

Date..... June 18, 2007

WHEREAS, on June 4, 2007, by Roll Call No. 07- 1071, it was duly resolved by the City Council that the proposal to amend the Zoning Ordinance, regarding electronic signs and off-premises advertising signs as more fully described in Exhibit "A" attached hereto, be set down for hearing on June 18, 2007, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on June 7, 2007; and

WHEREAS, in accordance with the notice, those interested in the proposed amendments, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the Zoning Ordinance be and the same are hereby overruled, and the hearing closed.

2. The City Council of the City of Des Moines hereby makes the following findings in support of the enactment of the proposed amendments to the Zoning Ordinance:

A. The city council finds it necessary for the promotion and preservation of the public health, safety, welfare and aesthetics of the community that the construction, location, size, conspicuity, brightness, legibility, operational characteristics and maintenance of billboards be controlled. Billboards have a direct and substantial impact on community aesthetics, property values, traffic safety and pedestrian safety. The city council recognizes that a great percentage of billboards that are blighted, unattractive, or provide an unsafe distraction to motorists can be corrected by sensible quality control through adequate maintenance, inspection and operational guidelines. With respect to electronic billboards, the city council finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled, electronic billboards can constitute a traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction*, Sept. 11, 2001 and *The Role of Driver Inattention in Crashes: New Statistics from 1995*; the University of North Carolina Highway Safety Research Center, *Distractions in Everyday Driving*, May 2003 and *The Role of Driver Distraction in Traffic Crashes*, May 2001; the Wisconsin Department of Transportation, *Synthesis Report of Electronic Billboards and Highway Safety*, June 10, 2003; and the Veridan Group, *Video Signs in*

Date..... June 18, 2007

*Seattle*, Gerald Wachtel, May 2001, reveal that electronic signs are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

- B. The city council intends by these amendments to the Zoning Ordinance to establish a legal framework for sign regulation in the city, while protecting and promoting the public health, safety, welfare and aesthetics of the community. It is not the purpose or intent of these amendments to the Zoning Ordinance to prefer or favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. The owner of any sign which is otherwise allowed by the Zoning Ordinance may substitute non-commercial copy or message in lieu of any other commercial or non-commercial sign copy or message without any additional approval or permitting subject to the operational standards set forth in the Zoning Ordinance. The purpose of this provision is to prevent any inadvertent favoring of commercial speech or message over non-commercial speech or message. The purposes of the proposed amendments to the Zoning Ordinance include:
- (1) To safeguard and enhance property values;
  - (2) To control nuisances;
  - (3) To eliminate potential hazards to motorists and pedestrians using public streets, sidewalks, and rights-of-way;
  - (4) To protect government investments in public buildings, streets, sidewalks, traffic control and utility devices, parks, and open spaces;
  - (5) To preserve and improve the appearance of the city through adherence to aesthetic principles, in order to create a community that is attractive to residents and to non-residents who come to live, visit, work, or trade;
  - (6) To discourage excessive and confusing sign displays;
  - (7) To implement the city's comprehensive plan;
  - (8) To encourage signs which by their design are integrated with and harmonious to the surrounding environment and the buildings and sites they occupy;
  - (9) To promote the public health, safety, and general welfare; and
  - (10) To provide for fair and consistent enforcement of the regulations set forth herein.

( continued )

★ Roll Call Number

Agenda Item Number

67

Date June 18, 2007

-3-

3. The proposed amendments to the Zoning Ordinance are hereby approved, subject to final passage and publication of the rezoning ordinance.

(Council Communication No. 07-368)

MOVED by \_\_\_\_\_ to adopt

FORM APPROVED:

*Roger K Brown*

Roger K. Brown

Assistant City Attorney

G:\SHARED\LEGAL\BROWN\WORK\Ch134\FORMDOC.WPD

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

June 18, 2007

67

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held June 7, 2007, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 8-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp				X
Shirley Daniels	X			
Dann Flaherty	X			
Bruce Heilman	X			
Jeffrey Johannsen				X
Greg Jones				X
Frances Koontz	X			
Kaye Lozier	X			
Jim Martin				X
Brian Millard			X	
Brook Rosenberg	X			
Mike Simonson				X
Kent Sovern	X			
Tim Urban				X
Marc Wallace	X			



CITY PLAN AND ZONING COMMISSION  
ARMORY BUILDING  
602 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309-1881  
(515) 283-4182

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

**APPROVAL** of a set of proposed amendments to Chapter 134 (Zoning Ordinance) to place limitations on electronic signs and off-premises advertising signs generally as follows, and as more specifically described in the accompanying Exhibit "A":

(10-2007-5.01)

- Add new definitions for Electronic Display Sign, Multi-vision Display Sign, and Video Display.
- Add regulations for electronic display signs over 24 square feet in area restricting the duration of any message to 20 seconds minimum, requiring transition to be instantaneous, establishing maximum brightness, requiring dimmer control mechanism to adjust to changing light conditions, and establishing residential separation of 100 feet for Electronic and Multi-Vision Display Signs.
- Add Video Display signs to the general list of prohibited signs.
- Add several additional locations (see included map) to the list of Designated and Gateway scenic corridors where off-premises signs are prohibited within 500 feet.
- 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.

- As part of the changes to the non-conforming provisions, an existing legal non-conforming off-premises advertising sign on a Designated Scenic and Gateway corridor could 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 Designated Scenic and Gateway corridor prior to such conversion.

## **MAY 17, 2007 STAFF RECOMMENDATION AND BASIS FOR APPROVAL**

Staff recommends approval of the proposed text amendments as attached. Based on input from the stakeholders meeting on May 14 and the Regulation and Ordinances Committee meeting on May 16, a revised recommendation may be forthcoming at the meeting.

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

On February 12, 2007 the City Council established a temporary moratorium on off-premises signs with electronic displays. The Plan and Zoning Commission created a sub-committee in response to the moratorium on February 15, 2007. The sub-committee along with staff was charged with investigating issues surrounding electronic signs. On April 9, 2007 the finding of the sub-committee and the Regulation and Ordinances Committee of the Plan and Zoning Commission reported to the City Council with the following findings:

- Electronic/digital display signs (both off-premises and on-premises) can present a direct and substantial impact to community aesthetics, property values, traffic and pedestrian safety.
- Electronic/digital display advertising signs are highly visible from long distances and at wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time.
- Without changes in the City of Des Moines Zoning Ordinance with regard to Electronic/Digital Display signs (in particular billboard sized signs), these signs will continue to present an increased threat to community aesthetics, property values, and traffic safety.

At that time the City Council then voted to extend the moratorium to develop proposed changes to the Zoning Ordinance text to mitigate potential impacts related to those findings. The Council also required that stakeholders in the sign industry be included in the review of any proposed Ordinance changes.

The attached Ordinance text changes recommended by the Regulation and Ordinances Committee will be presented at a stakeholders meeting on Monday, May 14, 2007. The Committee will review the input provided at the meeting on Wednesday May 16, 2007 prior to the Commission final consideration of text amendments. The City Council required that a recommendation from the Commission be forwarded on to them for their consideration at their June 4, 2007 meeting.

