

AN ORDINANCE CREATING ARTICLE 17-11(i)(6) OF THE ZONING ORDINANCE TO ALLOW DIGITAL (ELECTRONIC MESSAGE DISPLAY) MARQUEE SIGNS IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE. (BIG PICTURE VENTURES, LLC).

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WHEREAS, the Lexington-Fayette Urban County Planning Commission considered and adopted a text amendment to Article 17-11, creating Article 17-11(i)(6) of the zoning ordinance to allow digital (electronic message display) marquee signs in the Lexington Center Business (B-2B) zone. The Planning Commission did recommend approval of the staff alternative text by a vote of 6-3; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation of the Planning Commission is attached hereto and incorporated by reference herein;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 17-11(i)(6) of the Lexington-Fayette Urban County Government Zoning Ordinance is hereby created as follows:

Section 17-11(i)(6)

In conjunction with an indoor theater, one marquee, not to exceed thirty (30) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.

b) Location: The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device. ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.

c) Duration of message: The sign shall remain static for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.

d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.

e) The marquee sign shall not display messages or be illuminated when the use is closed.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: August 30, 2022

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
Clerk of Urban County Council

PUBLISHED: September 6, 2022-1t

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Recd by \_\_\_\_\_  
Date: \_\_\_\_\_


**RECOMMENDATION OF THE  
URBAN COUNTY PLANNING COMMISSION  
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY**

**IN RE: PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY) –**  
petition for a Zoning Ordinance text amendment to Article 17: Signage Regulations to allow digital (electronic message display) marquee signs in the Lexington Center Business (B-2B) Zone.

Having considered the above matter on April 28, 2022 and continued to June 23, 2022, at a Public Hearings and having voted 6-3 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL of the Amended Staff Alternative Text** for this matter for the following reasons:

1. The proposed staff alternative text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone to allow an increase in signage opportunity, while also complementing the surrounding land use and can help promote the surrounding attractions
2. The proposed staff alternative text amendment provides greater limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

**ATTEST:** This 29th day of July, 2022.

  
Secretary, Jim Duncan

LARRY FORESTER  
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Richard Murphy, attorney.**

**OBJECTORS**

- Amy Clark
- None

**VOTES WERE AS FOLLOWS:**

AYES: (6) Barksdale, Bell, Davis, de Movellan, Nicol, and Pohl  
NAYS: (3) Michler, Penn, Worth  
ABSENT: (2) Forester, Meyer  
ABSTAINED: (0)

FINAL REPORT

PAGE 2

DISQUALIFIED: (0)

Motion for **Approval** of **PLN-ZOTA-22-00001** carried.

Enclosures:      Application  
                         Justification  
                         Staff Reports  
                         Planning Commission Recommended Text  
                         Applicable excerpts of minutes of above meetings

## GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

1. **APPLICANT INFORMATION:**

**Name:** Big Picture Ventures, LLC

**Address:** 300 E. Main Street, Ste. 800

**City, State, Zip Code:** Lexington, KY 40507

2. **ATTORNEY (Or Other Representative) INFORMATION:**

**Name:** Richard Murphy

**Address:** 250 W. Main Street

**City, State, Zip Code:** Lexington, KY 40507

**Phone Number:** 859-233-9811

3. **REQUESTED TEXT CHANGE:** Date of Pre-application Conference: 12/21/2021

**Zoning Ordinance 17-11(i)(6) Specific text change proposed:**

In conjunction with an indoor theater facility, one marquee per street frontage, maximum of two, shall be allowed in addition to the other signs permitted in this zone as follows: The marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. The marquee shall not exceed a total of 40 (forty) square feet per screen (not including any screen smaller than 10 feet by 16 feet). The marquee may utilize a digital display, provided that there shall be no moving or scrolling messages, and provided that messages may be changed no more frequently than every five (5) seconds. No digital marquees shall be located directly adjacent to, or directly across the street from a residential zone.

4. **DESCRIBE THE JUSTIFICATION FOR MAKING THIS CHANGE: (Use attachment if necessary.)**

See attached letter of justification.

