



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Agenda Planning Commission

Monday, April 28, 2014

7:00 PM

Commission Chambers

1. Call to Order

2. Public Comments

3. Public Hearing

- 3a.** Portland Metro Men's Center -
Conditional Use Permit (CU 13-01), Site Plan and Design Review (SP
13-11) and Lot Line Abandonment (LL 13-04).

Attachments: [Commission Report](#)
[Comments and Correspondence Since Last Hearing](#)

4. Work Session

- 4a.** Presentation: Review Proposed Sign Code (OCMC Chapter 15.28)

Attachments: [Commission Report](#)
[Existing Sign Code Chapter 15.28](#)
[3.10.14 Draft Sign Code Chapter 15.28](#)
[Map of Properties with 600'+ Frontage](#)
[League of Oregon Cities Model Code](#)
[City of Portland - Title 32](#)
[City of Milwaukie - Title 14](#)
[City of Gladstone - Chapter 17.52](#)
[City of Tigard - Chapter 18.780](#)
[City of Tualatin - Chapter 38](#)
[City of Beaverton - Chapter 60.40](#)
[City of Hillsboro - Chapter 11.32](#)
[City of Troutdale - Chapter 10](#)
[City of Silverton - Chapter 15.16](#)
[City of Lake Oswego - Chapter 47](#)
[Spectaculars & Wallscapes](#)
[Window Graphics](#)
[City of Lake Oswego - Signs in the Right-of-Way and Banners Over the Roadway](#)
[City of Portland - Portable and Temporary Signs](#)

[Existing Oregon City Banner Policy](#)
[Cross Street and Street Pole Banners Overview](#)
[Mobile Billboards](#)
[City of El Segundo, CA - Development Incentives](#)
[City of Daytona Beach Shores - Non-Conforming Sign Removal Incentive Grant](#)
[ODOT - Relocating Outdoor Advertising Signs on a Scenic Byway](#)
[City of Mount Vernon - Sign Grant Incentive Program](#)
[City of Federal Way Sign Compliance Program](#)
[Excerpts from Various Mural Codes](#)
[City of Portland - Painted Wall Sign](#)
[City of Portland - Public Art Murals Program](#)
[City of Beaverton - Arts Commission](#)
[City of Salem - Public Art](#)
[City of Milwaukie - Planning Commission Discussion of Murals](#)
[City of Keizer - 2.308](#)
[City of Stayton - 17.20.140.10](#)
[Los Angeles Mural Ordinance](#)

5. Communications

6. Adjournment



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

File Number: PC 14-035

Agenda Date: 4/28/2014

Status: Agenda Ready

To: Planning Commission

Agenda #: 3a.

From: Planner Laura Terway

File Type: Land Use Item

SUBJECT:

Portland Metro Men's Center -
Conditional Use Permit (CU 13-01), Site Plan and Design Review (SP 13-11) and Lot Line
Abandonment (LL 13-04).

RECOMMENDED ACTION (Motion):

BACKGROUND:

The applicant has submitted a Site Plan and Design Review, Conditional Use and Lot Line Abandonment application in order to utilize the site for the Portland Metro Men's Center, a religious institution and associated Christian recovery program, including dormitory facilities for sixty-two (62) people comprised of up to sixty (60) students enrolled in the program and at least two employees, construct associated structures, and consolidate two lots.

The applicant is expected to submit additional information into the record for review by the Planning Commission.

BUDGET IMPACT:

Amount:

FY(s):

Funding Source:

From: [Jennifer Bragar](#)
To: [Tony Konkol](#); [Laura Terway](#)
Cc: [Bill Kabeiseman](#); [Ed Sullivan](#)
Subject: FW: Status of Teen Challenge PMMC Day Use
Date: Monday, April 21, 2014 10:46:19 AM

Tony and Laura,

Below is the e-mail response I sent to Mike Reeder regarding his email on April 17, 2014. If you have questions or would like to discuss this approach further, I am available today. Thank you.

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JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com

► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: Jennifer Bragar
Sent: Monday, April 21, 2014 10:47 AM
To: 'Micheal Reeder'
Cc: hodgesc@comcast.net; Dave Oliver; Rodger.Snodgrass@teenchallengepnw.com; garry.wallace@teenchallengepnw.com; rickgivens@gmail.com; Ed Sullivan
Subject: RE: Status of Teen Challenge PMMC Day Use

Mr. Reeder,

I received the information you sent via e-mail on April 17, 2014 regarding the Portland Metro Men's Center property located at 405 Warner Parrott Road. Currently, Portland Metro Men's Center (PMMC) has a current application (Planning files CU 13-01, SP 13-11 and LL 13-04) requesting conditional use approvals for a religious institution and associated Christian recovery program, including dormitory facilities for up to 60 students enrolled in the program.

I am not going to respond to everything in your April 17, 2014 e-mail, but there are a lot of assumptions in the e-mail for which the City disagrees. However, this is not the time to respond to those assumptions.

This e-mail identifies the process that PMMC can undertake for the City to address the information you provide.

The City needs to know what PMMC is applying for. If PMMC claims that it has a nonconforming use, then it needs to apply for a nonconforming use determination under OCMC 17.58.060. The nonconforming use determination will likely be a discretionary determination. PMMC may file the

nonconforming use application and may consolidate the application with the pending application. If the applications are consolidated, then new notice will be required.

If PMMC is arguing Equal Terms, then that argument must be raised with PMMC's current or future applications.

If we do not hear from you, the City will continue to process the current application.

Please contact me if you have questions regarding the foregoing information.

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► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: Micheal Reeder [<mailto:mreeder@arnoldgallagher.com>]

Sent: Thursday, April 17, 2014 11:54 AM

To: Jennifer Bragar

Cc: hodgesc@comcast.net; Dave Oliver; Rodger.Snodgrass@teenchallengepnw.com; garry.wallace@teenchallengepnw.com; rickgivens@gmail.com; Ed Sullivan

Subject: Status of Teen Challenge PMMC Day Use

Jennifer:

You will remember that the Assemblies of God, Oregon District, Inc. owned the site and church located at 405 Warner Parrott Road in Oregon City until April 29, 2012 when the church disbanded. The Assemblies of God then sold the site to Teen Challenge Pacific Northwest (TC) in mid-2012. After consultation with Laura Terway TC began using the site as a "religious institution" for a religious "day use" for its Portland Metro Men's Center (PMMC) on November 1, 2012.

It was my understanding from our meeting in your office on March 6, 2014 that City staff wanted evidence showing that the site had been used as a church continuously for 20 years prior to closing on April 29, 2012 in order to show that the current day use of the site was a legal, nonconforming use that did not require a CUP (either as part of the current CUP application or as a separate "day use" CUP application).

Staff is in error and I provide you with this email first without sending it directly to the Planning Commission so that you and staff may analyze it and take appropriate remedial

action. I expect City staff to take the position in the new staff report (due Monday) and at the Planning Commission hearing on April 28th that the current day use of the site is a legal, **conforming** use (i.e. outright permitted) pursuant to the RLUIPA Equal Terms provision. I also expect staff to take the position that, setting aside the fact that the current use is a legal, conforming use, that the site has been a “religious institution” for well over 20 years, and therefore, to the extent that such a determination is even necessary, the evidence is overwhelming that the current use is (at the very least) a legal, nonconforming use.

I explain our position as follows:

1. RLUIPA Equal Terms Provision

The RLUIPA Equal Terms provision requires the City to treat the current PMMC day use on equal terms with a similar secular institution or assembly. As you well know, the R-10 district permits outright “Community Centers” and “Neighborhood Centers”. See your attached letter to me dated September 32, 2012 wherein you take the position that the intended use of the site for a the PMMC with **overnight accommodations** (i.e. a dormitory) was not a proper comparator per 9th Circuit case law and therefore TC would need to go through the CUP process. (It should be noted that although we disagree with that conclusion and believe that the Equal Terms provision requires the City to permit the PMMC to operate (even with a residential component), TC made a business decision to seek for a CUP). Implicit in your argument was that the intended use without an overnight accommodation component is a valid comparator to Neighborhood Centers and Community Centers.

Therefore, since the day use of the PMMC is a valid comparator to a Neighborhood and/or Community Center, the Equal Terms provision requires the City to treat the PMMC day use on equal terms as the comparators. Since Neighborhood Centers and Community Centers are permitted in the R-10 zone without the need for a CUP, then the PMMC day use also need not apply for a CUP. Therefore the issue of whether the PMMC day use is a legal, nonconforming use is moot because it is a legal conforming use, permitted outright.

2. Over 20 Years of Continuous Use of the Site as a Church

To the extent that the City needs evidence that the site was used as a church (i.e. “religious institution”) continuously for 20 years prior to the use as the PMMC, I attach three letters that provide overwhelming evidence that the site was used continually as a church (i.e. for more than 20 years prior to its closing in 2012).

Jennifer, please let me know when you have reviewed this information and confirm for me what position you and staff will be taking regarding this issue. Should you have any questions, please feel free to call.

Best,

MICHEAL M. REEDER



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www.arnoldgallagher.com

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Please reply to JENNIFER BRAGAR
jbragar@gsblaw.com
TELEPHONE 503 553 3208

September 13, 2012

Michael M. Reeder
Arnold Gallagher
800 U.S. Bank Center
800 Willamette Street
Eugene, OR 97401

Re: Oregon City's Further Response to Teen Challenge International Pacific Northwest
Centers' Letters Requesting RLUIPA Consideration

Dear Mr. Reeder:

This firm serves as the City Attorney to the City of Oregon City ("City"). This letter responds to Teen Challenge International Pacific Northwest Centers' ("Teen Challenge") August 14, 2012, letter requesting waiver of the application requirements that would otherwise apply to a proposal to house between 30-35 students receiving pastoral counseling to aid in recovery from addiction. As we understand the situation, Teen Challenge proposes a dormitory use in the existing church building ("Intended Use"). The property is located at 405 Warner Parrott Road in Oregon City, Tax lot: 3-2E-06CA-01700 ("Subject Property") in the City's R-10 zone.

Teen Challenge seeks a waiver pursuant to the "Equal Terms" provision of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. 2000cc-(b)(1). Teen Challenge asserts that the Intended Use qualifies as a religious assembly use that is comparable with other assembly uses allowed outright in the R-10 zone and, therefore, Teen Challenge need not apply for or receive a conditional use permit prior to using the Subject Property as intended. For the following reasons, the City disagrees with Teen Challenge's contention and concludes that applying the RLUIPA elements established in *Centro Familiar Christiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011), the Oregon City Municipal Code ("OCMC") does not classify the Intended Use on less than equal terms than comparable secular activities within the R-10 zone. Under the City Code the Intended Use requires a conditional use permit.



Analysis of the applicability of the Equal Terms provision of RLUIPA is subject to the Ninth Circuit's test because the Ninth Circuit includes Oregon.

The Equal Terms provision of RLUIPA provides:

"No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

In *Centro Familiar Christiano Buenas Nuevas v. City of Yuma, supra*, at 1173, the court concluded a

"[c]ity violates the equal terms provision only when a church is treated on a less than equal basis with a secular comparator, similarly situated with respect to an accepted zoning criteria. The burden is not on the church to show a similarly *situated* secular assembly, but on the city to show that the treatment received by the church should not be deemed unequal, where it appears to be unequal on the face of the ordinance."

The courts have not decided an Equal Terms case that involves an application for a use similar to the Intended Use - a residential facility for 30-35 students. Instead, the City must meet the Ninth Circuit's requirement to show that the Intended Use is not treated on a less than equal basis with a secular comparator, similarly situated with respect to accepted zoning criteria. Teen Challenge contends that its Intended Use qualifies as a religious assembly or institution that is most comparable to community centers and neighborhood centers that are permitted uses in the R-10 zone. As the City stated in its August 8, 2012, letter to Teen Challenge, the primary characteristics of the Intended Use are significantly different from a community or neighborhood center most particularly with regard to overnight accommodations. Rather, the most "similarly situated" secular comparator to the Intended Use is a group home serving over fifteen people that requires a conditional use permit.¹

Oregon City's treatment of neighborhood centers and community centers

As Teen Challenge described, the City Code does not contain a definition of community center or neighborhood center. However, the American Planning Association, "A Planners Dictionary" utilized by the City does contain a definition of community center. This dictionary defines community center as,

"A building to be used as a place of meeting, recreation, or social activity and not operated for profit and in which neither alcoholic beverages or meals are normally dispensed or consumed. (*Hartford, Conn.*). A place, structure, area, or other facility used for and providing religious, fraternal, or recreational programs generally open to the public and designed to accommodate and service significant segments of the community. May also be referred to as a convention center or civic center. (*Mankato, Minn.*)"

¹ As described in the City's August 8, 2012 response to Teen Challenge, at pages 2-3, Oregon's Special Residence statutes, ORS 197.660 *et seq.* provide useful context for City's to review group home applications for over fifteen people through its conditional use process.



Further, this dictionary defines neighborhood facility,

"A facility intended to serve or accommodate the needs of a specific segment of a community or area. (*Fort Wayne, Ind.*)"

The City interprets these terms, as described in its August 8, 2012, letter consistently with these definitions to exclude the provision of overnight accommodations.

The City has only one recognized community center or neighborhood center within its boundaries. The Pioneer Community Senior Center is a day use, City-owned community center. The Pioneer Community Senior Center operates programs targeted to the senior community, and as described in Clackamas County's HUD CDBG grant application, the center is the base for a nutritional outreach program. See Attachment 1. This community center does not include overnight accommodations. Thus, Oregon City's operation of community centers and neighborhood centers align with the Planners Dictionary definitions described above because the one recognized center serves a specific segment of the community in a facility for recreation and social activity. Therefore, community centers and neighborhood centers are not secular comparators to the Intended Use that are similarly situated with respect to accepted zoning criteria because community and neighborhood centers do not include overnight accommodation.

The City concludes that the Intended Use is comparable to secular assemblies described in the conditional use section of the City Code and Oregon City Municipal Code 17.08.030 and subject to the same accepted zoning criteria.

Under OCMC17.08.030.J, the code lists a secular comparator to the Intended Use that is similarly situated with respect to the accepted zoning criteria in its listing of a "group home for over fifteen people." The use of R-10 property by an organization to house more than fifteen people, regardless of whether the organization operating the home is religious or secular, is a conditional use under OCMC 17.08.030.J. Based on this analysis, and in light of this comparable use, Teen Challenge's Intended Use would be treated equally to any other group home where over fifteen people reside in the R-10 zone, through the conditional use review process.

Conditional uses in the R-10 zone are all subject to the same zoning criteria found in OCMC 17.56.010, namely that the applications will be reviewed to consider the adequacy of transportation systems, public facilities, and services existing or planned for the area. As Teen Challenge has pointed out, that consideration will necessarily take into account the residential nature of the facility, as well as the number of residents intended to be housed.

To date, the City does not have any conditionally approved group homes with over fifteen residents. However, in 2007, the City approved a conditional use permit for the House of Hope to operate a boarding school for three to five girls undergoing live-in residential counseling. The Staff Report in support of approval contains a detailed analysis of the conditional use criteria that are considered in a conditional use process. See pages 5-6 of the attached Staff Report and Notice of Decision for CU 07-04, Attachment 2. As described therein, the application did not require upgrades to



any of the infrastructure for the home to be used as the boarding school and did not have traffic impacts because of the small number of girls that would be residing at the property. In contrast, Teen Challenge described that its Intended Use may have a greater impact on public infrastructure and utilities resulting from operation of a commercial kitchen, additional plumbing fixtures, and an increase in traffic. The Intended Use would be subject to the same zoning criteria as similarly situated secular assemblies that involve overnight accommodation for residents.

Though the Ninth Circuit Equal Terms test is similar to the Third Circuit's test, the Ninth Circuit is focused on the applicable zoning criteria, not the regulatory purpose.

Teen Challenges' letter focuses on the Third Circuit's Equal Terms test to consider whether a religious assembly is treated less well than secular assemblies or institutions that are similarly situated as to the regulatory purpose. *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 510 F3d 253, 266 (3rd Cir. 2007). Based on its reliance of the Third Circuit holding, Teen Challenge's August 14, 2012, letter focuses on the residential zoning and contends that its Intended Use is residential in nature and thereby achieves the regulatory purpose of the zone district.

However, this interpretation relies too much on the Third Circuit test, and not enough on the Ninth Circuit test that focuses on a comparison of a secular comparator that is similarly situated with respect to zoning criteria. *Centro Familiar Christiano Buenas Nuevas v. City of Yuma*, *supra*. at 1173. The City rejects the Third Circuit test in favor of the governing Ninth Circuit test. In Oregon City, the zoning criteria at issue are the conditional use standards in OCMC 17.56.030. The conditional uses listed in OCMC 17.08.030 and governed by the conditional use standards address the scale of development independent of an applicant's religious affiliation by providing a mechanism to address neutral concerns about the impacts of conditional use development in the R-10 zone. The City has a significant governmental interest to plan for specific land uses to be confined to R-10 districts; thus, the City has zoned its land to include single-family residential zones that do not permit dormitory uses outright. The City offers some flexibility to allow conditional uses within the R-10 zone, but reviews such proposals under the conditional use criteria in OCMC 17.56.030, to ensure that nursing homes, assisted living facilities, and group homes over fifteen people, as well as other listed conditional uses, do not transform residential neighborhoods into high density dormitory dominated neighborhoods.

Note, that even under a regulatory purposes gloss, the Third Circuit's discussion in *Lighthouse* emphasized that it did not intend to exempt religious entities from obtaining land use review. The Third Circuit rejected any test that would result in allowing outright a large church with a thousand members in the same neighborhood where a town already allows a local, ten-member book club to meet in a senior center. *Id.* at 268. Instead, the Third Circuit ruled that "a plaintiff under the Equal Terms Provision must identify a better-treated secular comparator that is similarly situated in regard to the *objectives* of the challenged regulation." *Id.* (emphasis in original).

As stated above, the conditional use standards provide the City an opportunity to review whether City-wide and site-specific infrastructure is adequate for the Intended Use. In this way, the City's zoning code is set up to reflect the concern raised by the Third Circuit and its intent to protect against the development of a high-intensity religious use by comparing it to a less-intense ten person book club.



Teen Challenges' August 14, 2012, letter does just that by trying to compare a 30-35 person live-in residential counseling facility to a day-use community or neighborhood center. In Oregon City, the threshold for conditional use review of the Intended Use, as well as any group home, nursing home, or assisted care facility is met when the proposal exceeds fifteen people. It is at that level of development that the City identified its concern that the scale of development requires additional oversight through application of the conditional use criteria, notwithstanding whether the applicant for the use involves a religious assembly.

Conclusion

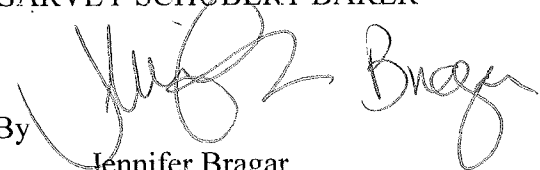
Under the Ninth Circuit's test, applicable to Oregon City, the City is tasked with comparing the Intended Use with a secular comparator, similarly situated with respect to an accepted zoning criterion. Here, the most similarly situated comparator is a group home subject to the conditional use criteria to allow the City to ensure the adequacy of the public roads, sewers, and other public facilities and services. Contrary to Teen Challenge's assertion, the City Code does not create unequal treatment of religious uses when the Intended Use is compared to similar secular uses, similarly situated with respect to accepted zoning criteria. Notwithstanding that the Intended Use is characterized as a religious use, the Intended Use is most comparable to a group homes that house over fifteen people in the R-10 zone. Therefore, the Intended Use proposed by Teen Challenge on the Subject Property is subject to the conditional use review process.

Thank you for your attention to this matter.

Sincerely,

GARVEY SCHUBERT BARER

By


Jennifer Bragar

JB:jlw

Enclosures:

Attachment 1: Excerpt of 1978 Clackamas County HUD Grant
Attachment 2: Staff Report and Notice of Decision for CU 07-04

cc: Chris Hodges
Client

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT PROGRAM				1. NAME OF APPLICANT Clackamas County, OR		2. APPLICATION NO.		3. <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT	
				ENTITLEMENT APPLICANTS ONLY 4. PROGRAM YEAR: FROM: 7/15/78 TO: 7/15/79					
ACTIVITY DESCRIPTION	RELATED SHORT- TERM OBJECTIVE	CENSUS TRACT/ ENUMER- ATION DISTRICT	ENVIRONMENTAL REVIEW STATUS	RELATED BUDGET LINE ITEM	ESTIMATED COST (\$000)				
					BLOCK GRANT FUNDS			OTHER FUNDS	
					PROGRAM YEAR	SUBSEQUENT YEAR	TOTAL	AMOUNT	SOURCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
(4) <u>Clearance, Demolition, Rehab.</u>	See Three Year Summary 1979 Objectives/Work Program	Community Wide	Assessment	4	5,000	35,000	5,000		
(5) <u>Rehabilitation Loans & Grants</u>		Community Wide	Assessment	5	195,000		195,000	25,000 160,000 10,000	AAA CSA FEA
(6) <u>Special Projects for the Elderly and Handicapped</u>				6	1,000,000		1,000,000		
A. Miawaukie Senior Multi-Purpose Center		208,209 210,211 212,215*	Assessment		650,000		650,000		
B. Oregon City Senior Center		224,225**	Certification		350,000		350,000	320,000 90,000 58,000 11,000	CDBG76 Land do- nated State Office of Elderly & Aging Senior Citizens
C. Gladstone Senior Center							129,000		
*Loaves and Fishes Nutrition Program Outreach									
**Nutrition program outreach to surrounding urban area and census tracts 239,234,242,243.									
1Preliminary Allocation									
GRAND TOTAL					\$	\$	\$	\$	

HUD-7015.1 (11-75)

CITY OF OREGON CITY
TYPE III – CONDITIONAL USE PERMIT
320 WARNER MILNE ROAD OREGON CITY, OREGON 97045
Tel 657-0891 Fax 657-7892



STAFF REPORT and RECOMMENDATION
October 1, 2007

Complete: August 23, 2007
120-Day: December 21, 2007

FILE NO.: CU 07-04

APPLICATION TYPE: Type III
Planning Commission Hearing Date: October 8, 2007

APPLICANT/OWNER: House of Hope
c/o Troy Wagner
P.O. Box 33114
Oregon City, OR 97045

REQUEST: The applicant is requesting approval of a Conditional Use permit to operate as a residential boarding school for 3 to 5 girls.

LOCATION: 206 Holmes, Oregon City, Oregon 97045
Clackamas County Map 3-2E-06AC, Tax Lot 1700
Zoned "R-10" Dwelling District

REVIEWER: Christina Robertson-Gardiner – Associate Planner, City of Oregon City

RECOMMENDATION: Approval with Conditions.

Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. Applications evaluated through this process include conditional use permits, preliminary planned unit development plans, variances, code interpretations, similar use determinations and those rezonings upon annexation under Section 17.06.050 for which discretion is provided. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.

IF YOU HAVE ANY QUESTIONS ABOUT THIS DECISION, PLEASE CONTACT THE PLANNING DIVISION OFFICE AT (503) 657-0891.

DECISION CRITERIA: Chapter 17.08 R-10 SINGLE FAMILY DWELLING DISTRICT
Chapter 17.50 ADMINISTRATION AND PROCEDURES
Chapter 17.56 CONDITIONAL USES

I. BACKGROUND

The applicant, House of Hope, is requesting approval of a Conditional Use permit to operate as a residential boarding school for 3 to 5 girls. The applicant has provided the following information about their program:

House of Hope Portland is a non-denominational Christian program for struggling boys and girls between the ages of 13 to 17. The mission of House of Hope is "to restore hurting families by allowing God to bring healing to the physical, spiritual and emotional needs of troubled teenagers and their families." At House of Hope Portland, this is accomplished through a multi-pronged approach: individual counseling, family counseling, schooling and living skills training.

In September 2006, House of Hope Portland began as a non-residential counseling program to temporarily meet the needs of the community. 4 teens and their families have received treatment in the first 7 months of the program. House of Hope: Portland works closely with both the family and the teen to ensure they are receiving the care and support they need for mutual progress to occur.

In some cases, a teen's issues are too deep to be dealt with while living at home. Some times it is simply unsafe for the teen to return home, as in cases of negative peer influences, running away, self-mutilation or suicidal depression. In these cases, residential treatment allows the teen and family to heal together while the teen remains in a safe, loving, structured Christian environment. Currently, House of Hope: Portland is looking for its first residential treatment facility. It will house between 3 and 5 girls.

The applicant has additionally submitted a daily schedule (Exhibit 3) identifying the times and activities for the girls to be living on site. According to the applicant, outside visitors are only allowed with proper approval and are supervised at all times.

The ^{at} subject site is currently occupied by a single-family residence on a 24, 829 square foot lot. The 1940s era home is situated at the front of the oversized lot near Holmes Lane and has both an attached two-car garage and a detached three-car garage in the rear with an additional gravel parking area for 3-5 cars. There are currently no street improvements on the site.

II. FACTS

1. **Location.** The site is located on the south side of Holmes Land between McCarver Avenue and Cherry Avenue and is identified as Clackamas County Map 3-2E 06AC TL 1700.
2. **Surrounding Zoning and Land Uses.** The subject site is zoned R-10 Single-Family Dwelling District. The properties to the north, south, east and west of the site are zoned R-10 Single-Family Dwelling District. Surrounding the site are single-family lots of sizes that range from 10,000 to 24,000 square feet. To the Southeast of the property along AV Davis and Linn Avenue is the Oregon City Evangelical Church (TL s 6400,600,500 &400). Also owned by the

Oregon City Evangelical Church is 155 A.V. Davis. This property was not included in their 2005 Conditional Use Review. The Oregon City Transportation System Plan identifies this section of Holmes Lane as a neighborhood collector.

3. **Public Comment.** The subject site was posted, the hearing was advertised in the Clackamas Review and notice of this proposal was sent to property owners within three hundred feet of the subject property and various City departments and other agencies requesting written comments and identifying the night and location of the hearing to present testimony. A memo has been prepared by Bill Kabeiseman, Assistant City Attorney responding to concerns relating to city's ability to enforce CC &R's on the property. Additionally, Carrie Richter, Assistant City Attorney, will be available at the October 8, 2007 hearing to answer any questions the Planning Commission may have regarding the submitted public comments.

Rivercrest Neighborhood Association Steering Committee, c/o Patty Brown PO Box 1223
The Steering Committee submitted minutes from their meeting with the applicant and notified staff that they do not object to the application.

Nancy K. Miller, 180 McCarver Avenue. Mrs. Miller, a resident of the neighborhood for 37 years raised concerns with the amount of non-single family use in the area and the associated security issues relating to the intended uses of the site.

Glenda Durham, PO Box 1006. Ms. Durham, representing an unidentified number of clients, raises issues relating to the appropriateness of the Conditional Use and to ongoing court action regarding the ability to enforce the CC&Rs of the Rivercrest Addition in Oregon City.

Linda Lord, 142 Holmes Lane. Ms. Lord is not in favor of the application and has identified concerns relating to noticing, licensing, social service agencies being allowed in a residential zone, traffic, noise, and the deed restriction on property.

Cheryl Hooper, 818 Linn Avenue. Ms. Hooper has concerns with the application and sees the proposal as more of a correctional institution than a boarding school.

Erlyn and Lesley Krueger, 631 Charman Street. The Krueger's are uncomfortable with the proposed use being in a residential district.

Bob Krueger, 130 Telford Road. Mr. Krueger opposes the proposed use to be allowed through the Conditional Use process.

Mardel Lewis and Catherine West, 203 Cherry. Ms. West and Mr. Lewis are concerned that the proposed use does not meet the CC&Rs of the subdivision as well as having concerns over safety, traffic and property values.

Bill and Eileen Johnson, 886 Linn Avenue. The Johnsons' concerns relate to safety, compatibility of the use in the neighborhood as well as the need for more landscaping and property security.

III. CONDITIONAL USE PERMIT FINDINGS:

OREGON CITY ZONING CODE

Chapter 17.08: R-10 Single-Family Dwelling District

17.08.010 Designated.

This residential district allows for areas of single-family homes on lot sizes of at least ten thousand square feet. (Prior code §11-3-2(part))

17.08.020 Permitted uses.

Permitted uses in the R-10 district are:

- A. Single-family detached residential units;
- B. Publicly-owned parks, playgrounds, playfields and community or neighborhood centers;
- C. Home occupations;
- D. Farms, commercial or truck gardening and horticultural nurseries on a lot not less than twenty thousand square feet in area (retail sales of materials grown on site is permitted);
- E. Temporary real estate offices in model homes located on and limited to sales of real estate on a single piece of platted property upon which new residential buildings are being constructed;
- F. Accessory uses, buildings and dwellings;
- G. Family day care provider, subject to the provisions of Section 17.54.050.

Finding: *Not Applicable.* The applicant has not proposed a permitted use.

17.08.030 Conditional uses.

The following conditional uses are permitted in this district when authorized by and in accordance with the standards contained in Chapter 17.56:

- A. Golf courses, except miniature golf courses, driving ranges or similar commercial enterprises;
- B. Uses listed in Section 17.56.030. (Prior code §11-3-2(B))

Finding: *Complies.* Section 17.56.030 identifies "Schools" as a use requiring a Conditional Use Permit.

17.08.040 Dimensional standards.

Dimensional standards in the R-10 district are:

- A. Minimum lot areas, ten thousand square feet;
- B. Minimum lot width, sixty-five feet;
- C. Minimum lot depth, eighty feet;
- D. Maximum building height, two and one-half stories, not to exceed thirty-five feet;
- E. Minimum required setbacks:
 - 1. Front yard, twenty feet minimum depth,
 - 2. Attached and detached garage, twenty feet minimum depth from the public right-of-way where access is taken, except for alleys. Garages on an alley shall be setback a minimum of five feet in residential areas.

3. Interior side yard, ten feet minimum width for at least one side yard; eight feet minimum width for the other side yard,
 4. Corner side yard, fifteen feet minimum width,
 5. Rear yard, twenty feet minimum depth,
 6. Solar balance point, setback and height standards may be modified subject to the provisions of Section 17.54.070. (Ord. 91-1020 §2(part), 1991; prior code §11-3-2(C))
- F. Garage Standards: See Section 17.20 – Residential Design Standards
- G. Maximum Building Coverage: See Section 17.20 – Residential Design Standards.

Finding: *Complies.* The existing single family residence on the 24,829 square foot lot meets all of the setbacks of the R-10 District.

Chapter 17.56 Conditional Uses

17.56.010 Permit--Authorization--Standards--Conditions.

The planning commission may allow a conditional use, provided that the applicant provides evidence substantiating that all the requirements of this title relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

1. *The use is listed as a conditional use in the underlying district;*

Finding: *Complies.* Section 17.56.030 identifies "Schools" as a use requiring a Conditional Use Permit. There has been some public comments submitted to the city questioning the nature of the proposed use as a school. Based on the information provided by the applicant, Staff has classified this use as a private boarding school. The students are minors between the ages of 13 and 17 and are being sent to the House of Hope by their parents where they will be provided with in home schooling. The applicant has indicated that they are pursuing the local and state licensing required to operate a school of this nature parallel to this Land Use process.

This Conditional Use is examining the impacts the proposal may have on the abutting single-family residential neighborhood and identify specific conditions of approval that may mitigate any potential impacts to the neighborhood.

2. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;*

Finding: *Complies with Conditions.* The subject site is a 24,829 square foot lot. The applicant is proposing to utilize the site for a boarding school for 3-5 girls. The purpose of the program is to provide in-house counseling and tutoring program for at risk girls with outside tutors and councilors who would come to the house at various points in the day/week. Once a week, parents of the students would come to the house to visit. The applicant has submitted a daily schedule in their submission packet which illustrates the controls the applicant plans to place on the girl's activities.

The applicant has also indicated that there would generally be no more than four or five cars at the site at any time. There is a two-car attached and three-car detached garage onsite as well as space for parking up to 5 cars either in the front driveway or in the rear parking area behind the house.

Staff finds that the proposed use of a boarding school for 3 to 5 girls is appropriate for the general area as it will have no more impact on the neighborhood than the potential intensity of any single family residence. Moreover, the Conditional Use process will provide an avenue for future neighborhood concerns of noise, parking and other nuisances to be addressed, which are not regulated in other single-family residences.

3. The site and proposed development are timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use;

Finding: Complies with Conditions.

Traffic/Transportation –

The anticipated traffic trips generated by the proposed use are no greater than that of the typical single-family residence. Parental visits and outside tutors are at a level of normal weekly single-family activity. As conditioned, all parking for the House of Hope shall be provided onsite and will not be allowed to spill into the neighboring streets

Sanitary Sewer – The existing home is not proposed to be altered for the conditional use.

Water – The existing home is not proposed to be altered for the conditional use.

Storm Drainage – The existing home is not proposed to be altered for the conditional use.

Fire – The existing home is not proposed to be altered for the conditional use.

Finding: Complies with Conditions.

4. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding: Complies with Conditions.

The applicant has contended and staff agrees that the proposed use will have no more affect on a neighborhood than a single-family residence. Neighborhood comments, however, do not agree with this statement. While the Land Use Committee of the Neighborhood Association does not opposes the application, numerous neighbors have submitted comments that strenuously appose the proposed use in their neighborhood. They contend that the proposed use will bring safety concerns from not only the girls but friends associated with the students that may come to the area to visit. They do not see the proposed use as compatible with a single-family neighborhood. No mitigation measures have been identified in the public comments that could alleviate their concerns. Therefore, staff is recommending the Planning Commission approve the use but require the applicant, to submit an application to show compliance with the Conditional Use approval under OCMC 17.56 within one year of the Conditional Use approval. This will be processed as a Type II Administrative procedure, which is appealable to the City Commission.

5. The proposal satisfies the goals and policies of the city comprehensive plan which apply to the proposed use.

Comprehensive Plan Policies

Section 6 – Quality of Air, Water and Land Resources

Goal 6.4 Noise: Prevent excessive noise that may jeopardize the health, welfare and safety of the citizens or degrade the quality of life.

Policy 6.4.1: Provide for noise abatement features such as sound-walls, soil berms, vegetation and setbacks to buffer neighborhoods from vehicular noise and industrial noises.

Policy 6.4.2: Encourage land-use patterns along high-traffic corridors that minimize noise impacts from motorized traffic through building location, design, size and scale.

Finding: Complies. The proposed use as conditioned is not anticipated to created an impact greater than that of a single family residence.

Section 10 – Housing

Goal 10.1 Diverse Housing Opportunities. Provide for the planning, development and preservation of a variety of housing types and lot sizes to provide for needed affordable housing.

Policy 10.1.1: Maintain the existing residential housing stock in established older neighborhoods by maintaining existing comprehensive plan and zoning designations where appropriate.

Finding: Complies. The applicant has proposed a boarding school in the R-10 Single Family Dwelling District, a conditional use. The applicant does not propose to alter the building in a manner that it cannot be returned as a single-family residence if the Conditional Use is removed from the site. Oregon City has moat of the schools located in residential zone districts. The proposed use is compatible with the adjacent residential character of the neighborhood. It is appropriate to maintain the existing comprehensive plan and zoning designations for this site.

B. Permits for conditional uses shall stipulate restrictions or conditions which may include, but are not limited to, a definite time limit to meet such conditions, provisions for a front, side or rear yard greater than the minimum dimensional standards of the zoning ordinance, suitable landscaping, off-street parking, and any other reasonable restriction, condition or safeguard that would uphold the spirit and intent of the zoning ordinance, and mitigate adverse effect upon the neighborhood properties by reason of the use, extension, construction or alteration allowed as set forth in the findings of the planning commission.

Finding: Complies. The applicant has not requested any restriction, condition or safeguard beyond what is normally required by the city to uphold the spirit and intent of the zoning ordinance and mitigate adverse effect upon neighborhood properties. Staff has recommended conditions of approval that would appear to be appropriate to ensure compliance with the Oregon City Municipal Code.

C. Any conditional use shall meet the dimensional standards of the zone in which it is to be located pursuant to subsection B of this section unless otherwise indicated, as well as the minimum conditions listed below.

Finding: Complies. The applicant has indicated that the dimensional standards of the zone will be met.

D. In the case of a use existing prior to the effective date of the ordinance codified in this title and classified in this title as a conditional use, any change of use expansion of lot area or expansion of structure shall conform with the requirements for conditional use.

Finding: Not Applicable. There is no pre-existing Conditional Use on the parcel.

E. The planning commission may specifically permit, upon approval of a conditional use, further expansion to a specified maximum designated by the planning commission without the need to return for additional review. (Ord. 91-1025 §1, 1991; prior code §11-6-1)

Finding: Not applicable. The applicant has not proposed a phased Conditional Use approval.

17.56.020 Permit--Application.

Finding: Complies. The applicant has properly filed the Conditional Use request and a public hearing will be held before the Planning Commission.

17.56.040 Criteria and standards for conditional uses.

In addition to the standards listed herein in Section 17.56.010, which are to be considered in the approval of all conditional uses and the standards of the zone in which the conditional use is located, the following additional standards shall be applicable:

A. Building Openings. The city may limit or prohibit building openings within fifty feet of residential property in a residential zone if the openings will cause glare, excessive noise or excessive traffic which would adversely affect adjacent residential property as set forth in the findings of the planning commission.

Finding: Not Applicable. There are no new building openings proposed within fifty feet of residential property.

B. Additional Street Right-of-Way. The dedication of additional right-of-way may be required where the city plan indicates need for increased width and where the street is inadequate for its use; or where the nature of the proposed development warrants increased street width.

Finding: Complies. Holmes Lane in this section is identified as a Neighborhood Collector in the Oregon City Transportation System Plan, which requires a right-of-way (ROW) width of 52 to 81 feet. Currently, Holmes Lane has a 60-foot ROW width along the site's frontage. As this use is not anticipated, nor conditioned, to be of more impact than a single-family residence, no street improvements are being proposed at this time. This criterion will be revisited if the applicant chooses to expand the Conditional Use or request approval for a land partition.

17.56.060 Revocation of conditional use permits.

Finding: Complies with Conditions. The applicant has requested a Conditional Use Permit approval for a Boarding School for 3-5 girls. Neighbors have submitted comments questioning the level of impact the school will have on the neighborhood. Their concerns can be addressed by having the Applicant, submit an application to show compliance with the Conditional Use approval under OCMC 17.56 within one year of the Conditional Use approval. This will be processed as a Type II Administrative procedure. No fees are to be assessed to the applicant for this process

17.56.070 Periodic review of conditional use permits.

Finding: *Not Applicable.* The site has not been identified as needing a periodic review of a previously issued permit.

CONCLUSION AND DECISION:

Based on the analysis and findings as described above, the House of Hope can meet the requirements as described in the Oregon City Municipal Code for Conditional Use Permit by complying with the Conditions of Approval provided in this report.

Therefore, staff recommends approval of files CU 07-04 with conditions, based upon the findings and Exhibits contained in this staff report.

EXHIBITS:

1. Vicinity Map
2. Birds eye view of the site (acquired by staff from OC Web map)
3. House of Hope Land Use Application
4. Public Comments
5. September 26, 2007 Letter form Bill Kabeiseman

Recommended Conditions of Approval

Planning Files: CU 07-04

1. Within one year of the Conditional Use approval, the Applicant shall submit an application to show compliance with the Conditional Use approval under OCMC 17.56. This will be processed as a Type II Administrative procedure. No fees are to be assessed to the applicant for this process.
2. The applicant shall create a good neighbor agreement with the Rivercrest Neighborhood Association. This agreement will contain, at a minimum, the following items:
 - a. A primary contact person for both organizations to facilitate timely communications.
 - b. A yearly meeting with the Rivercrest Neighborhood Association and owners within 300 feet of the subject property is encouraged to discuss any concerns they may have with the use.
 - c. An information sheet to be provided to all teachers, volunteers, councilors, visitors parents, and students of the House of Hope indicating that the House of Hope is a Conditional Use within a Single-Family Residential District. The letter shall also explain that the Neighborhood will be monitoring issues such as parking, noise and visitors as part of the Conditional Use approval.
 - d. If the Neighborhood Association or the Applicant fails to work together in good faith, to complete the agreement within 90 days of a final city decision, the agreement will no longer be required as part of the Conditional Use Approval.
3. All parking for the House of Hope shall be located onsite.

March 28, 2014

To whom it may concern,

My name is Michael Durant and I am writing this letter on behalf of the Teen Challenge Center located at 405 Warnerparrot RD. in Oregon City.

The location in Oregon City 405 Warnerparrot RD. has a significant meaning to me as I attended church at this location for approx. 32 years. I have lived in the Oregon City area for all of my life. My family started attending Oregon City Assembly of God in October of 1978. At that time I was 7 years old. Dr. J.W. Jepson was our pastor. Dr. Jepson pastored OCAG until moving to another ministry in 1985. He was replaced by Pastor Eugene Slape who pastored the church for a few years. During my high school years (around 1988) a new and younger pastor named Larry Rogers was elected as the pastor. He pastored the church until sometime around 1996.

