



MEMORANDUM

To: Mayor and City Council

From: Michael Tuller, Community Development Director

Date: June 20, 2011

Subject Revisions and Readoption of the City of Dunwoody City Code Chapter 20 and all Previous Amendments

The purpose of the item before you is to readopt the Sign Ordinance and all previous revisions. The most current version of the Sign Ordinance to be readopted is attached, save for the following amendments to be discussed tonight:

BACKGROUND: DVOD REVISIONS

Sec. 20-26. - Denial and revocation.

- a) ~~Procedure. The director shall deny permits to applicants that submit applications for signs that do not comply with the provisions of this chapter, incomplete applications, and applications containing any false material statements. Violation of any provision of this chapter and any other applicable state laws or city ordinances governing signs will be grounds for terminating a permit granted by the city for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application containing a false material statement, or that a permit has been erroneously issued in violation of this chapter, the director shall revoke the permit. Should the director deny a permit, the reasons for the denial are to be stated in writing and hand delivered, mailed by certified mail, emailed, or faxed to the address on the permit application, and post marked on or before the 15th business day after the director's receipt of the application. Any application denied and later resubmitted shall be deemed to have been submitted on the date of resubmission, instead of the date of the original submission. No permit shall be denied or revoked, except for due cause as hereinafter defined. "Due cause" is the violation of the provisions of this chapter, other applicable ordinances, state or federal law, or the submission of an incomplete application or an application containing false material statements.~~
- b) ~~Appeal. A rejection pursuant to this section shall be appealable pursuant to the procedures for zoning appeals outlined in the city of zoning ordinance. However, notwithstanding the foregoing, a final decision will be rendered within 90 days from~~



~~date an appeal is filed. If a final decision is not rendered within the 90 day period, the decision sought to be appealed shall be reversed.~~

- a) Procedure. Permits shall be denied where the applications for signs do not comply with the provisions of this chapter, are incomplete, and where the applications contain any false material statements. Violation of any provision of this chapter and any other applicable state laws or city ordinances governing signs will be grounds for revoking a permit granted by the city for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application containing a false material statement, or that a permit has been erroneously issued in violation of this chapter, the director shall revoke the permit. Should the director deny a permit, the reasons for the denial are to be stated in writing and hand delivered, mailed by certified mail, emailed, or faxed to the address on the permit application, on or before the 15th business day after the director's receipt of the application. Any application denied and later resubmitted shall be deemed to have been submitted on the date of resubmission instead of the date of the original submission. No permit shall be denied or revoked except for due cause as hereinafter defined. "Due cause" is the violation of the provisions of this chapter, other applicable ordinances, state or federal law, or the submission of an incomplete application or an application containing false material statements.
- b) Appeals. The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged that there is an error in the denial or revocation of a sign permit under this chapter. All such appeals shall be heard and decided following the notice requirements of subsection (c) of this section and pursuant to the following criteria and procedural requirements:
 - (1) Appeal of decision by administrative officials. A denial pursuant to this chapter shall be appealable by filing with the secretary of the board of zoning appeals an application for appeal on the forms provided by the department of planning specifying the grounds thereof, within 15 days after the action appealed from was taken. The application fee for an appeal under this section shall be the same as that established by the city council for an appeal under Chapter 27.
 - (2) Decision of the board. Following the consideration of all testimony, documentary evidence, and matters of record, the board shall make a determination on each appeal. An appeal shall be sustained only upon an expressed finding by the board that the administrative official's action was based on an erroneous finding of a material fact, or that the administrative official acted in an arbitrary manner. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that



end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.