## MURPHY & CLENDENEN, PLLC

ATTORNEYS AT LAW

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Lexington, Kentucky 40507

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RICHARD V. MURPHY

CHRISTOPHER M. CLENDENEN

January 3, 2022

Members of the Lexington-Fayette Urban  
County Planning Commission  
200 East Main Street  
Lexington, KY 40507

Re: Proposed text amendment

Dear Members of the Planning Commission:

I represent Big Picture Ventures, LLC, doing business as Krikorian Theaters.

Krikorian Theaters is requesting your approval of a text amendment to the Lexington Center Business (B-2B) zone to allow digital marquees in conjunction with indoor theater facilities.

Krikorian Theaters operates the LexLive entertainment center at the corner of High Street and South Broadway, across from the Lexington Civic Center (Central Bank Center) and Rupp Arena. As a movie theater complex, it needs to have the ability to inform convention goers, tourists and local residents of the movies and events that are occurring at the center. It is complimentary to the Civic Center and other downtown venues.

We are requesting to be allowed to use digital marquees. Digital technology is already in use downtown at the Opera House, City Center and University of Kentucky on South Limestone Street. It will be utilized in the future on the remodeled Civic Center (Central Bank Center) and Rupp Arena. The digital technology is a modern version of the traditional marquee.

Marquees are already allowed for movie theaters in the B-1 and B-3 zone. In those zones, marquees may be 24 square feet per theater screen, plus 24 feet of attraction board per theater screen. We are requesting to be allowed 40 square feet per screen, without any attraction board. Our proposal will not allow any moving or scrolling messages, and will require that the messages may be changed no more frequently than every five seconds. Also, no digital marquees could be located directly adjacent to, or directly across the street from a residential zone.

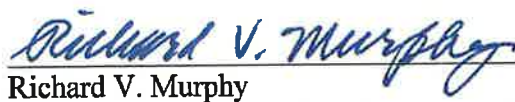
The signs for this center are essential to its success. A good portion of its patronage is from out of town, attending convention sessions at the Civic Center, or looking for entertainment options after attending events at other downtown venues. The signs are designed to create a sense of place and downtown vibrancy in the center of Lexington.

George Krikorian has designed 23 other theater complexes. Our proposal is in keeping with his other complexes, and other theaters nationally. The center is privately financed; there has been no public tax increment financing (TIFs) nor any other public financing. Proper signage is essential to the success of this facility.

As stated in the Comprehensive Plan, "Downtown is the urban epicenter of commerce and entertainment." It should include ground-level pedestrian engagement opportunities. (Page 273). This center provides the entertainment and quality of life opportunities that attract young and culturally diverse professionals to Lexington (Objective C.2.d.)

This proposal is complimentary to and will contribute to the success of both the Krikorian Theaters and the convention, hotel and hospitality industries downtown.

Thank you for your consideration of this text amendment.

  
Richard V. Murphy  
Murphy & Clendenen, PLLC, attorneys for  
Applicant



**LEXINGTON**

MAYOR LINDA GORTON

JIM DUNCAN  
DIRECTOR  
PLANNING

**SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT  
AMENDMENT**

**PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW  
A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY)**

APPLICANT: BIG PICTURE VENTURES, LLC

PROPOSED TEXT: (Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

**ARTICLE 17: SIGN REGULATIONS**

Article 17-11(i)(6):

In conjunction with an indoor theater facility, one marquee per street frontage, maximum of two, shall be allowed in addition to the other signs permitted in this zone as follows: The marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. The marquee shall not exceed a total of 40 (forty) square feet per screen (not including any screen smaller than 10 feet by 16 feet). The marquee may utilize a digital display, provided that there shall be no moving or scrolling messages, and provided that messages may be changed no more frequently than every five (5) seconds. No digital marquees shall be located directly adjacent to, or directly across the street from a residential zone.

**STAFF REVIEW**

In the period following the May public hearing, the staff met with the applicant regarding their concerns with the staff alternative and continued to research best practice ordinances and professional publications regarding the utilization of electronic message display systems within urban localities. Whereas the staff's initial recommendation does provide a model ordinance that would allow for the use of such signage in association with indoor theaters, staff reviewed some of the concerns raised by the applicant and the Planning Commission during the initial public hearing.

