

AGENDA
MAYOR'S DOWNTOWN TASK FORCE
Meeting #2 - July 21, 2008
2:00 p.m. to 4:00 p.m.
Siskiyou Room, Community Development Building
51 Winburn Way, Ashland, OR

1. Call to order and Introductions – Pam Hammond

2. Staff presentation of options:
 - A. Sign Code
 - a. Exempt Signs
 - b. Three Dimensional Objects
 - c. Signs for businesses on side streets/ alleyways

 - B. Use of the Right-of-Way
 - a. Commercial Use & Café Tables
 - b. Signs
 - c. Newspaper racks
 - d. Encroachments

 - C. Downtown Employee Parking Restrictions

3. Opportunity for Public Comment and Feedback

4. Committee Discussion and Direction to Staff

5. Adjourn

Memo

Date: July 16, 2008
From: Adam Hanks
To: Downtown Task Force
Re: Downtown Task Force Meeting #2 - Option Paper

The following are potential modifications to current Ashland Municipal Code Sections for the Downtown Task Force to consider. An assumed option with all issues and options listed is to leave as is. The order of the issues are not indicative of any particular priority or urgency.

These options will also be provided to you at the meeting on Monday in a chart/matrix format to facilitate discussion and decision making.

SIGN CODE

ISSUE #1: Particularly in the Downtown area, the limitation on exempt signs (no permit required) of 2 signs of two square feet do not meet the needs of the businesses.

- **Option #1:** Modify the Sign Code to allow one additional exempt sign (2 sq ft or less) to provide additional sign area and number for items such as restaurant menu's, sale of the day, specials, etc in the C-1-D zone only.
- **Option #2:** Modify the Sign Code to allow the existing exempt signs to be a maximum of 3 square feet rather than the existing 2 square feet.

Effect: Additional sign area is created with either option. Additional number of signs is created with option #1. This could lead to additional clutter of signage on business façade. The exempt signs could be used as temporary signs or permanent (current Sign Code language), but would still be required to be on private property rather than the public right of way.

ISSUE #2: The Sign Code currently prohibits three dimensional signs/representations of merchandise of any type.

- **Option #1:** Allow one of the two (or three) exempt signs to be three dimensional with a similar scale of the exempt signs, such as a 1x1x2.
- **Option #2:** Remove the section that prohibits 3-D/rep of merchandise from the Sign Code entirely (AMC 18.96.040 F), which would allow 3-D/rep of merchandise as a sign type, but would not necessarily add number or square footage to the signage allowed.
- **Option #3:** Retain prohibition on 3-D/rep of merchandise code section.
- **Option #4:** Create exemption for 2-D or 3-D Public Art as outlined in the attached memo. This option can be combined with options 1, 2 or 3.



Effect: Businesses would have the option of using a 3-D sign in lieu of the wall, awning or ground signs they are currently permitted, which would maintain the intent of the Sign Code for both number and size of signs per business. Some sort of conversion methodology would be needed to equate the cubic area of the 3-D sign to the 2-D maximum square footages allowed per business frontage. Removing the prohibition will also result in businesses being allowed to use merchandise as signage because the Sign Code can not regulate based on content. If the primary concern regarding prohibition of 3-D is for public art, option #3 maintains the broad prohibition but would not outright prohibit public art.

ISSUE #3: Some business, by virtue of their business access, have limited signage opportunity along the main streets within the downtown area.

- **Option #1:** Change the projection sign limitation from 18 inches from wall face to 24 inches from wall face to provide greater visibility for businesses on side streets/alley/pedestrian access ways.
- **Option #2:** See Right of Way Issue #5 for details of the potential use of the existing section in the Sign Code that allows “informational signs placed by the City of Ashland” in the public right of way.

Effect: The larger the projection from the wall face, the greater the angle needed to view other signs, which could lead to signs blocking the vision of existing or future signs behind it. The increased projection may be required by State Building Code to be higher on the building face than the current 18 inch projection.

RIGHT OF WAY

ISSUE #4: The use of the public right of way for private commercial use is limited by the Municipal Code to Sidewalk Café’s (AMC 6.44), which is not an equitable method for allocation of our limited public resource, downtown public sidewalks.

- **Option #1:** Eliminate AMC 6.44-Sidewalk Café’s.
- **Option #2:** Modify the Sidewalk Café Code to expand the allowable uses of the potential leased/permitted area to include any type of commerce, but maintain all public safety elements of the existing code section. The modification would also include a technical housekeeping matter of moving from AMC 6.44 to AMC Chapter 13 – Public Rights of Way.
- **Option #3:** Modify the fee structure and lease terms to better match the value of the “storefront bonus” that is created with the allowed use of the public right of way.

Effect: This issue plays a large role in how our downtown streetscape functions. A prohibition of commercial use of the sidewalks provide less obstruction, affording greater pedestrian capacity and comfort level. Allowing all types of commercial activity by permit/lease may lead to a very cluttered downtown area, both physically and aesthetically. It isn’t clear at this point whether the permit/lease could prohibit signs as part of the commercial use.