The proposed text changes generally make the following modifications to the sign regulations in the Zoning Ordinance:

- Add new definitions for Electronic Display Sign, Multi-vision Display Sign, and Video Display.
- Add regulations restricting the duration, transition, brightness, dimmer control, and residential separation for Electronic and Multi-Vision Display Signs.
- Add Video Display signs to the general list of prohibited signs.

- Add several additional locations (see included map) to the list of Designated scenic corridors where off-premises signs are prohibited within 500 feet.
- Add provisions changing the non-conforming provisions for signs prohibiting non-conforming signs to be converted to electronic display and limiting the ability of sign reuse by changing the way destruction of a sign is defined.

## **MAY 17, 2007 SUMMARY OF DISCUSSION AND ACTION**

Erik Lundy: Presented staff report and recommendation. Noted the subject request was originally before the City Council on February 12, 2007 in response to a sign that was installed at SW 63<sup>rd</sup> & Grand Avenue. The Plan and Zoning Commission followed up and established a subcommittee, which met once; Brian Millard was the Chairman. He thanked Commissioner Millard and the members of the R&O Committee and the contributions of all the Commissioners in the process. He explained it is not desired for moratoriums to be continually extended.

Larry Hulse: Commended Commissioner Millard for the research he did and noted there are few cities that have responded to the subject issue. Commissioner Millard found some websites that helped in the research of ordinances. Indicated if the installation is regulated there will be more calls. It has been cutting-edge review.

Brook Rosenberg: Expressed concern with regard to the 20 seconds and suggested people that slow down to view the signs would create a hazard.

Erik Lundy: Suggested the 20 minutes in the original language was looked at by R&O and determined that to be longer than necessary to reduce an impact. The idea behind setting a duration was to limit the number of messages that would be viewed. The thought was to reduce the duration to 20 seconds from the 20 minutes.

Mike Ludwig: Noted the discussion was to limit the number of sign changes to 2-3 times per minute. Most of the billboards are visible from 1/3 to 1/4 of a mile in travel distance from the billboard, which is roughly 1600 feet. At the speeds that are on most of the streets, 20 seconds covers between 700 and 1000 feet. On average the sign will change 2-3 times while the sign is visible.

Bruce Heilman: The Committee did not specifically consider the 20-second duration as a safety issue. R&O did not consider people slowing down so they could view all the changes the signs would have. The issue has to do not with the frequency, but whether changing signs should be allowed at all.

Brian Millard: Noted the Bloomington, MN ordinance details 20 minutes between sign changes. Suggested that was due to the speed of the vehicles going by so that in most cases there would be zero changes as they go high speed down the highway.

Mike Ludwig: Noted staff emailed the staff in Bloomington and indicated their intent was to have no change in signs.

Brian Millard: Asked how R&O decided the 20 seconds would be appropriate for the Des Moines Ordinance.

Bruce Heilman: Explained the email from Bloomington disavowed any safety concerns for establishing the 20 minutes. Static billboards are a distraction or they would not exist because they are advertising designed to attract attention. The introduction of changes could increase the distraction for people driving by. R&O discussed traffic light changes and estimated they average approximately 20 seconds in Des Moines. Noted that could be increased or decreased. The industry standard of 8-seconds was set by the industry.

Tim Urban: Noted he called municipalities to inquire how they regulate off-premise signs and whether they would address the use of electronic messaging. None of the five jurisdictions he spoke with had directly grappled with electronic messaging as a current technology issue. Most of them have provisions in the ordinances to disallow animated or electronic devices on off-premise signs at all; they would not allow them. He also discovered most of Des Moines' suburban neighbors do not allow off-premise advertising at all other than industrial districts. Also discovered 20-30 years ago the City Council grappled with the issue to set up an amortization plan to put them out of business except for industrial areas. Council changed its mind in 2000 and opened the door again allowing multiple panels on single poles. West Des Moines stuck with an amortization plan from 1973 to 1983 and they are basically gone with the exception of Fuller Road, which is an industrial district. Expressed concern that the real subject discussion should be what to do with off premise signs. Noted the safety issue of the electronic signs could not be proven.

Bruce Heilman: Noted the Commission could not dismiss the directive from the City Council.

Larry Hulse: Suggested the Commission could do both. The primary part of the discussion was digital, changeable signs. The Mayor brought up the possibility of the issue being the off-site advertising in general and asked for a report on that issue as well. Noted the Commission could address and give policy recommendations on both.

Tim Urban: Noted the ordinance has a section on scenic corridors that prohibits billboards and argued that was a new initiative and would have nothing to do with the electronic signs.

Larry Hulse: Noted it would because signs that are existing could still be there.

Tim Urban: Argued how non-conforming signs are dealt with is an entirely different issue. How signs are characterized as appropriate or inappropriate in the urban landscape of Des Moines compared to the rest of the metropolitan community is the issue.

Mike Simonson: Agreed with the direction of Commissioner Urban's arguments and suggested if the Commission does not like the billboards, suggested allowing them to change them once per week and there won't be any because they won't be able to afford to put them up.

Bruce Heilman: Noted the Commission has to have a reason for doing what they do. Noted there is precedent for amortization of billboard for lack of aesthetics and the Commission has discussed it, but it is not what they are being tasked with. It would be within the Commission's purview to turn the request down and recommend eliminating all billboards within 10 years.

Mike Ludwig: Noted there were two actions by City Council. The first was to determine regulations for digital billboards; the second was a referral from the City Manager's office to the Community Development department to discuss amortization of billboards.

Erik Lundy: Completed the staff report and recommendation and highlighted the suggestions of changes in the language of the ordinance that resulted from the discussion at the stakeholders' meeting relative to the following:

- Definition of Electronic Display Signs;
- Dimmer controls;
- Roof mounted sign restrictions;
- Non-conforming provisions.

Noted the members of the stakeholders' group were very open to being involved in the process.

Brian Millard: Asked if any of the stakeholders had met with staff or talked to staff about any other ideas since the meeting with the stakeholders.

Erik Lundy: Indicated none had specifically.

### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one in the audience to speak in favor of this request.*

*The following individuals spoke in opposition:*

Tim Jamison General Manager of Clear Channel, 3101 SW 61<sup>st</sup> Street: Noted their industry has been around for 150 years and is in every major metropolitan market in the United States and globally and noted Clear Channel has 57,000 employees. He indicated the digital billboards are on the cutting edge; it is technology that has evolved. Explained Clear Channel has over 600 of the digital billboards. Noted 98% of all boards are on 8-second spots. The premise of the City Council's concern was on safety. He noted that according to the Des Moines Police Department's accident records, on SW 63<sup>rd</sup> & Grand there was one accident in February of 2006 and since the billboard was converted to digital, there was one accident in March of 2007. Suggested if digital billboards were causing traffic accidents it would be all over the news. Asked if anyone asked Bloomington, MN if they had digital billboards. He noted they don't because of the 20 minutes intervals. Minneapolis, St. Paul, Maple Grove and Minnetonka, MN all have digital billboards, all of which were 8-second intervals, which is the average. Cedar Rapids, Waterloo and Dubuque, Iowa all have 8-second digital billboards. Questioned how Des Moines could be progressive if they don't want to participate in new technology.

