



Fremont City Council

3300 Capitol Avenue
Fremont, CA 94538

SCHEDULED

Meeting: 11/05/19 07:00 PM
Div/Dept: Community Development
Category: Presentations

STAFF REPORT (ID # 3928)

Sponsors:
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CITYWIDE – REAL ESTATE OPEN HOUSE SIGNS – To Receive a Presentation on Real Estate Open House Sign Regulations, Their Implementation and Enforcement

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Executive Summary: On May 7, 2019, Mayor Mei and Vice Mayor Salwan sponsored a referral directing staff to provide Council with a review of real estate sign regulations, their implementation and enforcement and report back with a summary and recommendation. Prior to this referral, the topic had already been a staff concern with increased enforcement by code enforcement due to numerous complaints ramping up in recent years. In the twelve months ending in October 2019, Code Enforcement observed 229 instances of real estate open house sign violations, resulting in fifty-seven warning notices being issued, and \$32,000 worth of citations issued to the responsible realtor or broker. Staff has now completed a review of the City's real estate sign regulations and enforcement tools, and recommends that the City Council direct staff to complete the following: prepare proposed amendments to the Fremont Municipal Code (FMC) to limit how many open house signs may be located at an intersection and the number of signs a realtor may display per property; prepare proposed amendments to the FMC to prohibit open house sign placement within a specific distance of a Fremont Registered historical resource; prepare proposed amendments to the FMC to increase the required sidewalk clearance where signs are placed from three feet to four feet; expand informational outreach programs to inform real estate agents of the City regulations; and develop options for weekend enforcement, including descriptions of the fiscal, staffing and workload impacts of each option.

BACKGROUND:

Existing Policy: Fremont Municipal Code (FMC) Chapter 18.194 regulates real estate open house signs in the public right-of-way (ROW), and Section 18.194.160 allows real estate open house signs to be temporarily displayed in the ROW on weekends between 12:00 p.m. and 5:00 p.m. and one day per week for a broker's open house. This report does not discuss real estate signs directing buyers to new subdivisions that are regulated by FMC 18.193.170, which haven't generated the high level of complaints that have been received regarding open house signs. The open house signs are subject to the following requirements:

- not more than three square feet per sign face,
- no higher than three feet,

- must be in the planter strip between the street and the sidewalk, but if there is no planter strip, they may be located on the edge of a sidewalk so long as a three-foot clear accessible walkway remains, and
- in no case may a sign be located on streets, center median islands or pedestrian ramps.

The existing regulations do not limit how many signs may be placed at a single corner or intersection, do not set limits on how many signs each realtor may set out, and do not restrict placement to being within any set proximity to the property being advertised for sale.

“The City of Fremont Guide to Real Estate Signage,” attached as Exhibit A to this report, illustrates placement of lawful and unlawful signage.

Code Enforcement Activity:

Code Enforcement receives numerous complaints from community members related to real estate signs. The majority of the complaints relate to:

- the quantity of signs individual realtors set out, going beyond simply providing directions to an open house, (some realtors will place four or five signs at a single intersection), and
- signs being left out beyond allowable times.

Complaints state the redundancy of signage is often intended to advertise the realtor’s or broker’s name and brand, rather than to direct the public to an open house. Many of these signs are also found to target major intersections or gateways to town, intending to capture a driver’s attention early on, regardless of how remote that sign is to the open house, and in some cases the signs are not associated with an open house, and are being used for general marketing.

During several periods in the past, Code Enforcement staff focused on real estate sign enforcement based on requests from Councilmembers, the community, and staff observations. Staff found that education and enforcement resulted in fewer violations as more and more realtors were contacted. Although Code Enforcement staff does not normally work weekends, in the most recent round of real estate sign enforcement, staff worked overtime on selected weekend days (especially between June and October 2018), for the specific purpose of real estate sign enforcement. Warning notices were issued to realtors each time an unlawful sign was discovered informing them that future violations would result in the fines shown below.

First occurrence	\$100*
Second occurrence within one year	\$200*
Third and subsequent occurrences within one year of first	\$500*

*Fines are set by Fremont Municipal Code Sec. 1.20.080, and the Fremont Civil Penalties Schedule.