In the mid 90's Pastor Wayne Wilson came from Goshen Oregon to pastor Oregon City Assembly of God. Pastor Wayne pastored the church for about ten years before moving on to another ministry. He was replaced by Zach Lucas.

During Zach Lucas's time as pastor of the church, the church name was changed to River of Life Christian Center. Legally it was Oregon City Assembly of God doing business under the name River of Life Christian Center. I was a board member of the church at this time. In 2008 I became the associate pastor of River of Life Christian Center. In the summer of 2010 I left my position at River of Life to pursue other ministry opportunities. However my parents, my sister and my brother-laws-family still attended the church.

In the fall of 2010 Zach Lucas resigned as the pastor at River of Life Christian Center. He was replaced by Pastor Alan Kern.

Alan Kern had a difficult time pastoring the church as it was in significant financial trouble. He was only pastor for 6-7 months before resigning.

After Alan Kern resigned Pastor Randy Robertson a former missionary and former Sr. Pastor of another church served as the pastor at River of Life Christian Center. Pastor Randy is known for turning churches around in Oregon. He had a tough time as the finances of the church were at a critical point.

AS the finances became worse Pastor Randy contacted The Oregon Ministry Network (Oregon District of the Assemblies of God) who stepped in to evaluate the financial condition of the church. The decision at that point was made to close the church.

I was asked to attend a meeting with the board and the members at that time. It was announced the church was to close. When everyone left the doors were locked. That was April of 2012. It was a very sad day as the church that started all the way back in 1941 and was a church over 71 years was now closed.

The building sat vacant for a few months before Teen Challenge purchased the building. The church existed at that location from the mid 1960's until it closed and became the new Teen Challenge Center.

I still serve in ministry and not only minister to others in the community but also at Teen Challenge in Oregon City. I hold ministerial credentials from the General Counsel of the Assemblies of God.

The work God started there is still continuing just under a new name and a new sign.

Sincerely,



Rev Michael Durant
22875 S. Tonya CT.
Beavercreek, OR 97004

To whom it may concern.

I understand there is some question as to how long Oregon City Assembly of God has been in operation.

They started in 1946 with Grace Butler.

However the property at 405 Warner Parrotte Rd was acquired in 1962. Pastor Donald Caves was the Pastor at that time. He came in 1956 and was there until 1964 when Kenneth Namar came. I also started coming in 1964, I was there when Pastor Caves was there. My husband and his family have attended there since about 1955.

Pastor Namar left in 1979. That's when J.W. Gipson came. He was there until 1985. That's when he left and Rev. Joantain was an interim pastor until later in 1985 when Pastor Slope

came. He was there until 1987 when
Larry Rogers came. He pastored until
1992. Pastor Gordon Meyers filled
in until Pastor Wayne Wilson
came. He was there from 1993
until 2005. After he left we had
a couple of people fill in for 6 weeks,
Pastor Don Jacobson & a deacon Bill
~~Dutton~~. Then pastor Zack Lucas came
in 2005. He was with us until 2010.

At that time we had different speakers
come and fill in until Alan Kern came
in 2010. He was there until 2012.

That is the year Oregon City Assembly
of God Church closed its doors.

I can't remember the month they
closed seems it was late summer.

I hope this is helpful

Ed & Evelyn Brubaker

Mike Durant said you needed this info.

If you have any questions please
feel free to call me. my # is
503-799-3710

I can tell you the Church was
never closed until Alan Kern left.

It has been in operation from
1946 - 2012 total, and from
1962 - 2012 at 405 Warner Parrate Rd.

Reelyn

I do have the complete list of pastors
from 1946 - 2012



oregon ministry network
of the assemblies of god

Developing Effective Leaders :: Building Healthy Churches and Ministries

March 31, 2014

City of Oregon City
625 Center Street
Oregon City, OR 97045

To whom it may concern:

On May 4, 1962 the property located at 405 WARNER PARROTT ROAD was deeded to both the Assemblies of God, Oregon District, Inc. and the local church also known as Assembly of God of Oregon City. The congregation operated continuously as a local church without interruption until the last service was held on April 29, 2012.

Shortly thereafter, the Assemblies of God, Oregon District was pleased to enter into negotiations with Teen Challenge Pacific Northwest. We extended a reasonable period of due diligence. Our organizations share common origins in the Assemblies of God U.S.A. denomination and we were delighted to have ministry continue in this location.

If you have questions about this matter, we would be delighted to help.

Sincerely,

Rev. Michael J. Gerlicher, CPA
Director of Finance

Cc: Garry Wallace, Executive Director
Portland Metro Men's Center

From: [Jennifer Bragar](#)
To: [Laura Terway](#)
Subject: FW: Status of Teen Challenge PMMC Day Use
Date: Thursday, April 17, 2014 12:28:52 PM

See below for a complete record. Thank you.

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JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com

► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: Micheal Reeder [mailto:mreeder@arnoldgallagher.com]
Sent: Thursday, April 17, 2014 11:58 AM
To: Jennifer Bragar
Cc: hodgesc@comcast.net; Dave Oliver; Rodger.Snodgrass@teenchallengepnw.com;
garry.wallace@teenchallengepnw.com; rickgivens@gmail.com; Ed Sullivan
Subject: RE: Status of Teen Challenge PMMC Day Use

Your letter that I attached and referred to in my last email is dated September 13, 2012 (not September 32, 2012). I am pretty sure September has never had 32 days!

MICHEAL M. REEDER



T: (541) 484-0188 / F: (541) 484-0536
800 Willamette Street, Suite 800, Eugene, OR 97401
www.arnoldgallagher.com

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matter addressed herein.

From: Micheal Reeder
Sent: Thursday, April 17, 2014 11:54 AM
To: Jennifer Bragar (JBragar@gsblaw.com)
Cc: Chris Hodges (hodgesc@comcast.net); Dave Oliver; Rodger.Snodgrass@teenchallengepnw.com; garry.wallace@teenchallengepnw.com; Rick Givens (rickgivens@gmail.com); 'Ed Sullivan'
Subject: Status of Teen Challenge PMMC Day Use

Jennifer:

You will remember that the Assemblies of God, Oregon District, Inc. owned the site and church located at 405 Warner Parrott Road in Oregon City until April 29, 2012 when the church disbanded. The Assemblies of God then sold the site to Teen Challenge Pacific Northwest (TC) in mid-2012. After consultation with Laura Terway TC began using the site as a “religious institution” for a religious “day use” for its Portland Metro Men’s Center (PMMC) on November 1, 2012.

It was my understanding from our meeting in your office on March 6, 2014 that City staff wanted evidence showing that the site had been used as a church continuously for 20 years prior to closing on April 29, 2012 in order to show that the current day use of the site was a legal, nonconforming use that did not require a CUP (either as part of the current CUP application or as a separate “day use” CUP application).

Staff is in error and I provide you with this email first without sending it directly to the Planning Commission so that you and staff may analyze it and take appropriate remedial action. I expect City staff to take the position in the new staff report (due Monday) and at the Planning Commission hearing on April 28th that the current day use of the site is a legal, **conforming** use (i.e. outright permitted) pursuant to the RLUIPA Equal Terms provision. I also expect staff to take the position that, setting aside the fact that the current use is a legal, conforming use, that the site has been a “religious institution” for well over 20 years, and therefore, to the extent that such a determination is even necessary, the evidence is overwhelming that the current use is (at the very least) a legal, nonconforming use.

I explain our position as follows:

1. RLUIPA Equal Terms Provision

The RLUIPA Equal Terms provision requires the City to treat the current PMMC day use on equal terms with a similar secular institution or assembly. As you well know, the R-10 district permits outright “Community Centers” and “Neighborhood Centers”. See your attached letter to me dated September 32, 2012 wherein you take the position that the intended use of the site for a the PMMC with **overnight accommodations** (i.e. a dormitory) was not a proper comparator per 9th Circuit case law and therefore TC would need to go through the CUP process. (It should be noted that although we disagree with

that conclusion and believe that the Equal Terms provision requires the City to permit the PMMC to operate (even with a residential component), TC made a business decision to seek for a CUP). Implicit in your argument was that the intended use without an overnight accommodation component is a valid comparator to Neighborhood Centers and Community Centers.

Therefore, since the day use of the PMMC is a valid comparator to a Neighborhood and/or Community Center, the Equal Terms provision requires the City to treat the PMMC day use on equal terms as the comparators. Since Neighborhood Centers and Community Centers are permitted in the R-10 zone without the need for a CUP, then the PMMC day use also need not apply for a CUP. Therefore the issue of whether the PMMC day use is a legal, nonconforming use is moot because it is a legal conforming use, permitted outright.

2. Over 20 Years of Continuous Use of the Site as a Church

To the extent that the City needs evidence that the site was used as a church (i.e. "religious institution") continuously for 20 years prior to the use as the PMMC, I attach three letters that provide overwhelming evidence that the site was used continually as a church (i.e. for more than 20 years prior to its closing in 2012).

Jennifer, please let me know when you have reviewed this information and confirm for me what position you and staff will be taking regarding this issue. Should you have any questions, please feel free to call.

Best,

MICHEAL M. REEDER



T: (541) 484-0188 / F: (541) 484-0536
800 Willamette Street, Suite 800, Eugene, OR 97401
www.arnoldgallagher.com

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From: [Jennifer Bragar](#)
To: [Micheal Reeder](#)
Cc: hodgesc@comcast.net; [Dave Oliver](#); Rodger.Snodgrass@teenchallengepnw.com; garry.wallace@teenchallengepnw.com; rickgivens@gmail.com; [Pete Miller](#); [Laura Terway](#)
Subject: RE: Portland Metro Men's Center April 28 Hearing
Date: Thursday, April 17, 2014 9:50:38 AM

Mike,

Thank you for the update.

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JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com

► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: Micheal Reeder [mailto:mreeder@arnoldgallagher.com]
Sent: Thursday, April 17, 2014 9:46 AM
To: Jennifer Bragar
Cc: hodgesc@comcast.net; [Dave Oliver](#); Rodger.Snodgrass@teenchallengepnw.com; garry.wallace@teenchallengepnw.com; rickgivens@gmail.com; [Pete Miller](#); lterway@ci.oregon-city.or.us
Subject: RE: Portland Metro Men's Center April 28 Hearing

Jennifer:

Thanks for the voicemail and email message. The applicant has no intention of asking for an extension at this time. We have information that will show conclusively that the current use is a legal, nonconforming use and that the application meets the standard for adequate sanitary sewer service pursuant to OCC17.56.010.A.3. We intend to provide some or all of that information on or before next Monday. Please let me know if you have any questions.

Best,

MICHEAL M. REEDER



T: (541) 484-0188 / F: (541) 484-0536
800 Willamette Street, Suite 800, Eugene, OR 97401
www.arnoldgallagher.com

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From: Jennifer Bragar [<mailto:JBragar@gsblaw.com>]
Sent: Thursday, April 17, 2014 8:47 AM
To: Micheal Reeder
Subject: RE: Portland Metro Men's Center April 28 Hearing

Mike,

I am following-up on the voicemail message I left for you yesterday about the PMMC Planning Commission hearing scheduled for April 28. The agenda is going to be sent out on Monday and the City can include information to alert the public if a further continuance is considered by the applicant. Please let me know if there is information the applicant would like included on the agenda and I will send it on to Laura for consideration. Thank you.

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JENNIFER M. BRAGAR

Associate | 503.228.3939 x 3208 Tel | 503.226.0259 Fax | jbragar@gsblaw.com

GARVEY SCHUBERT BARER | 11th Floor | 121 SW Morrison Street | Portland, OR 97204 | ► GSBLaw.com

► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: Laura Terway
To: ["patart949@gmail.com"](mailto:patart949@gmail.com)
Subject: Portland Metro Men's Center
Date: Wednesday, March 12, 2014 12:19:00 PM

Patricia,

The Portland Metro Men's Center was continued until April 28th, 2014. One week prior to the meeting, the agenda and all supporting documentation will be posted on the City website [here](#).



Laura Terway, AICP
Planner
Planning Division
PO Box 3040
221 Molalla Avenue, Suite 200
Oregon City, Oregon 97045
Phone: 503.496.1553
Fax: 503.722.3880
Iterway@orccity.org

Please note the Planning Division is available from 8am - 5pm Monday - Thursday and by appointment on Friday.



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PUBLIC COMMENT

Portland Metro Men's Center

File CU 13-01, SP 13-11 and LL 13-04

Planning Commission Hearing February 10, 2014

Name: Pat Ramsour
Address: 124 Randall Street
City, State, Zip: Oregon City, OR 97045
Representing: myself, an older citizen at same address since 1952.

COMMENTS:

Most of my neighbors and myself were unaware that Portland Metro Men's Center were operating their recovery program at the former church site on Warner - Parrott Rd until their request for a building permit to allow a dormitory with 60 male alcohol and drug addicts to live here for treatment.

Every person is entitled to improve their lives with recovery from addictions, but if 60 men are living here, allowed to use our public areas each day after their counseling and work hours are over, I feel the Chapin Park area and my street will not remain safe for local families.

MR. Rick Livens has stated that the men have until 10:00 p.m. until they must enter their facility for the night. At times I return home after dark, leave my car, walk to my door, unlock and enter my home and I need to feel the safety I now have. Being an older concerned citizen, I hope the Planning Commissioners will make the right choice regarding the requested permit. I appreciate their concerns at Feb. 24th meeting.

Thank you All.

From: [Micheal Reeder](#)
To: [Jennifer Bragar](#)
Cc: [Laura Terway](#); [Aleta Froman-Goodrich](#)
Subject: RE: Portland Metro Men's Center Sewer Capacity Follow-up
Date: Tuesday, March 25, 2014 3:23:52 PM

Thanks Jennifer. I have passed this information along to my client and Pete Miller of KPFF.

MICHEAL M. REEDER



T: (541) 484-0188 / F: (541) 484-0536
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From: Jennifer Bragar [mailto:JBragar@gsblaw.com]
Sent: Monday, March 24, 2014 4:02 PM
To: Micheal Reeder
Cc: Laura Terway; Aleta Froman-Goodrich
Subject: Portland Metro Men's Center Sewer Capacity Follow-up

Mike,

I am following-up on the March 6, 2014 meeting between Oregon City staff and the Portland Metro Men's Center (PMMC) team to discuss sewer capacity issues for the 405 Warner Parrott Road proposal, as well as your conversation with Ed Sullivan on March 21st. As you know, the sewer system in that area is over capacity and in order to tie into the public sewer system on Warner Parrott Road in a way that does not present a public health risk, the City staff estimated that pipe replacement would be required before allowing additional flow into the public system. City staff estimated the cost of the capital improvement to be \$1.3 million.

During the meeting PMMC contemplated whether an easement through neighboring properties to connect the proposed project to the public sewer system on Hartke Loop might address the sewer

capacity problems associated with the site. PMMC requested that City staff consider this option.

Based on information it has gathered for PMMC's proposed relocation of the sewer connection, the relocation may reduce the amount of pipe upsizing required. However, even with the reduction of replacement pipe, the capital improvement project is still estimated at \$515,400. City staff is still exploring solutions for a less expensive fix.

If PMMC is interested in further consideration of this approach, its project engineer should contact Aleta Froman-Goodrich of the City's engineering staff. Thank you.

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JENNIFER M. BRAGAR

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► land use | condemnation | real estate e-forum: www.northwestlandlawforum.com

From: [Mic James Miller](#)
To: [Laura Terway](#)
Subject: Re: Portland Mens Center update
Date: Thursday, April 17, 2014 4:28:31 PM

Thank you for the info Laura. We will be watching for updates.

Sent from my phone.

On Apr 16, 2014, at 9:54 AM, Laura Terway <literway@ci.oregon-city.or.us> wrote:

Mic and Jen,

The Portland Metro Men's Center is scheduled to be on the April 28, 2014 Planning Commission agenda. The agenda should be posted on the City [website](#) on Monday with additional details as to how the applicant would like to proceed. We have not received direction from the applicant at this point.

<image001.jpg>

Laura Terway, AICP
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Oregon City, Oregon 97045
Phone: 503.496.1553
Fax: 503.722.3880
literway@city.org

Please note the Planning Division is available from 8am - 5pm Monday - Thursday and by appointment on Friday.



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-----Original Message-----

From: Mic James Miller [<mailto:mjm472@yahoo.com>]
Sent: Tuesday, April 15, 2014 11:29 AM
To: Laura Terway
Subject: Portland Mens Center update

On Warner Parrott Rd.

Hello,

I am researching buying a home within the immediate area of this proposed project. I looked on the Ore City site and found there to be no definite answers or approval of the proposed plan. Is there anything in the works for a definite judgement?

Thank you for your time.
Mic and Jen Miller
5024772578

Sent from my phone.



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

File Number: PC 14-033

Agenda Date: 4/28/2014

Status: Agenda Ready

To: Planning Commission

Agenda #: 4a.

From: Community Development Director Tony Konkol

File Type: Planning Item

SUBJECT:

Presentation: Review Proposed Sign Code (OCMC Chapter 15.28)

RECOMMENDED ACTION (Motion):

Provide comments and guidance to items relating to the proposed amendments to the signage standards in OCMC chapter 15.28 as warranted.

BACKGROUND:

A comprehensive public process has resulted in many community discussions and recommendations to City staff for revisions to the signage standards. City staff has assembled proposed amendments to chapter 15.28 of the Oregon City Municipal Code. Planning Commission Work Sessions were held on February 24, 2014 and March 24, 2014 and a public hearing was held on April 14, 2014 before the Planning Commission providing background on the public involvement process related to the sign code update and the proposed code language.

BUDGET IMPACT:

Amount:

FY(s):

Funding Source:

Chapter 15.28 SIGNS

Chapter 15.28 SIGNS

Sections:

[15.28.010 Purpose and scope.](#)

[15.28.020 Definitions.](#)

[15.28.030 Permit required.](#)

[15.28.040 Variances.](#)

[15.28.050 Prohibited signs.](#)

[15.28.060 Signs not requiring a permit.](#)

[15.28.070 Signs in residential zones.](#)

[15.28.075 Signs for listed conditional uses in residential zones.](#)

[15.28.080 Signs in office, commercial and industrial zones.](#)

[15.28.090 Nonconforming signs and their removal.](#)

[15.28.100 Conflict and severability.](#)

[15.28.110 Violation—Penalty.](#)

15.28.010 Purpose and scope.

This chapter regulates the erection placement and maintenance of signs to protect and enhance public health, safety, welfare and property, more specifically to:

A. Purpose.

1. Allow those signs compatible with the character and uses allowed in the zoning district in which they are located;
2. Maintain the effectiveness of traffic signs;
3. Prohibit certain signs or portions thereof, which conflict with the safe movement of people and emergency services, constitute a public nuisance or hazard, are of unsafe construction, or which demand attention by their dominating size or appearance of motion;
4. Maintain and enhance the scenic and other aesthetic qualities of the city.

B. Scope. All signs, including sign structures and display areas or building walls with lettering on them shall be erected and maintained only as provided by this chapter, except for the following:

1. Signs not visible from either a public right-of-way or property of different ownership, provided such signs shall be erected and maintained in accordance with applicable law;
2. Signs owned and maintained by governmental agencies;
3. Signs lawfully erected in the public right-of-way in accordance with applicable state and local laws and regulations;
4. Signs inside a building, except for strobe lights or floating lights visible from a public right-of-way, private road or other private property; and

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5. Signs carved into or part of materials which are an integral part of a building.

(Ord. 94-1027 §1 (part), 1994)

15.28.020 Definitions.

For the purposes of this chapter:

"Abandoned sign" means a sign that does not have copy on the display surface for a period of six months or more, including an obsolete sign.

"Billboard" means a sign with a display surface area of three hundred square feet or more.

"Display surface area" means the total area of a sign that is available for displaying advertising or an informational message, subject to the provisions of this chapter.

"Erect" or "erected" means to construct, build, assemble, alter, place, affix, attach, create, recreate, paint, draw or in any way bring into being or establish.

"Free-standing sign" means a sign supported from the ground by its own structure.

"Fence" and "fencing" mean any barrier or section thereof, other than a wall, designed to delimit a boundary or provide a visual screen.

"Frontage" means the continuous distance along one street right-of-way line of one premises, provided such street is improved for public travel.

"Grade" means the level of the nearest sidewalk or road pavement.

"Incidental sign" means a sign identifying or advertising associated goods, products, services or facilities available on the premises, including but not limited to, trading stamps, credit cards accepted, brand names or price signs.

"Maintain," "maintained" or "maintaining" means activities, such as upkeep and repair of signs or sign structures and the replacement of sign messages or advertisement displayed on a sign, and an activity by which a sign or sign structure are permitted to exist.

"Natural materials" means wood, stone, brick and rock or any combination thereof.

"Obsolete sign" means a sign that calls attention to a business or other activity or a profession, commodity, product, service or entertainment no longer carried on, produced, sold or offered.

"Premises" means a lot or number of lots on which are situated a business, or a building or group of buildings designed as a unit.

"Projecting sign" means a sign projecting more than one foot from the wall of a building.

"Roof sign" means a sign erected or maintained wholly upon or over the roof of any building with the principal support on the roof structure.

"Sign" means any sign, display message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is designed, used or intended for advertising purposes or to inform or attract the attention of the public, and the term includes the sign structure, display surface and all other component parts of a sign; when dimensions of a sign are specified, the term includes panels and frames; and the term includes both sides of a sign of specified dimensions or display surface area.

"Sign face" means the total of display surface area visible from one side of a sign.

"Sign official" is the person designated by the city manager to enforce the provisions of this chapter, including the review of permit applications, the interpretation of the provisions of this chapter and the issuance of permits.

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"Temporary sign" means a sign that will become obsolete after the occurrence of an event or series of events. Temporary signs include, but are not limited to, for sale and lease signs, garage sale signs and political campaign signs.

"Traffic control sign or device" means an official route marker, guide sign, warning sign or sign directing or regulating traffic or pedestrians which has been erected by or under order of the city of Oregon City, the state or federal governments.

"Wall" means a masonry structure.

"Wall sign" means a sign erected on a wall.

(Ord. 94-1027 §1 (part), 1994)

15.28.030 Permit required.

- A. Permit Required. No sign shall be erected or maintained except as provided by this chapter and a permit has been issued by the sign official. This permit requirement applies to all signs, except those specifically exempt by a provision of this chapter and signs existing on the date of adoption of the ordinance codified in this chapter which shall be subject to subsection D of this section.
- B. Permit Application. Application for a sign permit shall be made in writing upon forms furnished by the sign official. A permit application fee shall accompany the application for it to be processed by the city. The amount of the fee shall be proportionate to the value of the sign proposed and shall be calculated according to a permit fee schedule adopted by resolution of the city commission.

The application shall include all plans and information necessary to establish that the proposed sign complies with all applicable requirements of this chapter and applicable buildings, structural and life safety codes. The permit shall be valid if the sign is erected and maintained in compliance with city code, and the applicant did not misrepresent or falsify any information supplied in the application. Any permit issued under this chapter shall be void if no substantial physical action be taken, in accordance with any conditions of the permit and the applicable requirements of this chapter, within ninety days following the date of its issuance. Any permit issued under this chapter shall remain in effect as long as the sign is maintained in compliance with any permit conditions and all applicable provisions of this chapter.

- C. Appeals. Any person aggrieved by a decision of the sign official may appeal the decision to the planning commission. Any such appeal shall be in writing and be received by the city recorder no later than ten days after the date the challenged is final. The appropriate appeal fee established by resolution of the city commission shall accompany the appeal. Proceedings before the planning commission shall comply with the provisions of [Chapter 17.50](#) of this code, including the provisions relating to city commission review of planning commission decisions involving conditional use permits.
- D. Permits for Signs Existing on the Effective Date of These Regulations. Signs existing on the effective date of these regulations shall also be required to obtain a permit within one hundred twenty days of the date these regulations become effective. No fee shall be charged for such permit and the sign official shall, within sixty days of the effective date of these regulations, give written notice of the requirement for permits and shall provide permit forms on request. Any such existing sign for which a permit has not been obtained within one hundred twenty days of the effective date of these regulations shall be deemed an unlawful use.

(Ord. 94-1027 §1 (part), 1994)

15.28.040 Variances.

- A. Grounds for Variance. Upon application by an applicant, the planning commission may grant a specific variance from provisions of this chapter provided all of the following circumstances exist:

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1. Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same area or vicinity. Such conditions may be the result of an unusual location or orientation of the applicant's building, topography, vegetation or other circumstance over which the applicant has no control;
 2. The variance is necessary for the preservation of a right of the applicant substantially the same as is possessed by the owners of other property in the area or vicinity;
 3. The authorization of the requested variance will not be materially detrimental to, or conflict with, the purposes of this chapter or be injurious to the use and enjoyment of other property in the area or vicinity, or the public way, in which the property is located; and
 4. The variance requested is the minimum variance necessary, to alleviate the identified hardship.
- B. Variance Fee. At the time of application for variance from the provisions of this chapter, the applicant shall pay a fee in accordance with the fee schedule established and amended from time to time by the city commission and on file with the city recorder.
- C. Procedure. A variance application shall be treated in the manner provided by [Chapter 17.50](#) of this code with respect to zoning variances.

(Ord. 94-1027 §1 (part), 1994)

15.28.050 Prohibited signs.

It is unlawful for the following signs to be erected or to be maintained except as otherwise provided in this chapter:

- A. Billboards;
- B. A sign that interferes in any way with a traffic control sign or device or prevents clear and unobstructed view of official traffic control signs or devices or approaching or merging traffic;
- C. A sign that contains, includes or is illuminated by any flashing or revolving, rotating or moving light or moves or has any animated or moving parts. This subsection does not apply to traffic control signs or devices;
- D. A sign with lighting which is not effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled right-of-way of a state highway, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle or otherwise to interfere with the operations thereof;
- E. A sign located upon a tree, or painted or drawn upon a natural feature;
- F. An obsolete sign;
- G. Portable signs, A-frame signs, sandwich boards, tent signs, streamers, strings of lights, balloons, hulas, banners or pennants, excepting traditional holiday decorations; and except as provided in [Section 15.28.010\(B\)](#);
- H. A sign that obstructs free ingress to or egress from any door, window or fire escape, alley, drive or fire lane, or is attached to a fire escape;
- I. A sign erected or maintained on public property or within the public right-of-way without permission of the public body having jurisdiction;
- J. A sign not able to withstand a wind pressure of twenty pounds per square foot of exposed surface, or is insecurely erected, or is constructed so as to constitute a fire hazard;
- K. A sign not maintained in a safe, neat, clean and attractive condition and in good repair;
- L. Any sign larger than four square feet on an undeveloped lot or parcel of property;

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M. A sign not otherwise in compliance with any provision of this code, Oregon law or the terms and conditions of any valid sign permit issued under this chapter;

N. Signs on fences or fencing.

(Ord. 94-1027 §1 (part), 1994)

15.28.060 Signs not requiring a permit.

In any zoning district, the following signs may be erected and maintained without a permit, so long as they comply with all applicable provisions of this chapter and are not illuminated;

- A. One temporary sign per street frontage of property under a single ownership provided such a sign does not cause a public safety hazard or nuisance, has no more than two faces, and that no sign face exceeds four square feet in area;
- B. Signs carved into a building or which are part of materials that are an integral part of the building not exceeding ten square feet in area. This subsection does not include signs painted on the sides of buildings;
- C. A single sign where the display surface area does not exceed two square feet;
- D. Window signs situated on the indoor-side of a window or door;
- E. Flags, limited to two per premises;
- F. Signs attached to, or carried by, a person;
- G. Signs required by law or legal action, including but not limited to, signs warning of hazardous or dangerous conditions on a premises and land use application and hearing notice signs.

(Ord. 94-1027 §1 (part), 1994)

15.28.070 Signs in residential zones.

- A. Signs Allowed. In the R-10, R-8, R-6, RC-4, R-6/MH and RA-2 zoning districts, the following signs are allowed:
 - 1. All signs allowed without permit as provided by this chapter so long as the requirements of this subsection are met;
 - 2. Permitted signs so long as a permit is first obtained as required by this chapter, and the requirements of this subsection are met.
- B. Display Requirements. All signs in the residential zones listed in this section must comply with the following requirements:
 - 1. Not more than one wall sign or free-standing sign to be visible from each frontage, with no more than three frontages. Wall signs shall be measured by the outer limits of the lettering, illustration or other display;
 - 2. Maximum twenty square feet of area per sign face;
 - 3. Not to exceed ten feet in length;
 - 4. Five feet maximum height above grade;
 - 5. Primarily constructed of natural materials;
 - 6. Sign shall be setback from the street as determined by the sign official, but not more than ten feet from the street right-of-way;

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7. If illuminated, the source of illumination shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.

(Ord. 94-1027 §1 (part), 1994)

15.28.075 Signs for listed conditional uses in residential zones.

- A. For conditional uses in residential zones, a sign that meets the following standards shall be allowed provided a permit is first obtained as required by this chapter:
 1. One wall sign per frontage is allowed. Additionally, one free-standing sign per conditional use is allowed;
 2. Maximum thirty-two square feet of area per sign face;
 3. Not to exceed ten feet in length;
 4. Eight feet maximum height above grade;
 5. Primarily constructed of natural materials or similar products, such as wood, stone, brick or metal;
 6. If illuminated, the source of illumination shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.

(Ord. 05-1002, 2005)

15.28.080 Signs in office, commercial and industrial zones.

- A. Signs Allowed. In the LOC, LO, NC, HC, LC, C, CBD, M-1 and M-2 zoning districts, the following signs are allowed:
 1. All signs allowed without permit as provided by this chapter, so long as the requirements of this subsection are met;
 2. Wall signs, so long as a permit is first obtained as required by this chapter and the display surface area is no larger than two square feet for each lineal foot of the wall on which the sign is erected;
 3. Free-standing signs, so long as a permit is first obtained as required by this chapter and the following standards are met:
 - a. Number. One free-standing sign shall be permitted for each street frontage of a premises, provided minimum subdivision lot frontage of thirty feet is met. No free-standing sign shall be permitted on the same frontage where there is a projecting or roof sign. Free-standing signs on the same premises but on different frontages shall be separated by a minimum of fifty feet distance.
 - b. Area. Where the street frontage is less than fifty feet, the maximum display surface area shall not exceed fifty square feet, with twenty-five square feet maximum area per sign face. Where the street frontage is greater than fifty feet but less than two hundred feet, surface display area shall not exceed one hundred square feet, with fifty square feet maximum area per sign face. Where the street frontage is two hundred feet or greater, the surface display area shall not exceed three hundred square feet, with a maximum area of one hundred fifty square feet per sign face. In no case shall any sign have a surface display area in excess of three hundred square feet.
 - c. Projection. Free-standing signs shall not project over a public right-of-way.

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- d. Clearance. A minimum clearance of ten feet from grade shall be maintained over pedestrian or vehicular areas, fourteen feet over areas of truck access.
- e. Horizontal Dimension. The greatest horizontal dimension shall not exceed twenty feet for any free-standing sign.
- f. Height. The height of any free-standing sign shall not exceed twenty-five feet above grade, plus five feet for each two hundred feet, or portion thereof, frontage in excess of two hundred feet frontage. In no event shall any sign exceed thirty feet in height.

The following table summarizes free-standing sign area and height limits:

Street Frontage (in feet)	Maximum Display Surface Area (square feet)	Maximum Area of Any One Sign Face (square feet)	Maximum Height (in feet)
Up to 50	50	25	25
50 —200	100	50	25
201+	101—300	51 —150	30

4. Roof Signs. Roof signs are allowed so long as a permit is first obtained as required by this chapter and the following standards are met:
 - a. Number. Maximum one roof sign is permitted for each premises, and shall be permitted instead of a projecting sign or free-standing sign.
 - b. Area, projection, clearance, horizontal dimension and height shall be within the limits set for free-standing signs. Stamped approval of a licensed civil or structural engineer may be required due to stresses put on the building. No roof sign shall be erected without approval of the fire marshal after a finding that the size, type and location of the sign will not substantially interfere with fire fighting;
5. Projecting Signs. Projecting signs are allowed so long as a permit is first obtained as required by this chapter and the following standards are met:
 - a. Number. One projecting sign may be permitted for each business frontage. No projecting sign shall be permitted for the same business frontage where there is a free-standing or roof sign.
 - b. Area. Sign area shall not exceed sixteen square feet per sign face, with total area of all faces not to exceed thirty-two square feet.
 - c. Projection. Maximum projection from a building wall shall be four feet. No sign shall project within two feet of the curb line.
 - d. Vertical dimension. The greatest vertical dimension of a projecting sign shall not exceed four feet; provided, however, for any reduction in projection, the sign may be increased in height a like distance. The maximum projection above the wall on which the sign is erected shall be one foot, and the visible supporting structure shall be minimized to the greatest extent possible consistent with safe structural support.

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- e. Clearance. A minimum clearance of ten feet from grade shall be maintained over pedestrian or vehicular areas, fourteen feet over areas of truck access.
 - f. Separation. The minimum distance from another projecting sign shall be twenty feet in the same horizontal plane.
 - g. Projecting signs on other project structures: awnings, marquees, canopies, false fronts and wall extensions, safely constructed and approved by the building code official, may extend beyond the limits for projecting signs. Projecting signs on such structure, shall not exceed the limits as to number, area, projection, vertical dimension, clearance and separation as provided for any projecting sign. The only exception shall be for those instances in which a projecting structure would prohibit a projecting sign within sight of pedestrians; in these instances, the clearance under the marquee or other permanent structure may be reduced to eight feet;
6. Incidental Signs. One additional sign is allowed per premises, so long as a permit is first obtained as required by this chapter, is allowed. An incidental sign may be a free-standing or wall sign, but in either case, shall meet all provisions for such signs, excepting area. The surface display area of an incidental sign shall not exceed thirty-two square feet, and no sign face shall exceed sixteen square feet.

(Ord. 94-1027 §1 (part), 1994)

15.28.090 Nonconforming signs and their removal.

- A. Signs lawfully erected and maintained as of the date of the adoption of this chapter, but which do not meet the requirements of this chapter, shall be regarded as nonconforming signs which shall be lawful if a permit for the same is obtained under [Section 15.28.030](#) and may be continued for a period not to exceed ten years from the date of adoption of this chapter for the purpose of amortization of investment. Relief from this provision may be sought from the planning commission by following the procedures of [Section 15.28.040](#) for a longer amortization period, upon a showing that the applicant requires a longer period in which to amortize its investment in the sign in question. In the case of an application for a longer amortization period for an alleged nonconforming billboard, the applicant must prove, at a minimum, that the sign structure cannot reasonably be used for a sign with an area smaller than three hundred square feet.
- B. Signs located on premises annexed into the city after the effective date of the ordinance codified in this section and which signs do not comply with the provisions of the ordinance codified in this section, shall be brought into compliance with the ordinance codified in this section within a period of time not to exceed six months after the effective date of annexation; provided, however, that a landowner may, within thirty days of annexation, request a variance as provided in subsection A of this section.
- C. Any sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all applicable provisions of this chapter; provided, however, that a landowner may, within thirty days of annexation, request a variance as provided in [Section 15.28.040](#)
- D. All existing signs or portions thereof prohibited in [Section 15.28.050](#), except subsection A, shall be removed or altered to comply within six months from the date of adoption of this chapter.
- E. Within one year from the date of adoption of this chapter, the sign official or an authorized representative may inspect any sign regulated hereunder. The sign official shall have right of reasonable entry onto private premises to enforce the provisions of this chapter. After inspection, a notice shall be issued to the owner of the sign or property that lists the signs and identifies those signs which, in the opinion of the sign official, need repair or modification to bring them into compliance with this chapter and those which are in violation of the provisions of this chapter and must be removed, including the expiration of the grace period for the particular sign. The sign official

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may repeat such on-site inspections, with reasonable notice, from time to time as deemed necessary to enforce the provisions of this chapter.

- F. Any sign regulated under this chapter found to be in violation of this chapter shall be deemed a nuisance. Violation of the provisions of this chapter shall constitute a civil infraction, subject to the code enforcement procedures of Chapters [1.16](#) and [1.20](#)

(Ord. 94-1027 §1 (part), 1994)

15.28.100 Conflict and severability.

In the event any provision herein is found to be in conflict with any zoning, building, fire safety, health or other code provisions of the city, the provision which establishes the higher standard for the promotion and protection of the health, safety and welfare of the people shall prevail.

A finding by a court of competent jurisdiction that any portion of this chapter is invalid shall not invalidate the remaining portions. A permit issued pursuant to this chapter does not grant any authority to violate any other law or regulation that may apply.

(Ord. 94-1027 §1 (part), 1994)

15.28.110 Violation—Penalty.

In addition to any other provisions hereof, it is unlawful for any person to maintain a sign or advertising structure in violation of the provisions of this chapter. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters [1.16](#), [1.20](#), [1.24](#).

(Ord. 99-1004 §27, 1999; Ord. 94-1027 §1 (part), 1994)

Oregon City Sign Code Staff Recommendation

March 10, 2014 DRAFT

The following is intended to replace Chapter 15.28 of the Oregon City Municipal Code.

15.28.010 Purpose of sign regulations

This chapter regulates the construction, placement and maintenance of signs to protect and enhance public health, safety, welfare and property. The code:

1. Allows signs compatible with the character and uses allowed in the zoning district in which they are located;
2. Maintains the effectiveness of traffic control signs throughout the city;
3. Prohibits signs, or portions thereof, that conflict with the safe movement of people and emergency services, constitute a public nuisance or hazard, are of unsafe construction, or that demand attention as a result of their dominating size or motion;
4. Maintains and enhances the scenic and other aesthetic qualities of the city; and
5. Supports the economic development of Oregon City businesses.

Proposed Changes to the Existing Code – Purpose Statement

- Minor rewording edits.
- “Supports the economic development of Oregon City businesses” is added.
- The scope of the chapter is separated into a separate section.

15.28.020 Definitions.

“Abandoned sign” means a sign structure where no sign has been in place for a continuous period of at least 6 months.

“A-frame sign” also known as “sandwich board” or “tent sign” means a movable steeply angled sign with two sides that meets at the top in the shape of the letter “A” and is not attached to a structure or the ground.

“Air Blown Sign” A sign that is intended to be inflated by air or other gas.

“Ancillary sign” means any sign allowed by this code, with or without permit, that is not a freestanding, incidental freestanding, wall, roof or projecting sign. If allowed within the zoning designation, ancillary signs include, but are not limited to, signs with an area less than 6 square feet, A-frame signs, flags (excluding attention flags), and banners.

“Attention flag” also known as “flutter,” “feather,” “teardrop,” or “blade,” means a pole-supported sign made of fabric, vinyl, or other similar non-rigid material, where one side of the sign is more than three times as long as any other side.

“Banner” means a sign made of fabric, vinyl, or other similar non-rigid material.

“Billboard” means a sign with a display surface area of three hundred square feet or more, including but not limited to, outdoor advertising signs as defined in ORS 377.710(21).

“Business” means any trade, profession, occupation or pursuit of every kind conducted in the city for gain.

“Construct” or “constructed” means to construct, erect, build, assemble, alter, place, affix, attach, create, recreate, paint, draw or in any way bring into being or establish.

“Display” means an arrangement of objects intended to decorate, advertise, entertain, or inform people about something.

“Display surface area” is defined in Section 15.28.050.

"Fence" and "fencing" mean any barrier or section thereof, other than a wall, designed to delimit a boundary or provide a visual screen.

"Flag" means a piece of fabric of distinctive design that is displayed hanging free from a staff, halyard or building to which it is attached.

"Freestanding sign" means a sign wholly supported from the ground by its own integral structure.

"Frontage" means the full length of a parcel of property that abuts a dedicated street, highway,¹ freeway or a the City-approved vehicular public access easement.

"Government owned sign" means a sign owned by a government agency, but does not include a sign constructed by a third-party with grant funds obtained from a government agency.

"Maintenance" means normal care or servicing needed to keep a sign functional or perpetuate its use, such as cleaning, replacing, or repairing a part made unusable by ordinary wear, and changing light bulbs.

"Natural materials" means metal, wood, stone, brick and rock or any combination thereof.

"Premises" means a lot or number of lots as approved by the community development director.

"Projecting sign" means a sign projecting more than one foot from the wall of a building².

"Public mural" means an original, two-dimensional work of visual art, comprised of paint, ceramic or glass tiles, or tesserae, executed by hand directly upon, or affixed directly to an exterior wall of a building, where the original, two-dimensional work of visual art has been approved by the Oregon City Arts Commission and accepted by the City into its public art collection pursuant to this Chapter. A public mural is not an original work of visual art if it is mechanically reproduced or computer generated and printed on a base that will be attached to the wall, such as, by way of illustration but not limitation, images digitally printed on vinyl.

