

SPIKOWSKI PLANNING ASSOCIATES

DRAFT

MEMORANDUM

TO: Steve Belden, Community Development Director, City of Fort Myers
FROM: Bill Spikowski
DATE: October 24, 2017 – DRAFT
SUBJECT: Used Car Lots in Fort Myers

This memorandum summarizes land development regulations that apply to used car lots in Fort Myers and then provides recommendations to improve them. Detailed code changes are attached.

— 1. INTRODUCTION —

The Fort Myers City Council requested an examination of city rules for used car lots in May 2017, citing the dismal appearance and geographic concentration of these businesses and their negative effects on surrounding land. Spikowski Planning Associates was contracted for this examination.

Eighty-one independent used car lots now operate in the City of Fort Myers, a majority along Palm Beach Boulevard and Fowler Street. A map is provided on page 4, followed by a list of street addresses for these lots.

The problems identified by the City Council are primarily the smaller used car lots that operate on abandoned commercial properties. These lots are concentrated along Palm Beach Boulevard and on Fowler Street north of Carrell Road, with a smaller number on Cleveland Avenue. Photos of two smaller lots are provided on the next page to illustrate practices that led to this examination.

The problems cited by the City Council do not apply to a few very large car lots located along Colonial. Those lots resemble new car dealerships and were built ‘from scratch’ on large parcels of undeveloped land. Their designs follow the city’s basic rules for all new commercial development, which require landscaped perimeter buffers and tree islands in the display areas.

There are a number of mid-sized lots on Fowler Street and Cleveland Avenue that are re-using older dealership properties from the era before most of those dealerships moved south of the city limits. These lots have enough space to be brought up to current standards; a few already comply.



Used Car Lots on Fowler Street

The crux of the problem is that the land development code (LDC) requires hardly any site improvements when a dealer opens a used car lot on already-developed land. Fort Myers heavily restricts outdoor storage for nearly all other uses, but the LDC essentially exempts all car dealers from those restrictions. The LDC also allows much more signage for car lots than other businesses.

Under the current LDC, dealers must meet one of three sets of rules (which apply equally to dealers of new and used vehicles):

- A dealer wishing to open a “new sales agency” by constructing a vehicle display area and office on vacant land must obtain a site work permit, at which time the city’s standard rules for new commercial development are applied (including a setback up to 15 feet wide between the display area and all streets).
- A dealer wishing to open an “existing sales agency” on already-developed land does not need to meet the city’s standard rules. Dealers can qualify as an “existing sales agency” either by having paid the local business tax or by converting a site with a previous use. “Existing sales agencies” only need to meet these LDC requirements (in 118.3.3.C.12.c.):
 - If the office is within 40 feet of the front or side lot line, a 1-foot setback must be provided with a single row of shrubs.
 - If the office is further than 40 feet away, a 15-foot setback is required, but only when property ownership changes at the time the local business tax is paid.

These and other city regulations are discussed in more detail in Section 3.

— 2. EXISTING BUSINESSES —

The parcels occupied by the 81 used car lots operating in Fort Myers in 2017 are mapped on page 4. The charts on pages 5 and 6 show the street address, size, and current zoning for each business.

These used car lots range from 4,800 square feet to 16.5 acres in size:

- 14% are smaller than 0.25 acres
- 36% are between 0.25 and 0.50 acres
- 22% are between 0.50 acres and 1.00 acres
- 15% are between 1 and 2 acres
- 11% are between 2 and 5 acres
- 2% are larger than 5 acres

These 81 lots do not include all businesses that paid the local business tax in 2017 for “used vehicles and tractors.” The others who have chosen to pay this tax include businesses that have closed; businesses that never opened; businesses that may occasionally sell vehicles, such as junkyards, new car dealers, truck dealers, and auto body & repair shops; and those who do not operate businesses at the given address but continue to pay this tax for reasons of their own.