Mike Simonson: Questioned how much it cost to construct the electronic billboard on SW 63<sup>rd</sup> and Grand. Also asked if they own the piece of property the billboard sits on.

Tim Jamison: Indicated the cost of the structure is less than \$400,000 because they buy them in bulk. Noted they not only own the property the existing digital billboard sits on, but they deeded a piece of it over to the City of Des Moines for the new bike trail. They placed the billboard legally and promoted the City of Des Moines for approximately \$60,000 worth of free advertising.

Mike Simonson: Noted he does not like billboards and he felt there is appropriate discussion about whether or not to have them and stressed that not having them does not mean Des Moines is not progressive. Indicated he would prefer the electronic over paper because they look better.

Dann Flaherty: Noted the easement for the bike trail was required because the bike trail was redirected.

Tim Urban: Noted billboards were a hot issue when he was on the City Council. Indicated he would vote for 20-minute intervals if it would eliminate the ability to have electronic billboards, although the real issue is the appropriateness of large signs in the cityscape.

Tim Jamison: Noted Clear Channel has built one new billboard in the last 24 months. They have taken down six due to natural attrition. Billboards disappear slowly with development. There are over 100 less billboards in the Des Moines than there were 24 years ago. Currently there are 653 faces, which would be 320 plus signs.

Brian Millard: Asked if Mr. Jamison had asked West Des Moines about traffic accident reports since it faces West Des Moines.

Tim Jamison: Noted he had not because the billboard is in Des Moines. They chose that location because it is a high traffic area. Indicated the City of Windsor Heights has contacted them to place digital billboards.



Brian Millard: Stressed it is a critical issue that needs to be covered thoroughly.

Mike Ludwig: Explained the City Council directed the Commission to review it. Indicated a motion be made and suggested if the Commission wants amortization, a motion needs to be made as well. Noted one of the provisions considered by the R&O was that on scenic/gateway corridors an existing legal non-conforming billboard could be converted to digital only if a second billboard of equal or larger size on the same corridor was removed.

Larry Hulse: Reminded the Commission that they were to be making a recommendation to the City Council and suggested if the discussion goes toward the elimination of billboards, adding what they think should happen if the Council does not agree with the recommendation.

Kaye Lozier: Suggested that the entire 235 freeway be designated as a scenic corridor.

David Cupp: Suggested the issue to be very important and noted he did not like billboards flopping in the wind and thought the electronic billboards to be a great alternative to what is there now. He also noted the instant Amber Alerts, which are public service announcements are important. Noted the Committee put a lot of time in the issue and he would vote in favor of their recommendations.

#### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

David Cupp: Moved staff recommendation.

Bruce Heilman: Appreciated the support, but asked that the Commission not let the time and efforts the R&O spent influence their decision. He stressed the Commission owes a recommendation to the City Council, but suggested if they wanted to share their overall view of where they feel billboards should go, a separation motion could be made.

Brian Millard: Suggested the Commission has offered advice to the City Council before that was not sought of them. Suggested if the Commission believes a large sign that changes images is aesthetically pleasing, then the status quo is sufficient and there does not need to be an ordinance. Stressed bus benches are heavily regulated. A screen to change every 8 seconds is less aesthetically pleasing than one that changes every 20 minutes or even 20 seconds. Felt 20 seconds to be too short and did not ever remember sitting at a traffic light that was only 20 seconds. Without solid justification he was at a loss of what would be appropriate. Noted he sent out an email to Des Moines neighborhood associations and read it to the Commission. He read some of the replies and indicated the consensus was opposition to the billboard. Stressed the need for facts, information and input from the community. Frustrated that the subcommittee that was formed only met once and then R&O took over. Did not know what was appropriate. Suggested whether a changing image is aesthetically detrimental to a neighborhood.

Tim Urban: Reiterated it is in the Commission's purview to determine if electronic billboards are appropriate or not. His position was that they are inappropriate. Did not think there was time to get into a broader discussion about whether or not to eliminate billboards.

Bruce Heilman: Reminded the Commission that they cannot regulate the message; it is a free speech issue, however they can regulate the structure based on aesthetics. Suggested if someone could come up with why electronic messaging is not appropriate to the City of Des Moines where static is, they could make that argument, but he did not think they could. Relative to the distraction and nuisance issue, they could make a recommendation on the frequency of change and when the 20-second interval was decided the information of the 8-second industry standard was not available. Indicated he did not have enough information to recommend the interval and noted the standard was set by the industry and is not necessarily in the best interest of the community where the billboards are.

David Cupp: Did not think the discussion was about electronic messaging, but was about billboards in general and suggested updating the billboards and get rid of the paper billboards. The electronic displays could do a lot of public good, thus he moved to accept the report and forward it to the City Council.

Kent Sovern: Noted it is difficult to narrow a decision down to yes or no on such a complex issue. Indicated there were other land use issues the Commission has struggled with, but regardless of how badly they would like to get rid of them they are beneficial to the City and the Commission has to determine the appropriateness to the citizens. He did not buy the safety argument. He did not think there is ample evidence as to what constitutes a distraction, however the Commission can appropriately deal with the aesthetic argument. Believed the electronic message boards are positive for the industry because they produce more revenue per board. Suggested the industry is motivated by monetary reasons to work with the City to improve the aesthetics and reach the goals of the R&O. He would be supportive of the 20-second interval. Suggested the issue needed to be moved forward and the broader issues could be dealt with relative to whether or not to move for the elimination of billboards overall by either separate motion or at a separate meeting.

Jeff Johannsen: Thought R&O had done a good job and commended Commissioner Millard. Noted he is not a big fan of billboards, but was pleased with the proposal.

Jim Martin: Noted the idea of the progressive nature caught his attention, but he bristled at the idea that being progressive is being like everybody else whether it is the cycling issue or what the suburbs are doing. He would prefer to see more interval than 20-second cycling, but suggested it is a good place to start.

Mike Simonson: Noted the cost of the signs has gone down already so there will be more. He was supportive of R&O's strive to put further restrictions on them. He concurred there is no safety issue. He would like to see the length of time increased substantially and would like to make another motion about the City working with the County to establish taxation of land that has million dollar billboards on it. The land the subject sign is on is flood plain, which probably has virtually no value with the exception of a valuable sign. The City and County should be entitled to some of the revenues being received from the billboard company or the landowners where the billboards sit.

Greg Jones: Noted he is on R&O and is therefore in support of the recommendations, however, he supported the further discussion about amortizing the signs over some period of time. He thought they were aesthetically challenged.

Larry Hulse: Noted the dates of the moratorium were set by City Council and the Commission could request an extension of time to study or could make a recommendation, which does not mean it cannot be looked at further.

Dann Flaherty: Thanked staff and R&O for their efforts and commended Commissioner Heilman and the other commissioners on R&O. He noted where he travels there are no billboards. He would entertain another motion that offsite billboards not be permitted. Would vote in favor of the current motion.

Mike Ludwig: Clarified the motion was to include the draft plus the amendments the R&O discussed.

