

**ORDINANCE NO. 3297**

**AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR 518 N. BUCKEYE AVENUE FOR THE CONSTRUCTION OF AN ELECTRONIC MESSAGE CENTER**

**WHEREAS**, the Planning Commission reviewed an application submitted by James Holland of the Abilene Area Chamber of Commerce (“Chamber”) as agent to the property owner of CL’S Holdings, LLC concerning a Conditional Use Permit for the construction of an electronic message center (“Sign”) in a “C-4, Central Business District” at property generally described as 518 N. Buckeye Avenue (“Property”) in Abilene, Kansas;

**WHEREAS**, the Planning Commission conducted a Public Hearing per Article 26 of the Zoning Regulations of the City of Abilene, Kansas, on April 12, 2016, and following public comment recommended approval of a Conditional Use Permit allowing the construction of the Sign on the above referenced Property.

**NOW, THEREFORE BE IT ORDAINED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Conditional Use Permit.** That a Conditional Use Permit (“Permit”) is hereby approved for the construction of a Sign to the Chamber subject to the conditions provided in this Ordinance and all supporting and supplementary documentation as provided in **Exhibit A**, attached hereto.

**SECTION TWO. Legal Description of Property.** The Permit shall apply to property legally described as:

*Lots Seventy-Eight (78), Eighty (80), Eighty-Two (82), and Eighty-Four (84) on Buckeye Avenue in Southwick and Augustine’s Addition to the City of Abilene, Kansas.*

And more generally described as 518 N. Buckeye Avenue in the City of Abilene, Kansas.

**SECTION TWO. Permit Conditions: Approval.** Per Section 26-110 of the Zoning Regulations, the Planning Commission may impose, and the City Commission may approve, reasonable conditions on the approval of a Conditional Use Permit. The following conditions are incorporated into the Conditional Use Permit, and the applicant must demonstrate compliance with all conditions during the effective period of the Conditional Use Permit:

1. The proposed sign be less than the maximum gross square footage surface area, which is sixty-four square feet per side, for off-site advertising signage in the “C-4, Central Business District” as provided in Table 27-2.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial and Industrial Districts, as provided in Section 27-604(c), which states that required setbacks are “thirty feet from the center of the right-of-way, except that no sign shall be located in the right-of-way, and except that advertising signs shall maintain the same setback that is required for principal structures.”

3. The proposed electronic message center must comply with required state setbacks for signs located adjacent to state highway right-of-way. The City would require documentation from the Kansas Department of Transportation that this requirement is met to the satisfaction of KDOT prior to issuance of the permit.
4. The proposed electronic message center must comply with Section 27-401(h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. The sign must maintain a free clearance to grade of nine feet. No metal sign shall be located within eight feet vertically and four feet horizontally of electric wires or conductors in free air carrying more than forty-eight volts, whether or not such wires or conductors are insulated or otherwise protected, and all such signs shall conform with the City's adopted Electric Code (2002 National Electric Code).
5. Only one electronic message center will be allowed on the subject property.
6. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
7. The message change shall occur no less than fifteen seconds.
8. A dimming device or means of glare reduction must be installed and implemented after sundown.

**SECTION THREE. Implementation.** The City Manager, or designee, is hereby authorized to issue a Conditional Use Permit upon receiving sufficient evidence that all conditions designated for prior approval have been reasonably met.

**SECTION FOUR. Effective Date.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 9<sup>th</sup> day of May, 2016.



**CITY OF ABILENE, KANSAS**

By: S. Dee Marshall  
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC  
Penny Soukup CMC  
City Clerk

APPROVED AS TO FORM:

Aaron O. Martin  
Aaron O. Martin, City Attorney

**EXHIBIT A**

**Supporting and Supplemental Documentation**

**Conditional Use Permit**

**(Electronic Message Center)**

**518 N. Buckeye Avenue**

## STAFF REPORT

***PC 16-2 Conditional Use Permit, at the request of the Abilene Area Chamber of Commerce, for the placement of an electronic message center in a "C-4, Central Business District"***

