PROPOSED AMENDMENTS TO CHAPTER 25, "SIGN REGULATION," AND RELATED CHAPTERS

Chapter 25 ("Sign Regulation") of Macon-Bibb County's Comprehensive Land Development Resolution (the "Resolution") has been substantially amended and re-organized for consideration by the Commission. The original impetus for these changes was the decision of the United States Supreme Court a few years ago, in Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015). This decision expanded the requirement that sign regulation be "content neutral" or else be subject to strict or heightened (and difficult to meet) review by the courts. (To be content neutral, a regulation regarding signs must not be based on the content--i.e. the message--of the sign.) Under Reed, any regulation that on its face depended on the "content" (including just the subject matter) of the sign would be subject to such heightened or strict scrutiny, as would any ordinance whose *purpose* related to content, even if it were content-neutral on its face.

Many of the changes proposed in Chapter 25 were therefore made for the purpose of maintaining content neutrality under Reed. Other changes to the chapter were either for the purpose of reorganizing for clarity, updating definitions and other text, removing inconsistencies, and/or simplifying the regulations where it appeared appropriate. Some of the reorganizing included deleting the old tables governing permitted use signs, as well as temporary signs, and replacing them with text. A few other chapters required minor amendments to remain in line with the amended Chapter 25 and Reed.

Changes to Particular Sections

25.01. Findings, Purpose and Intent.

This section is largely the same as the current one except that language was added to expand upon and clarify the legislative intent behind for the chapter.

25.02. Definitions.

Some of the definitions in Chapter 25 were deleted simply because the terms defined were no longer used in the text of chapter 25. Others were changed for clarification or to avoid the appearance of content-based regulation. Additional terms were added wherever it appeared helpful in understanding and clarifying the text of Chapter 25. Newly defined terms include: building sign, business park, canopy sign, changeable copy sign, feather flags, inflatable devices, multiple message billboard, standard billboard, T-frame sign and V-shaped sign.

Some of the more substantive changes to the definitional section include the following:

[6] *Billboards*. Reference to billboards being "off-site" signs was deleted, as were the definitions "on-site" and "off-site." Off-site refers to the message on a sign advertising goods or services not located on the same property as the sign. One irony of defining billboards as *"off-site"* signs of a certain minimum size is that such signs technically cannot be "on-site;" in other words, they can't technically advertise goods or services sold on the same premises as the billboard is located. It would be hard to justify such a prohibition, and it almost certainly was not intended to be one. Regulating signs differently based on whether they identify goods and/or services "off-site" may raise issues under Reed. Many jurisdictions, including Atlanta and other local governments in the Atlanta metro area, have altered their ordinances to remove the off-site v. on-site distinction, or else never had it.

The minimum size of 384 feet for billboards was reduced to "larger than 200 square feet." The maximum size for other freestanding signs under the Resolution is 200 square feet, except for shopping center and business park signs, which can be up to 320 square feet.

[9] *Building sign.* The term was added to address both wall and projection (including canopy) signs, which are treated similarly under the new draft.

[10] *Business.* This term has been broadened to clarify that it includes both nonprofit and professional activity and organizations. In practice, nonprofits are treated basically like

businesses for sign purposes anyway, and professional offices are also treated for the most part like other businesses.

[11] *Business park*. A "business park" is a group of professional offices, businesses, warehouses and/or industrial properties that exceeds 7500 square feet of gross leasable area, planned and developed as a unit, with common off-street parking, the same size as a shopping center, just intended to be more general than the "commercial establishments" referred to in the definition of shopping center in Chapter 1. Shopping centers and business parks are allotted similar signage under the revised regulations.

[13] *Changeable copy sign, [5.2] [Electronic graphic display sign], [5.5] Fixed copy fuel price sign.* The term "changeable copy sign," replaces the term "electronic graphic display sign."[1] It refers to signs that are smaller than billboards but that are basically otherwise the same as "multiple message billboards" in that such signs change their message either by electronic or other automatic means.

Excluded from the term "changeable copy signs" are signs that meet certain requirements, such as where the message changes no more frequently than every twelve hours, etcetera. These requirements follow the current resolutions' requirements for "fuel price" signs but the specific designation as "fuel price" signs is omitted, to avoid the appearance of a content-based purpose.

[21] *Flag.* This definition was changed to eliminate any appearance of content based regulation with respect to flags. As discussed below, the number and size of flags is limited in the proposed amendments, whereas now it is unrestricted under the Resolution.

[27] *Multiple message billboards* and [39] *standard billboards*. Multiple message billboards are not defined in the existing Resolution but probably should be, since they are regulated differently than "standard" billboards. Both "standard billboard" (which is, simply, any

[1] The term "changeable copy sign" is used in place of "electronic graphic display sign" to include signs where the message is changed "automatically" but by mechanical rather than electronic or digital means.

billboard other than a multiple message billboard) and "multiple message billboard" are defined in the amended definitions.