During the hearing and the subsequent meetings, the applicant indicated that there were three areas of concern with the staff's alternative language: maximum size of the sign, oversight of the sign, and duration of the message or image. The staff reviewed the text and found that increasing the per theater size from twenty-four (24) to thirty (30) square feet was acceptable, as it allowed for a slight increase in the downtown areas, which are less likely to have large scale multiplexes or to use the bulletin board sign allowances that are permitted in other business zones. However, staff remained resolute on the maximum of three-hundred (300) feet due to concerns with the larger scale signs, the impact on the architecture of the area, and the potential nuisances produced by larger digital signage.





In response to the applicant's concern with the oversight or "sign-off" on proposed signage, staff has modified the language to match the state regulations of digital signage. This does not negate the importance of the Division of Traffic Engineering's review of such signs, which will occur during the permitting process, but clarifies the specific location aspects of the placement of signs.

Finally, the staff continued to review the appropriate duration of messages or images displayed utilizing an electronic message display system. While the forty-five (45) second duration allows for significant increases in the messaging and was associated with the light cycles of downtown traffic signals, staff further reviewed documentation of what has been determined to be appropriate in other communities and model ordinances. There is a significant range in the duration that communities have determined to be most appropriate. At the base level for many communities, the timing has been set at eight (8) seconds. This is the typical time range attributed to digital signage associated with areas of high rates of speed, including highways and interstates. Within the Lexington-Fayette Urban County Zoning Ordinance, a duration limit of fifteen (15) seconds has been established for stadiums within the Highway Service Business (B-3) zone. The B-3 zone is intended to provide for retail and other uses, which are necessary to the economic vitality of the community but may be inappropriate in other zones. The zone is intended to be located along higher intensity roadways with higher rates of speed, ranging from 35 mph to 55 mph. The downtown streets of Lexington, specifically the areas within the B-2, B-2A and B-2B zones, are meant to both carry the appropriate vehicular traffic, but are also meant to be pedestrian centric. Within Lexington, the base speed limit is 25 mph unless otherwise indicated. It is staff's opinion that any increased use of electronic message display systems should be considered in light of the urban context and the slower downtown speeds. This determination is supported by documentation provided by the United States Sign Council (USSC) Foundation and the American Planning Association. Staff has found that a reduction of the original duration time of an image or message from forty-five (45) seconds to twenty (20) seconds allows for proper detection, review, and then eye movement away from the message for motorists in a complex roadway system, like those found in Lexington's downtown areas. While any increase in messaging of signage can result in inattentiveness and distraction of drivers, staff believes that a twenty (20) second duration will allow for safe mobility patterns to occur.

Staff recommends the following amended staff alternative:

17-11(i)(6) In conjunction with an indoor theater, one marquee, not to exceed ~~twenty-four (24)~~ ~~thirty (30)~~ square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

- a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.
- b) Location:
  - i. The sign shall not conflict with the operation of traffic lights, shall not have blinking, and the location shall be agreed to by the Division of Traffic Engineering; The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device.
  - ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.



- c) Duration of message: The sign shall remain static for a period of not less than forty-five (45) twenty (20) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
- d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.
- e) The marquee sign shall not display messages or be illuminated when the use is closed.

The Staff Recommends: Approval of the staff alternative text to the Zoning Ordinance, for the following reasons:

1. The proposed staff alternative text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone to allow an increase in signage opportunity, while also complementing the surrounding land use and can help promote the surrounding attractions.
2. The proposed staff alternative text amendment provides greater limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.







**LEXINGTON**

MAYOR LINDA GORTON

JIM DUNCAN  
DIRECTOR  
PLANNING

**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

**PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW  
A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY)**

APPLICANT: BIG PICTURE VENTURES, LLC

PROPOSED TEXT: (Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

**ARTICLE 17: SIGN REGULATIONS**

Article 17-11(i)(6):

In conjunction with an indoor theater facility, one marquee per street frontage, maximum of two, shall be allowed in addition to the other signs permitted in this zone as follows: The marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. The marquee shall not exceed a total of 40 (forty) square feet per screen (not including any screen smaller than 10 feet by 16 feet). The marquee may utilize a digital display, provided that there shall be no moving or scrolling messages, and provided that messages may be changed no more frequently than every five (5) seconds. No digital marquees shall be located directly adjacent to, or directly across the street from a residential zone.