KEY	ADDRESS	ACRES	ZONING
A	4356 Palm Beach Blvd.	0.60	CI
B	4250 Palm Beach Blvd.	1.73	CI
C	4190 Palm Beach Blvd.	0.43	CI
D	3945 Palm Beach Blvd.	0.38	CI
E	3861 Palm Beach Blvd.	0.28	CI
F	3845 Palm Beach Blvd.	0.35	CI
G	3768 Palm Beach Blvd.	0.65	CI
H	3718 Palm Beach Blvd.	0.42	CI
I	3711 Palm Beach Blvd.	0.79	CI
J	3671 Palm Beach Blvd.	0.86	CI
K	910 Veronica Shoemaker Bl.	0.42	CI
L	3426 Palm Beach Blvd.	0.22	CI
M	3481 Palm Beach Blvd.	0.87	CI
N	3445 Palm Beach Blvd.	0.76	CI
O	3421 Palm Beach Blvd.	0.79	CI
P	3364 Palm Beach Blvd.	1.26	CI
Q	3332 Palm Beach Blvd.	0.20	CI
R	3302 Pam Beach Blvd.	0.23	CI
S	3327 Railroad St.	0.81	CI
T	3194 Palm Beach Blvd.	0.33	CI
U	3181 Palm Beach Blvd.	0.21	CI
V	3175 Palm Beach Blvd.	0.30	CI
W	3154 Palm Beach Blvd.	0.48	CI
X	3134 Palm Beach Blvd.	0.22	CI
Y	3036 Palm Beach Blvd.	0.94	CI
Z	1620 Ortiz Ave.	0.89	CI

KEY	ADDRESS	ACRES	ZONING
AA	8900 Colonial Center Dr.	4.49	CI
AB	3444 Edison Ave.	0.90	CI
AC-1	2135 Central Ave.	1.19	DIST
AC-2	2419 Market St.	0.31	CI
AD	2274 Fowler St.	0.45	CI
AE	2308 Fowler St.	0.20	CI
AF	2316 Fowler St.	0.13	CI
AG	2333 Fowler St.	0.45	CI
AH	2521 Edison Ave.	0.30	CI
AI	2407 Fowler St.	0.31	CI
AJ	2411/2417 Fowler St.	0.32	CI
AK	2475 Fowler St.	0.80	PUD
AL	2472 Fowler St.	0.38	CI
AM	2504 Fowler St.	0.28	CI
AN	2534 Fowler St.	0.22	CI
AO	2559/2575 Fowler St.	2.24	CI
AP	2650 Fowler St.	2.05	PUD
AQ	2721 Fowler St.	0.54	CI
AR	2733 Fowler St.	0.11	CI
AS	2744 Fowler St.	0.80	CI
AT	2835 Powell St.	0.36	CI
AU	2575 Hanson St.	0.19	CI
AV	3001 Fowler St.	0.38	CI
AW	3086 Fowler St.	0.44	CI
AX	3105 Fowler St.	0.49	CI
AY	2455 Moreno Ave.	0.29	CI
AZ	3253 Fowler St.	0.47	CI

<u>KEY</u>	<u>ADDRESS</u>	<u>ACRES</u>	<u>ZONING</u>
AAA	3258 Fowler St.	0.49	CI
AAB	2445 Parkway St.	1.13	CI
AAC	3388 Fowler St.	1.10	CI
AAD	3476 Fowler St.	1.10	CI
AAE	3477 Fowler St.	0.37	CI
AAF	3671 Fowler St.	1.30	CI
AAG	3672-3680 Fowler St.	1.34	CI
AAH	3714 Fowler St.	1.14	CI
AAI	3980 Fowler St.	8.79	CI
AAJ	4036 Fowler St.	0.33	CI
AAK	4100 Fowler St.	0.41	CI
AAL	4206-4214 Fowler St.	1.23	CI
AAM	4175 Fowler St.	2.83	CI
AAN	4201 Fowler St.	2.70	CI
AAO	3000 Colonial Blvd.	16.48	CI
AAP	2851 Colonial Blvd.	1.08	CI
AAQ	4565 Fowler St.	4.91	IL
AAR	2441 N Airport Rd.	1.08	IL
AAS	2320 Colonial Blvd.	4.57	CI
AAT	1905 Boy Scout Dr.	2.25	CI
AAU	4102 Cleveland Ave.	0.73	CI
AAV	3611/3621 Cleveland Ave.	4.97	CI
AAW	3535 Cleveland Ave.	0.69	CI
AAX	3264 Cleveland Ave.	0.41	CI
AAZ	1950 Coronado Rd.	0.19	CI
AAZ	2952 Cleveland Ave.	0.64	CI