ISSUE #5: Sign Code compliance efforts have included enforcing the current prohibition of placing signage in the public right of way (sidewalk area primarily). Some businesses have exposure issues with their business location and feel that off-site signage is necessary for adequate exposure for their business.

- **Option #1:** Create guidelines/policy for the expanded use of the section of the Sign Code that allows “Informational signs placed by the City of Ashland in the publicly owned right of way” to include business directional/directory signs to be located in the public right of way. The guideline/policy would determine the standards for the signage and could include maximum size, color, font, content (name and arrow only), materials, location, etc.
- **Option #2:** Allow temporary signs located in the public right of way through a permit process and establish language in AMC Ch 13 to regulate their approved location, i.e. distance from business frontage, size, duration, etc. Existing public safety elements would apply to these signs.

Effect: Either option would create additional signage in the downtown area, with option #1 providing a more structured and controlled approach, but may not fit all needs of the businesses seeking additional signage exposure.

ISSUE #6: The proliferation of newspaper/misc publication racks within the downtown is creating a variety of problems, both functional and aesthetic.

- **Option #1:** Commit to work on newsrack placement & use ordinance to be in place before next season (April '09). Issues to work out include: maximum groupings by area, distance between groupings, aesthetic standards, who owns/operates, fee, maintenance standards, what types of newspapers/publications would qualify, etc.
- **Option #2:** Inventory all downtown zone newspaper/publication racks to ensure that each rack/box complies with current Municipal Code requirements for distance from curb (18 inches), minimum of six feet clearance between rack/box and other permanent obstruction, etc. Determine legal issues regarding immediate removal of rack/boxes that are not in use (no materials in them)

Effect: Possible reduction in number of rack/box obstacles in the sidewalk right of way. Better organization and tracking of approved locations for ongoing management. Maintain pedestrian’s ability to purchase newspapers/publications on street.

ISSUE #7: The business community has noted that there is inconsistency within the encroachment permit process, which does not have clear standards for what types of objects are encouraged, allowed or legal in the public right of way.

- **Option #1:** Develop standards/criteria for encroachment permits and utilize the permit process for all encroachments for non-City placed objects. This would include benches, tree grates, trash cans, news/publication racks, plantings/flower pots, etc.
- **Option #2:** Allow the abutting business owner/operator a specific amount of area immediately adjacent to their frontage to place objects from an approved list.



Effect: Each option would gain a level of control and regulation on the amount of the sidewalk right-of-way used. Option #1 would provide a greater degree of regulation and may have a more coordinated appearance to the downtown area. An issue with either option is the amount of sidewalk area used for these pedestrian amenities vs. the potential space used for commercial use of the sidewalk area if modifications are made to the Sidewalk Café ordinance.

DOWNTOWN EMPLOYEE PARKING BAN

ISSUE #8: Downtown business owner and employees are frustrated with the seemingly inconsistent enforcement of the downtown employee parking ban and also have expressed concern over its potential overreaching effect of limiting owner and employee access to the downtown area while not at work.

- **Option #1:** Eliminate section of AMC 11.30.020 which removes employee parking ban
- **Option #2:** Allow each business within downtown area to purchase one monthly parking pass/permit for the downtown zone which would allow vehicle to park within the zone (maybe just their block face?), but still not exceed time limits of parking space.
- **Option #3:** Allow the parking pass issued in option #2 to apply only to loading spaces

Effect: The parking pass/permit would assist in solving the issues of frequent but short duration parking by key personnel associated with a particular business, but would retain the frustration and potential inconsistencies of enforcement for those that do not have a pass/permit. Elimination of the ban would result in each business monitoring their own employees with attempts at voluntary compliance to the concept.

ISSUE #9: The City has several parking management items that need to be resolved to more efficiently administer the downtown parking program.

- Review block face parking regulations to be clear of parking management of all spaces.
- Create code section to allow for “booting” or towing of vehicles with either five unpaid parking tickets or a dollar amount, e.g., \$250, of outstanding tickets.
- Review signage for directional signage to public parking lots (preferred locations for longer term parking)



Memo

TO: Downtown Task Force
FROM: Martha Bennett, City Administrator
DATE: July 17, 2008
RE: Public Art Installations on Private Property

If the Task Force wishes the City to allow people to install art – whether 3-D or murals – on private property, then staff recommends that the Task Force discuss a two-step process.

Step One – *Easement or Dedication of Property.* To initiate the process, the property owner would offer an easement or dedication over the site in question to the City of Ashland. This could be a space on the ground or it could be a wall or space on a building. The Public Arts Commission would review the offer and determine whether they believe it is an appropriate location based on criteria developed to determine whether the proposed site is appropriate for a public art installation. For example, the Arts Commission could consider whether the space is actually accessible by the public, it doesn't create a safety concern, etc. (These are examples, since the Public Arts Commission has not yet discussed this issue) The Public Arts Commission would make a recommendation to the City Council about whether they should accept the proposed easement or dedication, and the Council would then decide to accept or reject the location for an art installation. This process would apply both for 3-D installations and for 2-D installations (murals). This process would ensure that the art in question is actually public art and would be managed and maintained by the City.