- (3) Time for final decision. A final decision will be rendered by the board within 90 days from date an appeal is filed. If a final decision is not rendered within the 90-day period, the decision sought to be appealed shall be reversed.
- c) Notice of public hearings. Notice of public hearing before the board on any application for appeal, variance, or special exception shall be provided as follows:
- (1) Written notice of the nature of the proposed application, and the date, time, and place of the public hearing before the board shall be mailed by first class mail to all property owners within 500 feet of the boundaries of the subject property as measured by use of the official zoning maps, and as such property owners are listed on the tax records of the city, at least 30 days before the public hearing before the board;
 - (2) Signs of no less than 12 square feet, in a color designated by the community development director or his designee, shall be posted within the public right-of-way or on the subject property at least 30 days before the hearing before the board. One sign shall be posted for each 500 feet of street frontage or fraction thereof along each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign is at a right angle to the street in order that said signs can be read by the traveling public in both directions. The lettering on the signs shall be printed and at least one inch in size and the sign shall state the nature of the proposed application and the date, time and place of the public hearing before the board; and
 - (3) Notice of the nature of the proposed application and the date, time and place of the public hearing before the board shall be published in the newspaper of general circulation within the city in which are carried the legal advertisements of the city at least 30 days prior to the date of the hearing before the board and not more than 45 days prior to the date of the hearing before the board.
 - (4) The cost of all signs posted, and notice mailings sent, pursuant to this section shall be specifically paid by the applicant in addition to all other applicable application costs.
—Applications may be withdrawn by the applicant or applicant's representative in writing without prejudice at any time before the vote of the board of zoning appeals on the application. All fees submitted shall be forfeited in



any case where the application is withdrawn after it has been advertised for a public hearing in a newspaper of general circulation.

e)d) *Certiorari.* In the event a person whose permit has been denied or revoked is dissatisfied with the decision of the board of zoning appeals, a person may petition for writ of certiorari to the Superior Court of DeKalb County as provided by law.

Sec. 20-64. - Zoning ordinance. Sec. 20-64 – Conflicts with Zoning Ordinance Overlay Districts.

~~Except as provided elsewhere in this section, to the extent that it is not inconsistent with this chapter, the city zoning ordinance, as amended including, but not limited to, definitions of terms contained therein, is incorporated as a part of this chapter as if fully restated herein for the same purposes stated in section 20-1 and for the same purposes for which the zoning ordinance, and any amendments thereto, were adopted, which purposes are expressly incorporated herein. However, to the extent that any regulations governing any zoning overlay district now existing or later enacted conflict with this article, the rules of the zoning overlay district shall control.~~

To the extent that any regulations governing any zoning overlay district now existing or later enacted conflict with this article, the rules of the zoning overlay district shall control.

Sec. 20-65. - Variances.

a) ~~Where a literal application of this article, due to special circumstances, would result in an unusual hardship in an individual case, a variance may be granted by the board of zoning appeals after receiving evidence that the applicant meets all of the following criteria:~~

- ~~(1) Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area;~~
- ~~(2) Granting the variance would not confer on the applicant any significant privileges which are denied to others similarly situated;~~
- ~~(3) The exceptional circumstances are not the result of action by the applicant;~~
- ~~(4) The requested variance is the minimum variance necessary to allow the applicant to enjoy the rights commonly enjoyed by others similarly situated;~~
- ~~(5) Granting of the variance would not violate more than one standard of this article; and~~
- ~~(6) Granting the variance would not result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic.~~



- b) ~~No variance shall be granted which increases the size, aggregate area, sign area of any sign more than 20 percent of that allowed by this chapter.~~
- a) An appeal for a variance from the strict application of the provisions of this chapter may be initiated by the aggrieved party by application to the board of zoning appeals on the form provided by the planning department.
- b) Variances from the regulations of this chapter shall be limited to the following hardship situations:
- (1) Where the proximity of existing signs on adjoining lots causes the subject property to be ineligible, due to spacing requirements, for a sign of the type sought; or
 - (2) Where visibility of a conforming sign from the proposed street and within fifty (50) feet of the proposed sign would be substantially impaired by existing trees, plants, natural features, signs, buildings or structures on a different lot; and
 - a. Placement of the sign elsewhere on the lot would not remedy the visual obstruction;
 - b. Such visibility obstruction was not created by the owner of the subject property; and
 - c. The variance proposed would not create a safety hazard to vehicular traffic or pedestrians.
- c) Variances shall be limited to the minimum relief necessary to overcome the hardship. No variances shall be granted to allow a greater number of signs than would be allowed if the hardship did not exist. No variance shall transfer to a new owner or occupant of the property.
- d) The staff or department of planning shall conduct a site inspection of and shall prepare an analysis of each application for variance applying the criteria and standards set forth in this section. Said staff shall present its findings and recommendations in written form to the board at least seven days prior to the public hearing thereon.
- e) Relief from the application of the provisions of this chapter by use of variances granted by the board shall be granted only upon a finding of hardship as previously defined. Hearing on such variances shall be noticed and a final decision rendered by the board using the same time frames and notice requirements as for appeals under this chapter.
- f) In the event of dissatisfaction with the decision of the board of zoning appeals, a person may petition for a writ of certiorari to the Superior Court of DeKalb County as provided by law.