<u>KEY</u>	<u>ADDRESS</u>	<u>ACRES</u>	<u>ZONING</u>
AAAA	2225 Cleveland Ave.	0.40	CI
AAAB	2160 Cleveland Ave.	0.70	PUD

— 3. ANALYSIS OF TODAY’S CONDITIONS —

The LDC’s lenient treatment of used car lots was not an oversight. See for instance the highlighted language in the LDC’s intent statement for the CI (Commercial Intensive) zoning district, where most used car lots are located:

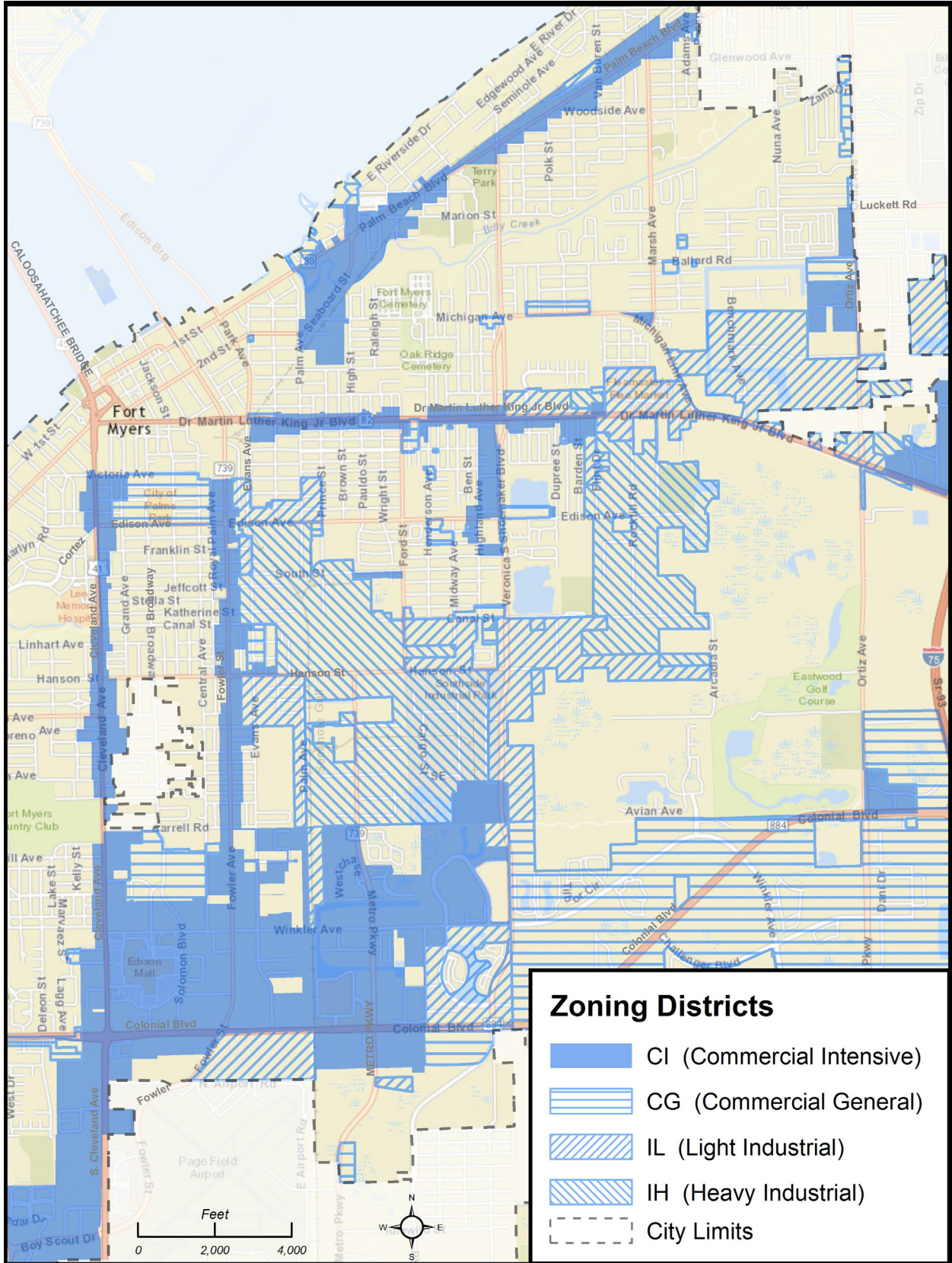
*By virtue of its location as designated in the comprehensive plan, it is the express intent of CI District to be as generous as possible in permitted uses while at the same time maintaining a clean and attractive community; therefore, **with the exception of the display for rent or sale of new or used automobiles, trucks, tractors, mobile homes, boats and other similar and large products or merchandise**, all products, merchandise, equipment or any other material stored outside of buildings, whether new or used, shall be hidden from view on all sides, except for necessary openings and gates, by a fence, wall or vegetative hedge, not less than six feet high, as approved by the development services manager. (LDC 118.2.2.A.3)*

