



## CITY COUNCIL STAFF REPORT

**MEETING DATE:** May 8, 2018

**TO:** Members of the City Council

**SUBMITTED BY:** Holly Smyth, AICP, Planning Director  
Robert Reber, AICP, Adjunct Planner

**SUBJECT:** Safeway Master Sign Program & Zoning Amendment to the Sign Ordinance

**APPLICANT:** Mike Powers, representing McNellis Partners

### RECOMMENDATION:

Receive report, open public hearing, discuss potential changes to #ZTA 18-03 and Design Review Permit #DRP 18-01 and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-03 for revisions to Chapter 34 of the Zoning Ordinance of the Sign Regulations and adopting a resolution approving DRP #18-01 for the Safeway Center Master Sign Program.

### COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

At its regular meeting on April 16, 2018, the Planning Commission unanimously approved Resolutions #18-06 and #18-07 recommending that the City Council (a) approve Zoning Text Amendment #18-03 to revise the Zoning Ordinance sign regulations, and (b) approve Design Review Permit #18-01 for the Safeway Center Master Sign Program. The Conditions of Approval were modified during their meeting to be contingent upon the approval of the Zoning Ordinance modifications and require that LED signs include dimmers to automatically adjust brightness as appropriate based on ambient light conditions.

### FISCAL IMPACT OF RECOMMENDATION:

No fiscal impact.

### DISCUSSION:

***Applicant's Request for a Master Sign Program (MSP):*** The Safeway project approved by the Council on September 26, 2017 included a condition of approval requiring a Master Sign Program (MSP) be submitted for all signage within the center. The submitted signage plan includes an 85' freeway-oriented pylon sign, two fuel pricing monument signs, and various retail tenant signs. Because the project conditions of approval also require that the fuel center include signs to direct vehicles to the fuel pumps in a one-way directional flow, the MSP shows "Do Not Enter—Exit

Only” signage along the exit bollards at each fuel aisle of the fueling station. The proposed Safeway Center MSP expressly forbids signs using flashers, scintillating/chasing bulbs, or moving elements; blimps, balloons, or other tethered aerial devices; painted signs, including advertising painted on walls; signs extending above building fascia; “Box” signs; changeable letter boards; LED screens with changeable graphics/copy on buildings or visible through glazing; and A-frame signs.

Though not expressly covered in the proposed Master Sign Programs (MSP), window signs at the Shopping Center would be subject to Section 34.500, “Signs Not Requiring a Permit,” which stipulates (34.500.L) that “[w]indow signs are allowed provided that they are placed on the inside of the window, and occupy no more than 25% of the glassed area of all windows, and [are] at least 3 feet from the window frame of an exterior window and the majority of the interior is visible from the outside of the building.”

As shown in Table 1 of the Planning Commission staff report, several of the proposed signs were not within the City’s Zoning Ordinance Sign Code criteria. Staff and the Planning Commission believe the proposed signage is appropriate for the center with the exception of which is included in the conditions of approval. Planning Commission’s recommending Resolution #18-06 captures the specific conditions that they believe should go with the MSP design drawings.

#### ***Staff Recommendations to Amend “Sign Regulations” through ZTA #18-01:***

Currently a Master Sign Program must be consistent with the Zoning Ordinance. Exceptions such as these can sometimes be granted through approval of either minor exceptions (per Chapter 45 of the Zoning Ordinance) or variances (per Chapter 51 of the Zoning Ordinance). However, the Zoning Ordinance’s “Binding Effect” provision for Master Sign Programs states, “In case of any conflict between the provisions of such a [Master Sign] plan with any provisions herein, this Section [i.e., the Zoning Ordinance sign regulations] shall prevail” (Zoning Ordinance, Section 34.400.R.8). To better resolve potential conflict between provisions of this and other MSPs and the Zoning Ordinance, staff recommends the changes listed below, as the public review process required for MSPs can better achieve nuanced, high-quality, contextually appropriate signage, rather than strict adherence to Zoning Ordinance limitations:

- Clarify that MSPs require Planning Commission approval;
- Require that MSPs substantially (but not necessarily completely) conform to the Zoning Ordinance; and
- Allow certain exceptions to standard signage regulations—including maximum allowed signage, monument sign size, and fuel canopy signs—through approval of MSPs.

#### ***Zoning Ordinance Consistency with First Amendment Protections:***

Though not expressly related to the proposed MSP for the Safeway Center, staff recommends—given recent case law—certain other revisions to the Zoning Ordinance’s Sign Regulations. In *Reed vs. Town of Gilbert*, 576 US (2015), the U.S. Supreme Court clarified when municipalities may impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny that should be applied to content-based restrictions on speech. In light of the Court’s decision, staff recommends making these additional changes to the Zoning Ordinance:

- Delete requirements specific to religious institution signs;
- Remove content-specific limitation on changeable copy signs;
- Delete provisions specific to advertising messages incorporated into signs;
- Eliminate content-specific bulletin board limitations;
- Delete fast food, automobile, and other content-specific exceptions for banners.

## **ENVIRONMENTAL DETERMINATION**

The Zoning Ordinance amendments are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines. The Design Review Permit/Master Sign Program is within the scope of the development programs evaluated in the Hercules New Town Center Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009) and its addendum (Initial Study/Addendum #17-01) which the City Council approved on September 26, 2017, at a duly held public hearing, through adoption of Resolution No. 17-069, which also reconfirmed and readopted the applicable mitigation measures and the Statement of Overriding Considerations for the Hercules New Town Center Project, as amended. No new significant environmental effects could occur as a result of the proposed project, no new mitigation measures are required for the proposed project, and the proposed project does not require further environmental review under CEQA.

## **CONCLUSIONS / RECOMMENDATIONS**

The Safeway Center project will advance goals, objectives, policies, and programs of the Hercules General Plan by expanding and enhancing commercial opportunities and services in the central Hercules area. The project also responds to the current market demand for those services as well as providing community, pedestrian, and open space amenities. The proposed Master Sign Program supports those goals of commercial success by specifying a comprehensive, cohesive, and consistent approach for the shopping center collectively and its tenants individually to identify and advertise their businesses to potential patrons. The proposed Zoning Ordinance amendments support this and future Master Sign Programs by eliminating potential confusion and conflict between approved MSPs and the Zoning Ordinance, and by helping ensure legally appropriate, content-neutral review of signage.

## **ATTACHMENTS**

- Attachment 1 – Draft Ordinance adopting Zoning Text Amendment #ZTA 18-03
- Attachment 2 – Draft Resolution approving Design Review Permit #DRP 18-01, Master Sign Program for Safeway Hercules Center with Conditions of Approval
  - Exhibit A – Master Sign Program for Safeway Hercules Center
  - Exhibit B – Facts with Findings
- Attachment 3 – Planning Commission staff reports and adopted Resolutions

**Attachment 1**

**Draft Ordinance adopting Zoning Text Amendment No. 18-03**

**Attachment 2**

**Draft Resolution approving Design Review Permit No. 18-01,  
Master Sign Program for Safeway Hercules Center, with Conditions of Approval**

**Exhibit A to Attachment 2**  
**Master Sign Program for Safeway Hercules Center**

## **Exhibit B to Attachment 2**

### **Facts with Findings**

### **Attachment 3**

#### **4/16/2018 Planning Commission Staff Report and Approving Resolutions**