

REGULAR SESSION

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
OCTOBER 18, 2011**

CALL TO ORDER

Mayor Ferguson called the 2112th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Ferguson and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Present by phone: Council President Greg Chaimov

Staff present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Attorney Tim Ramis, City Recorder Pat DuVal, Public Affairs Coordinator Grady Wheeler, Community Development/Public Works Director Kenny Asher, Police Chief Bob Jordan, Community Services Director JoAnn Herrigel, Planning Director Katie Mangle, and Assistant Planner Ryan Marquardt

PLEDGE OF ALLEGIANCE

Mayor Ferguson announced pursuant to Milwaukie Municipal Code § 2.04.140(B) Other Business item C, TriMet Funding, would be moved up in the agenda to facilitate Council President Chaimov's participation in the deliberations/decision on this matter. He recused himself from deliberations related to the light rail project as a TriMet employee.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School Student of the Month

The Milwaukie City Council and Principal Mark Pinder recognized Shannon Susbauer as the Milwaukie High School Student of the Month for October 2011.

B. Milwaukie Police Officers of the Year Follow-Up Presentation

Milwaukie Police Chief Bob Jordan and Public Safety Advisory Committee (PSAC) members congratulated Tony Cereghino, Officer of the Year, Jeff Rogerson, Reserve Officer of the Year, and Angela Powell, Cadet of the Year. Each was presented with a replica of a City of Milwaukie Police car.

AUDIENCE PARTICIPATION

Mark Gamba, Milwaukie, urged the City Council to support the City's application for Oregon Department of Transportation (ODOT) Flexible Funds to help pay for an integral part of transportation in the City of Milwaukie. These types of grants were the only way Milwaukie could pay for a project like this, and he understood it would pay only \$200,000 which was available in the system development charge (SDC) fund. He felt it would be a bad idea not to authorize staff to pursue grants that benefitted the City.

Lisa Batey, Milwaukie. As an Island Station Neighborhood District Association (NDA) officer and Planning Commissioner, she encouraged the City Council to move forward. The Island Station Neighborhood supported this grant application to facilitate a better connection to downtown Milwaukie. She had taken issue with some work session comments and felt it was important for the Neighborhood to have connectivity with the downtown. This was a very worthwhile project for Milwaukie residents.

Chantelle Gamba, Milwaukie, current chair of Historic Milwaukie NDA and Design and Landmarks Committee member, announced the Island Station and Historic Milwaukie NDAs were partnering in support of the grant application.

Clare Fuchs, Milwaukie, Planning Commission member. She supported the grant application and City match for what she perceived an important multi modal project of bike/pedestrian and light rail. The City Council can support the application without identifying the source of matching funds. She observed Milwaukie staff did more work for the dollar in terms of staff to population ratio. Although infrastructure in other parts of City was important, \$200,000 alone would not buy a lot. In this case additional funds would be leveraged.

Vincent Alvarez, Milwaukie, thought it was important to move forward and apply for the grant as it had leveraging possibilities. It would be nice not to isolate Island Station any longer.

Ed Zumwalt, Milwaukie, offered some history on light rail and commented on the loss of financing. The City Council wants to give TriMet \$5 million, but TriMet does not keep its commitments. Residents should vote on it because it is their money.

David Aschenbrenner, Milwaukie, thought the City needed to move forward with pursuing the grant. \$200,000 would not go far in carrying out many City projects such as street improvements. He agreed with those who felt this grant was a good way to leverage funds. If Milwaukie was not awarded the grant or if City Council decided to turn it down, the money would not be committed.

Mr. Asher discussed the grant application and clarified there were two types of matches: cash and in-kind. He was seeking a \$206,000 cash match and believed the source could change. The in-kind match was approximately \$100,000 which would allow funding at \$2.4 million. The application did not identify the source of the cash match.

Councilor Loomis supported the use of SDC funds to move the project forward. Milwaukie residents had wanted a safe pedestrian crossing for many years. This was a great opportunity to maximize funds whether the match came from the SDC fund or the general fund. He felt it was imperative that Milwaukie move forward with the application.

It was moved by Councilor Loomis to authorize staff to move forward with the grant application.

Councilor Miller was in favor of a connection with the Island Station Neighborhood, but he did have concerns with the timing of the application and the limited amount of time in which the City Council had to make a decision. He was in favor of moving the project forward but did wish to use SDC funds.

Councilor Hedges supported the bridge and commented on the feasibility of using it as a credit against the \$5 million to which the City had committed. He supported moving forward and applying for the grant but had reservations about the funding source.

Council President Chaimov understood the City did not need to identify the funding source at this time.

Mr. Asher did not believe it would hurt Milwaukie's chances if the funding source were changed after the grant was awarded. In terms of the credit toward the \$5 million, he did not believe it would be possible to bind another agency.

Councilor Hedges seconded the motion to authorize staff to move forward with the grant application. Motion passed with the following vote: Councilors Loomis, Miller, and Hedges and Council President Chaimov voting "yes." [4:0]

C. TriMet Funding

Councilor Hedges said when he was running for City Council, he promised this matter would go to a vote of the people. He did not see how installment payments could be made to TriMet without crippling City services. The only logical solution was to borrow extra money, so he proposed putting a \$6 million bond measure on the May ballot. This would cost people approximately \$34 annually rather than taking money out of the general fund.

It was moved by Councilor Hedges to put a \$6 million bond measure on the May 2012 ballot.

Councilor Miller promised during his campaign to do what he could to have a vote on the \$5 million to TriMet. **Councilor Miller seconded the motion to put a \$6 million bond measure on the May 2012 ballot.**

Councilor Loomis did not support the motion although he had voted against the \$5 million originally. He felt going back on the City Council's word now would be crippling.

Council President Chaimov said in his view Milwaukie had a lot of discussions ahead with TriMet and how we might, to the best advantage of our citizens, pay the \$5 million as well as fund other projects Milwaukie residents wanted. His preference was to continue having discussions with TriMet plus discussions about how to pay the money without making a dent in the budget.

Motion failed with the following vote: Councilors Miller and Hedges voting "yes" and Councilor Loomis and Council President Chaimov voting "no." [2:2].

Council President Chaimov disconnected, and **Mayor Ferguson** returned to the meeting.

CONSENT AGENDA

It was moved by Councilor Hedges and seconded by Councilor Loomis to adopt the consent agenda as presented. Motion passed with the following vote: Councilors Hedges, Loomis, and Miller and Mayor Ferguson voting "aye." [4:0]

- A. Resolution No. 92-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, to Establish an Intergovernmental Agreement between the City of Milwaukie and Clackamas County Department of Health, Housing, and Human Services Community Development Division for a Community Development Block Grant;**
- B. Resolution No. 93-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting Bylaws for the Milwaukie Arts Committee (artMOB);**
- C. Resolution No. 94-2011: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Macy Bishop to the Public Safety Advisory Committee as the Ardenwald Neighborhood District Association Representative;**
- D. City Council Minutes:**
 - 1. September 6, 2011 work session; and**
 - 2. September 20, 2011 work session; and**
- E. OLCC Application – Harrison Street Mart, 4140 SE Harrison Street, change of ownership**

AUDIENCE PARTICIPATION

Dan Holladay, Oregon City, Clackamas Cable Access Board. Willamette Falls Cable had begun its evolution into becoming a non-profit as a new entity called Willamette

Falls Media Center. He hoped to have board members from each member city and suggested a work session to illustrate how they planned to move forward prior to the City Council's making a decision on Metropolitan Area Communication Commission (MACC) membership.

Melody Ashford, Willamette Falls Media Center, discussed how producers touched a wide variety of people in the community and expressed interest in speaking with the City Council in a work session environment.

Jennelle Neill, Willamette Falls Media Center, urged continued conversations in order for Willamette Falls to operate as a community organization.

Dave Bower, Milwaukie, had done some productions at the Willamette Falls studio and found it a top notch facility. He hoped the relationship would continue.

Doug Prier, Feathers Afield Production, LLC, Clackamas County, had been a producer at both facilities and for the past 5 years with Willamette Falls Media Center. The possible disruption of services caused him great concern, and he noted going to the Cornell Road studio added costs to his productions

PUBLIC HEARING

A. Sign Code Amendments: Electronic Display Signs (File #ZA-11-02)

Mayor Ferguson reported he had received a number of calls today from businesses on International Way.

Mayor Ferguson called the public hearing on the legislative zoning ordinance amendment by the City of Milwaukie to order at 8:29 p.m.

The purpose of the hearing was to consider an ordinance amending Title 14, the Sign Ordinance, to revise standards and regulations related to electronic display signs. This was a legislative decision by the City Council based on Statewide planning goals, applicable federal or State laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan policies; and applicable provisions of implementing ordinances.

Mayor Ferguson reviewed the order of business. The City Council decision would be the final decision by the City. All testimony and evidence was to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who submitted written comments, testified, or signed the City Council Attendance sheet for this hearing.

Mr. Marquardt provided the staff report in which the City Council was requested to adopt amendments to Title 14 that pertained to electronic display signs. The Milwaukie Planning Commission directed staff to prepare certain amendments to ease some restrictions on signs along McLoughlin Boulevard in downtown Milwaukie. While working on these policy revisions, the City received its first application for an electronic, LED-lit billboard sign on Main Street in the North Industrial Area. The major issues being addressed were electronic display signs in the Downtown Zones, electronic display signs in commercial and industrial areas, rate of change for electronic display signs, illumination and shielding, related elements such as coordination with the Oregon Department of Transportation (ODOT), and an emergency adoption clause. Two key issues for City Council deliberation were frequency of message changes and sign size.

Mr. Marquardt summarized the proposed amendments. Signs at or under 20 square feet in area could change copy no more than once every 15 seconds. Signs greater than 20 square feet in area could change copy no more than once every 2 minutes. He discussed size limits and provided examples of percentages. He reviewed the City Council's decision-making options and noted this ordinance would be adopted with an emergency clause because of possible safety issues.

Correspondence:

Letter dated October 18, 2011, from E. Michael Connors, Hathaway Koback Connors LLP, 520 SW Yamhill St., Portland, expressing concern with the retroactive application of the new standards, overly restrictive nature of several new standards, and the emergency clause.

Audience Testimony:

Clare Fuchs, Milwaukie, Planning Commission. She was concerned that people may have thought these amendments applied only to the downtown and did not comment on the proposed ordinance. There were some concerns in the community about increasing the size of electronic signs in neighborhoods with some commercial zoning such as 32nd and 42nd Avenues. She addressed sequential signs when looking at rate of change for electronic signs. The sign companies had a number of issues, so the regulations were decreased based on what the Planning Commission was told.

Mark Gamba, Milwaukie, Planning Commission. The code amendments that addressed the downtown area were in order to enable businesses on McLoughlin Boulevard to change messages and do so with a smaller carbon footprint. The second part of the amendments was to address large billboards and signs. This gives Milwaukie a chance to decide what it wants to be – Vegas or a small town. He read a note from Lisa Batey indicating anything she had read would not have changed her vote. He explained the difference between a third party billboard and local business was really content which was illegal to limit. Rules would make it undesirable for big billboard companies to install them in Milwaukie but would not restrict local businesses.

Gary Klein, Milwaukie, was concerned about the signs being visible to those using the Riverfront Park, boaters, and residents living.

Russ Stoll, Milwaukie, Planning Commission, explained his reasoning behind allowing businesses to have access to this technology without McLoughlin Boulevard's becoming a garish strip.

Mike Connors, On-Site Advertising Services, local outdoor advertising company. He was not opposed to the concept but rather to certain elements of the proposal. Retroactive application of the new standards was not consistent with the City's policy of recognizing non-conforming uses and developments, frequency and timing of changes of the message display, and the need for an emergency clause. He discussed non-compliance with current state and federal laws and potential exposure to takings claims.

Staff Comments:

Mr. Marquardt replied the area about which Mr. Klein was concerned was where the signs would be most restricted, so visibility from the Park or the River would be limited. In respect to Mr. Connors' testimony, it was accurate that the hold times would be retroactive to signs in existence as well as newly-permitted signs. It was a continuation of something that was already in the sign code. The bigger point was where the City Council ended up on the hold time discussion. The 10-second hold would be status quo, and signs in existence now were permitted under that 10-second rule. Mr. Marquardt addressed Mr. Connors' concerns with SB 639, and staff found no limitations in that legislation on the size of electronic display signs which both the City Council and

Planning Commission had opined. The emergency clause addressed a current issue in the City and allowed for something that should be addressed as soon as possible.

Ms. Mangle added the motivation for adopting as an emergency ordinance was the speed with which sign applications, unlike land use, could be filed. Safety and aesthetics were the motivating factors.

Mr. Marquardt said large electronic signs did attract more attention than other types of signage and was considered a safety issue.

Councilor Miller asked what types of electronic signs businesses on Main Street could install.

Mr. Marquardt replied under the current code they would be allowed to have signs with external illumination such as spotlights, but the sign itself could not be illuminated either internally or with electronic display sign types of elements. The only change in the proposed code would be those properties with frontage on McLoughlin Boulevard.

Councilor Miller asked the appeal process for a business owner that wanted a certain type of sign that the code did not permit.

Mr. Marquardt responded there was an adjustment process for a sign that varied from sign code variations. For example, the Design and Landmarks Committee would probably review those in the downtown area; otherwise it would be a Planning Commission consideration.

Councilor Miller asked how this ordinance would affect signage at the baseball park.

Mr. Marquardt replied it would depend on the park design, so signage that was interior and not visible to the public from the right-of-way was exempt. He noted reference to the Keizer Volcano stadium signage in the staff report which was approximately 50-square feet. Signs on Hwy 99E, for example, would go through the application process.

Councilor Hedges asked staff to point out the commercial areas. He asked why these signs would be allowed for businesses like Lisac's on 32nd Avenue which was in a residential area but not on Main Street. He was concerned the Council was opening the City up to criticism in those areas with these amendments.

Mr. Marquardt pointed out the commercial areas on 32nd and 42nd Avenues and the small neighborhood/commercial area at Home Avenue and Monroe Street which had more stringent regulations.

Ms. Mangle discussed the standards and guidelines written for the Downtown Plan. Signage would be considered as part of the 32nd/42nd Avenue project. The current amendment proposal, prepared on rather short notice, had to do with the sign code in place and addressed specific situations.

Mayor Ferguson referred to page 76 and asked if notice had gone to all the businesses in the commercial and industrial areas.

Mr. Marquardt replied notice had been sent to all the business industrial and manufacturing zones as well as businesses on McLoughlin Boulevard. The City Council packet contained the written materials and verbal comments although there was no summary of all the individual conversations. He would have to check to determine if there were any conversations with Portland Mechanical.

Mayor Ferguson moved to continue the hearing to the November 1, 2011, City Council meeting and leave public testimony open. He hoped to hear more from the public and property owners and to have sufficient time for a more detailed review the correspondence and conversations.

Councilor Loomis was concerned about the retroactive application of the amendments and proposed hold times. He felt people should be grandfathered-in and was also concerned about the emergency clause.

Councilor Miller wanted more time to review all the information and continued to have concerns that businesses on McLoughlin Boulevard could have electronic signs while those on the interior would be restricted. This did not indicate a lack of support but rather he wanted more time to weigh his decision.

Councilor Hedges was happy to consider this matter in more detail and thought the amendments might not be strong enough. The City was ready to spend \$10 million on its Park, and he did not want Milwaukie to turn into an eyesore. He suggested an additional clause that any applications received after midnight tonight would be under the new regulations.

Mayor Ferguson did not have any specific research but wanted to review the material in more depth, get a better understanding of impacts to residential areas, and return some phone calls. He understood the intent of the ordinance but wanted more input from other companies.

Councilor Loomis seconded the motion to continue the hearing to the November 1, 2011, City Council meeting and leave public testimony open. Motion passed with the following vote: Councilors Loomis and Miller and Mayor Ferguson voting “aye” and Councilor Hedges voting against [3:1].

Mayor Ferguson recessed the meeting at 9:35 p.m. and reconvened the session at 9:40 p.m.

OTHER BUSINESS

A. Update on Riverfront Park Design and Funding and Consideration of David Evans and Associates Design Contract – Resolution

Gary Klein, Milwaukie, discussed his experiences with Riverfront Park and encouraged the City Council to continue moving forward with its development. He also asked that Dave Green, Riverfront Board Chair, be reappointed to his position in the 11th hour of its work.

Ms. Herrigel provided the staff report in which the City Council was requested to approve a resolution extending the term of the David Evans & Associates contract. She updated the City Council and public on the Riverfront Park Project and showed the design and structures being planned. To date the waterline and PGE poles had been relocated, a Metro grant was awarded to the Klein Point Project, and the 2011 feasibility study.

It was moved by Mayor Ferguson and seconded by Councilor Miller to adopt the resolution amending contract #2006-097 with David Evans & Associates for landscape design and engineering services for the Milwaukie Riverfront Park. Motion passed with the following vote: Councilors Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [4:0]

RESOLUTION 95-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CONTRACT #2006-097 WITH DAVID EVANS AND ASSOCIATES, INC. (DEA) FOR LANDSCAPE DESIGN AND ENGINEERING SERVICES FOR MILWAUKIE RIVERFRONT PARK TO EXTEND THE TERM TO SEPTEMBER 2014 AND ALLOW INCREASES TO COMPENSATION AS ALLOWED THROUGH ANNUAL CITY BUDGET APPROVAL AND MUTUALLY

AGREED UPON VIA CONTRACT ADDENDA SIGNED BY THE CITY AND DEA.

B. Comcast Cable Franchise Extension – Resolution

Ms. Herrigel provided the staff report and requested that the Mayor be authorized to extend the term of the current contract to January 31, 2014.

It was moved by Councilor Miller and seconded by Councilor Hedges to adopt the resolution authorizing the Mayor to sign a franchise extension agreement with Comcast extending the term of the current Comcast Cable Franchise to January 31, 2014. Motion passed with the following vote: Councilors Hedges, Miller, and Loomis and Mayor Ferguson voting “aye.” [4:0]

RESOLUTION 96-2011:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN A FRANCHISE EXTENSION AGREEMENT WITH COMCAST, EXTENDING THE TERM OF THE CURRENT COMCAST CABLE FRANCHISE TO JANUARY 31, 2014.

D. Council Reports

Mayor Ferguson and Councilors provided an update on meetings they attended on behalf of the City and upcoming community events.

Mayor Ferguson announced an executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions. The City Council would not be returning to regular session.

ADJOURNMENT

It was moved by Councilor Hedges and seconded by Councilor Miller to adjourn the meeting. Motion passed with the following vote: Councilors Hedges, Loomis, and Miller and Mayor Ferguson voting “aye.” [4:0].

Mayor Ferguson adjourned the regular session at 10:09 p.m.

Respectfully submitted,



Pat DuVal, Recorder

REVISED

AGENDA

**MILWAUKIE CITY COUNCIL
OCTOBER 18, 2011**

MILWAUKIE CITY HALL
10722 SE Main Street

2112th MEETING

REGULAR SESSION – 7:00 p.m.

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| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Milwaukie High School Student of the Month Shannon Susbauer
Principal Mark Pinder | |
| B. Milwaukie Police Officers of the Year Follow-Up Presentation
Staff: Police Chief Bob Jordan | |
| 6. OTHER BUSINESS <i>(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)</i> | |
| C. TriMet Funding | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 1 |
| A. Community Development Block Grant Intergovernmental Agreement with Clackamas County – Resolution | 2 |
| B. Milwaukie Arts Committee Bylaws Adoption – Resolution | 20 |
| C. Appointment of Macy Bishop as the Ardenwald Neighborhood District Association Representative to the Milwaukie Public Safety Advisory Committee (PSAC) – Resolution | 23 |
| D. City Council Minutes: | 25 |
| 1. Work Session Minutes of September 6, 2011 | |
| 2. Work Session Minutes of September 20, 2011 | |
| E. OLCC Application Harrison Street Mart, 4140 SE Harrison – change of ownership | 33 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first</i> | |

complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)

- 5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)* **37**
- A. **Sign Code Amendments: Electronic Display Signs (File #ZA-11-02) -- Ordinance** **38**
Staff: Ryan Marquardt, Assistant Planner
- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **154**
 - A. **Update on Riverfront Park Design and Funding and Consideration of David Evans & Associates Design Contract – Resolution** **155**
Staff: JoAnn Herrigel, Community Services Director
 - B. **Comcast Cable Franchise Extension – Resolution** **162**
Staff: JoAnn Herrigel, Community Services Director
 - D. **Council Reports**
- 7. **INFORMATION**
- 8. **ADJOURNMENT**

Public Information

- **Executive Session:** The Milwaukie City Council will meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

CONSENT AGENDA



Agenda Item: 3.A.
Meeting Date: 10-18-2011

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Community Development Block Grant IGA with Clackamas County

Prepared By: Hemmen

Dept. Head Approval: Asher

City Mgr. Approval: Monahan

ISSUE BEFORE THE COUNCIL

An Intergovernmental Agreement (IGA) defining terms for the City's relationship with Clackamas County for work with the Community Block Grant (CDBG) program as it applies to the Harrison Street sidewalk improvement and the pedestrian improvements at the UP mainline rail crossing.

STAFF RECOMMENDATION

Endorse the IGA to provide funds for the pedestrian improvements.

KEY FACTS & INFORMATION SUMMARY

Provides \$100k in funding for pedestrian safety improvements

A needed step to accomplish the quiet zone

Sidewalk project that is administered by the County

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

Allocate resources within the Capital Improvement Plan to improve livability in the neighborhoods

ATTACHMENTS

1. Resolution
2. IGA

FISCAL NOTES

Budgeted project, funded by \$100,000 grant and \$50,000 Street SDC fund.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Wendy Hemmen, Light Rail Design Coordinator
Gary Parkin, Engineering Director

Date: October 5, 2011 for the October 18th Regular Session

Subject: Community Development Block Grant IGA with Clackamas County

ACTION REQUESTED

Adopt a resolution authorizing the mayor to sign an Intergovernmental Agreement (IGA) between the City and Clackamas County Department of Health, Housing and Human Services Division.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

February 2010: Council heard an update on the Union Pacific Mainline Quiet Zone providing information that less restrictive and less costly measures could be used to implement a Quiet Zone.

October 2007: Council adopted Resolution No. 61-2007 authorizing application to establish a Quiet Zone on the Union Pacific mainline as funding was available.

March 2007: Staff reported to Council on the opportunity to leverage a Community Development Block Grant (CDBG) project to improve the pedestrian crossings on the Union Pacific Rail Road (UPRR) Mainline at Harrison St, Oak St, and 37th Ave.

November 2006: Staff presented and discussed with Council a Train Horn Quiet Zone on the Union Pacific mainline and the estimated cost.

BACKGROUND

The Intergovernmental Agreement proposed for authorization enables the City to utilize Community Development Block Grant (CDBG) funding for a project that will improve local neighborhood accessibility and the establishment of the mainline railroad quiet

zone that is a Council priority. The project, in the Capital Improvement Plan (CIP) and funded in the current budget, constructs sidewalks and ramps that meet Americans with Disabilities Act (ADA) standards along Harrison St on either side of the Union Pacific (UP) mainline rail tracks.

The project is in this year's budget to benefit from and supplement two other projects: The Harrison St Water Main Replacement Project (Phase 1) is just beginning construction. The project will dig a trench in Harrison St from 42nd Ave to beyond the main line rail crossing. The CDBG project will begin after the completion of the waterline project. Following the CDGB project, the pavement surface will be rebuilt by the Street Surface Maintenance Program (SSMP).

This will not be the first pedestrian rail track crossing improvement in this area that the City has undertaken. The City previously improved the pedestrian crossings at the 37th Ave and Oak St rail track crossings. The 37th Ave and Oak St railroad crossings are two of the three crossings that require improvements in order to establish the UP mainline quiet zone. The third and last remaining crossing still needing pedestrian improvements is the Harrison St crossing. Currently, wheeled pedestrians have to cross elsewhere or venture into the roadway. The project provides neighborhood accessibility aligning with Council goals as it improves the pedestrian connectivity between the Ardenwald and Historic NDAs.

Completion of the Harrison St pedestrian crossing improvement moves the City closer to the establishment of the mainline railroad quiet zone. Remaining work involves the construction of medians and placement of signage at the 37th Ave, Oak St, and Harrison St crossings. This remaining work, estimated at \$136,000, is planned in the CIP for inclusion in next year's budget, as funding is available.

The IGA sets out the purpose, scope, budget, financial obligations, terms, and a number of special requirements. The IGA sets protections for the City and County and establishes staff contacts. The scope also clearly defines responsibilities of each agency throughout the life of the project. The county's responsibilities are for the environmental approvals and administration of the grant. The City's responsibilities are for the engineering design, obtaining permits from UPRR, and property from necessary parties.

The scope of the project will include sidewalk connections across the UPRR property and will join the new crossing panels for full access across the set of rails. As funding allows, new handicap ramps and crosswalks will be installed at SE 31st Ave on the north side of Harrison St and SE Campbell St and SE Railroad Ave on the south side of Harrison St. The street maintenance program will follow this project with pavement resurfacing and grading on Harrison St.

CONCURRENCE

Community Development, Planning, Engineering, Operations, Community Services all concur on the work proposed by this IGA.

The City Attorney's office reviewed the County's IGA as to form. Finance and Risk Management also reviewed the IGA and their comments have been incorporated.

FISCAL IMPACT

Signing the IGA is a fiscal benefit to the City and provides \$100,000 for the sidewalk improvements on Harrison St at the UPRR mainline. The City's funding to complete the project is \$50,000 which has been budgeted in the Transportation SDC fund and the Transportation Fund (fund 320) as SSMP funding of the Harrison St resurfacing project completes the project.

The 37th Ave and Oak St crossing improvements included funding from the CDBG program in a previous funding cycle. The CDBG program provides federal funding in low and moderate income areas. Locally this program is managed by the Clackamas County Department of Health, Housing and Human Services. To be eligible for funding a project must benefit residents of low and moderate income, prevent or eliminate slums and blight, or meet an urgent community development need. Primary emphasis is placed on the benefit to low and moderate income people. The Harrison St. pedestrian crossing improvement is a project that meets the CDBG funding criteria.

WORK LOAD IMPACTS

City of Milwaukie Community Development (CD), the Light Rail Coordinator position, and Engineering Department are working on this project together. The work has been accommodated into the work loads of those positions with the addition of minor overtime hours worked.

ALTERNATIVES

None.

ATTACHMENTS

1. Resolution
2. IGA between County and City

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ESTABLISH AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MILWAUKIE AND CLACKAMAS COUNTY DEPARTMENT OF HEALTH, HOUSING AND HUMAN SERVICES COMMUNITY DEVELOPMENT DIVISION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT.

WHEREAS, the City of Milwaukie has identified the desire to improve crossing safety of the Union Pacific Railroad Mainline at Harrison Street; and

WHEREAS, the identified pedestrian sidewalk improvements will benefit local low and moderate income residents allowing safe crossing of the railroad tracks; and

WHEREAS, the City of Milwaukie has identified the project as necessary to the Mainline Quiet Zone project; and

WHEREAS, the Oregon Department of Transportation Rail Division has issued Crossing Orders for the sidewalk and street improvements; and

WHEREAS, the Federal Railroad Administration approved the Quiet Zone; and

WHEREAS, the City adopted Resolution No. 61-2007 on October 16, 2007, establishing intent to effectuate a Quiet Zone for the Union Pacific Mainline; and

WHEREAS, these improvements reflect the interests of Milwaukie businesses and Milwaukie’s Neighborhood District Associations;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie establishes its intent to effectuate an Intergovernmental Agreement to accept Community Development Block Grant funds for the Harrison Street Sidewalk Project:

Introduced and adopted by the City Council on October 18, 2011.