<b>Date:</b>	April 6, 2016
<b>Owner:</b>	CL's Holdings, LLC (see note below)
<b>Applicant:</b>	James Holland of the Abilene Area Chamber of Commerce, as agent to owner
<b>Requested Action:</b>	Conditional Use Permit
<b>Purpose:</b>	Placement of an electronic message center for off-site advertising
<b>Location address:</b>	518 N. Buckeye Avenue
<b>Comprehensive Plan:</b>	<b>Key Issue 3</b> – Lack of coordinated marketing efforts to promote economic and cultural activities; <b>Goal B</b> – Market Abilene to Abilenians
<b>Sites Existing Zoning:</b>	"C-3, Central Commercial District".
<b>Surrounding Zoning and Land Use:</b>	North: "R-3, High Density Residential District" South: "C-4, Central Business District" East: "C-4, Central Business District" West: "R-3 High Density Residential District"
<b>Land Area:</b>	Contains 9,460 square feet, more or less
<b>Notice Date:</b>	This project was published in the Abilene Reflector-Chronicle on February 15, 2016 and noticed by mail as required by Code.

### **COMMENTS**

1. The Abilene Area Chamber of Commerce is making a request for a conditional use permit to construct an electronic message center for the purposes of off-advertising.
2. Section 27-401(c) of the Zoning Regulations states the following with respect to electronic message centers:

*"Electronic message centers shall be permitted in Commercial and Industrial Districts only upon issuance of a conditional use permit in accordance with Article 26. In considering a conditional use permit application, the Planning Commission and Governing Body may impose requirements related to size, maximum illumination (including incorporating automatic dimmer controls), transition and hours of operation, or other conditions as deemed necessary and appropriate by the Planning Commission and Governing Body."*

3. The Abilene Area Chamber of Commerce is not the owner of record, and will have to provide sufficient proof to the City that the proper owner of the property consents to the application. The Chamber made application stating that the proper owner was the Brown Memorial Foundation, although County records indicate that CL's Holdings, LLC is the proper owner.

4. The proposed sign will be located on property parallel to Buckeye Avenue (K-15) and may require review and approval from the Kansas Department of Transportation to ensure that state setback requirements are met.



*Subject Property of 518 N. Buckeye Avenue*

## **RECOMMENDATION AND FINDINGS**

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property based on the following considerations outlined in Article 26-108 and 26-110:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations. Article 27 of the Zoning Regulations provide regulations for signage so as to “preserve, protect and promote the public health, safety, and general welfare.” The Article further states the intentions of “encouraging the reasonable, orderly and effective display of signs; enhance the physical appearance of the city; reduce visual clutter; prevent blighting influences; protect property values; provide minimum standards to safeguard life, health, and property by regulating and controlling the size, height, design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures; and authorize the use of signs which are compatible with their surroundings.” Staff has no evidence that the proposed use would be inconsistent with the aforementioned intent and purpose of Article 27.
2. The character and condition of the surrounding neighborhood and its effect on the proposed change. The subject property is located in a neighborhood that has a mix of uses ranging from commercial to residential uses. There is also an electronic message center located approximately 200 feet south of the subject property.