Likewise, the boisterous signage used by many used car dealers is explicitly sanctioned in the LDC, which allows vehicle sales dealers to display “any two types of promotional signs, such as strings of pennants, streamers, flags, or banners . . . throughout the year.” Most of these signs are not allowed for other businesses, or are allowed only for short periods. For instance, promotional banners are limited to two days per week for other businesses; other banner signs are limited to thirty days, four times per year; and portable signs are allowed for six months for a new business, then limited to thirty days once per year.

To determine where new and used car lots can be built in Fort Myers, the LDC assigns both to a “vehicle sales and services” category which is allowed as follows:

- Anywhere in the CI (Commercial Intensive) zoning district, and anywhere in industrial zoning districts: IL (Industrial Light) and IH (Industrial Heavy).
- In the CG (Commercial General) zoning district, if approved as a conditional use by the Board of Adjustments.
- In a PUD zoning district, anywhere in the city if approved by the City Council.

Page 8 provides a map that shows the current extent of CI, IL, IH, and CG zoning in Fort Myers. The current concentration of used car lots is not caused by zoning limitations, which are quite lenient; the concentration is the result of business decisions by dealers, which are heavily affected by ease of permitting, cost of land, cost of site improvements, visibility to potential customers, proximity to potential customers, and an affinity for locating close to other dealers.



In addition to choosing a location in an allowable zoning district, new and used car dealers must meet one of three sets of rules in the LDC (which were summarized in the introduction):

- (1) The most complicated and expensive set of rules are required for a dealer that wishes to construct a new vehicle display area and office on vacant land. The LDC requires this approach for what it calls a “new sales agency.” Certain rules are described in 118.3.3.C.12.b: a 15-foot setback to streets; 60% of this setback must contain shrubs and 40% must contain ground cover, all with drought-tolerant species; and the entire setback area must be mulched and irrigated. Not stated in this part of the code – but of much greater importance – the LDC requires a full site work permit before any grading and paving. The city’s standard rules for new commercial development are applied during that permitting process. The large new used car lots in the southern portion of the city have followed that procedure.
- (2) Two much simpler sets of rules apply to dealers that qualify as an “existing sales agency,” typically by leasing a parcel of previously developed land. These dealers are not required to follow the city’s standard rules for new commercial development. Dealers can qualify as an “existing sales agency” either by having paid the local business tax or by converting a site with a previous use.

“Existing sales agencies” only need to meet these extremely simple LDC requirements (in 118.3.3.C.12.c.):

- (2-a) If the sales office is within 40 feet of the front or side lot line, a 1-foot setback must be provided with a single row of shrubs.
- (2-b) If the office is further than 40 feet away, a 15-foot setback is required, but only when property ownership changes at the time the local business tax is paid. This ownership trigger was probably intended to upgrade used car lots over time; however the wording is clumsy and has not had a discernible effect.

The effects of these lenient requirements are apparent along wide stretches of Palm Beach Boulevard and Fowler Street, and at several other places in the city.

The city needs a strong response to this situation, but should be careful to avoid common mistakes that can be made at this stage:

- The city should not establish strict new rules and then “grandfather” the existing lots under the previous rules. That approach would perpetuate the very problem that initiated this examination and would permanently create two classes of businesses.
- The city should try to avoid forcing used car lots to relocate. Despite the obvious problems with the status quo, the current situation is not so problematic that relocation should be necessary. Simpler and more effective solutions are proposed below.