This resolution is effective on October 18, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY DEPARTMENT OF
HEALTH, HOUSING AND HUMAN SERVICES
COMMUNITY DEVELOPMENT DIVISION**

AND

THE CITY OF MILWAUKIE

I. Purpose

- A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Milwaukie (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the design and construction of pedestrian and ADA accessibility sidewalk improvements at the Harrison Street crossing near the Union Pacific Railroad tracks within the City of Milwaukie complying with FRA and ODOT Rail requirements on the north side and south side of the street. These improvements are herein referred to as the PROJECT.
- C. The COUNTY has determined that the PROJECT is eligible for Community Development Block Grant (CDBG) funds as a Low-Mod Area Benefit Activity. The service area for the PROJECT is the entire city and defined on the map included in Attachment A.

II. Scope of Responsibilities

- A. Under this agreement the responsibilities of the CITY shall be as follows:
 - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
 - 2. The CITY shall endeavor to obtain any permits, easements or approvals necessary to allow access onto private property and access to the Union Pacific Railroad property. Acquisition of any potential easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
 - 3. The CITY shall provide engineering services for the design and construction oversight of the PROJECT. Such services shall be provided

at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:

- a. The CITY shall have a registered professional engineer (herein after referred to as Engineer) prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight including staking and surveying of the PROJECT. The CITY has the option to hire a private engineer or assign a CITY Engineer from within their office.
- b. The CITY shall require a private Engineer to maintain comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to Engineer's or any of Engineer's subcontractor's performance of this Agreement.
- c. The CITY shall require a private Engineer to maintain professional liability insurance in an amount of not less than \$1,000,000 per claim. Such insurance shall include limited contractual liability coverage and shall provide for thirty days prior written notice to the COUNTY in event of cancellation. The Engineer shall endeavor to use good faith in order to maintain in force such coverage for not less than three (3) years following completion of the PROJECT. The COUNTY, at its option, may require a complete copy of the above policy and evidence of required coverage.
- d. The CITY shall require a private Engineer to include the County as an additional insured and refer to and support the Engineer's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide 30 days' written notice to the COUNTY in the event of cancellation, non-renewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the COUNTY within thirty (30) days after any reduction on the general annual aggregate limit.
- e. The CITY agrees to require a private Engineer to furnish the COUNTY evidence of the insurance required in II.A.3 (b) and (c).

- f. The CITY shall ensure that the Engineer's responsibilities include, but are not limited to, the following:
 - (i) During construction the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
 - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.
 - (iii) In the event modifications to the construction contract resulting in an increase in the contract amount are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.

- 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
- 5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT. (refer to Attachment A).
- 6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT. (refer to Attachment B).

B. Under this agreement the responsibilities of the COUNTY will be as follows:

- 1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
- 2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project.
- 3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
- 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.
- 5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.

- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT. Neither party is authorized to enter in to a contract without such joint approval.

III. Budget & Financial

- A. The COUNTY will apply CDBG funds in the amount of **\$90,000** to the PROJECT. The obligations of the CITY and COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. The CITY agrees to contribute the greater of:
 - 1. Twenty percent (20%) of the total cost of the PROJECT, or
 - 2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within limits of available funds.
- D. The CITY shall be credited towards the matching requirements stated in Part III. B. an amount equal to **12%** of the final construction cost for providing surveying, staking and engineering services as detailed in Part II. A. 3. a.
- E. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
 - 1. In the event a construction contractor is entitled to payments for work completed after \$90,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the COUNTY within thirty (30) consecutive calendar days of a written request.
 - 2. Upon receipt of written notification from the COUNTY the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B. All checks shall be made payable to Clackamas County, and be mailed to the following address:

Attn: Toni Hessevick
Clackamas County - Finance Office
2051 Kaen Road
Oregon City, OR 97045

3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.
4. Funds for the change order approved by both parties shall be split evenly between the COUNTY and the CITY.

IV. Liaison Responsibility

Wendy Hemmen will act as liaison from the CITY for the PROJECT. Steve Kelly will act as liaison from the COUNTY.

V. Special Requirements

- A. **Law and Regulations.** The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. **Public Contracting Requirements.** To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. **Relationship of Parties.** Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, and Oregon Constitution each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, upon completion of the improvements, the CITY will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.

- E. **Notice.** Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- G. **Access to Records.** The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. **Conflict of Interest.** No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. **Insurance.** The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

- K. **Nondiscrimination.** The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- L. **Handicapped Accessibility.** The CITY and COUNTY agree that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- M. **Nonsubstituting for Local Funding.** The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. **Evaluation.** The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. **Audits and Inspections.** The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. **Acquisition.** If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. **Change of Use.** The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. **Reversion of Assets.** Upon expiration or termination of this Agreement, CITY shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part

with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 shall ensure said real property is either:

1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending five (5) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment D, resulting from material failure by the CITY to comply with any term of this Agreement, or;
 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

THE CITY OF MILWAUKIE

6101 Johnson Creek Blvd.
Milwaukie, OR 97206

CLACKAMAS COUNTY

Chair: Charlotte Lehan
Commissioner Jim Bernard
Commissioner Ann Lininger
Commissioner Paul Savas

Signing on Behalf of the Board.

Jeremy Ferguson,
Mayor of Milwaukie

Cindy Becker, Director
Department of Health, Housing
& Human Services

Date

Date

ATTACHMENT A

COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL MEASURES REPORT

FOR THE PERIOD: JULY 1, _____ TO JUNE 30, _____

Project Name: Harrison Street Railroad crossing Improvements Project – in Milwaukie

The Service Area for this project is the entire city of Milwaukie contained within Census Tract _____ Block Group(s) 208.002, 208.003, 209.003 and 211.003. The City of Milwaukie portion of this Block Group is ?? Low- and Moderate-Income. The performance measure will be the number people accessing the nearby senior center.

Choose all that apply:

of persons _____ with new access this Public Facility or Infrastructure Improvement

of persons _____ with improved access to this Infrastructure Improvement

of persons _____ with access to this Infrastructure Improvement that is No Longer Substandard.

Total Number of persons assisted: _____

Need Harrison Crossing Map, Mark Sirois

Other benefits to the Service Area:

Signature

Date

Organization

ATTACHMENT B CDBG Project Matching Funds

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for your ESG projects:

2011-12 CDBG Funds	\$
--------------------	----

SOURCES OF LOCAL MATCH:	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)	
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

Private (including recipient) Funding	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By:
 (Print name)

 Signature

 Date

ATTACHMENT C

Change of Use

Excerpt from 24 CFR Part 570

570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in **570.208 (formerly 570.901)** and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in **570.504(b) (4) or (5)**, as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

ATTACHMENT D

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
 - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.



Agenda Item: 3.B.
Meeting Date: Type Here

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Milwaukie Arts Committee Bylaws adoption

Prepared By: Beth Ragel

Dept. Head Approval: JoAnn Herrigel

City Manager Approval: Bill Monahan

Reviewed by City Manager: Oct 6, 2011

Issue Before the Council

Approve a resolution adopting proposed bylaws for the Milwaukie Arts Committee (also called "artMOB").

Staff Recommendation

Approve a resolution adopting proposed bylaws for the Milwaukie Arts Committee (also called "artMOB") as written.

Key Facts & Information Summary

The artMOB discussed and approved the attached bylaws at its March 2011 meeting and shared these bylaws with Council at the joint work session August 2, 2011.

Other Alternatives Considered

N/A

City Council Goals

N/A

Attachment List

Staff report

Resolution and Milwaukie Arts Committee (artMOB) Bylaws

Fiscal Notes

N/A



To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Beth Ragel, Community Services Program Coordinator
Subject: Milwaukie Arts Committee (artMOB) Bylaws
Date: October 18, 2011

Action Requested

Approve a resolution adopting proposed bylaws for the Milwaukie Arts Committee (also called "artMOB").

History of Prior Actions and Discussions

Section **2.10.050** (A) of the Milwaukie Municipal Code states that Council "shall adopt bylaws for each board, commission, and committee's meetings and the performance of its duties. These bylaws shall be reviewed and updated annually by each board, commission, or committee. Bylaws and bylaw revisions shall be reviewed and accepted by Council and approved by Council resolution."

The artMOB discussed and approved the attached bylaws at its March 2011 meeting and shared these bylaws with Council at the joint work session August 2, 2011.

artMOB proposes that Council now approve the bylaws as written.

Concurrence

The Community Services Director supports the adoption of the attached bylaws.

Attachments

Resolution with bylaws attached

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
ADOPTING BYLAWS FOR THE MILWAUKIE ARTS COMMITTEE (artMOB).**

WHEREAS, Section 2.10.050 (A) of the Milwaukie Municipal Code states that Council shall adopt bylaws for each board, commission, and committee's meetings and the performance of its duties; and

WHEREAS, the Milwaukie Arts Committee (artMOB) approved the attached bylaws at its March 2011 monthly meeting; and

WHEREAS, the Milwaukie Arts Committee (artMOB) met with Council in August 2011 to discuss these bylaws and their annual work plan;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the bylaws drafted by the Milwaukie Arts Committee (artMOB) and recommends that the committee adhere to these bylaws.

Introduced and adopted by the City Council on October 18, 2011.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:

Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Milwaukie Arts Committee (artMOB) Bylaws

Purpose and Mission

The Milwaukie City Council is committed to providing a livable and vibrant community for all its citizens and visitors. Based on the community's suggestion the Milwaukie Arts Committee was created by Ordinance #1982 on March 18, 2008 and the first set of ten committee members appointed by Resolution 6-2008 on July 1, 2008.

The committee is appointed to do the following:

- Assist and advise the City Council and the Planning Commission in using public art to enhance continuing development, including public structures.
- Encourage and help promote greater opportunities to experience the arts in the Milwaukie area;
- Identify groups or organizations that could bring cultural enrichment to the Milwaukie area; this includes, but is not limited to, music, art, drama, dance, lectures and other areas as may be designated by the committee;
- Identify funding sources for artists and arts events and help to secure such funding as necessary;
- Work cooperatively with other organizations and City groups including other City boards and commissions, local schools, county and regional arts organizations, arts guilds and theater groups and local businesses to promote the arts in the community; and
- Provide liaison and representation of the Milwaukie area to county, regional and state arts agencies.

Responsibilities

- The committee shall draft and submit to City Council bylaws for adoption.
- The committee shall abide by guidelines established for all city boards, commissions and committees as stated in Milwaukie Municipal Code Chapter 2.10 Boards, Commissions and Committee Generally.

The Committee shall abide by guidelines specific to this committee established by Milwaukie Municipal Code Chapter 2.17 Milwaukie Arts Committee.

- Any other duties assigned by the City Council.

Membership

The committee shall consist of ten members appointed by the Mayor with the consent of the City Council. The majority of the committee shall be residents of the City.

Terms of office

Terms for the Committee shall be two years. No person may serve more than three (3) successive terms on any other board, commission, or committee unless there is an interval of at least one (1) term prior to the reappointment.

Committee and City staff procedures

The Committee shall have a staff liaison from the City's Community Services or Community Development Department or their designee.

The Committee shall have the following City resources available:

- Use of meeting rooms in City Hall, or other City facilities
- Reasonable use of City equipment through designated staff liaison (photocopies, fax machine etc.)
- Access to publicly available reports maintained by the City

The Committee shall meet on a regular basis according to and under the Oregon Public Meeting Laws requirements.

The Committee may hold public working sessions to solicit the input of the community and/or interested citizens or parties. Such working sessions shall be noticed and open meetings according to Oregon meeting requirements.

Rules of Procedure

a) A quorum of the Committee shall consist of a majority of the members seated. A quorum must be present in order for the Committee to hold a meeting.

b) All actions require a majority vote of the Committee members in attendance.

c) These Bylaws, the Milwaukie City Council Ordinance, and the Oregon Public Meeting laws shall govern the operation of the Committee and its meetings.

d) The Committee shall follow all applicable City fiscal and administrative policies and

procedures.

e) At the first regular meeting the committee shall appoint a Chairperson, Vice Chairperson, Secretary, and Treasurer. Other committee positions can be determined by majority vote of the committee. Officer elections shall take place every March.

f) The Chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.

g) The Vice-Chairperson shall assume all duties of the Chairperson in his/her absence. In the event the Chairperson and Vice Chairperson are both absent, the first order of businesses shall be the appointment of an Acting Chairperson.

h) The Secretary shall record the attendance and notes of all meetings according to Oregon Public Meeting Laws requirements.

i) The Committee may organize itself into Subcommittees to carry out tasks. Subcommittees composed of less than a quorum of the membership shall bring all decisions or recommendations back to the Committee for review and approval.

j) Individual Committee members may not speak for or on behalf of the entire Committee unless authorized to do so by a majority of the Committee;

k) The Committee is an important function within the City of Milwaukie and as such, certain expectations are held by the City Council in making the appointment of individuals to the Committee. These expectations include the following:

1. Committee members will attend regular meetings and special meetings as scheduled or as they arise. Committee members will communicate expected and unexpected absences to the Staff Liaison, or his/her designee, in a timely manner. Any member with three or more unexcused absences in a 12-month period shall be reported to City Council with a recommendation for removal from the Committee. Any member of the Committee may be removed from office by majority vote of the City Council at a regularly scheduled meeting.

2. Committee members will communicate potential conflicts of interest on agenda items to the Chair, or his/her designee, at least 48 hours in advance of the hearing to allow confirmation of a quorum.

3. Committee members will avoid conflicts of interest between their personal and professional financial interests and those interests that may come before the Committee.



Agenda Item: 3.C.
Date: October 18, 2011

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Appointment of Macy Bishop as the Ardenwald Neighborhood District Association Representative to the Milwaukie Public Safety Advisory Committee (PSAC)

Prepared By: Teri Bankhead
Dept. Head Approval: Bill Monahan
City Mgr. Approval: Bill Monahan
Reviewed by City Manager: October 7, 2011

Issue Before The Council

The Ardenwald Neighborhood District Association has nominated Macy Bishop for appointment as their representative to the Public Safety Advisory Committee.

Staff Recommendation

Accept the NDA's nomination and appoint Macy Bishop to PSAC

Key Facts & Information Summary

PSAC is an 11 member committee comprised of four at-large members and one member from each of the City's seven Neighborhood District Associations, for a total of 11. The Ardenwald NDA has recently nominated Macy Bishop for their PSAC vacancy which came open this spring.

Other Alternatives Considered

n/a

City Council Goals

n/a

Attachment List

1. Resolution

Fiscal Notes

n/a

ATTACHMENT 1
RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING MACY BISHOP TO THE PUBLIC SAFETY ADVISORY COMMITTEE AS THE ARDENWALD NEIGHBORHOOD DISTRICT ASSOCIATION REPRESENTATIVE.

WHEREAS, a vacancy exists on the Public Safety Advisory Committee for an Ardenwald Neighborhood Association member; and

WHEREAS, Milwaukie Municipal Code Section 2.24.020(B) provides for appointment of members of the Milwaukie Public Safety Advisory Committee “by the council;” and

WHEREAS, Macy Bishop possesses the necessary qualifications to serve on the Committee and has indicated her desire to serve.

Now, therefore, the City of Milwaukie, Oregon resolves as follows:

SECTION 1: That Macy Bishop is appointed to the Milwaukie Public Safety Advisory Committee as the Ardenwald Neighborhood District Association representative.

SECTION 2: That her term of appointment shall commence immediately and shall expire through June 30, 2013.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on October 18, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
SEPTEMBER 6, 2011

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Teri Bankhead, Planning Director Katie Mangle, Community Services Director JoAnn Herrigel, Public Affairs Coordinator Grady Wheeler, Program Coordinator Beth Ragel, Finance Director Richard Seals, Civil Engineer Zach Weigel, and Engineering Director Gary Parkin

Media: Molly Harbarger, *The Oregonian* and Raymond Rendlemen, *The Clackamas Review*

City Manager's Report

Mr. Monahan noted changes to the regular session agenda including TriMet funding. He distributed an interim communication plan for baseball prepared by Mr. Wheeler. Points of contact were Mayor Ferguson and Mr. Wheeler for a consistent message. The group discussed efforts employed prior to hiring a professional team and the wisdom of moving the dates. Direction was to follow the dates on an interim basis and then adjust them based on the professional firms' advice.

TriMet Funding

Mayor Ferguson excused himself from the discussion, and Council President Chaimov presided.

Council President Chaimov understood the direction was that the majority of the City Council was in favor of a process in which Milwaukie would make annual payments to TriMet and spread over a period of years. He understood the goal was to pay TriMet from increasing property tax revenues and not reduce current programs or staff levels. City Council would need to know if the City reached the point of having to reduce staff or services or find other ways to make the TriMet payments happen.

Councilor Hedges was not happy with taking money out of the general fund or any fund. He promised that if the City borrowed the money it went to a vote. He did not think the City would raise enough revenues, and there was no fat to cut.

Council President Chaimov said the question was how do we get to the point of making that decision. It was not necessary now to cut staff or services to make the payments. The only sensible way was to borrow the \$5 million and not take it out of services. He did not feel there was enough information to make a decision.

Mr. Monahan recommended getting all the questions on the table and then ask them of TriMet.

Mr. Asher noted the payment was due about one year from now.

Councilor Hedges observed there was nothing in the agreement holding to a firm and rigid accounting for the expenditure of the \$5 million.

Councilor Miller wanted accounting from TriMet on how the money was spent as he believed the citizens would demand. What would happen if the City did not pay the \$5 million? He saw raising taxes or cutting services as the only two solutions. It should be up to the citizens to make that decision. He did not believe TriMet wanted the negative publicity of suing the City of Milwaukie.

Councilor Loomis wanted to explore what kind of deal TriMet would offer. The City had an obligation and must find the most palatable way of doing it.

Councilor Miller asked Mr. Seals when the City would run out of money providing its current levels of services.

Mr. Seals said on June 2014 the ending fund balance would drop below policy levels or by fiscal year 2015. Permit fees could be applied to the first couple of years and buy up to 2015 if TriMet were reasonable.

Mr. Monahan said they will discuss this again at the September 27, 2011 study session.

The group discussed the Memorandum of Understanding with TriMet for the Triangle Site Development.

CCFD #1 Update on Precision Castparts Incident

CCFD #1 Deputy Chief Fred Charlton updated the City Council on the May 11 and 12, 2011 incident and lessons learned on. It took approximately 29 hours to mitigate the incident and make the community safe. Since that event they had gone through a formal debriefing and looked at the event from a global perspective including policy implications and public notifications. He discussed regional hazmat response and plume modeling.

Council President Chaimov asked if the City might have any policy changes to make a better process.

Deputy Chief Charlton said that Chief Jordan did a fantastic job as the City Liaison and was at the command center all night. The reverse 911 system was tested. They found it was important to educate the public on how to sign up for the service and continue proactive work with citizens on what the different messages meant.

Councilor Hedges asked how emergency shelters could be more active. He understood that during the incident they were looking to use emergency shelters in Happy Valley and not local shelters in Milwaukie.

Deputy Chief Charlton was not aware of that but would look into it. He discussed the central role played by Red Cross.

Councilor Loomis thanked the Fire District and Police Department and thought things went as smoothly as possible.

Mr. Monahan discussed the upcoming exercise on November 2 and announced a training opportunity sponsored by the County for public officials on October 6.

Community Development and Planning Activities

Mr. Asher noted recent developments in the Kellogg for Coho Initiative.

Ms. Mangle highlighted three projects: application by the Ukrainian Bible Church for a minor expansion that will go to the Planning Commission; letters to affected property owners by the recently adopted Natural Resource amendments; and an electronic signs code fix project that will likely be before the City Council in October.

City Council Work Session – September 6, 2011

Draft Minutes

Page 2

Continue Manager's Report

Mr. Monahan discussed Neighborhood Leadership meetings as related to Oregon Public Meetings laws.

Mr. Ramis said the issue was whether the Neighborhood District Associations (NDAs) were advisory to the City Council or not and how they operated.

Council President Chaimov said his preference would be to ask the leadership group how it wanted to be treated, and if it was an advisory body, to work within those limitations.

Councilor Miller agreed.

Councilor Hedges said it was something the leadership needed to sort out and determine how to operate.

Councilor Loomis suggested it might be a good topic for the next work session.

Natural Step

Mr. Monahan asked how the City Council wished to proceed with the Natural Step program.

Councilor Hedges replied the earlier session was lively but seemed like a sales pitch to provide more training. He was not sure the City would gain anything from that particular group.

Councilor Miller agreed. He appreciated that there was group dedicated to sustainability, but there was a financial commitment to continuing.

Mayor Ferguson appreciated the opportunity to participate in the session, but there was not a lot more the City could pursue right now. He thought the Natural Step Program should be on hold until there was more enthusiasm from the Planning Commission and the Design and Landmarks Committee. He thought it was not necessary to do any further training at this time.

Mr. Monahan said the City will continue the work of the Sustainability Team and encourage their continued efforts.

Mayor Ferguson said that Governor Kitzhaber appointed him to the Oregon Passenger Rail Council, and he would be representing Clackamas County and Southeast Portland.

Harrison Street Water Main Replacement Project Update

Mr. Parkin reported project costs were greater than the budget, and additional funds must be allocated from system development charge (SDC) funds in a supplemental budget to follow.

Mr. Weigel outlined the background of the project that replaced old 6-inch line with an 8-inch line. This project was being done to prepare for the quiet zone project and also was the first phase of the Harrison Street reconstruction project that would start next summer. The Water Operations Department chose this project because it was experiencing an increased need for plus it needed to be repaired prior to reconstruction. The original estimate was \$320,000, which was approved in the Capital Improvement Plan (CIP). After extending the project limits to better align with the quiet zone improvements, the estimate rose to \$523,000. The bids came back at \$572,000, which left \$187,000 that could be made up by the Water SDC fund in the supplemental budget process in December.

Council President Chaimov asked if this was vetted with members of the Budget Review Committee. It seemed it was a project that the City needed to undertake, but he was concerned there had not been citizen involvement in reviewing budget concerns.

Mr. Parkin replied the matter had not been considered by the Budget Review Board. It had been discussed with the Mr. Seals and staff only.

Mr. Monahan said the City Council would be voting on the contract award, but there was also an expectation that the supplemental budget would be approved later this year. He described the implications if the award were not approved which included missing out on this bidding cycle.

Councilor Loomis supported approving the contract tonight.

Councilor Hedges asked why the estimate was so far off and would we be depleting contingency?

Mr. Weigel said the reason for the major difference in costs was because they extended the length of the project to accommodate the quiet zone instead of waiting until the next fiscal year when it was scheduled.

Mr. Parkin said the full scope of the entire project had not changed, but the scope for this year had.

Councilor Hedges agreed the City should go ahead and do the project.

Mr. Miller asked if there was a plan to restore the contingency fund next year.

Mr. Parkin explained the money would come from the SDC fund and not the contingency fund.

Mayor Ferguson would vote in favor of approving the contract.

Mr. Ramis advised removing it from the consent agenda for discussion.

Mayor Ferguson adjourned the work session at 6:26 p.m.

Respectfully submitted,

Pat DuVal, Recorder

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
SEPTEMBER 20, 2011

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: Assistant to the City Manager Teri Bankhead, City Attorney Tim Ramis, City Recorder Pat DuVal, Planning Director Katie Mangle, Associate Planner Ryan Marquardt, Public Affairs Coordinator Grady Wheeler, Operations Director Jon LeBaron, Program Coordinator Beth Ragel, Finance Director Richard Seals

Excused: City Manager Bill Monahan

Media: Molly Harbargar, *The Oregonian*

City Manager's Report

Ms. Bankhead gave a brief overview of the evening's agenda and announced the upcoming Clackamas Cities Association monthly meeting hosted by the City of Estacada. There were two at-large vacancies on the Public Safety Advisory Committee (PSAC) and one application on file.

Mr. Asher introduced recently-hired Operations Director **Jon LeBaron**.

Planning and Community Development Capsule Summary

Mr. Asher provided an update on the Commercial Core Enhancement Program (CCEP) which was currently on hold. At this time the 42nd and 32nd Avenue neighborhood corridors was still making some progress. The first of the "Small Moves" implementation items had begun. Low-cost improvement opportunities in Dogwood Park were being considered to make it a nicer space and bring more care and attention to the South Downtown.

Ms. Mangle reported on land use and development review. The Residential Standards Development Project was underway, and the department will share the draft proposal at a public open house in October.

Mr. Asher provided a brief update on the Lake Road Improvement project.

Sign Code Amendments: Electronic Display Signs

Mr. Marquardt discussed the major topics in the proposed amendments: electronic display signs in the downtown, display signs in commercial and industrial areas, and rate of change for signs. The Planning Commission held its public hearing and recommended several amendments to the City Council. The most frequent comments expressed by businesses were that these amendments were too restrictive and concerns with the rate of change.

Ms. Mangle added the highway corridors were important as they did affect residential properties. Electronic signs like those in the new bus shelters were allowed since they were in the public right-of-way.

Mr. Marquardt discussed electronic signs in windows.

Councilor Chaimov asked staff to provide information on from neighboring cities on hold times for large signs. Would a sign like the Keizer Volcanoes stadium be allowed?

Councilor Hedges asked if the number of signs within a given area could be limited and could content be limited?

Mr. Marquardt reported content could not be regulated. He discussed compliance with amendments for those signs already installed.

Councilor Loomis asked for available safety data.

Councilor Hedges asked what could be on the backside of the sign.

Mr. Marquardt replied signs were limited by the amount of street frontage, and there were limitations to content management.

Councilor Miller asked how this code would compare to Portland and Clackamas County.

Ms. Mangle had referenced Portland and City of Salem regulations in her research; however, not too much was available from Clackamas County.

Mural Program

Ms. Ragel gave an overview of the mural review process which was exempt from the sign code and reviewed separately. Staff and the Arts Committee would engage in an outreach process and continue the dialogue with the Neighborhood District Associations (NDAs). The murals would be only in commercial and industrial zones and not in residential zones.

Mr. Marquardt said staff was seeking direction on whether to move forward on this type of program. He discussed the Dark Horse Comics proposal for a mural on the side of its building at Main and Jefferson Streets.

Councilor Loomis felt he needed more information on the amount of staff time involved before giving direction.

Ms. Ragel replied the Planning Department would work on the program as time allowed. She and Arts Committee members were interested in doing the public outreach element. The High School seemed understanding about the length of time this program might take.

Councilor Hedges had reservations about how the City might avoid being challenged as TriMet was with its busses.

Mayor Ferguson explained the TriMet issue had to do with its being a public forum.

Councilor Miller asked if the mural could be put back up on the Dietrich building. Would the decisions be broadly enough made to consider all types of murals or might it exclude some that might be different.

Ms. Ragel described how a selection committee might be balanced between the artistic and those who had ideas about community character.