"Roof sign" means a sign constructed or maintained wholly upon or over the roof of any building with the principal support on the roof structure.

"Sign" means any sign, display message, emblem, figure, painting, drawing, placard, poster, billboard, carving or other thing that is designed, used or intended to convey a message or image and is used to inform or attract the attention of the public, and the term includes the sign structure, display surface and all other component parts of a sign; when dimensions of a sign are specified, the term includes panels and frames; and the term includes both sides of a sign of specified dimensions or display surface area.

"Sign face" means the total area as measured pursuant to Section 15.28.050.

"Sign official" is the person designated by the City Manager to enforce the provisions of this chapter, including the review of permit applications, the interpretation of the provisions of this chapter and the issuance of permits.

"Tenant space" means the portion of a structure occupied by a single commercial lease holder, or an owner-occupied space with its own public entrance from the exterior of the building or through a shared lobby, atrium, mall, or hallway and separated from other tenant spaces by walls.

"Traffic control sign or device" means a sign approved through the right-of-way permit process through the City's Public Works Division, where the sign complies with the City's Street Standards and/or the Manual on Uniform Traffic Control Devices (MUTCD). In addition, traffic control sign or device includes signs on private property associated with an approved traffic control plan prepared by a transportation engineer and approved by the City through a Site Plan and Design Review process.

"Undeveloped lot" means a property without a building, business or valid land use approval.

¹ Note that highways and freeways are considered frontages.

² CAT suggested projecting signs should be signs projecting more than four (4) inches.

"Wall sign" means a sign that is attached to the wall of a building and extends no more than twelve inches from a wall.

Proposed Changes to the Existing Code – Definitions

- The following definitions deleted: incidental sign, obsolete sign, temporary sign, and wall.
- New definitions for A-frame sign, air blown sign, ancillary sign, attention flag, banner, business, display, flag, government owned sign, tenant space, and undeveloped lots.
- Minor rewording edits.

15.28.030 Scope of sign regulations.

Scope. All signs shall be constructed and maintained only as provided by this chapter, except for the following³:

1. Signs not visible from either a public right-of-way or property under different ownership, provided such signs shall be constructed and maintained in accordance with applicable law;
2. Signs inside a building, except for strobe lights or floating lights visible from the right-of-way or other private property;
3. Signs carved into or part of materials that are an integral part of a building.
4. Signs attached to, or carried by a person;
5. Signs required by law or legal action;
6. Government owned signs within the right-of-way;
7. Government owned signs within government-designated parks, Metro-designated open space and at stormwater facilities;
8. Public murals as defined in 15.28.090 existing prior to adoption of this code; and
9. Traffic control signs and devices.

Proposed Changes to the Existing Code – Scope of Sign Regulations

- All government owned signs are no longer exempt.
- Items 4-9 are new exemptions.

15.28.040 Permit required.

- A. Permit Required. No sign shall be constructed except as provided by this chapter and a permit has been issued by the sign official. This permit requirement applies to all signs, except those specifically exempt by a provision of this chapter.
- B. The following signs on private property do not require a sign permit.
1. Changes of copy whereby the sign size and material are not changing but the message is changing do not require a sign permit.
 2. Freestanding signs with no more than two faces, the total of which does not exceed six (6) square feet in area per sign face, excluding banners, and subject to the limitations identified for ancillary signs;
 3. A-frame signs, subject to the limitations under Section 15.28.100(I).
 4. Flags (excluding attention flags).
- C. Permit Application. Application for a sign permit shall be made in writing upon forms furnished by the sign official. A permit application fee shall accompany the application. The amount of the fee shall be adopted by resolution of the city commission. The application shall include all plans and

³ The Community Advisory team suggested signs painted on the sides of buildings to be exempt but did not vote to make a recommendation on the matter.

information necessary to establish that the proposed sign complies with all applicable requirements of this chapter and applicable buildings, structural and life safety codes. The permit shall be valid if the sign is constructed in compliance with the city code, and to the specifications described in the approved sign permit. Any permit issued under this chapter shall be void if no substantial physical action be taken, in accordance with any conditions of the permit and the applicable requirements of this chapter, within ninety days following the date of its issuance, excluding appeals and for LUBA or judicial review. Any permit issued under this chapter shall remain in effect as long as the sign is constructed in compliance with any permit conditions and all applicable provisions of this chapter. If an applicant seeks to have the city treat its property as a premise for purposes of the sign code, then the application shall explain how the property meets the definition of premises in Section 15.28.020.

- D. Appeals. Any party aggrieved by a decision of the sign official may appeal the decision to the Planning Commission. Any such appeal shall be in writing and be received by the city recorder no later than fourteen days after the date the challenged decision is final. The Planning Commission or City Commission may initiate an appeal on its own motion within the fourteen-day period. The appropriate appeal fee established by resolution of the city commission shall accompany the appeal. Proceedings before the planning commission shall comply with the provisions of Chapter 17.50 of this code, including the provisions relating to city commission review of planning commission decisions involving conditional use permits.

Proposed Changes to the Existing Code – Permit Required

- Minor edits, clarifications and reorganizations.
- Clarification of signs that do not require a permit.
- Removal of section D which required all existing signs without permits to obtain a permit within 120 days of adoption of the regulations.

15.28.050 Measuring Sign Face

- A. The following criteria shall be used for the purpose of determining the boundaries of a sign face:
1. Sign area includes the area within a perimeter enclosing the limits of lettering, writing, representation, emblem, figure, character and lighted surface, but excluding essential sign structure, foundations or supports. Where a sign is of a three-dimensional, round, or irregular solid shape, the largest cross-section shall be used in a flat projection for the purpose of determining sign face.
 2. When signs are constructed in multiple separate pieces the sign face is calculated by measuring the area within a perimeter enclosing the limits of lettering, writing, representation, emblem, figure, character and light surface, but excluding essential sign structure, foundations or support on all pieces collectively.
- B. The height of a sign above grade is measured from the average level of the grade below the sign to the topmost point of the sign including any supporting structure.
- C. Clearance is measured from the average grade below the sign to the lowermost point of the sign.

Proposed Changes to the Existing Code – Measuring the Boundaries of a Sign

- Entire section is new.

15.28.060 Signs in Residential Zones

This standard applies to the following zoning designations: “R-10” Single-Family Dwelling District, “R-8” Single-Family Dwelling District, “R-6” Single-Family Dwelling District, “R-5” Single-Family Dwelling District, “R-3.5” Dwelling District, and “R-2” Multi-Family Dwelling District.

- A. Wall Sign. The following standards apply to wall signs in residential zones:
1. One wall sign is allowed for each property frontage (with a maximum of three (3)). A wall sign is prohibited if there is a freestanding sign along the same property frontage, except in the “R-2” Multi-Family Dwelling District.
 2. Residentially zoned property may have a wall sign with a maximum area of twelve (12) square feet and maximum length of five (5) linear feet, except in the “R-2” Multi-Family Dwelling District where wall signs may have a maximum area of twenty (20) square feet and maximum length of five (5) linear feet.
 3. At least fifty percent (50%) of the wall sign shall be constructed of natural materials.
 4. If illuminated, the source of illumination for all signs within residential districts shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.
- B. Freestanding Sign: The following standards apply to freestanding signs in residential zones:
1. Residentially zoned property may have one freestanding sign if there is no wall sign on the same frontage except in the “R-2” Multi-Family Dwelling District where one freestanding sign for each property frontage (with a maximum of three (3)) is allowed.
 2. The freestanding sign may have a maximum area of twelve (12)⁴ square feet, maximum length of five (5) linear feet and a maximum height of five (5) feet above grade, except in the “R-2” Multi-Family Dwelling District where freestanding signs may have a maximum area of twenty (20) square feet in size, maximum length of ten (10) linear feet, and maximum height of five (5) feet above grade.
 3. At least fifty percent (50%) of the freestanding sign shall be constructed of natural materials.
 4. If illuminated, the source of illumination for all signs within residential districts shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.
- C. Ancillary Signs.⁵ The following standard applies to ancillary signs in residential zones.
1. A total of two (2) ancillary signs are allowed per property.
 2. Banners are prohibited in residential zones unless approved under Section 15.28.070.

Proposed Changes to the Existing Code – Signs in Residential Zones.

- Delete OCMC 15.28.070.B.6 requiring that wall and freestanding signs will “be set back from the street as determined by the sign official, but not more than ten feet from the street right-of-way”.
- Reduce the size of wall signs from twenty (20) square feet to twelve (12) square feet for properties in zones other than in the “R-2” Multifamily dwelling district.
- Allow portable signs, A-frame signs, sandwich boards, tent signs up to twelve (12) square feet, six (6) square feet per sign face and three (3) feet in height.
- Reduce maximum wall sign length from 10 to 5 feet.
- Remove the maximum five (5) foot height requirement for wall signs.
- The maximum size for freestanding signs is reduced from twenty (20) square feet to twelve (12) square feet for residential zones other than the “R-2” Multi-family dwelling district.
- The maximum length for freestanding signs is reduced from 10 to 5 feet for residential zones other than the “R-2” Multi-family dwelling district.
- For residential zones other than the “R-2” Multi-family dwelling district, the number of freestanding signs is changed from one freestanding or wall sign for each property frontage (with a maximum of three (3)) to a maximum of one freestanding sign.

⁴ CAT did not suggest a reduction in the size of freestanding signs for residential property.

⁵ The number of ancillary signs allowed was a split decision by the Sign Code Community Advisory Team.

- For properties within the “R-2” Multi-family dwelling district, the number of freestanding signs is changed from one freestanding or wall sign for each property frontage (with a maximum of three (3)) to allow one wall and freestanding sign for each property frontage (with a maximum of six (6)).
- The number of ancillary signs is now specified. Previously, a property would have been allowed more signs that did not require a permit.

15.28.070 Signs for Conditional Uses in Residential Zones

This standard applies to all conditional uses within a residential zoning district (“R-10” Single-Family Dwelling District, “R-8” Single-Family Dwelling District, “R-6” Single-Family Dwelling District, “R-5” Single-Family Dwelling District, “R-3.5” Dwelling District, and “R-2” Multi-Family Dwelling District) unless otherwise limited in the Conditional Use approval.

- A. Wall Sign. The following standards apply to wall signs for conditional uses in residential zones:
 1. One (1) wall sign per frontage is allowed, not to exceed a maximum of three wall signs.
 2. A wall sign may have a maximum area of thirty-two (32) square feet and maximum length of ten (10) linear feet.
 3. At least fifty percent (50%) of the wall sign shall be constructed of natural materials.
 4. If illuminated, the source of illumination shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.⁶
- B. Freestanding Sign. The following standards apply to freestanding signs for conditional uses in residential zones:
 1. One (1) free-standing sign per lot is allowed.
 2. The sign may have a maximum area of thirty-two (32) square feet, maximum length of ten (10) linear feet, and maximum height of fifteen (15) feet above grade.
 3. At least fifty percent (50%) of the freestanding sign shall be constructed of natural materials.
 4. If illuminated, the source of illumination shall be external to the sign and directed or shielded so as to not shine directly onto any neighboring structure.⁷
- C. Ancillary Signs⁸. The following standards apply to ancillary signs for conditional uses in residential zones.
 1. A total of two (2) ancillary signs (including banners) are allowed per property.
 2. Additional standards for banners
 - a. For a single property, banners may be in place for up to thirty (30) days, up to twice per year.⁹
 - b. Banners shall be securely placed against a building wall and may not project from the wall.
 - c. Banners shall comply with the wall sign size requirements and shall not be more than six (6) feet long and four (4) feet in height.
 - d. Banners are prohibited within an historic district and on any property designated as a historic landmark.

Proposed Changes to the Existing Code – Signs for Conditional Uses in Residential Zones

- Increase the height of freestanding signs from eight (8) feet to fifteen (15) feet.
- Remove the maximum height of eight (8) feet requirement for wall signs.

⁶ The Community Advisory Team was split as to if electronic message centers or internally lit signs should be allowed for conditional uses and if a conditional use would be required to allow the sign type.

⁷ The Community Advisory Team was split as to if electronic message centers or internally lit signs should be allowed for conditional uses and if a conditional use would be required to allow the sign type.

⁸ The number of ancillary signs allowed was a split decision by the Sign Code Community Advisory Team.

⁹ Members were split on this element of the recommendation.

- Allowing portable signs, A-frame signs, sandwich boards, tent signs up to twelve (12) square feet, six (6) square feet per sign face and three (3) feet in height.
- The number of ancillary signs is now specified. Previously, a property would have been allowed more signs that do not require a permit.
- Allow banners except for within a historic district and on any property designated as a historic landmark.

15.28.080 Signs in Office, commercial, mixed use and industrial zones

The following standards apply to signs in office, commercial, mixed use and industrial zones which are not identified in 15.28.060 or 15.28.070, unless otherwise provided by this code.

A. Wall Signs. The following standard applies to wall signs in office, commercial, mixed use and industrial zones:

1. The number of wall signs is unlimited provided the total combined display surface area of wall signs and projecting signs is no larger than one (1) square foot per each lineal foot of the wall length of the tenant space on which the sign is constructed. Signs on structures such as awnings, canopies, false fronts and wall extensions that do not extend more than one (1) foot from the structure are considered wall signs.¹⁰
2. Each ground floor tenant space may have a minimum sign area of twenty (20) square feet, regardless of the limitation in subsection A.1 above.¹¹

B. Freestanding signs. The following standards apply to freestanding signs in office, commercial, mixed use and industrial zones:

1. One freestanding sign¹² is allowed for each street frontage. On arterial streets, if a frontage exceeds a length of six hundred (600) linear feet a second freestanding sign is allowed¹³. In all cases, no freestanding sign shall be permitted on the same frontage where there is a projecting or roof sign.
2. Freestanding signs on the same property shall be separated by a minimum of fifty (50) feet distance.
3. Maximum display surface area:
 - a. Where the street frontage is less than fifty (50) feet in length, the maximum display surface area shall not exceed fifty (50) square feet, with twenty-five square (25) feet maximum area per sign face.
 - b. Where the street frontage is greater than fifty (50) feet but less than two hundred (200) feet in length, surface display area shall not exceed one hundred (100) square feet, with fifty (50) square feet maximum area per sign face.
 - c. Where the street frontage is two hundred (200) feet or greater in length, the surface display area shall not exceed three hundred (300) square feet, with a maximum area of one hundred fifty (150) square feet per sign face.
 - d. In no case shall any sign have a surface display area in excess of three hundred (300) square feet.
4. The signs shall not project over the right-of-way and a minimum clearance of ten (10) feet above grade shall be maintained over pedestrian or vehicular areas, and a minimum clearance fourteen (14) feet above grade over areas of truck access.

¹⁰ The Community Advisory Team suggested wall signs do not project from the building face no more than 4 inches.

¹¹ The Community Advisory Team suggested a minimum.

¹² The CAT suggested allowing an additional sign of any type for each freestanding sign allowed but not constructed.

¹³ Note that a second freestanding sign is allowed for large frontages on arterial roads.

5. The greatest horizontal dimension shall not exceed twenty (20) linear feet and the height shall not exceed twenty-five (25) feet above grade, or thirty (30) feet above grade if the frontage is more than two hundred (200) feet in length.
- C. Incidental freestanding signs. The following standards apply to incidental signs in office, commercial, mixed use and industrial zones:
1. One incidental freestanding sign is allowed for each street frontage. No incidental freestanding sign face shall exceed an area of eight (8) square feet with a maximum surface display area of sixteen (16) square feet.
 2. Incidental freestanding signs shall not project over the right-of-way and a minimum clearance of ten (10) feet above grade shall be maintained over pedestrian or vehicular areas, fourteen (14) feet above grade over areas of truck access.
 3. The height shall not exceed fifteen (15) feet above grade.
- D. Roof signs. The following standards apply to roof signs in office, commercial, mixed use and industrial zones:
1. One roof sign is permitted for each frontage if there is no projecting sign or free-standing sign along the frontage.
 2. Maximum display surface area:
 - a. Where the street frontage is less than fifty (50) feet, the maximum display surface area shall not exceed fifty (50) square feet, with twenty-five (25) square feet maximum area per sign face.
 - b. Where the street frontage is greater than fifty (50) feet but less than two-hundred (200) feet, surface display area shall not exceed one-hundred (100) square feet, with fifty (50) square feet maximum area per sign face.
 - c. Where the street frontage is two hundred (200) feet or greater, the surface display area shall not exceed an area of three hundred (300) square feet, with a maximum area of one hundred fifty (150) square feet per sign face.
 - d. In no case shall any sign have a surface display area in excess of three hundred (300) square feet.
 3. The roof signs shall not project over the right-of-way and a minimum clearance of ten (10) feet above grade shall be maintained over pedestrian or vehicular areas, fourteen (14) feet above grade over areas of truck access.
 4. The horizontal dimension shall not exceed twenty (20) feet and the vertical dimension may not exceed ten (10) feet.
 5. Skirting is required to obscure exposed hardware used to attach the sign to the roof, as viewed from the adjacent street level perspective.
- E. Projecting signs. The following standards apply to projecting signs in office, commercial, mixed use and industrial zones:
1. One projecting sign is allowed for each tenant space if there is not a freestanding or roof sign on the same frontage.
 2. The total combined display surface area of projecting signs and wall signs is no larger than one (1) square foot per each lineal foot of the wall length of the tenant space on which the sign is constructed.
 3. Each ground floor tenant space may have a minimum sign area of twenty (20) square feet, regardless of the limitation in subsection E.2 above.¹⁴

¹⁴ The Community Advisory Team suggested a minimum.

4. The maximum projection from a building wall shall be six (6) feet and shall not project within two (2) feet of the curb line. The maximum projection above the wall on which the sign is constructed shall be one (1) foot, and the visible supporting structure shall be constructed of natural materials.
 5. A minimum clearance of ten (10) feet above grade shall be maintained over pedestrian or vehicular areas, fourteen (14) feet above grade over areas of truck access.
- F. Ancillary Signs¹⁵. The following standards apply to ancillary signs in office, commercial, mixed use and industrial zones.
1. A total of two (2) ancillary signs (including banners) are allowed per property.
 2. Additional standards for banners
 - a. A total of two (2) ancillary signs are allowed per property.
 - b. For a single property, banners may be in place for up to thirty (30) days, up to twice per year¹⁶
 - c. Banners shall be securely placed against a building wall and may not project from the wall.
 - d. Banners shall comply with the wall sign size requirements and shall not be more than six (6) linear feet long and four (4) feet in height.
 - e. Banners are prohibited within a historic district and on any property designated as a historic landmark.

Proposed Changes to the Existing Code – Signs in Office, commercial, mixed use and industrial zones

- Wall signs are measured using the tenant space, and not using the entire building wall. The size of wall signs is unlimited so long as the total combined display surface area of wall signs and projecting signs is no larger than one (1) square foot for each lineal foot of the wall length of the tenant space on which the sign is constructed. The previous standard allowed two (2) square feet of signage for each lineal foot of a wall.
- Signs on other project structures such as awnings, canopies, false fronts and wall extensions which do not extend more than a foot are considered wall signs.
- Increase the number of freestanding signs from one (1) per frontage from two (2) for frontages with six hundred (600) lineal feet or more on arterial streets.
- Multiple free-standing signs on the same frontage are required to be separated by fifty (50) feet. Previously all signs had to be separated by fifty (50) feet, regardless of frontage.
- Change the number of roof signs from one per premises (if there is no projecting sign or free-standing sign along the frontage) to one per frontage (if there is no projecting sign or free-standing sign along the frontage).
- Remove the requirements for civil and structural engineers and fire marshal approvals, as it is implemented by the Building Division upon review of building permits.
- The height for roof signs is changed from a maximum of twenty-five feet above grade, plus five feet for each two hundred feet, or portion thereof, frontage in excess of two hundred feet frontage (in no event shall any sign exceed thirty feet (30) in height) to a vertical maximum of ten (10) feet.
- Reduce the maximum horizontal dimension for roof signs from twenty (20) to ten (10) feet.
- Skirting is required around the base of roof signs.
- Remove the twenty (20) foot minimum distance between projecting signs.
- Increase the dimensions for projecting signs from a maximum size of sixteen (16) square feet per sign face, with total area of all faces not to exceed thirty-two (32) square feet to a maximum of

¹⁵ The number of ancillary signs allowed was a split decision by the Sign Code Community Advisory Team.

¹⁶ Members were split on this element of the recommendation.

twenty-four (24) square feet per sign face, with total area of all faces not to exceed forty-eight (48) square feet.

- The maximum projection from a building wall for projecting signs is increased from four (4) feet to six (6) feet. Eliminate the four (4) foot maximum vertical dimension of a projecting sign.
- The supporting structure for projecting signs shall be constructed of natural materials.
- Clarify standards for signs on structures including clearance requirements of eight (8) feet.
- Incidental signs previously were allowed to be for wall or freestanding and are now only applicable to freestanding and are renamed incidental freestanding signs. Reduce the size limitations from a maximum sixteen (16) square feet with a maximum sign face size of eight (8) square feet. Remove the maximum horizontal dimension of twenty (20) feet. Reduce the maximum height from 25 feet above grade, plus five (5) feet for each two-hundred (200) feet, or portion thereof, frontage in excess of two-hundred (200) feet (not to exceed thirty (30) feet) to fifteen (15) feet.
- Allow portable signs, A-frame signs, sandwich boards, tent signs up to twelve (12) square feet, six (6) square feet per sign face and up to three (3) feet in height.
- Allow temporary banners to be attached to building walls outside of historic districts or historic landmarks.
- The number of ancillary signs is now specified. Previously, a property would have been allowed more signs that do not require a permit.

15.28.090 Public Murals

- A. Public Mural Program Intent and Purpose.** The intent and purpose of this section is to encourage the production of public murals for acquisition by the City. Public murals are a medium of expression which serves the public interest in unique ways, including, but not limited to: enhancing the aesthetics of the City; providing avenues for original artistic expression in the City; providing public edification through access to original works of public art; encouraging community participation in the creation of original works of art; and reducing the incidence of graffiti and other crime.
- B. Approval Process.** No person shall commence creation of any public mural without first obtaining approval from the Oregon City Arts Commission, and agreeing to donate the public mural to the City's public art collection. Murals that are created without approval from the Oregon City Arts Commission that are not otherwise exempt pursuant to this chapter or are inconsistent with the conditions of approval from the Oregon City Arts Commission shall not be deemed public murals.
- C. Criteria for Public Murals.** The following criteria shall be met for public murals:
 - 1. Public murals shall remain in place, without alterations, for a period of not less than five years, except as may be specified by the Oregon City Arts Commission in the conditions of approval.
 - 2. All public murals on locally designated historic structures shall be approved by the Historic Review Board prior to installation.
 - 3. No public murals shall be allowed on single family dwellings, duplexes, or multi-family dwellings. As used in this subsection, single family dwellings, duplexes, or multi-family dwellings do not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings.
 - 4. No part of the public mural shall exceed the height of the structure to which it is tiled, painted, or affixed.
 - 5. No part of the public mural shall be placed over the exterior surface of any opening of a building, including its windows, doors, and vents.
 - 6. No public mural may contain electrical components, three dimensional structural elements; employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance, image or message of the public mural.

7. Public murals shall utilize media that ensures longevity and durability, and structural and surface stability.
 8. Public murals shall be located in a manner that is accessible to the public.
 9. The artist has a strong concept and has demonstrated craftsmanship.
 10. The proposal has architectural, geographical, socio-cultural and historical relevance.
 11. The proposal is unique.
 12. The proposed design is feasible in regards to budget, timeline and experience.
 13. The public mural will last a minimum of five years, resistance to vandalism and weather; commitment to repair mural surface as necessary before painting and to use acceptable graffiti/UV coating, as needed, on finished mural.
 14. The scale is appropriate to the structure and surrounding neighborhoods.
 15. The approval and acceptance of each public mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the mural will be located, in a form approved by the City Attorney. The terms of the easement shall grant the right to create the public mural on the wall of the building and provide that the person granting the easement will maintain and restore the public mural in its original condition for the period of the easement, and state that upon termination of the easement, the mural shall be removed and the building restored to its prior condition.
- D. Approval Process. Public murals shall be approved by the Oregon City Arts Commission in a Type III.

Proposed Changes to the Existing Code – Public Murals

- Entire section is new.

15.28.100 Signs within the Right-of-Way

This standard applies to all signage within the City of Oregon City right-of-way, except signs exempted from this section under Section 15.28.030.

A. Signs on the Ground within the Right-of-Way

1. Number of signs permitted.
 - a. One (1) A-frame sign within the right-of-way per property frontage.¹⁷
 - b. Approved traffic control signs or devices do not count towards the number of signs permitted within the right-of-way. However, signs placed within the right-of-way shall not obstruct traffic control signs or devices.
2. Material, design and size standards:
 - a. The sign frame shall be wood, plastic or metal.
 - b. The sign shall be an A-frame sandwich design.
 - c. The sign may not be illuminated.
 - d. Maximum width: twenty-eight (28) inches wide
 - e. Maximum depth: two (2) feet
 - f. Maximum height: three (3) feet tall
 - g. Maximum size: six (6) square feet per sign face
3. Placement standards.

¹⁷ The Community Advisory Team does not believe this is fair for multi-tenant properties and suggested it is changed to allow one per adjacent business or entrance. Staff believes one sign per frontage is appropriate given the number of potential signs that may be placed within the right-of-way if a different standard is used and the number and type of signage which may be placed on adjacent private property.

- a. The sign shall be entirely outside automobile or bicycle travel lanes and on-street parking areas.
 - b. For signs placed within the right-of-way with an adjacent sidewalk:
 - i. The sign shall be placed within six (6) inches of the face of the curb.
 - ii. Four (4) feet of clearance width shall be retained on the sidewalk.
 - c. For signs placed in the right-of-way without an adjacent sidewalk:
 - i. The sign shall be located outside of any street pavement and may not be located closer than four (4) feet from the travel lane, turning lane, shoulder, parking lane or bicycle lane.
 - d. Signs placed in the right-of-way shall remain portable and shall not be attached or anchored in any manner to trees or public property including, but not limited, to utility or light poles, parking meters, traffic control signs, the ground, or pavement.
 - e. Signs shall not be placed in parking spaces, pedestrian pathways, or bicycle paths, street corners, transit stop areas, ADA accessible curb ramps, ADA accessible parking spaces, at building exits or fire escapes, or any portion of the street (travel lanes, shoulder, bike lanes, medians, traffic islands, and parking areas). The sign may not obstruct pedestrian or ADA access from the sidewalk to transit stop areas, designated ADA accessible parking spaces, ADA accessible ramps; or building exits including fire escapes. Signs may not impede or hinder the vision of drivers or bicyclists. The sign shall be located entirely outside of the area of a right-of-way corner that is between the curb and the lines created by extending the property line to the curb face.
4. Hours of Sign Placement.
- a. For signs not within residential zoning designations: Signs may be within the right-of-way for a maximum of twelve (12) hours per day¹⁸.
 - b. For signs within residential zoning designations: The signs may be displayed on Thursday, Friday, Saturday, and Sunday between 12:00 pm and 8:00 pm daily; and from 6:00 am to 1:00 pm on Tuesday.

B. Cross Street Banners

Temporary banners which extend over a roadway shall be permitted in the right-of-way upon issuance of a permit in accordance the following standards:

- 1. Location.
 - a. A single, two-sided cross street banner at ODOT facilities at Highway 99E/Pedestrian Bridge; and
 - b. A single, one-sided cross street banner at PGE power poles #412 and #413 on Molalla Avenue at Beverly Drive.
- 2. Cross street banner display periods shall not exceed twenty-one (21) consecutive days in duration and no more than three (3) times in any twelve (12) month period. Cross street banner(s) shall not be installed or removed on any dates other than those identified on the approved permit.
- 3. Cross street banner construction shall be in accordance with the banner construction standards adopted by the Public Works Division.

¹⁸ The Community Advisory Team suggested changing this to allow the sign in the right-of-way during business hours. This may be difficult for signs not associated with a business such as political signs.

4. Cross street banner(s) shall have 20 feet minimum clearance between the bottom of the banner and the roadway surface and clearance shall be maintained at all times. Banners shall not:
 - a. Prevent the driver of a motor vehicle from having a clear and unobstructed view of official traffic control devices and approaching or merging traffic;
 - b. Have any lighting, unless such lighting is shielded to prevent light from being directed at the roads/highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle; or
 - c. Be a traffic hazard.
- C. Who May Place the Sign
 1. Permits are approved on a first come first served basis.
 2. Except for cross street banners, if there is a business license associated with the person or company owning the sign, the business license location shall be directly abutting the location where the sign within the right-of-way is proposed. Based on the proposed location of the sign, the approval of the abutting property owner is required.¹⁹
- D. Right-of-Way Sign Permit Process
 1. An annual permit is required for signs on the ground within the right-of-way²⁰. A permit is required each time a cross street banner is installed.
 2. An approval sticker shall be placed on each sign within the right-of-way to easily distinguish the approved signs²¹.
 3. If the sign is owned by a business, the business shall have a valid business license, if applicable as determined under the criteria set forth in Oregon City Municipal Code Chapter 5.04²².
 4. The City Commission shall establish permit fees for signs located within the right-of-way.
 5. The applicant shall provide a certificate of insurance for general liability naming the City of Oregon City, its officers, agents, and employees, as additional insured's for the sign placement and include any other facility owners if applicable (e.g., State of Oregon (ODOT) and PGE).
 6. Applicant shall comply with and obtain any permits issued by any other applicable agency.
- E. Removal of signs within the right-of-way.
 1. Existing signs that do not comply with these standards or have not obtained a valid permit may be removed.
 2. The City Engineer may require signs to be modified, moved or removed if streets are widened or other improvements are made in the right-of-way that result in conditions where the sign placement will not comply with the above standards. The modification, moving or removing will be at the owner's expense.

Proposed Changes to the Existing Code – Signs With the Right-of-Way

- This entire section is new

15.28.110 Prohibited Signs

It is unlawful for the following signs to be constructed or maintained except as otherwise provided in this chapter:

¹⁹ The Community Advisory Team suggested requiring approval of the adjacent property owner.

²⁰ The City will create a form and approve over the counter.

²¹ The Community Advisory Team suggested that permits should not be required in residential and mixed-use zones.

²² Political signs, etc may not require a business.

- A. A sign that interferes in any way with a traffic control sign or device or prevents clear and unobstructed views of traffic control signs or devices or approaching or merging traffic or does not comply with chapter 10.32 of the Oregon City Municipal Code.
- B. A sign that contains, includes or is illuminated by any flashing or revolving, rotating or moving light or moves or has any animated or moving parts which move or rotate or change more than once (1) per day²³, except as otherwise allowed within this code.
- C. A sign with lighting that is not effectively shielded to prevent beams or rays of light from being directed at any portion of the main traveled right-of-way of a state highway, unless the lighting is of such low intensity or brilliance that it does not cause glare or impair the vision of the driver of a motor vehicle or otherwise interfere with the operations thereof.
- D. A sign located upon a tree, or painted or drawn upon a natural feature.
- E. A sign that obstructs free ingress to or egress from any door, window or fire escape, alley, drive or fire lane, or is attached to a fire escape.
- F. Any sign with an area larger than twelve (12) square feet, six (6) square feet per sign face on an undeveloped lot or parcel of property.
- G. A sign not otherwise in compliance with any provision of this code, Oregon law or the terms and conditions of any valid sign permit issued under this chapter.
- H. Attention flags.
- I. A-frame signs with an area larger than twelve (12) square feet, six (6) square feet per sign face or taller than three (3) feet.
- J. Air blown signs.
- K. Billboards.²⁴
- L. Signs on fences or fencing.²⁵
- M. Banners unless otherwise allowed by this chapter.
- N. Abandoned signs.

Proposed Changes to the Existing Code – Prohibited Signs

- The following are added as prohibited: attention flags, A-frame signs with an area larger than six (6) square feet per sign face or taller than three (3) feet, air blown signs, and abandoned signs.
- The following are removed from prohibited signs: obsolete sign, portable signs, A-frame signs, sandwich boards, tent signs, streamers, strings of lights, balloons, hulas, banners or pennants, excepting traditional holiday decorations, A sign erected or maintained on public property or within the public right-of-way without permission of the public body having jurisdiction, a sign not able to withstand a wind pressure of twenty pounds per square foot of exposed surface, or is insecurely erected, or is constructed so as to constitute a fire hazard, and a sign not maintained in a safe, neat, clean and attractive condition and in good repair.
- The size of signs on undeveloped lots or properties is increased from four (4) square feet to (12) square feet, six (6) square feet per sign face on an undeveloped lot or parcel of property.

15.28.120 Nonconforming Signs

²³ The Community Advisory Team was split on the minimum length of time which a message had to be displayed before it could change. Since no clear direction was provided staff defaulted to our current policy.

²⁴ This was a split issue by the Community Advisory Team. Staff chose to default to our existing code which prohibits billboards since a clear direction was not provided.

²⁵ The Community Advisory Team had a split decision on this. Staff defaulted to our current code.

Signs that were lawfully constructed and otherwise lawfully existing but no longer comply with this code are allowed to remain until removed. Nothing in this section shall be deemed to prevent the maintenance of any sign, or changes of sign copy on a sign.

- a. No additions or enlargements may be made to a nonconforming sign except those additions or enlargements that are required by law.
- b. A sign that is moved, replaced, or structurally altered shall be brought into conformance with this chapter, except that nonconforming signs may be reconstructed if required to be moved for construction or repair of public works or public utilities and the sign reconstruction is completed within ninety days after the completion of the public works or public utility construction or repair.
- c. Abandoned signs shall not be deemed nonconforming signs. No nonconforming sign shall be permitted to remain unless properly repaired and maintained as provided in this chapter. A sign maintained in violation of this provision shall be removed as provided in this chapter. Any nonconforming sign that is determined by the building official to be an unsafe sign shall be removed as provided in this chapter. Any nonconforming sign that is determined to be an abandoned sign shall be removed as provided in this chapter.

Proposed Changes to the Existing Code – Nonconforming Signs

- Existing signs are allowed to remain unless removed by the owner. The previous code included an amortization period.

15.28.130 Variances.

- A. Grounds for Variance. Upon application by an applicant, the planning commission may grant a specific variance from provisions of this chapter provided all of the following circumstances exist:
 1. That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;
 2. That the request is the minimum variance that would alleviate the hardship;
 3. Granting the variance will equal or exceed the purpose of the regulation to be modified;
 4. Any impacts resulting from the adjustment are mitigated;
 5. No practical alternatives have been identified which would accomplish the same purpose and not require a variance; and
 6. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.
- B. Variance Fee. At the time of application for variance from the provisions of this chapter, the applicant shall pay a fee in accordance with the fee schedule established and amended from time to time by the city commission and on file with the city recorder.
- C. Procedure. A variance application shall be treated in the manner provided by Chapter 17.50 of this code with respect to zoning variances.

Proposed Changes to the Existing Code – Variances

- The variance criteria are replaced with the variance criteria from OCMC 17.60.

15.28.140 Violation—Penalty.

In addition to any other provisions hereof, it is unlawful for any person to maintain a sign or advertising structure in violation of the provisions of this chapter. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20, 1.24.

Proposed Changes to the Existing Code – Violation

- No changes to this section are made other than renumbering the title.

15.28.150 Conflict and severability

In the event any provision herein is found to be in conflict with any zoning, building, fire safety, health or other code provisions of the city, the provision which establishes the higher standard for the promotion and protection of the health, safety and welfare of the people shall prevail.

A finding by a court of competent jurisdiction that any portion of this chapter is invalid shall not invalidate the remaining portions. A permit issued pursuant to this chapter does not grant any authority to violate any other law or regulation that may apply.

Proposed Changes to the Existing Code – Conflict and Severability

- No changes to this section are made other than renumbering the title.


DRAFT


City of Oregon City


GEOGRAPHIC INFORMATION SYSTEM

Non-Residentially Zoned Taxlots with 600 ft or more of Frontage on a Single Arterial

(Excludes Designated Parks
and Stormwater Facilities)

 City Limits

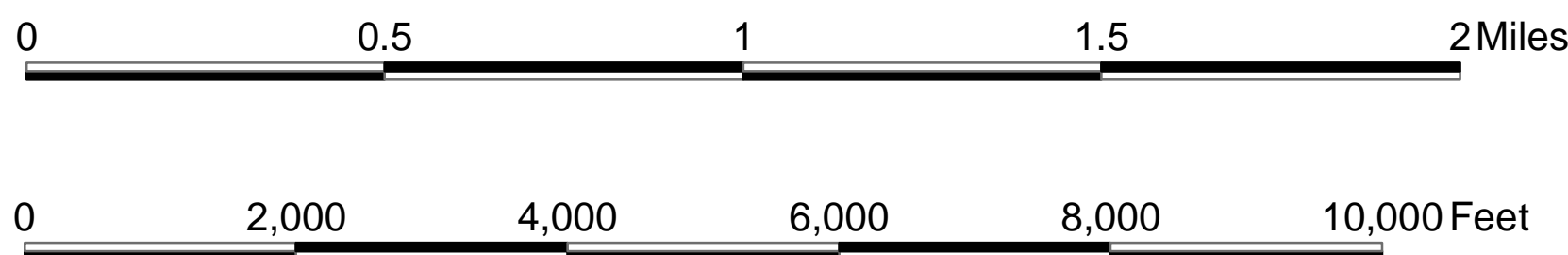
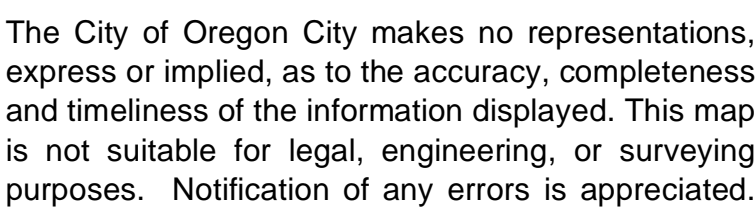
 Urban Growth Boundary

 Taxlots - Arterials Frontage (≥ 600 ft.)

Plotted March 21, 2014

(Excludes Designated Parks
and Stormwater Facilities)

Plotted March 21, 2014



Plot date: March 21, 2013
Map: Taxlot Road Frontage - 600 ft - Zoning Exclusions - 24x36P.mxd
Plot: Taxlot Road Frontage - 600 ft - Zoning Exclusions - 24x36P - 20140321.pdf

A GUIDE FOR DRAFTING A SIGN CODE

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A GUIDE FOR DRAFTING A SIGN CODE

INTRODUCTION

Sign regulation is a challenging area for local governments. Community interests in effective communication, safety, and aesthetics must be addressed, but always with respect for individual rights and interests safeguarded by the U.S. and Oregon Constitutions. CIS is dedicated to helping local governments manage the risks associated with carrying out their government functions. We have supported this project as a tool to assist in the area of sign regulation.

This Guide for Drafting a Sign Code was created by a group of experienced practicing city attorneys. City County Insurance Services (CIS) would like to acknowledge and thank the following attorneys who have worked diligently on this project: Evan Boone, Candace Haines, Alan Rappleyea, Mark Rauch, Rich Rodeman, Bob Shields, and Randall Tosh. Each attorney participated in the project with the permission of his or her client city and the cooperation of those cities is gratefully acknowledged. However, some initial disclaimers are in order.

The final product is general in nature, represents the collective effort of the involved attorneys, and has not been endorsed any city.

CIS and the city attorneys involved in preparing this Guide hope that our efforts will be useful to city officials; however this product does not constitute legal advice and should not be used without consulting your city's own legal counsel.

We specifically did not undertake to draft a "model" sign code. Sign regulations reflect the character and values of the local community, and only individual cities can make the necessary policy decisions to determine which regulations are appropriate for that city.

This Guide strives first to familiarize the reader with the overall legal issues presented when drafting a sign code, and then, using a recently adopted sign code to illustrate how the legal issues would be reflected in code text. The Committee has also provided commentary, and at times some alternative text, to aid the drafter. Finally, following the sign code in this Guide is an appendix of material on tips and issues involved in sign code drafting.

The drafter should consider the sign code in this Guide as a starting point for discussion and drafting, rather than an "off-the-shelf" finished product. The drafter may wish to review sign codes from other jurisdictions, to see how other jurisdictions have addressed the issues that arise in defining and implementing a sign code; many jurisdictions have their sign code available online: [*Hillsboro* \(Chapter 15.20\)](#), [*Lake Oswego*](#), [*Portland*](#), [*League of Oregon Cities Web Directory*](#). Additionally, there are other sources of information about signs generally which may be of assistance, particularly relating to "cutting edge" sign technologies and the impact upon communities: [*Scenic America*](#)

Finally – or perhaps firstly-- in preparing a sign code, the importance of local elected and appointed policy makers, with adequate and meaningful public participation, cannot be overemphasized.

