

**City of West St. Paul
Open Council Work Session Minutes
January 11, 2021**

1. Roll Call

Mayor Napier called the meeting to order at 5:22 p.m.

Present: Mayor Dave Napier
Councilmembers Wendy Berry, Julie Eastman, Lisa Eng-Sarne,
Robyn Gulley, John Justen, and Dick Vitelli

Absent: None

Also Present: City Manager Ryan Schroeder
City Attorney Kori Land
Police Chief Brian Sturgeon
Community Development Director Jim Hartshorn
City Planner Melissa Sonnek
City Clerk Shirley Buecksler

2. Review and Approve the OCWS Agenda

Motion was made by Councilmember Berry and seconded by Councilmember Eng-Sarne to approve the OCWS agenda, as presented.

Vote: 6 ayes / 0 nays. Motion carried.

3. Review the Regular Meeting Consent Agenda

Motion was made by Councilmember Eng-Sarne and seconded by Councilmember Justen to approve the Consent Agenda, as presented.

4. Agenda Item(s)

A. City Manager Position Profile

On November 23, 2020, the City Council authorized a contract with the Mercer Group for recruitment services to replace the retiring City Manager. Since that time, the client representative, Jim Miller, has conducted interviews with members of both the 2020 and 2021 City Councils, along with Department Directors to ascertain attributes and abilities desired from the next City Manager.

The result of the work noted above is creation of a position profile. While Mercer is beginning the next stage of the recruitment process, we are requesting verification that Council is comfortable with the position profile that Mercer is using.

It should be noted that this same request is being made of the EDA in a workshop at this same meeting date. While the EDA has the same membership of the Council, it does function under a somewhat differing set of rules (bylaws). Members of Council/EDA have opined that with a change in City Management it should be discussed if the new City Manager should take on a different or enhanced role within the EDA. Hence, within EDA agenda materials is a discussion about EDA bylaws and how they might be changed in reaction to the discussion. The response from Council and the EDA could impact how the Mercer Group approaches the recruitment for this position.

Mayor Napier said it looks great and puts West St. Paul in a positive light.

Councilmember Berry said she appreciated that Mr. Miller used pronouns so we can be in 2021 and not 1980. She also asked when items discussed in EDA will be added to the profile? Schroeder said he will speak with Mr. Miller tomorrow.

Councilmember Vitelli asked if this is a printed document or only online? Schroeder said Mr. Miller has submitted the previous document to websites and recruitment sites, so some of those may be static but the important thing is the earlier discussion so that he knows how to recruit and select. Schroeder answered Councilmember Vitelli's question and said he will be here until a new City Manager is hired.

Council consensus was to move this item forward.

B. Sign Ordinance Discussion

With the recent election, there were several questions about the regulations around non-commercial signs, political signs, and signs in residential areas generally. Therefore, a review and discussion of the current code was requested to provide an update and ensure all parties fully understand all aspects. A brief summary of the applicable sign ordinance sections was distributed as a Council update in November and was also included in the Council's packet.

Outside of the signage regulations, Staff has provided additional detail on signage violations, complaints, and fines that have occurred in recent years.

Sign violations:

	2018	2019	2020
Violations <i>(Compliance Letters)</i>	21	14	25
Complaints Reported	5	2	5
Citations Issued <i>(Fines)</i>	2	2	1

Councilmember Berry is concerned that it's not being enforced correctly and across the board. The Code Inspectors are doing a great job, but we are citing some but not others, and it could be looked at in a way that we are targeting folks. We need clarity in this language and to find an easy way for inspectors to enforce it.

Community Development Director Hartshorn said he gets calls from a neighbor who received a compliance letter about his sign but his neighbor did not. However, we cannot give him information on the neighbor. Other than to say we're looking into it, it doesn't make people feel better. It's difficult not being able to give them that type of detail they're looking for.

Councilmember Gulley said she struggles with regulating things like signs, especially when people find ways to get around it with a flag instead of a sign, for instance. Then we get into the danger of what defines a sign and what defines public art. We have a lot of beautiful art signs around with positive messages, but do they apply as signs or art? Additionally, we are causing Code Enforcement to do jobs below their job description and policing. Is a sign ordinance the way to handle this?