Sec. 20-68. - Severability.



Should any article, section, clause, or provision of this chapter be declared by a court of competent jurisdiction to be invalid, such action shall not affect the validity of the ordinance as a whole or any part hereof other than the part so declared to be invalid, it being the intent of the City Council of the City that each article, section, clause, and provision hereof be severable.

RECOMMENDATION

At their regularly scheduled meeting, the Community Council voted 5-0 in favor of approval of adopting the revisions and readopting the Sign Ordinance. Additionally, an exemption for drive-thru menu signs was discussed, and the following recommendation was made: allow a maximum of four (4) drive-thru menu signs, limit the size of ground-mounted signs to 18 square feet, and the size of wall-mounted drive-thru menu signs to nine (9) square feet, and allow an exemption from permitting requirements. Drive-thru menu signs are defined in the ordinance:

Drive-thru menu sign shall mean an internally illuminated sign placed so as to be adjacent to a commercial drive-thru lane and may contain a microphone and speaker for the purpose of ordering services and products sold on the premises.

Staff recommends approval of the revisions and readoption of the Sign Ordinance including the recommendation for drive-thru menu boards made by Community Council. Staff would also like to bring forward a revision to the sign code discovered after the initiation of the process but before the Community Council Meeting. The sign requirements for office space ground signs in Section 20-58 do not account for buildings with exactly two stories or ten stories, and staff recommends this discrepancy be rectified as a function of these revisions.

At the June 13 Planning Commission Meeting, members voted in favor of all revisions and recommendations by a vote of 6-0.

The legal department recommends moving the amendment regarding drive-thru menu signs to a section that would require a permit.

**AN ORDINANCE AMENDING CHAPTER 20 (SIGNS) OF THE CITY OF
DUNWOODY CODE OF ORDINANCES BY READOPTING OF SAME WITH
REVISIONS TO PROCEDURAL REQUIREMENTS**

WHEREAS, the City of Dunwoody Sign Ordinance, Chapter 20 of the City of Dunwoody Code of Ordinances, was adopted in January, 2009, and amended on October 25, 2010; and

WHEREAS, the City Council desires to amend procedural requirements for acquiring sign permits and filing appeals thereto in order to create a clearer process and allow as much procedural due process considerations as necessary to ensure all sign applicants and permit holders can be guided through the process easily; and

WHEREAS, A First Read of this Ordinance has been held on June 20, 2011 and a properly-advertised public hearing has been held on July 11, 2011 during the Second Read and adoption of this Ordinance.

THEREFORE, the Mayor and City Council for the City of Dunwoody hereby ordain as follows:

Section 1: Chapter 20 (Signs) of the City of Dunwoody Code of Ordinances is hereby readopted as attached hereto and incorporated herein in its entirety with the exception of the amendments delineated below.

Section 2: Chapter 20 (Signs) of the City of Dunwoody Code of Ordinances is hereby amended by amending Section 20-26 (Denial and Revocation) to read as follows:

ADDITIONS – UNDERLINED
DELETIONS - ~~STRIKETHROUGHS~~

Sec. 20-26: Denial and Revocation

- (a) *Procedure.* The Director shall deny permits to applicants that submit applications for signs that do not comply with the provisions of this Chapter, incomplete applications, and applications containing any false material statements. Violation of any provision of this Chapter and any other applicable State laws or City ordinances governing signs will be grounds for terminating a permit granted by the City for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application containing a false material statement, or that a permit has been erroneously issued in violation of this Chapter, the Director shall revoke the permit. Should the Director deny a permit, the reasons for the denial are to be stated in writing and hand delivered, mailed by certified mail, emailed, or faxed to the address on the permit application, and post marked on or before the fifteenth business day after the Director's receipt of the application. Any application denied and later resubmitted shall be deemed to have been submitted on the date of

~~resubmission, instead of the date of the original submission. No permit shall be denied or revoked, except for due cause as hereinafter defined. "Due cause" is the violation of the provisions of this Chapter, other applicable ordinances, State or Federal law, or the submission of an incomplete application or an application containing false material statements.~~