Step Two – *Decision about Public Art.* The City would either review a proposed piece of art or would commission the piece (presumably paid for by the property owner, not the City).

Existing Work of Art. If the property owner has a piece of art in mind, then the Arts Commission would select a panel to jury it based on criteria, which might include:

- 1) The art enhances the aesthetics of the area.
- 2) The art is artistically appropriate (form, shape, color, materials, artistic merit) for the proposed location
- 3) The installation is technically feasible.
- 4) The art does not reflect goods or services of adjacent or nearby businesses.



- 5) The art does not pose a hazard to pedestrians, drivers, or cyclists
- 6) The City has sufficient resources to accept, install, insure and maintain the art

The piece will be juried by a Selection Panel, a group separate from the Public Art Commission, who will make a recommendation of acceptance of the art to the Public Art commission. The PAC will bring the recommendation forward to the City Council for final acceptance.

Commissioned Work of Art. Alternatively, the Commission would work with the property owner on the solicitation for a commissioned piece in accordance with the existing Arts Master Plan and revised ordinance. Under this process, the Arts Commission forms a separate jury panel which develops a Request for Proposals (RFP) which outlines the type of piece that the Commission and jury would like to see in the space. The RFP contains the specific criteria that the jury panel uses to recommend the piece to the Arts Commission.



Memo

DATE: July 18, 2008
TO: Martha Bennett & Adam Hanks
FROM: Ali Brooks c/o Richard Appicello
RE: Notes for 7-21-08 Task Force Meeting

What follows are relevant excerpts to aid the task force in understanding the legal constraints in this area of legislative drafting.

FIRST AMENDMENT CONSTRAINT:

The *First Amendment* does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired," *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 69 L. Ed. 2d 298, 101 S. Ct. 2559 (1981). A municipality may impose reasonable restrictions on the time, place or manner of engaging in protected speech. *Ward*, 491 U.S. at 791. To qualify as a time, place, manner restriction on expression, the restriction must be neutral in content, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. See *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 2002 WL 1772664, *3 (9th Cir. 2002) (quotations omitted); *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998)

Neutral in content

"The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 105 L. Ed. 2d 661, 109 S. Ct. 2746 (1989). Speech restrictions are content-neutral when they can be "justified without reference to the content of the regulated speech." *One World One Family Now v. City & County of Honolulu*, 76 F.3d 1009, 1012 (9th Cir. 1996) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 82 L. Ed. 2d 221, 104 S. Ct. 3065 (1984)). A law that "confers benefits or imposes burdens on speech without reference to the ideas or views expressed" is normally content-neutral. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642-43, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994).

The Supreme Court and [Ninth Circuit] have found bans on certain *manner* of expression or expressive *conduct* content-neutral. See, e.g., [Turner](#), 512 U.S. at 645 (holding that rules that distinguish "based only upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry" are content-neutral); [G.K. Ltd.](#), 436 F.3d at 1075 (holding that a regulation on the size and type of signs permitted in a city is not content-based); [Honolulu Weekly Inc. v. Harris](#), 298 F.3d 1037, 1044 (9th Cir. 2002) (holding that an ordinance requiring distribution of publications from specified news racks based on whether or not they charge their readers is content-neutral because "the city targeted **[**26]** the *manner* in which [they are] distributed, not the content of [their] message[s]"); [One World One Family Now v. City and County of Honolulu](#), 76 F.3d 1009, 1012 (9th Cir. 1996) (holding that a ban on the sale of all merchandise, including message-bearing merchandise, on city **[*795]** streets is content-neutral).



Narrowly tailored to serve a significant government interest,

"Narrow tailoring" does not require the government to adopt the "least restrictive or least intrusive means of serving the statutory goal" when the regulation does not completely foreclose any means of communication. *Hill v. Colorado*, 530 U.S. 703, 726, 147 L. Ed. 2d 597, 120 S. Ct. 2480 (2000). The requirement that the regulation be "narrowly tailored" [**13] will be met "so long as the ...regulation promotes a substantial government interest that would be achieved less effectively absent the regulation" and the regulation is not "substantially broader than necessary to achieve the government's interest." *Ward*, 491 U.S. at 799-800 (citation omitted).

Ample alternative channels of communication

In *Honolulu Weekly*, the Ninth Circuit found ample alternative channels of communication, because a newspaper publisher, removed from its preferred coin-operated newsracks, still had the opportunity to distribute using non coin-operated newsracks and other distribution mechanisms within and outside of the regulated area. *Honolulu Weekly*, 298 F.3d 1037, 2002 WL 1772664, at *6. The fact that the publisher believed losing certain newsracks would hurt its ability to compete with other publications and that the number of non coin-operated racks to which the publisher was relegated was insufficient did not prevent the Court from finding the alternatives ample. *See* 298 F.3d 1037, at *5.

LEGALLY NONCONFORMING DEFINITION

AMC 18.08.520. Nonconforming Use or Structure

An existing structure or use lawful at the time the ordinance codified in this Title, or any amendment thereto, becomes effective, and which does not conform to the requirements of the zone in which it is located.