Councilmember Berry said this refers to any yard with two signs or more.

Mayor Napier said the current ordinance is you can have one sign year-round that is 6 square feet or less.

City Attorney Land said you cannot read the sign to find out if the sign is legal. You regulate time, place and manner of signs, not the content of the sign. If you have to read the sign to know if the sign is legal, then our ordinance is illegal. You can have one sign, 6 square feet freestanding.

Councilmember Justen asked what is the definition of a sign? Is it flat on posts? If I create a painting and put it in my garden on a stick, is that my one sign? Attorney Land said yes.

Councilmember Justen said if he has two paintings, he would be in violation? This is where the confusion seems to be and that anything defined as something on a stick is a sign unless it's a flag. Councilmember Vitelli said it could be a painting of a butterfly and Attorney Land said that would be considered art, not a sign.

Attorney Land read the definition of a sign in the ordinance: *"It is a structure, fixture, placard, announcement, declaration device, demonstration or insignia used for direction, information, identification or to advertise or promote any business product, goods, activity, services, ideas or interest."*

With that, Councilmember Justen said his painting would not be a sign. Attorney Land agreed.

Councilmember Eng-Sarne asked Hartshorn and Sonnek if there is anything we can change to make this easier for Code Enforcement?

Councilmember Gulley asked if we can find out about sign ordinances in surrounding communities? City Manager Schroeder said he looked at other communities and they are similar but not the same.

Councilmember Vitelli asked if the property owner with signs on Oakdale was breaking the law with more than one sign?

Attorney Land said they could be up during the election season. You can't read the content of the sign to know if it's a sign for an election. During the election period, they're allowed to have as many signs as they want. Ten days after the election, signs have to come down. During the election period, Mayor Napier said the number of signs is overlooked.

Mayor Napier said part of the job of Code Enforcement is to drive around and look at the community. Do we know how many signs/yards are in violation? Hartshorn said there were 25 notified in a sweep in December. City Planner Sonnek said there wasn't a sweep done specifically for signs but Code Enforcement are out every day, multiple times a day. Mayor Napier asked if they were all followed up on and complied? Hartshorn said yes, only one citation was issued. When others received the letter, they complied.

Mayor Napier asked about the status of the fence sign at the corner of Butler and Smith. Hartshorn said they instructed them to take it down. But because of the cold weather, they cannot paint over it yet. Schroeder said we gave them until April 15 due to winter season.

Councilmember Gulley asked why is that sign not considered public art? Is it because it expresses an idea? Hartshorn said because it's on a fence. Attorney Land said it is non-commercial speech but we do not allow any signs on fences. It clearly fits the definition of a sign because it's expressing an idea. Councilmember Gulley said art expresses ideas. Attorney Land said it may be a fine line but we have definitely stated, art or otherwise, you cannot paint a sign on a fence.

Councilmember Gulley asked why it was decided that we cannot paint things on fences? Attorney Land said because then commercial businesses would do it on every fence they have and we always require fences around commercial properties.

Councilmember Eastman asked if we can allow art painted on a fence if it doesn't have a written message? Is there anything restricting art or murals from being painted on a residential fence? Attorney Land said that is a decision for Council to make if you want to allow people to have non-commercial speech (art) on a fence. Pick and choose where it goes, because time, place and manner is all you can regulate. If you decide you want to allow residential areas, non-commercial speech on fences, that's a

decision. Just recognize what that means on every single fence in every single residential neighborhood.

Councilmember Vitelli mentioned a waterfall scene, years ago, the homeowner painted on a garage door between Logan and Emerson. It was there for a long time with no complaints but the neighbors didn't like it. It didn't convey any message.

Councilmember Justen said currently, by definition, a floral scene painted on a fence would be in violation. Attorney Land said non-commercial speech, by definition, is an idea expressing a political, religious, social, ideological, public service or informational message. That is non-commercial speech. If it is art of a floral design, that is not covered under any of this but is back to art. The problem is deciding is a symbol, that is very artistic but clearly expresses a political, religious or a symbol with meaning, where do you draw the line? She sees more of an issue with enforcement where one is good but another is not.

