



Council Communication

Office of the City Manager

Date	November 5, 2007
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Agenda Item No.	34
Roll Call No.	<u>07-</u>
Communication No.	<u>07-670</u>
Submitted by:	Larry Hulse, Community Development Director

AGENDA HEADING:

Second Reading regarding proposed amendments to the Zoning Ordinance text (Chapter 134) establishing designated gateway and scenic corridors, changing the provisions for legal non-conforming signs; and regulating the conversion of legal non-conforming billboards to electronic billboards.

SYNOPSIS:

The proposed text changes are included in the Council packet as Exhibit “A” and generally make the following modifications to the sign regulations in the Zoning Ordinance:

- Add several additional locations (see included map) to the list of Designated Gateway and Scenic corridors where off-premises signs are prohibited within a 500-foot setback from the corridor. Staff has included the Merle Hay Road corridor from I-80 to Franklin Avenue in the list of Designated Gateway and Scenic Corridors as directed by the City Council on August 20, 2007.
- Add provisions changing the standards for legal non-conforming signs prohibiting them from being converted to electronic display and limiting the ability of any type of sign reuse by changing the way destruction of a sign is defined.
- Allow an existing legal non-conforming off-premises advertising sign to be converted to an electronic sign only if the applicant agrees to cause a second existing legal non-conforming sign of equal or larger size to be removed from the same corridor prior to such conversion.

The proposed changes are supported by the significant corridors map and proposed policies for significant corridors contained on pages 38-39 of the Des Moines’ 2020 Community Character Plan.

FISCAL IMPACT:

Amount: Indeterminate. Assessed property values may be reduced dependent on number of existing off-premises advertising signs removed as a result of proposed Zoning Ordinance text amendments.

Funding Source: General fund property tax revenue.

ADDITIONAL INFORMATION:

On February 12, 2007, the City Council established a temporary moratorium on off-premises signs with electronic displays. On April 9, 2007, the City Council received and filed a report from the Community Development Department, the Sub-committee on Electronic Billboards, and the Regulation and Ordinances Committee of the Plan and Zoning Commission regarding electronic billboards. The report recommended the following amendments to the City of Des Moines Zoning Ordinance:

- Provide a more extensive review of the designated commercial and scenic corridors that are currently protected with regard to off-premises signs to determine if additional corridors and future planned corridors should be included under these limitations (i.e. Fleur Drive south of Army Post, Highway 5 bypass, etc.).
- Incorporate regulations for control of electronic/digital display off-premises signs to regulate the distance of sign from roadway, residential uses, and other signs; brightness/illumination; duration of message; transition of message; and prohibit the fluctuation, animation, or movement of the message.
- Adjust the non-conforming provisions of the Zoning Ordinance so that signs are considered independently of other uses (i.e. reduce the 60% destroyed threshold and exclude the foundation from the consideration so that fewer legal non-conforming signs can be reconstructed).
- Modify regulations with regard to illumination of existing billboards (i.e. require down-directional, sharp cut-off lighting with recessed bulbs).
- Investigate the possibility to reduce the maximum size of billboards and or eliminate all billboards within the City through amortization.

On June 18, 2007, the City Council approved the first consideration of an ordinance placing limitations on electronic signs including a minimum static display of eight seconds between electronic messages.

The Council extended the moratorium on digital signs, originally imposed by Roll Call No. 07-275, until August 6, 2007 (for signs greater than 24 square feet in size) to allow further review of an ordinance establishing designated gateway and scenic corridors, changing the provisions for legal non-conforming signs; and regulating the conversion of legal non-conforming billboards to electronic billboards.

The Council subsequently approved the second and final considerations of the ordinance establishing digital billboard regulations (i.e. minimum static display of 8 seconds, etc.) on July 9, 2007.

The City Council asked for responses to the following questions at the August 6, 2007, meeting when it set the date for the public hearing on the ordinance establishing designated gateway and scenic corridors and regulations regarding non-conforming signs:

