

**STAFF SUMMARY  
CITY OF MINNETONKA  
CITY COUNCIL STUDY SESSION  
MONDAY, MAY 14, 2007  
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**Council Present:** Bob Ellingson, Terry Schneider, Al Thomas, Tony Wagner, Brad Wiersum, and Mayor Jan Callison. Dick Allendorf was excused.

**Planning Commission:** Steven Adams, Mike Brandt, John Cheleen, Paul Lehman, Sarah Schmitz

**Staff:** John Gunyou, GERALYN Barone, Desyl Peterson, Ron Rankin, Julie Wischnack, David Maeda

Callison called the meeting to order at 6:30 p.m.

Wiersum moved, Thomas seconded a motion for the council to go into executive session. All voted "yes." Motion carried.

**1. Executive session to discuss the billboard litigation**

The council went into executive session at 6:32 p.m.

Callison called the meeting back to order at 7:00 p.m.

**2. Report from city manager**

None.

**3. Dynamic signage**

The council and commission watched a demonstration of a dynamic sign from Daktronics representatives. The demonstration included examples of the sign's brightness with different colors, different sequencing ranging from two to eight seconds, different non-instantaneous transitions including fades and spin-ins, and also a dynamic balloon graphic display.

After the demonstration Gunyou said staff was in the process of developing an ordinance to regulate dynamic signage and the study session was an opportunity to provide staff direction and feedback. Currently there is a moratorium on electronic signs in connection with a lawsuit involving two electronic signs, one on I-394 and one on I-494. The city contracted with various experts to provide background on the subject. An initial draft of a report has been prepared, but not finalized. The recommendations were included in the staff recommendations, and a final copy of the report will be available when the ordinance is introduced.

Gunyou said the draft ordinance will be introduced at the June 4 council meeting. The planning commission public hearing will be June 14. The commission's recommendation will then be considered by the council on June 25.

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Gunyou said the simplest approach in adopting a dynamic sign ordinance would have been to either allow everything or to allow nothing. Several cities have taken those approaches. Gunyou said the difficulty with allowing no dynamic signs is that approach doesn't recognize the evolution of technology. Staff felt it important to recommend an ordinance that wouldn't need adjusting every time a new technology is developed.

Gunyou cautioned there is always a tension between policy and law on what the city might want to do but would not legally be allowed. The strictest restriction is that free speech is constitutionally protected so the ordinance cannot discriminate against one form of expression versus another. There are also distinctions between offsite and onsite advertising. He said staff tried to be evenhanded. The dynamic sign provisions were designed to overlay the existing sign ordinance and incorporate many of the same definitions and provisions. He concluded the staff presentation by describing the recommended approach as standards-based, rather than overly proscriptive.

Lehman asked if the intention was to prohibit all new dynamic signs. Gunyou said no and that people who currently have a sign could convert their signs within the restrictions of the proposed ordinance. More dynamic signs are expected in the future, with many churches, gas stations and schools likely converting their static signs into dynamic signs. Schneider added that billboards and car dealerships along I-394 are the most likely to convert their signs.

Wiersum said he supported the general approach and liked the idea of being proactive as technology will change and the issue will grow. He said building on the existing sign ordinance was logical.

Schneider asked how the ordinance would apply to portable dynamic signs. City Attorney Desyl Peterson said currently those types of signs are prohibited and that would continue. She said there is a new trend with dynamic signs on the side of box trucks and that would be difficult to regulate since the trucks travel from city to city, and on interstate highways, and that issue would have to be addressed at a higher level.

Schmitz said she too liked the approach of overlaying the dynamic sign provisions over the existing sign ordinance, especially for signs that are part dynamic and part static. If there were different ordinances for different types of signs there might be confusion with which ordinance would apply to those types of combination signs.

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Getting back to Schneider's point, Wiersum said he could see adding something to the ordinance to address vehicles that function specifically as signs. However trying to get at trucks with signs on them would be difficult.

Gunyou said the brightness provision of the ordinance is challenging because of the difficulty of enforcement. He said the intent of the staff recommendation is that a dynamic sign should have the appearance of a regular sign in either the day or night. This requires a dynamic sign to be brighter during the day so the sign doesn't appear dimmer in the sunlight. It also deals with conditional issues like which direction the sign is facing, east or west. This requires constant adjustment of the sign depending on the ambient lighting conditions to keep it looking like a regular sign. Some cities establish maximize "nit" levels but it isn't possible to measure it by a meter because the appearance differs depending on the distance the sign is viewed from. Gunyou said at present there is no good way to measure the brightness, although there might be in the future. Staff is recommending language similar to the state of Wisconsin that says the signs should be no brighter than is necessary to be legible for general visibility. He said in talking with the sign industry there was agreement that the enforcement mechanism should be on a complaint basis. If there is a complaint and the city decides a problem exists, the sign owner would be notified, and if there is any disagreement there would be an appeals process.