- (b) *Appeal.* A rejection pursuant to this Section shall be appealable pursuant to the procedures for Zoning Appeals outlined in the City of Dunwoody Zoning Ordinance. However, notwithstanding the foregoing, a final decision will be rendered within ninety (90) days from date an appeal is filed. If a final decision is not rendered within the ninety (90) day period, the decision sought to be appealed shall be reversed.
- (a) *Procedure.* Permits shall be denied where the applications for signs do not comply with the provisions of this Chapter, are incomplete, and where the applications contain any false material statements. Violation of any provision of this Chapter and any other applicable state laws or city ordinances governing signs will be grounds for revoking a permit granted by the City for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application containing a false material statement, or that a permit has been erroneously issued in violation of this Chapter, the Director of Community Development shall revoke the permit. Should the Director deny a permit, the reasons for the denial are to be stated in writing and hand delivered, mailed by certified mail, emailed, or faxed to the address on the permit application, on or before the 15th business day after the Director's receipt of the application. Any application denied and later resubmitted shall be deemed to have been submitted on the date of resubmission instead of the date of the original submission. No permit shall be denied or revoked except for due cause as hereinafter defined. "Due cause" is the violation of the provisions of this Chapter, other applicable ordinances, state or federal law, or the submission of an incomplete application or an application containing false material statements.
- (b) *Appeals.* The Zoning Board of Appeals shall have the power and duty to hear and decide appeals where it is alleged that there is an error in the denial or revocation of a sign permit under this Chapter. All such appeals shall be heard and decided following the notice requirements of subsection (c) of this section and pursuant to the following criteria and procedural requirements:
- (1) *Appeal of decision by administrative officials.* A denial pursuant to this Chapter shall be appealable by filing with the Secretary of the Zoning Board of Appeals an application for appeal on the forms provided by the Community Development Department specifying the grounds thereof, within fifteen (15) days after the action appealed from was taken. The application fee for an appeal under this section shall be the same as that established by the City Council for an appeal under Chapter 27.

- (2) Decision of the board. Following the consideration of all testimony, documentary evidence, and matters of record, the Board shall make a determination on each appeal. An appeal shall be sustained only upon an expressed finding by the Board that the administrative official's action was based on an erroneous finding of a material fact, or that the administrative official acted in an arbitrary manner. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.
- (3) Time for final decision. A final decision will be rendered by the Board within ninety (90) days from date an appeal is filed. If a final decision is not rendered within the ninety (90)-day period, the decision sought to be appealed shall be reversed.
- (c) Notice of public hearings. Notice of public hearing before the board on any application for appeal, variance, or special exception shall be provided as follows:
- (1) Written notice of the nature of the proposed application, and the date, time, and place of the public hearing before the Board shall be mailed by first class mail to all property owners within 500 feet of the boundaries of the subject property as measured by use of the official zoning maps, and as such property owners are listed on the tax records of the City, at least thirty (30) days before the public hearing before the Board;
- (2) Signs of no less than twelve (12) square feet, in a color designated by the Community Development Director or his designee, shall be posted within the public right-of-way or on the subject property at least thirty (30) days before the hearing before the Board. One (1) sign shall be posted for each 500 feet of street frontage or fraction thereof along each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign is at a right angle to the street in order that said signs can be read by the traveling public in both directions. The lettering on the signs shall be printed and at least one (1) inch in size and the sign shall state the nature of the proposed application and the date, time and place of the public hearing before the Board; and
- (3) Notice of the nature of the proposed application and the date, time and place of the public hearing before the Board shall be published in the newspaper of general circulation within the City in which are carried the legal advertisements of the City at least thirty (30) days prior to the date of the hearing before the Board and not more than forty-five (45) days prior to the date of the hearing before the Board.

- (4) The cost of all signs posted, and notice mailings sent, pursuant to this section shall be specifically paid by the applicant in addition to all other applicable application costs.
- (5) Applications may be withdrawn by the applicant or applicant's representative in writing without prejudice at any time before the vote of the Zoning Board of Appeals on the application. All fees submitted shall be forfeited in any case where the application is withdrawn after it has been advertised for a public hearing in a newspaper of general circulation.
- (ed) *Certiorari.* In the event a person whose permit has been denied or revoked is dissatisfied with the decision of the ~~Board of Zoning~~ Zoning Board of Appeals, a person may petition for writ of certiorari to the Superior Court of DeKalb County as provided by law.

Section 3: Chapter 20 of the City of Dunwoody Code of Ordinance shall be further revised by amending Section 20-49(10) to read as follows:

Sec. 20-49. Exemptions from permit requirements.