Baseball Advisors Discussion

Mr. Asher informed the City Council on where he thought the baseball effort might go. He recommended bringing together a team of professional advisors to assess the feasibility of the baseball concept. Elements would include communications/campaign strategists, architectural and engineering professionals, and project management specialists.

Mr. Ramis discussed the purpose of public contracting rules and a proposal to use a procurement exemption done through informal process. The City Council, meeting as the Local Contract Review Board, will decide that in a public hearing.

Mr. Asher said if the process were approved, then the agreements could be signed shortly after the October 4 City Council meeting. The costs can be absorbed in the Community Development Department budget. The message for the City Council tonight was to either roll the dice and hope all agreed based on Mayor and Councilor rhetoric or work with experienced advisor for a more informed public discussion. He summarized the other projects that would be put on hold for the baseball project including all things business-related, managing the Kellogg-for-Coho project, the façade improvement program, and the CCEP.

Councilor Loomis said people in the neighborhoods liked the idea of bringing back baseball but had lots of questions. He felt it was important to have professional expertise in these areas. A united Council made for a strong message, and people wanted to hear more. He liked the idea of having project exit ramps.

Mayor Ferguson agreed.

Ms. Bankhead would bring monthly financial reports to the City Council.

Monthly Neighborhood District Association Dialogue

Leadership present: Beth Kelland, Linwood; Linda Hedges and Dave Aschenbrenner, Hector Campbell; Jeff Davis and Bryan Dorr, Ardenwald; Ed Zumwalt, Historic Milwaukie; and Debby Patten, Lake Road.

Ms. Hedges discussed what actions the NDA leadership group might be bound to take under the Oregon Public Meetings Law and the City Attorney's opinion. For a long time the members of the group felt they could talk freely, and people felt privileged to meet with the City Council on a regular basis.

Ms. Patten concurred.

Mr. Zumwalt said liaisons attended the NDA meetings, and Ms. Ragel attended the monthly leadership meetings. He felt there was no privacy, so they were better off meeting at local bistro. He recommended completely independent, offsite meetings.

Mr. Ramis discussed fundament trade-offs. He understood the leadership wanted to act informally; otherwise, certain public meeting standards would have to be met. Presently, the leadership meets regularly with the City Council making it an advisory body and subject to Public Meetings Laws. He felt the leadership group could still meet and from time to time meet with the City Council to share its thoughts. It was the relationship with City Council that triggered some laws.

Councilor Chaimov understood the NDA leadership could talk with City Council a couple of times a year if there were an space available on the agenda and not trigger the law.

Mr. Aschenbrenner noted the monthly NDA meetings were already noticed as open meetings. Could the leadership still meet in a public facility?

Mr. Ramis replied "yes", and staff could attend to speak about topics of broad interest like light rail.

Mr. Davis gave his perspective. Privacy was important but as an appointed advisory board member he was very involved and felt he had a direct relationship with the City Council. If the NDA Leadership became an appointed body and more official, then that would alter his reasons for participating. He would rather discuss neighborhood

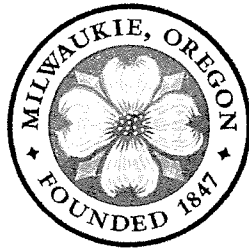
problems in an informal manner. He valued what he learned in the neighborhood leadership meetings.

Ms. Hedges summarized the outcomes of the discussion: the leadership would no longer meet with the City Council on a regular basis; no employee would take minutes of leadership meetings; and the group would not necessarily meet in a City facility. She hoped one Councilor would attend the regular NDA meetings and perhaps attend the leadership meeting to transfer information. It was good to know the dialogue would continue.

Mayor Ferguson adjourned the meeting at 6:52 p.m.


Respectfully submitted,

Pat DuVal, Recorder



Agenda Item: 3.E.
Meeting Date: 10-18-11



To: Mayor Ferguson and Milwaukie City Council
Through: Bill Monahan, City Manager
From: Bob Jordan, Chief of Police 
Date: October 3, 2011
Subject: O.L.C.C. Application – Harrison Street Mart – 4140 SE Harrison Street

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Harrison Street Mart - 4140 SE Harrison Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

POLICE DEPARTMENT
3200 SE Harrison Street
Milwaukie, Oregon 97222
P) 503 786 7400 / F) 503 786 7426
www.cityofmilwaukie.org



OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
 - Commercial Establishment
 - Caterer
 - Passenger Carrier
 - Other Public Location
 - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
 - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: _____

ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other _____

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

CITY AND COUNTY USE ONLY

Date application received: _____

The City Council or County Commission:

(name of city or county)

recommends that this license be:

- Granted
- Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: Patty R.

Date: 9/30/11

90-day authority: Yes No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① EAST WEST GAS AND FOOD INC ③ _____

② _____ ④ _____

2. Trade Name (dba): HARRISON STREET MART

3. Business Location: 4140 SE HARRISON STREET, MILWAUKIE, CLATSOP, OR, 97222-5860
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 4140 SE HARRISON STREET, MILWAUKIE, CLATSOP, OR, 97222-5860
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: (503) 654-4404
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: MUSTAFA INC. Type of License: OFF-PREMISES sales/w fuel pump

8. Former Business Name: _____

9. Will you have a manager? Yes No Name: MASUK Peter J. UNAH
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? MILWAUKIE
(name of city or county)

11. Contact person for this application: M.A. J. UNAH 360-305-4532
(name) (phone number(s))

52632 NE SAWYER ST, APT D7, SCAPPOOSE, OR, 97056 masukjinnah@yahoo.com
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① EAST WEST GAS AND FOOD INC Date 9/27/11 ③ _____ Date _____
By Mas Jinnah

② _____ President Date _____ ④ _____ Date _____



OREGON LIQUOR CONTROL COMMISSION
CORPORATION QUESTIONNAIRE

Please Print or Type

Corporation Name: EAST WEST GAS AND FOOD INC Year Incorporated: 2011
 Trade Name (dba): HARRISON STREET MART
 Business Location Address: 4140 SE HARRISON ST
 City: Milwaukie, OR ZIP Code: 97222-5860

List Corporate Officers:

<u>M.A. JINNAH</u>	<u>President</u>
(name)	(title)
<u>HILDEGARD JINNAH</u>	<u>SECRETARY</u>
_____	_____
_____	_____

List Board of Directors:

M.A. JINNAH
 (name)

HILDEGARD JINNAH

List Stockholders: (Note: If any stockholder is another legal entity, that entity may also need to complete another Corporation Questionnaire. See Liquor License Application Guide for more information.)

Stockholders:	Number of Shares Held:	Number of Stock Shares:
<u>M.A. JINNAH</u>	<u>500</u>	Issued: <u>1000</u> Unissued: <u>0</u> Total Shares Authorized to Issue: <u>1000</u>
<u>HILDEGARD JINNAH</u>	<u>500</u>	
_____	_____	
_____	_____	

Server Education Designee: MASUK P JINNAH DOB: 08/05/1971
 (See Liquor License Application Guide for more information)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Officer's Signature: EAST WEST GAS AND FOOD INC President Date: 9/27/11
 (name) M.A. JINNAH (title)



OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: EAST WEST GAS and FOOD INC Phone: 360-305-4532

Trade Name (dba): HARRISON^{STREET} Mart

Business Location Address: 4140 SE HARRISON ST

City: Milwaukie, OR ZIP Code: 97222-5860

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday	<u>7 AM</u>	to	<u>10 PM</u>
Monday	<u>6 AM</u>	to	<u>10 PM</u>
Tuesday		to	
Wednesday		to	
Thursday		to	
Friday		to	
Saturday	<u>7 AM</u>	to	<u>10 PM</u>

Outdoor Area Hours:

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

The outdoor area is used for:

- Food service Hours: _____ to _____
- Alcohol service Hours: _____ to _____
- Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.

_____ (Investigator's Initials)

Seasonal Variations: Yes No If yes, explain: _____

ENTERTAINMENT

Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> Live Music | <input type="checkbox"/> Karaoke |
| <input type="checkbox"/> Recorded Music | <input type="checkbox"/> Coin-operated Games |
| <input type="checkbox"/> DJ Music | <input type="checkbox"/> Video Lottery Machines |
| <input type="checkbox"/> Dancing | <input type="checkbox"/> Social Gaming |
| <input type="checkbox"/> Nude Entertainers | <input type="checkbox"/> Pool Tables |
| | <input type="checkbox"/> Other: _____ |

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

SEATING COUNT

Restaurant: _____ Outdoor: _____

Lounge: _____ Other (explain): _____

Banquet: _____ Total Seating: _____

OLCC USE ONLY	
Investigator Verified Seating: _____ (Y) _____ (N)	
Investigator Initials: _____	
Date: _____	

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: by ^{East West Gas and Food Inc} Magiech Print Date: 9/27/11

1-800-452-OLCC (6522)
www.oregon.gov/olcc

(rev. 12/07)

5.
PUBLIC HEARING



Agenda Item: 5.A.
Meeting Date: 10/18/2011

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Sign Code Amendments – Electronic Display Signs

Prepared By: Ryan Marquardt, Associate Planner

Dept. Head Approval: Kenny Asher, Community Development & Public Works Director

City Manager Approval: Bill Monahan, City Manager

Reviewed by City Manager:

Issue Before the Council

Amendments to Milwaukie Municipal Code Title 14, Signs, regarding the regulation of electronic display signs (EDSs).

Staff Recommendation

Adopt the proposed amendments as presented in Attachment 1: Ordinance.

Key Facts & Information Summary

Allows EDSs in downtown along McLoughlin Blvd, limit of 25% of the total sign area, up to a maximum of 20 square feet. Limits EDSs in commercial and industrial areas to 50% of the total sign area, up to a maximum of 50 square feet; currently no size limits on EDSs in these areas. Large EDSs could not change message more than once every 2 minutes; smaller signs not more than once every 15 seconds.

Other Alternatives Considered

Allow message changes more frequently – every 8-10 seconds. Allow larger sizes for signs in commercial and industrial areas.

City Council Goals

N/A

Attachment List

1) Ordinance – Findings, Amendments; 2) Code Amendments and Commentary; 3) Traffic Safety Studies; 4) Comments

Fiscal Notes

None.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenny Asher, Community Development & Public Works Director

From: Ryan Marquardt, Associate Planner

Subject: Sign Code Amendments: Electronic Display Signs (File #ZA-11-02)

Date: October 12, 2011 for October 18, 2011 Regular Session

ACTION REQUESTED

Approve File #ZA-11-02 with the Ordinance, Findings of Approval, and Amendments found in Attachment 1. This would amend the regulations of Title 14, Sign Ordinance, that pertain to electronic display signs.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

September 2011: Staff briefed the City Council on the amendments recommended for approval by the Planning Commission at a worksession.

July 2011: City Council discussed the new electronic billboards during a study session and requested that staff proceed quickly with code amendments to control them.

March 2011: City Council and Planning Commission discussed the topic of sign code amendments during the annual review of the Planning Commission work plan.

BACKGROUND

The Milwaukie Planning Commission directed staff to draft amendments to Milwaukie Municipal Code Title 14, Sign Ordinance, to address the issue of electronic display signs. Electronic display signs are signs that display messages electronically by bulbs, light emitting diodes (LEDs), or other sources of illumination. The goals of the amendments are to 1) make limited allowance for electronic display signs in areas of downtown Milwaukie, and to 2) limit the maximum allowed size of electronic display signs in areas outside of downtown. Other amendments are proposed that address the brightness, style of display, and rate of message change.

The Planning Commission initiated this project, which originally focused on easing some restrictions on signs along McLoughlin Blvd in downtown Milwaukie. The Commission felt that the current policy was too restrictive in its prohibition of small LED-style electronic signs, such as those that are often used to advertise gas prices or time and temperature signs.

Most Commissioners felt that such signs are appropriate in the more auto-oriented environment of McLoughlin Blvd. Additionally, it has been thought that this type of electronic sign would most likely be used instead of internally-lit cabinet signs with manually-adjusted lettering, which are lit by fluorescent tubes. LED technology is much more efficient, using less electricity.

As staff was working with affected property owners to craft a revised policy for these types of signs in early 2011, the City received its first application for an electronic, LED-lit billboard sign. The sign has since been installed on Main St in the North Industrial area. Staff received complaints on this sign and noted to the Commission and Council that the City's sign code lacks sufficient rules to adequately control these types of signs. In fact, larger signs that operate similar to large television screens could be permitted under the current code.

In March 2011, the Commission directed staff to expand the scope of the project to include both electronic signs in downtown as well as LED-style electronic billboards in other commercial areas.

Staff has worked with the Commission, some affected property owners, and ODOT to draft the proposed amendments. The Commission held its first public hearing on the amendments on September 13, 2011.

Summary of the Proposal

The specific amendments to the sign ordinance are shown in underline/strikeout Attachment 1. The major issues being addressed by the amendments are summarized below. The proposal does not include any changes to the types of signs allowed (e.g., roof signs, freestanding signs, wall signs), how big the signs may be, or where signs may be placed.

1) **Electronic Display Signs in Downtown Zones**

The intent of this amendment is to allow business owners along McLoughlin Blvd to have visible and attractive modern signage that allows for the sign's message to easily be changed, but to do so in a way that limits impacts to adjacent properties and the traveling public.

Currently, electronic display signs are not permitted in the downtown zone. The proposed amendments would allow electronic display signs downtown under the following conditions:

- The property must have frontage on McLoughlin Blvd, and the sign must be oriented toward McLoughlin Blvd;
- The size is limited to the lesser of 25% of the total sign face or 20 sq ft;
- The electronic display sign is part of a larger sign face and is not a standalone sign.

2) Electronic Display Signs in Commercial and Industrial Areas

Currently, electronic display signs are permitted in the commercial and industrial zones outside of downtown. There are no limits to the size of electronic display signs in these zones aside from the general size limits that apply to all signage, regardless of whether it is an electronic display sign or not.

The proposed amendments would limit the size of an electronic display sign to the lesser of 50 sq ft or 50% of the total sign face. Similar to the downtown zone, the electronic display sign must be part of a larger sign face and not a standalone sign.

3) Rate of Change for Electronic Display Signs

The current sign ordinance limits changes in copy for an electronic display sign to no more than once every 10 seconds. The proposed amendments would limit electronic display signs of 20 sq ft or less to changes no more than once every 15 seconds, and electronic display signs of more than 20 sq ft to changes no more than once every 2 minutes.

4) Illumination and Shielding

The current sign ordinance does not include standards specific to illumination levels for electronic display signs. The proposed amendments introduce technologically-appropriate standards to control light spill and brightness.

5) Other Related Amendments

Coordination with ODOT. Under the current policy, there is no relationship between the City and ODOT's permitting processes for reviewing billboards along state highways, even when each is reviewing the same sign at the same time. The City must approve a sign permit if it meets City standards, even if staff is aware that ODOT is planning to issue a citation.

The proposed policy would allow the City to coordinate its sign review with ODOT's process. At the Planning Director's discretion, the City could require that an applicant provide a statement from ODOT regarding whether a sign requires ODOT approval, and if so, include a preliminary assessment of the approvability of the sign. The City would be able to withhold issuance of a sign permit if it believes ODOT may not be able to approve the sign.

Supporting conversions of nonconforming signs to energy-saving technology. Currently, the structure of a nonconforming sign may not be altered to include LED technology unless the sign also comes closer to conformance with other standards (e.g., height, area, etc.). An electronic display sign could be added to an existing nonconforming sign if doing so does not cause the sign to go further out of conformance.

Appropriate standards for LED technology. Currently, the sign code does not clearly address LED technology, so staff has had to apply standards developed for incandescent and fluorescent bulbs to LED panels. A new provision would specifically allow LEDs, and other lighting technology not currently listed in the sign ordinance, to serve as internal or exterior illumination for a sign.

Appropriate standards for "moving" digital images. Currently the sign code restricts "moving" signs, but new sign types create a need for more specificity regarding this policy. New regulations would prohibit flashing, scrolling, moving, or video displays.

Required compliance for nonconforming signs. Regulations related to illumination, the rate of message change, and other prohibitions on distracting or dangerous signs would apply to all signs in the city, even if they were originally permitted under different standards.

6) Emergency Ordinance

The proposed amendments would be adopted as an emergency ordinance, which would make the amendments effective upon being passed by Council. Ordinances typically become effective 30 days after being passed. The reason for adopting these amendments as an emergency ordinance is to immediately address the issue of large electronic display signs. Planning Commission and City Council have indicated that large electronic display signs are inconsistent with the scale or character of Milwaukie. These signs also tend to attract more attention from vehicle operators and may negatively impact traffic safety. An emergency ordinance would ensure that there is not an additional window of time after the ordinance is passed for more of these signs to be installed.

Key Issues

Staff has identified two key issues for City Council deliberation on the proposed amendments.

Frequency of Message Changes

An important feature of electronic display signs is that they allow the sign owner to display multiple messages on one sign. They are more safe, convenient, and visually appealing than older readerboard signs that required physically changing letters. A potential drawback is that electronic display signs have the ability to change messages so rapidly that they become a distraction.

To address this issue, the proposed amendments include limits on how frequently an electronic display sign can change copy. Signs at or under 20 sq ft in area could change copy no more than once every 15 seconds. Signs greater than 20 sq ft in size could change copy no more than once every 2 minutes. The current allowance for changes of copy is no more than once every 10 seconds, regardless of sign size. The Planning Commission revised the first draft of the proposed amendments to shorten the hold time for large signs from 3 hours down to 2 minutes, and opted to leave the 15 second hold time for smaller signs unchanged.

There are three sub-topics within this issue for Council's consideration:

- Comments from Stakeholders

Comments were received in writing and at the Planning Commission hearing about the frequency of message changes. All of the testimony received on this subject supported allowing signs to change more frequently. Some commenters suggested leaving the current 10 second time in place, and others suggested that an 8 second time would be appropriate. The comments suggested that the longer hold times would not make the signs safer than they are with the current 10 second hold time and would decrease the overall usefulness and value of the signs. These comments were received from local business owners and from sign companies. No comments were received from Neighborhood District Associations on this point.

- Safety

Attachment 3 includes a report conducted for Minnetonka, MN in 2007 when that city adopted electronic sign regulations. The studies on electronic signage and traffic safety summarized in that report do not show a conclusive link between electronic billboards and traffic accidents. The report does cite studies suggesting that signage that is bright, contains images that move, or that frequently changes messages does tend to attract drivers' attention more than traditional signage. On the topic of hold times, the report cites an expert that

suggests drivers should see a maximum of 2 messages as they pass a sign. Attachment 3 also includes a 2007 Federal Highway Administration (FHA) memorandum on the topic of changeable message signs. The memorandum recommends a hold time of 8 seconds, and states that FHA divisions across the country have adopted hold times ranging from 4-10 seconds.

The table below indicates the number of messages that a driver would see on an electronic display sign based on the speed limit, distance from which the sign is first visible, and the frequency of message changes. For context, the large electronic display sign at 9304 SE Main Street is visible for approximately 1/4 mile for vehicles traveling north on McLoughlin Blvd., and the speed limit in that area is 40 MPH.

Number of Messages Visible for Changing Electronic Display Signs												
Vehicle Speed (MPH)	Sign Visible from 1/4 Mile						Sign Visible from 1/2 Mile					
	Sign visible for:	Message Frequency (Seconds)					Sign visible for:	Message Frequency (Seconds)				
		8	10	15	30	60		8	10	15	30	60
30	30 sec.	3	3	2	1	1	60 sec.	7	6	4	2	1
40	22.5 sec.	2	2	1	1	1	45 sec.	5	4	3	1	1
50	18 sec.	2	1	1	1	1	36 sec.	4	3	2	1	1

- Regulations from Other Jurisdictions

Staff researched sign ordinances from nearby jurisdictions regarding their regulations on the frequency of message changes.

- No regulation: Oregon City, Gresham, Beaverton, Troutdale, Portland, Wilsonville
- Short duration hold times: Tigard – 2 seconds, Newberg – 5 seconds
- 8-Second hold times: Hillsboro, Salem, Vancouver, WA, Canby, ODOT Outdoor Advertising regulations
- Long duration hold times: Sherwood – 30 seconds, Sandy – 1 hour
- Other: West Linn – decided during land use approval, Clackamas County – allows moving text and requires each message to be completed within 12 seconds

Salem and Newberg both have areas of the city where longer hold times are required. Salem requires a hold time of 1 hour for signs in commercial office

areas and residential areas, and Newberg requires a hold time of 10 minutes for signs downtown.

Based on this information, staff believes that both the current hold time of 10 seconds and the proposed 2 minute / 15 second hold times are within reason given safety considerations and the range of required hold times in other jurisdictions. Research suggests that more frequent message changes divert driver attention. The research does not, however, establish that hold times of 8-10 seconds create unsafe situations. The proposed hold times are longer than most other jurisdictions, though not longer than the most restrictive hold times. In deciding this issue, Council may want to consider that some areas where electronic display signs are allowed are adjacent to or visible from residential areas, and that neighborhood character may be impacted if required hold times are too short. Testimony received from stakeholders should also be considered.

SIGN SIZE

This issue concerns the size of signs allowed in commercial and industrial zones outside of downtown. Currently, there is no restriction on the size of an electronic display sign other than the size limit that applies to all signs. Where a 600 sq ft sign is allowed, the entire area of that sign is allowed to be an electronic display sign. The Planning Commission and City Council directed staff to pursue this topic in response to the installation of a large electronic display sign along McLoughlin Blvd. The implicit policy direction is that very large electronic display signs are inconsistent with the type of signage desired in Milwaukie.

The Planning Commission evaluated this issue, and felt that size was an appropriate limit. The proposed amendments ensure that an electronic display sign is not the predominant feature of a sign face and that overly large signs are not allowed regardless of how large a sign face may be.

Written and oral testimony received by the Planning Commission raised multiple points on the subject of size limits. First, most commenters were not necessarily opposed to placing some limit on the sign size, though some did oppose placing any more restrictive size limits on electronic display signs. Second, stakeholders that were not opposed to the concept of limiting the size of electronic display signs did comment that the proposed limits were too restrictive. Some suggested a size limit of 50-80% of the sign face with no maximum size cap. In response to these comments, the Planning Commission did increase the amount of sign face that could be an electronic display sign from 25% to 50%, and left the 50 sq ft size cap in place.

As an example of signage that could be allowed, the sign in the figure at right is something that could be permitted. The electronic display area comprises approximately 36% of the total sign size, and is approximately 50 sq ft in size.



Surrounding jurisdictions have varying policies on sizes of electronic display signs, summarized in the table below.

Jurisdiction	Allowed Size of Electronic Display Sign
Vancouver, WA	20% of sign area
Canby	25% of sign area
Sherwood	35% of sign area
Hillsboro	Allows 25-50% of sign area, depends on zone/use
Portland	Maximum 20 sq ft per site; allows at least 60% of a sign area
Clackamas Co.	80% of sign area
Tigard	Allowed to same size as all other signs
Sandy	Allowed to same size as all other signs
Newberg	Allowed to same size as all other signs

Among the jurisdictions that have a size limit, the proposed amendments would be generally less restrictive if the sign face is approximately 150 sq ft or less. The proposed ratio of 50% is on the higher end of allowed ratios. Even at 150 sq ft of total sign area, the 50 sq ft size limit still allows 33% of the sign to be an electronic display sign. For larger sign areas of 250 sq ft or more, the 50 sq ft size limit begins to reduce the percentage of the size of the electronic display sign below 20% of the sign area.

Outreach

Staff has used multiple forms of public outreach to inform stakeholders about these amendments. In March, Commissioners Churchill and Gamba presented the proposal regarding allowing electronic display signs downtown to the Historic Milwaukie NDA. In addition to the routine property owner and NDA notifications, staff has contacted local sign companies and affected businesses for comment on the proposal, and discussed the proposal with 9 interested stakeholders.

CONCURRENCE

The Commission initiated this project and supports its goals. The City Attorney’s office has participated in the project to ensure compliance with state law and advise on overall strategy. The Code Enforcement concurs with the amendments with the input that they

Council Staff Report – Sign Code Amendments: Electronic Display Signs
 October 18, 2011
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would prefer not to make existing electronic display signs nonconforming by revising the rate of message changes.

FISCAL IMPACT

None.

WORK LOAD IMPACTS

This project was not on the Planning Department's 2011 work plan. After it was introduced by the Commission due to circumstances in the community, the work plan was adjusted to include this project, displacing time that would have been spent on other projects (including commercial areas planning and the murals proposal). The Commission has been clear throughout this project that a larger effort to improve the City's sign code is needed, and that this project is intended to be a "quick" effort to fill an urgent need.

ALTERNATIVES

Council may wish to revise the proposed regulations that relate to the frequency of message display and the regulations for the size of an electronic display sign. These topics generated comments from stakeholders earlier in the adoption process.

ATTACHMENTS

1. Ordinance
 - Exhibit A: Findings in Support of Approval
 - Exhibit B: Amendments to Title 14, Sign Ordinance: underline/strikeout edits
 - Exhibit C: Amendments to Title 14, Sign Ordinance: clean copy
2. Proposed Code Amendments and Commentary
3. Research on Electronic Display Signs and Traffic Safety
4. Comments Received

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 14, SIGN ORDINANCE; TO REVISE STANDARDS AND REGULATIONS RELATED TO ELECTRONIC DISPLAY SIGNS (FILE #ZA-11-02).

WHEREAS, the City wishes to enable properties to have signage that is attractive and appropriate while preventing unsafe and unattractive signs; and

WHEREAS, the City has become aware of regulations that prohibit electronic signs with changeable copy in areas of downtown; and

WHEREAS, the City desires to place reasonable size limits on electronic signs with changeable copy in commercial and industrial areas of the city; and

WHEREAS, the City Council and Planning Commission directed staff to prepare amendments to address regulations related to electronic signs with changeable copy; and

WHEREAS, notification of the amendments has been provided on the city website, at City facilities, through a press release, to neighborhood leaders, to affected stakeholders, and to parties who own property affected by the proposed amendments; and

WHEREAS, the Planning Commission and City Council have held duly advertised public hearings on the amendments, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes; and

WHEREAS, delay between the adoption and effectiveness of these amendment is likely to result in the installation of unsafe signs;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Findings. Findings of fact in support of the proposed amendments are attached as Exhibit A.

Section 2. Title 14, Sign Ordinance Text Amendment. The Sign Ordinance is amended as described in Exhibit B (underline/strikeout version) and Exhibit C (clean version).

Section 3: Emergency Declared. This ordinance is necessary for the immediate preservation of the peace, health and safety of the City and shall take effect immediately upon passage. Signs are visible from City streets and proper regulation is needed on a Citywide basis to assure public safety.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Document2 (Last revised 2/6/2008)

**Recommended Findings in Support of Approval
Land Use File ZA-11-02**

1. The City of Milwaukie proposes to amend regulations in Title 14, Sign Ordinance, of the Milwaukie Municipal Code (MMC) The land use application for these amendments are ZA-11-02.
2. The purpose of the proposed code amendments is to address the topic of electronic display signs. Specifically, the proposed amendments would allow electronic display signs in limited area of downtown; limit the maximum size of electronic display signs in commercial and industrial areas outside of downtown, control the illumination and manner of display for electronic display signs, and coordinate review of Milwaukie’s sign permit process with the Oregon Department of Transportation’s Outdoor Advertising Sign program
3. The proposed amendments are subject to the following provisions of the MMC:
 - MMC Subsection 19.902.5, Zoning Text Amendments
 - MMC Subsection 19.1008, Type V Review Legislative Actions
4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.