LEGAL LANDSCAPE

First Amendment

Sign regulation is a challenging area for cities in every state because of the constitutional guarantees contained in the First Amendment. The Fourteenth Amendment makes First Amendment constitutional guarantees enforceable against all state and local governments. Consequently, all city sign regulations must comply with the First Amendment because signs are a constitutionally protected form of expression.

First Amendment analysis was recently applied to an Oregon sign code in *G.K. Ltd. Travel v City of Lake Oswego*, 436 F3d 1064, *cert. den.* ___ U.S. ___, 127 S. Ct. 156, 166 L. Ed. 2d 38 (2006). G.K. Travel purchased a travel business in Lake Oswego and changed the text on a pole sign advertising the business. The City told G.K. Travel that changing the copy on its pole sign the sign had to conform to the sign code, which prohibited pole signs. G.K. Travel was denied a permit and a variance. After an unsuccessfully appeal, G.K. Travel sued the City seeking to have its sign code declared unconstitutional.

The U. S. District Court ruled that a small part of the Sign Code was content-based but upheld the remainder of the Lake Oswego Sign Code.. The Ninth Circuit ruled that the City could impose reasonable time, place, and manner restrictions on protected speech if the restrictions: (1) are justified without reference to content, (2) are narrowly tailored to serve a significant government interest, and (3) where ample alternative channels for communication of the information are left open.

First, the pole sign restriction, as applied to G.K. Travel, was constitutional. It was not a content-based regulation of speech and it was narrowly tailored to achieve the City’s significant interest in aesthetics and traffic safety. The code left open ample alternative means of communicating G.K. Travel’s advertising message, including other kinds of signs and other types of communication.

Second, the sign code itself was content-neutral. The permit exemptions for public signs, hospital emergency services, legal notices, railroad signs, and danger signs were exemptions granted to certain speakers, not to particular content. The permit exemption for temporary signs in residential zones was content-neutral in that it was event based and imposed only temporal and size restrictions. The nonconforming provision only required the City to determine whether the text of a sign had changed, not to evaluate its substantive message. The design review provision, allowing sign review for “clarity and readability” was content-neutral, as applied by the City, because the City limited “clarity and readability” to legibility and not intelligibility. The sign code was narrowly tailored to achieve significant government interests and left ample alternative channels open for communication.

Third, the temporary sign in residential zones provisions did not illegally favor commercial over non-commercial messages or regulate commercial messages on the basis of content. Certain signs were exempted from a permit requirement during certain event-based time periods, without reference to content.

Fourth, the permitting requirement in the sign code did not constitute a prior restraint on speech and was constitutional. Reasonably specific and objective standards limited the discretion exercised by the permitting authority. Although the design review criteria required reasonable discretion to be exercised by the permitting authority, that alone did not make the sign code an unconstitutional prior restraint.

Finally in GK Travel, the sign code was not unconstitutionally vague. It clearly described what conduct was permitted and provided definite sign size and type requirements. It was clear what the sign code prohibited and this clarity avoided fear of arbitrary and discriminatory enforcement. The court refused to invalidate the entire sign code because of the reasonable subjectivity of the design review process and would not apply the vagueness doctrine to prevent the City from addressing problems that were difficult to define in objective terms.

The most critical legal issue raised by a sign code is whether it regulates signs based upon their content. Under the U.S. Constitution, courts evaluate content-based regulations under a demanding test known as strict scrutiny. Under the strict scrutiny test, a content-based sign regulation will be upheld only if it is justified by a compelling governmental interest, is narrowly-tailored to achieve that interest, and is the least restrictive means for achieving that interest.

Additional First Amendment challenges frequently include the adequacy of standards, and the permit review process. There must be adequate standards, rather than licensing official enjoying “broad discretion” whether to grant or deny permit (along with effective judicial review). Thomas v. Chicago Park District, 534 US 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). Standards are to be “narrowly drawn, reasonable and definite standards.” Café Erotica of Florida, Inc. v. St. Johns County, Florida, 360 F. 3d 1274 (11th Cir 2004) (“not in the public interest” or reference to grounds in the Building Code, when there are no grounds for denial existing in the Building Code impermissible.” Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996). (“harmful effect upon the health or welfare of the general public, ... and will not be detrimental to the aesthetic quality of the community or the surrounding land uses.” G.K. Ltd Travel v. City of Lake Oswego, 436 F3d 1064 *cert. den.*, ___ U.S. ___, 127 S. Ct. 156, 166 L. Ed. 2d 38 (2006) (Standards must be capable of judicial review).

The presence of judicial review is not a substitute for “concrete standards” to guide decision maker’s discretion. Granite State Outdoor Advertising, Inc. v. City of Clearwater, 351 F3d 1112 (11th Cir. 2003), *rehearing denied*, 97 Fed. Appx. 908 (Table), 11th Cir. 2004), *cert denied*, 543 U.S. 813, 125 S. Ct. 48, 160 L. Ed. 2d 17 (2004).

Oregon Constitution

In Oregon, the state constitution is more restrictive of sign regulation than the federal constitution. Some sign regulation allowed under the First Amendment is not permitted under Article I, Section 8 of the Oregon Constitution. For instance, the “off premises” v. “on premises” distinction, acceptable under the First Amendment, violates the Oregon Constitution. Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006). Also, under the First Amendment, there is a distinction between commercial and non-commercial speech and greater regulation of commercial speech is allowed. The Oregon Constitution does not permit this. Ackerley Communications, Inc. v. Multnomah County., 72 Or. App. 617, 696 P.2d 1140 (1985), *rev. dismissed*, 303 Or. 165, 734 P.2d 885 (1987).

This does not mean that the Oregon Constitution prohibits any regulations of signs. In Outdoor Media, the Oregon Supreme Court stated that “Article I, Section 8 does not bar every content-neutral regulation of the time, place and manner of speech.” Sign regulations must be reasonable and make no reference to the content of the sign. However, under Article I, Section 8, the appellate courts have set no specific standards or limits as to what are acceptable “time, space and manner” regulations.

Finally, under Article I, Section 8, any regulation that proscribes one or more modes of expression as a means to an end (i.e., prohibiting certain types of signs for reasons other than censorship, such as aesthetics or safety) is subject to “closer scrutiny” in order to determine “whether it appears to reach privileged communication or whether it can be interpreted to avoid such overbreadth.” State v. Robertson, 293 Or 402, 649 P2d 569 (1983).

“Facial” and “As Applied” Challenges

In a “facial challenge,” the person challenging a statute alleges that the statute is always, under all circumstances, unconstitutional. This type of challenge would be asserted where a sign regulation, on its face, is not content-neutral.

In contrast, an “as applied” challenge seeks relief from the application of a facially valid statute or ordinance because the regulation has been applied in an illegal or impermissible manner. Thus, even where care is taken to pass content-neutral sign regulations, it is important during implementation and enforcement to base all decisions on uniform rules and procedures. Otherwise, the application of the regulations will be challenged.

Land Use Regulation or Not?

Is the Sign Code intended to be a “Land Use Regulation” of the city? And what difference will it make if it is a land use regulation?

The Sign Code is a “land use regulation” if it implements a comprehensive plan provision. ORS 197.015(12). Ackerley Communications, Inc., v. City of Portland, 12 Or LUBA 410 (1984). Many jurisdictions adopt sign codes for, in part, aesthetic reasons. If aesthetic impacts of signage are addressed in the city’s comprehensive plan, the Sign Code could be found to be a “land use regulation.” See the following cases where the consideration of a sign permit as a land use decision was not challenged: Haug v. City of Newberg, 42 Or LUBA 411 (2002); Cotter v. City of Portland, 46 Or LUBA 612 (2004); Media Art v. City of Tigard, 46 Or LUBA 61 (2003)(Billboard challenge).

There may be other reasons why a municipality may want to leave a sign code inside the zoning ordinances. For instance, it may want to use the long established procedures for decision making and appeals that are found in zoning codes. It may not want to adopt special findings to support the aesthetics of a sign code and instead rely upon previously adopted policies in comprehensive plans. Additionally, the adoption of or amendment to sign codes are usually lengthy and contentious proceedings, there may be some benefit to using an city’s experienced planning commission or sign code review commission to conduct these hearings.

The determination of whether the Sign Code is a “land use decision” will affect the procedural requirements of public notice, decision, and appeal. If the jurisdiction adopts the Sign Code not as a part of its land use regulation, then findings in the adopting ordinance are recommended that it is not being adopted as part of the jurisdiction’s land use regulations.

Measure 37 (ORS 197.352).

Measure 37 provides compensation for the reduction in value to private property owners caused by the imposition of “land use regulations.” ORS 197.352 These are defined as “local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.” ORS 197.352(11)(B)(iii).

Many cities will have their sign code regulations as part of their zoning ordinances but this does not have to be. Regulating signage can be entirely separate from the regulation of land uses. The statute provides “land use regulation means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.” ORS 197.015(12). Thus, the sign code that does not establish zoning, clearly is not a land division ordinance and any provisions relating to signs can be removed from the comprehensive plan. No statute or rule mandates that they be part of the comprehensive planning system. Sign codes can fall outside of Measure 37.

PROCESS FOR ADOPTION

While it would be going too far to say that it's all about process, it probably would not be overstating things to say that the adoption process used for your jurisdiction's sign code will be immensely important. When you consider that the City of Hillsboro worked through their code for ten years, you begin to get the idea.

The decision in *G.K. Travel* practically sets out a blueprint for process—a review of that case would be *very helpful* to you as you begin. The Court liked (and, fortunately for us, commented at length upon) what they saw of Lake Oswego's adoption procedures.

The Court noted favorably that, in regulating all the signs in the City, the ordinance was aimed at reducing visual clutter, retaining the look of the City and maintaining traffic safety. The Court was also apparently impressed that the Lake Oswego Planning Commission held public hearings, looked to the experiences of other cities to see what was and was not successful, and consulted studies, while the City Council not only considered but incorporated many of the recommendations from businesses.

The *G.K. Travel* plaintiffs argued that the City didn't establish that it had a problem with visual clutter or traffic safety and that there was no evidence that the sign restrictions would help with those issues in any event. The Court, in finding these arguments had no credibility, stated that they generally defer to the body which has passed the law when considering whether that law advanced the governmental purpose. The Lake Oswego Sign Code, including the pole sign restriction, was the result of much legislative deliberation, a dynamic dialogue with the City's residents and businesses and extensive hearings; these conversations, along with Council reliance on the experience of other cities, produced strong evidence of the need for sign restrictions and the form these restrictions should take. This evidence provided the City with legitimate and relevant bases for advancing its Sign Code and restricting the availability of pole signs.

Lessons learned?

- Document, document, document. Be sure that every source of information considered is listed in minutes, staff reports, or the like, whether that information is a nation-wide study, front line experiences of other cities, or citizens who want to have their say. And preserve that documentation!
- Notify everybody. The greater the community involvement, the better. Provide notice to everybody you can think of who will have even the slightest interest, and provide them with a good opportunity for input.
- Make the process as public as you possibly can. Involve everyone. Get every person or business with any interests in this matter at all to testify. In McMinnville, their second sign ordinance was the result of a year and half of study of the issues by a citizen

committee. The draft has been (and will be) forwarded to various civic organizations. McMinnville anticipates gathering input for months yet, before bringing the draft to the Planning Commission.

And while this is not really a process issue, it is important enough to restate here: draft a strong purpose statement. The Court in *G.K. Travel* commented very favorably on Lake Oswego's purpose statement and returned to it over and over in their considerations. Address constitutional issues and goals. Be sure that the statement is "personal" to your city's needs.

SIGN CODE – A TEMPLATE

Drafting Notes

This Code is based largely – *but not exclusively* – on the 2006 Hillsboro Sign Code. The Committee made changes to the Hillsboro Sign Code. The Committee elected to use the Hillsboro version as a template because it was adopted just prior to the Committee’s work. The Committee was aided in its drafting of the template Sign Code by former Hillsboro City Attorney Tim Sercombe. CIS retained Mr. Sercombe to defend a multi-pronged challenge to the Lake Oswego Sign Code in *G.K. Travel*. Accordingly the drafting of the Hillsboro Sign Code was able to benefit from the Ninth Circuit’s opinion.

Any sign code needs to be tailored to the jurisdiction, as each jurisdiction’s desire to regulate signage varies, both in terms of scope and quantity. The Committee did not intend to offer the specifics of this sign code as a model, “off the shelf” sign code. How many signs to allow, what type of signs to allow, whether to have a “comprehensive sign program,” what the sign districts should be called, and what signs are permitted in specific zones are examples of issues that each jurisdiction must consider. Each section arguably is a policy decision to be made by the jurisdiction.

The Committee struggled with how much of the Hillsboro Sign Code should be removed, to present its framework as a template, and how much to leave, in order to give sufficient detail for the drafter to visualize how detailed a sign code can, or should, be. References to specific requirements of the Hillsboro Sign Code have been retained, therefore, to provide assistance to the drafter if the jurisdiction elects to include similar specific provisions, e.g., comprehensive sign program. The Committee therefore offers this sign code as a starting point for a jurisdiction’s consideration.

In some cases, the committee has noted optional text by the use of **[brackets]** to indicate text that should be customized.

The drafter should carefully consider the use of term “sign” v. “signs” in the regulatory sections. “Signs” means that an unlimited number of signs are authorized; a “sign” means one sign. The jurisdiction may wish to consider a specific number of signs.

A sign code may be a land use regulation, depending on whether it implements part of the jurisdiction’s comprehensive plan. Where appropriate, the Committee has noted in the text and commentary the different requirements necessitated by whether the sign is, or is not, a land use regulation. In some cases, whether a section or a paragraph is included depends on whether the sign code is intended to be a “land use regulation,” and in those instances, where paragraphs are added to address land use concerns, they are lettered as “X”, in such cases the drafter will need to assign the correct paragraph number to that paragraph and to subsequent paragraphs.

Perhaps no chapter of a jurisdiction’s code can result in as much passion as the sign code – it speaks to the jurisdiction’s aesthetic and commercial vision of itself, but such passion must be tempered to meet the Oregon and federal constitutional “free speech” provisions. To that end, the Committee believes that alternative sign code text will continue to evolve, and the Committee encourages city attorneys and county counsels to submit alternative sections / procedures to CIS, for inclusion on the League of Oregon City’s website for future consideration by jurisdictions other.

SIGN CODE – A TEMPLATE

XX.XX.005 Title.

This chapter shall be known as the “[City] Sign Code.”

XX.XX.010 Purpose.

The purposes of this chapter are to:

- protect the health, safety, property and welfare of the public,
- provide a neat, clean, orderly and attractive appearance of the community,
- improve the effectiveness of signs,
- provide for safe construction, location, erection and maintenance of signs,
- prevent proliferation of signs and sign clutter, minimize adverse visual safety factors to travelers on public highways and on private areas open to public travel, and
- achieve these purposes consistent with state and federal constitutional limits on the regulation of speech.

To achieve these purposes, it is necessary to regulate the design, quality of materials, construction, location, electrification, illumination, and maintenance of signs that are visible from public property, public rights-of-way and private areas open to public travel.

XX.XX.015 Definitions.

Comment: All sign codes will include certain terms that should be defined in order to clarify intent and avoid ambiguity. The term “sign” itself, as well as various categories or types of signs are examples of such terms. Consideration should be give to whether other terms used in the code (e.g., “premises”, “height”, etc.) need to be specifically defined or whether their common “dictionary” definition is sufficiently clear and consistent with the drafters’ intent. What follows are sample definitions of the term “sign” and various subcategories or types of signs, e.g., “lawn sign,” as well as other terms that may be applicable to sign codes. The specific terms defined in a sign code depend on the provisions of the code. The terms listed below are offered as examples. They may or may not be applicable, depending on your code provisions. As well, other terms may be appropriate for listing in this definition section.

For alternative language, as well as examples of other defined terms, see codes from other jurisdictions, e.g., [Hillsboro](#) (Chapter 15.20), [Lake Oswego](#), [Portland](#), [League of Oregon Cities Web Directory](#).

For the purposes of the [City] Sign Code, unless the context indicates otherwise: words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; undefined words have their ordinary accepted meaning; and, the following words and phrases mean:

“A-Frame Sign” means a double-faced temporary sign composed of two sign boards attached at the top and separate at the bottom, not permanently attached to the ground.

“Abandoned sign” means a sign or sign structure where:

A. The sign is no longer used by the person who constructed the sign. Discontinuance of sign use may be shown by cessation of use of the property where the sign is located;

B. The sign has been damaged, and repairs and restoration are not started within ninety days of the date the sign was damaged, or are not diligently pursued, once started.

“Alter” means to make a change to a sign or sign structure, including but not limited to, changes in area, height, projection, illumination, shape, materials, placement and location on a site.

Altering a sign does not include ordinary maintenance or repair, repainting an existing sign surface, including changes of message or image, or exchanging the display panels of a sign.

“Athletic scoreboard” means a sign erected next to an athletic field by the owner or operator of the field and which is visible to spectators.

“Automobile service station” means a retail place of business engaged primarily in the sale of motor fuels.

“Awning” means a shelter projecting from and supported by the exterior wall of a building constructed of rigid or nonrigid materials on a supporting framework.

“Awning Sign” means a sign attached to or incorporated into an awning.

“Balloon signs” means a sign consisting of a membrane that relies on internal gaseous pressure or a semirigid framework for maintaining its form.

“Banner” means a sign made of fabric or other nonrigid material with no enclosing framework.

“Bench sign” means a sign on an outdoor bench.

“Billboard” means a sign on which any sign face exceeds two hundred square feet in area.

“Blanketing” means blocking a pedestrian’s or motorist’s view of a projecting sign by another projecting sign.

“Boundaries of a site” means the area inside the legal lot lines of a site, not including any property in a public right-of-way.

“Building elevation area” means the area of a single side of a building, measured in square feet and calculated by multiplying the length of the side of the building by the height of the building to the roof line. If the roof line height varies along the side of the building, the average of the lowest and highest roof line height on that side shall be used in the calculation.

“Building frontage, primary” means the ground floor lineal length of a building wall that faces a street, driveway, parking lot, courtyard or plaza and has an entrance or exit open to the general public.

“Building frontage, secondary” means the ground floor lineal length of a building wall that faces a street, driveway, parking lot, courtyard or plaza and does not have an entrance or exit open to the general public.

“Building official” means the building official or his or her designee.

“Bulletin board” means a permanent sign providing information in a horizontal linear format, that can be changed either manually through placement of letters or symbols on tracks mounted on a panel, or electronically, through use of an array of lights in a dot matrix configuration, from which characters can be formed.

“Business complex” means a development consisting of one or more lots sharing appurtenant facilities, such as driveways, parking and pedestrian walkways, and is designed to provide varied products and services at a single location.

A. “Major business complex” means a development consisting of single or multiple principal uses and where the building(s) contain a minimum of forty-five thousand square feet in gross floor area.

B. “Minor business complex” means a development consisting of a minimum of six principal uses and where the building(s) contain a maximum of forty-four thousand nine hundred ninety-nine square feet in gross floor area.

C. “Industrial/research business complex” means a development consisting of a minimum of six principal uses and where the building(s) contain a minimum of one hundred thousand square feet of gross floor area.

Comment: This definition would mean a development of less than six "principal uses" and less than 45,000 square feet would not be treated as a "business complex" for purposes of sign regulation.

“Canopy” means a permanent roofed structure which may be freestanding or attached to a building, but which is not a completely enclosed structure or awning.

“Changing Image Sign” means a sign that through the use of:

- moving structural elements,
- flashing or sequential lights,
- lights in a dot matrix or LED configuration, which may be changed intermittently, or
- other automated method,

results in movement, the appearance of movement, or change of sign image, message, or display.

“Clearance” means the distance between the average grade below a sign to the lowermost portion of the sign.

“City” means the City of **[name of City]**.

“City engineer” means the city engineer or his or her designee.

“City Manager” means the City Manager or his or her designee.

Comment: Modify this definition here and throughout the code to refer to the highest decision making authority of the sign code within the jurisdiction, e.g., Planning Director, Community Development Director, City Manager . Note: If the jurisdiction

does not consider the sign code to be a land use regulation, but has members of the Planning Department also administer the sign code, the drafter should consider use of the term “City Manager” as inclusive of city staff generally, and thus not necessarily because of the staff’s planning position.

“City recorder” means the city recorder or his or her designee.

“Community event” means an activity or event identified as such by the city council.

“Dwelling” means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation.

“Filing” means depositing a document in the United States mail, postage prepaid and accurately addressed to the city, or leaving a copy with the city recorder at City Hall during work hours. For purposes of this chapter, a document is “filed” on the date it is received at City Hall.

“Fire marshal” means the fire marshal or his or her designee.

“Flag” means a rectangular piece of fabric of distinctive design that is displayed hanging free from a staff, halyard or building to which it is attached. A flag is often used to display the symbol of the United States, a nation, state, local government, business, organization or a person.

“Flashing Sign” means a sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source.

“Freestanding sign” means a sign wholly supported by integral pole(s), post(s), or other structure or frame, the primary purpose of which is to support the sign and connect it to the ground. Examples include monument signs and pole signs. A freestanding sign does not include a portable sign.

“Grade” For freestanding signs, “grade” is the average level of the ground measured five feet from either end of the base of the sign, parallel to the sign face. For signs mounted on buildings, the grade is the average level of the sidewalk, alley or ground below the mounted sign measured five feet from either end of the sign face.

“Ground-mounted sign” means a freestanding sign with a minimum of twelve inches of vertical solid base directly and continuously connected to at least fifty percent of the sign face width or, is borne by two or more supports which are a minimum of twelve inches but less than eight feet above grade.

“Handheld sign” means a hand-carried sign of six square feet or less in area, worn or carried by a person when being displayed.

“Hearing Body” means the [commission or other body that hears appeals of sign code permits] of the City.

“Height” means the vertical distance measured from grade to the highest attached component of a sign including the supporting structure.

“Historical or landmark marker” means a sign constructed in close proximity to a historic place, object, building, or other landmark recognized by an official historical resources entity, where

the sign is constructed by the owner of the historic property and does not exceed twenty square feet in size.

“Historical sign” means a sign designated as a historic or cultural resource under city, state or federal law or a sign that is an historical element of an historical landmark.

“Illuminated sign” means a sign illuminated by an internal light source or an external light source primarily designed to illuminate the sign. The illumination is “external” when the light source is separate from the sign surface and is directed to shine upon the sign and “internal” when the light source is contained within the sign, but does not include signs where the text or image is composed of dot matrix or LEDs. External illumination is “direct” when the source of light is directly seen by the public, such as a floodlight, and “indirect” when the source of light is not directly seen by the public, such as cove lighting.

“Interior sign” means a sign erected and maintained inside of a building, including, but not limited to, a sign attached to or painted on the inside of windows. This definition does not include text, pictures, graphics, or similar representations in display windows.

“Lawn Sign” means a temporary freestanding sign made of lightweight materials such as cardboard or vinyl that is supported by a frame, pole or other structure placed directly in or upon the ground without other support or anchor.

“LED” means a semiconductor diode that converts applied voltage to light and is used in digital displays.

“Lot” means a single unit of land that is created by a subdivision of land.

“Maintenance” means normal care or servicing needed to keep a sign functional or perpetuate its use, such as cleaning, replacing or repairing a part made unusable by ordinary wear, and changing light bulbs.

“Marquee” means a permanent roofed structure attached to or supported by a building.

“Menu board” means a sign placed at the beginning of a drive-up service lane of a food service establishment that includes a two-way speaker system for taking food orders.

“Monument sign” means a freestanding sign that is placed on a solid base that extends a minimum of 12 inches above the ground and extends at least 75 percent of the length and width of the sign. The above ground portion of the base is considered part of the total allowable height of a monument sign.

“Name plate” means a permanent wall sign located on the front facade of a residential structure.

“Neon sign” means a sign internally illuminated by a light source consisting of neon or other gas contained in a tube, except for fluorescent lights.

“Nonconforming sign” means a sign that was lawful when it was constructed but does not meet the requirements of the [City] Sign Code. When a sign permit is granted prior to the effective date of the ordinance codified in this chapter that complies with then existing requirements, the sign is conforming if it is erected within ninety days of the effective date of the ordinance codified in this chapter.

Comment: Other examples:

Portland: A sign that was created in conformance with development regulations, but which subsequently, due to a change in the zone or land use regulations, is no longer in conformance with the current applicable development standards. Nonconforming signs also includes signs that do not conform with the land use regulations of this Title and that were established prior to November 18, 1998.

Lake Oswego: Non-conforming signs are those signs which were lawfully installed which do not comply with the requirements of this sign code.

“Numeric information sign” means a sign only displaying current numeric measurements such as time, date, temperature, or stock indices.

“Owner” means the person owning title to real property on which a sign is located, or the contract purchaser of the real property as shown on the last available complete assessment roll in the office of county assessor. “Owner” also includes the owner of a sign who has a continuing lease of the real property on which the sign is located.

“Pennant” means a sign device made from a strip of flexible material intended to wave in the wind.

“Person” means every person, firm, partnership, association, or corporation.

“Planned unit development” means a tract or tracts of land developed as a planned unit development under city zoning / development ordinances.

“Pole sign” means a sign that is a freestanding sign connected to the ground by one or more supports with the lower edge of the sign separated vertically from the ground by a distance of nine feet or greater as measured from grade.

“Portable sign” means a sign which is not affixed to a building or other structure, or the ground in a permanent manner and is designed to be moved from place to place.

“Principal use” means a nonresidential use of property by an owner or lessee. Multiple principal uses may be located on a lot or development.

“Projecting sign” means a sign, other than a wall sign, that projects from, and is supported by or attached to a roof or wall of a building or structure.

“Public right-of-way” means travel area dedicated, deeded or under control of a public agency, including but not limited, to highways, public streets, bike paths, alleys and sidewalks.

“Public sign” means a sign erected, constructed, or placed within the public right-of-way or on public property by or with the approval of the governmental agency having authority over, control of, or ownership of the right-of-way or public property.

“Repair” means mending or replacing broken or worn parts with comparable materials.

“Roof elevation area” means the area of a single plane of a roof, measured in square feet and calculated by multiplying the difference between the height of the ridge and the height of the eave by the distance between opposing rakes.

“Roof line” means the top edge of a roof or a building parapet, whichever is higher, excluding any cupolas, chimneys or other minor projections.

“Roof sign” means a sign erected upon, against, or over the roof of any building or structure.

“Seasonal Holiday decorations” means every type of decoration displayed during and around a federally recognized holiday or on a seasonal basis, whether illuminated or not, and whether attached to utility poles, buildings or any other structure.

Comment: The inclusion of “seasonal” decorations presents challenges in terms of scope, and hence, enforcement. If the determination of what signs qualify as seasonal decorations cannot be “content-based,” then seasonal decorations can result in decorations that do not relate to the “season” being erected during the “season.” See G.K. Travel v. City of Lake Oswego.

There are also implications related to the First Amendment, regarding religious and free expression, because some of the religious holidays are not federally recognized holidays.

If “seasonal holiday” is eliminated, then the drafter should review the scope and limitations of “temporary signs.”

“Setback” means the horizontal distance from the property line to the sign, measured at the closest points of the sign to the property line.

“Sign” means any writing, video projection, illumination, pictorial representation, illustration, decoration, emblem, symbol, design, trademark, banner, flag, pennant, captive balloon, streamer, spinner, ribbon, sculpture, statue, or any other figure or character that:

1. Is a structure or any part thereof (including the roof or wall of a building); or
2. Is written, printed, projected, painted, constructed, or otherwise placed or displayed upon or designed into a structure or an outdoor screen or monitor, or a board, plate canopy, awning, marquee, or a vehicle, or upon any material object, device, or surface whatsoever; and
3. Communicates, or is designed to communicate on any subject whatsoever.

The scope of the term “sign” does not depend on the content of the message or image being conveyed.

It is a rebuttable presumption that a graphic, mural or art work that depicts or relates to the use of a site or structure on which it is displayed, is intended to communicate an informational message about the site or structure.

Comment: The Committee debated the breadth of the definition of “sign”-- should it extend to projections and/or graphics/text on the ground, i.e., parking lots, topiary, or the placement of rocks or vegetation in a manner that forms a text or graphic. Perhaps guided by the policy choices of the jurisdictions represented by the Committee members, the Committee opted for a generally broad definition, but did not include topiary or rock / vegetation. This is not to say that a jurisdiction could not include such media as a sign, but the drafter is cautioned that including such media should necessitate a careful consideration of expanding the types and quantity of permanent signage.

This broad definition arguably includes artwork. Some sign codes attempt to except “art” from this definition with language such as: “Graphics, murals and art work that do not communicate informational messages, apart from any aesthetic or artistic message

are not signs.” Although we are not aware of relevant case law, such a distinction is arguably “content-based.”

“Sign area” means the area of the sign measured within lines drawn between the outermost points of a sign, but excluding essential sign structure, foundations, or supports.

“Sign band” means a continuous horizontal band located on a facade where there are no doors, windows or other architectural features.

“Sign copy” means the message or image conveyed by a sign.

“Sign face” means the sum of the surfaces of a sign face as seen from one plane or elevation included within the outer dimensions of the sign board, frame or cabinet.

“Sign height” means the average level of the grade below the sign to the topmost point of the sign including the supporting sign structure, foundations, and supports.

“Site” means the area, tract, parcel, or lot of land owned by or under the lawful control of an owner. Abutting platted lots under the same ownership shall be considered one site.

“Street frontage” means the length or width of a site, measured along a line separating the site from a street or public right-of-way.

“Structure” means that which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

“Subdivision” means a site with four or more lots.

“Supporting structure” means a structure specifically intended for supporting or containing a sign.

“Suspended sign” means a sign suspended from the underside of a canopy, awning, eve, or marquee.

“Temporarily attached” means attached to a building, structure, vegetation or the ground in a manner than is easily removable.

“Temporary business” means a temporary business as defined by the city of [City] Municipal Code.

“Temporary sign” means a sign that is temporarily attached to a building, structure, vegetation, or the ground. Temporary signs include, but are not limited to, A-frames, banners, flags, pennants, balloons, blimps, streamers, lawn signs and portable signs.

“Transportation system plan (TSP)” means that portion of the city of [City] Comprehensive Plan that implements the State of Oregon Transportation Planning Rule OAR 660-012.

“Tri-vision sign” means a sign that contains display surfaces composed of a series of three-sided rotating slates arranged side by side, either horizontally or vertically, that are rotated by an electro-mechanical process, capable of displaying a total of no more than three separate and distinct messages, one message at a time, provided that the rotation from one message to another

message is no more frequent than every eight seconds and the actual rotation process is accomplished in four seconds or less.

“Unlawful Sign” means a sign that does not conform to the provisions of this Code and is not a non-conforming sign.

“Utility Sign” means a sign constructed or placed by a public utility on or adjacent to a pole, pipe, or distribution facility of the utility and within the public right-of-way or utility easement.

“Vehicle sign” means a sign placed in or attached to the motor vehicle, trailer, railroad car, or light rail car that is used for either personal purpose or is regularly used for purposes other than the display of signs.

“Video sign” means a sign providing information in both a horizontal and vertical format (as opposed to linear), through use of pixel and sub-pixel technology having the capacity to create continuously changing sign copy in a full spectrum of colors and light intensities.

“Vision clearance area” means a triangular area on lot at the intersection of two streets or a street and a railroad, alley, or driveway as defined and measured in [City] Zoning Ordinance No. 1945.

“Wall sign” means a sign that is painted on a wall of a building, or a sign attached to the wall of a building and extending no more than twelve inches from a wall, or attached to or erected against a roof with a slope not more than 20 degrees from vertical, with the exposed face of the sign in a plane that is vertical or parallel to the plane of that roof, and which does not project more than 18 inches from the wall or roof. Window signs that are permanently attached to the outside of a window are wall signs.

“Window sign” means a sign attached to, or painted on a window, or displayed inside the building within [6’] inches of a window or building openings so that it is viewable from the outside of the building.

“Zoning / development ordinance” means [City’s name for its zoning / development ordinance or community development code].

XX.XX.020 General requirements.

A. Except as provided in Section XX.XX.025 of this chapter, no person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any sign, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the [City] Sign Code.

XX. Except for public signs, railroad, or utility signs or for signs required by state or federal laws or regulations to be of a certain color or size, signs shall be designed to be compatible with other nearby signs, other elements of street and site furniture and with adjacent structures. Compatibility shall be determined by the relationships of the elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering.

Comment: This general requirement for sign compatibility was one of the sections challenged in the G.K. Travel v. City of Lake Oswego case. The City prevailed based on the strength of its

procedures for administering this section. Thus, if a jurisdiction wishes a heightened level of aesthetic compatibility, the drafter is urged to review the procedures discussed in G.K Travel as guidance in assuring that the requirement is constitutionally administered.

- B. Except as provided in Section XX.XX.040 of this chapter, no person shall erect, construct or alter a sign, or permit the same to be done, unless a sign or billboard permit has been issued by the city. A sign or billboard permit for the construction and continued use of a sign is subject to the terms and conditions stated in the permit and to the [City] Sign Code.
- C. An application for sign permit approval is subject to the procedures set forth in Section XX.XX.125 of this chapter. An application for billboard permit approval is subject to the additional requirements set out in Section XX.XX.075 of this chapter.
- D. No owner shall erect or construct a sign on a site that contains unlawful signs.
- E. The [City] Sign Code shall not be construed to permit the erection or maintenance of any sign at any place or in any manner unlawful under any other city code provision or other applicable law. In any case where a part of the [City] Sign Code conflicts with a provision of any zoning / development, building, fire, safety or health ordinance or code, the provision which establishes a stricter standard for the protection of the public health and safety shall prevail.
- F. The [City] Sign Code is not intended to, and does not restrict speech on the basis of its content, viewpoint or message. Any classification of signs in this chapter that permits speech by reason of the type of sign, identity of the sign user or otherwise, shall permit any type of speech on the sign. No part of this chapter shall be construed to favor commercial speech over noncommercial speech. To the extent any provision of this chapter is ambiguous, the term shall be interpreted to not regulate on the basis of speech content, and the interpretation resulting in the least restriction on the content of the sign message shall prevail.
- G. If any section, subsection, paragraph, sentence, clause or phrase of the [City] Sign Code is declared invalid for any reason by a court having jurisdiction under state or federal law, the remaining portions of this chapter shall remain in full force and effect.

XX.XX.025 Exempt signs.

Except for signs prohibited by this chapter, the following signs are exempt from the provisions of the [City] Sign Code:

- A. All signs which are placed inside a structure or building, and which are either not visible through windows or building openings, or are not intended to be visible from outside of the structure or building.
- X. *[Additional exempt signs desired by jurisdiction.]*

Comment: To the extent any such exemptions could be seen as content-based, they could subject the code to challenge.

Comment: The drafter is cautioned against adding a number of exempt signs. See GK

*Travel, n 11: “In this case, the Sign Code reflects the City's preference for not subjecting certain entities-public agencies, hospitals and railroad companies-to the requirements of the permitting and fee scheme.” The exemptions are purely speaker based according to the City's reasonable construction of the provision and say nothing of the City's preference for the content of these speakers' messages, nor do they allow the City to discriminate against disfavored speech. That is, plaintiffs have not shown that the City preferred the substance of railroad company messages, for instance, over travel agency messages and therefore exempted the railroad companies from the permitting process. See One World One Family Now v. City & County of Honolulu, 76 F.3d 1009, 1012 n. 5 (9th Cir.1996) (“Because [the] exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based.”). **Moreover, these institutional speakers are still subject to the mandates of the Sign Code concerning the type, number and characteristics of signs that are permissible in the City; it is just that certain speakers need not obtain permits (and pay the associated fee) before posting their signs.** That the law affects plaintiffs more than other speakers does not, in itself, make the law content based. See Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2796, 105 L. Ed. 2d 661 (1989) (‘A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.’).”*

XX.XX.030 Prohibited signs.

Except for nonconforming signs, the following signs are unlawful and are nuisances:

- A. Abandoned signs;
- B. Billboards, except as permitted by Section XX.XX.075 of this chapter;
- C. Video signs;
- D. Any sign constructed, maintained or altered in a manner not in compliance with the [City] Sign Code;
- E. Any nonpublic sign constructed or maintained which, by reason of its size, location, movement, coloring or manner of illumination may be confused with or construed as a traffic control device or which hides from view any traffic control device;
- F. Any sign constructed in such a manner or at such a location that it will obstruct access to any fire escape or other means of ingress or egress from a building or an exit corridor, exit hallway or exit doorway. No sign or supporting structure shall cover, wholly or partially, any window or doorway in any manner that it will substantially limit access to the building in case of fire;
- G. Any sign located in a manner which could impede traffic on any street, alley, sidewalk, bikeway or other pedestrian or vehicular travel way;
- H. Any sign equipped with moving, rotating or otherwise animated parts, except for tri-vision signs permitted under Section XX.XX.075 of this chapter and athletic scoreboards permitted under Section XX.XX.040;

- I. Any sign that is wholly or partially illuminated by a flashing or intermittent light, lights, lamps, bulbs, or tubes. Rotary beacon lights, zip lights, strobe lights, or similar devices shall not be erected or maintained, or attached to or incorporated in any sign;
- J. Any nonpublic sign within the vision clearance area provisions contained in the zoning / development ordinance;
- K. Any sign attached to a tree or a plant, a fence or a utility pole, except as otherwise allowed or required by the **[City]** Sign Code or other chapters of the City Code;
- L. Any sign within or over any public right-of-way, or located on private property less than two feet from any area subject to vehicular travel, except for:
 - 1. Public signs, (includes banners over the public right-of-way, with the approval of the controlling jurisdiction).
 - 2. Temporary signs specifically allowed within the public right-of-way under Section XX.XX.045 of this chapter;
- M. Temporary signs, including banners, pennants, and wind signs, except as authorized by Section XX.XX.040 or XX.XX.045 of this chapter.
- N. Unlawful signs.
- O. Any sign which is judicially determined to be a public nuisance.

XX.XX.035 Nonconforming signs.

- A. Nonconforming signs may continue in use, subject to the restrictions in this subsection:
 - 1. **[OPTION #1]** Removal Required for Specific Nonconforming Signs. All nonconforming **[type of sign]** signs shall be brought into compliance with **[applicable code section for the zone]** by _____, 20[XX].

Comment: This subsection of the draft code is primarily taken from Lake Oswego's code and it has recently withstood a federal court challenge that was petitioned to the highest court in the land. G.K. Ltd Travel v. City of Lake Oswego. As such, it is a good model to use. Non-conforming pole signs were at the heart of the GK Travel case. Lake Oswego prohibited pole signs and had a mandatory time frame in which to make them legal. Some jurisdictions may or may not want to follow this provision or to apply it to other types of signs.

If a mandatory removal provision is used under this provision, findings regarding a amortization schedule should be adopted. Lake Oswego originally adopted a five-year amortization period for pole signs, and that was extended an additional five years before enforcement began. See also below amortization period text. Also, the variance provisions in your sign code can provide some flexibility in case of hardship.

2. **[OPTION #2]** Removal Generally Required for Non-Conforming Signs
Following Amortization Period. Any sign constructed made nonconforming by a provision of the sign code:

[Option 2a] may be maintained for a period ending no later than **[three][five]** years from the date such sign becomes non-conforming,.

[Option 2b]. Any sign made nonconforming by a provision of the sign code may be maintained for a reasonable period of time to amortize the investment therein. The amortization period shall be determined as follows:

(a) Except as provided in paragraphs (b) and (c) of this subsection, every nonconforming sign shall be removed in accordance with the following amortization schedule:

Value	Maximum Period of Time Sign May Be Maintained
Less than \$500.00	1 1/2 years
\$500 to \$1,000	2 years
For each additional \$1,000 increment	One additional six-month period
Maximum period regardless of value	5 years

(b) The value of any nonconforming sign shall be determined by the following formula:

$$V = C - (10\% C) Y$$

V = Value of the sign for amortization purposes.

C = Original cost of the sign, including the cost of construction and installation.

Y = Number of years the sign has been standing as of the effective date of the ordinance codified in this title.

(c) The amortization period shall begin on the date of mailing by the **[City Manager]** of notice to the owner of the property on which the sign is located (as determined from the most recent tax assessor's roll), of the fact that the sign is nonconforming and subject to amortization. The notice shall include a statement of the owner's right to seek an extension of the amortization period under subsection (3) of this section.

Comment: Alternatively, the jurisdiction may wish to consider the amortization period automatically starting upon the date the sign becomes non-conforming, with the one-year opportunity to seek an extension to start then. This may depend upon how extensive changes in the sign code are publicized in the jurisdiction, and the degree of responsibility it wishes to place upon the sign owner.