[35] *Sign*. The definition of "sign" was amended to clarify that a "mural" as such, that is, a "painting on a wall," is not automatically considered a "sign" but to also reconfirm that any portion of a "mural" that really is a "sign" (i.e. used to advertise, identify or convey information) will still be treated as a sign.

Section 25.03. General provisions.

Several general provisions were added to this section for clarity:

Subsection [4] clarifies in one place a point that was reiterated in several different places and specific contexts in the current Resolution, that public ROW at the edge of a district is not counted as being part of a given zoning district where distance ***from*** a zoning district is being measured.

Subsection [5] was added to confirm that, wherever state or federal law prohibits local regulation, the sign in question will be exempt from such regulation.

Subsection [6] was added to clarify that applications for sign permits be in the name of the owner or tenant on the property, or authorized agent of either, except for billboard permits, which must be in the name of the owner. This conforms with current practice.

Section 25.04 – Signs not requiring a permit.

The amendments change this section from just making certain signs "exempt signs" to making certain signs not require a permit but clarifying that such signs are in fact subject to any "applicable requirements." Changes involving specific types of signs include:

[1] Window signs. Window signs are now allowed without a permit, even in residential areas. Previously, such signs were limited to commercial, manufacturing, or industrial

buildings. Windows are actually very often the easiest place to put signs, especially on a temporary basis, and possibly contribute less to "clutter," as compared to wall and especially freestanding signs.

[2] Banners. The limits on banners in the current § 25.14, "Additional Signage," were moved to this section. Banners beyond the stated limits as to size and number are prohibited under § 25.05.

[3] Flags. The former subsection [4] simply exempted flags without limitation. The exemption was modified to put a limit on the number and size of flags allowed on individual properties, based on the size of the lot.

[4] Temporary signs. This section was amended to do away with subject matter categories (such as "property for sale," "under construction," campaign signs or historic memorials), consistent with Reed. It was also amended to replace the existing table with text, for purposes of clarity, and to eliminate distinctions that appeared to be unwarranted or unintended. Banners and feather flags are included as temporary signs, with both being subject to specific limits on their size and number.

[5] Permanent signs on residential property. This section was added to allow for one small permanent sign on residential property, up to two square feet, consistent with the table that now exists in the current § 25.06. Although the table is for "permitted use" signs, implying a permit should be obtained, the practice has been to not require permits for such signs.

[6] A-frame and T-frame signs. This section was added to confirm the current practice of allowing such signs without permits as long as they meet certain requirements. Currently, the Resolution only states that "A-frame" signs are "not prohibited" in CBD-1, without clarifying whether a permit is required. (Of course, such signs in CBD-1 tend to all be in the public ROW anyway, which the Resolution technically does not apply to, pursuant to § 3.01.) The amendments allow such signs on all commercial property, as long as the restrictions on their size and location are followed.

Section 25.05.-Prohibited signs.

Deletions. The following signs, numbered as in the current Resolution, were deleted from the list of prohibited signs:

[1] Off-site signs, **except billboard signs.**

[10] Window signs in a residential district. (discussed above, in 25.04)

[11] Prohibited billboards. These prohibitions were moved to § 25.07 ("Special requirements for billboards").

[12] Prohibited signs in an SC district. The references to changeable copy signs, billboards and pennants and streamers as being prohibited in an SC district are redundant to the general prohibitions referenced elsewhere. Barring all temporary and window signs in an SC district seemed hard to justify especially since not all of the properties in an SC district will be occupied by adult entertainment-type businesses. Also, the category of "temporary signs" will include signs like real estate signs, political signs and others that could raise First Amendment concerns if barred altogether from any zoning district.

Additions: The following signs, numbered as in the current Resolution, were added to the list of prohibited signs:

[8] Signs on or over public property. This prohibits such signs except in limited circumstances, such as in the central business districts, provided the consolidated government does not object to such signs in the ROW.

[9] Maximum size and height. This was added to confirm maximum size and height for all signs.

[10]. Animated signs. Animation is already prohibited on EGD signs in the current resolution, at §25.10[3]. The prohibition was extended to all signs to clarify that it applies to multiple message billboards as well.

[11] Inflatable devices. These devices, when used to attract attention, are not necessarily "signs" but can create real nuisance issues, both because of the movement and noise associated with them.

[12] Signs with audio. Only EGD signs (at §25.10[8]) are currently expressly prohibited from having audio capabilities. This prohibition was extended to all signs.

[13-15] Flags, temporary signs, banners and permanent signs on single family or duplex property. This clarifies that these signs are prohibited except to the extent that they are allowed without a permit under § 25.04.

Section 25.06. Permitted use standards for selected signs.

