



## DEKALB CITY COUNCIL AGENDA MARCH 25, 2019

DeKalb Municipal Building  
City Council Chambers  
Second Floor  
200 S. Fourth Street  
DeKalb, Illinois 60115

### COMMITTEE OF THE WHOLE 5:00 P.M.

- A. CALL TO ORDER AND ROLL CALL
- B. APPROVAL OF THE AGENDA
- C. PUBLIC PARTICIPATION
- D. CONSIDERATIONS

1. [Suggested Revisions to the City's Downtown Parking Regulations.](#)

City Manager's Summary: The Community Development and Police departments have been working on an overhaul of the City's downtown parking regulations since the spring of 2018. Multiple focus group discussions have been held with the Chamber and the Downtown Merchants Association and, more recently, downtown residents. The last meeting was held on Tuesday, March 19, at the DeKalb Public Library.

In this matter, and in any instance involving government regulation, the general question arises: what is in the public's best interest? With respect to downtown parking, it appears that there is no monolithic public interest but a variety of interests among those who live, work, visit, and shop in the City's downtown area.

After weighing all of these interests, the City staff are recommending the following essential changes, as illustrated on [the attached color-coded map:](#)

- a. Change nearly all on-street parking, as well as parking in the Embree, Pond, and Van Buer lots to three-hour parking between 6:00 a.m. and 6:00 p.m., with no parking between 2:00 a.m. and 6:00 a.m. A total of about 85 parking spaces in remote parking lots can be purchased for an annual fee of \$120 by downtown residents, and these permitted spaces

will not be affected by the prohibited parking provisions between 2:00 a.m. and 6:00 a.m.

- b. Residents who do not purchase parking permits will have to adhere to the daytime parking regulations on a first-come, first-served basis and will have to comply with the overnight parking restrictions.
- c. Unrestricted daytime parking will be allowed in nine City parking lots (except the Embree, Van Buer Plaza, and Pond lots).
- d. "Grandfathered" on-street parking permits issued by the City to certain businessowners over the years will be rescinded, because nearly all City lots will feature unrestricted parking.

The proposed revisions reveal what we have learned over the past year. Here are some of the concerns that have been registered:

- Currently, the downtown parking codes allow a confusing variety of one-hour, ninety-minute, and two-hour parking spaces. These limits for parking without moving do not allow downtown visitors enough time to eat a meal and shop during the daytime or attend an evening show and dinner at the Egyptian or elsewhere, without moving or risking a ticket.
- Some businessowners and their employees "stake out" many of the prime on-street spaces during the daytime, which limits those prized, close-in on-street spaces for shoppers or customers.
- The current restrictions are too complicated and layered to keep straight.

A perfect consensus does not exist, even after many forums and meetings. At the Library forum on March 19, some additional nuances were suggested with respect to permit parking. Several participants suggested increasing the cost of permits for downtown residents from \$120 per year to a higher number. Charles Brown, a local attorney who has maintained a law office at 301 East Lincoln Highway for many years, suggested a floating permit allowing a business owner or employee to park in any available space between 6:00 a.m. and 6:00 p.m. for a fee of \$400 per year (please see the attached letter). To address the problems that would arise if daytime permits discouraged shoppers or customers from visiting the central business district, Mr. Brown suggested an annual lottery that would limit the total number of permits issued to downtown businesses.

If the Council supports the general approach depicted on the attached color-coded map, ordinance changes can be brought to the next Council meeting. However, the key to the success of any downtown parking program is accurate and customer-friendly signage or wayfinding. Last fall, the City staff estimated the TIF-eligible cost of such signage changes to be slightly less than \$15,000. Any

necessary signage changes would need to be timed to coincide with the implementation of Council-approved parking code revisions.

**City Council direction is recommended.**

**2. [Suggested Revisions to the City's Sign Codes.](#)**

City Manager's Summary: This item must be considered in light of some rather technical legal changes impacting the City's sign codes. Over the past several years, there have been a number of higher court rulings concerning municipal sign regulations. These cases have held that municipal sign codes which were previously enforceable are now unenforceable based upon a determination that they are unconstitutional. The essence of the rulings is that content-based restrictions must survive a very high degree of legal review (referred to as "strict scrutiny") in order to be upheld as valid and enforceable. Content-based restrictions are regulations that differentiate between different types of signs based on the information or messaging on the signs (i.e. the content) rather than the format or size of the signs. Strict scrutiny means that a municipality must essentially demonstrate that its content-based restrictions are the least restrictive method of accomplishing an important governmental objective.