- How many signs in the city will be impacted by the proposed changes? There are approximately 415 existing billboards within the City limits. Approximately 100 of the signs are 14' x 48' (672 s.f.) in size and 315 of the signs are 12' x 24' (288 s.f.) in size.
- What companies own the signs? Clear Channel Outdoor (CCO) owns approximately 380 of the signs within the City limits. Waitt Outdoor owns 10 off premise advertising signs within the Des Moines' City limits. Other miscellaneous advertising companies own the remainder of the signs.
- Can we look at reducing the maximum size of signs? Yes. Reducing the maximum size for billboards would also cause existing billboards to become legal non-conforming signs.
- How will this action resolve the outstanding issues with the signs on Fleur Drive (Gray's Lake) and the issues related to Western Gateway? These are independent issues from the ordinance under consideration, and staff intends to negotiate them separately.
- How would staff recommend approaching an amortization to get rid of all billboards? First, the City must define what it wants to amortize (i.e. size of billboards, existence of billboards, etc.). Second, the City must determine the economic life of each billboard (i.e. determine its value and life span). Third, the staff would need to prepare legislation for consideration by the Plan and Zoning Commission and Council that requires compliance with the new code within a set period of time that is commensurate with the economic life of the billboards (i.e. 5 years, 10years, 15

years, etc.) Finally, the City would need to wait for the period of time to expire and defend any legal challenges to the amortization.

On August 20, 2007, the City Council held a public hearing and approved the first reading of the proposed ordinance. The Council scheduled the second reading of the proposed ordinance for October 22, 2007, and directed staff to add the Merle Hay Road corridor from I-80 to Franklin Avenue to the list of Designated Gateway and Scenic Corridors. The Council also directed staff to have further discussion with Clear Channel Outdoor regarding the regulation of billboards.

Clear Channel recently went through a change in legal counsel and submitted a proposal to the City on October 3, 2007. With other priorities, staff did not have adequate time to review and respond to the proposal in order to meet the agenda deadlines for the October 22nd meeting. Therefore, the City Manager requested that the second consideration be delayed until November 5, 2007, to allow additional time to communicate with Clear Channel.

A summary of requests from Clear Channel Outdoor for amendments to the proposed ordinance follows. The staff analysis and recommendation is provided after each of the requested amendments:

- *CCO will relinquish the Fleur Drive / Gray's Lake sign at the time of approval of the amended Ordinance as stated below and the Fleur Drive / Gray's Lake sign will not be subject to replacement at another location.*

Removing the Gray's Lake billboard does not offset the concessions that CCO is requesting in the proposed ordinance regarding Electronic Display. The City has treated this issue separately throughout this process to review electronic signs. Staff recommends that the City continue to do so.

- *CCO requests that a legal non-conforming sign be allowed to convert to an electronic / digital sign of any size if a second existing legal non-conforming or conforming sign of any size located anywhere in the City is removed prior to the conversion (i.e. one sign face will be taken down for one electronic / digital sign face converted).*

The maximum flexibility staff recommends is allowing a conversion of a legal non-conforming sign to occur only if another legal non-conforming billboard is removed anywhere in the City, i.e., eliminate the provision that the sign to be removed must be on the same corridor as the converted sign. CCO's proposal to convert an existing legal non-conforming sign face to an electronic sign face of any size, if another legal non-conforming or conforming sign face of any size located anywhere in the City is unacceptable for the following reasons. First, the Clear Channel proposal references "sign faces" being removed versus entire billboard structures being removed per the proposed ordinance. The digital billboard message can change every 8 seconds, which equates to 420 messages per hour and 10,080 messages per day. An entire billboard (regardless of # sign faces) should be removed for every conversion allowed. Secondly, allowing a conforming sign to be taken down in exchange for conversion of a legal non-conforming sign would be contrary to the purpose of the proposed ordinance. Immediately after the conversion occurs, CCO can apply for a new billboard permit at the exact same location as the previous conforming sign that was removed. The net effect would be that a conversion would occur with no permanent net reduction in billboards.

- *Clear Channel Outdoor requests that ten locations be allowed for new signs in the Downtown and in the Iowa Highway 5 Corridor.*

Staff does not support 10 new billboard locations in the Downtown and Highway 5 corridor. Such a concession would require rezoning of properties or amendments to the applicable zoning districts to remove existing prohibitions on billboards.

- *CCO will participate in environmentally sensitive advertising, i.e. new recycled products will be available for use in the third quarter of 2007.*

Staff supports Clear Channel Outdoor's efforts to be environmentally sensitive.

- *CCO will agree to the addition of the Merle Hay Road corridor from I-80 to Franklin Avenue to the list of Designated Gateway and Scenic Corridors.*

The Merle Hay Road corridor from I-80 to Franklin Avenue is included in the recommendation for addition to the list of Designated Gateway and Scenic Corridors, per Council's direction.

Staff communicated these recommendations to Clear Channel's legal counsel on October 17, 2007.