The following signs shall be exempt from the permit requirements of Article II, Section 1 above; provided, however, that such signs shall be subject to all other provisions of this Chapter:

...
...

- (11) Drive-thru menu signs, with a maximum of four (4) such signs per property, so long as any ground-mounted drive-thru menu sign does not exceed eighteen (18) square feet and any wall-mounted menu-sign does not exceed nine (9) square feet, as well as drive-thru menu sign accessory panel exchanges.

Section 4: Chapter 20 of the City of Dunwoody Code of Ordinances shall be further amended by revising Section 20-58(c) to read as follows:

Sec. 20-58. Ground Signs

...
...

- (c) The height of ground signs shall depend upon the nature of the uses to which the sign relates, as follows:

- (1) Lots which contain only one retail user or one office building of one story in height may have ground signs no greater than 7 feet in height and 8 feet in width. Sign area is not to exceed 45 square feet;
- (2) Multi-story office buildings with ~~more than 2 or more~~ stories but less than 10 stories may have ground signs no greater than 10 feet in height and 5 feet in width. Sign area is not to exceed 40 square feet;
- (3) Multi-story office buildings with ~~more than 10 or more~~ stories may have ground signs no greater than 20 feet in height and 10 feet in width. Sign area is not to exceed 160 square feet; and

Section 5: Chapter 20 of the City of Dunwoody Code of Ordinances shall be further revised by deleting Section 20-64 in its entirety and replacing the same as follows:

Sec. 20-64. Conflicts with Zoning Ordinance Overlay Districts.

To the extent that any regulations governing any zoning overlay district now existing or later enacted conflict with this Article, the provisions of the overlay district shall control.

Section 6. Chapter 20 of the City of Dunwoody Code of Ordinances shall be further revised by deleting section 20-65 in its entirety and replacing the same as follows:

Sec. 20-65. Variances.

- (a) An application for a variance from the strict application of the provisions of this Chapter may be initiated by application to the Zoning Board of Appeals on the form provided by the Community Development Department.
- (b) Variances from the regulations of this Chapter shall be limited to the following hardship situations:
 - (1) Where the proximity of existing signs on adjoining lots causes the subject property to be ineligible, due to spacing requirements, for a sign of the type sought; or
 - (2) Where visibility of a conforming sign from the proposed street and within fifty (50) feet of the proposed sign would be substantially impaired by existing trees, plants, natural features, signs, buildings or structures on a different lot; and
 - (i) Placement of the sign elsewhere on the lot would not remedy the visual obstruction;
 - (ii) Such visibility obstruction was not created by the owner of the subject property; and



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- (iii) The variance proposed would not create a safety hazard to vehicular traffic or pedestrians.
- (c) Variances shall be limited to the minimum relief necessary to overcome the hardship. No variances shall be granted to allow a greater number of signs than would be allowed if the hardship did not exist. No variance shall transfer to a new owner or occupant of the property.
- (d) The staff or Community Development Department shall conduct a site inspection of and shall prepare an analysis of each application for variance applying the criteria and standards set forth in this section. Said staff shall present its findings and recommendations in written form to the Board at least seven (7) days prior to the public hearing thereon.
- (e) Relief from the application of the provisions of this Chapter by use of variances granted by the Board shall be granted only upon a finding of hardship as previously defined. Hearing on such variances shall be noticed and a final decision rendered by the Board using the same time frames and notice requirements as for appeals under this Chapter.
- (f) In the event of dissatisfaction with the decision of the Zoning Board of Appeals, a person may petition for a Writ of Certiorari to the Superior Court of DeKalb County as provided by law.

Section 7: Chapter 20 of the City of Dunwoody Code of Ordinance is further revised by the addition of new Section 20-68 to read as follows:

Sec. 20-68. Severability.

Should any Article, Section, clause, or provision of this Chapter be declared by a court of competent jurisdiction to be invalid, such action shall not affect the validity of the Ordinance as a whole or any part hereof other than the part so declared to be invalid, it being the intent of the City Council of the City that each Article, section, clause, and provision hereof be severable.

Section 8: This Ordinance shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Ordinance hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2011.

Approved:

Ken Wright, Mayor

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ATTEST:

Sharon Lowery, City Clerk
(Seal)

Approved as to Form and Content:

Brian Anderson, City Attorney