**STAFF REVIEW:**

The applicant, Big Picture Ventures, LLC, has filed a petition for a Zoning Ordinance text amendment to Article 17: Signage Regulations to allow digital (electronic message display) marquee signs in the Lexington Center Business (B-2B) Zone. Within their letter of justification the applicant indicates that, as a movie theater complex, they would like to have the ability to inform convention goers, tourists and local residents of the movies and events that are occurring at the complex. The applicant opines that the signage is complimentary to the Civic Center and other downtown venues. The applicant cites different locations near the downtown areas that currently utilize digital signage, including the Opera House, City Center and the University of Kentucky on South Limestone Street. It is important to note that the South Limestone Street electronic message display is not located within a zone that allows this form of signage, nor is the signage governed by local regulations.

Electronic message display systems are defined within the Zoning Ordinance as a sign with copy or images which includes, but is not limited to reflective disc, direct illumination, rotating veils, light emitting diodes (L.E.D.s), or liquid crystal diodes (L.C.D.s), and is controlled by means of a central computer or video control system and which has no audible sound (Article 17-8(o)). This form of signage is allowable in the Highway Service Business (B-3), Downtown Business (B-2), Downtown Frame Business (B-2A), and Lexington Center Business (B-2B) zones. The regulation of the size and operation of the electronic message display system form varies based on the context and form of development or land use with which they are associated.



An electronic message display system within the B-3 zone is allowable as part of a permitted free-standing or wall-mounted billboard or sign for an indoor or outdoor stadium or arena having a permanent seating capacity in excess of five thousand (5,000) persons for athletic and cultural events. Within this zone the electronic message display system cannot exceed fifty percent (50%) of the total sign area of the permitted sign, and no moving or scrolling messages are permitted. Messages displayed may be changed not more frequently than every fifteen (15) seconds (Article 17-11(g)(7)).

Within the B-2 and the B-2A zones, electronic message display systems are allowable in addition to the other permitted signs. These allowable signs include: a wall-mounted electronic message display center boards for civic centers, which contain exhibition halls and an arena for athletic and cultural events; for hotels and motels containing conference centers and restaurants; for television and radio system signal distribution centers and studios; and for banks, securities and commodities brokers, credit institutions, savings and loans, and investment companies. The total surface area shall not exceed eighty (80) square feet per sign. One electronic message display center shall be permitted per street front, with a maximum of two signs (Article 17-11(h)(7)).

Within the B-2B zone, electronic message display systems are allowable in addition to the other signs permitted in this zone. Four (4) wall-mounted electronic message display system signs are permitted for civic centers, which contain exhibition halls and an arena for athletic and cultural events. Two (2) such signs, not exceeding two hundred (200) square feet, are permitted, and two (2) additional signs may also be erected, not exceeding fifty (50) square feet each. Electronic message display system signs may be mounted on the wall of the civic center or any structure having a common wall with the civic center (Article 17-11(i)(2)).

With the development or incorporation of new forms of signage, it is necessary to maintain consistency with the established regulations, which allows for consistent application across the community, while also establishing new language that reflects best practice focused on the protection of the health, safety and welfare of our community. By blending the two, there is a continuum of community character, while also allowing for the incorporation of new technologies. The applicant proposed language that is focused on the reduction of negative light impacts on residential development, by including the restriction on adjacency to residential zoning. Additionally, the applicant proposed language that is representative of established regulations, including the description of the marquee, the restriction on the special effects (moving pictures, scrolling messages, etc.), and the inclusion of an amount of time that a single image must be displayed before a transition to another image or message. While these aspects are important, staff sees deficiencies in the proposed text amendment language that not only lead to inconsistencies between the established Ordinance, but do not adequately incorporate best practices in the regulation of electronic message display systems (digital signage).

Due to these concerns, staff has generated alternative text that would allow for the incorporation of electronic message display systems for movie theaters in the B-2B zone, while also providing the best possible consistency with the Ordinance and protecting the health, safety, and welfare of the Lexington community and visitors. The staff proposes the following alternative language:



17-11(i)(6) In conjunction with an indoor theater, one marquee, not to exceed twenty-four (24) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

- a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.
- b) Location:
  - i. The sign shall not conflict with the operation of traffic lights, shall not have blinking, and the location shall be agreed to by the Division of Traffic Engineering;
  - ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone
- c) Duration of message: The sign shall remain static for a period of not less than forty-five (45) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
- d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.
- e) The marquee sign shall not display messages or be illuminated when the use is closed.