(d) Notwithstanding any other provision in this paragraph, any nonconforming sign that has been fully depreciated for federal or state income tax purposes shall be removed or modified to comply with the provisions of the sign code within one year of the date the sign became non-conforming.

3. **Extension of Amortization Period.** If the amortization period established by the above provision of this section creates an exceptional hardship for the sign owner, the owner may make an application for an extension of the amortization period, provided the application is submitted before the expiration of such amortization period. For purposes of this subsection, “owner” includes lessee.

a. **Application.** An application shall be submitted to the [City Manager] and shall be accompanied by a fee as may be set by resolution adopted by the City Council. The application shall contain the name and address of the sign owner, the land owner, the type, location and size of sign, the date the sign was erected, the height (including supports) of the sign, the cost of construction, and the length of time extension is requested; and shall be accompanied by a detailed statement of reasons an extension is sought, and why the amortization period constitutes an exceptional hardship,

b. **Procedures.** Applications for extension of an amortization period shall be heard by the [hearing body], which shall determine whether the application satisfies the criteria set forth in subsection (b)(3) of this section. The [hearing body] may grant or deny the extension, and impose such conditions as may be necessary to minimize the adverse effects such extension upon surrounding properties. In granting an extension, the [hearing body] shall determine the length of the time for the extension. The findings and the basis for the [hearing body]’s decision shall be transmitted to the applicant in writing.

c. **Criteria.** In considering an application for an extension of the amortization period for a nonconforming sign, the following criteria shall be applied:

- (1). The original cost of the sign;
- (2). The date the sign was constructed and located on the site;
- (3). The degree of deviation from the sign regulations;

(4) Whether unusual circumstances concerning the sign's size, height, location or nature are present;

(5) The nature of the exceptional hardship, and whether allowing an extension in light of the hardship would be inconsistent with the intent of sign amortization;

(6) The effect of the nonconforming sign on the use, value, and enjoyment of surrounding and neighboring properties;

(7) The least amount of additional time required, if any, for the applicant to amortize any unreasonable economic loss, over and above the amortization period already permitted under this section; and

(8) Proof that the sign has not been fully depreciated for federal income tax purposes shall be required except in extraordinary circumstances where such proof is deemed inapplicable.

3. General Requirements for Nonconforming Signs.

Comment: The provisions relating to nonconforming signs are frequently the result of the governing body's sensitivity to the requests of current sign permit holders for the greatest possible rights to maintain, repair, and expand the current installed signs versus the desire to phase the nonconforming signs out to achieve the underlying goals motivating the change in sign regulations. Accordingly, the nonconforming sections are tailored by each city. The Committee sets forth several different versions of nonconforming sign provisions, for illustrative purposes:

Lake Oswego (with options suggested)

a. A non-conforming sign shall not be:

(1) Modified, unless the modification brings the sign into compliance with this Chapter. A change of copy is allowed, except that any change in a wall sign which is painted on a structure shall comply with **[applicable code section for the zone]**

(2) Expanded.

(3) Relocated.

b. A non-conforming sign may undergo normal maintenance, except:

(1). "Normal maintenance" excludes major structure repairs designed to extend the useful life of the non-conforming sign.

(2). **[Option #1]** If a non-conforming sign is damaged by wind, fire, neglect or by any other cause, and such damage exceeds 60% of its replacement value, the non-conforming sign shall be removed.

[**Option #2**] When any proposed change, repair, or maintenance would constitute an expense of more than [**fifty**][**twenty-five**] percent of the lesser of the original value or replacement value of the sign, the non-conforming sign shall be removed..

c. Upon change of use of a business or premise, a non-conforming sign shall be brought into compliance with [**applicable code section for the zone**] within one-hundred-eighty (180) days.

Comment: This code section also allows for a change of copy. Change of copy means the change of logo and/or message upon the face of a legal sign. Code provisions that prohibit change of copy are more likely to receive a constitutional challenge. Here, the code requires compliance with the code upon change of business. This provision survived review in G.K. Travel Ltd..

Hillsboro

- a. No additions or enlargements may be made to a nonconforming sign except those additions or enlargements that are required by law.
- b. A sign that is moved, replaced, or structurally altered shall be brought into conformance with this chapter, except that:
 - (1). Nonconforming signs may be repaired and maintained and may have the sign copy changed. A sign may be removed from its sign structure for repair or maintenance if a permit is obtained under this chapter.
 - (2). Nonconforming signs may be structurally altered when the alteration is necessary for structural safety.
 - (3). Nonconforming signs may be reconstructed if required to be moved for construction or repair of public works or public utilities and the sign reconstruction is completed within ninety days after the completion of the public works or public utility construction or repair.
- c. A nonconforming sign that is damaged shall not be repaired if the estimated expense to repair the sign exceeds fifty percent of the replacement cost of the sign as of the day before the sign was damaged. A damaged nonconforming sign that cannot be repaired shall be removed within ninety days of the date the sign was damaged. As used herein, “nonconforming sign” includes the sign structure, foundation and supports.
- d. Whenever a nonconforming sign is damaged and the estimated cost to repair the sign is fifty percent or less of its replacement value as of the day before the sign was damaged, it may be repaired and restored to the condition it was in before it was damaged and may continue to be used as a nonconforming sign,

provided that such repairs and restoration are started within ninety days of the date the sign was damaged and are diligently pursued thereafter.

e. Whenever repairs and restoration of a damaged nonconforming sign are not started within ninety days of the date the sign was damaged or are diligently pursued once started, the sign shall be deemed abandoned.

f. Abandoned signs shall not be permitted as nonconforming signs.

g. No nonconforming sign shall be permitted to remain unless properly repaired and maintained as provided in this chapter. A sign maintained in violation of this provision shall be removed as provided in Section XX.XX.160 of this chapter. Any nonconforming sign that is determined by the building official to be an unsafe sign shall be removed as provided by Section XX.XX.165 of this chapter. Any nonconforming sign determined by the **[City Manager]** to be an abandoned sign shall be removed as provided in Section XX.XX.170 of this chapter.

B. Nothing in this section shall be deemed to prevent the maintenance of any sign, or regular manual changes of sign copy on a sign.



C. Continuation of Non-Conforming Sign as Public Nuisance; Removal and Abatement.

1. The continuation of any nonconforming sign beyond the time period(s) set forth in Subsection A of this Section is hereby declared to be a public nuisance, which may be abated as provided by this section.

2. Any non-conforming sign that remains in place after the expiration of the amortization period, or any extension thereof, shall be removed within thirty days after a written notice for removal has been posted on the property upon which the sign is located, and a copy sent by certified mail, postage prepaid, to the sign owner and land owner, if different. Such notice shall state the particulars of the violation and require removal of the sign upon or before a date specified in the notice, but not less than thirty days after such posting and mailing, and that written objections to such removal may be filed with the **[City Manager]** on or before such date. If the non-conforming sign is not removed on or before the date specified in the notice, and if no written objections to such removal are filed, the **[City Manager]** may cause the removal thereof at the expense of the owner of the real property upon which such sign is located.

3. Upon receipt of timely filing of objections, the non-conforming sign shall remain in place. Hearing upon the objections shall be held before the City Council. Notice of the time, date and place of the hearing shall be personally delivered, or mailed by certified mail, postage prepaid, to the person filing such objections at the address provided in the objections, at least ten days prior to the hearing. Any non-conforming sign ordered removed by the City Council shall be removed within thirty days after notice of the removal order has been mailed to such objector,

and if not removed within such time, the [City Manager] shall cause the removal to be made at the expense of the owner of the real property upon which such sign is located.

XX.XX.040 Exemptions from requirement for permit.

The following signs are allowed in all sign districts without a permit. Use of these signs does not affect the amount or type of signage otherwise allowed by this chapter. The painting, repainting, cleaning, maintenance and repair of an existing sign shall not require a permit, unless a substantial structural alteration is made. The changing of a sign copy or message shall not require a permit. All signs listed in this section are subject to all other applicable requirements of the [City] Sign Code.

- A. Signs (including name plates and dates of erection of buildings) on multifamily residential, commercial, industrial, or institutional buildings when the sign is cut into the surface or the facade of a building, or when it is constructed of stone, masonry, bronze or other noncombustible material and projects no more than two inches from a building, so long as the cumulative sign face(s) are eight square feet or less in area;
- B. One indirectly illuminated or nonilluminated sign not exceeding one and one-half square feet in area placed on any nonmultifamily residential lot. This type of sign is typically used as a name plate;
- C. Flags;
Comment: a jurisdiction may want to establish the maximum size of flag permitted.
- D. Vehicle signs;
- E. Signs displayed upon a bus or light rail vehicle owned by a public transit district;
- F. Historical sign or historical or landmark markers;
- G. Seasonal holiday decorations on private property;
- H. Handheld signs;
- I. A sign up to six square feet constructed or placed within a parking lot, for each [XX] square feet of parking area. These signs are typically used to direct traffic and parking;
- J. Any public notice required by federal, state or local law, regulation or ordinance;
- K. Sign within the public right-of-way that is erected by a governmental agency, utility or contractor doing authorized work within the right-of-way;
- L. A sign that does not exceed eight square feet in area and six feet in height, and is erected on property where there is a danger to the public or to which public access is prohibited;
- M. Nonilluminated interior signs in nonresidential sign districts designed primarily to be viewed from a sidewalk or street provided the sign does not obscure more than twenty-five percent of any individual window;
- N. Illuminated interior signs in nonresidential sign districts designed primarily to be viewed from a sidewalk or street, provided the sign face is less than four square feet in area;

O. One suspended sign for each principal use erected on property which is not considered public right-of-way, under an attached first floor awning or canopy upon a building with direct exterior pedestrian access, provided the sign does not exceed six square feet in area and has a minimum of eight feet of clearance;

P. An exterior sign erected next to an entrance, exit, rest room, office door, or telephone, provided the sign is no more than four square feet in area. This type of sign is typically used to identify and locate a property feature;

Q. Signs located within a sports stadium or athletic field, or other outdoor assembly area which are intended for viewing by persons within the facility. The signs shall be placed so as to be oriented towards the interior of the field and the viewing stands;

R. Signs incorporated into vending machines or gasoline pumps;

S. Temporary signs as allowed under Section XX.XX.045 of this chapter;

T. Public signs.

U. Utility signs.

Comment: A jurisdiction may wish to establish limitations for utility signs, in which case utility signs should be addressed in a separate section.

V. Signs for hospital or emergency services, and railroad signs.

XX.XX.045 Temporary signs.

Comment: the listing of types and number of temporary signage permitted throughout the jurisdiction is illustrative. See other jurisdictions' sign code to compare the type and number of temporary signs permitted throughout a particular city.

A. Temporary signs may be erected and maintained in the city only in compliance with the regulations in this chapter, and with the following specific provisions:

1. Except as approved in a comprehensive sign plan and in connection with a community event, no temporary sign shall be internally illuminated or be illuminated by an external light source primarily intended for the illumination of the temporary sign.

2. A temporary sign shall be attached to the site or constructed in a manner that both prevents the sign from being easily removed by unauthorized persons or blown from its location and allows for the easy removal of the sign by authorized persons.

3. Except as provided in this code, temporary signs shall not be attached to trees, shrubbery, utility poles or traffic control signs or devices.

4. No temporary sign shall be erected or maintained which, by reason of its size, location or construction constitutes a hazard to the public.

B. In any residential sign district, the following temporary signs shall be allowed on a lot without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. This signage shall not be restricted by content, but is usually and customarily used to advertise real estate sales, political or ideological positions, garage sales, home

construction or remodeling and similar activities. Signage shall be allowed for each lot as follows:

Comment: note that this sign code authorizes different types or numbers of temporary signs based on the type of sign district where the sign is located. If sign districts are not utilized, then the drafter should revise this section accordingly to reflect the jurisdiction's wishes. See XX.XX.050 Sign Districts.

1. Signs not exceeding six square feet in area or four feet in height during the period from one hundred twenty days before a public election or the time the election is called, whichever is earlier, to five days after the public election.
2. One temporary sign not exceeding six square feet in area and four feet in height which is erected for a maximum of eight days in any calendar month and is removed by sunset on any day it is erected.
3. A sign not exceeding six square feet in area and five feet in height during the time of sale, lease or rental of **[the lot]** **[a dwelling]** provided that the sign is removed within fifteen days of the sale, lease or rental of the **[lot]** **[dwelling]**.

Comment: Some jurisdictions use the term "property", but the Committee recommends a more specific, and defined term, as to whether the event is related to the sale of a dwelling or to the underlying lot. Multi-family dwellings located on a single lot, i.e., apartments, condominiums, may result in temporary signs that seem more akin permanent signs if the multi-family dwelling structure has a re-occurring turnover of units.

4. A sign not exceeding six square feet in area during the time of construction or remodeling of the property, provided the sign is removed within seven days of the completion of any construction or remodeling. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously. On lots of more than two acres, the sign area may be increased to thirty-two square feet. In no case shall the sign or signs be erected for more than twelve months.
4. On property which has received subdivision or development approval from the city, from that approval until issuance of a building permit for the last lot to be sold or completion of the development project, one temporary sign not exceeding thirty-two square feet in area and eight feet in height on properties less than four acres in size or two temporary signs not exceeding sixty-four square feet in area each and eight feet in height on properties greater than four acres in size.

C. In any commercial/industrial sign district, station community commercial sign district, or industrial park and research park sign district, the following temporary signs shall be allowed on a lot without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. This signage shall not be restricted by content, but is usually and customarily used to advertise real estate sales, political or ideological positions, construction or remodeling, special events and similar activities. Signage shall be allowed for each lot as follows:

Comment: This could be as simple as establishing size limitations for temporary signs, without reference to specific dates / events. As signage is added for each type of event, the need to define the duration of the sign, and the size of the signs becomes necessary for each type of event.

1. Signs not exceeding four square feet in area and five feet in height, during the period from one hundred twenty days before a public election or the time the election is called, whichever is earlier, to five days after the public election.
 2. A sign not exceeding thirty-two square feet in area and eight feet in height during the time of sale, lease or rental of the property provided that the sign is placed on the property for sale, lease, or rental and removed within fifteen days of the sale, lease or rental of the property, or a sign not exceeding thirty-two square feet in area and eight feet in height during the time of construction and remodeling of the property, provided the sign is placed on the property where construction and remodeling is taking place and removed within seven days of the completion of any construction or remodeling. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously. In no case shall the sign or signs be erected for more than twelve months.
 3. A sign not exceeding thirty-two square feet in area during the period of charitable fundraising event being conducted on the property where the sign is erected by a charitable or nonprofit organization. This sign shall not be placed more than seven days prior to the event and must be removed within two days following the event.
- D. No temporary signs or banners shall be allowed in the public right-of-way or on public property, except for those listed in this subsection.
1. The following temporary signs shall be permitted in the right-of-way without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. No temporary sign in the right-of-way shall interrupt the normal flow of vehicle, pedestrian or bicycle traffic and shall provide a minimum of five feet of clear passage for pedestrians on a sidewalk where a sidewalk exists. No temporary sign shall extend into a vision clearance area. Temporary signs allowed in the right-of-way shall include:
 - a. Signs owned or erected by a governmental entity;
 - b. Signs on public sidewalks in all **[list applicable]** districts and adjacent to commercial uses in the **[listed specific]** districts which comply with the following standards:
 1. Any temporary sign is placed on the sidewalk within the first three feet behind the curb, and
 2. Any temporary sign is present only during the business hours of the responsible enterprise, and
 3. Any temporary sign placed elsewhere than directly adjacent to the primary use shall be placed only with the written consent of the property owner of the adjacent property. No more than two temporary signs shall

be placed in the public right-of-way adjacent to any property frontage on a single street;

c. Portable signs limited to a maximum of six square feet in area and three feet in height, displayed only on weekends and holidays, placed at street intersections in relative close proximity to a property for sale or lease during the time of that display. One single sign for each property or development shall be permitted at each intersection and shall be positioned as to be no closer than two feet from areas subject to vehicular travel;

d. Bench signs located at mass transit stops so long as the bench sign copy does not exceed fifteen square feet and the bench sign is approved by the owner;

e. Signs attached to mass transit shelters which are approved by the mass transit agency and the owner.

2. Temporary banners or seasonal holiday decorations which extend over a roadway or are attached to utility or streetlight poles shall be permitted in the right-of-way upon issuance of a permit in accordance with the procedures set out in Sections XX.XX.125 and XX.XX.135 of this chapter and shall comply with the following standards:

a. Banners or decorations which extend over a roadway shall not exceed sixty square feet in area. Banners which are attached to a single utility or streetlight poles shall not exceed twelve square feet in area.

b. Temporary banners or decorations shall be permitted only if the applicant is conducting an event or activity in the city of [City] that has been identified as a community event by the [City] city council or for purposes of identifying a geographic area or district of the city. Applications for geographic identification banners shall be submitted by an organized neighborhood association, or shall be accompanied by a petition indicating the consent of at least fifty-one percent of the property owners or retail establishments in the geographic area delineated on the banner application.

c. Applicants requesting permits for temporary banners or decorations in city of [City] right-of-way shall obtain all permits and approvals as outlined in Chapter XX.XX.045(D) of this Code prior to submittal of an application for a sign permit. Applicants requesting temporary banners placed over rights-of-way controlled by other agencies other than the city of [City] shall obtain written consent from the appropriate agency regarding the proposed banner(s) prior to submittal of an application for a sign permit. The consent shall identify any restrictions desired by the owner of the right-of-way.

d. Except for a banner(s) identifying a geographic area or district of the city, banner(s) shall be removed within two days of the applicant's event or activity giving rise to the permit.

XX.XX.050 Sign districts—General.

Comment: If the jurisdiction does not view the sign code as a land use regulation, the drafter is cautioned regarding the sign districts being co-terminus with, and using the same designations as, the zoning districts for the jurisdiction. Although not necessarily determinative, the more similarities the sign code has to the jurisdiction's land use scheme, the more likely it may be thought of as a land use regulation, by the public and perhaps by the courts.

A. The following sign districts are created and applied to designated land. No permit shall be issued for any sign unless specifically allowed as an allowed sign under the terms of the applicable sign district or otherwise allowed as a nonconforming sign under Section XX.XX.035 or exempted under Section XX.XX.040 of this chapter. Any particular limitation in a sign district regulation shall not be construed to exclude the applicability of other restrictions imposed under this chapter.

B. The sign districts shall be as follows:

1. The residential sign district includes all land within the **[list sign/zone]** districts.
2. The commercial/industrial sign district includes all land within the **[list sign /zone]** districts.
4. The industrial park and research park sign district includes all land within the **[list sign /zone]** zoning districts.
5. **[List any additional sign /zone districts].**
6. **[list any additional Overlay Districts / corridors] –**

C. Property within a newly designated **[sign / zone]** district shall be governed by the provisions of the sign code applicable to the new **[sign /zone]** district upon the effective date of the ordinance amending the **[sign /zone]** map. Completed applications for sign permits made before the effective date of the **[sign district /zone]** change will be considered under the provisions of the **[City]** Sign Code applicable to the **[sign /zone]** district existing at the time the application was completed. All signs which are not in compliance with the provisions of the **[City]** Sign Code applicable to the newly established **[sign / zone]** district shall be considered nonconforming signs.

XX.XX.055 Residential sign district.

Comment: In determining signage for a specific area or zone / sign district, the drafter is cautioned to fully consider the uses in the zone / district, the types of signs that should be permitted, sign height, illumination, changeable copy, compatibility, etc. The specific provisions below reflect the policy choices by the City of Hillsboro, and are shown for illustrative purposes.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

A. Permitted Sign Types, Number and Area.

Signs within the residential sign district are limited as follows and require issuance of permits under Section XX.XX.125 of this chapter.

Comment: in referencing specific types of dwellings within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A different formatting option is to list the sign / zone districts, and then list under each zone the types of signs permitted within the sign / zone districts – more text but perhaps more user-friendly.

1. Monument and Ground-Mounted Signs.

a. In multifamily developments, one double-faced monument sign, or not more than two single-faced monument signs on either side of a vehicular entrance shall be permitted on the primary street frontage. Sign area shall not exceed sixteen square feet for each sign face. Where a complex has multiple street frontages, this signage may be permitted on each building frontage that abuts a TSP designated arterial or collector street.

b. In subdivisions, not more than two single-faced monument signs for a subdivision or planned unit development having twenty or more lots may be permitted on either side of a public right-of-way or private street tract entrance. Sign area shall not exceed sixteen square feet for each sign face.

c. For churches, schools, public/semipublic facilities, and privately owned community centers; one single- or double-faced monument sign shall be permitted for each such facility. Where such a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed sixteen square feet for each sign face.

d. For commercial and office uses in **[name of district]** Commercial districts, one single- or double-faced monument sign shall be permitted on the primary frontage of the development. In lieu of one monument sign, one single- or double-faced ground-mounted sign shall be permitted on the primary frontage of developments which contain five or more principal uses in one structure. Where a development has multiple street frontages, this signage may be permitted on each building frontage that abuts an arterial or collector street. Sign area shall not exceed thirty square feet for each sign face.

2. Bulletin Boards.

a. For schools, churches, public and semipublic facilities, and privately owned community centers, one single- or double-faced bulletin board may be incorporated into an approved monument sign. Sign area for a bulletin board shall not exceed twenty-four square feet for each sign face.

b. For commercial and office uses in **[name of district]** Commercial districts, one single- or double-faced bulletin board per site may be incorporated into an

approved monument or ground-mounted sign. Sign area of the bulletin board portion of the sign shall not exceed sixty-five percent of the total sign face.

3. Wall Signs.

a. For commercial uses permitted in **[name of district]** districts, one wall sign for each tenant occupancy shall be permitted. Sign area for all wall signs shall not exceed eight percent of the building elevation area, with a maximum individual sign face area of fifty square feet on primary frontages. Sign area for all wall signs shall not exceed six percent of the building elevation area on secondary frontages, with a maximum individual sign face area of twenty-five square feet.

b. For churches, schools, and public/semipublic facilities, one wall sign for each building frontage shall be permitted. Sign area for all wall signs shall not exceed eight percent of the building elevation area with a maximum individual sign face area of fifty square feet on primary frontages, and six percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

c. For commercial and office uses in **[name of district]** Commercial districts, total sign face area for all primary building-mounted wall signs shall not exceed twelve percent of the building elevation area with a maximum individual sign face area of one hundred square feet. Where the use has multiple frontages, the signage on secondary frontages shall not exceed eight percent of the building elevation area with a maximum sign face area of fifty square feet. No more than two wall signs shall be permitted on the primary building frontage. Only one wall sign shall be permitted on the secondary frontage.

4. Awning Signs.

a. For commercial uses permitted in **[name of district]** districts, one awning sign for each building frontage shall be permitted. Total sign area including wall signs shall not exceed twelve percent of the building elevation area, with a maximum sign face area of fifty square feet on primary frontages, and eight percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

b. For churches, schools, and public/semi-public facilities, one awning sign for each building frontage shall be permitted. Total sign area including wall signs shall not exceed twelve percent of the building elevation area, with a maximum sign face area of fifty square feet on primary frontages, and eight percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

c. For commercial and office uses in **[name of district]** Commercial districts, total sign face area for primary building-mounted wall signs and awning signs shall not exceed twelve percent of the building elevation area with a maximum sign face area of one hundred square feet. Where the use has multiple

frontages, the signage on secondary frontages shall not exceed eight percent of the building elevation area, with a maximum sign face area of fifty square feet.

5. Projecting Signs.

For upper floor businesses in the **[name of district]** district, two projecting signs for each street frontage shall be permitted for buildings having two or more floors and at least fifty feet of street frontage. Sign area for each sign shall not exceed six square feet.

6. Suspended Signs.

For each business in **[name of district]** districts, one suspended sign over public right-of-way shall be permitted under an attached first floor awning or canopy with direct exterior pedestrian access. Sign area shall not exceed six square feet.

7. Banner Signs.

a. For multifamily residential developments, one banner sign shall be permitted for each development. The banner sign shall be limited to a display period of a maximum of thirty continuous days twice for each calendar year. Sign area shall not exceed fifty square feet.

b. For principal uses in **[name of district]** districts, one banner sign shall be permitted for each principal use. The banner sign shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Sign area shall not exceed fifty square feet.

c. For temporary uses, one banner sign shall be permitted for each temporary use. The banner sign shall be allowed for the same duration as the temporary use. Maximum sign area shall not exceed fifty square feet.

B. Maximum Sign Height.

Monument signs shall be no more than six feet in height. Ground-mounted signs shall be no more than twelve feet in height.

C. Illumination.

1. Except for monument signs in the **[name of district]** zoning district, athletic scoreboards, bulletin boards, and wall signs permitted in the **[name of district]** districts, any illumination of signs in the residential sign district shall be indirect.

2. The illumination of signs within the residential sign district shall comply with the standards contained in Section XX.XX.120 of this chapter.

D. Other Limitations.

1. For major business complexes, a comprehensive sign plan, in compliance with Section XX.XX.105 of this chapter, shall be required.

2. For minor business complexes, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter, may be submitted.

3. Signage for automobile service stations in **[name of district]** Commercial districts shall comply with the provisions contained in Section XX.XX.110 of this chapter.

4. Within the **[name of district]**district, the design of all signs shall be historic in character, reflecting the type, style and materials of the 1900-1930 historic period of the district. In evaluating the design of signs in the **[name of district]**district, the approving authority shall consider elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering. The planning department shall maintain an inventory of depictions of approved signs to offer guidance to applicants and the approving authority in the application of these standards. Plastic-faced signs, signs displaying flashing or intermittent lights or lights of changing degree of intensity, including bulletin boards, are prohibited in this district. The content of a sign message shall not be considered as a part of design review.

5. Within the **[name of district]**district, monument signs otherwise allowed by subsection (A)(1)(b) of this section are prohibited.

6. Within the **[name of district]**district, the design of a sign shall be evaluated in its relationship to the architectural style of the building on the site and signage on adjacent properties. To the extent feasible and without interfering with the communication need of the sign owner, the form, proportion, scale, color, materials, surface treatment, size, illumination, and size and style of lettering of a sign shall be harmonious with the building style and design, and signs of adjoining properties. The number of graphic elements on a sign shall be held to the minimum necessary to convey the sign message and shall be composed in proportion to the area of the sign face. Plastic-faced signs, signs displaying flashing or intermittent lights or lights of changing degree of intensity, including bulletin boards, are prohibited in this district. The content of a sign message shall not be considered as a part of design review.

7. When an applicant submits a determination by an architect or other design professional that the design standards of this section are met, it creates a rebuttable presumption that the criteria are satisfied. In order to overcome this presumption, and deny a sign permit for the failure to satisfy design criteria, the city must obtain a contrary opinion from an architect or other design professional that the criteria are not met and a recommendation of the design changes needed to obtain compliance with the standards.

XX.XX.060 Commercial/industrial sign district.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

Comment: in referencing specific types of uses within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A. Permitted Sign Types, Number and Area.

Signs within the commercial/industrial sign district are limited as follows and require the issuance of permits under Section XX.XX.125 of this chapter:

1. Monument or Ground-Mounted Signs.

- a. For principal uses, one single- or double-faced monument or ground-mounted sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each frontage building frontage that abuts an arterial or collector street. Sign area shall not exceed forty square feet for each sign face.
 - b. Major or Minor Business Complex. Monument signs in major or minor business complexes shall be permitted in accordance with the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.
 - c. For churches, schools, and public/semipublic facilities, one single- or double-faced monument sign shall be permitted for each such facility. Where such a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed forty square feet for each sign face.
2. Pole Signs.
 - a. For major or minor business complexes, pole signs shall be permitted in accordance with the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.
3. Wall Signs.
 - a. For a principal use, the total sign face area for all building-mounted wall signs, including multiple signs for multiple tenants, shall not exceed eight percent of the building elevation area on the primary frontage, with a maximum individual sign face area of one hundred twenty square feet. Where the use has multiple building frontages, the total signage area on secondary building frontages shall not exceed six percent of the building elevation area, with a maximum individual sign face area of sixty square feet. However, if the building elevation area on a frontage exceeds five thousand square feet, the maximum individual sign area may increase to one hundred ninety-nine square feet.
 - b. For major or minor business complexes, wall signs are permitted in accordance with the provisions of this section and the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.
4. Awning Signs.
 - a. For principal uses, the total sign face area for awning signs and wall signs shall not exceed twelve percent of the building elevation area on the primary frontage, with a maximum sign face area of one hundred twenty square feet. Where the use has multiple frontages, the signage on secondary building frontages shall not exceed eight percent of the building elevation area, with a maximum sign face area of sixty square feet.
5. Numeric Information Signs.

For principal uses, one single- or double-faced time, numeric information sign with a maximum of six square feet shall be permitted.
6. Bulletin Boards.

a. Schools, churches and public and semipublic facilities, one single- or double-faced bulletin board may be incorporated into an approved monument or ground-mounted sign. Maximum sign area for a bulletin board shall not exceed twenty-four square feet for each sign face.

b. Theater Marquees. One single-faced bulletin board, or one double-faced bulletin board constructed so that the two faces connect at one end with an angle of forty-five degrees or more, may be incorporated into a theater marquee. Maximum sign area for the bulletin board shall not exceed twelve percent of the building elevation area on the primary frontage, with a maximum sign face area of one hundred twenty square feet. The total combined area of theater marquee bulletin boards, awning signs and wall signs shall not exceed the maximum percentage of building elevation area permitted for the building elevation.

7. Banner Signs and Balloon Signs.

a. Principal Use. One banner sign or one balloon sign shall be permitted for each principal use and shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Maximum sign area shall not exceed fifty square feet, as calculated pursuant to Section XX.XX.080(A) of this chapter.

b. Temporary Business. One banner sign or one balloon sign shall be permitted for a temporary business and shall be allowed for the same duration as the temporary business. Maximum sign area shall not exceed fifty square feet for a banner sign. Sign area for a balloon sign shall be calculated pursuant to Section XX.XX.080(A) of this chapter.

8. Electronic Message Signs.

a. For principal uses, one single- or double-faced electronic message sign per site may be incorporated into an approved monument or ground-mounted sign. Sign area of the electronic message portion of the sign shall not exceed fifty percent of the total sign face.

b. For major or minor business complexes, one single- or double-faced electronic message sign per complex may be incorporated into a monument or ground-mounted sign approved under the comprehensive sign plan provisions contained in Section XX.XX.110 of this chapter. Sign area of the electronic message portion of the sign shall not exceed fifty percent of the total sign face.

9. Illuminated Interior Signs.

a. For principal uses, one or more illuminated interior signs may be installed into the windows facing a public street or sidewalk. Sign area of individual illuminated interior signs shall not exceed four square feet; and the cumulative area of two or more illuminated interior signs installed in windows on the same building elevation shall not exceed fifteen percent of the overall window area on that elevation.

b. For major or minor business complexes, one or more illuminated interior signs may be installed into the windows facing a public street or sidewalk. Sign area of

individual illuminated interior signs shall not exceed four square feet; and the cumulative area of two or more illuminated interior signs installed in windows on the same building elevation shall not exceed fifteen percent of the overall window area on that elevation.

10. Projecting Signs.

For principal uses, one or more projecting signs shall be permitted per use. Maximum sign area shall not exceed twenty square feet. Total sign area for wall and projecting signs shall not exceed twelve percent of the building elevation area on the primary frontage. Where the use has multiple frontages, total sign area for wall and projecting signs.

11. Roof Signs.

a. For a principal use, the **[City Manager]** may approve one roof sign, in lieu of other building-mounted signs, only upon finding that there are no other reasonable means of signing the business or use, due to extraordinary circumstances related to the physical location or structure of the building, distance from nearby streets, proximity of surrounding buildings or vegetation, or other factors over which the applicant has no control.

b. Approval of a roof sign shall be subject to the following standards:

1. The sign is installed on a gabled, hipped, mansard, or otherwise sloped roof;
2. Sign area for the roof sign shall not exceed eight percent of the roof elevation area, with a maximum area of one hundred twenty square feet;
3. The highest point of the roof sign shall not exceed the height of the ridge of the roof; and
4. Issuance of a building permit and final approval of the installed sign by the building department.

B. Maximum Sign Height.

1. Monument signs shall be no more than six feet in height.
2. Ground-mounted signs shall be no more than twelve feet in height.
3. Pole signs in a major or minor business complex shall not exceed the sign heights outlined in Section XX.XX.105 of this chapter.
4. Pole signs permitted in the Tualatin Valley Highway sign corridor, as defined in Section XX.XX.050 of this chapter, shall not exceed twenty-four feet in height.
5. The overall height of a balloon sign, if installed on the ground, shall not exceed the height of the lowest building on the site. If installed on top of a building, the height of the balloon sign above the roof of the building shall not exceed a distance equal to the height of the building above grade.

C. Illumination.

Illumination of signs within the commercial sign district shall meet the standards contained in Section XX.XX.120 of this chapter.

1. For a major business complex, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter shall be required.
2. For a minor business complex, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter may be submitted.
3. Signage for automobile service stations shall comply with Section XX.XX.110 of this chapter.
4. Pole signs are prohibited within three hundred feet of public right-of-way designated as a freeway or as light rail transit on the transportation system plan.
5. Where up to five principal uses are contained in a building(s) with less than thirty thousand gross square feet of building area, one monument or ground-mounted sign shall be permitted for each lot.
6. Balloon signs permitted in the commercial/industrial sign district shall be securely installed by a professional sign contractor.

XX.XX.070 Industrial park and research park sign district.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

Comment: in referencing specific types of uses within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A. Permitted Sign Types, Number and Area. Signs within the industrial park and research park sign district are limited as follows and require the obtaining of permits under Section XX.XX.125 of this chapter:

1. Monument Signs.
 - a. Principal Use. One single- or double-faced monument sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each building frontage that abuts a TSP designated arterial or collector street. Sign area shall not exceed thirty square feet for each sign face.
 - b. Principal Use on Sites Larger Than Five Acres. One single- or double-faced monument sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each building frontage that abuts an arterial or collector street. Sign area shall not exceed sixty square feet for each sign face.
 - c. Churches, Schools and Public/Semipublic Facilities. One single- or double-faced monument sign shall be permitted for each such facility. Where such

a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed thirty square feet for each sign face.

2. Wall Signs.

a. Principal Use. The total sign face area for building-mounted wall signs shall not exceed eight percent of the building elevation area on the primary frontage, with a maximum individual sign face area of one hundred square feet. Where the use has multiple building frontages, the total signage on secondary building frontages shall not exceed six percent of the building elevation area with a maximum individual sign face area of one hundred square feet. However, if the building elevation area on a frontage exceeds five thousand square feet, the maximum individual sign area may increase to one hundred ninety-nine square feet.

3. Bulletin Boards.

a. Churches, Schools and Public/Semipublic Facilities. One single- or double-faced bulletin board may be incorporated into an approved monument sign. Maximum sign area for the bulletin board shall not exceed twenty-four square feet for each sign face.

4. Banner Signs.

a. Principal Use. One banner sign shall be permitted for each principal use and shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Maximum sign area shall not exceed fifty square feet.

b. Temporary Business. One banner sign shall be permitted for a temporary business and shall be allowed for the same duration as the temporary business. Maximum sign area shall not exceed fifty square feet for a banner sign.

5. Electronic Message Signs.

a. For principal uses, one single- or double-faced electronic message sign per site may be incorporated into an approved monument or ground mounted sign. Sign area of the electronic message portion of the sign shall not exceed twenty-five percent of the total sign face.

b. For major or minor business complexes, one single- or double-faced electronic message sign per complex may be incorporated into a monument or ground-mounted sign approved under the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter. Sign area of the electronic message portion of the sign shall not exceed twenty-five percent of the total sign face.

6. Roof Signs.

a. For a principal use, the **[City Manager]** may approve one roof sign, in lieu of other building-mounted signs, only upon finding that there are no other reasonable means of signing the business or use, due to extraordinary circumstances related to the physical location or structure of the building, distance from nearby streets, proximity of

surrounding buildings or vegetation, or other factors over which the applicant has no control.

- b. Approval of a roof sign shall be subject to the following standards:
 - 1. The sign is installed on a gabled, hipped mansard, or otherwise sloped roof;
 - 2. Sign area for the roof sign shall not exceed eight percent of the roof elevation area, with a maximum area of one hundred twenty square feet;
 - 3. The highest point of the roof sign shall not exceed the height of the ridge of the roof; and
 - 4. Issuance of a building permit and final approval of the installed sign by the building department.
- B. Maximum Sign Height. Monument signs shall be no more than six feet in height.
- C. Illumination. The illumination of signs within the industrial park and research park sign district shall meet the standards contained in Section XX.XX.120 of this chapter.
- D. Other Limitations.
 - 1. A comprehensive sign plan may be submitted for industrial and research business complexes and shall comply with Section XX.XX.105 of this chapter.

XX.XX.075 Billboard districts and permits.

Comment: Billboards need not be authorized within a city. See generally G.K. Travel v. Lake Oswego, (no constitutional right to communicate via pole signs). If permitted, there should be no distinction between on-premise / off-premise billboard. Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006)

Comment: If included, it is recommended that the billboard restrictions be in a separate section from the rest of the sign code. Billboard regulation is frequently challenged; it would be harder to also challenge other parts of your sign code in attempting to demonstrate unconstitutionality as it relates to billboard signs, and thus reduces the possible challenge to the entire sign code.

- A. No billboard shall be constructed or maintained within the city unless the owner obtains a billboard permit from the **[City Manager]**. A billboard permit is a type of sign permit required under Section XX.XX.020 of this chapter.
- B. An owner of a billboard site may apply for a billboard permit as provided in Section XX.XX.125 of this chapter. The **[City Manager]** shall issue or deny the billboard permit within thirty days of receipt of the permit application. If there is more than one complete application for a billboard permit, the **[City Manager]** may select an application for approval by chance. A billboard permit is a type of sign permit. A billboard permit shall be issued under the provisions of Sections XX.XX.125 and XX.XX.135 of this chapter.

- C. A billboard permit is subject to the following standards:
1. A billboard must be located within the boundaries of **[list]** district.
 2. No more than sixteen billboard permits shall be issued at any one time for billboards within the **[list]** district. The number of billboard permits within the **[list]** district may be increased by the number of any billboards located on land designated industrial or commercial in the city's comprehensive plan, located adjacent to **[street / highway name – define scope of area]**. No more than two billboard permits shall be issued at any one time for billboards within the **[list]** district. The **[City Manager]** shall limit the number of billboard permits within the **[list]** billboard district to one permit if that permit allows a tri-vision sign or an electronic message sign. The **[City Manager]** shall also limit the number of billboard permits within the **[list]** billboard district if consolidation is approved under subsection (C)(10) of this section.
 3. A billboard permit may be assigned without the consent of the city. The permittee shall provide notice of any assignment to the city. The allowed location of a billboard may be changed by modification of the permit. The **[City Manager]** shall approve a modification if the new location is consistent with the requirements of this section of the code.
 4. Except as provided herein and in subsection (C)(10) of this section, each sign face of a billboard shall not exceed three hundred square feet in area. The signage area may be increased an additional twenty percent for any signage that is irregular in form and projects beyond the outer dimensions of the sign board, frame or cabinet. Each side of a double-faced billboard shall be a separate sign face for purposes of these signage area limitations.
 5. Any billboard in the **[list]** billboard district may be a tri-vision sign or an electronic message sign. No tri-vision sign or electronic message sign may be located within the **[list]** billboard district until or unless the number of billboard permits for that district is limited to one permit. Any billboard may be double-faced, allowing sign copy on two sides of a sign structure, provided the two sides are parallel to each other within a deviation of ten degrees.
 6. The building height zoning limitation for the property upon which a billboard is situated applies to that billboard.
 7. Within the **[list]** billboard district, no billboard shall be located closer than one hundred fifty linear feet from the property line of any residentially zoned property as measured along the same side of the highway and at the highway frontage where a sign is proposed, unless the residential property is separated from the billboard property by **[highway name]**.
 8. All billboards shall be subject to the separation requirements established by state statute or rule.
 9. The provisions of this section control over any inconsistent requirement or limitation in the underlying sign district applicable to the property on which a billboard is located.

10. Within the [list] billboard district, a billboard permit holder may file a consolidation application to combine two billboards with areas less than three hundred square feet into one billboard with an area less than seven hundred square feet. The [City Manager] shall approve the billboard consolidation application if the consolidated billboard meets the locational standards in subsections (C)(7) and (C)(8) of this section. In the event a billboard permit holder receives a consolidated billboard permit, the number of permits allowed within the billboard district shall be permanently decreased by the number of consolidated permits issued.

11. No person installing a billboard shall scatter, daub, or leave any paint, paste, glue, or other substances used for painting or affixing advertising matter or scatter or throw or permit to be scattered or thrown any bills, waste matter, paper, cloth, or materials of whatsoever kind removed from signs on any public street, sidewalk, or private property.