Adams said he drives by a dynamic billboard every day and it he finds it distracting. He supports including a standard in the ordinance. Gunyou noted staff is proposing to prohibit pure white light which is the brightest color. The sign industry doesn't like to use pure white because it distracts from the rest of the sign.

Wagner asked how the brightness tests deal with light spillover issues. Gunyou responded electronic signs are better with spillover because the light comes not just from a bulb but from cylinders in the sign face. Similar to new television screens, if viewed from the side, the image disappears or fades. The light is also shielded downward. Wagner asked if the existing ordinance needed to be tweaked on the issue of spillover. Gunyou agreed that with dark sky ordinances being examined by other cities, the spillover issue should be considered.

Lehman said the issue of brightness should be addressed for all signs and not just dynamic signs. He said all signs should meet the same standards regardless of the technology involved. Gunyou said that issue might best be considered as a next step rather than dealing with the issue in this proposed change to the ordinance.

Callison said the proposed language of "adequate visibility" was vague and didn't address the balance between visibility and safety. She suggested adding

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language better defining adequate visibility. Peterson suggested adding “factors to be considered...”

Schneider said he has driven by a billboard that was too dim for the conditions and he realized as he was trying to read the sign he wasn't paying attention to the road. Wiersum said he was concerned about leaving it up to a billboard owner to decide what was adequately visible. The city may not agree but creating standards for a broad variety of circumstances would be difficult to do. Peterson said she would be concerned about prohibiting full brightness because with different technologies it could be appropriate that the lighting be at full brightness in order to be legible. She said there was an instance in which she saw the I-494 billboard on a bright sunny day with snow on the ground where the sign appeared very dull.

Schmitz asked if the companies would adjust the signs to adapt to conditions. She didn't want to see a complaint come in when it was sunny only to have conditions change, and it likely wasn't realistic to expect the companies to monitor changing weather conditions. Gunyou said current sign technology includes photo cells and timers to adjust to lighting conditions. He said he expects the technology will get better so adopting a philosophy the dynamic signs should look the same as regular billboards might be the best approach as technology changes. Callison said the proposed panel that would decide on the complaints is based on the idea there will be constant light. If the panel decided the light setting is wrong and the technology allows for changes periodically, the panel would not have much function because by the time they get out to regulate, the setting may have changed.

Adams asked if the Wisconsin Department of Transportation had developed a good way to regulate these issues. Peterson said the proposed standard is currently in effect and the state is struggling to implement it. The standard has been in place for at least a year. There is no appeals process in place and the department is supposed to come up with rules to implement the standard but this hasn't been done yet. Wiersum agreed having a vague standard makes sense because there needs to be a level of accountability. If there is a complaint there would be a methodology to take action.

Gunyou said the frequency of the message change and the type of change has a big impact on the operational mode. If the message changes frequently it is distracting. If the message is sequential and you are waiting for the next message, that too is distracting. To get at these public safety issues the recommendation is to require the instantaneous replacement of a static unrelated image. The current dynamic billboards display one ad that is instantaneously and completely replaced by another ad. There is not a fade in from one ad to the next. There is not a series of ads from one company with only slight changes from one ad to the next. Gunyou said the billboard industry has agreed to live

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with this provision. Staff also recommends the minimum display time be 20 minutes for each advertisement. This suggested time limit is the same as Bloomington's sign ordinance. Gunyou said the only exception would be for time and temperature signs. A federal court has allowed those types of signs to change when the time changes.

For signs that consist of both dynamic and non-dynamic portions, Gunyou said the recommendation is to allow 35 percent of the sign to be dynamic. One rationale for signs is way finding. People are served by being able to find where they want to go. The signs serve a public safety purpose as well because they allow people to make the driving adjustments needed to get to their destination. Callison asked about font size requirements. Gunyou responded when the ordinance is introduced, recommendations will be made for the minimum size font that will be allowed.

Peterson said by reducing the amount of space for the dynamic portion of a sign, it would encourage people to make their messages smaller to get more information delivered. This could be distracting. Cheleen noted the color of the letters is another issue that would impact the readability. Schneider said the viewing distance makes a difference as well.

Callison said the 35 percent requirement might not work in all cases because for signs with smaller face sizes like the Midwest Bank sign, putting in a maximum font size might cause issues. She said there is a relationship between the size of the sign and the font size. Schneider agreed and said the critical component was finding a substantive way-finding feature. He said in some instances a fifty/fifty ratio may be appropriate. He asked if the proposed ordinance would allow the non-dynamic portion to be electronic. Gunyou said that was not the intent because for enforceability purposes it would be easier to structurally limit the signs. Schneider said he wasn't sure he supported that because one of the positives of the dynamic billboards are they are better aesthetically than illuminated wood or aluminum signs.

Lehman asked about the federal exemption for signs displaying time and temperature. He questioned how the ordinance would deal with signs that display time, temperature and a message. He said if the ordinance limited companies to just displaying time and temperature, those signs might go away altogether. Conversely if the ordinance allowed an exemption of the 20 minute time change between messages for signs that display time, temperature and a message, it might create a loophole. Peterson replied the ordinance would allow the signs to include time, temperature and a message but the message still could only change once every 20 minutes while the time and temperature could change as the facts change.