Kent Sovern: Noted Commissioner Millard saved the Commission dozens of hours in research and commended him.

Mike Ludwig: Noted staff would want copies of the emails Commissioner Millard received. Explained minor changes to the proposed ordinance after input from the Stakeholders' meeting.

Bruce Heilman: Noted the motion included the information and changes staff presented, which included the legal non-conforming sign language.

Roger Brown: Suggested the Commission's action be to ask the City Council to continue the moratorium for another two weeks to allow the Commission to have the exact language available for discussion at the next Plan and Zoning meeting. Noted the matter is an important one, but there should not be a sense of urgency.

David Cupp: Withdrew his motion and moved to request a continuance of the moratorium until the June 7, 2007 meeting at which time it would be in writing for the Commission to discuss further.

Brian Millard: Expressed concern because there were already two City Council members who voted against extending the moratorium.

Roger Brown: Noted the Moratorium currently is extended until June 5, 2007. He suggested that the Commission make a recommendation to the City Council that at their meeting on June 4<sup>th</sup> they extend the moratorium to allow the Commission to come forward with a recommendation based on language in front of them. If the moratorium is or is not extended for two weeks, Clear Channel could push the issue to get another off-premise display using digital format, although he did not think they would want to do that.

Mike Ludwig: Read the recommendation and explained the non-conforming sign language.

Kent Sovern: Noted staff is in the process of contacting the County Assessor to determine how the billboards are assessed. If they are assessed based on a measure of value as to the construction or digitization or by their potential to produce revenue.

Tim Urban: Asked if another amortization plan is adopted, it would be the taking value of the asset that becomes appraised and not the land value. The cost of digital billboards would be substantially more than the cost of the static billboards.

Roger Brown: Noted if the City needs to take down a billboard for any reason, it is the value of the billboard that controls what must be paid, and what it is assessed at for tax purposes might be one thing that would be considered in determining that value. However it is extraordinarily rare that a piece of property can be condemned for its assessed value. It is only one factor that is considered in determining the value. It is true that if the sign is being condemned and being taken down, a digital billboard may drive the value of the sign up. He further explained amortization to involve the value and the expected life of the improvement. The value will go way up but the expected life of a digital sign is much shorter.

Brian Millard: Asked if there were any non-conforming issues that would not allow the 2 for 1 swap; if all legal non-conforming signs would be eligible for the 2 for 1 swap.

Roger Brown: Noted the language only applies it to the scenic or gateway corridors. Outside those corridors there is a separation requirement. The Subcommittee thought where billboards were made non-conforming by the separation requirement, the solution is to separate the billboards by taking one down. The new sign becomes conforming by eliminating a sign or two and spreading them out.

Kent Sovern: Moved staff recommendation with the inclusions presented including the language intended by the R&O to reduce the number of advertising faces along scenic corridors.

Dann Flaherty: Asked legal counsel if he was comfortable.

Roger Brown: Noted he was comfortable after the detailed explanations and discussion.

Mike Simonson: Seconded the motion and asked for a friendly amendment to change the frequency time from 20 seconds to 20 minutes.

Kent Sovern: Would not accept the amendment.

Mike Simonson: Asked fellow Commissioners to reject the motion so he could make another motion.

Kent Sovern: Noted he could ask to make an amendment to that section.

Mike Simonson: Moved the amendment.

Dann Flaherty: Noted the amendment would be voted on first, then the motion.

Amendment failed 4-8-1 (Greg Jones, Brook Rosenberg, Jeffrey Johannsen, Kent Sovern, Kaye Lozier, David Cupp, Bruce Heilman, and Marc Wallace were in opposition; Brian Millard abstained due to a lack of information on the rationale to the duration chosen).

Motion to adopt the staff recommendation with the inclusions presented including the language intended by the R&O to reduce the number of advertising faces along scenic corridors passed 9-3-1 as set forth below. Brian Millard stated that he abstained due to a lack of information on the rationale to the duration chosen.

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
David Cupp	X			
Shirley Daniels				X
Dann Flaherty	X			
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz				X
Kaye Lozier	X			
Jim Martin	X			
Brian Millard			X	
Brook Rosenberg		X		
Mike Simonson		X		
Kent Sovern	X			
Tim Urban		X		
Marc Wallace	X			

Mike Simonson: Noted there would be some positive things accomplished as a result of the action; there would be half the number of billboards and the rest would be electronic because the cost will come down. Moved that City Council work with entities to determine proper assessed values of land and/or structures that contain very valuable billboards.

Kent Sovern: Would support the motion because it would help to understand how State law and the actions of the County Assessor work with this particular type of commercial activity, which will offer a better understanding of its impact both positively and negatively on the City.

Bruce Heilman: Noted the more information the Commission gets the better and if they get into an amortization discussion they will need this type of information anyhow and if the City realizes how much tax revenue they could get from the billboards it may change their appetite for amortization down the road.

David Cupp: Offered a friendly amendment to the motion to encourage the City Council to work with billboard companies to promote community service announcements such as Amber Alerts.

Mike Simonson: Accepted the friendly amendment.

Motion passed 12-0-1 (Brook Rosenberg abstained).

Tim Urban: Moved that the Commission go on record as indicating to the City Council that it is in the public's interest to phase out billboards in the community.

Motion passed 12-1 (Kent Sovern was opposed).

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**FURTHER CONSIDERATION AT MEETING OF JUNE 7, 2007**

The matter was brought before the Commission on June 7, 2007 to confirm that the language in Exhibit "A" correctly reflects the action taken at the May 17, 2007 meeting.

**JUNE 7, 2007 SUMMARY OF DISCUSSION**

Brook Rosenberg: Asked if the Mesquaki sign on I-235 would be included, as well.

Mike Ludwig: Indicated since it is a mechanical sign it will be included.

Brian Millard: Abstained from discussion and voting on this item due to the questionable rationale for the duration chosen for the signs.

Kent Sovern: Moved staff recommendation.

Motion passed 8-0-1 (Brian Millard Abstained).

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:dfa

Attachment

## **Exhibit “A”**

### **Regulation of Electronic Signs and Billboards**

#### **Sec. 1. Purpose, Intent and Findings**

The city council finds it necessary for the promotion and preservation of the public health, safety, welfare and aesthetics of the community that the construction, location, size, conspicuity, brightness, legibility, operational characteristics and maintenance of billboards be controlled. Billboards have a direct and substantial impact on community aesthetics, property values, traffic safety and pedestrian safety. The city council recognizes that a great percentage of billboards that are blighted, unattractive, or provide an unsafe distraction to motorists can be corrected by sensible quality control through adequate maintenance, inspection and operational guidelines. With respect to electronic billboards, the city council finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled, electronic billboards can constitute a traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction*, Sept. 11, 2001 and *The Role of Driver Inattention in Crashes: New Statistics from 1995*; the University of North Carolina Highway Safety Research Center, *Distractions in Everyday Driving*, May 2003 and *The Role of Driver Distraction in Traffic Crashes*, May 2001; the Wisconsin Department of Transportation, *Synthesis Report of Electronic Billboards and Highway Safety*, June 10, 2003; and the Veridan Group, *Video Signs in Seattle*, Gerald Wachtel, May 2001, reveal that electronic signs, including billboards, are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