Under the Fremont Municipal Code (FMC), each day each sign is found in violation of the ordinance can be cited. The program resulted in reduced unlawful sign placement by most realtors who received an enforcement/citation letter, showing that enforcement can be effective when regularly applied.

The City's Sign Ordinance and Applicable Law:

While state and federal law prohibits the City from banning real estate "open house" signs, the City may regulate the time, place, and manner of their placement. These signs may be reasonably located in plain view for the public to observe, but their placement must not adversely affect public safety or impede the safe flow of vehicular traffic. Real estate agents who place a directional sign on public property contrary to regulations (without permission) would be committing a misdemeanor public nuisance under State law. If the city's sign regulations are too restrictive, an Agent may claim it is an unconstitutional interference with real estate sales, known as a 'restraint on alienation,' and may also violate the citizen's freedom of speech. Another legal concern is that the Americans with Disabilities Act (ADA) provisions for the public right-of-way (ROW) specify that a four-foot clear sidewalk is required, meaning FMC § 18.194.160 should be amended to a four-foot (rather than three-foot) standard currently specified in the City's Sign Regulations.

Cities have a greater ability to restrict real estate signs on public property (streets, sidewalks, etc.) compared to private property. Open house or related directional signs in the ROW may be prohibited altogether; this is essentially the practice in both Oakland and San Jose. However, the vast majority of local municipalities regulate, rather than prohibit these signs in the ROW (San Jose prohibits ROW sign placement, except it allows one sign to be safely placed on the ROW adjacent to corner lots only). Fremont's existing code regulates the time, place, manner, and size restrictions on open house sign placement.

The City's Sign Ordinance underwent a major revision in 2014. Prior to adoption, the revised sign ordinance was vetted by local realtors' and merchants' groups, and the revised ordinance expanded the "set-out" times for Open House signs by one hour. Realtors were previously allowed to place their "open house signs" out from 1:00 p.m. to 5:00 p.m., but the hours were modified to the current 12:00 p.m. to 5:00 p.m. ordinance limitation. At that time, Realtors indicated that Open House viewings typically start at 1:00 p.m., therefore they requested to modify the set-out time to an hour earlier at 12:00 p.m., so that they could get to the home before the scheduled open house.

DISCUSSION/ANALYSIS: Since the FMC does not limit the quantity or proximity of real estate signs, realtors are currently free to place as many open house signs in the ROW as they desire. Besides this 'unlimited quantity' issue, problems arise when realtors either do not know the details of the regulations, or if they know, they choose to ignore the requirements. The realtors who have pushed for earlier set-out hours argue that it is safer to stop to place/retrieve signs in the streets during the early morning or late evening when traffic is lighter, rather than during the traffic occurring between 12:00 p.m. to 5:00 p.m.

A significant amount of the real estate sign complaints received are from realtors 'blowing the whistle' on other realtors, stating their non-compliant competitors are gaining an unfair business advantage over the law-abiding realtors because increased signage can mean more successful viewings and sales, in addition to name recognition for future clients. A few realtors who appear to be the most significant violators use contractors or employees to set

out 100 or more open house signs every weekend, regardless of how many listings or open houses they may have.

The types of complaints that Code Enforcement receives includes excessive signage, multiple redundant signs at one location, saturating neighborhoods with more signs than necessary to direct motorists, placing signs in prohibited locations, setting them out too early or retrieving them too late, or placing them in front of the historic Mission San Jose, distracting from its historic appearance. Fremont places a significant value on its historic and cultural heritage, with the preservation of Historic Resources both within Historic Districts and elsewhere in the City. In observing the placement of signs in front of the historic Mission San Jose and other Fremont Registered Historic Resources, staff feels that sign placement should be prohibited within a certain distance in order to maintain community character.

Based on the recent round of enforcement action, it appears only a minority of realtors are contributing to the problem. In fact, some realtors are actively assisting the City with sign concerns. The Bay East Realtors Association summarizes and publishes Fremont's sign regulations (along with over thirty other local municipalities) on its website to serve as a resource to its members. Some realtors also diligently report observations of unlawful signs to the City.

