

Public Hearing Published 04-15-08 First Reading 05-21-08
Public Hearing 05-18-08 Passed 06-04-08

ORDINANCE NO. 348-7

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FLOWERY BRANCH, GEORGIA, ORDINANCE NO. 348-7, TO AMEND ARTICLE 24, "SIGNS" TO PROVIDE FINDINGS; TO DEFINE AND REGULATE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS, TO PROVIDE FOR SEVERABILITY, TO REPEAL CONFLICTING ORDINANCES, AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, the City's existing sign regulations prohibit animation but do not address the intensity of illumination, timing of message displays or transition time from message to message, or other characteristics of changeable electronic variable message signs; and

WHEREAS, serious highway safety questions have been raised by the Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), and others with respect to changeable electronic variable message signs; and

WHEREAS, the City desires to minimize and mitigate the level of distraction from changeable electronic variable message signs by regulating the operational characteristics of changeable message signs; and

WHEREAS, the City Council held a public hearing on May 15, 2008, duly noticed as prescribed by law and published in the Gainesville Times, regarding this zoning ordinance amendment.

NOW THEREFORE, THE CITY COUNCIL OF FLOWERY BRANCH DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1.

The Flowery Branch Zoning Ordinance, Article 24, "Signs, Section 24.2, "Authority and Scope," is deleted in its entirety and replaced with a new, retitled Section 24.2, " Findings and Scope" to read as follows:

"Sec. 24.2. Findings and Scope.

- (a) **Findings Regarding Changeable Electronic Variable Message Signs.** Changeable electronic variable message signs, which allow operators to change content from remote locations in a matter of seconds, have been shown to create possible threats to public safety. Such signs are erected for the purpose of trying to hold the attention of motorists by changing messages and pictures for short durations using a series of bright, colorful images produced mainly via LED (light emitting diode) technologies. Brightly lit signs that change messages every few seconds compel motorists to notice them, and they lure the attention of motorists away from what is happening on the road and onto the sign. Such signs pose public safety threats because if they attract a

motorist's attention, the motorist will look at the sign and not at the road. Changeable electronic variable message signs are also a threat to public safety because of their brightness, making them visible from great distances. Due to their nature of brightness and changing displays, changeable electronic variable message signs are more distracting than signs which do not vary the message. Some such signs could, if unregulated, have the appearance of large, plasma-screen televisions. An electronic LED display contains brightly-lit text and graphics which can be seen from hundreds of feet away, drawing the attention of everyone within view. Unless otherwise regulated, such displays can be extremely bright since they are designed to be visible in bright sunlight and at night. Furthermore, the human eye is drawn to them far more strongly than to traditional illuminated signs. Such electronic LED displays can be seen from as far away as six-tenths of a mile, making them distracting. It takes a minimum of six seconds to comprehend the message on an electronic sign, which is three times the safe period for driver distraction. For these reasons, it is the intent of the City Council to allow changeable electronic variable message signs subject to acceptable criteria. The City Council relies on the following studies and findings, among others, as empirical and professional justification for imposing these regulations:

1. Federal Highway Administration (FHWA). September 11, 2001. *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction.*
2. University of North Carolina Highway Safety Research Center. May 2001. *The Role of Driver Distraction in Traffic Crashes.*
3. University of North Carolina Highway Safety Research Center. May 2003. *Distractions in Everyday Driving.*
4. Pettitt, M., Burnett, G., Stevens, A. 2005. "Defining Driver Distraction." Paper presented at World Congress on Intelligent Transport Systems, San Francisco, November 2005.
5. Wallace, B. 2003. "Driver Distraction by Advertising: Genuine Risk or Urban Myth?" Proceedings of the Institution of Civil Engineers *Municipal Engineer* 156 September 2003 Issue ME3, Pages 185-190.
6. Scenic America. "Billboards in the Digital Age: Unsafe (and Unsightly) at any Speed." *Scenic America Issue Alert 2 Electronic Signs.*

A Wisconsin Department of Transportation study examined crash rates on I-94 East and West adjacent to the Milwaukee County stadium, after a variable message sign that showed sports scores and ads had been installed and concluded that "it is obvious that the variable message sign has had an effect on traffic, most notably in the increase of the side swipe crash rate." An analysis of the 100-Car Naturalistic Driving Study, conducted by the National Highway Traffic Safety Administration, released in 2006, showed that taking one's eyes off the road for more than two seconds for any reason not directly related to driving (such as checking the rearview

mirror) “significantly increased individual nearcrash/crash risk.” A 1998 FHWA memo noted that digital signs raise “significant highway safety questions because of the potential to be extremely bright, rapidly changing, and distracting to motorists.” A 2001 FHWA review of billboard safety studies found that “the safety consequences of distraction from the driving task can be profound.”

- (b) **Scope.** This Article is adopted to serve substantial governmental interests of correcting and avoiding multiple problems that would occur without the regulation of signs. The regulations contained herein are no more extensive than necessary to serve the substantial governmental interests identified in this Article. It is not the intent of this Article to regulate the content of signs, but only their composition, type, location, distance from right-of-way, height, size, illumination, and in some cases the duration they may be displayed, or other non-content based restrictions implied in this Article. It is not the intent of this Article to foreclose important and distinct mediums of expression for political, religious, or personal messages, on any sign permitted to be erected by this Article. These regulations shall not be construed as limiting the message content of any sign.

SECTION 2.

The Flowery Branch Zoning Ordinance, Article 24, “Signs,” is hereby amended by adding the following Section 24.33, “Changeable Electronic Variable Message Signs” to read as follows:

“24.33. Changeable Electronic Variable Message Signs.

