

**Town of Cape Elizabeth
Ordinance Committee Minutes**

October 6, 2016

1:30 p.m.

Town Hall

Present: Caitlin Jordan, Chair
Sara Lennon
Jessica Sullivan

Staff: Maureen O'Meara, Town Planner

Councilor Jordan called the meeting to order. The minutes of the September 15, 2016 meeting were approved.

Public Comment

No member of the public was present.

Sign Ordinance

Councilor Jordan referenced the meeting materials, including the summary chart of the signs allowed under the existing ordinance. The committee agreed to discuss overall goals for signs and reviewed the existing ordinance purpose statement to stimulate the goal discussion.

Committee members offered the following goals for a new sign ordinance:

- Limit excessive signage/preserve town character/aesthetics
- Ordinance regulations in compliance with state and federal restrictions
- Promote local businesses
- Promote traffic safety/public safety
- Allow community information/events
- Signs should be structurally sound
- A user friendly ordinance/well organized/do's and don'ts
- Govern sign placement

The committee agreed that there should be lighting restrictions and signs in keeping with town character, but these should be regulations within the ordinance that fit under the community aesthetics and public safety goals noted above.

The committee agreed to delay a discussion of definitions until the ordinance has been drafted.

Councilor Jordan asked about organizing sign regulation by location, in this case by zoning district. Ms. O'Meara explained that two location groups are proposed, the commercial zones, TC, BA and BB in one group and the residential zones and all the specialty zones, like the Town Farm District, and RP districts in a second group.

Councilor Jordan recognized the farmers in the room that had joined the committee meeting. We have commercial businesses, farms, operating in residential areas and how do we regulate that? The committee is unsure how to proceed, but it is something we need to deal with.

Councilor Sullivan expressed legal concerns with exceptions. Councilor Jordan said that the Reed decision does not address commercial signs, so we can allow our existing commercial sign provisions to continue. Reed says you need to have equal fairness with noncommercial signs, that is all.

Councilor Sullivan is concerned that you would need to allow the same signage for non-commercial signage as you allow for commercial signage. She noted the substitution clause issue, which the Maine Municipal Association has suggested.

Councilor Jordan clarified if you are suggesting that a commercial business could take down their sign and replace it with non-commercial speech? Councilor Sullivan questioned if the regulations we allow for commercial businesses be claimed for noncommercial speech? Councilor Jordan said no. A commercial sign can be replaced with non-commercial speech.

Councilor Lennon asked what is the benefit of organizing regulations by location? Instead can we regulate signs by category such as business, opinion, etc? Councilor Jordan said we can divide it into commercial and non-commercial speech.

Councilor Lennon would like to regulate signs by purpose, but Councilor Jordan suggested that would be a content based regulation.

Public Comment: Councilor Jordan recognized a member of the public, Penny Jordan, 21 Wells Rd. She asked the committee to consider commercial/non-commercial and define the commercial entity. They, wherever that commercial entity is located, can have commercial signage. Zoning won't matter.

Councilor Sullivan is concerned that zoning may still be an issue. Councilor Jordan suggested the commercial definition would need to be narrowly tailored. Councilor Sullivan is concerned with the impact on neighborhoods where there are currently home businesses.

Public Comment: Penny Jordan, 21 Wells Rd, said you can regulate home business signs.

Councilor Jordan supports creating categories of business signs, from shopping center, etc...

Councilor Lennon asked if we can allow small signs for small businesses and a larger sign for larger businesses? Councilor Jordan referenced the outline where signs on the larger street classifications, such as arterials, etc could have different regulations. This would not address signs on major roads that you may object to aesthetically.

Councilor Lennon asked if that is tied to speed limit? Councilor Jordan noted that the speed limit on lower classification roads is slower, which supports an organizational strategy where smaller signs are allowed on those roads. Road type is one way to regulate signs, and there are other ways.

Councilor Sullivan noted that, in the materials we have received, it does state that commercial speech should not be treated more favorably than non-commercial speech.

Councilor Lennon asked how we stop that? How do we monitor opinion? Councilor Jordan says that is the substitution clause.

Public Comment: Penny Jordan, 21 Wells Rd, offered that the more minutia you get into, the more exceptions you create, so you need to keep things broad and high level.

Councilor Jordan said that now we do have a lot of exceptions.

Public Comment: Councilor Jordan recognized Jay Cox, 1148 Sawyer Rd. Reed does not address commercial signs and you can discriminate between commercial and other signs. There are older, 1981 cases, that say you cannot treat an ideological speaker less favorably than a commercial speaker. Someone with an ideological message can make a claim to the same signage as commercial signage. That has nothing to do with Reed.