To illustrate this legal shift, the City can still lawfully enforce a regulation restricting off-premises signs (for example, signs advertising a business, posted at a location other than the business address). However, if the City prohibits certain off-premises signs and allows other off-premises signs based on their content, this is likely unconstitutional. A few hypothetical examples may sharpen this issue:

- a. The City prohibits all off-premises signs of all types and sizes. This restriction is likely constitutional and enforceable.
- b. The City allows off-premises signs advertising model homes for sale but prohibits off-premises signs advertising used car dealerships. This type of restriction is likely unconstitutional, as it regulates between different signs based on the *content* of the signs.
- c. The City indicates that all building-mounted signs must be no wider than 20% of the width of the building that they are attached to. This may be a constitutional regulation to enforce, as it applies uniformly.
- d. The City indicates that retail shops may have building-mounted signs up to 20% of the width of the building that they are attached to, but churches may only have building-mounted signs up to 5% of the width of the building that they are attached to. This would likely be unconstitutional, as a content-based sign restriction unfairly discriminating against religious content.

- e. The City indicates that LED signs must adhere to a maximum brightness standard, to avoid their constituting a safety hazard for drivers. This restriction is not content-based and is likely constitutional.
- f. The City indicates that banks may have moveable text LED signs providing banking information, but that mattress stores may not have moveable text LED signs providing information on bed sales. This restriction would likely be unconstitutional as a form of content-based regulation

For the record, City Attorney Dean Frieders has provided the legal history of this tectonic shift in the Agenda background. To briefly summarize, the seminal case on this topic is *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). In that case, the town of Gilbert, AZ had adopted a new sign ordinance in 2005. Under the sign ordinance, most outdoor signs required a permit, although there were 23 different types of signs that were exempt from permit requirements, but subject to other regulations. Ideological signs (containing a message for noncommercial purposes) could be displayed in any zoning district for any length of time, of a size not greater than 20 square feet. Political signs (designed to influence the outcome of a public election) could be no larger than 32 square feet on nonresidential property and 16 square feet on residential property and could only be displayed up to 60 days before or 15 days after an election. Temporary directional signs relating to a special event conducted by a non-profit organization could be up to six square feet but could only be up for a limited number of hours before or after the event.

Within the town was a community church that posted roughly 15-20 temporary signs throughout the community, advertising church services. The church was cited for violating the sign ordinance, since the signs were left in place for longer than the hour limitation applicable to temporary directional signs. The church filed a lawsuit against the City, arguing that the sign ordinance violated their freedom of speech and seeking an injunction against enforcement of the ordinance. The request for injunction was denied by the Federal District Court, and the denial of an injunction was upheld by the Federal Appellate Court. Ultimately, the Federal District Court granted summary judgment in favor of the town, upholding the validity of the sign ordinance. That decision was affirmed by the Federal Appellate Court, and then appealed to the United States Supreme Court.

The decisions made at levels below the Supreme Court had concluded that the sign ordinance was content neutral (i.e. applied to all content equally), since the ordinance was not adopted based upon the town's disagreement with the content of any messages. If the ordinance was in fact content neutral, then the level of judicial review of the ordinance would be whether it passed the lowest level of scrutiny, commonly referred to as "rational basis" review. In other words, the Court would simply evaluate whether the town had a rational basis for imposing the ordinance's requirements—which the Courts readily found existed.

DeKalb's sign codes generally attain this lower level of judicial scrutiny. Regulations applicable to church, school, or public building signs are different from those permitted for contractors, in all zoning districts. Political signs are regulated differently from project construction signs or directional signage. Temporary signs are regulated completely differently based on the type of advertisement being made. The Supreme Court's *Gilberts* decision now imposes a higher level of scrutiny, and an exacting standard of review. While the Council has had discussions regarding the possibility of engaging in stronger enforcement of the sign code, from a legal perspective it would be preferable to update the City's sign codes to ensure their constitutionality prior to undertaking stronger enforcement efforts.

While the *Gilberts* decision does apply a very exacting standard of review to sign codes in terms of their enforceability, it does not hold that all content-based restrictions are unconstitutional. There are areas where content-based restrictions survive strict scrutiny. For example, with regard to adult-oriented advertising, marketing for age-restricted items such as alcohol or tobacco, and marketing for unlawful activities, the City can likely survive strict scrutiny with some content-based restrictions. A content-based restriction prohibiting an adult book shop from utilizing graphic, sexual terminology in their building-mounted signs, or prohibiting a tobacco shop from having child-oriented cartoon-style tobacco graphics would likely survive strict scrutiny, based on the compelling governmental interests at issue and based upon the absence of less restrictive measures to address such signage.

**The City Manager recommends a thorough review of the City's sign codes as time permits.** In the near-term, we can anticipate that the City will continue to be approached with applications for new sign permits and will also be approached with complaints about existing signs. The first step toward a thorough revision of the sign codes will be the creation of a working standard for applying a "strict level of scrutiny" in these cases, so the City can remain open for business.

**E. EXECUTIVE SESSION PURSUANT TO 5 ILCS (120/2)**

**F. ADJOURNMENT**

**[FULL AGENDA PACKET](#)**