- (c) **Definition.** For purposes of this Section, “changeable electronic variable message sign” shall mean any sign, as defined in Sec. 24.2 of this Article other than a public variable message sign, which is erected by a city, county, or state government for traffic communications purposes which results in the illuminated display of messages or information by the use of a matrix of electric lamps (e.g., digital, LED (light emitting diode) or similar or refined display technology), movable discs, movable panels, light apertures, or other methods, which allows the message change to be actuated by a control mechanism rather than manually changing the message; and which changes the message more often than twice daily. It is characteristic of such signs that the sequence of messages and the rate of change can be electronically programmed and can be modified by electronic processes.
- (d) **Purposes.** This Section establishes requirements associated with the changeable electronic variable message signs, including but not limited to the duration of message, transition time, light intensity, malfunction, and permitting, to ensure reasonable and safe standards are met to protect the motoring public.
- (e) **Zoning Districts Permitted.** Such signs shall only be permitted in “HB,” Highway Business Zoning District and “M-1,” Manufacturing and Industrial Zoning District.
- (f) **Area and Height.** No such sign shall exceed the area or height specified for the type of sign for which it is defined and permitted under the terms of this Article.

- (g) **Separation.** No such sign shall be located within 5,000 feet of another multiple message sign on the same side of the highway.
- (h) **Nature of the Display.** Nothing in this Section shall be construed to permit or authorize the flashing or variation of light intensity of an individual message; such flashing or variation constitutes an “animated sign” as defined in Sec. 24.2 and prohibited by Sec. 24.8 of this Article.
- (i) **Duration of Message.** Each multiple message shall remain fixed for at least the amount of time that would result in one (1) message per mile at the highest speed limit posted within the 5000 feet approaching the sign for the road from which the sign is to be viewed.
- (j) **Transition Time.** When a message is changed, it shall be accomplished in less than one-tenth (1/10th) of a second and shall not use fading, swiping or other animated transition methods.
- (k) **Illumination and Brightness.** No such sign shall be illuminated at an intensity of greater than twelve (12) foot-candles or illumination, measured from the nearest point of any highway or public road. See Sec. 23.3 of this zoning ordinance for definitions related to measuring illumination. All such signs shall be equipped with a dimmer control and a photo cell which shall constantly monitor ambient light conditions and adjust sign brightness accordingly.
- (l) **Freeze of Display When Malfunction Occurs.** Such signs shall include a default designed to freeze a display in one still position if a malfunction occurs.
- (m) **Sequencing of Messages Prohibited.** Using two or more successive screens to convey a message that will not fit on one (1) screen shall be prohibited.
- (n) **Permit Requirements.** In addition to those permit requirements established in Section 24.12 of this Article relative to permits for signs generally, the Zoning Administrator is authorized to impose additional permit requirements specific to changeable electronic variable message signs and applications therefor, including but not limited to the following:
 - 1. Description or graphic depiction of the type of internal illumination technology; and
 - 2. A drawing or schematic prepared by an illumination engineer showing the amount of light designed to emanate from the proposed sign at the highway or public road to which the sign is directed, and at any highway or public road to which the proposed sign is visible, showing measurements in footcandles. Said drawing or schematic shall show either is of foot-candles (i.e., connecting points of equal light illumination levels, similar to a topographic contour) or a photometric grid with individual spot readings; and

3. A statement certified by an engineer, acceptable to the Building Inspector, demonstrating that the weight of the sign upon installation has sufficient footing and other characteristics sufficient to ensure the sign will be safely secured and able to withstand wind resistance as may be customary for similar structures according to the applicable Building Code; and
4. Other information as may be reasonably required by the Zoning Administrator to ensure compliance with the purpose and regulations of this Section, Article 24 of this Zoning Ordinance, and the purposes and intentions of this Zoning Ordinance generally.

These permit requirements shall be submitted on application forms prepared by the Zoning Administrator. These permit requirements are applicable to both the construction of a new changeable electronic variable message sign and the re-facing of an existing sign with a changeable electronic variable message sign.

SECTION 3.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

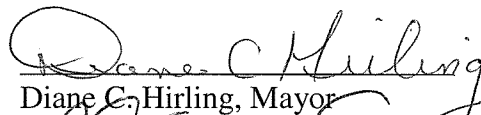
SECTION 4.

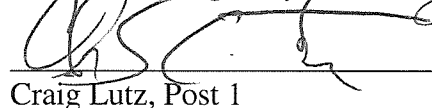
The effective date of this Ordinance shall be upon approval by the City Council of the City of Flowery Branch, Georgia.

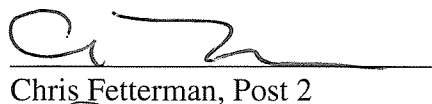
SECTION 5.

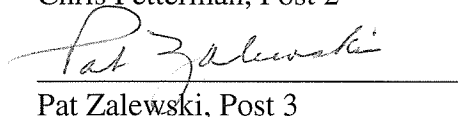
All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this 4TH day of JUNE, 2008.


Diane C. Hirling, Mayor


Craig Lutz, Post 1


Chris Fetterman, Post 2


Pat Zalewski, Post 3

Allen J. Bryans, Sr.
Allen J. Bryans, Sr., Post 4

Mary Jones
Mary Jones, Post 5

ATTEST:

Melissa McCain
Melissa McCain, City Clerk

APPROVED AS TO FORM:

E. Red Benitez
City Attorney