5. Compliance with MMC Subsection 19.902.5, Zoning Text Amendments:

MMC Subsection 19.902.5.B states that Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B may be approved if the following criteria are met:

- A. *The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.*

The City Council finds that the proposed amendments are consistent with other provisions of the Milwaukie Municipal Code. No conflicts have been identified with the proposed amendments to Title 14 affecting electronic display signs and any other provisions of the Milwaukie Municipal Code.

- B. *The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.*

The City Council finds that the proposed amendments are consistent with the following portions of the Comprehensive Plan:

Chapter 4 – Land Use

ECONOMIC BASE AND INDUSTRIAL/ COMMERCIAL LAND USE ELEMENT

Objective #11 — Commercial Land Use: Highway Oriented Center; (3) Development and signage orientation, design, and lighting shall not produce adverse impacts upon adjacent residential areas.

The City Council finds that the proposed amendments help to minimize the impacts created by electronic readerboard signage by limiting the overall size, type of display, and illumination allowed for electronic readerboard signs.

Objective #13 — McLoughlin Boulevard: “To provide for limited highway service uses along McLoughlin Boulevard while improving the visual and pedestrian-oriented linkages between downtown and the Willamette River, and making McLoughlin Blvd. more attractive.”

The City Council finds that the proposed amendments allow signage that is appropriate for highway service uses along McLoughlin Blvd and allowing for replacement of dated signage with attractive, new, and up-to-date signage.

NEIGHBORHOOD ELEMENT

Goal Statement: To preserve and reinforce the stability and diversity of the City’s neighborhoods in order to attract and retain long-term residents and ensure the City’s residential quality and livability.

The City Council finds that the proposed amendments support this goal. Areas where electronic readerboard signs are allowed in Milwaukie are often in close proximity to residential neighborhoods. The proposed amendments help to limit the scale and impacts of such signs to ensure that these areas maintain a good residential quality and a high degree of livability.

Chapter 5- Transportation/Public Facilities/Energy Conservation TRANSPORTATION ELEMENT

Goal 2, Safety: Develop and maintain a safe and secure transportation system.

The City Council finds that the regulations would help to ensure signage that is not distracting or unsafe to persons traveling in the right-of-way.

- C. *The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.*

The City Council finds that there are no portions of the Metro Urban Growth Management Functional Plan or other regional policies that address signage.

- D. *The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.*

The City Council finds that the proposed amendments are consistent with Oregon Revised Statute 377 and Oregon Administrative Rule 734 in that they promote coordination between state requirements for permitting outdoor advertising signs and Milwaukie’s sign permitting. No other provisions of state statutes or rules have been identified as being applicable to the proposed amendments.

- E. *The proposed amendment is consistent with relevant federal regulations*

The City Council finds that there are no relevant federal regulations except those implemented by state statutes for signage along roadways that are applicable to the proposed amendments.

6. Compliance with MMC Subsection 19.1008, Type V Review:

A. Type V Public Notice. The Planning Director notified the City's Neighborhood District Associations on August 15, 2011. On August 12, 2011, 30 days prior to the Planning Commission's first hearing on the amendments, staff posted information about the amendments on the City's website and at 4 City facilities that are open to the public. Staff posted notice 30 days prior to the City Council's hearing at the same facilities and on the website on September 16, 2011. Notice of the proposed amendments were sent to Metro and to the Department of Land Conservation and Development on July 6, 2011. A Measure 56 Notice was sent on August 19, 2011 to property owners for whom the proposed regulations would have an impact on the types of signs allowed.

The City Council finds that the requirements of MMC 19.1008.3 are met.

B. Type V Decision Authority; Recommendation and Decision. The Planning Commission conducted a public hearing on September 13, 2011 and prepared a recommendation to City Council. City Council held a public hearing on October 18, 2011 and its decision on the proposed amendments. City Council finds that the requirements of MMC 19.1008. 4 and 5 are met.

7. The proposed amendments were referred to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and comment. They were discussed at several Planning Commission and City Council meetings. Additionally, the most up-to-date draft of the proposed code amendments and commentary document was posted on the City's web site starting on August 12, 2011. Public comments received, including any City responses, are summarized in the staff report.

Underline/Strikeout Amendments

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; ~~and,~~
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content; ~~and,~~
- K. Coordinate review where multiple agencies have review authority for a sign permit.

14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

Proposed Code Amendment

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign on which the message or display is created by bulbs, light-emitting diodes, liquid crystal displays, plasma display panels, pixel or subpixel technology, or other similar technology.

Sign, Moving. “Moving sign” means a sign with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

Sign, Outdoor Advertising. “Outdoor advertising sign” means a sign that meets the definition of Oregon Revised Statute 377.710(2).

“State highway” means the entire width between the boundary lines of every State highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

14.08.100 SIGNS VISIBLE FROM STATE HIGHWAYS

A proposed sign that would be visible from a State highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a State highway to submit documentation from the Oregon Department of Transportation indicating whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved, or could be conditioned to be approved, by the Oregon Department of Transportation.

CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. ~~Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

CHAPTER 14.16 SIGN DISTRICTS

14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on McLoughlin Blvd, subject to the following standards:
 - a. An electronic display sign may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the following size limitations:
 - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
 - (2) 20 sq ft.

- b. An electronic display sign shall be primarily visible from, and oriented toward, McLoughlin Blvd and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Subsection 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards of Subsection 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing nonconforming sign is allowed subject to the regulations of Subsection 14.28.020.A.3.b.

CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or ~~inferior~~ interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 ~~foot-candles~~ footcandles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light-emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial Zone sign district (Section 14.16.040) and the Manufacturing Zone sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown Zones sign district per Subsection 14.16.060.H.6 and the standards below.

1. Illumination

- a. An electronic display sign may not have an illumination intensity of more than 0.3 footcandles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \frac{\text{sign face area} \times 100}{\text{illumination intensity}}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a solid white screen (for multicolor displays) or a solid single-color screen (for single-color display). To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular to the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a, no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right-of-way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size

An electronic display sign in the Commercial Zone sign district or Manufacturing Zone sign district may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the size limitations below. Size regulations for signs in the Downtown Zones sign district are as described in Subsection 14.16.060.H.6.

- a. 50% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 sq ft.

3. Display

- a. On an electronic display sign with an area of 20 sq ft or less, the message or copy is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. On an electronic display sign with an area of more than 20 sq ft, the message or copy is allowed to change no more than once every 2 minutes. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 sq ft or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

14.28.020 NONCONFORMING SIGN

A. Time Limit

- 1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.

Proposed Code Amendment

2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter, with the following exceptions:
 - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
 - b. The inclusion of an electronic display sign within the existing display area of a nonconforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. Compliance with the following subsections is required regardless of any prior legal nonconforming status of the sign: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. The provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.4

Clean Amendments

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets;
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content; and,
- K. Coordinate review where multiple agencies have review authority for a sign permit.

14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign on which the message or display is created by bulbs, light-emitting diodes, liquid crystal displays, plasma display panels, pixel or subpixel technology, or other similar technology.

Sign, Moving. “Moving sign” means a sign with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

Sign, Outdoor Advertising. “Outdoor advertising sign” means a sign that meets the definition of Oregon Revised Statute 377.710(2).

“State highway” means the entire width between the boundary lines of every State highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

14.08.100 SIGNS VISIBLE FROM STATE HIGHWAYS

A proposed sign that would be visible from a State highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a State highway to submit documentation from the Oregon Department of Transportation indicating whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved, or could be conditioned to be approved, by the Oregon Department of Transportation.

CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians.
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

CHAPTER 14.16 SIGN DISTRICTS

14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on McLoughlin Blvd, subject to the following standards:
 - a. An electronic display sign may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the following size limitations:
 - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
 - (2) 20 sq ft.

- b. An electronic display sign shall be primarily visible from, and oriented toward, McLoughlin Blvd and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Subsection 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards of Subsection 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing nonconforming sign is allowed subject to the regulations of Subsection 14.28.020.A.3.b.

CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 footcandles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light-emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial Zone sign district (Section 14.16.040) and the Manufacturing Zone sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown Zones sign district per Subsection 14.16.060.H.6 and the standards below.
 - 1. Illumination
 - a. An electronic display sign may not have an illumination intensity of more than 0.3 footcandles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \frac{\text{sign face area} \times 100}{\text{illumination intensity}}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a solid white screen (for multicolor displays) or a solid single-color screen (for single-color display). To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular to the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a, no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right-of-way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size

An electronic display sign in the Commercial Zone sign district or Manufacturing Zone sign district may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the size limitations below. Size regulations for signs in the Downtown Zones sign district are as described in Subsection 14.16.060.H.6.

- a. 50% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 sq ft.

3. Display

- a. On an electronic display sign with an area of 20 sq ft or less, the message or copy is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. On an electronic display sign with an area of more than 20 sq ft, the message or copy is allowed to change no more than once every 2 minutes. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 sq ft or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

14.28.020 NONCONFORMING SIGN

A. Time Limit

- 1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.

2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter , with the following exceptions:
 - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
 - b. The inclusion of an electronic display sign within the existing display area of a nonconforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. Compliance with the following subsections is required regardless of any prior legal nonconforming status of the sign: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1.

MMC Title 14, Sign Code Commentary

The purpose of this commentary on the proposed amendments is to explain the purpose and effect of the proposed regulations.

THIS DRAFT INCLUDES ONLY CHAPTERS AND SECTIONS OF CODE WITH PROPOSED AMENDMENTS AND SOME SURROUNDING SECTIONS FOR CONTEXT. CODE SECTIONS NOT INCLUDED IN THIS DRAFT WOULD NOT BE AMENDED.

14.04.020 PURPOSE

K. Include inter-jurisdictional coordination to the purpose section.

14.04.030 DEFINITIONS

"Dissolve" - new definition, describes one method that is allowed for larger electronic display signs to switch between messages.

"Fade" - new definition, describes a second method that is allowed for larger electronic display signs to switch between messages.

"Prohibited electronic display" - new definition, describes manners of display on an electronic display sign that are prohibited. The manners of display listed in this section are based on definitions within Salem's code.

Sign, Changing (Automatic). - a definition proposed for deletion. This definition included signs that have physical moving parts or signs that had electronic messages. New definitions for 'moving sign' and 'electronic display sign' are proposed with the goal of better describing each type of sign.

Sign, Electronic Display. - new definition, intended to cover broad array of electronic signs, LEDs readerboards etc.

Sign, Moving. - new definition, focused on signs that have physically moving parts; based on a portion of the definition for 'changing sign' proposed for deletion.

Sign, Outdoor Advertising - new definition, clarifies that this term, when used in the Milwaukie Municipal Code, refers to the definition established in the ORS.

"State highway" - new definition added for coordination with the ODOT outdoor advertising sign rule. Definition is lifted from ORS 337.

14.08.100 SIGNS VISIBLE FROM STATE HIGHWAYS

New section of code in the administrative provisions, and applies to all signs - not just LED signs. It allows the Planning Director to have the applicant submit documentation from ODOT for any sign visible from a state highway about whether the sign is an outdoor advertising sign and whether the site is legal for an outdoor advertising sign. It also allows

the Planning Director to withhold issuance of a city sign permit unless it is clear that the sign could be approved by ODOT.

14.12.020 PROHIBITED SIGNS

- A. Moving signs ... amendments to existing prohibition, but limits this subsection to signs that physically move. Portions dealing with electronic changing is covered in the new prohibition in "R".
- R. Prohibition that says electronic display signs cannot use any of the prohibited manners of display. This would be a blanket rule for signs downtown and in other parts of the city.

14.16.060 DOWNTOWN ZONES

H. Illumination

- 6. This is a new subsection that sets the location and size regulations for allowing electronic display signs downtown. Electronic display signs would be allowed along McLoughlin Blvd, and would need to be oriented toward that right of way. The electronic display sign would be allowed as part of a larger permitted sign, rather than a standalone sign, and the size limit is the lesser of 20 sq ft or 25% of the overall sign face. These signs would be approvable through staff review of a sign permit, and would not require public notice or discretionary review by the Design and Landmark Committee or Planning Commission.

14.24.020 SIGN LIGHTING

- F. Helps to clarify that other lighting technology not specifically mentioned in the code (i.e., other than incandescent, fluorescent, and neon) can be used for interior or exterior sign lighting, so long as the other regulations of the chapter are met.
- G. Allows electronic display signs are allowed in the Commercial and Manufacturing sign districts, and downtown per Subsection 14.16.060.H.6, so long as they meet the standards in this section.
 - 1. Illumination levels.
 - a. The proposed illumination limits are consistent with literature provided to staff by the International Sign Association. The standard that ODOT recently adopted for their regulation of digital billboards is based on this methodology.
 - b. An automatic adjustment mechanism is required to keep the sign's illumination level consistent with the illumination standards.

- c. This standard allows the Planning Director discretion to require a sign's illumination level, even if it complies with subsection 'a', to be lowered if it presents a safety hazard or is unduly distracting.
 2. Size - electronic display sign would be allowed as part of a larger permitted sign, rather than a standalone sign, and the proposed size limitations for an electronic display sign are the lesser of 50% of the size of the sign face OR 50 square feet.
 3. Display - electronic display signs that are 20 sq ft in size or less can change copy no more than once every 15 seconds. Electronic display signs that are over 20 sq ft can change copy no more than once every 2 minutes. Signs are allowed to switch instantaneously between messages or use a fade or dissolve effect to transition between messages.
- H. Shielding - these requirements would require measure to prevent light pollution for larger sign sizes. This applies only to larger signs with exterior illumination and requires that externally illuminated signs must have their lights oriented horizontally or lower.

14.28.020 NONCONFORMING SIGN

3. Revisions to this section of code. Same basic policy as the current code, with the additional exemption that an electronic display sign can be added if it does not cause the sign to go further out of conformance.
4. Added sign illumination standards as standards that all signs need to comply with, regardless of whether they are/were non-conforming.

THIS DRAFT INCLUDES ONLY CHAPTERS AND SECTIONS OF CODE WITH PROPOSED AMENDMENTS AND SOME SURROUNDING SECTIONS FOR CONTEXT. CODE SECTIONS NOT INCLUDED IN THIS DRAFT WOULD NOT BE AMENDED.

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; ~~and,~~
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content; and,
- K. Coordinate review where multiple agencies have review authority for a sign permit.

14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign on which the message or display is created by bulbs, light-emitting diodes, liquid crystal displays, plasma display panels, pixel or subpixel technology, or other similar technology.

Sign, Moving. “Moving sign” means a sign with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

Sign, Outdoor Advertising. “Outdoor advertising sign” means a sign that meets the definition of Oregon Revised Statute 377.710(2).

“State highway” means the entire width between the boundary lines of every State highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

14.08.100 SIGNS VISIBLE FROM STATE HIGHWAYS

A proposed sign that would be visible from a State highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a State highway to submit documentation from the Oregon Department of Transportation indicating whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved, or could be conditioned to be approved, by the Oregon Department of Transportation.

CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. ~~Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~

R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

CHAPTER 14.16 SIGN DISTRICTS

14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on McLoughlin Blvd, subject to the following standards:
 - a. An electronic display sign may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the following size limitations:

- (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- (2) 20 sq ft.
- b. An electronic display sign shall be primarily visible from, and oriented toward, McLoughlin Blvd and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Subsection 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards of Subsection 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing nonconforming sign is allowed subject to the regulations of Subsection 14.28.020.A.3.b.

CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or ~~inferior~~ interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 ~~foot candles~~ footcandles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light-emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial Zone sign district (Section 14.16.040) and the Manufacturing Zone sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown Zones sign district per Subsection 14.16.060.H.6 and the standards below.

1. Illumination

- a. An electronic display sign may not have an illumination intensity of more than 0.3 footcandles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \sqrt{\text{sign face area} \times 100}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a

solid white screen (for multicolor displays) or a solid single-color screen (for single-color display). To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular to the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a, no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right-of-way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size

An electronic display sign in the Commercial Zone sign district or Manufacturing Zone sign district may be included only as part of a larger sign, and the electronic display portion of the sign is subject to the more restrictive of the size limitations below. Size regulations for signs in the Downtown Zones sign district are as described in Subsection 14.16.060.H.6.

- a. 50% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 sq ft.

3. Display

- a. On an electronic display sign with an area of 20 sq ft or less, the message or copy is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. On an electronic display sign with an area of more than 20 sq ft, the message or copy is allowed to change no more than once every 2 minutes. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 sq ft or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

14.28.020 NONCONFORMING SIGN

A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter- with the following exceptions:
 - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
 - b. The inclusion of an electronic display sign within the existing display area of a nonconforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. Compliance with the following subsections is required regardless of any prior legal nonconforming status of the sign: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. The provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Guidance on
Off-Premise Changeable Message Signs

Date: September 25, 2007

From: Original signed by:
Gloria M. Shepherd
Associate Administrator for
Planning, Environment, and Realty

In Reply Refer To:
HEPR -20

To: Division Administrators
Attn: Division Realty Professionals

Purpose

The purpose of this memorandum is to provide guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). Those Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. **Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.**

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d)(5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

Background

The HBA requires States to maintain effective control of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960's and the early 1970's.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that FHWA has "always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual Federal/State agreements." It was expressly noted that "in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind". The 1996 Memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs "regardless of the type of technology used" are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the 1996 Memorandum.

The policy espoused in the 1996 Memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

Discussion

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This Guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any question that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, Divisions should consider all relevant information, including but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by Divisions to date, contain some or all of the following standards:

- Duration of Message
 - Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.
- Transition Time
 - Transition between messages is generally between 1 and 4 seconds – 1-2 seconds is recommended.
- Brightness
 - Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- Spacing
 - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
 - Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, our Office is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information, please contact your Office of Real Estate Point of Contact or Catherine O'Hara (Catherine.O'Hara@dot.gov).

**“DYNAMIC” SIGNAGE:
RESEARCH RELATED TO DRIVER DISTRACTION
AND
ORDINANCE RECOMMENDATIONS**

Submitted by
SRF Consulting Group, Inc.

Prepared for
City of Minnetonka
June 7, 2007

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ATTACHMENT 5

Increasingly complex traffic and roadway environments require greater attention to and focus on the driving task.

The purpose of this study is to understand what existing transportation research tells us about the effects of dynamic signs on motorists. This study also explores regulatory measures enacted in other jurisdictions to address concerns related to driver distraction. Due to time and scope constraints, this report is not comprehensive, but rather addresses the most frequently cited and easily accessible information available. The report concludes with a discussion of regulatory options for the City of Minnetonka to consider in their formulation of policies to address dynamic signage.

Information collected for this report draws from a variety of sources including interviews with subject matter experts, government and academic research, and policies developed to regulate various types of signage.

Several city and county sign ordinances were used as references for policy and regulatory research. In some cases, ordinances were brought to our attention by planners and others following the sign ordinance issue. In others, Internet searches were conducted using words and references that apply specifically to dynamic signs.

Several sign manufacturers and sign companies provided an industry perspective through a workshop with the SRF Consulting Group and the City of Minnetonka staff on February 27, 2007. This meeting yielded information about sign characteristics that can be addressed through policy and regulatory measures. Daktronics, a company that manufactures and markets LED signs, was also helpful in this regard, providing informational materials about characteristics of signs that can be regulated and examples of city sign ordinances with which they are familiar.

3.0 SELECTED RESEARCH FINDINGS

This following section presents a summary of expert opinions and selected driver distraction research conducted by government and academic researchers examining roadside signage and its effects on the driving task. Studies are organized around critical questions with serious research ramifications.

- *Is there reason to believe that billboards are a source of distraction?*
- *Is there reason to believe that "dynamic" billboards are an additional source of distraction?*
- *How much distraction is a problem?*
- *How does "brightness" affect driver safety concerns?*
- *How should billboards and other signage be regulated from a driver safety perspective?*

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1.0 INTRODUCTION

This study was precipitated by concerns raised by the City of Minnetonka, Minnesota in regard to the installation of two LED ("light emitting diode") billboards along Interstate 394 and Interstate 494. The LED function was applied to two existing "static" image billboards located adjacent to the interstate. Following installation of the LED function, the City turned off the power to the signs through a stop work order based on current city ordinance prohibiting flashing signs, which is broadly defined, as well as permitting requirements for the retrofitting of the signs to the upgraded technology. The billboard owner sued the City, and the court response to this legal action as of the writing of this study has been to allow limited use of the LED billboards. A moratorium on further signage of this type was established by the City to facilitate the study of issues related to driver distraction and safety and appropriate regulatory measures for LED and other types of changeable signage.

This study was undertaken on behalf of the City of Minnetonka to examine these issues. While the concerns were precipitated by LED billboards in particular, this report examines more broadly "dynamic" display signage which is defined as any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking, or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays. These capabilities may be provided by a variety of technologies which are discussed later in this report.

As the study progressed, additional communities within the Twin Cities Metropolitan Area, as well as the League of Minnesota Cities, expressed interest in these issues. However, it is not the intention of this report to provide a comprehensive study of all issues raised by dynamic signage, or other types of billboards, but rather to focus narrowly on the issues of concern to the City of Minnetonka.

2.0 PURPOSE OF STUDY AND METHODOLOGY

Driving a motor vehicle is a complex task that requires the ability to divide one's attention. Simultaneously maintaining a steady and legal speed, changing lanes, navigating traffic and intersections, reading and interpreting street signs, drivers are often challenged by conditions that can change in the blink of an eye. Internal and external physical conditions can affect how safely the driving task is accomplished. Drug or alcohol intoxication, fatigue and/or distractions in the driving environment all can play a role in motor vehicle crashes. However, these conditions are rarely the sole reason for a crash. Rather, these conditions serve to exacerbate an already-complex driving environment and subsequent mistakes in judgment can lead to crashes.

3.1 Expert Opinions

A combination of researchers and public policy experts were interviewed for this study. Individuals were identified while conducting background research into driver distraction and were interviewed because of their credibility in the field.

Kathleen Harder, a researcher at the University of Minnesota, has conducted driver distraction research for a variety of applications, including research for Mn/DOT. She is an expert in the field of human factors and psychology. She indicated that electronic billboards pose a driver distraction threat because of their ability to display high resolution color images, their ability to change images, and their placement in relationship to the roadway, particularly in areas where the road curves, exits and entrances are present, merges, lane drops, weaving areas, key locations of official signs, and/or areas where roadways divide.

Greg Davis, a researcher with the FHWA Office of Safety Research and Development, in Washington, DC was involved in the 2001 FHWA study on electronic billboards. He was interviewed to gain a deeper understanding of this critical study and to learn of recent research in this area. Davis stated that while no research has established a direct cause and effect relationship between electronic outdoor advertising signs and crash rates, the lack of such a research finding does not preclude a causal relationship between electronic billboards and crashes. He advocated for a new study that can control all variables and determine if a cause and effect relationship exists.

Scott Robinson, an outdoor advertising regulator for Mn/DOT, wrote the 2003 technical memorandum that addresses allowable changes for outdoor advertising devices. Mr. Robinson indicated that the memo was originally written in 1998 to establish a permitted rate of change for tri-vision signs and that the application to electronic billboards was not considered. The minimum change rate of 4.9 seconds for 70 mph roadways and 6.2 seconds for 55 mph roadways was based on the travel time between static signs spaced at the minimum allowed distance apart. Mr. Robinson also indicated that the memo is not a Mn/DOT policy, statute or rule, but rather it was written to provide internal guidance.

Jerry Wachtel, an Engineering Psychologist and highway safety expert in private practice, was the lead author for the FHWA's original (1980) study on electronic billboards. He has continued his active involvement in this field, and advises Government agencies as well as the outdoor advertising industry on sign ordinances, sign operations, and the implications of the latest research on road safety. Mr. Wachtel believes that it is neither feasible from the perspective of research design and methodology, nor necessary from a regulatory perspective, to demonstrate a causal relationship between digital billboards and road safety. Rather, he believes that we have a strong understanding, based on many years of research, of driver information processing capabilities and limitations, and of the contributions to, and consequences of, driver distraction, on crash risk; and that this understanding is sufficient to support development of guidelines and ordinances for the design, placement, and operation of digital billboards so as to lessen their potentially adverse impact on road safety and traffic operations.

Wachtel also offered comments on drafts of this report. In later conversations related to his review, Wachtel stated his belief that even though visual fixations on roadway signs decrease as route familiarity increases, a strength of the new digital billboards is that they can present messages *that are always new*. Thus, the conclusion from the 1980 FHWA study is another argument against these billboards; namely, drivers spend more time looking at the unfamiliar signs than at familiar ones, suggesting digital billboards are more dangerous than traditional fixed billboards. Wachtel also suggested his preference for a goal to have any given driver experience only one, or a maximum of two, messages from an individual roadside sign.

3.2 Billboards: a Source of Driver Distraction?¹

The purpose of a sign is to attract the attention of passersby so that a message is conveyed. To the degree signs attract the attention of vehicle drivers, they may distract them from the activity of driving. While this report primarily examines the impact of *dynamic* roadside advertising, the role traditional *static* advertising plays in driver distraction is discussed below.

The relationship between roadside advertising and crash rates has been the subject of several studies. The majority of this research was conducted in the 1950s, 60s and 70s. While some of the earliest studies have been subsequently criticized for flawed methodologies and improper statistical techniques, some findings emerge when the totality of the studies are examined. One of these findings is that the correlation between crash rates and roadside advertising is strongest in complex driving environments. For example, higher crash rates were found at intersections (generally considered a complex environment) that have advertising than those intersections that do not have advertising. A few of the studies that are important in this field are summarized below.

Minnesota Department of Transportation Field Study (1951) and Michigan State Highway Department Field Study (1952)²

These two studies from the early 1950s used similar methods but came to significantly different conclusions. Recognized as the more scientifically rigorous study, the Minnesota study found that increases in the number of advertising signs per mile are correlated with increases in motor vehicle crash rates. It also found that intersections with at least four advertising signs experienced three times more crashes than intersections with no advertising signs. Conversely, the less rigorous Michigan study found the presence of advertising signs had no effect on the number of crashes.

Iowa State College, Do Road Signs Affect Accidents? (Lauer & McMonagle, 1955)³

A laboratory test was created to determine the effect of advertising signs on driver behavior. The results of this study found removing all advertising signs from the driver's field of vision did not improve driver performance. When signs were included, driver performance was slightly better. Note that laboratory methods used in this study are considered to be dated by today's standards.

Faustman (California Route 40) Field Study (1961)⁴ and Federal Highway Administration, Reanalysis of Faustman Field Study (1973)⁵

Two studies that appear to have stood the test of time are Faustman's original analysis of California Route 40 and its re-examination by FHWA more than a decade later. The original analysis tried to improve upon previous research by limiting variables, such as roadway geometric design and roadway access controls. The FHWA reanalysis focused on disaggregating the data and converting actual crashes to expected crash rates on specific roadway sections. Each of the sections was given a value based on the number of billboards on the section. A linear regression was performed to determine the expected crash rates. An analysis of variance of the regression coefficients found that the number of billboards on a section was statistically significant. The reanalysis found a strong correlation between the number of billboards and crash rates as shown in Table 1.