XX.XX.080 Measurements.

The following shall be used in measuring a sign to determine compliance with this chapter:

A. Sign Area.

1. Sign area shall be measured within lines drawn between the outermost dimensions of the frame or cabinet surrounding the display area containing the sign copy. When signs are not framed or on a base material and are inscribed, painted, printed, projected or otherwise placed upon, or attached to a building, canopy, awning or part thereof, the sign area is the smallest possible space enclosing the sign copy that can be constructed with straight lines. Where a sign is of a three-dimensional, round, or irregular solid shape, the largest cross-section shall be used in a flat projection for the purpose of determining sign area.

Table [XX]

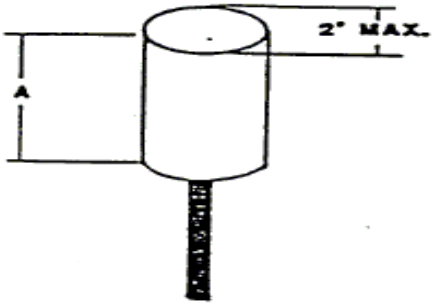
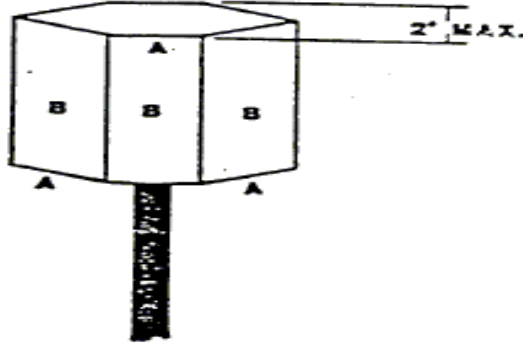
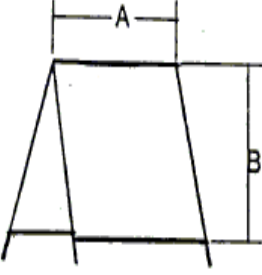
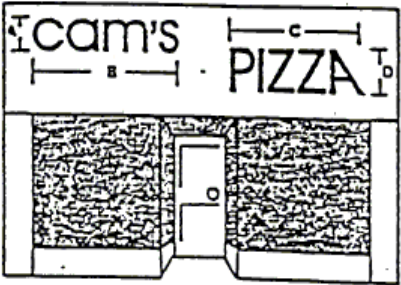
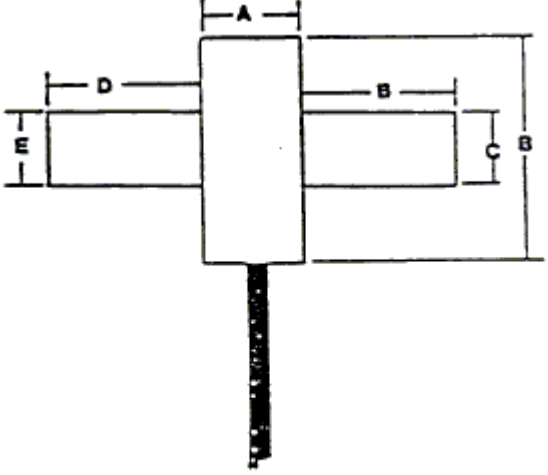
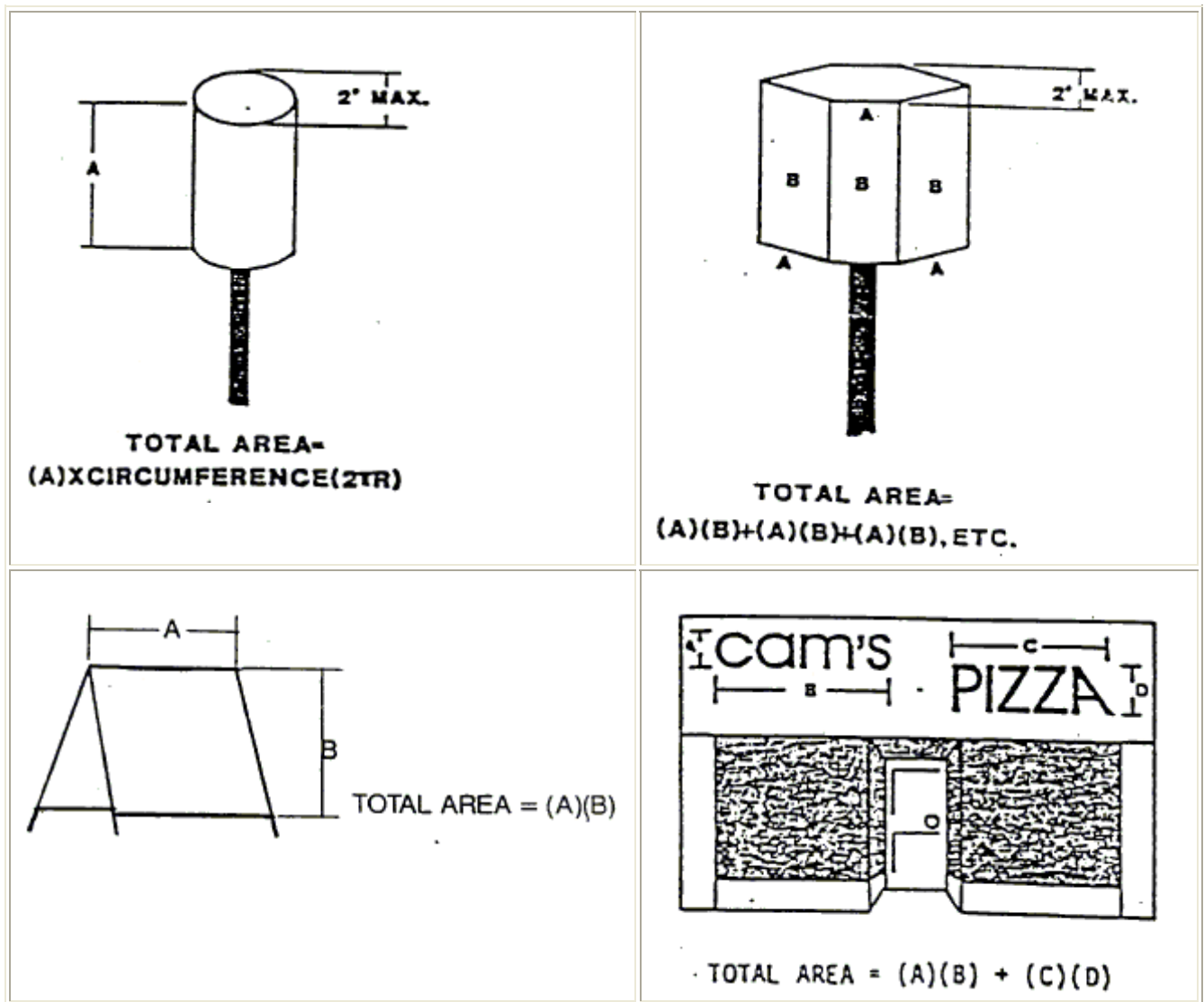
 <p>TOTAL AREA= (A)XCIRCUMFERENCE(2πR)</p>	 <p>TOTAL AREA= (A)(B)+(A)(B)+(A)(B), ETC.</p>
 <p>TOTAL AREA = (A)(B)</p>	
 <p>TOTAL AREA = (A)(B) + (C)(D)</p>	 <p>TOTAL AREA=(A)(B)+(B)(C)+(D)(E)</p>

Table [XX]



2. The area of all signs in existence at the time of enactment of the ordinance codified in this chapter, whether conforming or nonconforming, shall be counted in establishing the permitted sign area.

3. When signs are constructed in multiple separate pieces containing sign copy, sign face area is determined by a perimeter drawn in straight lines, as small as possible, around all pieces.

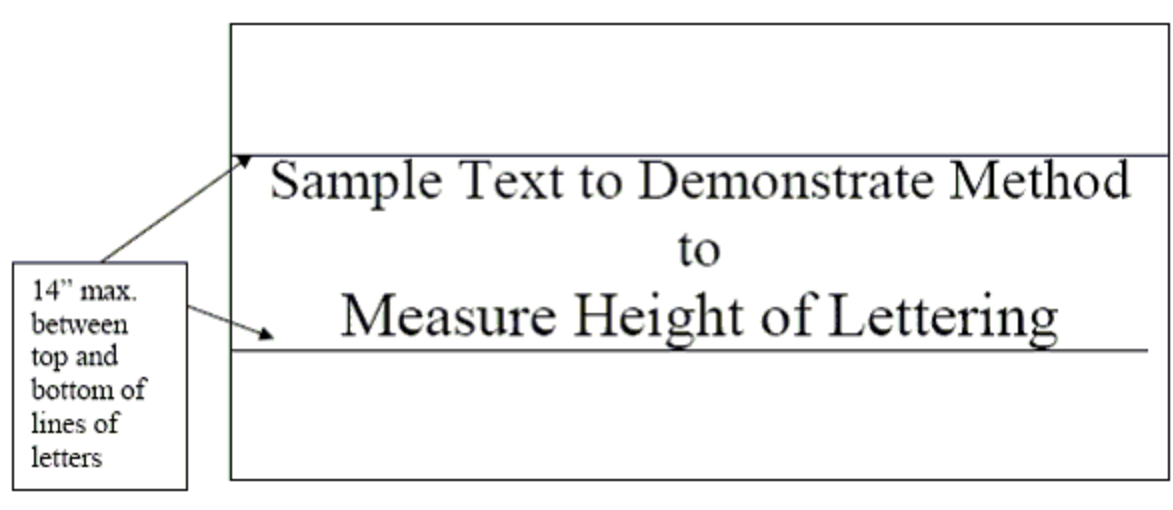
B. Height.

1. Height of sign above grade is measured from the average level of the grade below the sign to the topmost point of the sign including the supporting structure.

2. Where there is a limitation on the size of lettering, the lettering shall be measured cumulatively in height. See graphic below.

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TABLE [XX]
METHOD OF MEASURING HEIGHT OF LETTERING FOR CORNICE SIGNS



C. Clearance.

Clearance is measured from the average grade below the sign to the lowermost point of the sign.

D. Spacing.

1. For the purpose of applying spacing requirements to signs, distances shall be measured parallel to the centerline of the adjacent street or highway.
2. The sign or sign location under consideration shall be included as one sign.
3. A back-to-back sign is counted as a single sign for the purpose of spacing distances.

[E. Visibility.]

Comment: Some jurisdictions may wish to attempt to regulate the visibility of the signs vis-à-vis other signs. These should be carefully thought out because there are likely challenges in the administration and enforcement.

XX.XX.085 Projecting signs.

An otherwise authorized sign shall be permitted to project over public right-of-way if the sign meets all of the following requirements:

- A. The sign is attached to the face of a building where the building face is located within five feet of the property line abutting a street.

- B. No external cross braces, guy wires, trusses, or similar bracing systems are used in constructing the sign.
- C. The sign extends no more than eight feet from the building face and shall be no less than [XX] feet above the ground under the projecting sign.
- D. The sign does not project above the roof line or parapet wall, whichever is higher.
- E. Projecting signs shall conform to all provisions of this section which are designed to provide safe minimum clearance along public sidewalks and streets. The sign must have a minimum of [8.5] feet clearance from the ground. The outer edge of the projecting sign must be set back a minimum of two feet from the curbline.
- [F. Spacing between an earlier erected and any later erected projecting sign shall be a minimum of twenty feet.]**

Comment: only applicable if the jurisdiction imposes a spacing requirement, see XX.XX.080.E.

XX.XX.090 Wall signs.

- A. A wall sign shall not project more than eighteen inches from the wall to which it is attached. A wall sign located on an alley frontage shall not project more than twelve inches from the wall to which it is attached and shall have fifteen feet of clearance.
- B. A wall sign shall not project above the roof line, or top of the parapet wall, whichever is higher.
- C. No external braces, guy wires, “A” frames, or similar bracing systems shall be used in constructing a wall sign.
- D. The height of a wall sign attached to the end or face of a marquee shall not exceed thirty inches. The lower edge of this sign shall not extend below the marquee.
- E. Wall signs on mansard roofs of thirty degrees or less may be installed vertically if solid background is used.
- F. Wall signs shall be placed within the sign band.

XX.XX.095 Freestanding signs.

- A. No part of a freestanding sign shall be erected or maintained within three feet of a street front property line, or within five feet of a side lot line, unless the application for the permit has been reviewed by the fire marshal and the fire marshal has determined that the location of the sign does not interfere with adequate fire access to any property.
- B. No part of a freestanding sign shall project or extend into any public right-of-way.
- C. Except as provided in this subsection, no freestanding sign shall project or extend into any vision clearance area. One or two sign poles supporting a freestanding sign may be located within the vision clearance area if they are necessary for the support of the sign, and if no other

portion of the sign is located within the vision clearance area between two feet and ten feet overgrade.

D. A freestanding sign shall be directly supported by poles or foundation supports in or upon the ground. No external cross braces, guy wires, “T” frames, “A” frames, “trusses,” or similar bracing systems shall be used to buttress, balance, or support a freestanding sign.

E. Only one freestanding sign is allowed for each street frontage, unless multiple signs are approved through a comprehensive sign plan.

F. A minimum of nine feet in clearance is required in areas accessible to vehicles. The lowest point of these signs may be less than nine feet above grade in areas not accessible to vehicles when the signs are protected from physical damage by the installation of bumper poles or other ground protections.

G. Freestanding signs permitted in a commercial/industrial sign district, station community commercial sign district or industrial park and research park sign district shall not be located closer than fifty linear feet from the property line of any single-family residential, multifamily residential, or station community residential zoned property as measured along the street frontage.

XX.XX.100 Awning signs.

A. Awning signs are permitted only as an integral part of the awning to which they are attached or applied.

B. The awning supporting structure shall maintain a clearance of eight feet.

C. An awning shall not extend to within two feet from the curb. An awning shall not project above the roof line.

D. The awning sign shall extend no more than eight feet from the building face.

XX.XX.105 Changing Image Signs

A. Changing images permitted under this chapter shall comply with the following standards and all other applicable requirements under this code or other applicable law:

1. The sign is constructed, established, operated, or otherwise function in such a way that the message or display changes no more frequently than every [*] hours/minutes;

2. The changing image sign may not be more than **[forty (40)]** square feet, whether the changing image is stand alone or a part of a more comprehensive or aggregate sign; and

3. Subject to subsection 4 of this section, the changing image sign must be constructed, established, operated, or otherwise function in such a way as to not exceed the following illumination limitations:

(A) For a sign comprised of red only, the intensity level (NIT) may be no more than [3,130] in the daytime and [1,125] in the nighttime;

(B) For a sign comprised of green only, the intensity level (NIT) may no more than [6,300] in the daytime and [2,250] in the nighttime;

(C) For signs comprised of amber only, the intensity level (NIT) may be no more than [4,690] in the daytime and [1,675] in the nighttime; and

(D) For signs with full color, the intensity level (NIT) may be no more than [7,000] in the daytime and [2,500] in the nighttime; and

4. The permittee shall submit to the Building Official a written certification from the sign manufacturer, stating that the light intensity of the sign has been factory pre-set not to exceed the levels specified in subsection (3) of this section, and the intensity level is protected from end-user manipulation by password-protected software or other method as deemed appropriate by the Building Official.

5. No other flashing light is permitted on the same side of a sign containing a changing image sign.

B. Electronic message signs permitted under this chapter shall comply with the following standards and all other applicable requirements under this code or other applicable law:

1. The rate of change for sign copy from one message to another message shall be no more frequent than every eight seconds and the actual copy change shall be accomplished in four seconds or less. Once changed, the copy shall remain static until the next change.

2. Displays may travel horizontally or scroll vertically onto electronic message signs, but must hold in a static position after completing the travel or scroll.

3. Electronic message signs requiring more than four seconds to change from one copy to another shall be turned off during the change interval.

4. Sign copy shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of lights, or blinking of chasing lights. Copy shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the sign face.

5. No electronic message sign lamp may be illuminated to a degree of brightness than is greater than necessary for visibility. In no case may the brightness exceed eight thousand nits or equivalent candelas during daylight hours, or one thousand nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted or removed as directed by the [City Manager].

XX.XX.110 Comprehensive sign plan.

A comprehensive sign plan provides a means for defining common sign regulations for multi-tenant projects by providing incentives in the design and display of multiple signs. A comprehensive sign plan shall be required for all major business complexes and may be submitted for minor business complexes, industrial and research business complexes, and institutional uses. An application for a comprehensive sign plan approval shall be filed at the time permits for permanent signs on the property are sought. If a sign is for a development that requires development review under [City] Zoning / development Ordinance Sections 133 and 136, then the sign shall be reviewed as part of the development review process prior to approval of a sign permit. The plan shall be reviewed under the procedures set out in Section XX.XX.125 of this chapter. A decision on the plan application is subject to review under the procedures set out in Section XX.XX.135 of this chapter.

Comment: if the jurisdiction wishes signs to be compatible with other nearby signs, the drafter should consider how a comprehensive sign plan will be implemented.

Presumably, following approval of a comprehensive sign plan, subsequent signs that comply with the plan should be approvable. But what of later-erected nearby signs and the requirement that the new sign under the sign program be compatible with the then existing signs?

- A. An application for a comprehensive sign plan shall include information on the following:
 - 1. The location of all wall, projecting, monument, and freestanding signs;
 - 2. A description of the signs including construction materials, color scheme, unifying design elements, and any proposed lighting;
 - 3. An itemization of sign sizes including height and area at all identified sign locations;
 - 4. The location of any area designated for temporary signs, and documentation of the means by which such signs may be illuminated if approved.
- B. A comprehensive sign plan shall comply with the following standards:
 - 1. The signs and the signs together with the architectural style of structures in the business complex shall share common design elements. The content of any sign message shall not be considered in determining whether common design elements are present.
 - 2. The comprehensive sign plan shall accommodate future revisions that may be required because of changes in principal uses or tenants; and
 - 3. The comprehensive sign plan shall comply with the standards of this chapter, including any special allowances for sign area, number, location, and height provided for in this section.
- C. Wall signs in a comprehensive sign plan shall meet the following requirement:
 - 1. The allowed sign area shall be the amount authorized in the relevant sign district.
- D. Freestanding signs and monument signs in minor business complexes shall meet the following requirements:

1. One freestanding sign shall be permitted for the entire complex. The maximum height of such sign shall be twenty feet. The maximum area of this sign shall be one hundred square feet for a single-faced sign and two hundred square feet for a double-faced sign.
 2. One monument sign shall be permitted on each pad site or lot located within the minor business complex. The sign shall not exceed six feet in height and thirty-two square feet in area for a single-faced sign and sixty-four square feet in area for a double-faced sign.
- E. Freestanding signs and monument signs in major business complexes shall meet the following requirements:
1. One freestanding sign shall be permitted for the entire major business complex. The maximum height of this sign shall be twenty-six feet. The maximum area of this sign shall be one hundred thirty square feet for a single-faced sign and two hundred sixty square feet for a double-faced sign.
 2. Where a complex has multiple street frontages, one freestanding sign shall be permitted on each street frontage classified as an arterial or collector on the transportation system plan and having a minimum of five hundred feet of frontage. There shall be three hundred lineal feet of separation, measured along each side of the right-of-way, between the two freestanding signs.
 3. One monument sign shall be permitted on each pad site or lot located within the major business complex. The sign shall not exceed six feet in height and thirty-two square feet in area for a single-faced sign and sixty-four square feet in area for a double-faced sign.
- F. Monument signs in industrial and research business complexes shall meet the following requirements:
1. One double-faced sign located at the primary vehicular entrance or a maximum of two single-faced signs on either side of the primary vehicular entrance shall be permitted. The sign shall not exceed thirty-two square feet in area for a single-faced sign and sixty-four square feet for a double-faced sign. The sign may either be constructed as a monument sign with a maximum six-foot height, or incorporated into a decorative wall.
 2. One monument sign shall be permitted on each lot located within the industrial and research business complex. The sign shall not exceed four feet in height and sixteen square feet in area for a single-faced sign and thirty-two square feet in area for a double-faced sign.
- G. Where development review is accomplished through the approval of a development permit for a commercial or industrial building or site, a comprehensive sign plan shall be included with the conceptual drawings, illustrations and building elevations and shall address the standards contained in this chapter. The sign plan shall be reviewed and approved by the **[[hearing body]]**, in association with building and site design, as a part of the development permit review process using the standards set out in this section.

XX.XX.115 Automobile service station sign plan.

Comment: This provision arguably is a "speaker-based distinction," which could subject the provision to legal challenge. The distinction may well be justified and defensible based on considerations such as the heightened need to control sign clutter for service stations so the traveling public can clearly identify the service station and the services and goods it offers, given the nature of the business – servicing autos on the adjacent right of way -- to prevent slow traffic cruising gas stations to find the best deal. If this type of provision is to be included in the sign code, the entity should be able to document their consideration of such factors."

An automobile service station sign plan shall be required for all automobile service stations. An application for an automobile service station sign plan approval shall be filed at the time permits for permanent signs on the property are sought and shall comply with the provisions contained in this section. The plan shall be reviewed under the procedures set out in Section XX.XX.125 of this chapter. A decision on the plan application is subject to review under the procedures set out in Section XX.XX.135 of this chapter.

A. One freestanding sign shall be permitted. The sign area may include both a stationary sign face area and a bulletin board or changing image sign area. The maximum area for such a sign shall be fifty square feet for a single-faced sign and one hundred square feet for a double-faced sign.

1. The maximum height of a freestanding monument sign shall be six feet.
2. The maximum height of a freestanding ground-mounted sign shall be twelve feet.
3. The maximum height of a freestanding pole sign, including supporting structure, shall be twenty-four feet. The minimum clearance of a freestanding pole sign, excluding supporting structure, shall be fifteen feet.

B. Except for a service station opening for a period up to three weeks, flags, pennants, or other attention-seeking or advertising devices shall not be permitted.

C. Wall signs associated with an automobile service station sign plan shall not exceed the amount authorized in the relevant sign district. In lieu of the wall signage allowed by this section, one sign shall be permitted on the automobile service station canopy facing the principal frontage. Total sign area shall not exceed twenty percent of the visible vertical surface of the canopy face, with a maximum sign face area of fifty square feet. Where the use has multiple frontages, one additional sign shall be permitted on the canopy facing each secondary frontage. Total sign area on the secondary frontage shall not exceed ten percent of the visible vertical surface of the canopy face, with a maximum sign face area of twenty square feet.

XX.XX.120 Construction and maintenance standards.

A. All permanent signs shall be constructed and erected in accordance with the requirements of the Uniform Building Code.

Comment: The International Structural Specialty Code, Appendix H, contains structural requirements relating to sign materials, loads and stresses, as well as provisions relating to “exempt signs”, “sign definitions”, etc. The State has not adopted Appendix H, so the jurisdiction should review Appendix H to determine if it wishes to adopt Appendix H, in full or in part, to require a building permit review as part of the sign permit. If not adopted, then the signs are subject to the State Building Code, as determined by the local building official, e.g., structural requirements for free-standing or marquee signs, electrical code, etc.

When reviewing Appendix H, the Committee recommends the drafter consider the following revisions to Appendix H:

Section H101: The first sentence should be moved to Section H103.

Section H101.2: delete, because that is duplicative with this Sign Code.

Section H102: delete, because this Sign Code has its own definitions of types of signs.

Section H112.4: delete, as this is addressed in height limitations relating to projecting signs.

Section H113.4: delete, as this is addressed in the sign size limitations contained in this Code.

- B. All illuminated signs must be installed by a state-licensed sign contractor, subject to the requirements of the State Electrical Code. All electrically illuminated signs shall be listed, labeled, and tested by a testing agency recognized by the state of Oregon.
- C. Building and electrical permits shall be the responsibility of the applicant. Prior to obtaining building and electrical permits, the applicant shall obtain a sign permit or demonstrate an exception from the permit requirements of this chapter.
- D. All signs, together with all of their supports, braces, guys, and anchors shall be kept in good repair and be maintained in a safe condition. All signs and the site upon which they are located shall be maintained in a neat, clean, and attractive condition. Signs shall be kept free from excessive rust, corrosion, peeling paint or other surface deterioration. The display surfaces of all signs shall be kept neatly painted or posted. Signs which are faded, torn, damaged or otherwise unsightly or in a state of disrepair shall be immediately repaired or removed.
- E. No sign shall be erected or maintained in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit, or standpipe. No signs shall be erected or maintained so as to obstruct any building opening to such an extent that light or ventilation is reduced below minimums required by any applicable law or provisions of this code.

XX.XX.125 Illumination—General restrictions.

- A. No sign, light, lamp, bulb, tube, or device shall be used or displayed in violation of this section.

- B. Regardless of the maximum wattages or milliampere rating capacities allowable under Section XX.XX.120(E) of this chapter, no light source shall create an unduly distracting or hazardous condition to a motorist, pedestrian or the general public. Lighted signs shall be placed, shielded or deflected so as not to shine into residential dwelling units or structures, or impair the road vision of the driver of any vehicle.
- C. External light sources for a sign shall be directed and shielded to limit direct illumination of any object other than the sign.
- D. Except for **[either]** holiday seasonal decorations, **[or signs approved under a comprehensive sign plan]**, temporary signs shall not be illuminated.
- E. The illumination of signs shall comply with the following standards:
1. No exposed reflective type bulb, par spot nor incandescent lamp, which incandescent lamp exceeds **[twenty-five]** watts, shall be exposed to direct view from a public street or highway, but may be used for indirect light illumination of the display surface of a sign.
 2. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed **[three hundred]** milliamperes rating for white tubing nor **[one hundred]** milliamperes rating for any colored tubing.
 3. When fluorescent tubes are used for interior illumination of a sign such illumination shall not exceed:
 - a. Within residential sign districts, illumination equivalent to four hundred **[twenty-five]** milliamperes rating tubing behind a sign face with tubes spaced at least seven inches, center to center;
 - b. Within commercial or industrial sign districts, illumination equivalent to **[eight hundred]** milliamperes rating tubing behind a sign face spaced at least nine inches, center to center.

XX.XX.130 Sign permit application.

- A. Except as provided in this chapter, a permit is required to erect, construct, repair or alter a sign. If a sign is for a new development that requires development review under **[City]** Zoning / development, then the sign shall be reviewed as part of the development review process prior to approval of a sign permit.
- B. An application for a sign permit shall be made on a form prescribed by the **[City Manager]** and shall be filed with the city. The application shall be filed by the owner of the sign or a representative of the sign's owner. A separate sign permit application is required for each sign, unless a combined application for all signs in a proposed development is proposed. The application shall include information required by the **[City Manager]** and the following:
1. A sketch of the site, drawn to scale, showing the approximate location of existing structures, existing signs, and the proposed sign;

2. Building frontage elevations drawn to scale, showing the sign's relative location and placement;
3. An illustration of the proposed sign, drawn to scale, showing the design, elevations, sign face dimensions and area, materials and engineering data which demonstrates its structural stability. The illustration of the proposed sign need not show the sign message, but shall show the size, style, and design of the lettering, numbers, and graphics conveying any message. The content of any message shall not be considered in the evaluation of a sign permit application;
4. The names and addresses of the applicant, the owner of the property on which the sign is to be located, the manufacturer of the sign and the person installing the sign, and the construction contractor's board number of the installer. The owner of the property on which the sign is to be located shall sign the sign permit application;
5. A fee in the amount set by council resolution. When a person begins construction of a sign requiring a sign permit before the permit is approved, the permit fee shall be doubled.

Comment: Fee charged must not "restrain" the free expression or "restrict" the right to speak freely. Fee should be reflective of the cost of the permit review and cost of the program. Fidanque v. State by and Through Oregon Gov't Stds. & Practices Comm'n, 328 Or. 1, 9 (Or. 1998); Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006)

Example: Lake Oswego

19) Signs (multiple window signs in the EC zone treated as a single sign)	\$ 329
Special event sign	\$ 95
Variance to Sign Code	\$ 1,081
Sign Retrieval Fee (violations)	\$ 20
Refundable deposit for Public Notice Signs	\$ 70

C. When deemed necessary by the building official, building or electrical permits shall be obtained as a part of the sign permit process. When required by Section XX.XX.095 of this chapter, the approval of the fire marshal shall be obtained.

Land Use Regulation

X. Public Notice of Sign Permit Application and Comment Period.

Comment: If Sign Permit review is a "limited land use decision" (approval or denial based on discretionary standards that regulate the physical characteristics of a use permitted outright, i.e., design review), then must provide for at least 14-day written comment period by properties within 100 feet. ORS 197.195(3). Notice is required to be given to the recognized neighborhood association in which the site is located. ORS 197.763(1)(b).

Notice must contain:

- *Statement that issues that could be basis of appeal must be stated in written comment; list criteria; address;*
- *date/time/place comments are due;*
- *copies of application available for inspection / copying;*
- *name of staff person.*

ORS 197.195(3).

It is recommended that the notice process be the same as for the city's zoning/development applications which are "limited land use decisions," for consistency.

D. The **[City Manager]** shall grant or deny the sign permit application based upon the information submitted with the application and other information obtained by or submitted to the city.

Non-Land Use Regulation	Land Use Regulation
1. A decision on a sign permit application shall be made within seven calendar days of submission of a complete application, unless a later decision period is specified under the below subsections.	1. A decision on a sign permit application shall be made within seven calendar days following completion of the Public Comment Period above, unless a later decision period is specified under the below subsections. The decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.
<i>Comment: To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for application review and appeal provide for expeditious review. If review of application is content-neutral with objective criteria, quick time for review is not required. <u>St. Petersburg.</u> "time</i>	<i>Comment: Decision to be made following close of Comment Period. ORS 197.195(4) requires a statement explaining the decision See also Non-Land Use Regulation Comment opposite.</i>

<p><i>limits are not per se required when the licensing scheme at issue is content-neutral.” See also <u>Thomas v. Chicago Park. GK Travel</u>. However, this depends on court finding the licensing scheme was a content-neutral time, place and manner permit scheme. <u>GK Travel</u>. In <u>Granite State Outdoor Advertising, Inc. v. City of Clearwater</u>, 5 day completeness review and 5-10 working days substantive review deemed constitutional. In <u>Thomas v. Chicago Park</u>, 28 days was approved. <u>GK Travel</u> (14 day review).</i></p>	
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If a decision is not made within the time specified in this section, the applicant may temporarily install the sign as requested, at the applicant’s risk for costs of removal, until such time as the City’s decision is issued and is final.

Comment: The Code should specify what remedies applicant has if the review is not completed in the time specified -- can the sign be put up while waiting for decision? Is permit deemed issued? Granite State Outdoor Advertising, Inc. v. City of Clearwater

X. When the requested permit is part of an application for [a comprehensive sign plan] or [an automobile service station plan] reviewed by the [City Manager], a decision on the permit shall be made within thirty days of submission of a complete application.

E. Notice of Decision

Non-Land Use Regulation	Land Use Regulation
<p>4. If the application is denied, the [City Manager] shall mail the applicant written notice of the decision and shall explain why the application was denied. [The decision shall also include an explanation of the applicant’s appeal rights.] The decision shall be mailed to the address of the applicant on the application by regular mail.</p>	<p>4. The [City Manager] shall mail the applicant and any persons who submitted a written comment upon the application within the Public Comment Period written notice of the decision and shall explain why the application was approved or denied. The decision shall also include an explanation of the appeal rights. The decision shall be mailed by regular mail to the address of the applicant on the application and to interested persons to the address stated in their Comment.</p>
<p><i>Comment: The [bracketed text] is not required by statute.</i></p>	<p><i>Comment:</i></p> <ul style="list-style-type: none"> ○ <i>Decision must be based upon the</i>

	<p><i>submitted record and explain the justification for the decision. ORS 197.195(4).</i></p> <ul style="list-style-type: none"> ○ <i>Explanation of appeal rights required by ORS 197.195(4).</i>
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E. A sign permit application shall be approved if:

1. The application complies with all of the applicable provisions of this chapter and any other objective requirement imposed by law. No standard shall be applied to deny a permit if the operation of that standard violates a constitutional right of the applicant. If, as part of the application, an applicant identifies a particular standard alleged to have unconstitutional effect, and provides reasons for that contention, the **[City Manager]** shall seek the opinion of the city attorney on the contention. If the city attorney concludes that the operation of the standard violates a constitutional right of the applicant, the **[City Manager]** shall not apply the standard in reviewing the application;
2. The applicable permit fee has been paid.

F. An approved sign shall be constructed and installed within six months of the final approval of the permit, including resolution of any appeal. The sign permit shall be void if installation is not completed within this period or if the sign does not conform to the approved permit. Sign permits mistakenly issued in violation of this chapter or other provisions of this code are void. The **[City Manager]** may grant a reasonable extension of time for the installation deadline upon a showing of reasonable grounds for delay.

G. If sign does not conform to the building code after inspection, the sign will be subject to removal under Section XX.XX.155 of this chapter.

H. The **[City Manager]** may revoke a sign permit if the director finds that there was a material and misleading false statement of fact in the permit application.

XX.XX.135 Adjustments.

A. Adjustments to the numeric standards of this section shall be allowed only in compliance with this subsection. Adjustments may be requested to allow relocation of a sign, on the subject property, reducing the height of a sign, or enlarging the area of a sign. Adjustments allowing the use of prohibited signs, or allowing signage other than that specifically allowed by this code, are not permitted.

B. Requests for adjustments shall be filed with the city, on a form provided by the planning department, and accompanied by a fee as approved by the city council. The request shall include the information required for a sign permit, as specified in Section XX.XX.125(B) of this chapter, the specific standard from which the adjustment is requested, and the numeric amount of the adjustment, and written responses to the following approval criteria:

Land Use Regulation

Comment: when setting up the application and appeal process, attention should be given to the requirement for processing an application to a final decision within the 120-day period required by ORS 227.178.

Hillsboro

1. Compliance with the applicable standard would create an unnecessary hardship due to physical conditions of the property (topography, lot size or shape, or other circumstances over which the applicant has no control), which are not present on other properties in the same vicinity or sign district, and the adjustment is necessary to permit signage comparable with other properties in the same sign district in the vicinity;
2. The hardship does not result from actions of the applicant, owner(s) or previous owner(s), or from personal circumstances of the applicant, owner(s) or previous owner(s), such as physical condition, age or financial situation; and
3. Approval of the adjustment will not adversely affect the function or appearance of the development and use of the subject property and surrounding properties; and will not impose limitations on other properties and signage in the area including signage that would be allowed on adjacent properties.

Lake Oswego

1. Strict application of the code requirement would deny the applicant a reasonable opportunity to communicate by sign in a manner similar to like persons or uses because of an unusual or unique circumstance relating to the property or the proposal, such as site or building location, building design, physical features on the property, or some other circumstance;

2. The sign which would result from the variance will not affect the surrounding neighborhood or other property affected by the request in a manner materially inconsistent with the purpose of the Sign Code as stated in XX.XX.010; and

3. The degree of the variance is limited to that reasonably necessary to alleviate the problem created by the unique or unusual circumstance identified pursuant to subsection (1) of this section.

C. The **[hearing body]** shall conduct a public hearing on the request for adjustment. The **[hearing body]** shall approve, approve with conditions, or deny the adjustment, based upon the evidence at the hearing. The **[hearing body]** may impose such conditions as are deemed necessary to mitigate any adverse impacts which may result from approving the adjustment. The hearing shall be conducted under the procedures used by the **[hearing body]** for a quasi-judicial land use hearing.

D. The city recorder shall give written notice of the hearing by mail to owners of property located within one hundred feet of the lot containing the sign, using for this purpose names and addresses of owners as shown upon the latest assessment role of the county assessor. Failure of a person to receive the notice specified in this section shall not invalidate any proceeding in connection with the application for an adjustment.

Comment: Some jurisdictions expand the notice area beyond the statutory minimum of 100 feet. ORS 197.763(2)(a). Notice to neighborhood associations is required by ORS 197.763(2)(b)

Comment: if the sign code is a land use regulation, the notice of decision area should be the same as for a limited land use decision (variance) under the development code.

E. The **[hearing body]** shall issue its decision in writing explaining the reasons why the adjustment was approved or denied. The decision shall be mailed to the address of the applicant on the application by regular mail. The decision of the **[hearing body]** shall be final.

XX.XX.140 Appeal of decision on sign permit.

Non-Land Use Regulation	Land Use Regulation
<p>A. An applicant may appeal the denial of an application for a sign permit, conditions of approval of the allowance of a permit or revocation of the permit.</p> <p>An appeal may be initiated by filing a form prescribed by the [City Manager], that is filed within twenty days of the date of mailing the decision of the [City Manager]. The form shall specify the bases for the appeal.</p> <p>Except as provided herein, the appeal shall be to the [hearing body]. The decision of the [hearing body] may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section.</p>	<p>A. An applicant or interested person who appeared by submission of a Comment may appeal the denial of an application for a sign permit, conditions of approval of the allowance of a permit, or revocation of the permit.</p> <p>An appeal may be initiated by filing a form prescribed by the [City Manager], that is filed within twenty days of the date of mailing the decision of the [City Manager], city engineer or the building official.</p> <p>Except as provided herein, the appeal shall be to the [hearing body].</p>

<p><i>Comment: A decision of approval or denial should be in writing, with a copy provided to the applicant. <u>Café Erotica</u> (concurring opinion); <u>GK Travel</u></i></p> <p><i>To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for appeal provide for expeditious review. <u>Granite State Outdoor Advertising, Inc. v. City of Clearwater</u>, <u>Thomas v. Chicago Park</u>, <u>GK Travel</u></i></p>	<p><i>Comment: At least one internal appeal required from hearing officer's decision to the planning commission or to the City Council is required, if the initial decision is made without a hearing. ORS 227.175(10)(a)(A).</i></p> <p><i>Comment: See ORS 227.010 - .090 to determine if other hearings bodies within the jurisdiction qualifies as a "Planning Commission." Appeal could be directly to city council. ORS 227.175(10)(a)(D).</i></p> <p>2. The hearing before the [hearing body] shall be de novo, and is not limited to the issues stated in the appeal notice.</p> <p><i>Comment: ORS 227.175(10)(a)(D) and (E) require the initial post-hearing officer hearing be de novo, without limitation of evidence or argument to what was reviewed by the hearings officer.</i></p> <p>3. The decision of the [hearing body] may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section.</p>
	<p><i>Comment: only one internal appeal is required; the hearing body's decision could be the final decision of the City. If the sign code is considered a land use regulation, refer to similar provisions in the jurisdiction's development code. [In setting the application processing times and hearing notice requirements, keep in mind the 120 day limitation for processing land use permits]</i></p>

B.

Non-Land Use Regulation	Land Use Regulation
	The city recorder shall give written notice of the hearing by mail to owners of property

	located within one hundred feet of the lot containing the sign, using for this purpose names and addresses of owners as shown upon the current records of the county assessor, and to the recognized neighborhood association in which the site is located. Failure of a person to receive the notice specified in this section shall not invalidate any proceeding in connection with the application for an appeal.
<i>Comment: The extent of public notice of an appeal hearing is up to the City, as the focus under the First Amendment is only upon the speaker's rights. Some jurisdictions may elect to involve the public, and issue public notices of hearings, akin to land use hearings.</i>	<i>Comment: Again, some jurisdictions expand the notice area beyond the statutory minimum of 100 feet. ORS 197.763(2)(a). Notice to neighborhood associations is required by ORS 197.763(2)(b)</i>

C. The **[hearing body]** shall conduct a public hearing on the appeal within 21 days following the receipt of the filed notice of appeal.

Comment: To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for appeal provide for expeditious review. Granite State Outdoor Advertising, Inc. v. City of Clearwater, Thomas v. Chicago Park, GK Travel

The **[hearing body]** shall grant or deny the permit based upon the evidence at the hearing and the record of its administrative proceedings.

Non-Land Use Regulation	Land Use Regulation
The hearing may be conducted under the procedures used by the [hearing body] for a quasi-judicial hearing.	The hearing shall be conducted under the procedures used by the [hearing body] for a quasi-judicial land use hearing.
	<i>Comment: The initial evidentiary hearing procedures of ORS 197.763 must be followed. See also ORS 197.195(5).</i>

D. The **[hearing body]** shall issue its decision in writing explaining the reasons why the permit was granted or denied.

Non-Land Use Regulation	Land Use Regulation
The decision shall be mailed to the address of the applicant on the application by regular mail.	The decision shall be mailed by regular mail to the address of the applicant on the application and to interested persons to the address stated in their Comment.