There is a longer-term dimension to public policy on used car lots: a glut of used car lots can be perceived as interfering with redevelopment — or as viable interim uses while the redevelopment process gets underway. At present, most of these lots have numerous handicaps for redevelopment:

- Many of these businesses occupy a surplus of small highway-fronting lots with intense commercial zoning. Most lots aren't large enough for today's chain stores, which seem to be the main businesses with sufficient capital at this time to construct new buildings in these areas. Existing and proposed medians interfere with convenient access, especially for impulse purchases, creating another impediment for new convenience stores, pharmacies, fast food restaurants, etc.
- Most of these lots aren't suitable – at least yet – for higher-value uses such as mixed-use buildings in walkable areas. Few of the lots are interconnected in any useful way to allow shared parking and genuine pedestrian frontages; and pedestrian-friendly features are poor and sometimes missing entirely on these corridors. However, over time, certain locations along these corridors will emerge as centers of higher-value uses. Low-value used car lots would be the least expensive lots to consolidate for this purpose; fairly new chain stores would be the most expensive.

— 4. RECOMMENDATIONS ON CODES —

This section describes the changes to city codes that are recommended to address the problems discussed above. The full wording of the code changes are provided in an attached document.

The critical changes being recommended fall into three groups:

- A. Require site improvements before a car dealer opens any new location
- B. Current car dealers must meet these standards within a defined period
- C. Allow car dealers only the same amount of signage as other businesses

The proposed changes are summarized below, by group.

A. Require site improvements before a car dealer opens any new location

A-1 The code already requires site improvements for what it calls a “new” sales agency. That terminology is confusing: it is not limited to new vehicles, and it also applies to an existing agency that wishes to reconfigure its site, for instance by expanding the display area. The proposed rules would remain mostly the same, but the code would define them as applying to all “vehicle sales agencies” operating on “new or reconfigured sites,” which would include:

- a new facility being built on an undeveloped or previously developed site; or
- a reconfigured facility on a previously developed site, for instance expanding the display area or constructing or expanding a building.

The current rules apply to dealers selling automobiles, trucks, recreational vehicles, motorcycles, boats, and “similar” vehicles. The new rules would include those same vehicles but would make it clear that they apply to the sale or leasing of new and used vehicles alike, and would specifically list trailers, tractors, construction equipment, and “similar vehicles and equipment.”

Several minor conflicts between the current rules for car lots and the current rules for all other business would be resolved. For instance, drought-tolerant shrubs and ground cover are currently required for perimeter buffers of car lots, but are not required for other businesses; these requirements would remain in place for car lots.

A-2 The current code does not require meaningful site improvements for what it calls an “existing” sales agency; and the rules for qualifying as “existing” are far too lenient.

The proposed code changes would eliminate the inaccurate term “existing sales agency” in favor of new rules that apply to all “vehicle sales agencies” operating on “existing sites.” These are the dealers who re-use a previous car lot or use an abandoned commercial site that already has in place a usable building plus a parking lot suitable for displaying vehicles.

The proposed rules for “existing sites” include the following:

- Customer parking must be provided, with at least five spaces available for customers during all hours of operation.
- Signs would be limited to what the LDC allows for all other businesses in the same zoning district; additional signs would have to be removed even if they had been legal when installed.
- Fencing would be limited to what the LDC allows for all other business in the same zoning district.
- Vehicles could not be displayed over sidewalks, on public rights-of-way, in customer parking spaces, or in buffer areas.
- The site must be at least 1/2 acre; however, an existing vehicle sales agency that is able to meet all requirements on a site smaller than 1/2 acre may continue to operate. If an agency ceases to operate on that site, it could reopen only if it meets the stringent requirements to qualify as a nonconforming use.

- A setback of at least 5 feet must be provided along all streets and equipped with a partial visual screen, which could be either a fence or shrubbery plus ground cover (at the dealer’s discretion). The city’s current requirements to plant regularly spaced street trees along major corridors would also apply to these lots.
- **If the screen is a fence**, it must be at least 30 inches tall with thick vertical rails. This type of fence would appear as a solid wall from a distance but up close it would be mostly transparent and would not block the view of vehicles on display. Two photos of fences with vertical rails are shown below (one with shrubs behind the fence):



- **If the screen is shrubbery**, it must also be at least 30 inches tall. Drought-tolerant shrubs and ground cover would be required as at present (but without the loopholes that made the current code ineffective). Two photos of shrubbery as partial visual screens are shown below:



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B. Current car dealers must meet these standards within a defined period

Car dealers currently operating in Fort Myers would be required to upgrade their lots to meet the new standards within a defined period (except for dealerships that had been developed in accordance with current city regulations for new commercial development such as drainage, paving, buffering, parking, access points, etc. These upgrade requirements would apply even to lots that qualify for nonconforming status.