The big change in this section was to replace tables with text. Numerous complaints have been made over the years about the complexity of the tables and how difficult they were to use. Some of the complexity is unavoidable; whether done as text or as tables, this section is addressing different "uses" in different districts with different restrictions on size, height, location and number of signs allowed based on such uses and districts. However, the use of text avoided much of the redundancy that was inherent in the tables, and was designed to make it easier to determine what the actual requirements and provisions are that govern a given situation.

For the most part, the "substance" of the text is the same as that of the tables. The text is also organized in a manner similar to the tables. However, some districts were consolidated where there seemed to be little or no difference in sign requirements (or reason for any difference), and new uses were added, and some taken off, where it appeared appropriate based on non-content based signage concerns. There were a few instances where there seemed to be differences in signage allowed without any basis, perhaps, to some degree because it was so difficult to interpret the tables; those differences were removed. Also, where separate uses seemed to be allowed virtually or exactly the same signage, the uses were combined to avoid duplication.

Specific changes in the proposed draft of Section 25.06 include the following:

* The reference in each table to single family residential properties is removed, since no permit is (or has been) required for the one permanent sign allowed, which is now referenced in § 25.04.

* The use category of "Institutional uses, banks and places of assembly (business serving and community serving)" was changed to "schools and places of assembly." To the extent that banks need special signage due to their "drive-up" business, that is handled in a separate section addressing such signage for all such businesses, § 25.06[5] (formerly, §25.14). Otherwise, there seems to be little need or justification for banks to be treated differently than other businesses. Similarly, there seems to be no justification for treating "institutional" ("institution" is defined in § 1.02[49] to be a nonprofit corporation or establishment) uses differently than businesses, as far as signage as concerned. Under the revised definitions, "business" is defined to include nonprofits. As a practical matter, nonprofits have largely been treated as businesses anyway, for signage purposes.

* Differences in height limitations based on the size of the street were done away with; height limitations are based on use and district.

*The number of signs allowed for schools and places of assembly was set at two signs for all districts. In the current Resolution, historic areas were actually allowed three signs for such uses while other districts, including "standard" commercial, were allowed only one, which appears to have been an oversight.

* To the use category of "multifamily development" was added "entrances to residential subdivisions."

* The use categories of "businesses" and "professional offices" were combined into one category, "businesses." The sign standards were identical anyway in the current tables except for PDR and HR-3 districts. (Business is defined in the amendments to include

both professional and nonprofit activities) Also, the separate categories of “businesses, one use per property” and “businesses, two or more uses not in a shopping center” were combined. This was accomplished simply by providing that each “establishment” would get at least one building sign of a certain limited size regardless of frontage but otherwise basing the amount of signage for each separate business on “building frontage” leased or owned by such business in districts that were both non-historic and nonresidential.

* Use categories were included only for districts where they are currently allowed.

* The terms “warehouse park” and “office park” were replaced by “business park,” as discussed above.

* The sign locations in the tables referred to as “canopy or wall” are now referred to as “building signs,” which refers to both wall and projection (including canopy) signs.

* Nonresidential districts (excluding historic ones) were merged into one category as the treatment of signage was extremely similar, though not identical, across all of those districts. This allowed the use of one zoning category to replace some six separate tables. Where there were different signage requirements for certain uses in different districts, those differences are maintained within the text by delineating those particular districts within the discussion of each use.

* For businesses in residential and historic districts, instead of just limiting the number of non-freestanding signs by “aggregate maximum signage,” one “building” sign is allowed per establishment. This allows each business or office within a multi-business building or center to have a sign on the wall of the building without allowing what is basically an unlimited number of such signs. Window signs, which is what many retail establishments use anyway, are still allowed without limit in the Resolution.

Deleted—current section 25.07, “Signs at the entrance or exit of a shopping center, office park or warehouse park.”

This section was deleted. The aggregate size requirements, and the allowance of one freestanding sign, are covered in § 25.06. The requirement that there be "at least two separate panels on the freestanding structure" is dropped, as there does not appear to be substantial justification for it.

Section 25.07. – Special Requirements for billboards.

Like § 25.06, this section (former § 25.08) was completely reorganized, primarily for clarity. Substantively, the sections are largely the same. In the current chapter 25, various sections relate to multiple issues that developed over time, making it difficult to comprehend. For instance, multiple message billboards and "standard" billboards (i.e. non-multiple message billboards) are covered in the same unlabeled sections but also separately, while provisions applicable to all billboards are interspersed throughout the chapter. The proposed draft is organized into labelled sections, as follows:

[1] General provisions for all billboards.

[2] Permitted uses areas for standard billboards.

[3] Conditional use areas for standard billboards.

[4] Permitted use areas for multiple message billboards.

[5] Conditional use areas for multiple message billboards.

[6] Criteria for conditional use permits for all billboards.

[7] Additional criteria for multiple message billboards.