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Municipal Court Not Available or Not Elected	Municipal Court Option
<p><i>Comment: no additional text is necessary, as subsection D grants broad authority to consider the appeal.</i></p>	<p>E. In considering the appellant’s contentions, the [hearing body] shall exercise only the following review authority:</p> <ol style="list-style-type: none"> 1. Determining whether the [City Manager] failed to follow applicable procedures in taking action on the permit or the sign in ways that prejudiced the rights of the appellant; 2. Determining whether the [City Manager] properly applied the provisions of this chapter; 3. Modifying the decision of the [City Manager] only to the minimum extent necessary to be consistent with the requirements of this chapter or of other laws; 4. Attaching such conditions to granting all or a portion of any appeal as necessary to achieve the purposes of this chapter. <p>F. When the appeal form in an appeal of a sign permit or revocation states an issue involving the application of state or federal constitutional law, the municipal court judge shall resolve the constitutional law issues on an expedited basis. Notice of the hearing before the municipal court judge shall be provided as set forth in subsection (B) of this section. The court shall conduct a public hearing on the constitutional issues and may allow the reception of factual evidence. The city attorney may appear on behalf of the city. Following the hearing, the court shall issue a written opinion on the constitutional issues. If the constitutional issues are the only issues raised in the appeal, the court shall direct the [City Manager] to grant or deny the permit or</p>

	<p>revocation. The directed decision of the [City Manager] is the final decision of the city. If other issues are raised in the appeal, the decision of the municipal court shall be binding on the [hearing body] . Following resolution of these other issues, the decision of the [hearing body] may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section.</p> <p><i>Comment: the drafter should consider whether the appeal should be bifurcated between the constitutional issues (if any) and the non-constitutional issues, with the Municipal Court hearing the constitutional issues.</i></p>
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Note to Drafter regarding Appeal Beyond City's Final Decision

Non-Land Use Regulation	Land Use Regulation
<i>Judicial appeal would be by a writ of review. ORS 34.010.</i>	<i>City's decision is either a "land use decision" or a "limited land use decision", resulting in judicial appeal to LUBA. ORS 197.825.</i>
<i><u>Littleton</u> ("Ordinary court procedural rules and practices (generally) provide reviewing courts with judicial tools sufficient to avoid delay-related First Amendment harm.", citing <u>Freeman</u>)</i>	
<i>In Oregon, we do not differentiate based on content, so burden is upon applicant to show that application meets Code requirements. See <u>Café Erotica of Florida, Inc. v St. Johns County, Florida</u>, 360 F. 3d 1274, 1294 (11th Cir 2004)'s concurring opinion: "Although this provision demands a content-based analysis, it is not an impermissible prior restraint. First, there is not a Metromedia violation because commercial speech is not advantaged over non-commercial speech. Rather, the provision establishes a preference for "core" speech by making the county bear the burden of proof and costs of initiating cases in circuit court if a denial is based on the content of the message. "Second, in <u>Freedman v. Maryland</u>, the Supreme Court required municipalities to "bear the burden of going to court to suppress speech and must bear the burden of proof once in court." <u>FW/PBS v. City of Dallas</u>, 493 U.S. 215, 227, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990) (citing <u>Freedman v. Maryland</u>, 380 U.S. 51, 58-60, 85 S. Ct. 734, 738-40, 13 L. Ed. 2d 649 (1965)). The county was most likely attempting to write its code to meet this <u>Freedman</u> requirement." (citations in original).</i>	

XX.XX.145 Inspections.

A. If a building permit is required, the building official shall perform a sign inspection upon notification by the permittee that the construction is ready for inspection. Failure of the permittee to notify the building official of the progress of construction for inspection purposes shall result in the revocation of the sign permit. A final inspection of a sign shall be made upon completion of all construction work and prior to its illumination.

B. All signs may be inspected or reinspected at the discretion of the building official. The building official may inspect footings for monument, ground-mounted or freestanding signs. The building official may enter at reasonable time upon the premises of any person licensed under the provisions of this chapter for the purpose of inspection of signs under construction.

XX.XX.150 Enforcement of Sign Code – General Provisions

Comment: It can be difficult to enforce sign codes. The defendant in such cases often points to other instances in the City where violations have occurred and have not been

enforced. This leads to arguments that the city is selectively enforcing its ordinance in violation of Article 1 Section 8 (free expression) and Article 1 Section 20 (equal privileges) of the Oregon Constitution and the First Amendment as well as the Equal Protection and Due Process under the Fourteenth Amendment of the US Constitution.

The basic elements of this claim are 1) that there is selectivity in enforcement; 2) that the selective enforcement is intentional; and 3) that the selective enforcement is based on a unjustifiable standard. City of Portland v. Bitans, 100 Or App 297, 302, 786 P2d 222 (1990); McQuillin, Municipal Corporations Section 27.57.10. The argument that others have not been prosecuted is not sufficient. Selectivity in enforcement is allowed unless there is proof that it was deliberately pursued because of some impermissible reason such as race, religion or some other arbitrary standard. Proof of sporadic or non-existent enforcement in the past is not adequate.

In Oregon, these challenges to enforcement have generally failed. City of Eugene v. Crooks, 55 Or App 351, 637 P2d 1350 (1981).

The proposed code allows for monetary penalties and the recovery of costs for both signs on right of way and private property that are taken down by the City.

- *On private property, before the sign can be taken down and the owner charged, there should be notice and an opportunity for a hearing.*
- *On public property, non-permitted signs can be summarily removed and the owner given notice before the property is destroyed. Some codes and some jurisdictions merely remove the signs and destroy them. To avoid issues regarding the taking of private property, notice is proposed to be given before the property is destroyed.*

A. The following referenced code sections may be utilized for enforcement of this Sign Code, in regards to the types of sign violations referenced:

1. Sign in public right-of-way or on City-owned real property: Section XX.XX.155.
2. Sign on private property or on non-City-owned public property, other than on public right-of-way: Section XX.XX.160.
3. Unsafe Sign: Section XX.XX.165.
4. Abandoned Sign: Section XX.XX.170.

B. In addition to any other provisions contained herein, the [**City Manager**] is authorized to undertake such action as the [**City Manager**] deems necessary and convenient to carry out the provisions of this Sign Code, as is permitted by law.

C. Nothing contained herein shall preclude the issuance of citations for civil violations of this ordinance, either prior to, concurrently with, or after action is commenced to declare a sign to be unlawful or to removal an unlawful sign.

D. The [**City Manager**] may promulgate reasonable rules and regulations necessary to carry out the provisions of this chapter.

E. When a sign is removed, altered, and/or stored under these enforcement provisions, removal and storage costs may be collected against the sign owner and the person responsible for the placement of the sign. The city council shall establish the fees for removal and storage of signs, and for other associated fees, by resolution, from time to time.

F. This chapter shall not be construed to create mandatory enforcement obligations for the City. The enforcement of this chapter shall be a function of the availability of sufficient financial resources consistent with adopted budgetary priorities and prosecutorial priorities within the range of delegated discretion to the **[City Manager]**.

Comment: Just because a city prosecutes one violation and not another is not in itself prohibited discrimination. In the example of the sign code violation, unless the city is actually prosecuting a sign code because of the content of the message or because of membership in suspect class, there would be no improper prosecution. See also Medford Assembly of God v. City of Medford, 72 Or App 333, 339, 695 P2d 1379 (1984).

XX.XX.155 Enforcement - Sign in public right-of-way or on City-owned real property.

Any sign installed or placed in the public right-of-way or on City-owned real property, except in conformance with the requirements of this chapter, may be removed by the **[City Manager]** as follows:

A. Immediate confiscation without prior notice to the owner of the sign.

B. The city shall store any sign ordered to be removed by the **[City Manager]** for a period of **[30]** days from the time the person responsible therefore is notified as provided in subsection

C. The city shall continue to store such sign for any additional period during which an appeal or review thereon is before the **[City Manager / municipal court.]**

C. If a telephone number or address of the owner of the sign, person responsible therefore, or person or business that is the subject of the communication on the sign in on the text of a sign, the City shall contact the said person or business by telephone or by mail (based on the manner of contact stated on the sign) and advise that the City believes that:

1. The sign was found in a location that the City believes to be a public right-of-way or City-owned real property;

2. That no permit was issued for the placement of the sign in said location, and that the sign is not otherwise lawfully permitted to be in said location;

The communication shall advise said person or business that the City has confiscated the sign and shall destroy the sign after **[30]** days from the time the person responsible therefore is notified, unless either the sign is claimed and the removal and notice fees are paid in full or a Request for Hearing is submitted by the reputed sign owner to the **[City Manager]**.

If no telephone number or mailing address is stated for the owner of the sign on the sign, the City shall retain the sign for a period of [15] days to permit the sign owner to ascertain that the sign has been removed and to file a Request for Hearing.

D. Upon receipt of a Request for Hearing, the City Recorder shall determine that that applicable fee is paid, and shall then schedule a hearing before the [**City Manager / municipal judge**] within [3] business days. The City Recorder shall notify the reputed sign owner and the appropriate city staff of the date, time, and place of the hearing upon the removal of the sign.

E. The hearing shall be conducted by the [**City Manager / municipal judge**]. The procedures for the hearing shall be established by the [**City Manager / municipal judge**] sufficient to provide the parties not less than the minimum due process required under state and federal law.

F. A prima facie violation of this Code shall be met if it is shown that:

1. The sign was located in a public right-of-way or City-owned real property; and
2. The sign owner is not a public entity or other public entity authorized to install and maintain public signs within the public right-of-way under this Sign Code.

The sign owner may rebut the prima facie showing of violation upon a showing that the sign was lawfully permitted within the public right-of-way or City-owned real property, or that the law does not require the sign owner to obtain a permit under this Sign Code to place a sign within the public right-of-way or on City-owned real property.

G. The [**City Manager / municipal judge**] shall issue a written decision within [7] days following close of the hearing. The decision shall be based upon substantial evidence in the record. A copy of the decision shall be mailed to the reputed sign owner at such address as provided on the Request for Hearing. The decision of the [**City Manager / municipal judge**] shall be the final decision of the City.

H. If the [**City Manager / municipal judge**] determines that the sign was not lawfully placed upon the public right-of-way or City-owned real property, then, following any applicable appeal or review period, the sign shall be destroyed in such manner as the [**City Manager**] determines appropriate. Destruction of the sign is in addition to any penalties that may be imposed under separate proceedings for civil violation of this Sign Code.

Land Use Regulation	Non-Land Use Regulation
<i>Comment: If the decision is a land use decision, the appeal period to LUBA is 21 days from the date of the decision.</i>	<i>Comment: if the decision is not a land use decision, the appeal period is 60 days, under the writ of review provisions of ORS 34.030.</i>

Comment: Some jurisdictions may wish the option of allowing the sign owner to recover the sign. The following alternative text is suggested:

At the expiration of the time specified in this section, if the person responsible for the sign or other interested person has not reclaimed the sign as provided herein, the **[City Manager]** may destroy the sign or dispose of it in any manner deemed appropriate. To reclaim any sign removed by the **[City Manager]** the person reclaiming the sign shall pay the city an amount equal to the entire costs incurred by the **[City Manager]** as provided in subsection (I).

If the **[City Manager / municipal judge]** determines that the sign was lawfully placed upon the public right-of-way or City-owned real property, then the City shall re-install the sign upon the same place that it was removed from within **[3]** business days of the issuance of the decision and the fee for Request for Hearing shall be refunded to the payor of the fee.

Comment: The City may wish to include its right to appeal from the decision. In that case, re-installation of sign should be delayed until the appeal period has passed.

I. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually.

XX.XX.160 Enforcement - Sign on private property or on non-City-owned public property, other than on public right-of-way.

A. The **[City Manager]** may order the removal of any sign erected or maintained on private property or on non-City-owned public property, other than on public right-of-way, in violation of the provisions of this chapter or other applicable provisions of this code. If necessary to enter the premises to inspect the sign, the **[City Manager]** shall seek an administrative warrant for entry to the premises.

B. An order to bring a sign into compliance or to remove a sign shall be in writing and mailed or delivered to the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known.

C. The order shall inform the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known that the sign violates the regulations in this chapter and must be brought into compliance or be removed

within [60] days of the date of the order, or such earlier date as shall be stated in the order. The order shall also state the reasons why the [City Manager] concludes the sign violates the regulations in this chapter and shall inform the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known of the right to submit a Request for Hearing, to determine whether or not the sign is in violation of this Sign Code.

D. A Request for Hearing shall be filed by the reputed owner of the sign, or owner of the building, structure or premises on which the sign is located within [15] days following mailing or delivery of the order. The Request for Hearing shall be filed with the City Recorder.

E. Upon receipt of the Request for Hearing, the City Recorder shall proceed in the manner specified in Section XX.XX.155(D), and a hearing shall be held, and decision issued, in the manner specified in Section XX.XX.155(E) and (G).

F. A prima facie violation of this Code shall be met if it is shown that the sign:

1. Does not conform to the requirements of this Code; or
2. Is posted by a person that is not authorized to post the sign in the specific location.

The prima facie showing of a violation may be rebutted upon a showing that the sign was lawfully permitted or authorized under this Code, or is otherwise required to be installed and maintained by state or federal law.

G. If the [City Manager / municipal judge] determines that the sign is not permitted or authorized by this Sign Code, or by other applicable state or federal law, then within [10] days following any applicable appeal or review period, the owner of the sign, or owner of the building, structure or premises on which the sign is located shall cause the sign to be removed, or altered in such a manner as to be made to conform to the requirements of this Sign Code. A sign which is not removed or altered in such a manner as to be made to conform to the requirements of this Sign Code, is defined as a public nuisance.

Comment: some jurisdictions may wish to consider different periods for removing permanent v. temporary signs. Other jurisdictions may decide that an illegal sign should be removed, following, hearing, post haste, regardless of its classification.

H. The [City Manager] may:

1. Exercise all rights and remedies to cause the removal of the sign, including but not limited to removal of public nuisance, injunctive order, or as otherwise existing under Oregon law; and/or
2. Seek judgment against the owner of the land and the sign owner, individually, or collectively, for the removal and other costs pursuant to Section XX.XX.150(E), and may collect upon the judgment in the manner provided by Oregon law; and/or
3. Seek such additional orders from a court of competent jurisdiction to permit entry upon the premises and removal of the sign.

I. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.165 Removal of unsafe signs.

A. If the [City Manager] finds that any sign by reason of its condition it presents an immediate and serious danger to the public, the [City Manager] may, without prior written notice, order the immediate removal or repair of the sign within a specified period. The City Manager shall follow the procedures provided in Section XX.XX.160, subsections (B), (C), (D), (E), (H), except that the [City Manager] may shorten the time deadlines as reasonable, considering the risk to the public from the sign if the sign were to fail.

B. If the [City Manager / municipal judge] determines that the sign presents an immediate and serious danger to the public, then within such time as set by the [City Manager / municipal judge] the owner of the sign, or owner of the building, structure or premises on which the sign is located shall cause the sign to be removed, or altered in such a manner as to be made to eliminate the threat of death, injury, or damage to the public and its property. A sign which is not removed or altered in such a manner as to be made safe, is defined as a public nuisance.

C. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.170 Removal of abandoned signs.

A. An owner of a sign shall remove the sign when it is abandoned.

B. The [City Manager] may order the removal of abandoned signs in the same manner as provided in Section XX.XX.160, and the procedures for requesting a hearing, and the decision issued, shall be as set forth therein.

C. Abandonment of a sign shall be made when it is shown that:

1. The sign is no longer used by the person who constructed the sign or the property where the sign is located is no longer used. The sign owner may rebut the prima facie showing of this ground of abandonment upon a showing that a reasonable effort is underway to continue the use of the property or sign,

2. The sign has been damaged, and repairs and restoration are not started within ninety days of the date the sign was damaged, or are not diligently pursued, once started.

D. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.175 Reserved.

XX.XX.180 Violations.

A. It shall be a violation of this Code for any person to perform, undertake, allow, or suffer the following:

1. Installation, creation, erection, suffering, or maintenance of any sign in a way that would create a non-conforming sign;
2. Failing to remove any non-conforming signs within sixty calendar days after the expiration of the amortization period;
3. Failing to remove any non-conforming sign after being order to do so;

B. Continuing Violation. Each day of a continued violation shall be considered a separate violation when applying the penalty provisions of this Code.

XX.XX.185 Penalties and Other Remedies.

A. The [**municipal / circuit**] court is empowered to hear and determine violations of this chapter.

B. In addition to any other penalty of law, the municipal court or any other court of competent jurisdiction may issue a judgment necessary to ensure cessation of the violation, including but not limited to injunctive order and/or monetary penalty.

C. Any person who places a sign on property in violation of this chapter shall be punishable by a fine not to exceed [**XX**] dollars.

XX.XX.190 Amendments.

Non-Land Use Regulation	Land Use Regulation
<i>Comment: The drafter should consider whether the Sign Code should contain an amendment process that requires greater public notice and comment than required for the city's regular ordinances, given the need for meaningful public participation.</i>	<i>Comment: The drafter should also comply with the required notice and adoption process required for land use regulations.</i>

APPENDIX A - First Amendment Pitfalls In The Regulation Of Signs

FIRST AMENDMENT PITFALLS IN THE REGULATION OF SIGNS

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Presented at International Municipal Lawyers Association Annual Conference

Portland, Oregon

September 18, 2006

Summary of GK Ltd Travel v. City of Lake Oswego

In *GK Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1077 (9th Cir. 2006), the Ninth Circuit Court of Appeals sustained Lake Oswego's sign regulations against a variety of federal constitutional claims. The case provides guidance in framing and defending the regulation of signs by local governments. The plaintiffs in the case were a sign owner (Ramsey Signs), its lessee (GK Travel) and GK's two shareholders. The city and its code enforcement officer were the defendants. Plaintiffs' pole sign was used to advertise and identify GK Travel, a travel agency. The city reformed its sign code in 1985 and again in 1994 to eliminate classifications of signs based on content. As part of the 1994 changes, the city phased out allowance of pole signs over a five-year amortization period, which was later extended to ten years. The case arose out of enforcement efforts against plaintiffs' nonconforming pole sign.

The plaintiffs asserted 17 claims for relief. Two of the four damage claims sought compensation under 42 U.S.C. § 1983 because of the enforcement of the pole sign limitation. The remaining two damage claims (race discrimination and just compensation for removal of sign) were without factual support or were premature. The claims for injunctive and declaratory relief alleged that the ordinance was unconstitutional because it triggered compliance upon change of copy on a sign, prohibited pole signs which were a "protected medium" of speech, impermissibly classified based on the content of signs, the viewpoint of the sign owner, and commercial/non-commercial sign distinctions, failed to provide sufficient procedural safeguards in obtaining a sign permit, granted "unbridled discretion" to the issuer of sign permits, and was vague and overbroad.

The city obtained summary judgment in the district court in all but a few particulars. The court found, and the city conceded, that the regulations of "danger," "official notices," "no solicitation," and "for charitable fundraising events" signs were based on content of messages and were not justified. The remainder of the sign code was found to be constitutional and the

¹ Editor's note: Mr. Sercombe was appointed to the Oregon Court of Appeal in 2007 and is no longer in private practice. [5/07]

judgment of the district court was affirmed on appeal. The circuit court upheld the pole sign limitations and the remainder of the sign code against all of the constitutional claims.

The opinion is significant in several respects. First, the court found that the sign code was content-neutral. Importantly, the court held that classifying on the basis of speaker is not a content-based regulation, and upheld the city's speaker-based exemptions to the permitting process. (These exemptions spared hospitals, railroads and public bodies from obtaining a permit and paying a fee.) The court also found that event-triggered allowances for temporary signs were not content-based restrictions, and upheld these allowances for signs around the time of elections and the sale or lease of real estate. Finally, the court declared it is not a content-based regulation merely because a city officer has to read a sign in order to determine if the change of copy regulation applies.

Second, the court granted deference to the city's stated purposes in the sign code. While the plaintiffs argued that the city had to prove the existence of traffic safety problems or aesthetic decline and show how the sign code would remedy them, the court accepted the evidence offered by the city and announced a general deference to the city's determination that the sign code served its legitimate interests.

Third, the court upheld permitting regulatory classifications based on sign structure types. In upholding the near complete ban on pole signs, the court held that pole signs were not a "venerable means of communication" and that the city's limitation was justified by its aesthetic interests. The court also found that the sign code left open ample alternatives to pole signs, including other non-sign-based forms of communication, as well as other types of signage.

Fourth, the court upheld the city's design review process. Because the code contained sufficiently specific criteria to determine whether the sign in question was "compatible" with the surrounding environment and required written reasons for a denial, it did not grant unbridled discretion to city officials. The court also rejected the plaintiffs' vagueness challenge, and held that the "somewhat elastic" criteria in the design review process did not invalidate the code.

Finally, the court determined that the procedural protections in the Lake Oswego sign code were sufficient to meet constitutional standards. The court determined the sign code was content-neutral, and therefore did not require all the procedural requirements of content-based prior restraints. The court was satisfied that the sign code requires quick processing of sign permit applications and a written decision with findings; it did not require more.

Plaintiffs' petition for a writ of certiorari was denied by the United States Supreme Court.

Other Issues in Sign Code Litigation

While the *GK LTD Travel* case addresses many pertinent topics in sign code litigation, there are several other current issues municipalities should consider in drafting and defending their sign codes. The following section addresses some of the most important questions.

1) Can a municipality provide generic exemptions to the permitting requirements under its sign code?

Courts draw distinctions between exemptions from the application of municipal sign codes to certain types of signs and exemptions from permitting and fee requirements. *GK Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1077 (9th Cir. 2006). Cases arise where exemptions from code requirements allow certain messages to appear in forms unavailable to other messages, such as banning noncommercial billboards but allowing signs placed by government bodies or memorial plaques placed by historical agencies. *Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246, 248 (9th Cir. 1988). While such categorical exemptions from sign code requirements are consistently found unconstitutional, *id.*, the law is not entirely clear as to when exemptions from permitting and fee requirements are permissible.

Depending on how they are drafted, generic exemptions from municipal permitting and fee requirements can constitute impermissible content-based restrictions as well. Even though permitting exceptions narrow the reach of the sign ordinance, they will be struck down if the exceptions favor particular sign messages. For example, in *Solantic LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005), the Eleventh Circuit invalidated a city ordinance that exempted 17 different categories of signs from both the form and permitting schemes imposed in the sign code, including several seemingly “generic” exemptions.² The court emphasized that even if the enumerated exemptions applied only to the permit requirements, the character of the exceptions would still render them unconstitutional because they were based on the content of the messages. 410 F.3d at 1256 n.6. The court relied on its previous decision in *Dimmit v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993) to support a finding that the permitting exemptions were content-based. In *Dimmit*, the court invalidated a city ordinance that exempted from permitting requirements flags representing a governmental unit or body but not flags of another organization or group. *Id.* at 1262.

However, not all exemptions from permitting requirements have been struck down as content-based restrictions. In *Solantic*, the Eleventh Circuit distinguished its previous decision in *Messer v. City of Douglasville*, 975 F.2d 1505 (1992) in which it held that an ordinance exempting certain signs from a city permit requirement was not content-based on the grounds that the *Messer* exemptions were “much more limited”³ and “contained no specific exemptions for political, historical, religious, or special event signs.” 410 F.3d at 1263 n.12.

² The following kinds of signs are among the exemptions enumerated by the Neptune City Sign Code. “Signs erected by, on behalf of, or pursuant to the authorization of a government body, including... legal notices, identification signs and informational, regulatory or directional signs; ... Official signs of a noncommercial nature erected by public utilities...; Holiday lights and decorations; ...Public warning signs to indicate the dangers of trespassing, swimming, animals or similar hazards; and Religious displays.” 410 F.3d at 1257.

³ “The ordinance in *Messer* exempted from permitting requirements and/or permit fees the following signs: (1) one wall sign per building, attached to the side of the building, announcing the business; (2) one real estate “for sale” sign per property; (3) one bulletin board located on religious, public, charitable, or educational premises; (4) one construction identification sign; (5) directional traffic signs containing no advertisements.” 410 F.3d at 1263 n. 12 (quoting *Messer v. City of Douglasville*, 975 F.2d 1505, 1511 (11th Cir. 1992)).

As noted above, in *GK LTD. Travel v. City of Lake Oswego*, the Ninth Circuit upheld exemptions from the city's permit and fee requirements for "public signs, signs for hospitals or emergency services, and railroad signs." 436 F.3d at 1076.⁴ The court found that these exemptions are "purely speaker based" and "say nothing of the City's preference for the content of these speakers' messages." *Id.* at 1077. The court also held that event-based exemptions for temporary signs in residential zones were not content-based. *Id.* However, the Ninth Circuit did not disturb the district court's holding that exemptions for "legal notices" or "danger signs" were constitutionally impermissible (as based on the message of the sign rather than the identity of the sign owner). The district court reasoned that there are no obvious owners for either type of sign, and therefore the distinction based on speaker was inapplicable. *Id.* at 1076.

The Ninth and Eleventh Circuits take different positions on whether speaker-based exemptions from permit requirements are content-based or content-neutral. In *Solantic*, the Eleventh Circuit expressly rejects the idea that exemptions favoring certain speakers are not content-based. 410 F.3d at 1265 ("The sign code exemptions that pick and choose the speakers entitled to preferential treatment are no less content-based than those that select among subjects or messages."). The Ninth Circuit takes a contrary view in *GK LTD. Travel*, holding that municipalities may exempt certain speakers from permitting and fee requirements without the burden of justifying a content-based regulation. The court notes that these institutional speakers are otherwise required to follow the substantive requirements of the sign code and concludes that just because the law affects one class of speakers more than others does not make the law content-based. 436 F.3d at 1077.

The key differences between the valid and invalid ordinances providing exemptions to permitting requirements seem to be the breadth of the exemptions and the presence of an articulated requirement of content-neutrality. The *Messer* exemptions are extremely narrow and very limited in scope. The *GK Travel* exemptions are entirely content-neutral and justified solely on the basis of the party speaking or a triggering event. There, the Ninth Circuit expressly notes the sign code's demand for content-neutrality.⁵ 436 F.3d at 1077. Speakers exempt from permit and fee requirements should not be exempt from the general sign regulation scheme, as exemptions from form requirements are routinely held unconstitutional. *See Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246 (9th Cir. 1988) (striking down content-based exemptions to general ban on billboard signs).

2) What kind of procedural protections must a municipality provide to permit seekers?

⁴ The Lake Oswego Code defined "public sign" as "a sign erected and maintained by a public agency within the right-of-way of a street or alley."

⁵ The provisions allowing temporary signs without a permit expressly state that "signage shall not be restricted by content" but is "usually and customarily used to advertise real estate sales, political or ideological positions, garage sales, home construction or remodeling" and other temporary events.

Municipalities seeking to impose sign permitting requirements must comply with the procedural protections established by prior restraint jurisprudence. In *Freedman v. Maryland*, 380 U.S. 51 (1965), the Court articulates the requirements imposed by the First Amendment for valid licensing processes. These requirements have been summarized as: “(1) any restraint prior to judicial review can be imposed only for a specified brief period, during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court.” *Solantic*, 410 F.3d at 1270 (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990)).

Whether or not the *Freedman* protections apply depends upon whether the permitting scheme in effect is content-based or content-neutral. In *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002), the Court evaluated a content-neutral licensing scheme for public park use and found that “*Freedman* is inapposite because the licensing scheme at issue here is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum.” *Id.* at 322. Following *Thomas*, multiple courts have concluded that the *Freedman* requirements apply only to content-based permitting schemes. See *Solantic*, 410 F.3d at 1271 (citing *Granite State Outdoor Adver., Inc. v. City of St. Petersburg*, 348 F.3d 1278, 1281 (11th Cir. 2003)); *GK LTD. Travel*, 436 F.3d at 1082.

Therefore, so long as the city’s sign code is content-neutral, courts will not require all the *Freedman* procedural protections to be in place. However, municipalities still must avoid granting “unbridled discretion” to their city officials in making determinations under the code and provide avenues for “effective judicial review.” *Thomas*, 534 U.S. at 323.

3) What must a local government prove to justify its sign code?

The sign code must meet the *Ward* test for time, place and manner restrictions

When a municipal sign ordinance is challenged as violating the First Amendment, courts will use the test laid out in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) to determine the constitutionality of the restrictions on speech. Municipalities defending their ordinances will have the burden of showing that the regulations are reasonable time, place, and manner restrictions. Under *Ward*, time, place and manner restrictions must be content-neutral, narrowly tailored to serve significant government interests, and provide for ample alternative channels of communication. An analogous test is used to justify the regulation of commercial speech under *Central Hudson Gas and Elec. v. Public Serv. Comm’n*, 447 U.S. 557 (1980).

To satisfy the first prong of the test, the regulations must be content-neutral, which means that the regulations must be justified without reference to the content of the regulated speech. *Id.* at 791. Many sign codes fail under this prong, as it is difficult to draft exemptions to sign codes that do not classify permissible speech according to content. See *Nat’l Adver. Co. v. City of Orange*, *supra*. In *City of Orange*, the sign code granted exemptions to the ban on noncommercial billboards for a variety of speakers and topics, including signs placed by

governments and public utilities, memorial tablets or plaques, flags of national or state bodies, and changeable reader boards. *Id.* at 248. The court found that the exemptions were based on content and ultimately struck down the sign code. *Id.* at 249. Content-based regulations must meet a higher standard and are much more difficult for governments to justify.

If the regulations in a sign code are found to be content-neutral, the government must also show that they serve significant government interests and are narrowly tailored to advance those interests. *Ward*, 491 U.S. at 796. The most common government interests advanced in sign code litigation are traffic safety and aesthetics. The Supreme Court has held that both of these interests are “significant” for the purposes of the *Ward* test. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507 (1981). While courts will defer to the legislative body’s judgment in determining whether the government’s ends are advanced by a particular regulation, they will also examine the city’s statement of purpose and any studies or findings advanced by the litigants to justify the regulations. *GK Travel LTD*, 436 F.3d at 1073. Municipalities should clearly articulate their interests in passing sign regulations in a statement of purpose included in the sign code ordinance.

Once a city demonstrates its ordinance serves significant government interests, it must also show that the regulations on speech are narrowly tailored to advance those interests. *Id.* The more exceptions to form and permitting requirements included in a code, the less likely it is that a court will find the code to be necessary to advance the stated regulatory purposes. In *Solantic v. City of Neptune Beach*, the 11th Circuit found that the City never explained how its purported interests in traffic and aesthetics were served by the numerous exemptions in the code. The court faulted the city for failing to explain how a sign depicting a religious figure with flashing lights and moving parts (which was permissible under the exemption for religious displays) would be any less distracting to motorists than a moving or illuminated sign featuring another figure which was categorically barred by the code’s general prohibition on moving parts or flashing lights. *Solantic*, 410 F.3d at 1267. While the city’s interests may have been legitimate, the code had too many loopholes to appear to seriously advance them. The ultimate question before most courts is whether the code in question could have been written more narrowly (*i.e.*, with less exceptions) and still advance the stated interest.

By contrast, the Ninth Circuit upheld the City of Lake Oswego’s ban on all pole signs, finding it was narrowly tailored to serve the city’s interests in traffic safety and aesthetics. The court found that because of their height, pole signs could reasonably be perceived by the city to be aesthetically harmful and distracting to travelers and that severely limiting their presence in Lake Oswego “directly serves the City’s purposes.” *Id.* By banning all pole signs, and not excepting certain signs, Lake Oswego’s code was upheld as narrowly addressing a specific problem.

The final prong of the *Ward* test requires that even narrowly tailored content-neutral regulations on speech leave open ample alternative opportunities for a speaker to convey his or her message. *GK LTD Travel*, 436 F.3d at 1074. A city defending its sign code must show that speakers have other reasonable opportunities to communicate. In *GK Travel*, the Ninth Circuit

found that even though the city had banned pole signs, the sign code left unrestricted many other non-sign based forms of communication, such as handbills, radio, television, newspaper or telemarketing. *Id.* With respect to signage, the code still authorized several other types of signs, including wall, monument and canopy signs. *Id.* Municipalities should consider what other avenues are left open to speakers when they restrict certain media.

The local government has the burden of proof to show its code meets the *Ward* factors

When a sign code is challenged, the burden is on the municipality to show that its code meets the *Ward* requirements. Different courts have required varying amounts of evidence from government entities in meeting this burden, but at the very least, the government must come forward with some justification for its restrictions on speech. The amount and kind of required evidence will depend somewhat on whether the sign code is subject to a “facial” or “as applied” challenge. A “facial” challenge alleges that any enforcement of the ordinance creates an unacceptable risk of the suppression of ideas. *Kuba v. 1-A Agricultural Assoc.*, 387 F.3d 850, 856 (9th Cir. 2003) (citing *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998)). An “as applied” challenge alleges that the restriction on speech is unconstitutional as applied to the litigant’s particular speech activity or to a particular permitting decision, even though the law may be capable of valid application to others. *Id.* The kind of evidence needed to meet the government’s burden in overcoming these challenges varies somewhat depending on which type of challenge is brought and under which of the *Ward* factors the sign code is attacked.

When a challenger alleges that an ordinance is content-based, the city must show that its code provisions are content-neutral. In a “facial” challenge, the city can present the text of the code itself to show that its provisions or exemptions do not discriminate on the basis of content. A statement of purpose espousing content-neutrality can also be helpful in supporting the city’s position. *See GK LTD Travel*, 436 F.3d at 1077. In an “as applied” challenge, whether or not a facially content-neutral ordinance was applied to censor or limit particular sign messages may create jury claims for damages, depending upon factual issues about consistency in the application of the ordinance. *Seattle Affiliate of the October 22nd Coalition v. City of Seattle*, 403 F.Supp.2d 1185, 1194 (W.D. Wash. 2006). Courts will consider evidence of past discriminatory enforcement (or lack thereof) in assessing a city’s claims of content-neutral application.

The city also has the burden of demonstrating that its stated interests are significant and that the regulation in question is narrowly tailored to advance those interests. Though courts often combine this two-prong test into a single inquiry, municipalities defending sign ordinances should be prepared to provide *both* evidence of sign-related problems (to justify the significance of the interest) *and* evidence that demonstrates that the proposed regulations will address the identified problems (to show narrow tailoring). In an as applied challenge, the city’s actual motivation in enforcing its ordinance may sometimes create a question for the jury which speaks to both the legitimacy of the interest and narrow tailoring. *See, e.g., October 22nd Coalition*, 403 F.Supp.2d at 1194. However, whether a jury will ultimately make this determination is dependant on the particular facts of each case. Similarly, a jury may also consider whether the

city's ordinance has left open ample alternative channels for the speaker to communicate his message, but this question, once again, is very fact dependant. *Id.* (finding, as a matter of law, that placing marchers on sidewalk instead of street along permitted parade route provided an ample alternative).

The required justification may vary.

The amount of evidence a city must provide varies somewhat by court and by the particular type of speech limitation. In cases dealing with regulations that limit the physical characteristics of signs (size, height and structure limitations), courts defer to a municipality's means-end determinations. As noted in *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994), "[i]t is common ground that governments may regulate the physical characteristics of signs"

In contrast, regulations that preclude signage may require more substantial justification. A court will question and require stricter justification for any "broad prophylactic rule[]" that is of the kind that is "inherently suspect in the area of free expression." *Edenfield v. Fane*, 507 U.S. 761 (1993). In *Weinberg v. City of Chicago*, 310 F.3d 1029 (7th Cir. 2002), the court struck down the city's prohibition on peddling near a sports stadium because the city had "provided no objective evidence" that its stated interests in traffic flow and safety were jeopardized by the plaintiff's peddling. *Id.* at 1039. The court noted that the city offered "no empirical studies, no police records, no reported injuries, nor evidence of any lawsuits filed" to support either its interest in pedestrian safety or the proposition that its ordinance advanced that interest. *Id.*

Other courts have not required as significant a showing from the city defending an ordinance burdening speech. In the commercial speech context, courts have permitted litigants to justify speech restrictions "solely on history, consensus, and simple common sense." *Falanga v. State Bar of Georgia*, 150 F.3d 1333, 1341 (11th Cir. 1998)(citing *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)). However, municipalities should be wary of this seemingly permissive language. Even in cases where this lower standard has been applied, the city has been required to offer more than "conclusory affidavits" from interested parties. *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1555 n.15 (7th Cir. 1986). Similarly, in *GK Ltd Travel*, the 9th Circuit noted favorably the existence of testimony and hearings in the city's record about the problems of "visual pollution" associated with pole signs and the dialogue between the city and business leaders regarding the proposed sign code. 436 F.3d at 1073. The court also considered evidence that the city had relied "on the experience of other cities" and found that "this evidence provided the City with legitimate and relevant bases for advancing its Sign Code and restricting the availability of pole signs." *Id.*⁶

At a minimum, municipalities defending their sign ordinances should offer some empirical data justifying their sign codes. While cities are not necessarily required to conduct their own independent studies and can rely on research or reports conducted in other

⁶ Finally, many of the cases requiring "hard" evidence are outside the context of sign regulations and occur generally in cases dealing with leafleting and picketing. See, e.g., *Weinberg*, *supra*.

communities, they should be prepared to offer justification for why the experience of another city necessitates similar action in their own communities. That justification may be present in the legislative history of the sign regulation.

4) Can a local government apply design review to signs without creating “unbridled discretion” in decision makers?

Municipalities can apply design review provisions to their sign codes if they employ “narrowly drawn, reasonable, and definite standards.” *Advantage Media, LLC v. City of Eden Prairie*, 2006 WL 2129304 (8th Cir. Aug 1, 2006) (citing *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 133 (1992)). Plaintiffs challenging design review provisions often allege that the design review process grants “unbridled discretion” to local authorities enabling them to improperly reject permit requests for unconstitutional reasons. Local governments can defeat these challenges if their sign codes contain a limited and specific set of criteria for review, including characteristics such as form, proportion, scale, color, materials, and style of lettering. *GK Ltd Travel*, 436 F.3d at 1083. Cities should also provide written reasons for the denial of any permit and an established deadline within which officials must make permitting decisions.

Most design review provisions that have been invalidated by the courts have contained overly broad design criteria or have failed to articulate standards for officials to follow. In *Desert Outdoor Adver., Inc. v. City of Moreno*, 103 F.3d 814 (9th Cir. 1996), the court struck down the city’s sign code because permits could be denied on the basis of such ambiguous reasons as “harming the community’s health, welfare or aesthetic quality.” *Id.* at 819. Moreover, city officials could deny a permit without providing any evidence or reasons as to why a proposed sign is detrimental to the community. *Id.* Conversely, the court upheld the City of Lake Oswego’s permitting process because the standards for “compatibility review” were explicitly defined in the city’s sign code. *GK Ltd. Travel*, 436 F.3d at 1083.⁷ Courts will also look to the history of the sign code to determine whether or not a pattern of past abuse exists. *Id.* at 1084. Lacking evidence of past discriminatory application, courts are less likely to find that a design review process is unconstitutional.

5) Can sign companies challenge regulations that do not apply to them?

The “overbreadth doctrine” creates an exception to some traditional standing requirements in First Amendment cases. This doctrine allows litigants to challenge a statute not because their own rights of free expression are violated, but because of an assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech. *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1270 (11th Cir. 2006) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)). Under the doctrine, a party may bring a First Amendment case asserting the rights of third parties if a statute is

⁷ The Lake Oswego sign code required signs to be “designed to be compatible with other nearby signs, other elements of street and site furniture and with adjacent structures. Compatibility shall be determined by the relationships of the elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering.”

constitutionally applied to the litigant but might be unconstitutionally applied to third parties not before the court. *Id.* The challenge on behalf of the absent third parties must be a “facial” challenge.

Sign companies challenging municipal sign codes often use the overbreadth doctrine to attempt to invalidate an entire sign code, even when the code has been constitutionally applied to their particular case. In order to bring an overbreadth challenge, the sign company must still first establish what is known as “constitutional standing” before they can sue on behalf of anyone else. Constitutional standing requires a showing that the company has suffered an injury, that there is a causal connection between the injury and the city’s conduct, and that there is a likelihood that the injury can be redressed by a favorable decision in the case. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Recent circuit court decisions have interpreted this requirement to mean that a sign company can only challenge the provisions of the sign code that in some way apply to them. In *Advantage Media LLC v. City of Eden Prairie*, *supra*, the sign company sought to invalidate the entire sign code on a facial overbreadth challenge. The Eighth Circuit held that because the code’s provisions were severable, the sign company could not challenge other provisions of the code which were not factors in the denial of its permit applications. *Id.* at *5. Similarly, in *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257 (11th Cir. 2006), the Eleventh Circuit concluded that the plaintiff could only challenge provisions of the contested festival ordinance that affected its activities.