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Callison said over the weekend she drove to Cleveland and back. She said the distracting signs she saw near the Wisconsin Dells and Chicago were the ones that had a lot of motion with fading and splicing. She said dynamic signs in Chicago displayed two advertisements side by side. She suggested clarifying the ordinance to prohibit multiple advertisers on the same face at the same time. Schneider said such a prohibition deals with content. Callison said the ordinance could restrict multiple ads at the same time. Wagner said he would support that.

Schmitz asked for the rationale of the proposed 35 percent dynamic sign provision. Peterson said it was decided the way-finding purpose had more weight than advertising, so the ratio was proposed on a two for one basis. Gunyou said one possibility would be to base the percentage allowed on the size of the sign.

Cheleen asked if logos would be allowed under the animation provisions of the ordinance. Gunyou said the animation provisions prohibit motion and would not apply to fixed logos.

Gunyou said the ordinance deals with off premise signs differently than on premise signs because off premise signs have different rights as nonconforming uses. The city no longer allows off premise signs, and as nonconforming uses, they cannot be expanded. There are 33 existing billboard faces in the city. The recommendation is for an incentive to be provided to encourage companies to take down existing signs in exchange for more favorable standards and regulations. Clear Channel owns 30 of the signs in Minnetonka. The company has a pending lawsuit with the city, so Gunyou said the company was approached to see if they would be open to some type of settlement arrangement. At an earlier study session, council gave direction for a potential settlement with Clear Channel.

Under the settlement, the company would permanently remove some billboards in exchange for more liberal allowances for billboards located in areas they may feel more strongly about converting to dynamic signs. Gunyou said the two areas Clear Channel feels most strongly about would be allowed to use 100 percent of the sign face and a more frequent rate of change for the ads. The company proposed eight seconds instead of 20 minutes for the rate of change allowed. The federal highway administration and MNDOT have indicated this is the evolving standard in the industry,. The city's position was that the 100 percent use of the sign face was something that was workable, but the eight second change rate was difficult to accept. A number of discussions were held and Gunyou said Clear Channel was willing to give up a substantial number of billboards to have the eight second limit for its remaining sign faces. The company agreed to permanently remove 15 of its 30 signs. Eight of the remaining signs can be converted to dynamic billboards and the other seven will remain fixed signs under the tentative agreement.

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Gunyou said the signs the city most wanted removed were not the ones Clear Channel most wanted to convert. Under the company's business model it makes more sense to keep the billboards in the corridors that have 100,000 drivers driving past them every day. Conversely, the city was most interested in removing the billboards that had more aesthetic impact because of the area involved. Under the proposed settlement Gunyou said the city will allow Clear Channel to have one east facing and one west facing sign on I-394 west of Plymouth Road, and one east facing and one west facing sign east of Plymouth Road. This means, driving either way a person would only see two dynamic billboards changing every eight seconds. Because the Plymouth Road overpass represents an effective visual barrier, the driver would not see both billboards at the same time so the frequency of change would not be that distracting. The tentative agreement will be publicly announced on Tuesday, May 15.

Adams said the eight seconds provision was a problem and asked if that could be lengthened. Callison said the proposal would come before the council for approval. Adams said he drives by a sign that changes every eight seconds and it is distracting and a public safety issue. Cheleen said he agreed signs that change every eight seconds are distracting but removing billboards permanently from the city was a nice tradeoff. Gunyou pointed out that Clear Channel also agreed to keep the eight second minimum even if the federal government should later decide to allow more frequent changes. Schneider said the frequency of the time between changes was much talked about by the council. He asked Adams how frequently the sign he sees changes before he drives by it. Adams said he usually sees two changes.

Wiersum said when it came down to making a decision, the council saw a great opportunity to permanently get rid of one-half of the billboards in Minnetonka. He said none of the council liked allowing changes every eight seconds but it came down to the question if the trade was worth it. Was the city better off with the eight seconds and half the billboards gone or could the city end up in the position of having to accept the eight seconds and getting nothing in return because of future changes in federal government regulations?

Wagner said he drives I-394 several times a day and the city is blessed by the topography in the area. The overpasses limit what the driver will see in regards to the allowed signs.

Peterson thanked the council and planning commission for all the thoughtful comments and feedback. She said it was an extremely difficult issue for staff to get its arms around.

Wiersum congratulated the staff for all the work and said he is excited about the idea of the billboards coming down.

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Gunyou said he has been involved in a lot of negotiations over the years and wanted to recognize the representatives from Clear Channel for their straightforward approach to the negotiations. He said it really is a win/win agreement and that the company deserved a lot of credit for coming to the table with an open mind.

**4. Adjournment**

The study session adjourned at 8:25 p.m.

Respectfully submitted,

David E. Maeda  
City Clerk