The city council intends by this section of the city code to establish a legal framework for billboard regulation in the city, while protecting and promoting the public health, safety, welfare and aesthetics of the community. It is not the purpose or intent of this section of the city code to prefer or favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. The owner of any billboard which is otherwise allowed by this Section of city code may substitute non-commercial copy or message in lieu of any other commercial or non-commercial sign copy or message without any additional approval or permitting subject to the operational standards set forth herein. The purpose of this provision is to prevent any inadvertent favoring of commercial speech or message over non-commercial speech or message. This provision prevails over any more specific provision to the contrary. The purposes of the regulations promulgated in this Section include:

- (1) To safeguard and enhance property values;
- (2) To control nuisances;
- (3) To eliminate potential hazards to motorists and pedestrians using public streets, sidewalks, and rights-of-way;
- (4) To protect government investments in public buildings, streets, sidewalks, traffic control and utility devices, parks, and open spaces;
- (5) To preserve and improve the appearance of the city through adherence to aesthetic principles, in order to create a community that is attractive to residents and to non-residents who come to live, visit, work, or trade;
- (6) To discourage excessive and confusing sign displays;

- (7) To implement the city's comprehensive plan;
- (8) To encourage signs which by their design are integrated with and harmonious to the surrounding environment and the buildings and sites they occupy;
- (9) To promote the public health, safety, and general welfare; and
- (10) To provide for fair and consistent enforcement of the regulations set forth herein.

**Sec. 2. New definitions to be added to Section 134-3**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Sign, electronic display* means any portion of a sign upon which alphabetic, pictographic or symbolic informational content can be changed or altered on a display screen composed of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices, including but not limited to programmable microprocessor controlled electronic displays; and, the projection of images or messages with these characteristics by any other means onto the sign face.

*Sign, multi-vision display* means any portion of a sign where the display surface is comprised of rotating elements that permit the display of different messages by the rotation of the elements.

*Video display* means an electronic display sign upon which multiple-color pictures or graphics are displayed in a series of frames which give the illusion of motion. This definition includes but is not limited to television screens, plasma screens, LED screens and holographic displays used to display video images.

**Sec. 3. Regulation of Electronic Signs (add new section to Chapter 134)**

Any sign utilizing an electronic display or multi-vision display more than 24 square feet in area must meet the following operational standards:

- (a) *Duration.* The display area and each portion thereof must be static for at least 20 seconds between any change in the message displayed.
- (b) *Transition.* The change between static messages must be instantaneous.
- (c) *Brightness.* No lighting shall be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of any street, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle. In no event may such a sign exceed a maximum illumination of 5,000 candelas per square meter during daylight hours and a maximum illumination of 500 candelas per square meter between dusk to dawn as measured from the sign's face at maximum brightness.
- (d) *Dimmer control.* Electronic display signs must have an automatic dimmer control to automatically reduce the illumination at night and during times of reduced ambient light.
- (e) *Separation from Residential.* No such sign shall be permitted within 100 feet of (i) any lot in an R district which either is used for residential purposes or is vacant, or (ii) any portion of a PUD district devoted to single- or two-family use.

**Sec. 134-1276. General Regulations.**

- .....
- (j) Prohibited signs. The following designated signs shall be prohibited in all zoning districts:
- (1) Obsolete signs. Signs that advertise an activity, business, product or service no longer conducted on the premises on which the sign is located.
  - (2) Banners, balloons, posters, and the like. Signs which contain or consist of banners, balloons, posters, pennants, ribbons, streamers, spinners or other similarly moving devices, except as specifically provided in subsections (i)(1)d and (i)(1)f of this section. These devices when not part of any sign shall also be prohibited.
  - (3) Swinging signs. Such signs which swing or otherwise noticeably move as a result of wind pressure because of the manner of their suspension or attachment.
  - (4) Portable signs. Such signs that are not permanently anchored or secured to either a building or the ground.
  - (5) Off-premises signs on public property. Such off-premises signs located on public property which is being used for public purposes.
  - (6) Painted wall signs. Such off-premises signs painted on building walls.
  - (7) Fascia signs. Such signs which encroach more than 18 inches on or over a street right-of-way or a required yard.
  - (8) Building or wall signs. Such signs which extend more than four feet above the roofline, except in areas where roof signs are permitted.
  - (9) Video display signs.

- .....
- (q) Off-premises advertising signs. Off-premises advertising signs shall be permitted only in those zoning districts where such signs are specifically classified as permitted or conditionally permitted uses by applicable district regulations. In each zoning district where off-premises advertising signs are classified as a permitted or conditionally permitted use, such signs shall be subject to the following additional restrictions:
- (1) The height of any such sign, if freestanding, shall not exceed 45 feet.
  - (2) Such signs shall meet applicable zoning district yard requirements for principal structures, except that the district front yard setback requirement shall apply only if there is no immediately adjacent principal structure with a front yard setback of less than the district requirement on either side of the property where such a sign is located. If there is an immediately adjacent principal structure with a front yard setback of less than the district requirement on only one side of the property where the sign is located, the minimum front yard setback requirement for the sign shall be the average of the district front yard setback requirement and the setback of such adjacent structure. If there are immediately adjacent principal structures with front yard setbacks of less than the district requirement on both sides of the property where the sign is located, the minimum front yard setback



- requirement for the sign shall be the average of the setbacks of said adjacent structures.
- (3) Such sign may contain separate side-by-side, back-to-back or V-type sign faces, provided such separate faces are attached to a single supporting structure. Single faced off-premises advertising signs in existence on July 1, 2000, which are located at least 500 feet from any other such sign and comply with the separation requirements in paragraph (5), below, may be altered to add a back advertising panel which conforms to the current size limitations for the zoning district in which it is located.
  - (4) Where off-premises advertising signs and roof signs are both permitted by the applicable district regulations, off-premises advertising signs ~~Such signs~~ may be located on roofs of buildings, subject to the following restrictions:
    - a. Such signs shall not exceed a height of 35 feet above the roof level from the point of mounting.
    - b. The back of any such sign shall be effectively shielded from public view by a building wall, by backing the face with another such sign face to conceal the exposed backs or by painting the exposed back a neutral color. Structural supports shall be painted a neutral color.
    - c. The total combined height of any such sign and the building upon which it is placed shall not exceed the zoning district height limitation applicable to the building.
  - (5) No such sign shall be permitted within 200 feet of (i) any lot in an R district which either is used for residential purposes or is vacant, or (ii) any portion of a PUD district devoted to single- or two-family use. No such sign shall be permitted within 500 feet of (i) any lot on which is located a public square, public park, public or parochial school, church, synagogue, funeral home, cemetery, or public library, or (ii) any lot which is part of a designated city landmark or historic district or a National Register historic district.
  - (6) Except as otherwise allowed by paragraph (7), below, no such sign greater than 300 square feet in size shall be located within 1000 feet of any other such sign, regardless of the size of the other sign. Except as otherwise allowed by paragraph (7), below, no such sign 300 square feet or less in size shall be located within 1000 feet of any other such sign which is greater than 300 square feet in size, nor shall it be located within 500 feet of any other sign which is 300 square feet or less in size.
  - (7) Along the designated major commercial corridors listed in this subsection, in lieu of the separation requirements identified in paragraph (6), above, no such sign shall be located within 500 feet of any other such sign. The designated major commercial corridors are:
    - a. Second Avenue (east side) from University Avenue to Washington Avenue.
    - b. Euclid Avenue from East Fourteenth Street to Mac Vicar Freeway.
    - c. Mac Vicar Freeway (west side) from extension of Tiffin Avenue to north city limits.
    - d. Southeast Diagonal from Southeast Fifteenth Street to Southeast Twenty-fourth Street, and from Southeast Thirtieth Street to east city limits.