The proposed staff alternative represents greater consistency with the current size requirements for marquee signs and the size for each theater. This recommends twenty-four feet per theater and removes any discussion of "screens" that are not associated within a theater environment. The association with the theater is essential, as the marquee is directly tied to the theatrical elements of the use, rather than an associated restaurant or sports bar. Additionally, the staff recommends a maximum of 300 square feet, which allows for adequate signage without dominating the structure.

In addition to maintaining consistency with the Zoning Ordinance, the staff is recommending the inclusion of text that governs the image, location, duration, luminance, and hours of operation of the signage. The proposed limitations on image, location, and duration are focused on ensuring that there be no distractions to those viewing the sign while traveling in the public right-of-way. Moving, scrolling, or other special effects displayed on signage can draw focus to the signage and can distract motorists, leading to potentially dangerous situations, especially in a high pedestrian area in the downtown. While duration or hold time is variable throughout different communities, the general standard is tied to the speeds at which vehicles are moving through space. Typical highway standards recommend the duration between changing images be five to eight seconds, which allows a driver to view a single image, or message. For Lexington, the duration for the changing of an image in the Highway Service Business (B-3) zone is currently 15 seconds. Due to the shorter block lengths, the high amount of controlled intersections (stop lights), and the slower speeds in the downtown areas, it is important to increase the timespan between shifting images or messages. In consultation with the Division of Engineering, staff found that the typical timespan for a full cycle of a signalized





intersection is 90 seconds. Staff recommends that an image or message be held for a duration of 45 seconds before shifting to a new image. The proposed limitation to image, location and duration of the displayed electronic image or message is supported by national standards.

The luminance, or intensity of light, of the sign recommended by the staff has been established by the United States Sign Council (USSC) Foundation as best practice. The proposed luminance allows for legibility of the sign based on the impact of the sun. A nit value is the measurement of luminance and can be measured either with a dedicated tool or a downloaded application on a mobile device. These measurements have been established in many other communities' Zoning Ordinances who have incorporated this form of signage.

The recommended provision that the digital marquee or electronic message display sign not display messages or be illuminated when the use is closed is directly tied to the impact that such signage illumination may have on surrounding development. While there is a provision that the signage not be adjacent to residential zoning, the B-2, B-2A, and B-2B zones all include residential land uses and hotel land uses. The consistent changing of images or messages throughout the night can be detrimental to the neighboring properties and can negatively affect the Lexington community and visitors.

While electronic message display systems are not appropriate in all areas of the Urban County, they have been determined to be appropriate in the most intensely developed portions of the downtown areas. The B-2B zone is intended to ensure compatible land uses, preservation of existing attractions compatible with the Lexington Convention Center, while encouraging new uses necessary to the proper development of the Downtown area. The permitted land uses in the zone are intended to have a logical relation to the Lexington Center and to the downtown core, should promote tourism, should promote the economic health of the community, should provide for an aesthetically pleasing environment, and should prevent the creation of influences adverse to the prospering of the Lexington Center and the Downtown area.

The staff alternative is focused on allowing for an increase in signage opportunity, as requested by the applicant, while also complementing the surrounding land use helping to promote the surrounding attractions in the area. Whereas previous legislation discussed some of the impacts of electronic message display systems, the proposed staff alternative provides limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

**The Staff Recommends: Approval of the staff alternative text** to the Zoning Ordinance, for the following reasons:

1. The proposed staff alternative text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone to allow an increase in signage opportunity, while also complementing the surrounding land use and can help promote the surrounding attractions.
2. The proposed staff alternative text amendment provides greater limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.



TEXT AMENDMENT RELATING TO MARQUEES IN THE LEXINGTON CENTER  
BUSINESS (B-2B) ZONE

New Section 17-11(i)(6) of the Zoning Ordinance:

In conjunction with an indoor theater, one marquee, not to exceed thirty (30) square feet per theater, with a maximum of three-hundred (300) square feet; such marquee shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum sign clearance of eight (8) feet. Marquee signs may utilize electronic message display systems, only if the sign complies with the following additional requirements:

- a) Image: Sign must be static and there shall be no moving or scrolling messages, special effects, or animations.
- b) Location:
  - i. The sign shall not interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device.
  - ii. The sign shall not be located directly adjacent to, or directly across public right-of-way or a private road, from a residential zone.
- c) Duration of message: The sign shall remain static for a period of not less eight (8) seconds. The transition from one (1) message or image to the next shall be direct and immediate.
- d) Luminance: Between sunrise and sunset, the maximum luminance shall be five thousand (5,000) nits, and between sunset and sunrise, the maximum luminance shall be five hundred (500) nits. Sunrise and sunset shall be determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for Lexington-Fayette Urban County. The sign must be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's luminance.
- e) The marquee sign shall not display messages or be illuminated when the use is closed.