PREVIOUS COUNCIL ACTION(S):

Date: August 20, 2007

Roll Call Number: 07-1669

Action: [On](#) proposed amendments to the [Zoning Ordinance](#) to place limitations on electronic signs and off-premises advertising signs. ([Council Communication No. 07-499](#)) Moved by Vlassis to adopt and approve, subject to final passage of the enacting ordinance. Council will have second consideration of the ordinance on October 22, 2007; refer to the City Manager to review extending the Merle Hay Corridor, and to have further discussion with Clear Channel Communication regarding the regulation of billboards. Motion Carried 7-0.

Date: August 20, 2007

Roll Call Number: 07-1670

Action: [First](#) consideration of ordinance above. Moved by Vlassis that this ordinance be considered and given first vote for passage. Second consideration will be on October 22, 2007. Motion Carried 7-0.

Date: August 6, 2007

Roll Call Number: 07-1518

Action: [On](#) proposed amendments to the [Zoning Ordinance](#) to place limitations on electronic signs and off-premises advertising signs, (8-20-07). ([Council Communication No. 07-489](#)) Moved by Coleman to adopt. At the hearing, City Manager will provide information regarding: 1. The number of signs

impacted; 2. Amortization of billboards; 3. Possibility of reducing the maximum size. Motion Carried 7-0.

Date: July 9, 2007

Roll Call Number: 07-1315 and 07-1316

Action: [Amending](#) Chapter 134 of the Municipal Code regarding limitations on electronic signs and off premises advertising signs. Moved by Hensley that this ordinance be considered and given second vote for passage. Motion Carried 7-0.

[Final](#) consideration of ordinance above, (waiver requested by Community Development Director), requires 6 votes. Moved by Hensley that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, [#14,668](#). Motion Carried 7-0.

Date: June 18, 2007

Roll Call Number: 07-1224 and 07-1225

Action: [On](#) proposed amendments to Zoning Ordinance to place limitations on electronic signs and off premises advertising signs. ([Council Communication No. 07-368](#)) Moved by Hensley to adopt, subject to the following conditions: a) The ordinance shall be amended to delete the amendments to the Zoning ordinance corresponding to the last three bullet points in the synopsis of Council Communication No. 07-368. b) The moratorium on digital signs originally imposed on February 12, 2007 by Roll Call No. 07-275, is hereby renewed and extended until August 6, 2007, and amended to apply only to signs greater than 24 square feet in size. Motion Carried 6-1.

[First](#) consideration of ordinance above. Moved by Hensley that this ordinance be considered and given first vote for passage, subject to the ordinance being amended to delete the amendments to the Zoning ordinance corresponding to the last three bullet points in the synopsis of Council Communication No. 07-368. Motion Carried 6-1.

Date: June 4, 2007

Roll Call Number: 07-1071

Action: [On](#) proposed amendments to Zoning Ordinance to place limitations on electronic signs and off premises advertising signs, (6-18-07). ([Council Communication No. 07-340](#)) Moved by Vlassis to adopt. Motion Carried 7-0.

Date: April 23, 2007

Roll Call Number: 07-781 and 07-782

Action: [From](#) David Harkin, 535 E. Army Post Road, requesting relief from the temporary moratorium on off-premises advertising signs and electronic displays. Moved by Vlassis to receive and file comments. Motion Carried 7-0.

Alternate Motion: To grant requested relief to this and to all similar signs. Moved by Vlassis to adopt and approve the waiver, and to amend the temporary moratorium initially imposed on February 12, 2007, by Roll Call No. 07-275, to exempt all electronic signs no larger than 12 square feet in size. Motion Carried 7-0.

Date: April 9, 2007

Roll Call Number: 07-696

Action: [Report](#) on Electronic Billboards and extending the temporary moratorium until June 5, 2007. ([Council Communication No. 07-204](#)) Moved by Vlassis to adopt. Motion Carried 5-2. Nays: Hensley and Kiernan.

Date: February 12, 2007

Roll Call Number: 07-275

Action: [Resolution](#) establishing a temporary moratorium on new off-premises advertising sign with electronic displays. Moved by Vlassis to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Date: May 17, 2007

Roll Call Number: N/A

Action: Plan and Zoning Commission recommended text changes to the Zoning Ordinance to regulate electronic signs and to restrict off-premises advertising signs.

Date: February 15, 2007

Roll Call Number: N/A

Action: Plan and Zoning Commission established Billboard Sub-Committee to follow up on City Council charge to study billboard issues.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Final consideration of the proposed ordinance is planned for November 19, 2007.