Table 1. FHWA Reanalysis of Faustman's Findings.

No. of Billboards	Expected No. of Accidents in a 5-year Period	Cumulative Increase in Accident Rate
0	5.92	
1	6.65	12.3
2	7.38	24.2
3	8.11	37.0
4	8.84	49.3
5	9.57	61.7

**Federal Highway Administration
Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signage (Wachtel & Netherton, 1980)⁶**

This extensive review provides a comprehensive discussion of roadside advertising research as of 1980. The study authors noted "attempts to quantify the impact of roadside advertising on traffic safety have not yielded conclusive results." The authors found that courts typically rule on the side of disallowing billboards because of the "readily understood logic that a driver cannot be expected to give full attention to his driving tasks when he is reading a billboard." Because the distraction evidence is not conclusive, these decisions were generally not based on empirical evidence.

The research review noted that accident reports often cite "driver distraction" as a default category used by uncertain law enforcement officers who must identify the cause of a crash. As a result, the authors believe crashes due to driver distraction are not always properly identified. In addition, law enforcement officers often fail to indicate the precise crash locations on crash reports, making it difficult to establish relationships between crashes and roadside features.

Accident Research Unit, School of Psychology, University of Nottingham
Attraction and distraction of attention with roadside advertisements (Crundall et al., 2005)⁷

This research used eye movement tracking to measure the difference between street-level advertisements and raised advertisements in terms of how they held drivers' attention at times when attention should have been devoted to driving tasks. The study found that street-level advertising signs are more distracting than raised signs.

3.3 “Dynamic” Billboards: an Additional Source of Distraction?

Signage owners or leasers want to incorporate dynamic features into their signage for a number of reasons: to enhance the sign's ability to attract attention, to facilitate display of larger amounts of information within the same sign area, to conveniently change message content, and to enhance profitability. As mentioned earlier, this report uses the term “dynamic” signs to refer to non-static signs capable of displaying multiple messages. Several studies documented the ability of a sign to accomplish the first of these goals.

University of Toronto
Observed Driver Glance Behavior at Roadside Advertising Signs (Beijer & Smiley, 2004)⁸

Research done at the University of Toronto compared driver behavior subject to passive (static) and active (dynamic) signs. The study found that about twice as many glances were made toward the active signs than passive signs. A disproportionately larger number of long glances (greater than 0.75 seconds) taken were toward the active signs. The duration of 0.75 seconds is important because it is close to the minimum perception-reaction time required for a driver to react to a slowing vehicle. For vehicles with close following distances, or under unusually complex driving conditions, a perception delay of this length could increase the chance of a crash. The following findings were reported in this study:

- 88% of the subjects made long glances (greater than 0.75 seconds).
- 22% of all glances made at all signs were long glances (greater than 0.75 seconds).
- 20% of all the subjects made long glances of over two seconds.
- As compared to static and scrolling text signs, video and tri-vision signs attracted more long glances.
- Video and scrolling text signs received the longest average maximum glance duration.
- All three of the moving sign types (video, scrolling text and tri-vision) attracted more than twice as many glances as static signs.

University of Toronto

Impact of Video Advertising on Driver Fixation Patterns (Smiley et al., 2001)⁹

Another study completed at the University of Toronto used similar eye fixation information in urban locations to show that drivers made roughly the same number of glances at traffic signals and street signs with and without full-motion video billboards present. This may be interpreted to mean that while electronic billboards may be distracting, they do not appear to distract drivers from noticing traffic signs. This study also found that video signs entering the driver's line of sight directly in front of the vehicle (e.g., when the sign is situated at a curve) are very distracting.

City of Seattle Report (Wachtel, 2001)¹⁰

The City of Seattle commissioned a report in 2001 to examine the relationship between electronic signs with moving/flashing images and driver distraction. The report found that electronic signs with moving images contribute to driver distraction for longer intervals than electronic signs with no movement. Following are major points made in the report:

- New video display technologies produce images of higher quality than previously available technologies. These signs have improved color, image quality and brightness.
- New video display technologies use LEDs with higher viewing angles. Drivers can read the sign from very close distances when they are at a large angle from the face of the sign.
- Signs with a visual story or message that carries for two or more frames are particularly distracting because drivers tend to focus on the message until it is completed rather than the driving task at hand.
- Research has shown that drivers expend about 80 percent of their attention on driving related tasks, leaving 20% of their attention for non-essential tasks.
- The Seattle consultant suggests a "10 second rule" as the maximum display time for a video message.

The expanded content of a dynamic sign also contributes to extended distraction from the driving task. The Seattle Report examined how this may be due in part to the *Zeigarnik effect* which describes the psychological need to follow a task to its conclusion. People's attention is limited by the ability to only focus on a small number of tasks at a time, and by the tendency to choose to complete one task before beginning another. In a driving environment, drivers' attention might be drawn to the sign rather than the task of driving because they are waiting to see a change in the message. This loss of attention could lead to unsafe driving behaviors, such as prolonged glances away from the roadway, slowing, or even lane departure.

While the Zeigarnik effect may be present in a wide variety of driving situations, possible scenarios that could affect drivers include:

- A scrolling message requires the viewer to concentrate as the message is revealed. Based on the size and resolution of the sign, and the length of the message, this could range from less than one second to many seconds.
- A sequence of images or messages that tell a story, during which the driver's attention may be captured for the entire duration that the sign is visible. Instead of merely glancing at the sign and then returning concentration to the driving task, more attention may be given to the message.
- Anticipation of a new image appearing, even if the expected new image is not related to the first image. In this case, the driver may be distracted while waiting for the change.

Federal Highway Administration

Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signage (Wachtel & Netherton, 1980)¹¹

This research provides information on the use of on-premise Commercial Electronic Variable-Message Signs (CEVMS) that display public service information (i.e., time and temperature) and advertising messages along the Interstate highway system. The research found the following major considerations:

- **Highway Safety Considerations**

The link between changing messages that attract drivers' attention and crashes has been an issue of concern since the earliest forms of electronic signage became available. This study thoroughly reviewed the literature seeking information regarding a potential link between CEVMS and crashes:

“Although a trend in recent findings has begun to point to a demonstrable relationship between CEVMS and accidents, the available evidence remains statistically insufficient to scientifically support this relationship.”

The study also noted that studies have not documented information about “such occurrences as ‘near misses’ or traffic impedances that are widely recognized as relevant to safety, and which may or may not be attributable to the presence of roadside advertising.”

- **Human Factors Considerations**

Human factors relate to all the elements that explain driver behavior, such as eye glances and driver responses to a variety of driving-related stimuli. The study makes the point that simple driving-related tasks consume relatively little information processing capacity. However, when other conditions, such as congestion, complicated roadway geometries, or weather are also considered, the marginal extra

amount of attention required to read roadside advertisements could lead to driving errors that could cause crashes.

"The enormous flexibility of display possessed by CEVMS makes it possible to use them in ways that can attract drivers' attention at greater distances, hold their attention longer, and deliver a wider variety of information and image stimuli than is possible by the use of conventional advertising signs."

Texas Transportation Institute for FHWA, Impacts of Using Dynamic Features to Display Messages on Changeable Message Signs (Dudek et al., 2005)¹²

This study examined the comprehension times for three different scenarios for DOT-operated changeable message signs. The scenarios evaluated were:

- Flashing an entire one-phase message
- Flashing one line of a one-phase message while two other lines of the message remain constant
- Alternating text on one line of a three-line CMS while keeping the other two lines of text constant on the second phase of the message

The findings of this study were:

- Flashing messages did not produce faster reading times.
- Flashing messages may have an adverse effect on message comprehension for unfamiliar drivers.
- Average reading times for flashing line messages and two-phase messages were significantly longer than for alternating messages.
- Message comprehension was negatively affected by flashing line messages.

While this research did not evaluate advertising-related signs, it does demonstrate that flashing signs require more of the driver's time and attention to comprehend the message. In the case of electronic billboards, this suggests that billboards that flash may require more time and attention to read than static ones.

3.3.1 OTHER INFORMATION

NHTSA Driver Distraction Internet Forum (2000)¹³

The National Highway Traffic Safety Administration held an internet forum to gather research and public comment related to driver distraction with an emphasis on the use of cell phones, navigation systems, wireless Internet and other in-vehicle devices. During this forum, participants were invited to take a poll to determine the most prominent driver

distraction issues. Electronic billboards were identified as one of six noted sources of distraction.

Parliament of Victoria, Australia, Report of the Road Safety Committee on the Inquiry into Driver Distraction (2006)¹⁴

This report identified road signs and advertising as one of the largest sources of driver distraction. At least three billboards near Melbourne, Australia display moving images.

"The Committee considers these screens to be at the high end of potential visual distraction and accordingly, present a risk to drivers."

The study also included a quote from the Manager of the Road User Behaviour group at VicRoads (the State's road and traffic authority) from a December 2005 hearing:

What we do know is when there is movement involved, such as flicker or movement in the visual periphery, that this is more likely to capture a driver's attention. We actually are hard-wired as human beings to movement, so particularly moving screens and information that scrolls at intersections and in highly complex driving situations – these are risky, and in particular researchers have been most concerned about those sort of advertising materials.

This opinion would suggest that electronic signs can present a distraction to drivers.

3.4 How Much Distraction Is a Problem?

A number of studies were identified that discussed concerns with driver distraction generally. It should be noted that some of the studies cited use specific crash data that is ten or more years old. Direct comparison of distraction sources to influences of today may not be completely valid due to increased technological sophistication of distracting influences. These could include in-vehicle technology (e.g., navigation systems, MP3 players, DVD players, CD players, computer systems, etc.) as well as other potentially distracting influences (e.g., cell phones, text messaging, dynamic signage, other roadway elements, etc.) that were not commonplace when the data for these studies was collected:

**Australian Road Research Board
Investigations of Distraction by Irrelevant Information (Johnston & Cole, 1976)**¹⁵

This research used five experiments to test whether drivers could maintain efficient performance in their driving tasks while being subjected to content that was information rich, but irrelevant to driving. The findings were that a small, but statistically significant amount of performance degradation was observed when the participant was under a critical load of stimuli.

National Highway Traffic Safety Administration/ Virginia Tech Transportation Institute

Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data (Klauer et al., 2006)¹⁶

This study analyzed the data from a driving database developed by the National Highway Traffic Safety Administration. This database contained exhaustive data recorded by instrumented vehicles that measured glance position, impairment, drowsiness, risk taking and many other parameters potentially involved in crash causation. Vehicles were instrumented so that an observer did not need to be in the vehicle to collect data. Automated data collection reduced the problem of an observer influencing driver behavior. The study found that glances of two seconds or greater doubled the risk of crashes or near-crashes. The study also found that 22 percent of crashes are accompanied by "secondary-task" distraction whether inside or outside the vehicle.

National Highway Traffic Safety Administration/ Virginia Tech Transportation Institute

Driver Inattention is a Major Factor in Serious Traffic Crashes (2001)¹⁷

The National Highway Traffic Safety Administration commissioned a study to examine the causes of crashes. The study gathered information from four areas throughout the country and used data from the National Automotive Sampling System (NASS) from April 1996-April 1997 for analysis. The geographic areas were selected because they had good crash investigation practices and high interview completion rates. The results of this study are summarized in Table 2.

Table 2. Crash Causation Summary

Causal Category	Percentage of Drivers Contributing to Causation
Driver Inattention	22.7
Vehicle Speed	18.7
Alcohol Impairment	18.2
Perceptual Errors	15.1
Decision Errors	10.1
Incapacitation	6.4
Other	8.8

Association for the Advancement of Automotive Medicine

The Role of Driver Inattention in Crashes; New Statistics from the 1995 Crashworthiness Data System (Wang, 1996)¹⁸

This report analyzed the NHTSA 1995 Crash Worthiness Data System (CDS). It found that the greatest source of driver distraction (3.2 percent) was due to a specified person, object or event outside the vehicle. The full results of the study are presented in Table 3.

Table 3. Percentage of CDS Crashes Involving Inattention-Distraction Related Crash Causes

Data Element	% of Drivers	% of Crashes
Attentive or not distracted	46.6%	28.4%
Looked but did not see	5.6%	9.7%
Distracted by other occupant [specified]	0.9%	1.6%
Distracted by moving object in vehicle [specified]	0.3%	0.5%
Distracted while dialing, talking, or listening to cellular phone [location and type of phone specified]	0.1% [@]	0.1% [@]
Distracted while adjusting climate controls	0.2% [@]	0.3% [@]
Distracted while adjusting radio, cassette, CD [specified]	1.2%	2.1%
Distracted while using other device/object in vehicle [specified]	0.1%	0.2%
Sleepy or fell asleep	1.5%	2.6%
Distracted by outside person, object, or event [specified]	2.0%	3.2%
Eating or drinking	0.1%	0.2%
Smoking-related	0.1%	0.2%
Distracted/inattentive, details unknown	1.5%	2.6%
Other distraction [specified]	1.3%	2.2%
Unknown/No Driver	38.5%	46.0%

Weighted driver N = 4,627,000 (7,943, unweighted); weighted crash N = 2,619,000 (4,536);
 In order for a crash to be classified "attentive," all involved drivers had to be classified "attentive."
[@] - estimate based on 5-9 cases.

**University of North Carolina Highway Safety Research Center
 The Role of Driver Distraction in Traffic Crashes (Stutts et al., 2001) ¹⁹**

A study prepared by the University of North Carolina Highway Safety Research Center for the AAA Foundation for Traffic Safety examined the sources of driver distraction in traffic crashes. The data came from the CDS from 1995-1999. Of the thirteen specific sources of distraction tracked by the study, the greatest source of distraction was an outside person, object or event. While the study does not break down the sources of outside distraction, it does show that distractions outside the vehicle are the largest factor in distraction-related crashes. The results of this study are presented in Table 4.

Table 4. Specific Sources of Distraction Among Drivers in Distraction-Related Crashes

Specific Distraction	Percentage of Drivers
Outside person, object or event	29.4
Adjusting radio, cassette, CD	11.4
Other occupant in vehicle	10.9
Moving object in vehicle	4.3
Other device/object brought into vehicle	2.9
Adjusting vehicle/climate controls	2.8
Eating or drinking	1.7
Using/dialing cell phone	1.5
Smoking related	0.9
Other distraction	25.6
Unknown distraction	8.6
Total	100.0

Three studies were found which attempted to measure driver behavior specifically in response to dynamic signage. Two of these studies demonstrated a potential relationship between dynamic signage and crash rates:

Minnesota Department of Transportation, The Effectiveness and Safety of Traffic and Non-Traffic Related Messages Presented on Changeable Message Signs (CMS) (Harder, 2004) ²⁰

This study used a driving simulator to measure the effect of Department of Transportation changeable message signs on traffic flow. The two messages evaluated were a “crash ahead” warning and an AMBER Alert (child abduction information). The research found that just over half of the participants used the “crash ahead” message and 60 percent could recall the AMBER Alert with scores of Good or Better. Over one fifth of the participants slowed down by at least 2 mph upon seeing the AMBER Alert, demonstrating that messages relevant to drivers are associated with changes in at least some drivers’ travel speed .

Decision of the Outdoor Advertising Board in the Matter of John Donnelly & Sons, Permittee, Telespot of New England, Inc., Intervenor, and Department of Public Works, Intervenor, with Respect to Permit Numbered 19260 as Amended (1976) ²¹

This proceeding documents the Commonwealth of Massachusetts Outdoor Advertising Board’s ruling regarding one of the first changeable signs. This sign was located near an arterial road in Boston and used magnetic discs to portray a message that changed every 30 seconds. The original sign permit was rejected based on four criteria, one of which was safety. Upon appeal, the Massachusetts Department of Public Works allowed the permit based on the fact that the sign would give the public a benefit. However, they ultimately determined that the sign was a safety hazard based on crash rates before and after the sign was installed. Tables 5 and 6 show the change in crash rates.

Table 5. Telespot Sign Crash Rates - Expressway Southbound

	Average per year (1/1/1970-12/31/1972)	Average per year (1/1/1973-3/31/1975)	Average Percent Change
Crashes where the sign was viewable (north of sign)	29.0	20.0	-31.0
Crashes where the sign was not viewable (south of sign)	39.0	15.6	-60.0

Table 6. Telespot Sign Crash Rates - Expressway Northbound

	Average per year (1/1/1970- 12/31/1972)	Average per year (1/1/1973- 3/31/1975)	Average Percent Change
Crashes where the sign was viewable (south of sign)	46.3	42.7	-7.8
Crashes where the sign was not viewable (north of sign)	8.0	1.8	-77.5

This analysis shows that while crash rates decreased on comparable sections in the years after the sign was installed, the sections where the sign was visible experienced smaller crash rate decreases. Due to these arguments, the Board ruled that the operation of the sign must be terminated.

**Wisconsin Department of Transportation
Milwaukee County Stadium Variable Message Sign Study – Impacts of an Advertising Variable Message Sign on Freeway Traffic (1994)**²²

A study prepared by the Wisconsin Department of Transportation (WisDOT) examined crash rates before and after an advertising variable message sign was installed in 1984 on the Milwaukee County Stadium, home of the Milwaukee Brewers professional baseball team. Crash statistics were analyzed for the three years before and the one and three years after the sign was installed. As they are often associated with driver distraction, side-swipe and rear-end crashes, as well as total crashes, were examined for both the eastbound and westbound directions. The sign was much more visible to eastbound traffic due to the stadium's proximity to the roadway and the amount of visual obstructions for westbound traffic.

The analysis found an increase in crash rates for all crash types in the eastbound direction after the sign was installed. Most pronounced was an 80 percent increase in side-swipe crashes after the first year of installation. Results in the westbound direction were mixed, with a 29 percent decrease in crashes the first year the sign was in place and a 35 percent increase in the three years the sign was in place. Although no control roadway sections were studied, an interview with the study author revealed that the introduction of a sign on a high volume curving roadway may have introduced enough distraction to an already demanding driving environment to explain the higher crash rate in the eastbound direction. The study author also stated that the study was not able to establish a causal relationship between the sign and the crash rates.²³

**Federal Highway Administration
Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction (2001)**²⁴

The Federal Highway Administration published a comprehensive report in 2001 that consisted of a literature search, literature review and a description of research needs for

the topic of electronic billboards (EBBs). While the study did not conduct any new research, it does provide an excellent summary of the role electronic billboards play in traffic safety and includes good descriptions of the terminology related to electronic billboards. Selected findings from that synthesis are provided below:

"In most instances, researchers were not able to verify that an EBB was a major factor in causing a crash. Only one study since the 1980 review and one lawsuit were identified."

"Studies were identified that verified that: an increase in distraction, a decrease in conspicuity, or a decrease in legibility may cause an increase in the crash rate."

"Commercial EBBs are designed to 'catch the eye' of drivers. Their presence may distract drivers from concentrating on the driving task and visual surrounds."

"There is indication that individual differences in age and driving experience may be important considerations in driver distraction, and are relevant to understanding driver responses to the external environment. Furthermore, research regarding driver familiarity of their route demonstrated that visual fixations on roadway signs decreases as route familiarity increases. This research may show that there is a difference between commuter and visiting drivers."

Based on these findings, the FHWA recommended additional research to further demonstrate how roadway characteristics, sign characteristics and legibility, driver characteristics and other potential driver distractions affect traffic safety. FHWA was contacted to see if any new information was available. Greg Davis, a Research Psychologist with the FHWA Office of Safety R&D, indicated that the FHWA has not performed additional studies on the topic since the report was published. He stated that there is "no direct correlation between electronic outdoor advertising signs and crash rates". He referred to a before/after study of electronic signs installed along a freeway in Las Vegas that found no change in crash rates. He went on to say that the lack of a research finding that links signs with crash rates does not mean that a causal relationship does not exist. He indicated that he has been contacted by several law enforcement agencies regarding the link between driver distraction and dynamic message signs/electronic billboards. He indicated that this is a timely and pertinent topic for many states due to the increasing popularity and capabilities of electronic outdoor advertising devices, and he expects further research to be forthcoming. He advocates for a new study that can control for all variables and determine if a cause and effect relationship exists.²⁵

3.5 How Does "Brightness" Affect Driver Safety Concerns?

The brightness of any sign, static or dynamic, raises concerns with discomfort or disability glare to the driver that may arise when viewing any lighted object. *Disability Glare* occurs when a

driver is exposed to a light source so bright that it temporarily blinds the driver, impairing their ability to perform driving tasks. This temporary blindness is brief, but can be dangerous. *Discomfort Glare* occurs when a light source is bright enough to distract or encourage the driver to look away from the light, but is not blinding. Discomfort glare is of particular concern in cases where a bright sign is located in the same line of sight as a traffic sign, signal or another vehicle.

While concerns about glare are not unique to dynamic signs, newer sign technologies, which often include dynamic components, have the technical capability to emit more light and/or respond to ambient light conditions, raising additional concerns about sign brightness in areas where signs compete with regulatory traffic signs or signals.

3.6 Billboards and Other Signage Regulation: a Minnesota Perspective

Roadside signage is governed by policies and laws at the federal, state and local levels. Minnesota Statute, Chapter 173 seeks to “reasonably and effectively regulate and control the erection or maintenance of advertising devices on land adjacent to such highways.” The statute requires adherence to federal statutes with respect to interstate and primary systems of highways.

Minnesota Statute Ch. 173.16 Subd. 3. regulates lighting of signs. Signs which are “illuminated by any flashing light or lights, except those giving public service information” (time, date, temperature, weather or news) are prohibited. This section also states:

(b) Advertising devices shall not be erected or maintained which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway, of such intensity or brilliance as to cause glare or impair the vision of the operator of any motor vehicle; or which otherwise interfere with any driver’s operation of a motor vehicle are prohibited.

and

(c) Outdoor advertising devices shall not be erected or maintained which shall be so illuminated that they interfere with the effectiveness of or obscure any official traffic sign, device or signal.

3.7 Billboard and Other Signage Regulation: Other Perspectives

During the course of this study, several articles were found which summarize regulation of dynamic signage in other states:

**Wisconsin Department of Transportation
Electronic Billboards and Highway Safety (2003) ²⁶**

The Wisconsin Department of Transportation also published a literature review report to further explain the current state of EBB research. Although much of the information is

mentioned in other sections of this report, the Wisconsin review did summarize Wisconsin's regulations for electronic billboards.

- No message may be displayed for less than one-half second;
- No message may be repeated at intervals of less than two seconds;
- No segmented message may last longer than 10 seconds;
- No traveling message may travel at a rate slower than 16 light columns per second or faster than 32 columns per second (light column defined as pixel column);
- No variable message sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility.

National Alliance of Highway Beautification Agencies (1999) ²⁷

Although this survey is eight years old, it generated the following information related to electronic billboards:

- Nine states had specific regulations governing signs,
- Nine states had regulations on tri-vision signs that were either being drafted or in pending legislation,
- Fifteen states had regulations regarding moving parts and/or lights,
- Nine state had no regulations on tri-vision signs, and
- Six states and Washington, DC, prohibited tri-vision signs.

An investigation into state outdoor advertising regulations was also conducted.

- Thirty-six states had prohibitions on signs with red, flashing, intermittent, or moving lights,
- Twenty-nine states prohibited signs that were so illuminated as to obscure or interfere with traffic control devices, and
- Twenty-nine states prohibited signs located on interstate or primary highway outside of the zoning authority of incorporated cities within 500 ft of an interchange or intersection at grade or safety roadside area.

Parliament of Victoria, Australia, Report of the Road Safety Committee on the Inquiry into Driver Distraction (2006) ²⁸

This report, cited earlier for its driver distraction opinions, identifies road signs and advertising as one of the largest sources of driver distraction. VicRoads, the state's road and traffic authority, has implemented the following regulations.

Figure 1. VicRoads' Ten Point Road Safety Checklist

An advertisement, or any structure, device or hoarding for the exhibition of an advertisement, is considered to be a road safety hazard if it:

1. obstructs a driver's line of sight at an intersection, curve or point of egress from an adjacent property; or
2. obstructs a driver's view of a traffic control device, or is likely to create a confusing or dominating background which might reduce the clarity or effectiveness of a traffic control device; or
3. could dazzle or distract drivers due to its size, design or colouring, or it being illuminated, reflective, animated or flashing; or
4. is at a location where particular concentration is required (eg. high pedestrian volume intersection); or
5. is likely to be mistaken for a traffic control device, for example, because it contains red, green or yellow lighting, or has red circles, octagons, crosses or triangles, or arrows; or
6. requires close study from a moving or stationary vehicle in a location where the vehicle would be unprotected from passing traffic; or
7. invites drivers to turn where there is fast moving traffic or the sign is so close to the turning point that there is no time to signal and turn safely; or
8. is within 100 metres of a rural railway crossing; or
9. has insufficient clearance from vehicles on the carriageway; or
10. could mislead drivers or be mistaken as an instruction to drivers.

VicRoads also gives operational requirements for electronic advertising message signs. Signage must:

- not display animated or moving images, or flashing or intermittent lights;
- remain unchanged for a minimum of 30 seconds;
- not be visible from a freeway; and
- satisfy the ten-point checklist.

4.0 SUGGESTED REGULATORY APPROACH

Local governments regulate electronic outdoor advertising devices in widely varying degrees. Some cities completely prohibit the use of all electronic signs (sometimes specifying LED signs), while others have no regulations specific to electronic signs. Between those two extremes, there are many levels and types of control that can be applied.

The primary concerns to keep in mind when considering sign regulations are 1) First Amendment rights, which can be affected by regulations that affect the content of a sign's message, and therefore should be avoided, and 2) changing technology, which can quickly make a sign ordinance no longer applicable if the ordinance has been specifically written to address a certain type of sign technology. Performance based measures may therefore be preferable as they remain viable even as sign technology advances.

4.1 Definitions

Signage discussions often include a number of different words or phrases used to describe the technical characteristics of signage devices or their components (such as LEDs). For the purpose of zoning, some additional terms are also used to describe sign characteristics. Any regulatory efforts should take care to precisely define terminology. One possible resource in this effort is "Street Graphics and the Law," published by the American Planning Association (APA) Planning Advisory Service²⁹.

4.2 Types of Regulatory Measures

4.2.1 Complete or Partial Prohibition of Electronic Signs

Some cities have completely prohibited the use of electronic outdoor advertising devices. For example, the City of Maple Valley, WA prohibits all types of electronic outdoor advertising devices including animated signs, electronic changeable message signs, flashing signs or displays, moving signs, scrolling displays, and traveling displays. This applies to both on-premise and off-premise signs.

Other cities are very selective about where electronic signs are allowed, allowing them only in certain zoning districts. There are very few "standard" approaches. For the most part, each local

government tailors their regulations to their own situation. One approach adopted by cities is to prohibit electronic outdoor advertising devices in residential zoning districts, and for a certain distance away from residential zoning districts, similar to the zoning limitations placed on illuminated signs. Some ordinances require that electronic signs be situated such that the sign face is not visible from nearby residences.

4.2.2 Size Limitations on Electronic Signs

Another way of regulating electronic signs is to limit their size. Again, there is no set standard for this. One ordinance reviewed for the purpose of this study limits the electronic portion of a sign to no more than 50 percent of the sign face with the overall size determined by whatever the sign ordinance allows for a particular zoning district. Other examples of electronic sign size limitations include five square feet, 1,000 square inches, 20 square feet, and so forth. In other ordinances, there is no differentiation made between the size of electronic signs and other signs.