- Rebuttal & Closing Statements
  - (a) Petitioner's comments (5 minute maximum)
  - (b) Citizen objectors (5 minute maximum)
  - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

### C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

1. PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY) – petition for a Zoning Ordinance text amendment to Article 17: Signage Regulations to allow digital (electronic message display) marquee signs in the Lexington Center Business (B-2B) Zone.

INITIATED BY: Big Picture Ventures, LLC

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Postponement.

The Staff Recommends: Approval of the staff alternative text, for the following reasons:

1. The proposed staff alternative text amendment allows for the expansion of the use of electronic message display systems within the Lexington Center Business (B-2B) zone to allow an increase in signage opportunity, while also complementing the surrounding land use and can help promote the surrounding attractions.
2. The proposed staff alternative text amendment provides greater limitations that prevent the creation of influences adverse or would negatively impact the overall health, safety, and welfare of the Lexington community and visitors to the Urban County.

This is a continuation of a public hearing from the Planning Commission meeting held on April 28, 2022.

Staff Text Amendment Presentation – Mr. Hal Baillie updated the commission information that has changed since the April 28, 2022 meeting. Mr. Baillie gave a brief overview of the previous suggested text presented by the applicant in April, as well as the staff alternative at that time. He highlighted three previous concerns from the April meeting including the size of the sign, the oversight of the sign, and the duration of the message presented on the sign.

Mr. Baillie presented the updated Staff recommended text that sought to address those concerns from the last meeting. First, staff shifted the per-theater sign from the previous 24 square feet to 30 square feet. This allows the applicant to reach the maximum size requirement with 10 theaters. Additionally, staff changed the language having to do with the oversight of the signage to match the state statute associated with digital signage.

The final element that Mr. Baillie highlighted was the duration of the images. Initially, the staff alternative language said that the duration could not go less than 45 seconds. The revised staff alternative reduces that time to 20 seconds. Mr. Baillie displayed reasons why the Staff thought that the applicant's proposal of 8 seconds was inappropriate, including that the suggestions from the applicant for 8 seconds was using regulations designed for vehicles that are going faster and little pedestrian activity that could potentially be distracting to drivers. These regulations are much better suited for highways and interstates, but not downtown areas.

Mr. Baillie continued giving Staff's justification for a 20 second duration, stating that this is much more in line with the current Zoning Ordinance, it is in keeping with best practices on complex downtown streets, and it allows for signs to be absorbed while staying focused on the roadway. Additionally, Mr. Baillie displayed a mathematic equation that Staff also used as justification for the 20 seconds they recommended.

Mr. Baillie ended his presentation by saying that Staff is recommending the amended staff alternative that he presented today.

Commission Questions – Bruce Nicol asked for clarification on the size issue and if the applicant was happy with that change. Mr. Murphy indicated from the audience that he was and Mr. Baillie stated that that was his understanding as well. Mr. Nicol joked that he tried to do the math on the equation that Mr. Baillie presented and got 6 seconds, which Mr. Baillie indicated was incorrect.

Mr. Michler asked about what time the signs would stop displaying and more specifically if it was the business's decision when to stop displaying the messages. Mr. Baillie indicated that Staff did not put a restriction of time of operation in their recommendation because it is associated with the business operation rather than sign usage. Any type of cap on a specific time would get into conditional zoning restrictions, rather than Zoning Ordinance text



Mr. Pohl asked if there was a limitation on how high the sign can be mounted. Mr. Baillie stated that there were limitations that included the sign has to project out from the building and the sign cannot be above the building itself.

Applicant Presentation – Dick Murphy, attorney for the applicant, starting his presentation by giving some background on Mr. Krikorian and his business ventures that lead him to develop Lex Live.

