

February 17, 2010

M. M. Fowler, Inc.  
4220 Neal Road  
Durham, NC 27705

RE: ZONING TEXT AMENDMENT UDO-213

Dear Sirs:

The attached report of the Planning Board to the City of Winston-Salem City Council is sent to you at the request of the Council Members.

When the text amendment is scheduled for public hearing, you will be notified by the City Secretary, of the date on which the City Council will hear this petition.

Sincerely,

A. Paul Norby, FAICP  
Director of Planning

Attachment

pc: City Secretary  
Bill Gifford, 608 Oaklawn Avenue, Winston-Salem, NC 27104  
Melynda Dunigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106

**ACTION REQUEST FORM**

**DATE:** February 17, 2010  
**TO:** The Honorable Mayor and City Council  
**FROM:** A. Paul Norby, FAICP, Director of Planning

**COUNCIL ACTION REQUEST:**

Request for Public Hearing on Zoning Text Amendment proposed by M. M. Fowler, Inc.

**SUMMARY OF INFORMATION:**

Zoning Text Amendment proposed by M. M. Fowler, Inc. to amend Chapter B of the *Unified Development Ordinances* to revise the rate of change for electronic signs. (UDO-213)

**PLANNING BOARD ACTION:**

**MOTION ON PETITION:** APPROVAL  
**FOR:** WESLEY CURTIS, ARNOLD KING, ARTHUR KING,  
DARRYL LITTLE, PAUL MULLICAN  
**AGAINST:** LYNNE MITCHELL  
**SITE PLAN ACTION:** NOT REQUIRED

## STAFF REPORT

DOCKET # UDO-213

STAFF: [Aaron King](#)

### REQUEST

This UDO text amendment is proposed by M. M. Fowler, Inc. to amend Chapter B of the *Unified Development Ordinances* (UDO) to revise the rate of change for electronic message board signs.

### BACKGROUND

Electronic message board signs warranted a significant amount of discussion as UDO-164 (Sign Ordinance) was being developed in 2006-07. This type of sign was originally prohibited in the Sign Committee's draft ordinance. Through discussion and comments at public information sessions, staff noted these signs were useful to businesses and should be permitted in UDO-164. It was not the intent of staff, however, for these signs to be used in a distracting, attention grabbing manner. To ensure this, staff originally proposed a maximum rate of change of four times per twenty-four hour period. This rate of change was reduced to one change per thirty minutes after a second round of public hearings in May 2006.

The recommendation of one change per thirty minutes remained in place for the September 2006 Planning Board public hearing. After providing various simulated rates of change for the Planning Board, the recommended change rate was reduced to one change per thirty seconds in January 2007. At the March 2007 Planning Board meeting, the Board recommended approval of UDO-164 with a recommended change rate of one per eight seconds. The final version of UDO-164, adopted by the City Council in May 2007, set the maximum rate of change for electronic message board signs at one change per two minutes with the exception of stadiums, coliseums, etc, which were allowed a rate of change of one per eight seconds.

In August 2007, the City Council requested a text amendment (UDO-178) that would revise the rate of change for electronic message board signs to a uniform one change per one minute. In the analysis of the Council's request, staff believed the previous staff recommendation of one change per thirty seconds or the Planning Board's recommendation of one change per eight seconds were also appropriate. Staff also noted that a uniform rate of change would be easier for the Inspections Division to enforce.

In October 2007, the City Council adopted UDO-182 which provided different standards for existing and new electronic message board signs. Under UDO-182, legally existing electronic message board signs were allowed a maximum rate of change of one per eight seconds. New electronic message board signs constructed after adoption of the ordinance would be limited to a maximum change rate of one per two hours. At the end of the fifteen year amortization period (November 1, 2022), all electronic message board signs would have a maximum change rate of one per two hours.

## **ANALYSIS**

The subject request seeks to revise the maximum change rate for new electronic message boards from one change per two hours to one change per two minutes. Under the provisions of UDO-182, legally existing electronic message boards are allowed to have a change rate of one per eight seconds, while all new electronic message board signs are restricted to one change per two hours. While the proposed request would not result in a uniform standard for electronic message board signs, it does close the gap in terms of allowed time between changes. The proposed request does retain the provision requiring all electronic message boards to have a two hour change rate once the amortization period has concluded.

The issue of change rates for electronic message board signs has been the subject of much debate over the past five years. Throughout the analysis over the past five years, staff has primarily been concerned with community appearance and traffic safety. Staff believes the proposed two minute rate of change will not lead to a “Vegas-style” strip of flashing, distracting signs. With respect to traffic safety, staff believes the two minute change rate is sufficiently long enough to not serve as a distraction to motorists.

The Inspections Division also believes the proposed text amendment will provide an easier method of enforcement. Currently, under the two hour change rate, an inspector could spend up to four hours on one sign inspection. The proposed request significantly reduces the amount of staff time needed to enforce this ordinance.

## **RECOMMENDATION**

### **APPROVAL**

Aaron King presented the staff report.

### **PUBLIC HEARING**

FOR:

Bill Gifford, 608 Oaklawn Avenue, Winston-Salem, NC 27104

- I'm the attorney for the applicant M. M. Fowler.
- M. M. Fowler operates seven Family Fare convenience stores in Winston-Salem.
- They are good corporate citizens. They are clean, provide necessary products to City residents including gasoline and provide jobs for people in this area.
- Family Fare has been forced to operate at a disadvantage because of the limits placed on on-site advertising.
- In 2007 they purchased electronic signs for six of their seven stores. These signs were ordered when the May 2007 sign ordinance was in effect. The two minutes rate of change was the requirement at that time except for the eight second rate of change for coliseums and theaters, etc.
- Family Fare's signs were ordered when the May 2007 ordinance was in effect. They were then made, delivered, and installed in 2008. However, when Family Fare went to get their permits, they were told the signs could not change every two minutes as expected, but could only change every two hours.

