square, circle or rectangle that encloses the extreme limits of the message, including all letters, figures, characters, background and trim. Any supportive frame and bracing members of a sign shall not be included in the sign area calculations provided that the member has no advertising value. Only one (1) side of a double-faced sign shall be included in a computation of sign area. For other signs with more than one (1) face, each side shall be included in a computation of sign area. The area of a cylindrical or spherical sign shall be included by multiplying one-half (½) of the circumference by the height of the sign. Murals determined to be signs shall have their entire square footages included in sign area calculations.

The remainder of Section 11-7-2 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013. Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-3
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-3 General Regulations for All Signs be modified by amending subsection (1) as shown:

- (1) No sign, unless herein excepted, shall be erected, constructed, attached, painted, altered or relocated, except as provided in this chapter, until a permit has been issued by the director of community development or their designated agent. Before any permit is issued an application shall be filed in the office of the director of community development along with sufficient plans and/or specifications as is necessary to fully establish the scope and intent of the work and the total value of the signage including cost of installation. All signs which are electrically illuminated shall require a separate electrical permit and inspection. All permits shall become null and void when work is not performed within one year from the date on which the permit is issued. Fees for sign permits shall be in accordance with the schedule adopted by ordinance, a copy of which is maintained in the office of the director of community development.

The remainder of Section 11-7-3 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the _____ day of _____, 2013. Adopted and approved this _____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-6
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-6 Special Regulations for the B-1, Central Business District be modified by amending subsection (1) as shown:

- (1) Except as otherwise permitted, all permanent signs shall be for on premises advertising use. ~~and, when affixed to walls or other vertical façade fixtures, shall be attached rather than painted upon facades so as to be easily removed upon vacancy or change of occupancy.~~

The remainder of Section 11-7-6 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013. Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION

11-7-6.1

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-6.1 Special Regulations for the B-1A, Local Business District and B-2, General Business District be modified by amending subsection (1) as shown:

- (1) Except as otherwise permitted, all permanent signs shall be for on premises advertising use, and, when affixed to walls or other vertical façade features, shall be attached rather than painted upon facades so as to be easily removed upon vacancy or change of occupancy.

The remainder of Section 11-7-6.1 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013. Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-7
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-7 Special Regulations for the M-1, General Industrial District be modified by amending subsection (1) as shown:

- (1) ~~Except as otherwise permitted, a~~All permanent signs shall be for on-premises advertising use. ~~with the exception of subsection (7) below, and when affixed to walls or other vertical facade features, shall be attached rather than painted upon facades so as to be easily removed upon vacancy of use or change in occupaney.~~

The remainder of Section 11-7-7 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013. Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION

11-7-9

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-9 Variances be modified by amending subsection (1) and (3) as shown:

- (1) A variance allowing off-premises signs within the B-2 and M-1 zoning classifications for uses on parcels having no road frontage. This sign shall be the only freestanding sign permitted for the off-premises use(s) advertised. The area of such sign shall be determined by the city council; provided, that the area of the off-premises sign shall not exceed the amount of signage previously allowed for an on-premises sign on the same lot. In addition, the off-premises sign area shall not be calculated against the allowable signage for the lot on which it is situated, but shall be counted against the allowable signage for the lot served by the off-premises sign. At no time shall variances be granted to allow more than one (1) off-premises sign for any parcel of land having no road frontage regardless of the number of uses.

- (3) Before approving any such variance, the city council shall hold at least one public hearing thereon, pursuant to public notice as required by section 15.2-2204 of the Code of Virginia, 1950, as amended. The application fee for the variance shall be \$275.00. ~~and the cost of the public notice shall be paid by party requesting the variance.~~

The remainder of Section 11-7-9 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the _____ day of _____, 2013. Adopted and approved this _____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-12
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-12 Special Regulations for the R-5, High Density Residential District be modified by amending subsection (1) as shown:

- (1) All permanent signs shall be for on-premises advertising use, ~~and when affixed to walls or other vertical facade features, shall be attached rather than painted upon facades so as to be easily removed upon vacancy of use or change of occupancy.~~

The remainder of Section 11-7-12 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the _____ day of _____, 2013. Adopted and approved this _____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE

ORDINANCE AMENDING AND RE-ENACTING SECTION
11-7-14
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 11-7-14 Special Regulations for the MX-U, Mixed Use Planned Community District be modified by amending subsection (1) as shown:

- (1) All permanent signs shall be for on-premises advertising use, ~~and when affixed to walls or other vertical facade features, shall be attached rather than painted upon facades so as to be easily removed upon vacancy of use or change of occupancy.~~

The remainder of Section 11-7-14 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013. Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK PRO TEMPORE