3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and if so, the nature of such changed or changing conditions. The subject property has recently developed from a vacant lot into a new commercial building. As a commercial property, businesses located on-site have a reasonable expectation for signage to advertise the businesses located at the site. The request for an electronic message center, however, would be used for off-site advertising and would arguably not be a necessary condition due to changing conditions.
4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such change in classification. As previously mentioned, the subject property is in an area that has a mix of land uses. However, given the fact that there is an existing electronic message center located approximately 200 feet to the south of the subject property staff sees no evidence that the proposed use would negatively affect nearby land uses.
5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity. The subject property is presently zoned as "C-4, Central Business District." As previously mentioned, commercial properties have a reasonable expectation of signage to market their business. The propose use, however, will advertise off-site uses, but such advertisements do not seem to conflict with the commercial nature of the subject property.
6. The suitability of the applicant's property for the uses to which it has been restricted. The proposed sign will be located parallel to the public right-of-way for Buckeye Avenue that is also state highway K-15. The Kansas Department of Transportation may have setback requirements for signage that would restrict the applicant's ability to locate the proposed sign on the subject property. With that said, the existing electronic message center located to the south of the property has been operational at the site for a few years so it is reasonable to suggest that the proposed sign would meet KDOT's setback requirements. There is also another electronic sign located approximately 600 feet south of the subject property and in close proximity to the public right-of-way. As a condition to the permit, the Planning Commission may want to include a review and approval by KDOT to ensure that the proposed sign complies with state setback requirements.
7. The length of time the subject property has remained vacant or undeveloped as zoned. The property was vacant prior to its recent development, although this point is not applicable to the proposed sign.
8. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified. This point is not applicable to the proposed sign.
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development. This point is not applicable to the proposed sign.
10. The recommendations of professional staff and advisors. Staff recommendations are discussed below.

11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan. Key Issue 3 in the Comprehensive Plan identifies the "lack of coordinated marketing efforts to promote economic and cultural activities." Goal B of Key Issue 3 establishes the goal of "marketing Abilene to Abilenians." Staff is of the opinion that the proposed electronic message center aligns with these two points in the Comprehensive Plan.
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification. This point does not seem to be applicable to the proposed sign as the applicant does not own or seem to control a majority stake in the subject property. The hardship created if the sign is not approved may be the potential loss of rent revenue by property owner if the applicant plans to operate under the terms of a lease with the property owner for use of the property for off-site advertising using an electronic message center. The hardship to the applicant, although not the property owner, would be a loss of revenue generated by the sale of off-site advertisements that would be displayed on the electronic message center.
13. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property based on the following considerations outlined in Article 26-110:

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations. Please refer to Item 1 in the aforementioned section.
2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood. Please refer to Items 2, 4, and 5 in the aforementioned section.
3. Whether the proposed use places an undue burden on the existing public infrastructure in the area affected, and if so, whether additional infrastructure can be provided. Electric service in the area is provided by Westar Energy and is adequate to accommodate the proposed use.
4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected. Please refer to Item 3 in the aforementioned section.

#### **Recommended Conditions**

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property with the following conditions:

1. The proposed sign be less than the maximum gross square footage surface area, which is sixty-four square feet per side, for off-site advertising signage in the "C-4, Central Business District" as provided in Table 27-2.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial and Industrial Districts, as provided in Section 27-604(c), which states that required setbacks are "thirty feet from the center of the right-of-way, except that

no sign shall be located in the right-of-way, and except that advertising signs shall maintain the same setback that is required for principal structures.”

3. The proposed electronic message center must comply with required state setbacks for signs located adjacent to state highway right-of-way. The City would require documentation from the Kansas Department of Transportation that this requirement is met to the satisfaction of KDOT prior to issuance of the permit.
4. The proposed electronic message center must comply with Section 27-401(h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. The sign must maintain a free clearance to grade of nine feet. No metal sign shall be located within eight feet vertically and four feet horizontally of electric wires or conductors in free air carrying more than forty-eight volts, whether or not such wires or conductors are insulated or otherwise protected, and all such signs shall conform with the City's adopted Electric Code (2002 National Electric Code).
5. Only one electronic message center will be allowed on the subject property.
6. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
7. The message change shall occur no less than fifteen seconds.
8. A dimming device or means of glare reduction must be installed and implemented after sundown.

#### **Planning Commission Action**

Per Section 26-104(a) of the Zoning Regulations, the Planning Commission has the following options with respect to this item:

1. Recommend to the governing body approval of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission.
2. Recommend to the governing body partial approval of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission. The Planning Commission would need to specify the parts of the proposed ordinance that are recommended for approval and which are not recommended for approval.
3. Recommend to the governing body denial of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission.