The Bay East Association of Realtors has also received similar complaints and has worked with the City to try and educate realtors on the City's Ordinances. The Association has directly informed its members of the City's regulations from time to time, has relayed the complaints it has received to Code Enforcement staff, and maintains a database summary of the broader area's real estate sign regulations to inform realtors of the various jurisdictional rules so they may easily comply with local regulations. The database can be viewed by visiting <https://bayeast.org/community-info-statistics/>. A review of this database shows that several cities limit how many open house signs a realtor may display per property, and the maximum distance they may be located from that property. For instance, Dublin allows "4 per property, 8 per intersection and 1 per property per intersection," and Hayward allows "4 directional signs and 1 on-site per open house; total of 4 signs permitted per intersection, 1 sign per corner." A chart showing a few local cities' sign regulations, taken from the Bay East website is attached as an exhibit to this report as "Exhibit B".

Council has asked if the current levels of fines are sufficient to effectively deter violations. Staff has found that \$100 fines for first violations typically cause realtors to contact the issuing Code Enforcement Officer to learn how to comply in order to avoid any additional fines. Realtors who have not initially responded to \$100 fines have then spoken up either when the City initiates efforts to collect the unpaid amounts, or if they are chronic offenders, speak up when they receive additional citations that can amount to several thousands of dollars' worth of fines. As a general law City, Fremont is limited in setting its maximum fine levels for sign violations, and the City's current fine schedule is already set at the maximum allowable under State law. Regardless of the State law limit, Fremont's current fine levels appear sufficient to modify realtor behavior in most instances.

Staff Recommendations For Future Actions

To reduce the negative community impacts from real estate signage, staff recommends that Council direct staff as follows:

1. Prepare amendments to the FMC to place a limit on the quantity of signs that may be set out in the ROW and the distance from the property that signs may be located. For example, the City could set: "Four per property, four per intersection and one per property per intersection" as an appropriate limit for open house signs. Such limits align with many other local cities;
2. Prepare amendments to the FMC to place a limit within the Fremont Municipal Code prohibiting sign placement with a specific distance of a Fremont Register Historic Resource (see a list of such resources at [Appendix "D" City of Fremont General Plan](#));
3. Prepare amendments to the FMC to modify the required clear sidewalk width from three feet to four feet;
4. Reach out to the Bay East Association of Realtors and other professional real estate agent associations to ensure all parties understand the current concerns regarding the proliferation of open house signs as well as the regulations surrounding such signs. Staff will also enhance the amount of educational materials/brochures on our various media platforms. Code Enforcement can provide an educational brochure along with a written warning to first time offenders, efficiently combining education and enforcement actions;

Develop options for weekend enforcement, including descriptions of the fiscal, staffing and workload impacts of each option. In the interim, staff will continue to conduct periodic weekend enforcement consistent with the adopted budget and current staffing levels.

FISCAL IMPACT: There are various strategies for conducting weekend Code Enforcement, including overtime, modified work schedules, or on-call services. If staff is directed to conduct weekend enforcement, the next report that staff presents to Council on this matter will outline in detail the various options with fiscal, staffing, and workload impacts.

ENVIRONMENTAL REVIEW: The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment under Title 14 of the California Code of Regulations, Section 15061(b)(3). No further environmental review is necessary.

ATTACHMENTS:

- Exhibit A - City of Fremont Guide to Real Estate Signage
- Exhibit B - Open House Sign Regulations Table

RECOMMENDATION: Direct staff to complete the following items for consideration by the Council at a future meeting:

- a. Prepare proposed amendments to the FMC to limit how many open house signs may be located at an intersection and the number of signs a realtor may display per property;
- b. Prepare proposed amendments to the FMC to prohibit sign placement within a specified distance of a Fremont Registered historical resource;
- c. Prepare proposed amendments to the FMC to modify the required clear sidewalk width from three feet to four feet;
- d. Expand informational outreach programs to inform real estate agents of the City's regulations; and
- e. Develop options for weekend enforcement, including descriptions of the fiscal, staffing and workload impacts of each option.