Mr. Murphy said that since the last meeting approximately six weeks ago, Staff and he have had productive discussions and agree on everything except one issue, the duration of messages. Mr. Murphy asked the Planning Commission for 8 seconds because it is the industry standard norm for digital signage. Additionally, Mr. Murphy confirmed that this text amendment only relates to on premise signs, not off-premises signs.

Mr. Murphy indicated that their intention with this text amendment is to display still images, not videos or any type of moving images.

Mr. Murphy said that he appreciated the Staff's research on this, but cited a number of private and government agencies that use the 8 second interval that the applicant is requesting. Mr. Murphy also cited data that there was no correlation between electronic signage and distracted driving. Mr. Murphy stated that they wanted signage that was effective and safe.

Mr. Murphy presented to the Planning Commission a video he took of the Lexington Opera House digital marquee and recorded how many advertisements that were shown in 45 seconds. He stated that it was a significant amount of ads in a short amount of time, and reiterated that he wanted to show the Commission that two and half blocks away from their location, a digital marquee with even more advertisements is operating in Lexington. He also presented a video of the digital sign directly across the street at the Hyatt outside of Rupp Arena.

Mr. Murphy listed a number of cities including Charlotte, Fort Worth, and Atlanta and gave what their duration for digital signage was, and while there was variation, he indicated that the average was about 8 seconds, and is what the applicant was requesting.

Mr. Murphy ended his presentation saying that the applicant agreed with the Staff's revised language, with the exception of the interval, asking to change the interval from 20 seconds to 8 seconds.

Commission Questions – Mr. Nicol pointed out that Mr. Murphy was citing data that was meant for highways, not busy downtown streets. Mr. Nicol also pointed out that in our own Ordinance for signs, it says 15 seconds is appropriate, and asked if those 12 seconds are really worth the trouble here. Mr. Murphy responded citing data from the International Sign Association that found an example of the 15 second duration at Wildhealth Ballpark. Mr. Murphy continued, pointing out the intervals at the Opera House and at Rupp Arena.

Mr. Nicol responded asking why he keeps bringing up, the Opera House and Rupp Arena, as they are not regulated under this Ordinance and asked if bringing them up is about fairness or anything else. Mr. Murphy said that it had to do with that to some extent, but their main point is that these type of signs are already here and are safe and work well.

Mr. Michler said he appreciated a lot of the issues being settled before the meeting, but asked how many important messages advertised does the applicant think he has to show in a minute. Mr. Murphy said that because they have 10 theaters and a variety of other events going on, such as e-sports, they need as many possible messages out as they can.

Mr. de Movellan asked if Mr. Murphy had a sample of what they would like to display. Mr. Murphy indicated that he did not at this time.

Mr. de Movellan also asked a question about the sign at closed hours, because there are multiple businesses in Lex Live including a theater and bowling alley, would the sign be turned off when the theater is closed or will it be closed when the other businesses are closed. Mr. Murphy consulted Mr. Krikorian and stated that all the businesses close at the same time.

Finally Mr. de Movellan asked staff what businesses qualify as a theater. Mr. Baillie responded stating that theaters are not specifically defined in the Zoning Ordinance, but usually defined as a stage with a projected screen in which there are stadium seating.

Ms. Worth pointed out that the studies Mr. Murphy highlighted were from 2012 and 2014 and asked if there had been any more recent studies. Mr. Murphy indicated that there was not from what he had seen.

Staff Rebuttal – Mr. Baillie started the rebuttal by the thanking the applicant for working with staff for making it a collaborative process. Mr. Baillie reiterated the staff position with the location being downtown, with pedestrians, various turn signals, lights, and signs, Staff is looking to implement a "best practices" policy and be as safe as possible. Mr. Baillie highlighted a number of court cases where judges have indicated that these signs can create inattentiveness and some distraction. Staff wants to make sure that this is the safest ordinance possible and allows for the incorporation of these new technologies effectively.

Mr. Baillie elaborated on the different elements of signage including speed, interval, complexity and size as well as reiterating staff's point that the regulations Mr. Murphy is highlighting are meant for highways or interstates. Mr. Baillie mentioned the

Opera House's frequency of ads was not effective because you are getting so many ads in a short amount of time that the driver cannot fully comprehend what they are seeing in such a short amount of time.