According to input from representatives of the sign industry, the smaller the size of the electronic sign, the more desirable it is for businesses to use frequent message changes, or sequenced messages, where more than one screen of text is used to convey an entire message.

4.2.3 Rate-of-Change Limitations on Electronic Signs

Many communities that allow electronic signs also regulate the rate at which the messages on the signs can be changed. Research on sign codes has shown this to range from as little as four seconds to as long as 24 hours.

The Interstate 394 sign between Ridgedale Drive and Plymouth Road is visible for approximately 45 seconds at free flow traffic speeds. Depending on text size, the message may not be readable by drivers during this entire duration, but the message changes can attract attention from long distances. Depending on how often the message changes occur and the speed of traffic, drivers on this segment could see a varying number of discrete messages. Table 7 provides the number of message changes a driver would see at different change durations and traffic speeds.

Table 7. Number of New Messages Seen at Various Driver Speeds and Time Intervals Between Messages

Speed (mph)	Time sign is clearly visible* (seconds)	Number of Messages Seen					
		Message Display Time (seconds)					
		6	8	10	60	1800 (30 minutes)	3600 (1 hour)
30	60	11	9	7	2	1	1
45	40	8	6	5	2	1	1
55	33	7	5	4	2	1	1

*Assuming the sign is clearly visible from one-half mile away.

Prohibiting displays from changing quickly can minimize potential driver distraction, but it would significantly limit the message owner's ability to convey information that does not fit on one screen of the sign. Using two or more successive screens to convey a message is referred to as sequencing. Based on the studies summarized in part 3 of this Report, including the glance duration studies performed by Klaur for the FHWA in 2006 and by Beijer & Smiley in 2004, and Wachtel's analysis for Seattle of the Zeigarnik effect, a message delivery system such as sequencing that requires or induces a driver to watch the sign for several seconds increases the likelihood of driver distraction. Based on information from the sign industry, for sequencing to be effective in a marketing sense, a brief rate-of-change (1-2 seconds) is generally used before transitioning into the next screen.

Some codes specify how an image changes, while other codes prohibit the use of transitions. The change from one image to another can be accomplished by various techniques: no transition – simply a change from one screen to another, or fading or dissolving one image into the next. Flashing, spinning, revolving, or other more distracting transition methods can be prohibited, allowing businesses to use sequencing in an effective manner without making the signs overly distracting. Another way of regulating distracting transitions is to require a very short time of a dark or empty screen between images.

4.2.4 Motion, Animation, or Video Limitations on Electronic Signs

Motion on a sign can consist of everything from special text effects (spinning, revolving, shaking, flashing, etc.) to simple graphics, such as balloons or bubbles rising across the screen, to more realistic moving images that have the appearance of a television screen. According to sign industry representatives, video imagery on a sign is referred to as "animation" if the sign is limited to the capability of 10 frames per second. Fewer frames per second make the moving image look more like animation. Imagery produced by signs that have the capability of processing up to 30 frames per second is accurately referred to as "video" imaging.

Many communities that allow dynamic signs do not allow the application of any type of motion, animation, or video on the signs. However, Seattle was obliged to allow video imagery on their signs after earlier signage code regulating certain types of signs was not strictly enforced. In addition to requiring a dark period between successive messages to overcome the Zeigarnik effect, Seattle also limits the duration of the video message to a minimum of two seconds and a

maximum of 10 seconds. This time frame was established based upon careful calculations of the streets from which these signs could be seen, speed limits and traffic volumes in addition to the community's concern over the extent to which moving images could distract drivers. However, Seattle also limits the size of their electronic signs to a maximum of 1,000 square inches, with no single dimension greater than three feet, thus minimizing the effect of video images.

4.2.5 Sign Placement and Spacing

Regulating the number of dynamic sign potentially visible to a driver at any one time as well as the position of the sign in relationship to the roadway may reduce distraction to drivers. Spacing requirements should consider the speed, width and horizontal and vertical alignment of the roadway.

Some communities have established minimum distances between electronic signs. Establishing an adequate distance between these types of devices seems particularly important if a fairly fast rate of change is allowed for the purpose of facilitating sequenced messages or if animation and video imaging is allowed. Closely spaced signs attempting to convey sequenced messages may simply create visual overload and an over-stimulated driving environment. Research conducted to date has not yielded information about optimal electronic sign spacing. Seattle adopted a 35-foot spacing requirement for their electronic signs based upon multiple levels of analysis of the downtown city environment in which these signs are present.

Due to the varying characteristics of individual roadways in this regard, overlay districts allowing dynamic signage with conditions specific to that area could be considered. Overlay districts could also take into account other locational factors such as offset from the roadway and conspicuity. Determining appropriate offsets from the roadway must consider roadway clear zone requirements as well as spacing of frontage roads and access points, while also considering the signage too far outside the driver's line of sight may be a further distraction. Conspicuity, a sign's ability to stand out from its surroundings, should also be considered.

4.2.6 Text Size

Legibility is another important property of signage. The preferred approach used within highway signing is that drivers can read text that is 1 inch high from 30 feet away. Larger text is needed for signs to be legible at greater distances. Large, legible text allows the driver to read the billboard from varying distances and focus on the driving task. Conversely, with small text, the driver is more likely to focus on the sign for a longer period of time and possibly be more adversely distracted. However, the size or type of text or the amount of text due is rarely regulated.

4.2.7 Brightness Limitations on Electronic Signs

One of the main concerns about the use of electronic signs, regardless of whether they consist of changeable text, animation, or video, is the brightness of the image. The brightness of an object can be characterized in two ways. *Illuminance* is the total brightness of all the light at a point of measurement. Illuminance often describes ambient light and can be measured with a standard light meter such as is used in photography. *Luminance* is the measure of the light emanating from an object with respect to its size and is the term is used to quantify electronic sign brightness. The unit of measurement for luminance is nits, which is the total amount of light emitted from a sign divided by the surface area of the sign (candelas per square meter).

Many, but not all, LED-type signage can be time-programmed to respond to day and nighttime light levels. Higher-end signage types are equipped with photo cells to respond to ambient light conditions. Despite these controls, LED signs have been observed that are considered to be excessively bright. Sign industry representatives indicate that excessive brightness can be the result of 1) sign malfunction or improper wiring, 2) lack of photo cell and/or dimming mechanism, or 3) operator error or lack of understanding that brightness is not necessarily an advantage, especially if it makes a sign unreadable or unpleasant to look at. They also maintain that the intent of the electronic sign industry is to establish a brightness level that is similar to a traditional internally or externally lit sign. Recent observations of sign technicians calibrating the Interstate 394 LED billboard noted that the brightness controls are not calibrated to specific nit levels, but rather vary in proportion to a set maximum level, like a volume control dial on a typical car radio.

To control the extent to which electronic signs are a distraction or the extent to which they are readable, many local governments have adopted regulations that limit nit levels. At this time, ordinances that use nit level limitations typically differentiate between day time and night time nit levels. A common daytime nit limitation ranges from 5,000 to 7,000 nits. A common nighttime limitation is 500 nits, although in areas that are extremely dark at night, with very little in the way of ambient light levels, less than 500 nits may be appropriate. Other communities have taken this farther, such as Lincoln, Nebraska, whose sign code incorporates a graph of varying ambient light levels ranging from night time to a bright sunny day and all conditions between those two extremes, and has correlating nit limitations for the various ambient light levels.

Enforcement of these types of regulations is challenging as luminance of electronic signs is very difficult to measure in the field. Typically, sign luminance is measured and calibrated in a controlled factory setting using a spectral photometer to measure the light output. This calibration setting is then used in conjunction with a photo cell to control the brightness of the sign. The higher the ambient light levels, the brighter the sign. There are different nit thresholds for various colors. White is most often used to set dimming levels because at a constant nit level, white has the most intensity as perceived by the human eye.

Lincoln uses a light meter to conduct testing on electronic signs and found a wide range of luminance levels. One small electronic sign had luminance levels of 13,000 nits. The process that Lincoln uses to check luminance levels is to hold a luminance meter close to the face of the sign so that it captures only the light emitted from the sign. They have not had any requests to

measure the brightness of LED billboards, so the viability of using this approach on billboards has not been explored.

In Seattle, sign luminance was found too difficult to measure, so signs are visually inspected when complaints from the public are received. Sign owners are then contacted and asked to adjust sign luminance accordingly.

Both Mesa, Arizona and Lincoln, Nebraska have included a requirement for written certification from the sign manufacturer that the light intensity has been preset not to exceed the illumination levels established by their code, and the preset intensity level is protected from end user manipulation by password protected software or other method approved by the appropriate city official. This language appears to offer the advantage of ensuring that electronic signs, at a minimum, cannot exceed a certain established level of brightness.

At a minimum, it is important for communities to require all electronic signs to be equipped with a dimmer control. A requirement for both a dimmer control and a photo cell, which constantly keeps track of ambient light conditions and adjusts sign brightness accordingly, is optimal.

Over time, the LEDs used in electronic signs have a tendency to lose some of their intensity, and an owner may choose to have the sign adjusted and calibrated, which involves adjusting the level of electrical current in a manner that affects the brightness of the sign. This occurs over the course of two or three years. Having maximum nit levels established would ensure that the sign company has upper limits to work with as far as adjusting the sign is concerned.

4.3 Public Review

Most communities establish rules within their sign code and do not create opportunities for electronic signs to be approved through conditional use permits or special use permits. Some communities with special overlay districts, or areas that are oriented toward entertainment and night life, have established a review process for electronic signs, or for various functions of electronic signs such as animation and video.

Other communities take the opposite approach, where they allow electronic signs with no controls whatsoever, except in certain special areas, such as a historic overlay district, or a historic downtown district, where the signs are prohibited. Each community needs to tailor their application of electronic signs to meet their needs.

As of the writing of this report, no ordinances have been discovered that have a special review committee just for the purpose of electronic signs. Typically, sign regulations established in the zoning ordinance would be reviewed in accordance with existing review and approval processes. As with other development features, dynamic signage should be either prohibited, permitted, or conditional depending upon the zoning district and/or the specific features of the sign as established within the city's regulations (i.e. size, specific location with respect to the adjacent roadway, zoning district, proximity of sensitive uses). The recommended review process for permitted dynamic signs should be the same as procedures already in place for administrative

review. For dynamic signs requiring a Conditional Use Permit (CUP), the standard process for public notification and a public hearing before the planning commission should apply.

5.0 CONCLUSIONS AND RECOMMENDATIONS

Driver distraction plays a significant role in traffic safety. Driver distraction is a factor in one in four crashes, and of those crashes involving driver distraction, one in four involves distractions outside the vehicle. The extent to which dynamic signage contributes to traffic safety has been examined in this study. Following are some of the major findings from a review of available research.

- Drivers that are subjected to information-rich content that is irrelevant to the driving task (such as digital advertising) may be temporarily distracted enough to cause a degradation in their driving performance. This degradation could lead to a crash.
- The unlimited variety of changing content allows dynamic signage to attract drivers' attention at greater distances and hold their attention longer than traditional static billboards.
- Several studies have found a correlation between crashes and the complexity of the driving environment. For example, crash rates are higher at intersections because the difficulty of the driving task is increased by the roadway's complexity. Complex driving environments place a high demand on drivers' attention. Introducing a source of distraction in an already demanding driving environment is more likely to result in crashes. This is illustrated by the 1994 Wisconsin DOT study that examined crash rates before and after installation of an electronic sign on a high-volume curving roadway. Introduction of this sign was identified as a likely factor of the 80 percent increase in side-swipe crashes that was experienced.
- Many studies have noted a correlation between outdoor advertising signs and crash rates, but have not established a *causal* relationship between the signs and crash rates. Driving is a complex task influenced by multiple factors. It is not necessary to establish a direct causal relationship between outdoor advertising signs and crash rates to show that they can make the driving task less safe. While the research shows that driver distraction is a key factor in many motor vehicle crashes, this often includes many interacting factors that distract drivers. The specific driver distraction danger that advertising signs contribute is difficult to quantify. A study that could control for multiple variables (human factors, vehicle, enforcement and the roadway environment) would be needed to provide a definitive statement on the level of driver distraction that signs produce. Such a study would likely find that not all advertising signs cause distraction that would lead to crashes, but some signs in some situations are more likely to contribute to crashes than others.

Overall, the literature review conducted for the purpose of this study identifies a relationship between driver distraction and electronic outdoor advertising devices. As indicated, driver distraction is a significant factor in crashes. The purpose of dynamic signage is to attract the attention of people in vehicles, so a natural conclusion from that knowledge is that drivers may be distracted by them. Professional traffic engineering judgment concludes that driver distraction generally contributes to a reduction in safe driving characteristics.

For this reason, state departments of transportation have carefully studied the design and location of dynamic signs within the highway right-of-way. Their goal is to convey a message to the traveling public in a manner that is as straight-forward and readable as possible without being a visual "attraction". The goal of the outdoor advertising sign is to be a visual attraction outside the right-of-way, possibly making it a source of driver distraction. Nevertheless, the actual change in crash rates influenced by the presence of any specific device has not been quantified in a manner that fully isolates the impacts of an electronic sign. Recent studies conducted by FHWA and others have cited the need for further research.

In the interest of promoting public safety, this report recommends that electronic signs be viewed as a form of driver distraction and a public safety issue. Therefore, the ordinance recommendations identified here should be considered. These recommendations should be reviewed in the future as additional research becomes available.

With respect to regulatory measures for electronic outdoor advertising signs, it is important that local governments take a thorough approach to updating their ordinances to address this issue. For example, an ordinance that addresses sign motion, but does not address brightness and intensity levels may leave the door open for further controversy. This report seeks to identify all of the aspects of electronic outdoor advertising devices that are subject to regulation. It does not specifically state what those regulations should be (e.g. the size of electronic signs), since these are all things that policy makers and staff must take into careful consideration. Further, as driver distraction and resulting influences on safety do not, in a practical sense, distinguish between on-premise and off-premise signage, this distinction is not highlighted in the recommendations below.

Regulatory Measures recommended for consideration

To properly address the issue of dynamic signage, it is recommended that the sign code address the following:

1. Identify specific areas where dynamic signs are prohibited. This would typically be done by specifying certain zoning districts where they are not allowed under any circumstances. If dynamic signs are to be allowed in specific areas, this could be done by zoning district (only higher level commercial districts are recommended for consideration) or by zoning overlay related to specific purposes (e.g. entertainment or sports facility district) or to specific roadway types.
2. Determine the acceptable level of operational modes in conjunction with such zoning districts or overlays. The various levels include:
 - a. Static display only, with no transitions between messages,
 - b. Static display with fade or dissolve transitions, or transitions that do not have the effect of moving text or images,
 - c. Static display with scrolling, traveling, spinning, zooming in, or similar special effects that have the appearance of movement, animation, or changing in size, or get revealed sequentially rather than all at once (e.g. letters dropping into place, etc.), and

- d. Full animation and video.
3. If one of the forms of static display is identified as the preferred operational mode, a minimum display time should be established. This display time should correspond to the operation roadway speed (rather than posted speed limit), allowing at most one image transition during the time that the sign is visible to a driver traveling at the operational speed.

If a shorter minimum display time is considered, the effects of message sequencing should be considered. Wait intervals of more than 1-2 seconds between sequenced messages have the potential to become more of a distraction as viewers wait impatiently for the next screen, in an effort to view the complete message.

4. If the community wishes to accommodate animation or video in some or all locations where dynamic are permitted, a minimum and maximum duration of a video image should be established. The purpose for establishing a time limit is to ensure that the message is conveyed in a short, concise time frame that does not cause slowing of traffic to allow drivers to see the entire message. Given the creativity of advertising, these video images may be seen as a form of entertainment, and people typically like to see an entertaining message through to the end.

Differentiate between zoning districts where dynamic signs are permitted by right, and zoning districts, overlay districts, or special districts where they should only be allowed through the approval of a Conditional Use Permit. A CUP would involve public notification and review and approval by the Planning Commission. Other options would include a design review board or other dispute resolution process.

5. Consider the establishment of minimum distance requirements between electronic outdoor advertising devices in relation to the zoning district or roadway context in which the signs are allowed.
6. Consider size limitations on dynamic signs for zoning districts where they are allowed. This may vary from one district to another.
7. Consider if dynamic signs are allowed independently, or if they must be incorporated into the body of another sign, and therefore become a limited percentage of the overall sign face.
8. Establish a requirement for that all dynamic signs that emit light be equipped with mechanisms that allow brightness to be set at specific nit levels and respond accurately to changing light conditions. The City must establish the authority to disable or turn the device off if it malfunctions in a manner that creates excessive glare or intensity that causes visual interference or blind spots, and require that the device remain inoperable until such time that the owner demonstrates to the appropriate city official that the device is in satisfactory working condition. If such technology is not available, consideration should be given to banning dynamic signs that emit light until such time as the technology allows brightness levels to be precisely controlled.

9. Consider maximum brightness levels that correlate to ambient (day or night condition, lighting of surrounding context) light levels. A maximum daytime and separate nighttime nit/footcandle level should be established. Consider wording that requires the sign to automatically adjust its nit level based on ambient light conditions.
10. Consider a requirement for a written certification from the sign manufacturer that the individual sign's maximum light intensity has been preset not to exceed the maximum daytime illumination levels established by the code, and that the maximum intensity level is protected from end user manipulation by password protected software or other method approved by the appropriate city official.
11. Require sign owners to provide an accurate field method of ensuring that maximum light levels are not exceeded. If such a method cannot technically be provided, consider banning dynamic signs that emit light until such time as the technology is available.



August 29, 2011

City of Milwaukie
Planning Commission
10722 SE Main St
Milwaukie, Oregon

Regarding: Proposed Sign Code Amendments

Dear Commission Members:

First I would like to express my appreciation on behalf of Security Signs for providing us with an opportunity to submit comments on your planning committee's recommendations. While Security Signs fully supports the intent of the project, many of the proposed sign changes will be detrimental to local business and the city as a whole.

My comments are as follows:

Electronic Message Center Hold Time Requirements:

Oregon State currently regulates billboards on highways at an 8 second hold, other jurisdictions (Washington County, City of Vancouver) have hold times of only 4 seconds. In comparison to other jurisdictions a 3 hour hold time is overly restrictive. I would support a 4 second hold for your smaller signs and an 8 second hold for your signs over 20sf.

Electronic Message Center Area Limitations:

Restricting the area of EMC to a percentage is a great way to encourage dynamic and multi functioning signs. The proposed code restricts an EMC to only 25% of the overall sign allowance. I would suggest increasing this to 50% of the sign area, compare it to jurisdictions like Clackamas County with their 80% restriction. I would also suggest deletion of the maximum area as the percentage limitation already prevents overly large signs from being installed.

Shielding:

I understand the desire for Dark Sky Standards in your sign code, however, signs are not a major contributor to overall light pollution. Signs are designed to allow effective viewing of a message, not to illuminate the surrounding area. I also have concerns on

the vague standards for the proposed shielding and its effectiveness. The aesthetics of requiring a 2' projection of an umbrella above larger signs, will have an impact on the overall look of the sign as well as an expensive impact on the construction of the sign. The proposed requirements for dimming switches will be much more effective against light pollution than the shielding. The shielding will also lead to some very strange looking signs in your city.

Allow EMCs for Churches and Schools:

While the sign code is on the table I would highly recommend extending your EMC allowances to non-conforming uses in residential zones, specifically for churches and schools. A message centers at the road is a great way for schools to connect with parents and the community at large. Allowing them to change their message electronically facilitates ease of use as well as a more pleasing sign that your typical manual message center with plastic letters.

Thank you again for providing us with this opportunity to provide input and perspective as a company which does business in Milwaukie.

Sincerely

A handwritten signature in cursive script that reads "Melissa Hayden".

Melissa Hayden
Security Signs
Project Manager
503 546 7114

Marquardt, Ryan

From: Lee M. Holzman <lmholzman@reliablecredit.com>
Sent: Wednesday, August 24, 2011 4:29 PM
To: Marquardt, Ryan
Cc: 'Lee M. Holzman'; 'Irwin Holzman'
Subject: electronic display signs

Ryan,

Nice chatting with you today regarding the proposed changes to the regulations regarding electronic display signs. Reliable Credit Association, Inc. ("RC") has enjoyed the use of an electronic display sign at 10690 SE McLoughlin Blvd in downtown Milwaukie for approximately 10 years (Far West Federal Savings & Loan operated a similar sign in our current location for many years prior). The sign has had a positive impact on our business.

RC opposes increasing the change copy time from 10 to 15 seconds. While requiring 10 seconds already limits the effectiveness of the sign, increasing to 15 seconds would further limit its effectiveness, and we doubt that the additional 5 seconds would provide benefit to any party.

Thank you for your consideration. If you have any questions, comments, or concerns please do not hesitate to contact me.

Lee Holzman
Reliable Credit Association, Inc.
503-462-3073
503-462-3040 (Fax)

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Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Region 1 Headquarters
123 NW Flanders
Portland, OR, 97209-4012
Phone: (503) 731-8200
Fax: (503) 731-8259

FILE CODE: 5032

August 29, 2011

City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

Attn: Ryan Marquardt, Associate Planner

Ryan – I sent the proposed code to Wendy Elstun, Outdoor Advertising Program, ODOT Right of Way. She provided the following information:

As to LED Outdoor Advertising Signs (OAS) requirements, ODOT sign regulations overall are less restrictive than those proposed by the City of Milwaukie.

However, the state has specific light emissions requirements that are calculated from a specified distance based on sign size, the City's proposed code does not include this requirement. If the "proposed OAS" would meet the City of Milwaukie requirements regarding LED and the States light emission requirements then it would be allowed. This comment is specific to LED OAS criteria and all other regulations for OAS such as spacing to other OAS, Purchase Sites, Scenic Areas-Byways and the requirement to provide an eligible relocation credit still must be met.

SB 639 which allows LED OAS(Digital Billboards) was passed by the last legislative session and becomes law September 29th. Here is the temporary OAR that was filed with the Oregon Transportation Commission on August 18th. It goes into effect September 29th, the same day as the new regulations.



734-060-0007.pdf
(17 KB)



sb0639.en.pdf (48
KB)

It appears that these regulations pertain only to Outdoor Advertising Signs (OAS), which are defined as signs that advertise off-premise businesses or activities. These regulations are in effect for McLoughlin Blvd./OR 99E. If signs meet the OAS definition, then an ODOT permit is required for installation.

- If the City sign code does not currently have an ODOT permit requirement for Outdoor Advertising Signs which are visible from a state highway, I recommend you add this to your code to facilitate coordination and compliance.

You might want to contact Wendy directly to "talk signs", as the City might want to consider applying the ODOT specs for sign light emissions for all signs on OR 99E or at locations Citywide. She can be reached at: wendy.s.elstun@odot.state.or.us or 503.986.3650.

Sonya Kazen, Sr. Planner
503.731.8282

Cc: Wendy Elstun, Outdoor Advertising Program, ODOT Right of Way

August 31, 2011

City of Milwaukie
Attn: Planning Commission
10722 SE Main Street
Milwaukie, OR 97222

Re: Proposed sign ordinance changes

Members of the Planning Commission:

Daktronics would like to provide the following comments in reference to the proposed ordinance amending Milwaukie's Sign Code. We would like to also use this letter as a chance to express our support of the proposed amendments and comments offered by the International Sign Association (ISA).

It is our understanding that the Planning Commission has requested amendments regulating electronic billboards within Milwaukie's commercial and industrial districts, in light of the recent state statute implementation permitting such signs. The proposed amendments, however, seek to provide essentially a de facto prohibition on such signs, and increase restrictions on business signs that have previously permitted within the city for some time.

Electronic Billboards

The proposed regulations really don't address electronic billboards, other than by adding in regulations that would restrict the area of electronic display signs so much as to effectively prohibit their use as electronic billboards.

Electronic billboards are very beneficial for businesses, including local businesses. They can broadcast AMBER Alerts, weather updates, dangerous fugitive warnings, homeland security updates, and community events at a moment's notice to large numbers of people. For example, within 15 minutes of the interstate bridge collapse in Minnesota, electronic billboards were notifying drivers and rerouting traffic. In Kansas City, electronic billboards help law enforcement officers apprehend dangerous criminals. The effectiveness of this program has inspired law enforcement personnel nationwide to turn to electronic billboards to help catch criminals.

We are aware that that city doesn't differentiate between on and off-premises. Therefore, we would simply suggest that all existing billboards located along state-regulated highways be subject to the regulations recently passed by the state.

Static Message Duration Requirements for Automatic Changeable Copy Signs

Currently, the city permits automatic changeable copy signs and moving signs to change once every 10 seconds. The proposed regulations seek to continue to allow moving signs to rotate once every 10 seconds, but then seek to limit electronic display signs to change only once every 15 seconds (for signs under 20 square feet) or once every three hours (for signs over 20 square feet). Electronic billboards, which were the entire reason for the proposed regulations, would be all but prohibited, as the smallest

standard-sized billboards are over 200 square feet, and the proposed limitations seek to only permit such signs at a maximum area of 50 square feet.

First, the city currently allows electronic display signs to change once every ten seconds. Such limitations, albeit more restrictive than most jurisdictions that permit electronic display signs, sufficiently regulate electronic display signs to ensure that businesses can pass on their messages in a timely manner while ensuring the adverse effects of unacceptable uses, such as flashing, are avoided. Therefore, there is no need to implement more restrictive regulations.

There is a common rule-of-thumb in sign regulation that can be paraphrased as follows: Regulations should be no more restrictive than necessary to adequately regulate signage. Municipalities throughout the nation, numerous states (including Oregon) and the Federal Highway Administration, all permit and effectively regulate these signs at hold times less than what Milwaukie is proposing. Therefore, there is no reason to place such restrictive regulations on these signs.

Rather than requiring that electronic display signs change once every 15 seconds or three hours, such signs should be subject to the existing regulations permitting such signs to change once every 10 seconds.

Brightness Limitations

We would like to applaud the city for considering regulations for brightness similar to those passed by the state. However, the regulations implemented by the state are intended for electronic billboards that are much larger than what the city is seeking to implement. As a result, the regulations seeking measurement of all signs smaller than 300 square feet at a distance of 150 feet have the potential to yield overly bright signs, especially since the largest permitted sign size is only 50 square feet.

The 0.3 foot candle measurement is intended to be measured from typical sign-to-viewer distances. For small business signs, that sign-to-viewer distance is much closer. Therefore, measurements need to be taken from closer to the display to ensure appropriate brightness.

The standards ISA has suggested were written by the same gentleman who wrote the standard from which the state regulations are based. However, ISA's proposed standards are intended to be applied to a broad spectrum sign sizes instead of standard billboard sizes.

Area Limitations

Electronic display signs differ from traditionally illuminated signs only in their ability to display multiple messages in a timely and effective manner. Therefore, such signs should be subject to the same area limitations that are applied to other signs of the same design (i.e. wall, freestanding, etc.).

However, if the city is insistent on area limitations, rather than a 25% area limitation, we would suggest 50 %, as such a percentage is more in line with municipalities throughout the nation that have implemented area limitations. Additionally, we suggested deletion of the maximum area of 50 square feet, as the percentage limitation adequately prevents overly large signs from being installed.

We would urge the Planning Commission to consider the amendments proposed by ISA.