Councilmember Justen said now we are interpreting whether art has a message behind it or not. If someone paints an historical piece on their privacy fence, and that historical moment has a meaning, it could be declared as messaged speech. Within this ordinance, if you remove the words, you cannot capriciously decide which art is acceptable or not acceptable. We are in a wedge where we should either be not allowing floral landscapes or allow everything, he said, and we need to have some definition that doesn't put us in that pinch. Eventually, we will see a sign that is art that may have a message to some but someone could make the argument that it's not a message they're trying to convey. At that point, I don't know where we would be, legally, on one side or the other.

Attorney Land agreed and said it is truly a question of interpretation, and could be compared to what some consider items in their yard as art. It's similar, but this is a bigger First Amendment issue that we need to back away from if we can.

Councilmember Berry asked if we want to change anything or what can we do to help Code Enforcement? Next steps? Hartshorn said the best thing to have would be clarity.

Councilmember Justen asked what we are currently doing with painted fences? Are you being forced to interpret art? Do we need to revisit how we're defining that? He doesn't want to tell people they cannot paint beautiful artwork on their fence, but sees the potential for danger and feels it would be helpful for Staff it was defined that nothing could be painted on fences or nothing with a word, symbols. Perhaps Staff could look at it and figure this out. Schroeder said that is why it's easiest from a Staff position just to say no. Because we can all think of different things that someone would say is art but someone else may not. It's better to be straight forward and say no.

Councilmember Eng-Sarne disagreed and doesn't want to ban art from fences. She is willing to be uncomfortable with the conversation in order for people feeling freedom to paint.

Councilmember Gulley echoed and said we are interested in a City with more public art. By and large, the messages are positive. If we embrace that, we are more likely to feel great in our city than feel intimidated, but people will find ways around rules we set. She is leaning towards opening up the rules for residential spaces and limit it for commercial spaces where they would need to come in for approval. She would like to see murals on buildings.

Councilmember Eng-Sarne clarified that she was referring to residential properties.

Councilmember Vitelli said he is 100% against it because it's not fair to the neighbors. If someone paints their house fluorescent green with flowers and he would have to look out his window at it, he is not in favor. Think about the neighbors at Smith and Butler and what their view is out their window. It's not fair for other taxpayers, he said.

Councilmember Berry thinks it's art but we don't get to judge whether your art is beautiful, so please leave it, but another person's art is not beautiful, so please take it down.

Councilmember Eastman said there needs to be more art opportunities in the community. She thinks we are going to have art opportunities in commercial areas, so she personally welcomes what some cities do that have creative art on utility boxes. She hopes we have abilities to do that in West St. Paul.

Councilmember Justen clarified his last comment and that he loves public art. The problem is that he sees a real logistical nightmare if we become the arbitrator of determining art versus messaging. The issue is from a legal standpoint as a City – it has to be all or nothing. The fences either have to allow people to paint what they want on them or you cannot paint anything on them. We cannot just step in when one sign is not okay. It will get tested and the lines will be pushed, so we need a specific definition. The only way to not be arbitrator of what is legal or not, is to allow all or allow none. We cannot take a middle position because it will not legally work that way.

Mayor Napier said these are great points all the way around. This is a conversation we wanted to have and it's important to talk about. From a managerial standpoint, it would be a nightmare.

Mayor Napier said we need to revisit the art piece to get that in there. To paint a fence, it may need to be a Conditional Use Permit.

Councilmember Berry said need to find ways to tweak the ordinance and make this easier for Community Development and Code Enforcement.

Councilmember Justen said if Attorney Land has any input on the ordinance, if she sees a path forward that is simpler, more straight forward, that leaves no gray area, he would love to have her input on that.

In closing, Mayor Napier said we are out enforcing the current ordinance, and the fence discussed has been given a pass until April 15.

5. Adjourn

Motion was made by Councilmember Vitelli and seconded by Councilmember Berry to adjourn the meeting at 5:57 p.m.

All members present voted aye. Motion carried.

David J. Napier
Mayor
City of West St. Paul