

**ORDINANCE NO. 3321**

**AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR 207 EAGLE DRIVE FOR THE CONSTRUCTION OF AN ELECTRONIC MESSAGE CENTER**

**WHEREAS**, the Planning Commission reviewed an application submitted by Joe Leiker, of Baudy Enterprise, dba Commercial Sign co. as agent to Astra Bank, concerning the issuance of a Conditional Use Permit for the construction of an electronic message center (“sign”) in a “C-3, General Commercial District” at property addressed as 207 Eagle Drive, Abilene, Kansas (“property);

**WHEREAS**, the Planning Commission conducted a Public Hearing per Article 26 of the Zoning Regulations of the City of Abilene, Kansas, on February 10, 2017, 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 Astra Bank 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:

*Lot 1, Block 1, Astra Bank Addition to the City of Abilene.*

And more generally described as 207 Eagle Drive in the City of Abilene, Kansas.

**SECTION THREE. 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 100 square feet per side, for on-site adverting signage in the “C-3, General Commercial District” as provided in Table 27-2 of the Zoning Regulations.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial, Industrial, and Public Use Districts, as provided in Section 27-604(c), which states that required setbacks are “thirty feet from the center of th 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 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

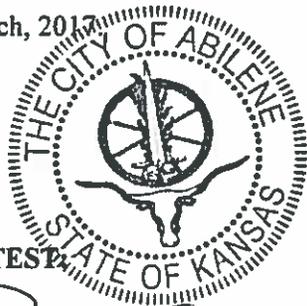
vertically and four feet horizontally of electric wires or conductors in free air carrying more than forty-eight volts, whether or not such wires or conductors are insulated or otherwise protected, and all such signs shall conform with the City's adopted Electric Code (2002 National Electric Code).

4. Only one electronic message center will be allowed on the subject property.
5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.
7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown.
8. The property owner shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

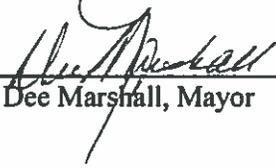
**SECTION FOUR. Implementation.** The Zoning Administrator, or designee, is hereby authorized to issue a Conditional Use Permit upon receiving sufficient evidence that all conditions designated for prior approval have been reasonably met.

**SECTION FIVE. 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 13<sup>th</sup> day of March, 2017.



**CITY OF ABILENE, KANSAS**

By:   
S. Dee Marshall, Mayor

ATTEST:

  
Penny Soukup, CMC  
City Clerk

**APPROVED AS TO FORM:**

  
Aaron O. Martin, City Attorney



## MEMORANDUM

**TO:** City Commission  
**FROM:** James D. Holland, Community Development Director  
**SUBJ:** PC 16-13: Conditional Use Permit to allow an Electronic Message Center in the C-3 zoning district  
**DATE:** February 27, 2017

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### **ISSUE:**

The applicant wishes to install an Electronic Message Center (EMC) in the C-3 – General Commercial District, pursuant to Section 27-401(c), which requires the issuance of a conditional use permit.

### **BACKGROUND:**

Astra Bank plans to install an EMC on it's property located at 207 Eagle Drive for the purposes of identifying the bank and displaying information on the services they offer.

On February 10, 2017, the Planning Commission held a public hearing on the CUP application and recommended approval (5-0) with the following conditions:

1. The proposed sign be less than the maximum gross square footage surface area, which is 100 square feet per side, for on-site adverting signage in the "C-3, General Commercial District" as provided in Table 27-2 of the Zoning Regulations.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial, Industrial, and Public Use Districts, as provided in Section 27-604(c), which states that required setbacks are "thirty feet from the center of th 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 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).
4. Only one electronic message center will be allowed on the subject property.

5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.
7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown.
8. The property owner shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

There were three citizens who expressed concerns about the EMC being located near the residential development to the south.

**RECOMMENDATION:**

Staff recommends approval in accordance with the finds of the Planning Commission and the conditions as stated above.

**FISCAL NOTE:**

Approval of the application does allow for structural investment on property, which directly enhances the tax base. More importantly, approval would allow a new business location to use a basic on-site advertising structure to promote business.

**ATTACHMENTS:**

- Ordinance No. 3321;
- Staff memo to the Planning Commission.