The “defined period” would be set so that it would expire on September 30, the date each year when the local business tax expires. Dealers that did not complete their upgrades would be ineligible to obtain a new business tax receipt, which is required for businesses to operate lawfully beginning October 1. Those dealers would be violating the business tax requirement as well as the LDC’s upgrade requirements, all of which would become code enforcement violations that would be resolved through the code enforcement process.

C. Allow car dealers the same amount of signage as other businesses

As described earlier, the LDC now allows car dealers a level of signage far in excess of what is allowed for other businesses. It is obvious why dealers would support this approach; they are in a very competitive business with few repeat customers. Yet it is hardly necessary, since a packed parking lot of clean vehicles practically announces itself. Also, this allowance is unfair to many other businesses whose own signs are less noticeable due to the visual noise from car lot signs; those businesses may also prefer to install additional signage in similar hopes of attracting more customers.

Nonetheless, times have changed and the city is no longer free to establish its own policy on this matter. In recent years, the courts have decided that signs are a type of speech which is protected by the First Amendment. A 2014 decision by the U.S. Supreme Court ruled decisively that local governments may not regulate signs based on their content or on what entity posts the signs (*Reed v. Town of Gilbert*). Local governments still have considerable latitude to regulate signs; for instance, they may allow some types of signs but not others; and they may apply sign regulations that vary by zoning district. But sign regulations that vary according to who posts the signs will be nullified by the courts. Preferential treatment for car dealers over other businesses in the same zoning district seem unlikely to survive any legal challenge.

The proposed code changes would eliminate the preferential treatment for car lots that is now found in sections 126-111 and 126-112-c of the LDC. However, one type of sign currently allowed only for car lots would now be allowed for any business in the CI, IL, or IH zoning district: these are “antenna flags” which can be attached to the antenna of vehicles provided the flags are less than one square foot in size and do not extend above the height of the antenna.

The proposed code changes would not affect any of these current regulations:

- There would be no change to which zoning districts permit new or used car lots. Dealers would still have the option of requesting PUD zoning, which allows consideration of different standards than those published in the LDC.
- There would be no change to the city’s nonconforming standards in Chapter 98 of the LDC. Some dealers may believe that nonconforming status would make new standards inapplicable to them; that is not the case. The revised code would clearly state that nonconforming status does not relieve dealers from complying with updated LDC requirements.
- No dealers would be required to relocate, although some dealers might choose to relocate on their own so that their investment in site improvements would be made at a location that would be more suitable for their business over time than their current location.

— 5. COMMENTS ON RELATED BUSINESSES —

The code changes as currently drafted apply not only to used and new car lots but also to dealers of trucks, recreational vehicles, motorcycles, boats, trailers, tractors, construction equipment, and similar vehicles and equipment. With rare exceptions, these businesses display vehicles and/or equipment outdoors in front of their buildings.

Certain other businesses such as used tire shops also display merchandise in front of their buildings. The LDC allows this practice, which is defined as “outdoor display” rather than “outdoor storage,” subject to several rules — most notably that the merchandise must be moved indoors at the end of each business day.

Other businesses expose quasi-industrial activities to the street, particularly automobile and truck repair businesses. Some of these businesses are in industrial areas where this would be expected, but most are in heavy commercial areas because they serve retail customers who benefit from conveniently located repair shops. In 2008 the LDC was amended to require service bays on commercial buildings to face the side or the rear of the building instead of facing the front (see subsection 118.3.3.C.11.b); it would be very difficult to apply this rule retroactively to older buildings.

ATTACHMENT: Detailed Code Changes, dated October 24, 2017.

Proposed new wording is underlined; wording to be repealed is ~~struck through~~.

All new and repealed wording is also highlighted.