Daktronics, Inc. is the world leader in the design and manufacture of electronic display systems. Daktronics offers many products, including commercial electronic display signs and digital billboards. We are committed to providing information and aiding regulatory entities in drafting appropriate regulations for electronic display signs.

Please let me know if you have any questions or concerns

Sincerely,



Terra Fisher
Signage Legislation
605-691-1285



INTERNATIONAL SIGN ASSOCIATION

September 1, 2011

City of Milwaukie
Attn: Planning Commission
10722 SE Main Street
Milwaukie, OR 97222

Re: Proposed sign ordinance changes

To Whom It May Concern;

I am submitting this letter on behalf of the Northwest Sign Council (NWSC) and the International Sign Association. The NWSC represents the interests of the sign industry in Oregon, Idaho, Washington, Alaska, Montana and Wyoming. The NWSC is organized for the mutual benefit of its member sign companies, sign-related companies, with respect to on-premises signage. The NWSC is an important stakeholder that is actively involved with sign legislation issues. The International Sign Association (ISA) represents 27 sign manufacturers and related industries in the state of Oregon.

We would like to provide the following comments in reference to the proposed ordinance amending Milwaukie's Sign Code. We hope you find the following letter, as well as the accompanying documents, beneficial.

We appreciate the city for its consideration of amendments relating to electronic display signs. However, we would like to suggest that the city reconsider some of the proposed usage regulation, as they seem to be a deviation from existing, adequate regulations.

Static Message Duration Requirements

Currently, the city permits automatic changeable copy signs (which are essentially electronic display signs) and moving signs to change (or rotate) once every 10 seconds. The proposed regulations seek to continue to allow moving signs to rotate once every 10 seconds, but then seek to limit electronic display signs (automatic changeable copy signs under a new name) to changing only once every 15 seconds (for signs under 20 square feet) or once every three hours (for signs over 20 square feet). First, the city currently allows electronic display signs to change once every ten seconds. Such limitations, albeit more restrictive than most jurisdictions that permit electronic display signs, sufficiently regulate electronic display signs to ensure that businesses can pass on their messages in a timely manner while ensuring the adverse effects of unacceptable uses, such as flashing, are avoided. Therefore, there is no need to implement more restrictive regulations.

Regulations that separate usage by size are generally implemented to take into account the fact that smaller signs are too small to display an entire message in a single frame. Such regulations are typically put into place that allow smaller signs to change once every couple of seconds or utilize movement, because they are aware that hold times more than a couple of seconds long would prevent these smaller signs from displaying complete messages (for instance, Abilene, Texas permits

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INTERNATIONAL SIGN ASSOCIATION

animation on signs smaller than 70 square feet, but requires an eight-second hold time on signs larger than 70 square feet). A 15-second hold time for these small signs will not allow for small sign owners to pass on their messages in multiple frames, and therefore, does not satisfy the rationale for differing hold times.

Electronic display signs have been studied for more than 30 years and have NEVER been found to be hazardous. Reputable organizations such as Virginia Tech Transportation Institute and even the Federal Highway Administration itself have found digital signs to be appropriate along our nation's roadways at hold times far less than once every three hours or 15 seconds. Therefore, there is no reason to place such restrictive regulations on these signs.

Rather than requiring that electronic display signs change once every 15 seconds or three hours, such signs should be subject to the existing regulations permitting such signs to change once every 10 seconds.

Brightness Limitations

We would like to applaud the city for considering regulations for brightness similar to those passed by the state. However, the regulations implemented by the state are intended for digital billboards that are much larger than what the city is seeking to implement. As a result, the regulations seeking measurement of all signs smaller than 300 square feet at a distance of 150 feet have the potential to yield some VERY bright signs.

The 0.3 foot candle measurement is intended to be measured from typical sign-to-viewer distances. For small business signs, that sign-to-viewer distance is much closer. Therefore, measurements need to be taken from closer to the display to ensure appropriate brightness.

The standards we suggested in our accompanying changes were written by the same gentleman who wrote the standard from which the state regulations are based. However, our proposed standards are intended to be applied to smaller signs instead of larger displays. We have provided a brief synopsis of the 0.3 foot candles standard, as applied to on-premise (business) signs, accompanying this letter.

Area Limitations

Electronic display signs differ from traditionally illuminated signs only in their ability to display multiple messages in a timely and effective manner. Therefore, such signs should be subject to the same area limitations that are applied to other signs of the same design (i.e. wall, freestanding, etc.).

However, if the city is insistent on area limitations, rather than a 25% area limitation, we would suggest 50 %, as such a percentage is more in line with municipalities throughout the nation that have implemented area limitations. Additionally, we suggested deletion of the maximum area of 50 square feet, as the percentage limitation adequately prevents overly large signs from being installed.



INTERNATIONAL SIGN ASSOCIATION

Shielding

The ordinance proposes to require a shield on the top of the sign face that projects 2' from the face. We believe that signs are not a major contributor to light pollution. Signs are not designed to illuminate areas such as parking lot fixtures or street lights. Signs are illuminated sufficiently to allow for safe and effective viewing of the message. In addition, the application of this proposed regulation from a design perspective will be a challenge. Therefore, we believe that the proposed 2' shield on the top of each sign face is not reasonable or justified. We recommend that this section be eliminated from the proposed code.

Economic Consideration

When considering amendments regarding this valuable technology, local regulators should be aware that overly restricting electronic display signs can negatively affect business owners' well being, and ultimately inhibit the community's economic well being. The Small Business Administration estimates that businesses can raise their revenue anywhere from 15 to 150 percent with an electronic display sign. Such an increase in business not only positively impacts business owners it also positively impacts their communities by increasing tax base. In a struggling economy, small and large businesses alike need a cost-effective advertising medium that has been proven to work.

Accompanying this letter you will find suggested changes that, we feel, would be more conducive to business and sign-owner needs. We would urge the Planning Commission to consider an amendment to the proposed language that would allow for these suggested changes.

ISA and the Northwest Sign Council are committed to providing information and aiding regulatory entities in drafting appropriate regulations for electronic display signs.

Please do not hesitate to contact me any questions.

We appreciate your consideration of our recommendations.

Sincerely,

James Carpentier AICP
Manager State and Local Government Relations
James.carpentier@signs.org
Phone: 480-773-3756

Red underlines (underlines) denote NWSC & ISA proposed additions to the draft sign code.
Red strikethroughs (~~strikethroughs~~) denote NWSC & ISA proposed deletions to the draft sign code.
Black underlines (underlines) denote additions to the existing code proposed by the city.
Black strikethroughs (~~strikethroughs~~) denote deletions to the existing code proposed by the city.

TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

14.04.010 TITLE

This chapter shall be known and may be cited as the "Sign Ordinance of the City of Milwaukie, Oregon."

14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; and,
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content. and,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

"Dissolve" means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

"Fade" means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

"Prohibited electronic display" means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

"Flash" means sudden or intermittent electrical illumination.

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Black underlines (underlines) denote additions to the existing code proposed by the city.
Black strikethroughs (~~strikethroughs~~) denote deletions to the existing code proposed by the city.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

~~Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means on which the message or display is created by bulbs, light emitting diodes, liquid crystal displays, plasma display panels, pixel or sub-pixel technology, or other similar technology.~~

~~Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.~~

~~“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.~~

CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

14.08.100 Signs Visible from State Highways

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the site is legal for an outdoor advertising sign, and whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or

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Black strikethroughs (~~strikethroughs~~) denote deletions to the existing code proposed by the city.
~~hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~

R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

CHAPTER 14.16 SIGN DISTRICTS

14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:

Red underlines (underlines) denote NWSC & ISA proposed additions to the draft sign code.
Red strikethroughs (~~strikethroughs~~) denote NWSC & ISA proposed deletions to the draft sign code.
Black underlines (underlines) denote additions to the existing code proposed by the city.
Black strikethroughs (~~strikethroughs~~) denote deletions to the existing code proposed by the city.

- a. An electronic display sign is subject to the more restrictive of the following size limitations: Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.
 - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
 - (2) 20 square feet.
- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or inferior interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.
 1. Illumination.
 - a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified in Table 14.24.020.G.1.a.

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Table 19.24.020.G.1.a Distance Electronic Display Signs

<u>Display Area of Electronic Display Sign</u>	<u>Distance for Measurement</u>
<u>300 square feet or less</u>	<u>150 feet</u>
<u>301– 378 square feet</u>	<u>200 feet</u>
<u>Over 378 square feet</u>	<u>250 feet</u>

<u>Table 19.24.020.G.1.a Distance Electronic Display Signs</u>	
<u>Area of Sign</u>	<u>Measurement</u>
<u>sq. ft.</u>	<u>Distance (ft.)</u>
<u>10</u>	<u>32</u>
<u>15</u>	<u>39</u>
<u>20</u>	<u>45</u>
<u>25</u>	<u>50</u>
<u>30</u>	<u>55</u>
<u>35</u>	<u>59</u>
<u>40</u>	<u>63</u>
<u>45</u>	<u>67</u>
<u>50</u>	<u>71</u>
<u>55</u>	<u>74</u>
<u>60</u>	<u>77</u>
<u>65</u>	<u>81</u>
<u>70</u>	<u>84</u>
<u>75</u>	<u>87</u>
<u>80</u>	<u>89</u>
<u>85</u>	<u>92</u>
<u>90</u>	<u>95</u>
<u>95</u>	<u>97</u>
<u>100</u>	<u>100</u>

* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:

$$\text{Measurement Distance} = \sqrt{\text{Area of Sign Sq. Ft.} \times 100}$$

To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of

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way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district shall not exceed 50% of the allowed sign area for the sign type on which the electronic display sign is placed (i.e. If the electronic display sign is a freestanding sign, it shall be subject to 50% of the area restrictions for freestanding signs in that sign district. If the electronic display sign is a wall sign, it shall be subject to 50% of the area restrictions for wall signs in that sign district.)~~is subject to the more restrictive of the size limitations below.~~ Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.

~~An electronic display sign that is not part of a larger sign face or abutting another sign face is subject to the limitation of Subsection 14.24.020.G.2.b unless other portions of this title have a more restrictive allowance for sign area.~~

~~a. 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.~~

~~b. 50 square feet.~~

3. Display.

a. The message or copy on an electronic display sign with an area of 20 square feet or less is allowed to change no more than once every 15 10 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

~~b. The message or copy on an electronic display sign with an area of more than 20 square feet is allowed to change no more than once every 3 hours. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.~~

H. Shielding.

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. These regulations apply to any sign face greater than [50-100] square feet with interior or exterior illumination.

1. Internally illuminated signs shall contain a shield placed at the top of the sign face that projects at least 2 feet horizontally from the sign face. If other regulations do not allow a shield to project 2 feet from the sign face, the shield shall extend to the maximum amount allowed. Shielding is not required if portions of a structure above the sign screen the sign in a manner consistent with the purpose of these regulations.

2. The light source for externally illuminated signs shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

Red underlines (underlines) denote NWSC & ISA proposed additions to the draft sign code.
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Black underlines (underlines) denote additions to the existing code proposed by the city.
Black strikethroughs (~~strikethroughs~~) denote deletions to the existing code proposed by the city.

14.28.020 NONCONFORMING SIGN

A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter, with the following exceptions:
 - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
 - b. The inclusion of an electronic display sign within the existing display area of a non-conforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

B. Notice

For legally established nonconforming signs that are approaching the end of the 10-year period during which they may be maintained under Subsection 14.28.020.A.1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform.

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.
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TITLE 14 SIGNS

CHAPTER 14.04 GENERAL PROVISIONS

14.04.010 TITLE

This chapter shall be known and may be cited as the "Sign Ordinance of the City of Milwaukie, Oregon."

14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; and,
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content. and,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

"Dissolve" means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

"Fade" means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

"Prohibited electronic display" means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

"Flash" means sudden or intermittent electrical illumination.

"Scroll" means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

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“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

14.08.100 Signs Visible from State Highways

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the site is legal for an outdoor advertising sign, and whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. ~~Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

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CHAPTER 14.16 SIGN DISTRICTS

14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. Sign lighting should be designed as an integral component of the building and sign composition.
 - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
 - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
 - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
 - b. The sign copy should be lighter than the sign background.
 - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:
 - a. An electronic display sign is subject to the more restrictive of the following size limitations: Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.
 - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
 - (2) 20 square feet.

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 Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or inferior interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.
 - 1. Illumination.
 - a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified in Table 14.24.020.G.1.a

<u>Table 14.24.020.G.1.a Distance Electronic Display Signs</u>	
<u>Area of Sign</u>	<u>Measurement</u>
<u>sq. ft.</u>	<u>Distance (ft.)</u>
<u>10</u>	<u>32</u>
<u>15</u>	<u>39</u>
<u>20</u>	<u>45</u>
<u>25</u>	<u>50</u>
<u>30</u>	<u>55</u>

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<u>35</u>	<u>59</u>
<u>40</u>	<u>63</u>
<u>45</u>	<u>67</u>
<u>50</u>	<u>71</u>
<u>55</u>	<u>74</u>
<u>60</u>	<u>77</u>
<u>65</u>	<u>81</u>
<u>70</u>	<u>84</u>
<u>75</u>	<u>87</u>
<u>80</u>	<u>89</u>
<u>85</u>	<u>92</u>
<u>90</u>	<u>95</u>
<u>95</u>	<u>97</u>
<u>100</u>	<u>100</u>

* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:

$$\text{Measurement Distance} = \sqrt{\text{Area of Sign Sq. Ft.} \times 100}$$

To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district shall not exceed 50% of the allowed sign area for the sign type on which the electronic display sign is placed (i.e. If the electronic display sign is a freestanding sign, it shall be subject to 50% of the area restrictions for freestanding signs in that sign district. If the electronic display sign is a wall sign, it shall be subject to 50% of the area restrictions for wall signs in that sign district.) Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.

3. Display.

- a. The message or copy on an electronic display sign is allowed to change no more than once every 10 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding.

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.
Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

~~The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. These regulations apply to any sign face greater than [50-100] square feet with interior or exterior illumination.~~

- ~~1. Internally illuminated signs shall contain a shield placed at the top of the sign face that projects at least 2 feet horizontally from the sign face. If other regulations do not allow a shield to project 2 feet from the sign face, the shield shall extend to the maximum amount allowed. Shielding is not required if portions of a structure above the sign screen the sign in a manner consistent with the purpose of these regulations.~~
- ~~2. The light source for externally illuminated signs shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.~~

CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

14.28.020 NONCONFORMING SIGN

A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter, with the following exceptions:
 - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
- b. The inclusion of an electronic display sign within the existing display area of a nonconforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

B. Notice

For legally established nonconforming signs that are approaching the end of the 10-year period during which they may be maintained under Subsection 14.28.020.A.1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform.

September 2, 2011

City of Milwaukie
Att: Planning Commission
10722 SE Main St
Milwaukie, OR 97222

RECEIVED

SEP 06 2011

CITY OF MILWAUKIE
PLANNING DEPARTMENT

RE: Proposed changes for Electronic Display Signs

Members of the Planning Commission:

ClearChannel Outdoor and our predecessors have operated our business in the Portland metro area for close to 100 years, we currently employ 28 local residents at our facility. Over the decades our industry has progressed through the use of different technologies: manual posting with paste, hand painting, silk screening & printing on paper, and printing on vinyl. With the recent adoption of SB 639 we are now poised to utilize digital technology in the State of Oregon that complies with the formal guidance from the Federal Highway Administration (see the 2007 FHWA Memo attached).

The proposed sign ordinance changes for the city of Milwaukie will prohibit the use of LED technology amongst Outdoor Advertising companies and subsequently deny the city of the many benefits that are inherent with electronic billboards. LED signs provide critical time savings in the display of public safety and emergency messages, i.e. amber alerts, missing persons alerts, and tsunami warnings. Please see the attached letters received from the Salem Police Department, the FBI, the U.S. Marshals, the Department of Homeland Security, and The National Center for Missing and Exploited Children. Also included is an email from our Branch President in Minneapolis, MN that was sent out after a bridge collapsed there in 2007 and a copy of the message that was displayed on the signs.

Another advantage to electronic billboards that you may not be aware of is the increased ability for sign companies to provide space for public service. Digital technology eliminates the need for production costs which expands the number of organizations that would be able to make use of such programs. Please see the letters for support for digital billboards from the March of Dimes, American Cancer Society, and Cascade Aids Project.

The proposed code changes limit the area of a sign that can be converted to digital technology to 25%. This is unnecessary and inconsistent with State and Federal guidelines. The standard for outdoor advertising is 100% of a sign face in order to provide a seamless message presentation.

The proposed static message duration requirements are inconsistent between automatic changeable copy signs and electronic display signs. Differentiating the turn rates between these types of signs and further delineating the change rate for electronic display signs based on a size greater than 20 square feet is needless and unsubstantiated by any particular methodology.

The code currently allows for 10 second change rates which is already more restrictive than State and Federal guidelines of 8 seconds. This adequately addresses any concerns that digital signs will violate the prohibition of intermittent, flashing, or moving lights.

Lastly we feel it necessary to point out that the transition to this new technology allowing businesses and sign companies to upgrade to better and more efficient lighting should mirror the city's desire to move in a more sustainable direction. Also, prohibiting the use would impact future development such as the movement to bring a minor league baseball team to the area, whose park would benefit greatly from digital signage.

ClearChannel Outdoor is highly interested in working together with the city of Milwaukie to draft sign ordinance regulations that will benefit all parties involved and serve as a solid, forward thinking, guideline for signage in the future.

Regards,

A handwritten signature in blue ink, appearing to read 'Dan Dhruva'.

Dan Dhruva
VP Real Estate and Public Affairs
ClearChannel Outdoor - Portland



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Guidance on
Off-Premise Changeable Message Signs

Date: September 25, 2007

From: Original signed by:
Gloria M. Shepherd
Associate Administrator for
Planning, Environment, and Realty

In Reply Refer To:
HEPR -20

To: Division Administrators
Attn: Division Realty Professionals

Purpose

The purpose of this memorandum is to provide guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). Those Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. **Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.**

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d)(5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

Background

The HBA requires States to maintain effective control of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960's and the early 1970's.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that FHWA has "always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual Federal/State agreements." It was expressly noted that "in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind". The 1996 Memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs "regardless of the type of technology used" are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the 1996 Memorandum.

The policy espoused in the 1996 Memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

Discussion

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This Guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any question that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, Divisions should consider all relevant information, including but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by Divisions to date, contain some or all of the following standards:

- Duration of Message
 - Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.
- Transition Time
 - Transition between messages is generally between 1 and 4 seconds – 1-2 seconds is recommended.
- Brightness
 - Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- Spacing
 - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
 - Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, our Office is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information, please contact your Office of Real Estate Point of Contact or Catherine O'Hara (Catherine.O'Hara@dot.gov).

CITY OF *Salem*
AT YOUR SERVICE

POLICE DEPARTMENT

555 Liberty St. SE / Room 130 • Salem, OR 97301-3513 • (503) 588-6123

January 20, 2011

Lamar Advertising Company
Attn.: Chris Colvin, General Manager
29345 Airport Road, Suite B
Eugene, Oregon 97402

Dear Mr. Colvin:

It is with great pleasure that I send you the following letter of thanks for your support of the Salem Police Department's Top 10 Most Wanted.

The Most Wanted program features Salem's most sought after criminals and provides an opportunity for citizens to assist police in apprehending them to prevent their committing more crimes. The program was revived in January 2010 through the distribution of posters and fliers displayed in prominent locations throughout the community.

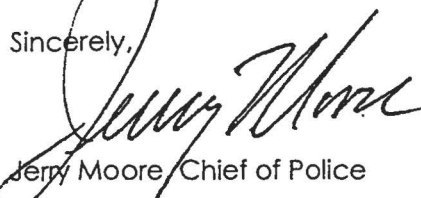
However, in May when your company generously offered to donate digital billboard space, we never imagined just how much of a community awareness boost the program would receive.

Recently, a featured suspect saw the posters and acquaintances made him aware of his digital billboard spot. Because of the exposure he was receiving, the suspect turned himself in. The suspect commented, "The posters are more than effective, but the billboards and posters really shrink Salem." His words give dimension to the success of the partnership between Salem Police and Lamar Advertising.

This month marks the program's one-year anniversary and we are pleased to announce that between January 2010 and January 2011, we have featured 37 suspects and captured 22.

We appreciate the support we have received from Lamar Advertising and commend you for your service to your community.

Sincerely,



Jerry Moore
Chief of Police

c: Rick Smith, Senior Account Executive

From: Robert Hoever [<mailto:RHOEVER@ncmec.org>]
Sent: Wednesday, June 16, 2010 1:07 PM
To: Parsons, Brad; Laible, Myron; mary.lindstrand@mcso.us
Cc: Alwin, Tony; Sandblast, Terry; DHRUVA, DANIEL; Robert G. Lowery, Jr.
Subject: RE: Kyron CCO Billboard Press Release & photos
Importance: High

I would like to take a moment to thank each and every one of you who are involved with this project! Typically, in any missing child case, someone knows something, and it has been our experience that the public's help is vital to a safe recovery. Your efforts are helping to enlist the eyes and ears of the public to assist help law enforcement in the search for a missing child. It is through your efforts we can be assured that whomever has information knows it is critical they come forward to report it.

Both OAAA and Clear Channel have helped us in the past with AMBER Alerts, and this is just one more example of your good corporate citizenship and willingness to help with public safety issues, specifically missing and abducted children. We thoroughly value our partnership with you!

Our sincere thank you!

Bob

Robert Hoever

Associate Director, Missing Children Division
National Center for Missing & Exploited Children

rhoever@ncmec.org

Office (703) 837-6118

Cell (571) 221-5176

U.S. Department of Homeland Security
Federal Emergency Management Agency
FEMA-1985-DR-MA
Joint Field Office
135 Commerce Way
Portsmouth, NH 03801



FEMA

July 23, 2010

Mr. Stephen Ross,
President-Boston Division
Clear Channel Outdoor
89 Maple Street
Stoneham, MA 02180

Dear Mr. Ross:

On behalf of Administrator Fugate and the Federal Emergency Management Agency (FEMA), please accept our sincere gratitude for assisting us in serving the citizens of the Commonwealth of Massachusetts following the floods and storms that occurred last March and April. Your willingness to place critical disaster assistance information on Clear Channel Outdoor digital billboards in Massachusetts, has enabled us to reach out to a multitude of disaster survivors all within a very brief time period.

The eagerness of Clear Channel Outdoor to join us in our mission to support our citizens and first responders has resulted in an invaluable outreach initiative.

Once again, thank you for your support. FEMA appreciates the assistance you have provided in helping the community get back on its feet. You've been a great partner in this time of need. We all hope the occasion doesn't arise again, but we're thankful for your willingness to support our efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Russo".

Chief Nick Russo, Ret. CEM
FCO 1891 DR ME, 1892 DR NH, 1895 DR MA
Assistant Director, NE Div.
Federal Coordinating Officer Cadre
DHS/FEMA Region 1

/sl



FBI Wanted Messaging on Digital Displays - Updated 8/2/10

Clear Channel Outdoor has agreed to work with the Federal Bureau of Investigations (FBI) to provide broadcast of "Wanted Criminal" messages on all of its digital outdoor networks across the country, as well as any future digital networks established. This Clear Channel Outdoor initiative has been in place since 12/26/07.

In addition to our internal FBI "Wanted" digital messaging program, there is now a second, expanded, National FBI alert system. These alerts will come by email through the OAAA. The posting of these national FBI alerts will follow the same protocol as our internal program, which is under the discretion of each local market president, based on the importance to that managers local community and availability.

Each Digital Outdoor Network branch office is responsible to do the following:

1. Designate one digital manager in your market and one back-up person to be the contact point person for the FBI information.
2. Each CCO digital point person should contact the following National FBI liaison:

Christopher Allen
Federal Bureau of Investigation
Investigative Publicity & Public Affairs
202-324-5681
Christopher.Allen@ic.fbi.gov

3. Chris Allen will then contact a local FBI branch office in your market and have them contact your designated FBI/DON contact.
4. Once each market has established an acceptable and prompt communication route with their local FBI representative they will accept information to be posted on the digital outdoor network.
5. FBI "Wanted Criminal" information will be posted on a space available basis. The attached FBI "wanted design template" should be used for branding consistency an easy recognition. (Note: We have an updated FBI template as of 8/2/10 to follow national FBI standards)
6. FBI "Wanted Criminal" information or other important security messaging will be displayed on Clear Channel Outdoor digital networks at the discretion of the FBI and subject to the reasonable judgment of the local Clear Channel Outdoor branch office management.
7. As new CCO Digital networks are created in the future please be advised that the same procedure as above should be followed and consideration for FBI messaging should be a high priority for the test period of the digital displays.

The National FBI Digital Alert Network

The OAAA has partnered with the FBI to help create a National Digital Alert Network of digital displays similar to the Amber Alert program. Each division that has digital displays will be contacted by email about the following alerts: The email alert system uses the same routing system as the OAAA Amber Alert system.

- a. **Hot pursuit** - Regional or interstate messages where the FBI, alone or together with state and local law enforcement, is attempting to apprehend suspected felons in the immediate aftermath of a crime.
- b. **Emergency messaging** - regarding security threats relevant to the communities listed in the email.
- c. **Ten Most Wanted Fugitives program** - Criminal alerts for FBI's top ten most wanted criminals.

**TOP 10
MOST WANTED**

JOE LUIS SAENZ

WANTED FOR MURDER, KIDNAP, RAPE

1-800-CALL-FBI
REWARD



FBI



TOP 10 TEMPLATE

**TOP 10
MOST WANTED**

JOE LUIS SAENZ

WANTED FOR MURDER, KIDNAP, RAPE

1-800-CALL-FBI REWARD



FBI



EMERGENCY SITUATION

**EXPLOSION AT
JFK AIRPORT**

Tip Line: 1-800-CALL-FBI



FBI

NATIONAL EMERGENCY TEMPLATE

EMERGENCY SITUATION

EXPLOSION AT JFK AIRPORT

Tip Line: 1-800-CALL-FBI



FBI

From: Parsons, Brad
Sent: Thursday, August 02, 2007 8:46 AM
To: Sandblast, Terry
Subject: Minneapolis Bridge Collapse

Attachments: Breaking news copy.jpg

From: Muller, Lee Ann
Sent: Wednesday, August 01, 2007 5:27 PM
To: Outdoor Corporate Officers; Outdoor Presidents/GMs; Outdoor Sales Managers; Outdoor Operations Managers; Outdoor Real Estate Managers; Fletcher, Nancy; Klein, Ken
Cc: MCCARVER, TOM; Klees, Tom; Miller, Patty; Ogilvie, Garfield; 'Fuller, Jeffrey'; St Jacques, Jim
Subject: Minneapolis Bridge Collapse

As many of you probably know by now, a bridge on a major freeway heading toward downtown Minneapolis collapsed tonight at 6:19 PM. To my knowledge at this time, none of our employees were on the bridge or harmed by this incident.

This bridge is within 3 miles of our office and is traveled on a daily basis by about half of our employees.

We have dedicated our digital network to MNDOT to communicate traffic and safety information. We were live with an emergency message within 15 minutes of the bridge collapse. Attached is a copy of our initial message.

We will keep you updated on any new information.