Mr. Baillie briefly mentioned the justification for the decrease from 45 seconds to 20 second intervals because there was more scientific research, although he did mention that the 45 seconds was a good transition point. The 20-second duration would allow the applicant more opportunities to advertise what is going on at the facility.

Mr. Baillie ended his rebuttal saying that the Zoning Ordinance right now is regulated at 15 seconds for the B-3 zone and that a 20 second duration is backed up by research and deals with Lexington's current context in the best way.

Applicant Rebuttal – Mr. Murphy stated that they have about 10 movies a week that can change weekly and they have to get that information out there. Mr. Murphy reiterated his assertion that there is no statistical data that suggests that there is a correlation between digital signage and an increased risk of accidents.

Mr. Murphy ended saying that the 8 second interval was safe, works and complies with all governmental and private sign agencies.

Commission Questions – Mr. Bell asked the applicant if signage is changing and in what ways that is happening and if what is happening in Lexington is different from anywhere elsewhere the applicant has a theater. Mr. Krikorian responded that in his theaters, all the digital signage was approved over the last ten years. Mr. Krikorian said that there are a number of different movies playing currently, some that will be coming soon, as well as other events that you might not be aware of. He stated that these signs are important to show people what is going on.

Mr. Bell also asked if this project was unique, and Mr. Krikorian said that it was. He stated that the theater being downtown is unique, as well as Lexington in general being unique.

Ms. Barksdale stated that her biggest concern with the longer intervals, would they try to put more advertisements on the screen, and asked the applicant if there are limitations on what can be on the screen.

Mr. Baillie answered the question saying that the city staff could not limit the content because that goes into free speech. Mr. Baillie gave more information on the research that staff did on how long it takes to see and comprehend a sign or advertisement at around 5 seconds when you first see the message and start to absorb it.

Mr. Nicol asked staff if there was a reason why they did not recommend 15 seconds, which is in the current Ordinance and instead recommended the 20 seconds in the staff alternative. Mr. Baillie answered that while staff did look to see if they could find justification for the 15 seconds which was based on older studies. The 20 seconds had much better backing and research. The calculation at 20 seconds has surer footing than the 15 seconds.

Ms. Wade gave more support to Mr. Baillie stating that the 15 second interval was put in place 20 years ago and that the 20 seconds is a more precise measurement than the 15 seconds. Ms. Wade also noted that there is more research now than there was then.

Mr. Pohl referred to Mr. Murphy's presentation where he said there was no link between signage duration and accidents, on the other hand staff is stating 20 seconds is necessary to diminish accidents. Mr. Pohl asked how the Planning Commission can balance those two lines of thinking. Mr. Baillie responded saying that Mr. Murphy said that there was no statistical change, not that there was no evidence. Mr. Baillie continued saying that there were many studies that show digital signage increased inattention and that inattention leads to an increased chance of accidents. Mr. Baillie indicated that through staff's research, 20 seconds was appropriate for drivers to take in their environment, see the signs and do so in the safest possible way.

Applicant Rebuttal – Mr. Murphy briefly stated that in their discussions with Ruggles Signs, they indicated based on their experience, the longer the interval, the longer people sit and look, the longer cars stop and wait for the next slide. He also indicated that the formula that staff presented does not lead to effective signage.

Motion – A motion was made by Mr. Nicol, seconded by Ms. Worth, and failed 4-5 (de Movellan, Bell, Pohl, Davls, and Barksdale opposed) (Forester and Meyer absent) to approve the Staff alternative for PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY).

Motion – A motion was made by Mr. Pohl, seconded by Mr. Bell, and approved 6-3 (Michler, Penn, Worth opposed) (Forester and Meyer absent) to approve the Staff alternative, but changing the duration from 20 seconds to 8 seconds for PLN-ZOTA-22-00001: AMENDMENT TO ARTICLE 17: SIGNAGE REGULATIONS TO ALLOW A DIGITAL MARQUEE (ELECTRONIC MESSAGE DISPLAY).

2. PLN-ZOTA-22-00009: AMENDMENT TO ARTICLE 8-20 TO PERMIT BANQUET FACILITIES IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE – a petition for a Zoning Ordinance text amendment to allow banquet facilities as a principal permitted use in the Highway Service Business (B-3) zone.

INITIATED BY: Cervantes and Associates, LLC

June 23, 2022

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