All options will require the Planning Commission to include with its recommendation reasons for such recommendation to the governing body. If a motion for approval fails to gain approval for any reason, the application is deemed to have been denied and will be submitted to the governing body.



PROPERTY INFORMATION

PROPERTY ADDRESS OR GENERAL LOCATION (IN RELATION TO NEAREST STREETS):

518 N. Buckeye Avenue

PROPERTY TAX IDENTIFICATION

NUMBER: 021151603013001000

ZONING: Existing: C-4 Proposed: C-4

LAND USE: Existing: Office Proposed: Office w/ sign

GROSS SIZE OF PLAT/LOT:

Residential: Commercial: 7,460 sq ft Industrial: Other: Total: 7,460 sq ft

NUMBER OF LOTS:

Residential: Commercial: 4 Industrial: Other: Total: 4

IMPROVEMENT CHARACTERISTICS:

Number of Buildings or Structures: 1 Total Building Area:
Maximum Height of Buildings or Structures: Total Impervious Area:

EXISTING PUBLIC FACILITIES:

Table with columns: Public, Private, Other (Describe). Rows: Water Service, Wastewater Service, Roadway Access.

FLOODPLAIN INFORMATION:

Floodway: Yes No FIRM Map-Panel Number:
Floodway Fringe: Yes No Zone:

ARE ANY OTHER PERMITS OR DEVELOPMENT APPROVALS REQUIRED, APPLIED FOR OR RECEIVED FOR THE APPLICATION PROPERTY BY THE CITY OR ANY OTHER JURISDICTION OR AGENCY?

Yes No If Yes, Describe Briefly and Attach a Copy of Each Permit, Approval or Application

APPLICANT/PROPERTY OWNER CERTIFICATION\*

I/we acknowledge receipt of the instruction sheet explaining the method of submitting this application. I/we realize that this application cannot be processed unless it is completely filled in; is accompanied by a current abstractor's certificate as required in the instruction sheet; and is accompanied by the appropriate fee. I/we further certify that the foregoing information is true and correct to the best of our knowledge. I/we acknowledge that the City of Abilene Planning Commission, Board of Zoning Appeals or City Commission shall have authority to impose such conditions as it deems necessary in order to serve the public interest and welfare.

James D Halland
Applicant Signature
C.H. Holdings, LLC
Paul Mulanay President
Property Owner Signature

3-9-16 Date
previously applied on 1-22-16
3-10-16 Date

\* This Application must bear the signature(s) of the property owner(s). If an authorized agent signs on the owner's behalf, the agent shall sign his own name and attach the owner's written notarized authorization to this Application.

**PART II - TO BE COMPLETED BY STAFF**

**DOCUMENTS TO BE SUBMITTED WITH APPLICATION\*\***

- Copy of Deed
  - Site Plan
  - Infrastructure Plans
  - Elevation Survey
  - Performance Agreement
  - Text Amendment Language
  - Annexation Boundary Map
  - Variance Justification
  - Easements and Covenants
  - Preliminary Plat
  - Development Agreement
  - Traffic Impact Study
  - Proof of Notification
  - Property Owner List
  - Operating Characteristics Report
  - Location Map
  - Final Plat
  - Grading and Stormwater Plans
  - Construction Plans
  - Utility Plans
  - Comprehensive Plan Amendment Justification
  - Administrative Appeal Justification
- Other \_\_\_\_\_

Additional document requirements provided to applicant on 3/17/16. The applicant is advised that the application is not accepted for public review until such time as the above identified documents are submitted and a Determination of Complete Application is certified.

David B. Dillner  
Name

City Manager  
Title

David B. Dillner  
Signature

3/17/16  
Date

\*\* Number of copies for submission determined by Zoning Administrator. The Zoning Administrator may request additional information as deemed necessary to properly evaluate the permit application.

**APPLICATION REVIEW**

DECISION-MAKING BODY:  Staff  Planning Commission  Board of Zoning Appeals  City Commission  
 Heritage Commission  Other (specify):

DATE OF INITIAL HEARING(S): PC mtg 4/12/16 CC mtg.