Councilor Jordan said that is subject to interpretation. It doesn't mean that if a commercial sign gets 15-16 sq. ft., then an ideological sign has to have the same square footage. It can be interpreted that it has to have the same opportunity to present its message. You can't allow a sign, then not allow a political sign.

Councilor Lennon asked how we proceed? Councilor Jordan responded we can organize by location, or non-commercial/commercial. We could start with what are the noncommercial regulations going to be and what are the commercial regulations going to be? Where?

Councilor Sullivan suggested to proceed with the outline, since we have no consensus right now.

The committee began with signs that would be allowed town-wide. These would be traffic control signs. Ms. O'Meara explained that if the committee likes this approach, she will go through the current sign ordinance and put all the signs that can fit into the traffic control sign category and put them in this section. Maybe we can put address signage and business directional signage into this category. The more expansive we make this, the more risky it is. The committee liked this approach. The traffic control signage definition would need to be updated.

In response to a question about the relationship with the current ordinance, Ms. O'Meara suggested that if the committee can agree on an outline, then task staff to take the current ordinance and prepare a new draft ordinance to review. That was generally acceptable.

In response to a question about the outline, Ms. O'Meara explained that non-traffic control signage is already in the right-of-way so we need to address that in the ordinance. One approach is to provide for anyone to place some signage in the right-of-way. Another approach is to regulate signs in the right-of-way by the zoning district the right-of-way is located in. If you want to regulate by zoning district, this should be moved out of the "townwide" section to the section that regulates by zoning district location.

Councilor Sullivan prefers that town wide only be traffic control signage.

Councilor Jordan ask how we would handle that signage then? Ms. O'Meara noted that we should not be reading the sign to determine how the regulations apply, so just providing an allowance townwide is an approach. You may also decide that the town is more tolerant of signs in the right-of-way on major roads, which would steer more towards regulation by zoning district location.

Councilor Sullivan said it is key to think of it as a blank sign. Councilor Lennon asked about how this applies and it was made clear this is the right-of-way, not private property.

Councilor Lennon asked how you enforce political signs in the right-of-way? It is enforced now. Signs are placed in a manner and size regulated by the current Sign Ordinance. Councilor Lennon asked if we could only allow signs in the major road rights-of-way, and you can, but there may be lots of opposition to that restriction.

Councilor Jordan noted that Rt 77 goes through multiple zones and this will be complicated. Councilor Lennon suggested using types of roadways.

The committee discussed trying to regulate temporary signs townwide by road type. The family fun day sign was mentioned. Councilor Sullivan noted there are large sections of Rt 77 that are very residential. Councilor Jordan liked being able to spread out the signs along the roadway rather than having them clustered in some locations.

Councilor Lennon asked about farm signage. If someone has a farm on Sawyer Rd and another farmer has a farm on Rt 77, does the Rt 77 farm get to have 4 times as much signage? Councilor Jordan noted we are talking about right-of-way signage. Councilor Sullivan is concerned with the residential areas of Rt 77, so organization by roadway may not work.

The committee moved onto sign regulation in residential (and other nonbusiness districts) districts, further divided by major and minor roads. This approach allows you to limit signage in most neighborhoods, where there may be the most concerns. The committee reviewed the roads in the arterial, collector and rural connector categories (See Appendix C of the Zoning Ordinance).

Councilor Jordan asked that, if you do this by road category, can it survive strict scrutiny? Ms. O'Meara said this approach is based on location, which is Reed compliant. Distinction between commercial and residential is also an acceptable way to regulate. Councilor Sullivan said that smaller signs can also protect public safety in smaller neighborhoods.

The committee discussed square footage allowed? The committee thought 32 sq. ft. was too much sign in a residential area. The committee referred to the summary chart of the signs currently allowed.

Councilor Lennon would like to reduce the signage allowed. Councilor Sullivan noted there would be some grandfathering for existing signage.

The committee noted that some large signs are allowed now. For example, churches are allowed 72 sq. ft. of signage.

Councilor Lennon would like some value judgement in signage. We want to encourage farming, so can we allow 72 sq. ft. for farms, and less for development? The range of sign sizes currently allowed implicitly has values. Councilor Jordan said that if you classify the ordinance into commercial and noncommercial and put farming signs in commercial, then you can do that. Commercial signs only have to survive an intermediate scrutiny. It is an important government interest to promote farming. It is not an important government interest to promote developers.

Councilor Sullivan has concerns this is a slippery slope. Farming is documented as important in our town. Councilor Jordan said it is important for the country. Councilor Sullivan asked if this is consistent with the Reed decision. Councilor Jordan said Reed does not talk about commercial at all. Councilor Sullivan agrees farms are important, but other businesses are considered important to the community. She remains concerned.