As to changes in display time and change time for both multiple message billboards and changeable copy signs, see discussion of Section 25.08[4], below.

Section 25.08. Standards for changeable copy signs.

This section replaces the old section 25.10 regarding "electronic display signs (EGDs)." The lay-out of this section is basically the same as before, except for the following changes:

[2] *Area.* Such signs are still limited to 50 square feet in size but the old requirement that the "EGD" area also be limited to 25% of the total area of the sign was eliminated as out-of-date. This 25% limitation seems especially inappropriate given that there is no such requirement for multiple message billboards.

[4] *Minimum display and change time*. The time for remaining fixed, as relates to multiple message billboards, was changed to match those required for multiple message billboards under state law, from six seconds to ten seconds. Minimum static time for changeable copy signs was left at six seconds, due to their smaller size. The maximum time for accomplishing a change was changed for both multiple message billboards and changeable copy signs, also to match state law, from a flat three seconds and two seconds respectively, to three seconds if the change is accomplished mechanically and two seconds if accomplished electronically or digitally. O.C.G.A. § 32-6-75(c).

[5] *Location.* The reference in the first paragraph of this subsection to signs allowed under the old 25.14 ("Additional Signage") not being permitted to be EGD signs *except for "freestanding menu boards for restaurants with drive-through windows,"* is eliminated and replaced by subpart (b), which refers only to signs located at "drive-through areas." Subpart (c), the requirement that EGD signs be at least 2 feet from a public ROW is deleted, as there is now a requirement in § 25.10[1] that *all* signs be at least that distance. Subpart (d), requiring that sign location be reviewed by the Traffic Engineer's Office is deleted, as anachronistic; at any rate, there is currently no such requirement for multiple message billboards.

Deleted: Current Section 25.11. Special requirements for wall signs. All requirements for wall signs are now incorporated into § 25.06, under "building" signs. The requirement of wall signs not being more than a certain percentage of a wall (25% for the front or 50% for the sides or rear) are dropped as the 2 square feet per linear foot of building frontage for building signs

under §25.06 would seem to result in significantly less signage than would be allowed under those percentages anyway.[2]

Section 25.09. Special requirements for illuminated signs.

A new Subsection [1] was added to prohibit illuminated signs on single family and two family residential properties in residential or historic zoning districts. In addition, a new subsection [5] was added to clarify that *all* illuminated signs, including changeable signs and multiple message billboards, must meet the same brightness requirements.

Section 25.10. Setbacks and vision clearance.

[1] This section was changed from requiring that no sign be closer than two (2) feet from the front property line to "no part of a sign shall be located closer than two (2) feet to a public right-of-way." This change addresses the properties that "front" on public rights-of-way on more than just their "front" property lines.

Section 25.11. Master signage plan.

The only changes to this section were to delete the phrase "color scheme, lettering or graphic style" in subsection [1](d) and to insert a new subsection [5] to state that content of any sign will not be considered. Both changes were to avoid any appearance of "content-based" regulation or any such effect.

Section 25.12. Maintenance and removal of signs.

Subsection [1] was deleted and replaced by new language that focuses on the condition of the sign rather than whether the property on which the sign lies is "vacant and unoccupied" for 12 months or more (unless it's a billboard) and on whether the sign relates to "an event or

[2] For example, where §25.06, as proposed, allows variable amounts of building signage, it does so based on a two (2) square foot of signage per linear foot of building frontage. If a business has 20 feet of building frontage, then it will get up to 40 square feet of building signage; if a building were twenty foot long, then 50% of the building's front area (20 x 10 = 200 square feet)would be 100 square feet.

purpose which no longer applies." As to vacant properties, it seems arbitrary to allow a huge billboard but not a smaller sign on any given piece of vacant property. As to the reference to events or "purpose," this was removed to avoid the appearance of content-based regulation under Reed.

Deleted: Current Section 25.14. "Additional signage."

The provisions regarding "banners" and "miscellaneous signs" in this section were moved to §§ 25.04[4] and 25.06[5], respectively. Banners will not require a permit if they meet the requirements of §25.04[4], but otherwise will be prohibited under §25.05[16]. Miscellaneous signs (such as menu boards at drive-through establishments, etc.) will be permitted as additional signs under §25.06 but will count toward maximum aggregate signage. These changes clarifies that miscellaneous signs do require a permit, in line with current practice.

AMENDMENTS TO RELATED CHAPTERS

A few chapters other than Chapter 25 deal with signs or similar devices, and they were also amended as part of this proposed legislation. In Chapter 1, the definition of "billboard" was deleted as the term is only used in Chapter 25, and is defined there. In Chapter 4, a new section was inserted into § 4.09 prohibiting flashing or running lights except for temporary holiday displays. (Former section 25.05[9] prohibiting string lights was deleted as it did not seem to involve signs, per se.)