- Family Fare operates in several locations where it has competitors directly across the street who have electronic message signs that look exactly like our signs. The only difference is that the competitors signs can change once every eight seconds while ours can only change once every two hours.
- In our view the difference is inequitable with no basis for the inequity.
- The amendment we have requested would reduce rather than eliminate the current inequity by allowing signs installed after November 1, 2007 to have a two minute rate of change rather than a two hour rate of change.
- As Mr. King stated earlier, this change would not adversely impact either the appearance of our community or traffic safety.
- We ask for your support.

#### AGAINST:

Melynda Dunigan, 1875 Mallard Lakes Drive, Winston-Salem, NC 27106

- Distributed memo, a copy of which is on file.
- The Winston-Salem Neighborhood Alliance is opposed to this request.
- The minimum interval of two hours for new electronic signs was approved by the City Council in 2007. This decision was made after a great deal of discussion and debate and input from a variety of people representing various interests.
- Owners of new signs will find it burdensome to switch to a two-hour rate in 2022 when all signs will have to comply with the two-hour minimum rate change.
- Reducing the rate of change will erode the compromise time which was arrived at in 2007.
- Updates to ordinances often cause disparities between situations regulated under the old and new ordinances. That is the purpose of grandfathering and amortization. Owners who purchased signs after the ordinance update should have to comply with the new rules.
- Reducing the change rate for new signs will cause business to attempt to out-do each other to attract customers. This increases the danger for motorists.
- We wonder how much time is being given by Inspections to enforce the current sign regulations since the enforcement is on a complaint-driven basis. This change would likely result in a greater need for enforcement.
- We ask that you recommend denial of this requested change.

#### **WORK SESSION**

During discussion by the Planning Board, the following points were made:

1. Paul Mullican: I'm having a real dilemma with the two minutes because we've already voted on this three times and arrived at the eight second limit.
2. Darryl Little: Will there be a limit to the number of signs per business?
3. Paul Norby: I believe there would only be one electronic sign per location. In most cases there's also only one free-standing sign allowed per location.

4. Arthur King: When we unanimously passed the eight second change rate, it was the belief of the Board that it was the right frequency. Notwithstanding the change which was made by the Elected Officials, it seems to me that the two minute rate of change comes closer to the eight seconds than does the two hour rate of change. Approval of this request to move to two minutes is more in line with what the Board was thinking at that time so I would be inclined to vote for this petition.
5. At the end of the amortization period, all signs including Coliseum signs, etc. would have to comply with the two hour rate of change requirement set by the City Council.
6. Wesley Curtis: One of the things we spent a lot of time on was to find data which would substantiate whether any certain rate of change led to more or less traffic distractions that cause accidents. The eight seconds was the compromise we came down to. I certainly couldn't fault support of the two minutes given where we were with the eight seconds as well.
7. Lynne Mitchell: This is tough. I was concerned about the enforcement issue, but when we look at 2022 the rate will be two hours and that sort of takes away that argument. I agree that this may encourage more people to get signs and that concerns me. I also worry about the negative messages these stores put up there. They often advertise items which are not healthful products. I'm inclined to say we don't change it now because I am worried about what will happen as we move closer and closer to 2022.
8. Arnold King: I would have voted for the eight seconds, but the petitioner has asked for two minutes and staff supports that request. I will vote in favor of the request.

MOTION: Arthur King moved approval of the zoning text amendment.

SECOND: Wesley Curtis

VOTE:

FOR: Wesley Curtis, Arnold King, Arthur King, Darryl Little, Paul Mullican

AGAINST: Lynne Mitchell

EXCUSED: None

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A. Paul Norby, FAICP  
Director of Planning

**UDO-213**  
**AN ORDINANCE AMENDING**  
**CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES***  
**TO REVISE THE RATE OF CHANGE FOR ELECTRONIC MESSAGE BOARD SIGNS**

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

**Section 1.** Chapter B, Article III of the UDO is amended as follows:

## **Chapter B – Zoning Ordinance**

### **Article III – Other Development Standards**

#### **3-2 SIGN REGULATIONS**

##### **3-2.1 SIGN REGULATIONS (W)**

**(F) Signs Allowed *With* a Zoning Permit**

The following signs are allowed with a zoning permit in any zoning district where the specified uses are permitted:

- (2) Electronic Message Board Sign.** Electronic Message Board Signs shall be allowed in all nonresidential zoning districts. A development may have either attached or freestanding Electronic Message signage, but not both, unless otherwise provided for in this Ordinance. The following conditions shall apply to Electronic Message Board Signs:

- (b) Changes Per Day. ~~For fifteen (15) years following the effective date of this ordinance the period until November 1, 2022, an Electronic Message Board Sign for which a permit has had been lawfully issued as of the effective date of this ordinance November 1, 2007 (1) may display a message that scrolls and (2) shall have a maximum change rate of every eight (8) seconds; at the end of said fifteen (15) year period such signs shall not display a message that scrolls and shall have a maximum change rate of once every two (2) hours.~~ For the period from the effective date of this ordinance until November 1, 2022, all Electronic Message Board Signs for which a permit has been lawfully issued after the effective date of this ordinance November 1, 2007 shall have a maximum change rate of once every two (2) hours minutes and shall not display a message that scrolls. Changes shall be complete and shall not contain any scrolling, flashing, or similar transitional effects between static messages. After November 1, 2022, all Electronic Message Board Signs shall not display a message that scrolls, flashes or has similar transitional effects between static images, and shall have a maximum change rate of once every two (2) hours.

**Section 2.** This ordinance shall be effective upon adoption.