Councilor Lennon said maybe all commercial should get the same size. Our current ordinance has an implicit value system and she is surprised development gets more than farmers.

Councilor Jordan thinks it is simpler to think commercial/non-commercial, not just zones. How big should noncommercial signs be allowed on major roadways. How long for temporary signs. Do they light it?

Councilor Lennon said not lit, typical 18 x 24 sign.

Councilor Jordan redirected to how much signage should be allowed. We allow a lot of different signs right now.

Councilor Sullivan noted we have a lots of large signs on Route 77 now, for example St. Bart's sign. Some, but not all the signs are commercial. Councilor Jordan suggested the definition of commercial sign be broad to include churches.

Councilor Lennon asked if there is a way to distinguish between commercial signs and ideological signs? Councilor Jordan suggested defining commercial signs to include all those categories, use hours open as part of the definition.

Public Comment: Jay Cox, 1148 Sawyer Rd, suggested one way to regulate sign size is to use a formula that equates size of the sign to the size of the lot.

Councilor Jordan said it does not address sign content, so that would be legal. It is no different than regulating by road. If you can afford to live on one road, it is the same as if you can afford to own more land. It is similar to roosters and discriminating by lot size.

Councilor Sullivan is concerned this is a free speech issue, not tied to lot size.

Councilor Lennon wants to define the purpose and allow bigger signs for farming.

We can define commercial to be everything that is not noncommercial. Councilor Lennon said it needs to include schools, town hall. Councilor Jordan said it could be anything that is not just residential, to encompass everything.

Ms. O'Meara felt municipal signs can be allowed as a public purpose.

Councilor Lennon asked about churches and Ms. O'Meara cautioned the committee to be very careful because religious institutions are very protected free speech.

Councilor Lennon asked if CELT can be in a special category. Ms. O'Meara said yes, but every exception increases legal risk.

The committee discussed the signs and properties that have signs right now, in commercial and residential zones.

What else needs to be in the commercial definition? churches, farms, and nonprofits.

Public Comment: Jay Cox, 1148 Sawyer Rd, said put anything that isn't political, ideological and religious in one pile and everything else is in the other. You don't need to define commercial. Some things, like nonprofits, may overlap commercial and noncommercial.

Councilor Lennon suggested the commercial definition should be where no one lives. Councilor Jordan asked about farms.

The committee discussed temporary signage, including time limits and size. It was suggested that a temporary sign be square footage in addition to the permanent signage allowed, in order to avoid requiring removal of permanent signage. You can limit size and time allowed for temporary signage.

Councilor Jordan asked about the biggest signage allowed on a typical residential street. There are many signs allowed. The committee consulted the chart. It was noted that regulating by location is more user-friendly. There was general agreement to allow a budget for temporary signage and remove a lot of specific signs listed in the current ordinance.

Public Comment: Jay Cox, 1148 Sawyer Rd, asked why the outline did not mention agricultural products signs?

Ms. O'Meara said she is avoiding, until instructed otherwise, any regulation of signs by content category.

The committee reviewed the time frames in the current ordinance for temporary signs. For now, allow temporary signs, 12 sq. ft., for 8 weeks, and if you need it longer, it needs to be treated as a permanent sign.

How do you want to treat off-premise signs? 4 max, also 8 weeks.

Public Comment: Jay Cox, 1148 Sawyer Rd, asked if signs on private property not visible from the public road be allowed.

Councilor Jordan said we talked about treating these as directional signage.

Public Comment: Jay Cox, 1148 Sawyer Rd, said he puts out 6 off-premises signs, including some in South Portland and Scarborough.

Public Comment: Penny Jordan, 21 Wells Rd, said Bill and Lois put out 6 off-premises directional signs, at various Cape intersections. They have more every year.

Councilor Lennon noted that they are relatively short term, for a few weeks. Councilor Sullivan noted that this would then allow 6 garage sale signs, etc. Councilor Jordan said this loops back to commercial/noncommercial. Allow commercial to have 6 off-premise signs and non-commercial 2 off-premise signs. Ms. O'Meara pointed out that this is the crux of the Reed decision, more strictly regulating off-premise non-commercial signage.

Councilors questioned if a garage sale or selling your home is commercial.

Next Meeting

The next meeting of the committee will be held on Thursday, November 3rd, from 1:15 p.m. to 2:45 p.m.

Public Comment

Jay Cox, 1148 Sawyer Rd, liked commenting during the discussion.

The committee adjourned at 2:45 p.m.