## STAFF REPORT

**PC 16-13 Conditional Use Permit, at the request of the Joe Leiker, agent to property owner Astra Bank, for the placement of an electronic message center in a "C-3, General Commercial District"**

<b>Date:</b>	February 10, 2017
<b>Owner:</b>	Astra Bank
<b>Applicant:</b>	Joe Leiker, of Baudy Enterprises dba Commercial Sign Co. as agent to property owner
<b>Requested Action:</b>	Conditional Use Permit
<b>Purpose:</b>	Placement of an electronic message center for on-site advertising
<b>Location address:</b>	207 Eagle Drive, Abilene, Kansas
<b>Comprehensive Plan:</b>	Key Issue 3 – Lack of coordinated marketing efforts to promote economic and cultural activities; Goal B – Market Abilene to Abilenians
<b>Sites Existing Zoning:</b>	"C-3 General Commercial District"
<b>Surrounding Zoning and Land Use:</b>	North: "C-3, General Commercial District" with South: "R-1, Low Density Residential District" East: "C-3, General Commercial District" West: "C-3, General Commercial District"
<b>Land Area:</b>	1.5 acres, more or less
<b>Notice Date:</b>	Notice of the Public Hearing was published in the Abilene Reflector-Chronicle on January 24, 2017 and by mail as required by the Section 26-102 of the Zoning Regulations.

### COMMENTS

1. Astra Bank requests a conditional use permit to construct an electronic message center for the purposes of onsite-advertising. Astra Bank is constructing a new building at 207 Eagle Drive, which is the subject property.
2. Section 27-401(c) of the Zoning Regulations was recently amended with the adoption of Ordinance No. 3292 and states the following with respect to electronic message centers:

*"Electronic message centers shall be permitted in Commercial, Industrial, and Public Use 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 City has received comments from Maureen Dawson and Stew Etherington in opposition to the proposed electronic sign due to its potential impact to residential properties.

## **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 provides 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 an area of the community that is a mix of commercial and residential. Presently, the properties located south of the subject property is zoned residential and contains two units. The sign is proposed to be located in the northwest corner of the site, and will still be visible from the residential properties located to the south of the site. As such, the proposed sign may have a negative effect on the adjacent properties depending on alignment, brightness, and hours of operation, etc.
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 catalyst for the proposed Conditional Use permit is not necessitated by a change of the conditions to the area. Astra Bank is constructing a new building on the site and desires to provide advertising for its offerings in a location that is more readily accessible for the traveling public. The area has had a commercial development pattern over the years, although residential development began in the Dawson Cottage Addition a few years ago. The electronic message center should balance the commercial use with the adjacent residential use, if at all possible.
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.
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-3 General Commercial District" The subject matter of the request is whether to allow an electronic message center on the property. If the Conditional Use Permit is approved, it may diminish the uses that are currently allowed on the property by right or conditionally. Residential units to the south of the proposed location may be negatively affected by the placement of the sign. Actions to mitigate the off-site effects should be considered so as to minimize any potential negative impacts on adjacent properties.

6. The suitability of the applicant's property for the uses to which it has been restricted. The property has been rezoned for commercial use and Astra Bank is presently developing a bank facility on the site. The proposed electronic message center is allowed by conditional use permit, but as previously mentioned, may have a negative impact on adjacent properties. If the Planning Commission elects to recommend approval of the conditional use permit, it may wish to impose restrictions that would mitigate the off-site impacts as much as possible.
7. The length of time the subject property has remained vacant or undeveloped as zoned. An electronic message center has never been located on the site. The site has had commercial development on it for at least a few decades. The Eagles Lodge used to be located on the site prior to the development of the bank building.
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 request.
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 request.
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, and will allow the Astra Bank to market its offerings, as an economic activity, to the general public.
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. The hardship created if the sign is not approved may be the potential loss of revenue by property owner if they do not have the ability to market their business offerings. It would be difficult to determine if a loss of revenue resulted from a lack of electronic message signage as the bank would have other means of advertising its products and has a pre-established customer base.
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. Astra Bank should take actions to mitigate the impact of the electronic message center on the adjacent residential properties to the south. Such actions may include aligning the sign north and south so the sign faces east and west, placing the sign as far from the residential uses and the property will allow, planting natural landscaping to reduce the effects of glare on off-site properties, dimming the sign after dusk, and turning the sign off after 9:00 or 10:00 pm.
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. Therefore, staff does not believe that an undue burden is placed on existing infrastructure.
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 100 square feet per side, for on-site advertising signage in the "C-3 General Commercial District" as provided in Table 27-2 of the Zoning Regulations.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial, Industrial, and Public Use 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."
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4. Only one electronic message center will be allowed on the subject property.
5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.

7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown and the sign will be turned off for advertising purposes after 10:00 pm.
8. The property owner shall align the sign north and south so that the face shows east and west, and shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

**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.

Dickinson County Property Data - 0211120904001009000

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