- e. Southeast Fourteenth Street from Pleasantview Drive to Bloomfield Road.
- f. Army Post Road (south side) from Southwest Ninth Street to Southwest Second Street, and from Southeast Sixth Street to and including the 2100 block of Army Post Road.
- g. Sixty-third Street/ Iowa Highway 28 from Watrous Avenue to Army Post Road.
- h. Park Avenue from Southwest Forty-sixth Street to Southwest Sixty-third Street.
- i. Merle Hay Road (west side) from Douglas Avenue to Aurora Avenue.
- j. Merle Hay Road (east side) from Aurora Avenue to north city limits.
- k. Martin Luther King Jr. Parkway (east side) from Hickman Road to Euclid Avenue.
- l. Northeast Fourteenth Street From Douglas Avenue to north city Limits.

(8) No such sign shall be located within 500 feet or face any of the designated scenic or gateway corridors listed in this subsection. These scenic and gateway corridors have been so designated because they provide significant views from the public right-of-way to the Des Moines or Raccoon River, downtown, state capitol, or large areas of open space, or serve as major entryways into distinct residential, institutional or commercial districts. The designated scenic and gateway corridors are as follows:

- a. Army Post Road and Relocated Army Post Road from Fleur Drive to Iowa Highway 28.
- b. Bell Avenue
- c. Douglas Avenue from Martin Luther King, Jr. Parkway to west city limits.
- d. East 14th Street and Southeast 14<sup>th</sup> Street from East Park Avenue to East Euclid Avenue.
- e. East Army Post Road from Indianola Avenue to east city limits.
- f. East Euclid Avenue from MacVicar Freeway to Hubbell Avenue.
- g. East University Avenue.
- h. Easton Boulevard from Hubbell Avenue to east city limits.
- i. Euclid Avenue and East Euclid Avenue from Martin Luther King, Jr. Parkway to East 14th Street.
- j. Fleur Drive from Grand Avenue to south city limits.
- k. Grand Avenue from Twelfth Street to the west city limits.
- l. Hartford Avenue from Southeast 14th Street to Southeast 22nd Street.
- m. Hubbell Avenue.
- n. Indianola Avenue.
- o. Iowa Highway 5.
- p. MacVicar Freeway between 7th Street and East 6th Street, and except the west side thereof from the extension of Tiffin Avenue to the north city limits.
- q. Martin Luther King, Jr. Parkway from north city limits to East 14th Street, but excluding the east side thereof from Hickman Road to Euclid Avenue. For that portion of E. Martin Luther King Jr. Parkway not yet constructed, the Zoning Enforcement Officer shall obtain, review and reasonably

utilize the available data from the state department of transportation, the city engineering department and from any other reliable source in determining the location of the future right-of-way.

- r. Southeast 30<sup>th</sup> Street from East University Avenue to Maury Street.
- s. Southwest 1st Street from Raccoon River Bridge to Depot Street.
- t. Southwest Connector. For the portions of the Southwest Connector not yet constructed, the Zoning Enforcement Officer shall obtain, review and reasonably utilize the available data from the state department of transportation, the city engineering department and from any other reliable source in determining the location of the future right-of-way.
- u. Thomas Beck Road
- v. University Avenue
- w. U.S. Highway 65/69 from East Army Post Road to south city limits.

- a. ~~Grand Avenue from Twelfth Street to the west city limits.~~
- b. ~~Fleur Drive from Grand Avenue to 200 feet south of Army Post Road.~~
- c. ~~Martin Luther King, Jr. Parkway from MacVicar Freeway to the east bank of the Des Moines River.~~
- d. ~~MacVicar Freeway from Seventh Street to East Sixth Street.~~
- e. ~~East Fourteenth Street from Hartford Avenue to Governor Square Drive.~~
- f. ~~Southwest First Street from Raccoon River Bridge to Depot Street.~~
- g. ~~Embankments of the Raccoon River Bridges at Southwest Third Street, Southwest Seventh Street, Southwest Ninth Street and Sixty-third Street.~~
- h. ~~Embankments of the Des Moines River Bridges at Southeast First Street, Southeast Sixth Street, Second Avenue, Sixth Avenue, Euclid Avenue and University Avenue.~~

- (9) The maximum size of any such sign shall not exceed the following limits:
  - a. Within the NPC and C-3A districts, 300 square feet.
  - b. Within the C-2, M-1, M-2, PUD, PBP, U-1 and FW districts, 672 square feet plus an additional 20 percent for temporary extensions.