Lee Ann Muller

President / General Manager

Clear Channel Outdoor
3225 Spring Street NE
Minneapolis, MN 55413

612-605-5125 Phone
612-605-5150 Fax
lamuller@clearchannel.com

**35W BRIDGE COLLAPSED
AT DOWNTOWN MINNEAPOLIS
PLEASE USE ALTERNATE ROUTES**

BREAKING NEWS

**35W BRIDGE COLLAPSES
AT DOWNTOWN MINNEAPOLIS**

August 16, 2010

Direct: 408-251-2200 Fax:

Greater Oregon Chapter
3400 SW Morrison, Ste 210
Portland, OR 97205

Telephone: (503) 227-9400
Fax: (503) 227-8966

http://marchofdimes.org

To: Oregon State Officials

Re: The value of outdoor advertising

The Greater Oregon Chapter of March of Dimes has a long-standing relationship with Clear Channel Outdoor. For many years Clear Channel Outdoor has been providing billboard space at a deeply discounted rate for March of Dimes, enabling us to raise awareness about our largest fundraising event, March for Babies.

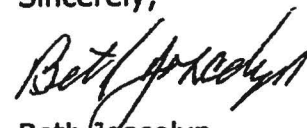
In 2009, for example, we put up 16 billboards to raise awareness for March for Babies. Thanks to Clear Channel Outdoor donating \$24,000 worth of space, our costs as a non-profit were limited to vinyl production and posting fees.

These billboards are not only important for us to generate exposure for the event—the revenues from which fund Nobel Prize-winning research that saves babies lives; but they are also important for us to generate exposure for our sponsors. Our chapter-wide sponsors support March of Dimes mission to improve the health of babies, but they also need their marketing dollars to produce a level of impressions for them that justifies their investment. Nothing can do that for us like billboards can. At roughly 18,000 impressions per billboard per day, we're able to get approximately 16 million impressions for less than the cost of one full page ad in Portland Monthly magazine, which has a readership of 228,000 (circulation of 58,000).

In an age where non-profits expense lines are closely monitored and the need for 75% or more of our revenues to go to programs and mission, advertising budgets are slim to none. Our bottom lines would be improved even more with the use of digital billboards—a faster, greener, more efficient means of getting public service announcements out.

We rely on Clear Channel Outdoor to help further the mission of March of Dimes; which is to improve the health of babies by preventing birth defects, premature birth and infant mortality. Clear Channel Outdoor is a champion for babies.

Sincerely,



Beth Joscelyn
State Director



To Whom It May Concern:

The American Cancer Society, on behalf of our leadership and thousands of Oregon and SW Washington volunteers, is pleased to support Clear Channel Outdoor.

Clear Channel Outdoor has provided the American Cancer Society with the opportunity to utilize outdoor advertising at the non-profit rate for several years. As a major supporter of the American Cancer Society, Clear Channel Outdoor has assisted in the advertisement of several local American Cancer Society events, as well as a number of our patient programs and services. With the assistance of Clear Channel Outdoor, we at the Society are better able to reach more of our key constituents in Oregon and SW Washington, enabling us to continue our mission of creating a world with more birthdays.

Though Clear Channel Outdoor has been able to provide this wonderful opportunity to us at a discounted rate, there are still fees incurred that we do not generally budget for. If the state allowed digital advertising, the costs of print and production would be much less, therefore leading our organization the opportunity to put those funds towards educating people about prevention and early detection, raising money to help people stay well and get well, to find cures, and fighting back against the disease.

Thank you for your attention and consideration.

Regards,

Holly Ball
American Cancer Society
District Executive Director
503.795.3946
Holly.Ball@cancer.org



Board of Advisors

Terry Bean
Bean Investment Real Estate

Bruce Carey
Bruce Carey Restaurants

Andy Davis
Davis Business Centers

Sho Dozono
Azumano Travel

Avel Gordiy
Portland State University

Craig Hartzman
Community Volunteer

Tom Imeson
Port of Portland

Roy Jay
African American
Chamber of Commerce

Thomas M. Lauderdale
Pink Martini

Kathleen Lewis
Community Volunteer

Gary Maffei
Merlo Corporation

Tony Melaragno
Legacy Hospital

Jeff Miller
Travel Portland

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Maria Rojo de Steffey
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Darcelle XV Showplace

Elsa Dozono
Miller Nash LLP

Jack Gahan
State of Oregon

Jennifer Jako
Fix Studio

Thomas R. Johnson
Perkins Coie LLP

Elizabeth Kramer
Insight Schools Inc.

Liz Rablner Lippoff
Liz. ink

Larry Lunnen
Nike, Inc.

Charles Washington
Fred Meyer Stores Inc.

Brian Wong, MD
OHSU

Cascade AIDS Project



August 16, 2010

Brad Parsons
President / General Manager
Clear Channel Outdoor – Oregon & SW Washington
715 NE Everett Street
Portland, OR 97232

Dear Mr. Parsons:

I want to personally thank you and Clear Channel Outdoor for the tremendous support you have provided Cascade AIDS Project (CAP) over the past two years. As you know, CAP's mission is to prevent HIV infections, support and empower people affected and infected by HIV/AIDS, and to eliminate HIV/AIDS-related stigma. On all these fronts, communications play a critical role, whether it is about raising awareness or providing education.

Over the past 18 months, Cascade AIDS Project has benefitted hugely through the in-kind contribution of billboards for airing messages about AIDS Walk, our Wellness Center, and World AIDS Day. In fact, we've estimated the in-kind value of the donation to be in excess of \$60,000 over the past year and a half.

While the donation of space for our messages has been hugely appreciated, it is always a struggle to come up with the resources for the installation and printing of Boards. We hope that Oregon will soon allow digital billboards, as we know this would reduce production costs and allow us to continue to get our messages out efficiently and effectively.

As a non-profit with limited resources, we rely on the generous support of both donors and key business partners who help to make their resources available to achieve our mission. Towards this end, we once again express our sincere gratitude to you and Clear Channel Outdoor. With the introduction of digital billboards, we are hopeful that we will even have more ability to effectively reach communities throughout Oregon and SW Washington with critical messaging.

Sincerely,

Michael Kaplan
Executive Director
Dir. 503.278.3810
mkaplan@cascadeaids.org

RECEIVED

SEP 09 2011

CITY OF MILWAUKIE
PLANNING DEPARTMENT

September 1, 2011

City of Milwaukie
Att: Planning Commission
10722 SE Main St.
Milwaukie, OR 9722

RE: Proposed sign ordinance amendments

Members of the Planning Commission:

I am a local business owner in Milwaukie that would be affected by your proposed sign ordinance amendments. I can understand the need to update the code to regulate LED brightness and assure it complies with national standards, as LED signs are put into use by our business community. I also agree with the need to allow businesses with non-conforming signs the ability to upgrade them to newer technology. However I do not see the need to restrict the area of a sign that can be used for LED nor does it seem necessary to make changes to the rate that electronic display signs may change.

It is my understanding that the State of Oregon has recently adopted new regulations for electronic display signs next to state highways and it does not prohibit the area of the sign used for LED, and allows for an 8 second change rate.

It is my opinion that if these standards are permissible by the state that the city of Milwaukie should not arbitrarily be creating its own limitations on regulating this type of signage.

Sincerely,

Todd Freeman

A handwritten signature in black ink, appearing to read 'Todd Freeman', with a long horizontal flourish extending to the right.

RECEIVED
Sept. 13, 2011
Planning Dept.

September 13, 2011

City of Milwaukie
Attn: Planning Commission
10722 SE Main St.
Milwaukie, OR 9722

RE: Proposed revisions to the sign ordinance

Dear Members of the Planning Commission:

I am a long-time local business owner in Milwaukie, and I am writing to express my concerns with the proposed amendments to the sign ordinance.

I completely support the proposed changes to regulate LED brightness so it complies with the national standards, as many local businesses use this type of signage. I also feel many business owners will benefit greatly if they have the ability to upgrade their non-conforming signs to the newer technology. However, I disagree with a few of the revisions; to restrict the area of the sign that can be used for the LED, and to change the rate that electronic display signs may change.

I am urging you to adopt the same regulations that the State of Oregon has recently adopted for electronic display signs next to state highways. It does not prohibit the area of the sign used for LED, and allows for an 8 second change rate. Many property and business owners in the community would benefit greatly if the City of Milwaukie adopts these same standards.

Thank you for your time and consideration in this matter.

Sincerely,



Anthony Enders
18010 Holly Lane
Oregon City, OR 97045-8522

September 30, 2011

City of Milwaukie
Attn: City Council
10722 SE Main Street
Milwaukie, OR 97222

Re: Proposed sign ordinance changes

Members of the City Council:

Daktronics would like to provide the following comments in reference to the proposed ordinance amending Milwaukie's Sign Code. We would like to also use this letter as a chance to express our support of the proposed amendments and comments offered by the International Sign Association (ISA).

First, we would like to applaud the Planning Commission for amending the first proposed ordinance in a fashion that provides a little more consideration for the needs of local businesses. We feel the changes made at Planning Commission, which increased the allowed sign area from 25 to 50 percent, and lowered the signs' message duration requirements from 3 hours to 2 minutes, are a step in the right direction for Milwaukie.

However, we still feel that proposed message duration requirements, as well as the lack of consideration for the allowance of electronic billboards within the city, will adversely affect local businesses within your community. Additionally, the Commission failed to amend the brightness regulations to levels that are appropriate for both large and smaller signage. This could have the potential to yield very bright signage on the aforementioned smaller signage. Therefore, would strongly urge the Council's reconsideration of those two aspects, and have provided the following comments to reinforce our position.

Electronic Billboards

The proposed regulations really don't address electronic billboards, other than by adding in regulations that would restrict the area of electronic display signs so much as to effectively prohibit their use as electronic billboards.

Electronic billboards are very beneficial for businesses, including local businesses. They can broadcast AMBER Alerts, weather updates, dangerous fugitive warnings, homeland security updates, and community events at a moment's notice to large numbers of people. For example, within 15 minutes of the interstate bridge collapse in Minnesota, electronic billboards were notifying drivers and rerouting traffic. In Kansas City, electronic billboards help law enforcement officers apprehend dangerous criminals. The effectiveness of this program has inspired law enforcement personnel nationwide to turn to electronic billboards to help catch criminals.

We are aware that that city doesn't differentiate between on and off-premises. Therefore, we would simply suggest that all existing billboards located along state-regulated highways be subject to the regulations recently passed by the state.

Static Message Duration Requirements for Automatic Changeable Copy Signs

Currently, the city permits automatic changeable copy signs and moving signs to change once every 10 seconds. The proposed regulations seek to continue to allow moving signs to rotate once every 10 seconds, but then seek to limit electronic display signs to change only once every 15 seconds (for signs under 20 square feet) or once every two minutes (for signs over 20 square feet). Electronic billboards, which were the entire reason for the proposed regulations, would be all but prohibited, as the smallest standard-sized billboards are over 200 square feet, and the proposed limitations seek to only permit such signs at a maximum area of 50 square feet.

First, the city currently allows electronic display signs to change once every ten seconds. Such limitations, albeit more restrictive than most jurisdictions that permit electronic display signs, sufficiently regulate electronic display signs to ensure that businesses can pass on their messages in a timely manner while ensuring the adverse effects of unacceptable uses, such as flashing, are avoided. Therefore, there is no need to implement more restrictive regulations.

There is a common rule-of-thumb in sign regulation that can be paraphrased as follows: Regulations should be no more restrictive than necessary to adequately regulate signage. Municipalities throughout the nation, numerous states (including Oregon) and the Federal Highway Administration, all permit and effectively regulate these signs at hold times less than what Milwaukie is proposing. Therefore, there is no reason to place such restrictive regulations on these signs.

Rather than requiring that electronic display signs change once every 15 seconds or three hours, such signs should be subject to the existing regulations permitting such signs to change once every 10 seconds.

Brightness Limitations

We would like to applaud the city for considering regulations for brightness similar to those passed by the state. However, the regulations implemented by the state are intended for electronic billboards that are much larger than what the city is seeking to implement. As a result, the regulations seeking measurement of all signs smaller than 300 square feet at a distance of 150 feet have the potential to yield overly bright signs, especially since the largest permitted sign size is only 50 square feet.

The 0.3 foot candle measurement is intended to be measured from typical sign-to-viewer distances. For small business signs, that sign-to-viewer distance is much closer. Therefore, measurements need to be taken from closer to the display to ensure appropriate brightness.

The standards ISA has suggested were written by the same gentleman who wrote the standard from which the state regulations are based. However, ISA's proposed standards are intended to be applied to a broad spectrum sign sizes instead of standard billboard sizes.

We would urge the Council to consider the amendments proposed by ISA.

Daktronics, Inc. is the world leader in the design and manufacture of electronic display systems. Daktronics offers many products, including commercial electronic display signs and digital billboards. We are committed to providing information and aiding regulatory entities in drafting appropriate regulations for electronic display signs.

Please let me know if you have any questions or concerns

Sincerely,



Terra Fisher
Signage Legislation
605-691-1285

6.

OTHER BUSINESS



Agenda Item: 6.A.
Meeting Date: October 18, 2011

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: David Evans Contract Amendment

Prepared By: JoAnn Herrigel
Dept. Head Approval: JoAnn Herrigel
City Mgr. Approval: Bill Monahan

ISSUE BEFORE THE COUNCIL

Adopt a resolution amending a contract with David Evans and Associates (DEA) for Riverfront design and permit extension of the term of the contract to September 2014 and allow increases to compensation as allowed through annual City budget approval and mutually agreed upon via contract addenda signed by the City and DEA.

STAFF RECOMMENDATION

Adopt a resolution amending a contract with David Evans and Associates (DEA) for Riverfront design and permit an extension of the term of the contract to September 2014 and allow increases to compensation as allowed through annual City budget approval and mutually agreed upon via contract addenda signed by the City and DEA.

KEY FACTS & INFORMATION SUMMARY

The support and technical assistance of the David Evans design team is critical to the on-going progress toward developing Milwaukie Riverfront Park. First, the City has received a grant from Metro to build Klein Point at the northern part of the park (construction commences in June 2012). Second, the permit from the Corps of Engineers appears to be nearing approval, which will allow DEA to move the design to 100%. Third, CCSD#1 has agreed to work with the City on the proposed access for the park and the treatment plant, clearing the way for the City's application to ODOT for a new highway access on McLoughlin Blvd. And, finally, together with C3 Strategies, the Riverfront Board and staff have developed a fund raising strategy for the Riverfront Park.

As part of the discussion of the DEA contract extension, staff will provide Council with a general update on the status of Milwaukie Riverfront Park design and construction.

OTHER ALTERNATIVES CONSIDERED

None

CITY COUNCIL GOALS

Develop Riverfront Park by January 1, 2013.

ATTACHMENT LIST

Resolution

FISCAL NOTES

Current budget anticipated this contract extension and has adequate funds to meet this need.



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: JoAnn Herrigel, Community Services Director

Date: September 20, 2011

Subject: David Evans Contract Amendment

ACTION REQUESTED

Adopt a resolution amending a contract with David Evans and Associates (DEA) for Riverfront design and permit the extension of the term of the contract to September 2014 and allow increases to compensation as allowed through annual City budget approval and mutually agreed upon via contract addenda signed by the City and DEA.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

September 2006: Council conducted a formal competitive procurement and adopted a resolution awarding a contract to David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park, authorizing the City Manager to sign a Personal Services contract for these services and appropriating a \$100,000 payment from the North Clackamas Parks and Recreation District.

August 2007: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2008, increasing the compensation to \$300,000, adding two additional tasks and appropriating \$100,000 in the Fiscal year 07-08 budget for use in the Riverfront design and permitting.

August 2008: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2009 and increase the compensation by an additional \$200,000 for use in the Riverfront design and permitting.

August 2009: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2010 and increase the compensation by an additional \$150,000, for use in the Riverfront design and permitting.

August 2010: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2011 and increasing the compensation by an additional \$100,000, for use in the Riverfront design and permitting.

BACKGROUND

In 2006, the Riverfront Board delivered to City Council a concept plan for Milwaukie Riverfront Park. City Council endorsed this concept and requested that staff move forward with a design of the Park. In October of 2006, after formal competitive procurement, the City contracted with David Evans and Associates (DEA) for development of design and engineering plans for Milwaukie Riverfront Park. As the design progressed toward 70% the staff and design team began the local, state and federal permitting process for the project. DEA has assisted with development of all local land use applications and a joint permit application for the Army Corps of Engineers (ACOE) and the Department of State Lands. DEA staff work has included the drafting and submitting of applications, completion and modification of design drawings, technical support during regulatory review and at public hearings and development of back up materials for grants and outreach materials.

2012 may well be the year that all of the elements of the Riverfront Park come together. First, the City has received a grant from Metro to build Klein Point at the northern part of the park. Second, the permit from the Corps of Engineers appears to be nearing approval, which will allow DEA to move the design to 100%. Third, CCSD#1 has agreed to work with the City on the proposed access for the park and the treatment plant, clearing the way for the City's application to ODOT for a new highway access on McLoughlin Blvd. And, finally, together with C3 Strategies, the Riverfront Board and staff have developed a fund raising strategy for the Riverfront Park. The support and technical assistance of the David Evans design team is more critical this coming year than ever.

As part of the discussion at the October 18th Council meeting of the DEA contract extension, staff will provide Council with a detailed update on the status of Milwaukie Riverfront Park design and construction. Current activities related to the Milwaukie Riverfront Park Design are described here in summary only. Activities can be separated into four main areas: 1) Design 2) Land use approvals/permitting 3) Site Preparation, and 4) Funding. As with any large project, all activities are taking place concurrently with significant overlap and interaction between tasks.

1) Design

DEA has completed 70% designs for the Park. Further detail of the whole site design is pending input from local, state and federal permit reviewers. 100% design plans are being completed this month (September 2011) for the northern portion of the site, called Klein Point. The City has received a grant from Metro to construct Klein Point and this portion of the park is not dependent on ACOE permit approval. Once all permit conditions have been established for the remainder of the park, the final design can be completed for the whole site.

2) Land Use Approvals and Permitting

The original scope of work with David Evans for Milwaukie Riverfront Park design included developing final design and construction plans for the park. In 2007, staff and the design team determined that it was necessary to begin submitting permitting applications to various regulatory agencies in order to determine whether certain aspects of the plan were "approvable" before completing the final design. Thus, the project team put some elements of the final design "on hold" and began working on local land use and state and federal permit application preparation.

Status of approvals and permitting is as follows:

- Milwaukie Planning Commission approvals:
 - Planning Commission approved all land use applications for the project with conditions on May 25, 2010.
 - Project staff will return to the Design Landmarks Commission (DLC) and Planning Commission to provide additional details on the project design as conditioned by the approval.
- Joint Permit application to Army Corps of Engineers (ACOE) and Department of State Lands (DSL):
 - DSL permit was approved in 2009 and an extension granted in 2010 and 2011.
 - The Corps of Engineers has referred the application to various federal agencies for review.
 - City Staff met with the Corps of Engineers and other environmental regulatory agencies on September 29th to discuss how the City may facilitate the completion of the permit.

3) Site Preparation

In 2009/10 a water line, traversing the upper level of the Riverfront property, was relocated to allow future re-grading of the site.

In 2010-11 City staff and DEA coordinated with PGE to determine exact locations for several of the power poles located in the upper level of the park. PGE plans to relocate these poles while they are relocating poles for the light rail project in the late fall of 2011.

Re-grading of the northern portion of the site (Klein Point) will begin in June of 2012 following the City's issuance of a construction contract for the project.

4) Funding

City staff had planned to apply for grants from the Oregon Marine Board (OMB) and the Oregon Parks and Recreation Department (OPRD) in the spring of 2011. However, the absence of approvals from the Corps of Engineers and continued concerns by Clackamas County Sewer District #1 regarding the new access proposed for the Park, resulted in a postponement of these applications. Staff met with grant administrators from OMB and OPRD in early 2011 and was cautioned that applications for grants before final permit approval would jeopardize grant application approvals.

In the meantime, the City applied for and was granted a Metro Capital Grant for the construction of Klein Point at the north end of the park. The City will begin construction of this project in June 2012.

In August of 2011, the Community Services Director hired C3 Strategies to draft a fundraising strategy for Milwaukie Riverfront Park. The contract was funded with a Community Partnership grant from Clackamas County Tourism and Cultural Affairs. Based on the initial results of this work, staff anticipates extending the contract with C3

Strategies and expanding the effort to begin fund raising for Milwaukie Riverfront Park in earnest.

CONCURRENCE

The Finance Director, City Manager and City Attorney's office have reviewed this staff report and the associated resolution.

FISCAL IMPACT

The fiscal year 2011-12 budget has adequate funding to accommodate this contract amendment.

WORK LOAD IMPACTS

The Community Services Director will continue to allocate at least a quarter of her time to coordination of Riverfront Park design and development.

ALTERNATIVES

Deny approval of the resolution, jeopardizing the completion of the design and permitting for Milwaukie Riverfront Park.

ATTACHMENTS

1. Resolution

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, amending contract # 2006 097 with David Evans and Associates Inc. (DEA) for landscape design and engineering services for Milwaukie Riverfront Park to extend the term to September 2014 and allow increases to compensation as allowed through annual City budget approval and mutually agreed upon via contract addenda signed by the City and DEA.

WHEREAS, the City Council awarded a contract # 2006 097 to David Evans and Associates Inc. (DEA) in October, 2006 for design of Milwaukie Riverfront Park; and

WHEREAS, the design elements for the park have now been established and design is at 70% completion; and

WHEREAS, the City has requested that DEA complete land use and permitting applications for local, state and federal regulatory agencies on this project before completing the final design; and

WHEREAS, the permitting issues for this project have been complicated due to the site's proximity to the Willamette River and Johnson and Kellogg Creeks; and

WHEREAS, the completion of design and permitting for Klein Point in 2012 will require regular input from DEA; and

WHEREAS, in order to complete these additional tasks, the current agreement must be amended regarding term and compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT: contract # 2006 097 with David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park shall be amended to extend the term to September 2014 and allow increases to compensation as allowed through annual City budget approval and mutually agreed upon via contract addenda signed by the City and DEA.

Introduced and adopted by the City Council on October 18, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



Agenda Item: 6.B.
Meeting Date: Oct 18, 2011

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Comcast Franchise Extension

Prepared By: JoAnn Herrigel
Dept. Head Approval: JoAnn Herrigel
City Mgr. Approval: Bill Monahan

ISSUE BEFORE THE COUNCIL

Approve a resolution authorizing the Mayor to sign a franchise extension agreement with Comcast extending the term of the current Comcast cable franchise to January 31, 2014.

STAFF RECOMMENDATION

Approve the attached resolution, allowing the extension of the Comcast franchise.

KEY FACTS & INFORMATION SUMMARY

The City's current Comcast franchise will expire on July 7, 2012. The proposed extension of the Comcast franchise is necessary to allow adequate time to complete the required ascertainment process and franchise negotiations with Comcast.

OTHER ALTERNATIVES CONSIDERED

None.

CITY COUNCIL GOALS

None related to this action.

ATTACHMENT LIST

- 1.Resolution
- 2.Franchise Extension Agreement

FISCAL NOTES

None



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: JoAnn Herrigel, Community Services Director

Date: September 29, 2011

Subject: Comcast Cable Franchise Extension

ACTION REQUESTED

Approve a resolution authorizing the Mayor to sign a franchise extension agreement with Comcast, extending the term of the current Comcast cable franchise to January 31, 2014.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

May 2011: Community Services Director met with Council at work session to discuss the City's existing agreement with the Metropolitan Area Communication Commission (MACC) and the potential for MACC to assist the City in negotiation of the Comcast cable franchise. Staff noted that they would return to Council with a request to extend the Comcast franchise to January 31, 2014.

BACKGROUND

Since the spring of 2011, Milwaukie staff has been discussing the possibility of joining the Metropolitan Area Communication Commission (MACC). One of the benefits that would result from Milwaukie's joining MACC is that MACC staff and their consultants would negotiate the Comcast franchise for Milwaukie. The City's current Comcast franchise will expire on July 7, 2012. While Council has not yet decided to join MACC, staff feels that an extension of the Comcast franchise is necessary. Due to the complex nature of cable service provider franchise negotiations, even if the City were to begin negotiations now, there would be inadequate time remaining in the current franchise to complete negotiations by the expiration date. Further, the requested extension will allow the City time to determine whether City staff or MACC will be completing the work on this franchise.

Cable franchise negotiations are relatively complicated and lengthy due to a federally required "Ascertainment Period" which precedes the actual franchise negotiation. During ascertainment, customer surveys and technical assessments of the franchise holder are conducted to prepare the negotiating parties for the negotiation itself. The

proposed extension of the cable franchise would allow the ascertainment period to begin in the spring of 2012 with the goal of completing negotiations near the January 2014 expiration date.

CONCURRENCE

Comcast has agreed to the proposed extension.

FISCAL IMPACT

None.

WORK LOAD IMPACTS

None.

ALTERNATIVES

Deny approval of the resolution and direct staff to take a different course of action.

ATTACHMENTS

1. Resolution
2. Franchise Extension Agreement

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN A FRANCHISE EXTENSION AGREEMENT WITH COMCAST, EXTENDING THE TERM OF THE CURRENT COMCAST CABLE FRANCHISE TO JANUARY 31, 2014.

WHEREAS, the Comcast cable franchise, effective July 7, 1999, will expire on July 7, 2012; and

WHEREAS, Comcast initiated the renewal process by letter on September 2009; and

WHEREAS, the City requires more time to complete the required ascertainment process and franchise negotiations than would be afforded by the current expiration date;

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to sign a franchise extension agreement with Comcast extending the term of the cable franchise to January 31, 2014.

Introduced and adopted by the City Council on October 18, 2011.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Document10 (Last revised 09/18/07)

ATTACHMENT 2

FRANCHISE EXTENSION AGREEMENT For the City of Milwaukie/Comcast Cable Franchise Agreement

WHEREAS, Comcast of California/Colorado/Florida/Oregon, Inc. ("Comcast"), currently holds a cable franchise with the City of Milwaukie ("City"), with an effective date of July 7, 1999, which will expire on July 7, 2012 ("City Franchise"); and

WHEREAS, by letter dated September 24, 2009, Comcast initiated the renewal process under Section 626 of the Cable Act and reserved its statutory rights related thereto; and

WHEREAS, by letter dated October 20, 2009, the City replied, reserving its statutory rights in the same manner; and

WHEREAS, the City and Comcast have determined that it is in both parties' best interest to extend the term of the City Franchise from July 7, 2012 to January 31, 2014.

NOW, THEREFORE, the City and Comcast agree as follows:

1. The City Franchise shall be extended up to and through January 31, 2014.
2. All provisions of the City Franchise, other than the duration of the City Franchise as set forth in Section 3.1 and 3.3, shall remain in full force and effect, through the extended date set forth herein.
3. The City and Comcast agree that execution of this extension does not waive any rights that either party has under Section 626 of the Cable Act.


ACCEPTED this ____ day of ____, 2011.

City of Milwaukie

By: _____
Print Name: _____
Title: _____

ACCEPTED this 19th day of Sept, 2011.

Comcast of California/Colorado/Florida/Oregon,
Inc.

By:  _____
Print Name: Gary A. Pohl
Title: RSVP