FEE AMOUNT: \$ 100.00 DATE FEE PAID: 1/29/2016

**DETERMINATION OF COMPLETE APPLICATION:**

I certify that the Development Approval Application and attached documents are sufficient in form and content for review and recommendation by the decision-making bodies of the City of Abilene. As such, all required notifications and hearings may proceed pursuant to City regulations and procedures. This certification does not preclude the review, recommendation and/or decision-making bodies from requesting additional information as deemed necessary to serve the public interest.

David B. Dillner  
Name

City Manager  
Title

David B. Dillner  
Signature

3/17/16  
Date

**CITY OF ABILENE**  
**PLANNING COMMISSION**  
**MEETING MINUTES**

April 12, 2016  
Meeting at 4:30 p.m.  
Abilene Public Library  
209 NW 4<sup>th</sup> Street

**Members Present:** Gene Bielefeld, Rod Boyd, Travis Sawyer (Chair) and Michelle Stephens (via conference call)

**Members Absent:** Kyle Campbell (Vice-Chair), Bruce Dale and Steven Olson

**Staff Present:** David Dillner, City Manager, Jennie Hiatt, Community Development Administrative Assistant and Aaron Martin, City Attorney

**Others Present:** (see attached list)

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**Call to Order & Roll Call.**

Chair Sawyer called the meeting to order.

Hiatt took roll call with four of the seven Commissioners present, with one of the four via conference call.

**Approval of Agenda.**

Bielefeld made a motion to approve the agenda as written. The motion was seconded by Boyd. The motion passed unanimously. (4-0)

**Approval of Meeting Minutes – March 8, 2016.**

Boyd made a motion to approve the minutes as corrected, by removing Daniel Shea from being present at the meeting. The motion was seconded by Bielefeld. The motion passed unanimously. (4-0)

**Business.**

1. **Public Hearing, PC 16-2**, a request by Abilene Area Chamber of Commerce for a Conditional Use Permit (CUP) to allow an Electronic Message Center in the C-4 (Central Business District) Zoning District located at 518 N. Buckeye Avenue, Abilene, Kansas.

Sawyer verified that the applicant was present.

Dillner presented the staff report.

Sawyer asked if the applicant had any comments.

Holland commented that per request of the property owner that they will be pulling the electronic message center back as far as far south as possible and also to meet KDOT approval.

Bielefeld mentioned previous issues such as a proper application, the permit approval process and KDOT approval.

Dillner stated that previous issues have been taken care of.

Holland stated that there will be a maintenance agreement with the property owner and the base will have a planter, so they will be able to spruce it up.

Sawyer opened up the public hearing and then closed the public hearing when there were no public comments presented.

Martin stated that the motion needs to be in the form of an ordinance and that the meeting date needs to be changed from March 8<sup>th</sup> to April 12<sup>th</sup>.

Bielefeld made a motion to recommend approval of the ordinance with staff findings, recommendations and the change of the meeting date. The motion was seconded by Boyd. The motion passed unanimously. (4-0)

2. **Public Hearing, PC 16-5**, a request by Kaw Valley Engineering, Inc. for a Final Plat for a Replat of the property addressed as 207 Eagle Drive, Abilene, Kansas.

Sawyer verified that the applicant was present.

Dillner presented the staff report.

Sawyer asked if the applicant had any comments and they had none.

Sawyer opened up the public hearing and then closed the public hearing when there were no public comments presented.

There was brief discussion.

Boyd made a motion to recommend approval with staff findings and recommendations. The motion was seconded by Bielefeld. The motion passed unanimously. (4-0)

#### **Comments.**

The next regular scheduled meeting is on May 10, 2016.

#### **Adjournment.**

Bielefeld made a motion to adjourn the meeting. The motion was seconded by Boyd. The motion passed unanimously (4-0) and the meeting was adjourned.

Minutes Submitted,

Minutes Approved,

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David Dillner  
City Manager

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Travis Sawyer, Chair or  
Kyle Campbell, Vice-Chair