**Sec. 134-1352. Use of land, use of structures and structures in any R district.**

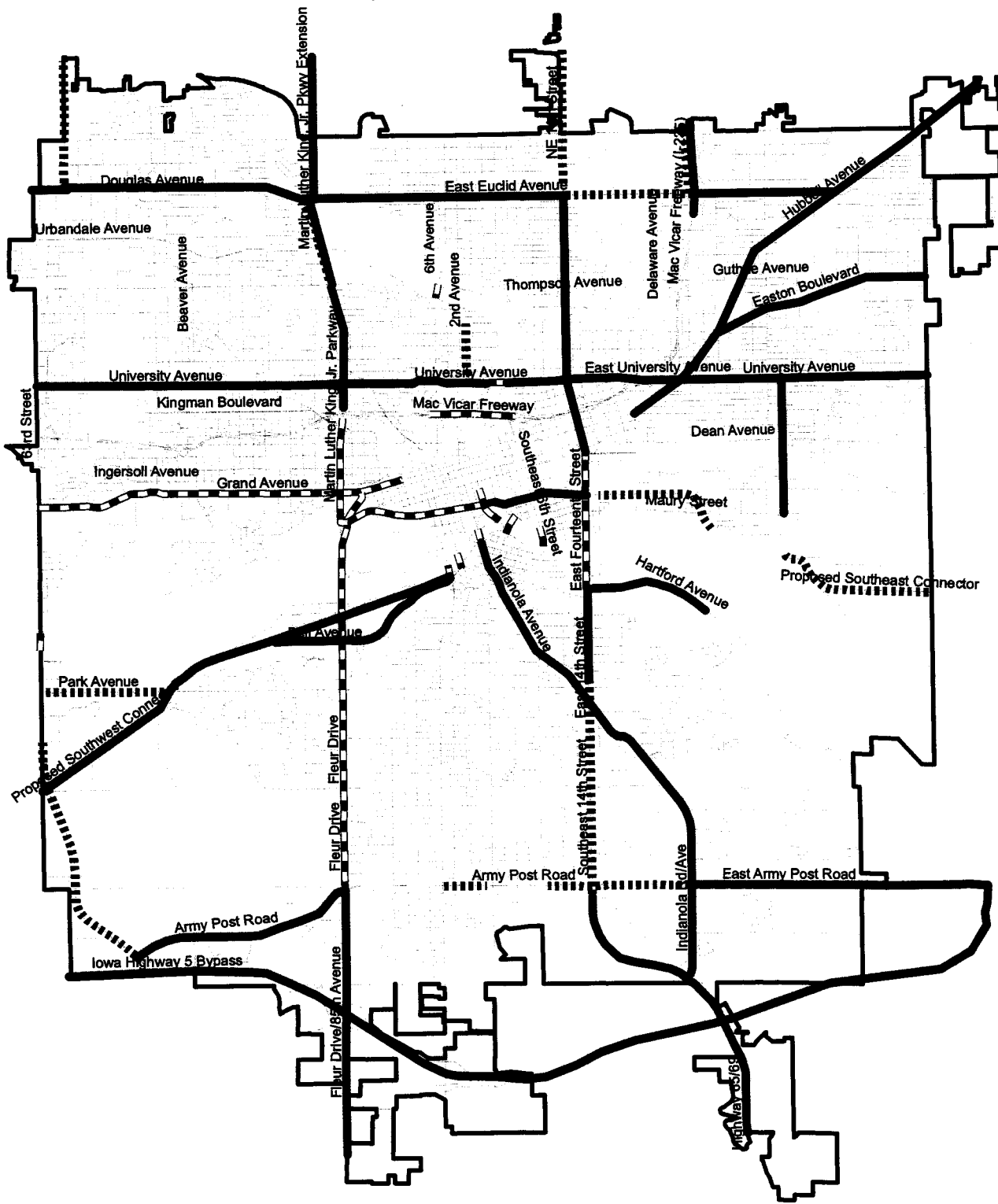
- (c) Nonconforming structures other than signs. Where a structure other than a sign exists at the effective date of the ordinance adopting or amending this chapter that could not be built under the terms of this chapter because of restriction on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following:
  - (1) No such structure may be enlarged or altered in a way which increases its nonconformity.
  - (2) If such structure is destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with this chapter. This subsection does not apply to nonconforming

structures within an R-HD residential historic district. Any single-family semidetached or two-family dwelling which was a conforming structure on December 31, 1996 may be structurally altered, and if destroyed may be reconstructed and used as before, provided such reconstruction is commenced within six months of such destruction and diligently pursued to completion.

(d) Nonconforming signs. Where a sign exists at the effective date of the ordinance adopting or amending this chapter that could not be built under the terms of this chapter because of size, height, setback, separation, or other characteristics of the sign or its location, such structure may be continued so long as it remains otherwise lawful, subject to the following:

- (1) No such sign may be enlarged or altered in a way which increases its nonconformity.
- (2) No such sign may be converted to use an electronic display. However, a legal non-conforming sign on a scenic or gateway corridor may be converted to an electronic display sign 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.
- (3) If such sign is destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction exclusive of the foundation and supporting elements below the bottom face of the sign, such sign shall not be reconstructed except in conformity with this chapter. If the sign be less than 60 percent destroyed above the bottom face of the sign, it may be reconstructed and used as before provided it is done within six months of such happening and is built of like or similar materials.

# PROPOSED ADDITIONAL DESIGNATED SCENIC AND GATEWAY CORRIDORS



**Corridors**

**Corridor Type**

- PROPOSED ADDITIONAL DESIGNATED SCENIC AND GATEWAY CORRIDOR
- - -** Designated Scenic and Gateway Corridor (Section 134-1276(q)(8))
- · ·** Designated Major Commercial Corridor (Section 134-1276(q)(7))

City of Des Moines'  
Designated Corridors

67

**Rauh, Diane I.**

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**From:** Bmillarddsm@aol.com  
**Sent:** Sunday, May 27, 2007 9:05 AM  
**To:** Rauh, Diane I.  
**Subject:** Billboard ordinance

Diane:

Please provide the following to the City Council when the proposed Billboard ordinance comes back to them from P&Z.

Thanks!

Brian

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<http://www.postwritersgroup.com/archives/peir0520.html>

### **Billboards vs. A 'Greener' America**

NEAL PEIRCE

May 20, 2007

WASHINGTON -- There's lots of talk about the ``greening" of America in this time of climate change and soaring energy costs. But don't count the billboard industry in.

Indeed, its latest and biggest moneymakers are the big, brash, brilliant signs -- LED (light-emitting diode) digital billboards -- being sited rapidly on high-volume highways coast to coast.

The flashy mega-signs are called energy efficient, but they're powerful enough to be seen a half mile away and consume about 4,800 watts of electric power per square yard per hour. Each costs about \$450,000. Over 500 are up already; one industry analyst predicts there'll be 75,000 by 2010.

Driving on congested, stop-and-go urban freeways, it's increasingly tough to ignore these monsters, each flashing a new commercial every six or eight seconds. ``We have the ultimate ability to withstand the whole challenge of consumer avoidance," Paul Meyer, chief executive of Clear Channel Outdoor, one of the media titans now dominating the billboard industry, told The Washington Post. ``We're there 24-7. There's no mute button, no on-off-switch, no changing the station."

What's more, because each digital board can have multiple sponsors with constantly updated messages, advertisers are proving easy to recruit. The industry is reportedly enjoying close-to-astronomic profit margins.

Critics charge that the new signs, like the 500,000-plus old-style billboards dotting U.S. highways coast to coast, not only blight the landscape but represent private exploitation of roadways that the public paid for.

And increasingly, charges Kevin Fry, president of Scenic America, tasteless outdoor advertising is endangering Americans' public realm. Drive into San Francisco and a forest of signs looms ahead, obscuring one of our most beautiful and renowned skylines. New York's great neighborhoods are being -- in Fry's words -- ``draped like a giant burrito in enormous vinyl signs." Poor neighborhoods are plastered with ads for liquor and fattening snacks. In many metropolitan areas, buses and subway cars are being wrapped in advertising.

The big new digital signs are kicking off a heated argument about safety. There's no proof the intense, rapidly flashing messages cause swerving or crashes, says the billboard industry. But Fry cites a National Highway Traffic Safety Administration conclusion that it's dangerous to divert a driver's attention more than two seconds. ``By design," he says, ``the LEDs distract for more than two seconds; otherwise they wouldn't be useful to advertisers."

There's no doubt the billboard industry, which sues to invalidate local communities' sign ordinances and targets decision-makers from local towns to state legislatures to Congress, represents one of the nation's most potent lobbies. It's effectively emasculated the 42-year-old Highway Beautification Act, passed with Lady Bird

Johnson's inspiration.

And its hunger shows no bounds. Think trees, for example. This January, the Spartanburg, S.C., Men's Garden Club planted dozens of dogwoods, maples and other trees along a five-mile stretch of interstate roadway, some of it blighted by decaying and partly collapsed billboards. But the South Carolina Department of Transportation ordered removal of 45 trees because they were inside the 300-foot highway "view window" the billboard lobby had urged the state to mandate.

Indeed, at least 28 states have laws that can force cutting trees owned by the public on public land if they obscure drivers' clear view of billboards. Florida even insists on a 500-to-1,000-foot "view zone." How "ungreen," one wonders, can government policy get?

Are all signs then to be condemned? No, says Fry, reasonably sized informational signs are fine. Even big electronic displays are OK where they spell the very character of a place, such as Times Square or the Las Vegas strip. The problem is the sign and billboard lobby trying to force inappropriate signs down Americans' throats, from city to country, wherever it sees a buck to be made.

Los Angeles, for example, has been trying to get a handle on the 10,000-plus billboards, many illegally placed or sized, lining its roadways. The City Council ordered an inspection and enforcement program, plus a moratorium on new boards. Clear Channel Outdoor Inc. and CBS Outdoor Inc. sued to invalidate the ordinance. According to the Los Angeles Times, the city was winning successive court rounds when City Attorney Rocky Delgadillo suddenly stepped in to settle with the billboard giants. He agreed to legalize scores of illegally operating billboards if the industry would agree to inspection and modest fees.

Billboard opponents were enraged, noting Delgadillo had received \$424,000 worth of billboard space to support his election, and that the firms had continued to contribute thousands more to him and some of the City Council members who eventually approved the settlement.

Fighting the billboard lobby looks like a classic David and Goliath struggle -- huge resources against largely unpaid volunteers. But those volunteers say that if we're to hope for a clean, green, uncluttered America, this is one battle we can't avoid.

Neal Peirce's e-mail address is [nrp@citistates.com](mailto:nrp@citistates.com).

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See what's free at [AOL.com](http://AOL.com).

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**Rauh, Diane I.**

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**From:** Bmillarddsm@aol.com  
**Sent:** Sunday, May 27, 2007 9:11 AM  
**To:** Rauh, Diane I.  
**Subject:** Please provide to Council Members when the Billboard Ordinance comes to them.

## **Malfunctioning billboard blinds drivers leaving the Bay Bridge**

Christopher Heredia, Chronicle Staff Writer

Wednesday, May 16, 2007

**(05-16) 19:17 PDT OAKLAND** -- Motorists leaving the Bay Bridge going to the East Bay recently may have been reminded of the '70s tune "Blinded by the Light."

Greeting them -- just as they headed for an already confounding (and disabled) freeway interchange -- has been the bright glare of a 50-foot illuminated billboard gone haywire on the south side of eastbound Interstate 80.

The sign company, CBS Outdoor, blames the problem on a glitch in the sign's light-dimmer and promises to have it fixed. Responding to a cascade of complaints, Caltrans Wednesday told the billboard company that the sign should be shut off until the repair is done, Caltrans officials said.

Some drivers have had to shield their eyes. Others, momentarily distracted, have struggled to keep their eyes on the road, while one of those lodging complaints in the blogosphere said he hallucinated that he was in Vegas. Others reported that the light could be seen from the Oakland hills and across the Bay in San Francisco.

"It's an accident waiting to happen, in both directions," said Ann Bartz of Berkeley, who said the CBS Outdoor billboard's brightness has been a problem for weeks, even before a tanker exploded on Interstate 880 on April 29, destroying a section of freeway above.

"I find myself squinting at the arresting colors and tiny type from the toll plaza, shielding my eyes going east at night," Bartz told The Chronicle today. "Take that thing down before somebody gets killed."

Added Brian Brick of Oakland: "There are enough drivers already weaving through the lanes at this spot, trying to figure out which of the lanes they need, without this monstrosity. Too bad the freeway collapse didn't take this billboard out."

Caltrans officials say they have been inundated with calls from motorists complaining about the billboard, which was completed and illuminated in March.

As part of a deal initially okayed by Caltrans, and hashed out by Port of Oakland officials and developer Phil Tagami, CBS Outdoor agreed to contribute at least \$7.5 million in revenues from the billboard over the next 20 years to the Oakland School for the Arts, located at the historic Fox Theatre. The Port is due to receive \$8 million.

As for the glare, CBS Outdoor said it's scrambling for a solution. The company blames the recent blast of light on a software glitch. The sign's brightness is supposed to automatically adjust when the sun sets. Due to a malfunction last week, it didn't self adjust and so evening drivers were bombarded with the level of brightness programmed for daylight, according to Port officials relaying what CBS Outdoor told them.

Officials from Caltrans, the California Highway Patrol and the Port, which owns the land on which the sign sits, are pushing CBS Outdoor to turn down the light.

As Caltrans sees it, the company is in violation of the state vehicle code which forbids signs that impair the



vision of drivers. "We began receiving complaints as soon as the sign was erected," Caltrans spokesman Jeff Weiss today.

"The complaints have vastly increased in the last week or so," Weiss added. "We consider it a safety hazard. Each time, (CBS Outdoor) has cited a new problem to be fixed and it's never been fixed. We're asking them to turn it off until it's fixed."

CBS Outdoor Northern California Vice President Steve Shinn said today that the company believes the sign conforms to state and federal regulations; however, the company has turned down the brightness below the legal requirement, he said.

"We are confident our sign meets all the appropriate community and transportation safety standards," Shinn said in an e-mail to The Chronicle. "However, we are mindful of the views of the driving public and have willingly adjusted the brightness of this particular billboard over the past two nights."

In an interview, Shinn said he hadn't heard that Caltrans wanted the billboard shut off and so he couldn't comment on that.

Ultimately, Weiss of Caltrans said, it would be CHP's responsibility to tell the billboard company to shut the lights off since that agency is responsible for enforcing the vehicle code.

CHP Sgt. Les Bishop said his agency is working with Caltrans to measure the brightness of the light to see whether it conforms to state regulations.

"My understanding is CBS Outdoor has been cooperative and open to doing what needs to be done," Bishop said. "I've driven that stretch of road and didn't find it to be a danger to my driving, however that's a pretty subjective thing. That's why we have these specifications in the vehicle code."

Port spokesman Harold Jones said he is confident CBS Outdoor will come up with a level of brightness that is acceptable to most people.

"As the owner of the property, we want them to comply with the law ... and also be mindful beyond that of the safety issues and public perception," Jones said.

Tagami and officials at the Oakland School for the Arts said its 340 middle school and high school students will suffer if the billboard goes dark for an extended period of time.

The millions expected to be generated by the billboard over the next two decades will be split by CBS Outdoor, the Port and the School for the Arts, a nonprofit charter started by former Mayor Jerry Brown. For the school, it will help pay for the \$71,000 monthly rent at the renovated Fox theater.

"These guys (CBS Outdoor) have done what I want to see in community leaders," said Thomas Loker, president of the school's Board of Directors.

"They've stepped up to support this board and this nonprofit," Loker said. "If they shut this off, we'll lose revenue to the tune of \$340,000 a year, which we'll have to make up some other way."

*E-mail Christopher Heredia at [cheredia@sfnchronicle.com](mailto:cheredia@sfnchronicle.com)*

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See what's free at [AOL.com](http://AOL.com).