However, municipalities should be aware that sign companies can indeed bring overbreadth challenges if they can show that they are subject to the provisions of the sign code. In *CAMP v. City of Atlanta*, though the court found that the plaintiff organization could not challenge the entire festival ordinance as a whole, it did have standing to challenge provisions of the code that allegedly granted unbridled discretion to licensing officials, a permitting exception for government-sponsored events, and three application requirements that allegedly functioned as unconstitutional prior restraints. *Id.* at 1275-76. Because CAMP was impacted by each of those provisions, the court found it had standing to sue. Thus, if a particular sign code (or any of its provisions) could possibly apply to a sign company, the company will be able to establish standing to challenge the code (or particular provisions).

6) How can municipalities regulate political signs?

Municipalities drafting sign codes must be particularly sensitive to regulations on political signs. Because political speech is at the core of the First Amendment, it is the most protected and any regulations impacting political speech will be closely scrutinized by a court. There are two primary ways in which political speech can be impermissibly burdened: when a sign code favors commercial speech over noncommercial speech and when the sign code makes content-based distinctions between types of noncommercial speech.

A sign code is invalid if it imposes greater restrictions on noncommercial speech than on commercial speech. *GK Ltd Travel*, 436 F.3d at 1081. Sign codes which make it easier, cheaper and faster to communicate a commercial message than a political message will likely be held unconstitutional. In *Beaulieu v. City of Alabaster*, 2006 WL 1791401 (11th Cir. June 30, 2006), the court struck down a sign code which required a permit to post a campaign sign but not to post a real estate sign.

As discussed throughout this paper, exemptions to permitting and form requirements are difficult to draft without making impermissible content-based distinctions. In *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005), the court struck down the city's sign code because some types of signs were extensively regulated and others were exempt from regulation based on the nature of their messages. *Id.* at 1266. In the case of political signs, homeowners could post signs "related to elections, political campaigns, or referendums" without a permit, but could not post a different political message unrelated to an upcoming election. *Id.* at 1264-65. The court held that these content-based distinctions between types of noncommercial speech are unconstitutional.

Conversely, the City of Lake Oswego was able to successfully regulate political signs by avoiding content-based distinctions. In *GK Ltd Travel*, the sign code provided for an exemption for all signs placed in residential zones regardless of content. 436 F.3d at 1077. The only restrictions were temporal and size limits. Under the code, residents could erect a temporary sign without a permit so long as that sign goes up not more than 90 days prior to an election, stays up not more than five days following the election, and is no larger than six square feet. *Id.* The sign code explicitly prohibited content-based regulation and allowed for residents to display any message of their choosing as long as the size and time requirements were honored. The court found that the code was neutral with respect to noncommercial messages and upheld the regulations.

Practical tips for municipal lawyers drafting sign codes

1. Include a statement of purpose in the sign code that clearly identifies the city's interests in sign regulation. Cite to evidence of the problems necessitating the sign code as well as evidence that the proposed solution will address the problems. Reliable sources of evidence include empirical studies, anecdotal evidence from citizens (compiled complaints about distractions or dissatisfaction with current sign scheme), transcripts from hearings on the issue, studies of the impact of sign codes conducted in other cities that can be reasonably related to the problems faced in your city, or other data showing a correlation between the signs to be regulated and the problems you want the code to solve.
2. Include minimal exemptions and define them without reference to content. Speaker-based exemptions have been upheld in the Ninth Circuit, but not in the Eleventh Circuit. Short lists of clear, narrow, exemptions are more often upheld than longer lists. Event-based exemptions are also upheld, so long as the

exemption is not content-based. For example, instead of allowing temporary signs for the conveyance of messages about candidates or election issues, merely permit additional temporary signs of any content during the period of 90 days before an election. Instead of allowing signs about subdivision sales, consider allowing additional signage of any content on subdivision property that is the subject of sales.

3. Provide opportunities to comment and participate in the creation of sign regulations to affected persons and industry groups. The factual foundation for the regulation will be more firm if the comments are recognized by modifications or discussion.
4. Explicitly disavow regulatory distinctions based on the message of a sign in the text of the ordinance. A provision in the sign code for the City of Hillsboro, Oregon provides that,

“The Hillsboro Sign Code is not intended to, and does not restrict speech on the basis of its content, viewpoint or message. Any classification of signs in this chapter that permits speech by reason of the type of sign, identity of the sign user or otherwise, shall permit any type of speech on the sign. No part of this chapter shall be construed to favor commercial speech over non-commercial speech. To the extent any provision of this chapter is ambiguous, the term shall be interpreted to not regulate on the basis of speech content, and the interpretation resulting in the least restriction on the content of the sign message shall prevail.”
5. Publicly-owned signs should not be completely exempted from sign regulation. They can be exempted from the requirements to obtain a permit and pay a permit fee.
6. If possible, place the decision-making authority under a sign code in either a single individual, or a select committee, to increase the likelihood that code decisions will be consistent. The more people with authority to make permitting decisions increases the risk that the code may be applied inconsistently.
7. Provide written reasons for permit denials and include a time limit for permit decisions in the text of the sign code.
8. Provide some type of formal administrative review of all adverse permitting decisions.

9. Use a separate severability clause than the standard one in your code. In particular, be sure to state that the physical limitations on signage (size, height, location, illumination and number restrictions) are severable.
10. Consider including a variance provision to allow a court to find that the sign code is more narrowly tailored. Subjective variance criteria, however, risk a determination of “unbridled discretion.”

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TABLE OF CASES⁸

Ackerley Communications, Inc., v. City of Portland, 12 Or LUBA 410 (1984).

Ackerley Communications, Inc. v. Multnomah County, 72 Or. App. 617, 696 P.2d 1140 (1985), *rev. dismissed*, 303 Or. 165, 734 P.2d 885 (1987).

Café Erotica of Florida, Inc. v St. Johns County, Florida, 360 F. 3d 1274 (11th Cir 2004).

City of Eugene v. Crooks, 55 Or App 351, 637 P2d 1350 (1981).

City of Portland v. Bitans, 100 Or App 297, 302, 786 P2d 222 (1990).

Cotter v. City of Portland, 46 Or LUBA 612 (2004).

Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996).

Fidanque v. State by and Through Oregon Gov't Stds. & Practices Comm'n, 328 Or. 1 (Or. 1998).

Granite State Outdoor Advertising, Inc. v. City of Clearwater, 351 F3d 1112 (11th Cir. 2003), *rehearing denied*, 97 Fed. Appx. 908 (Table), 11th Cir. 2004), *cert denied*, 543 U.S. 813, 125 S. Ct. 48, 160 L. Ed. 2d 17 (2004).

G.K. Ltd Travel v. City of Lake Oswego, 436 F3d 1064 *cert. den.*, ___ U.S. ___, 127 S. Ct. 156, 166 L. Ed. 2d 38 (2006).

Haug v. City of Newberg, 42 Or LUBA 411 (2002)

Medford Assembly of God v. City of Medford, 72 Or App 333, 695 P2d 1379 (1984).

Media Art v. Tigard, 46 Or LUBA 61 (2003).

One World One Family Now v. City & County of Honolulu, 76 F.3d 1009 (9th Cir.1996).

Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006).

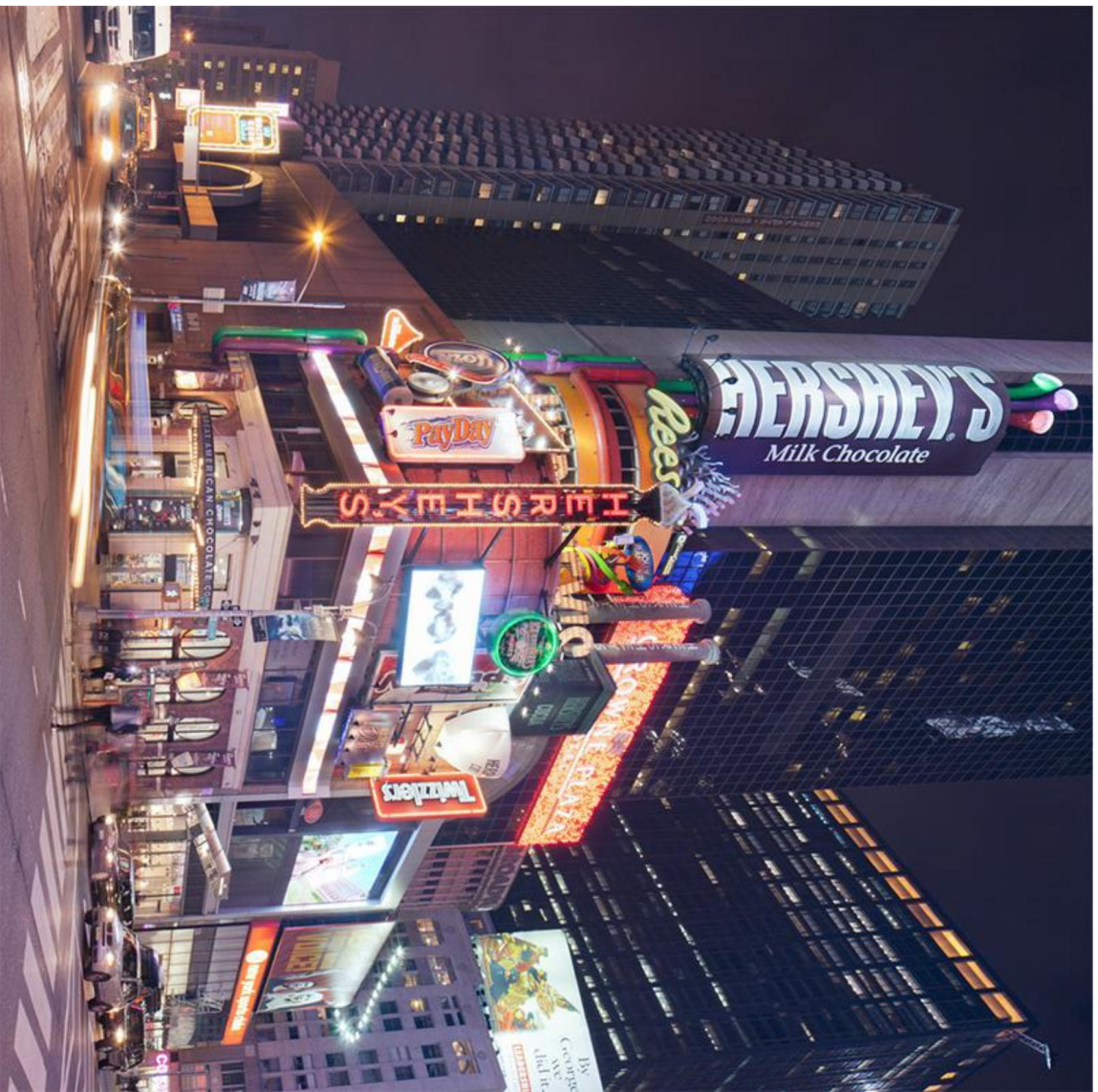
State v. Robertson, 293 Or 402, 649 P2d 569 (1983).

Thomas v. Chicago Park District, 534 US 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002).

Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2796, 105 L. Ed. 2d 661 (1989).

⁸ Table of Cases lists cases cited in the Sign Code Template, not in the Appendix.

Spectaculars



Wallscapes



Newsracks



Inflatable Advertising





Window Graphics



	Portable	Banner and Balloon			Temporary Fascia and Freestanding
Size	In public rights-of-way, signs may not exceed a total 8 sq. ft. in area, with a maximum of 4 ft. (42 inches displayed height) tall and maximum of 2.5 ft. (30 inches) wide.	ZONE	Temporary	Permanent	Lawn signs: up to 3 sq. ft. of sign is allowed on a single support.
		OS, R, CN, CO1, CM	32 sq. ft.	32 sq. ft.	Temporary fascia/wall and freestanding signs: may be no larger than 32 sq. ft. in area.
		CS, CX	50 sq. ft.	100 sq. ft.	
	On private property the sign may be as large as 12 sq. ft.	CO2, CG, E, I	100 sq. ft.	200 sq. ft.	Temporary freestanding signs: may have two faces of 32 sq. ft. in area, provided the two faces are within 90 degrees of each other.
		Balloon signs may not be permanent and the maximum height is 25 ft.			
Number	Limited to the number of public entrances per building or buildings on the site. Multiple doors at one entrance count as a single entrance. If there are multiple tenants in a building, which share the same public entrance, only one sign can be registered. Tenants and property owner should coordinate the registration and display of a portable sign.	Up to three small banners, under 32 sq. ft. each, may be displayed per site without a registration, if you place only one per exterior wall or structure.			Lawn: no limit.
		Permanent banners are treated as permanent signs and must follow code for permanent signs.			Temporary fascia: one per street frontage.
		Only one balloon sign per site is allowed and must be registered.			Temporary freestanding: one per site, larger sites may install one per 300 lineal ft. of arterial street frontage.
	For sites without buildings, such as surface parking lots, each vehicle entrance counts as one entrance, limited to four portable signs.				
	One sign for businesses with service windows, but no public entrance.				
Location, Zoning and Mounting	Permanent portable signs are allowed and registered only in: RX (Central Residential), C (Commercial), E (Employment), or I (Industrial) zones, all other zones prohibited.	Banners must be securely mounted on a structure.			Lawn: allowed in all zones, but must be placed on private property only
	In the public right-of-way (streets and sidewalks), these signs must be within 6 inches of curb and must allow a clear pedestrian path no less than 6 ft. wide.	Balloon signs restricted to RX (Central Residential), C (Commercial), E (Employment), or I (Industrial) and may be located on a building rooftop.			Temporary fascia / freestanding: restricted to RX (Central Residential), C (Commercial), E (Employment), or I (Industrial).
	Portable signs are prohibited at street corners, transit stop areas, disabled access curb ramps, disabled parking spaces, at building exits or fire escapes, any portion of the street (medians, traffic islands, and parking areas), pedestrian pathways, bicycle paths, and sidewalks less than 8 ft. wide.				Temporary fascia: attached parallel to and not to extend from the façade, must not be attached to fire escapes, and not to exceed 6 inches above roof line.
	Portable signs can only be placed on the right-of-way adjacent to the property where the sign is registered or on the private property where the sign is registered. They cannot be placed across the street or a neighboring property.				Temporary freestanding: may have two faces, either back-to-back or at a 90 degree angle to each other.
Display Period	Temporary portable signs: (real estate open house, garage sale and other temporary events) may be displayed only between 6:00 pm Friday and 8:00 pm Sunday and from 6:00 am to 1:00 pm on Tuesday. May not be used at the same location regularly and must remain temporary.	Banners are limited to 180 calendar days per year.			Temporary fascia / freestanding signs: up to two consecutive 180-day periods without a permit or registration. A longer display period requires registration.
		Balloon signs are limited to a maximum of one week per calendar year.			
Prohibitions	Signs must remain portable and cannot be attached to the ground, pavement, street trees, light or utility poles, sign poles, parking meters, street furniture, etc.	Banner display on roofs, trees or other landscaping is prohibited.			Lawn: prohibited in the public right-of-way which includes the street area, sidewalks and the planting strip.
		Banners are prohibited on single family houses and duplexes.			
	Not allowed in the right-of-way in the Hillsdale Plan District.	More than 4 temporary banners on one site is prohibited.			No lights, other electrical components or changing image features.
	No lights, other electrical components or changing image features.				Temporary: may not extend into the right-of-way or on the roof.
	Not to exceed 12 sq. ft. in area.				
Registration	Each portable sign requires a separate registration, the registration options are listed on the registration form, these include: a one year or two year registration, or paying a one time fee.	Banners: larger than 32 sq. ft. or the fourth banner on a site must be registered.			Lawn: no registration
		Balloon signs must be registered.			Temporary Fascia/Freestanding: may be displayed for two consecutive 180 day periods without permit or registration. A longer display period requires registration and is limited to additional 360 days.
	Registration forms and permit applications are available online at www.portlandoregon.gov/bds and in the Development Services Center (DSC) at 1900 SW 4th Avenue.				
Inspections	Inspections are random or complaint based.	Inspections are random or complaint based.			Inspections are random or complaint based.
	Citations may be issued for improper placement, unregistered signs or improperly registered signs.	Citations may be issued for improper placement, unregistered signs or improperly registered signs.			Citations may be issued for improper placement, unregistered signs or improperly registered signs.
	Citations include a fine for the first infraction, if the same sign is cited three times, BDS will impound the sign and revoke the registration and/or prohibit future registration.				
Exemptions	Interior displays and inside windows are exempt.	Interior displays and inside windows are exempt.			Lawn: exempt from registration with BDS.
	Portable signs: exempt from Design Review.	Banners: in rights-of-way are regulated by PBOT.			
		Flags: exempt regardless of size or content.			

Helpful Information

Bureau of Development Services
City of Portland, Oregon
1900 SW 4th Avenue, Portland, OR 97201
www.portlandoregon.gov/bds

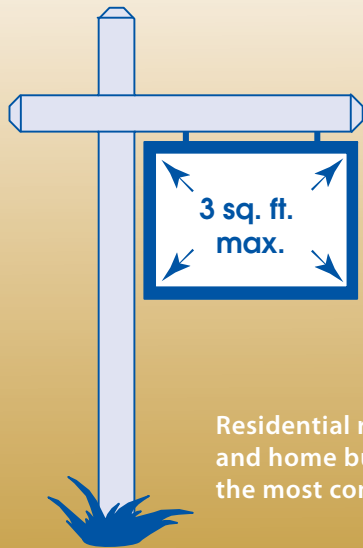
General Office Hours:

Monday through Friday, 8:00 am to 5:00 pm
BDS main number: 503-823-7300

Permit Information is available at the following location:

Development Services Center (First Floor)
For Hours Call 503-823-7310 | Select option 1
Permitting Services (Second Floor)
For Hours Call 503-823-7310 | Select option 4

- Portable Signs.....503-823-7891
- Signs, except portable.....503-823-7379
- BDS main line.....503-823-7300
- DSC automated information line503-823-7310
- Zoning information503-823-7526
- Permit information503-823-7363
- Transportation (PDOT)
 - Banners in rights-of-way.....503-823-5179
 - Sidewalk issues.....503-823-3467
- City of Portland TTY503-823-6868



Residential real estate signs and home business signs are the most common lawn signs



Examples of a properly displayed temporary lawn sign and a temporary freestanding sign

The information in this publication is an overview of portable and temporary sign regulations. Please contact BDS staff to get more detailed information. Sign fee information, permit applications and registration forms are available online and in the Development Services Center (DSC).

A clear pedestrian pathway is required between a portable/a-board sign and any other object or display on the sidewalk, as in the case of a sidewalk cafe.



Banners must be securely mounted on a structure.

For more detailed information regarding the bureau's hours of operation and available services;

Visit our Web site
www.portlandoregon.gov/bds

Online the Signs information, is located under the Permits tab | in the drop-down choose Signs.

Note: All information in this brochure is subject to change.

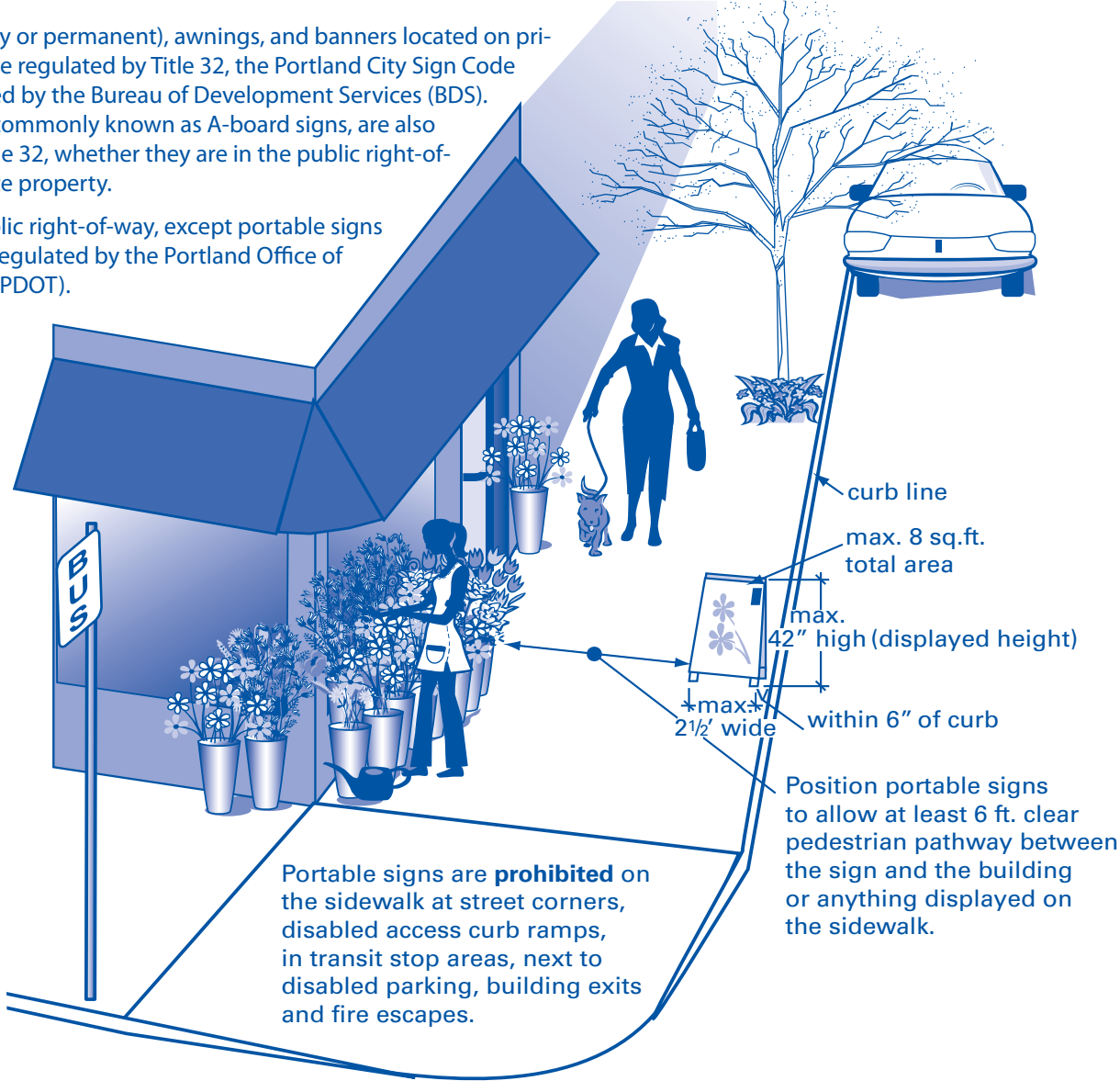
comm_signs 09/17/13



Signs: Portable and Temporary

Signs (temporary or permanent), awnings, and banners located on private property are regulated by Title 32, the Portland City Sign Code and administered by the Bureau of Development Services (BDS). Portable signs, commonly known as A-board signs, are also regulated by Title 32, whether they are in the public right-of-way or on private property.

Signs in the public right-of-way, except portable signs (A-boards), are regulated by the Portland Office of Transportation (PDOT).



Type of Sign	Definition
Portable	Movable sign that is not attached to a structure or the ground, includes: A-boards, portable reader-boards and similar signs.
Temporary portable	Movable sign with specific limited display times, typically used for real estate open houses, garage sales and other temporary events, but may not be used regularly in same location.
Banner	A sign made of fabric or other similar non-rigid material supported or anchored at four corners or along top with weighted bottom. A larger banner will require additional support and anchor points.
Balloon	Examples include giant inflatable balloons, hot air or flying balloons, fly guys/air dancers and balloon sculpture/arches.
Flag	A sign made of fabric or other similar non-rigid material supported or anchored along one edge or two corners. If any side is more than three times as long as any other side the flag becomes a banner.
Temporary fascia/freestanding	Registration through BDS when displayed for more than one year
Portable signs can only be placed on the right-of-way adjacent to the property where the sign is registered or on the private property where the sign is registered. They cannot be placed across the street or a neighboring property.	

* For information about permanent signs (other than portable permanent signs) and awnings, please visit the BDS Web site at www.portlandoregon.gov/bds, select the Pemits tab then Signs and Other Permits.



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Temporary Sign Registration

Permit number _____

FOR INTAKE, STAFF USE ONLY

Application date _____ Approved by _____

Issued date _____ Zone _____

Use a separate form for each individual sign. Complete applicable sections and please print legibly.

Sign location address _____

[Y] [N] Do you have permission of the property owner to register this sign?

Date of sign installation _____ Date sign to be removed _____

Property owner name _____

Owners mailing address _____

City _____ State _____ Zip code _____

Day Phone _____ FAX _____ e-mail _____

Applicant name (if different from property owner) _____

Applicants mailing address _____

City _____ State _____ Zip code _____

Day Phone _____ FAX _____ e-mail _____

Registration Fees, check one and then complete the referenced section, see reverse for limitations

☐ \$33 per month temporary banner (Complete A)

☐ \$69 per year temporary fascia sign (Complete C)

☐ \$33 one week temporary balloon (Complete B)

☐ \$69 per year temporary freestanding sign (Complete D)

A - Temporary Banner

Number of banners currently at site: _____

Current banner dimensions: _____

Proposed banner dimensions: _____

Proposed banner total area: _____

Location on building where banner is to be mounted: _____

Attachment/mounting method: _____

B - Temporary Balloon Signs

Proposed balloon height: _____ Balloon mounted on ☐ rooftop ☐ building ☐ ground ☐ Other

Anchoring or weighting method: _____

C - Temporary Facia Signs

Size in square feet of proposed sign: _____

Location on building where sign is to be mounted: _____

[Y] [N] Are there additional temporary fascia signs installed on other walls?

D - Temporary Freestanding Signs

Size in square feet of proposed sign: _____

Property location for sign (what street it faces) _____

[Y] [N] Are there additional temporary freestanding signs on this site?

If yes, what is total street frontage of this site? _____

Temporary Signs and Limitations

Banners

Many, but not all, temporary banners must be registered. Temporary banners are only allowed in non-residential zones and on uses in residential zones such as churches and schools that can use the CN standards. On any site up to three banners, each less than 32 sq. feet can be hung, provided there is not more than one banner on any one wall. Banners may not be hung on roofs. For banners larger than 32 square feet, or a 4th banner on a building, or a 2nd banner on a wall, registration is required. Temporary banner registrations are limited to 6 months during any calendar year. The property/business owner can use those 6 months in any combination provided no more than one registered banner is displayed at a time. Permanent banners must comply with permanent sign standards and be permitted as a permanent sign.

Temporary Balloon Signs

Temporary balloons are limited to being displayed for only one week in any calendar year. Only one balloon sign can be on any one site. Permanent balloon signs are prohibited.

Temporary Fascia and Freestanding Sign

Temporary fascia and freestanding signs are not required to be registered for the first 360 days of display. These temporary signs can be displayed for a second year provided they are registered. After the registration period expires, these signs must be removed or approved as a permanent sign. Temporary fascia signs are limited to an area of 32 square feet and no more than one may be displayed on any building wall. Temporary fascia signs are also limited to an area of 32 square feet per sign face, but may have two faces as much as 90 degrees from each other (back to back). Only one temporary freestanding sign is allowed per site for every 300 feet of arterial frontage.

Payment may be mailed to Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201, or may be made in the Development Services Center on the first floor. Make checks payable to the City of Portland.

For sign information call 503-823-0631.

Information is subject to change..



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Portable / A-Board Sign Registration

Permit number _____

FOR INTAKE, STAFF USE ONLY

Application date _____ Approved by _____

Issued date _____ Zone _____

Use a separate form for each individual sign. Complete all sections below and please print legibly.

Portable sign location address _____

Business name _____

Business owner's name _____

Business mailing address _____

City _____ State _____ Zip code _____

Day Phone _____ FAX _____ e-mail _____

Property owner name _____

Owners mailing address _____

City _____ State _____ Zip code _____

Day Phone _____ FAX _____ e-mail _____

Registration Fees (check one)

☐ \$70 per sign for 1 yr ☐ \$127 per sign for 2 yrs ☐ \$228 per sign for 4 yrs ☐ \$702 per sign one time fee (non-transferrable)

[Y] [N] Do you have permission of the property owner (where the sign is located) to register this sign?

Sign placement (check one)

☐ The sign will be located in the public right-of-way (public sidewalk or planting/parking strip). There must be 6 feet of sidewalk clearance for pedestrians. Signs can only be placed on the right-of-way adjacent to the property where the sign is registered. Signs cannot be placed across the street or on a neighboring property.

☐ The sign will be located only on private property.

Sign dimensions (enter dimensions in boxes to the left of item)

	Height of sign: maximum 3 ¹ / ₂ ft. (42") from ground to top of sign when displayed
	Width of sign: 2 ¹ / ₂ ft. (30") maximum if in right-of-way
	Area of sign face: 8 sq. ft. maximum if in right-of-way (height times width)
	12 sq. ft. maximum if on private property

Allowed number of portable / A-board signs is equal to (select one and enter number in box):

	The number of pedestrian entrances to the entire building(s) on the same site, not just your space
	If the primary use of the property is a parking lot or garage, the number of vehicle entrances to the site

OR

	Check box if being used for a Vending Cart
--	--

Payment may be mailed to Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201, or may be made in the Development Services Center on the first floor. Make checks payable to the City of Portland.

For sign information call **503-823-7306**. Please check our website at www.portlandoregon.gov/bds for current DSC hours.

Information is subject to change.



OREGON CITY BANNER POLICY REVISED 2013

PURPOSE

Currently, the City Code allows the installation of temporary banner(s) only upon the approval of the City Manager or his designee. This policy establishes universal guidelines for all City staff to follow when considering requests to display banner(s) within Oregon City's public right-of-way.

APPLICABILITY

This policy applies to all banner(s) installed in the public right-of-way within the city limits of Oregon City. Traffic control devices are exempt from this policy.

IN GENERAL

- A. **Banner(s) Definition.** Any banner, cross street banner, pennant, light pole banners, valance, flag, and/or seasonal decoration display constructed of cloth, canvas, light fabric, or other materials with or without frames intended to be attached to City street light poles, Portland General Electric (PGE) power poles, and/or Oregon Department of Transportation (ODOT) bridges, and intended to be displayed for a limited period of time.
- B. **Applicant.** Banner applications shall be accepted from local organizations that promote activities for neighborhood beautification, cultural and historical events, community fundraiser, youth events and public involvement. Banner applications will generally be processed and approved on a "first come, first serve" basis, however approval priority may be given to City events or events that have received sponsorship through the Metro Enhancement and/or Oregon City Civic Improvement grant process. Banner applications shall comply with the following criteria:
 - a) **A minimum of two weeks prior to the desired banner(s) installation date**, the applicant shall submit a completed City Banner Application/Permit Form.
 - b) Applicant shall apply, obtain, submit, and comply with the approved Portland General Electric (PGE) permit when applicable.
 - c) Applicant shall apply, obtain, submit, and comply with the approved "ODOT Banner Requirements" when applicable.
 - d) Applicant shall pay the City's banner application administrative fee.
 - e) For light pole banners(s) the applicant shall provide the City with a marked up location map showing the applicant's preference for banner locations. Note: Street light banner locations cannot be guaranteed.
 - f) Cleaning and structural repairs to banner(s) are the responsibility of applicant. All banners must be clean and in good condition when delivered for installation each season.
- C. **Banner Permit.** The City reserves the right to deny the issuance of Banner Permits for any reason. Banner Permits shall be issued by the City Manager or his designee for the installation of the banner(s) when the following criteria are met:
 - a) Applicant has complied with all banner policy requirements.
 - b) Applicant's signed City Banner Application/Permit Form has been reviewed and approved by City Manager or his designee.
 - c) Applicant has provided a Certificate of Insurance as specified in the permit.
 - d) Applicant has paid all fees including the Banner(s) Installation/Removal Fee(s).

- D. **City Responsibility.** Banner(s) shall be installed, re-secured, and removed by the City. The City reserves the right to change, withdraw, or remove the approved banner(s) at any time after the installation.
- E. **Banner Requirements.** Banner(s) within the public right-of-way and/or ODOT right-of-way for which a permit has been issued under this policy, may be installed with the following applicable requirements met:
1. The following requirements shall apply to all banner(s):
 - a) Banner(s) display periods shall typically not exceed 21 consecutive days in duration and no more than three times in any 12-month period. The City Manager or his designee may extend or shorten the duration of the banner display period and the frequency based on the demand for banner needs by applicants of other events. Exceptions may also be made for banners owned by public agencies for banners of a decorative intent.
 - b) Demand for banner locations is high. The City will work to accommodate event schedules to the extent reasonable and will strive to meet the standards established in this policy. However, if the banner demand exceeds the time available for installation and take down, or the availability of hanging locations is limited, the City may be required to find a compromise that may not be completely consistent with the applicants approved permit or preference.
 - c) Applicant shall provide a description and date of event, sketch of banner layout, content of banner, desired banner location, banner material, support/attachment material, and desired dates for banner installation and removal.
 - d) Banner(s) may contain the name, date and time, and general location of the event.
 - e) Banner(s) **may not include** any advertising, commercial message, brand, logo and/or product name, or other information that can be construed as an advertisement for a private business. Public agencies are exempt from this restriction.
 - f) Banner(s) shall be located within a five-mile radius of the event or as approved by the banner permit.
 - g) Applicant shall provide a description of special provisions for the banner(s) where applicable.
 - h) Applicant shall provide banner(s) and all support/attachment material for each banner as required.
 - i) Banner(s) shall not materially impair the purposes of the City's Sign Code. Seasonal decorations installed within the public right-of-way shall be considered to be such banner(s). The impact to the surrounding area at the banner location from lighting such banner(s) shall be reviewed during the application process.
 - j) City staff shall remove banner(s) within five (5) business days of the permit removal date.
 - k) Applicant shall provide a certificate of insurance for general liability naming the City of Oregon City, its officers, agents, and employees, as additional insured's for the project and include any other facility owners if applicable [i.e., State of Oregon (ODOT) and PGE].
 - l) Applicant shall sign banner permit, which includes the indemnification and hold harmless agreement and the insurance requirements.
 - m) All banner(s) shall be two (2) sided with the exception of the ODOT location at Highway 99E/Pedestrian Bridge.
 - n) Banner construction shall be in accordance with the banner construction standard listed herein (Section G) and the details shown on Exhibit 1.
 2. The following additional requirements shall apply to all banner(s) located on City street light poles:
 - a) If the applicant has specific location preferences, the applicant shall include a street light location map indicating the areas of preference.
 - b) Applicant shall provide support/attachment material for the installation of each banner and as specified on the approved banner permit. Typically, plastic ties of suitable size shall be designated on the application for attachment of banner(s) to street light poles.
 3. The following additional requirements shall apply to all cross street banner(s) locations; one located on ODOT facilities at Highway 99E/Pedestrian Bridge, and one located on PGE power poles #412 and #413 on Molalla Avenue at Beverly Drive:
 - a) Banner(s) shall not be installed or will be removed prior to removal date if the banner(s):

- (i) Interfere with, imitate, or resemble any official traffic control device or appear to attempt to direct the movement of traffic;
 - (ii) Prevent the driver of a motor vehicle from having a clear and unobstructed view of official traffic control devices and approaching or merging traffic;
 - (iii) Have any lighting, unless such lighting is shielded to prevent light from being directed at the roads/highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle; or
 - (iv) Are otherwise traffic hazards.
4. The following additional requirements shall apply to cross street banner(s) located on PGE power poles #412 and #413 on Molalla Avenue at Beverly Drive:
- a) PGE permit must be obtained and submitted with City Banner Application/Permit Form.
 - b) All PGE policies and requirements shall be met.
 - c) All requirements within this policy and including cross street banner(s) requirements shall be met.

F. **Banner Locations, Application/Permit Administrative Fee, and Installation/Removal Fee.**

Banner Type / Location	Application/Permit Administrative Fee \$ / Application	Installation and Removal Fee \$ / Banner
City Street Light Pole Banner(s) / Various Designated Locations	\$40	\$25 / banner
PGE Power Poles Cross Street Banner / Molalla Avenue at Beverly Drive	\$40	\$210
ODOT Bridge Cross Street Banner / Highway 99E/Pedestrian Bridge	\$40	\$ 60

G. **Banner Construction Standards.**

- a) Banners shall be constructed in accordance with these standards and as shown on attached as Exhibit A.
- b) Banner(s) shall be made of a durable material constructed to withstand wind pressure of 20 pounds per square foot of exposed surface.
- c) For street light banners we recommend that banner material be made of two ply 12-ounce vinyl banner sheeting sewn together with a 1-1/2 inch border hem, or a commercial heat sealed hem.
- d) For cross street two sided banners we recommend two ply 22-ounce vinyl banner sheeting sewn together with a 1 ½ inch border hem, or a commercial heat sealed hem. Wind slits are recommended.
- e) Cross Street Banner support/attachment material shall be 40 feet of cord rope 1/4" diameter or, ½ inch wide flat fiber ribbon rope. Applicant provides all support/attachment material for the installation of each banner and as specified on the approved banner permit.
- f) Banner(s) shall have 20 feet minimum clearance between the bottom of banner and the roadway surface and clearance shall be maintained at all times.

SUMMARY OF BANNER APPLICATION/PERMIT AND INSTALLATION PROCESS

To receive a permit for installation of banner(s) within Oregon City's public right-of-way and/or at the designated ODOT location, the Applicant shall follow the steps below.

BANNER APPLICATION PROCESS

1. Become familiar with the locations where banner(s) are allowed:
 - Various designated City street light poles on 7th Street, Molalla Avenue, Main Street, and Washington Street (pennant signs)
 - PGE power poles #412 and #413 on Molalla Avenue at Beverly Drive (cross street banner)
 - ODOT Highway 99E/Pedestrian Bridge (cross street banner attached to bridge)
2. If applying for a banner installation on PGE power poles #412 and #413, obtain appropriate permit from PGE and submit PGE permit with City's banner application. All PGE and cross street banner policies, requirements, and permit conditions must be met, including banner(s) size, material construction, support/attachment material, and content. The ODOT banner location shall be permitted through the City with all ODOT and cross street banner requirements met.
3. Complete City Banner Application/Permit Form **a minimum of two weeks prior to desired banner(s) installation date**, Applicant submits City Banner Application/Permit Form with payment of Administrative Fee and include the approved PGE permit when applicable. Banner Applications are processed and approved on a "first come, first serve" basis. The application must be signed by the applicant, which includes the insurance requirements and the indemnification and hold harmless agreement.
4. City reviews Banner Application/Permit Form and notifies Applicant of the approval or denial of the application.

BANNER PERMIT PROCESS

1. After the applicant is notified of their Banner Application approval, the Applicant pays Banner Installation/Removal Fee to the City and provides a Certificate of Insurance naming the City as additional insured. PGE and/or ODOT must also be named additional insured when applicable.
2. City schedules the installation of banner(s) per the Banner Permit dates.

BANNER INSTALLATION/REMOVAL PROCESS

1. Provide City with banner(s) and support/attachment material as specified within banner permit.
2. City installs banner(s) per installation date specified in the Banner Permit and removes banner(s) within five (5) business days from the removal date specified in the Banner Permit.
3. Applicant shall retrieve banner(s) from the City after banner removal.



OREGON CITY

PUBLIC WORKS DEPARTMENT BANNER APPLICATION / PERMIT FORM

Each year, Oregon City Public Works receives numerous requests to install banners, pennants, seasonal decorations and/or other displays for attachments to City street light poles, PGE power poles, and ODOT bridges. Oregon City Public Works endorses local activities that promote neighborhood beautification, cultural and historical events, youth events and public involvement. We look forward to working with you to make your event a success.

Oregon City Public Works reserves the right to deny any banner application for any reason or to change, withdraw or remove the approved banner(s) at any time after the installation. Banner applications are processed when received and approved on a "first come, first serve" basis. Oregon City Banner Policy and Application/Permit Form outlines banner requirements needed for personal and public safety and for the protection of City property.

Please see the Insurance Requirements and Indemnification sections on page 2 of this form. Please note that banners installed on PGE power poles require a permit from PGE and banners installed within ODOT right-of-way require a permit from ODOT (see below).

Desired Date of Installation: _____ **Desired Date of Removal:** _____

Organization Name: _____ **Phone:** _____

Is your organization a non-profit? _____ **Yes** **No** _____

Contact Name: _____ **Phone:** _____
Last First Middle Initial

Email Address: _____

Address: _____ **City/State/Zip:** _____

Please describe event and the content of banner:

Banner location:

- ☐ PGE Power Poles #412 and #413 Cross Street Banner on Molalla Avenue at Beverly Drive (**PGE permit required**, contact PGE banner coordinator at 503-672-5552)
- ☐ ODOT Bridge Cross Street Banner at 99E/Pedestrian Bridge (**ODOT permit also required**, contact ODOT banner coordinator at 971-673-6226)
- ☐ Banner Posts at Highway 213 and Washington Street

Fees for Banner Application/Permit and Installation/Removal

			<u>Total</u>
Banner Application/Permit Administrative Fee	(per application)	\$40	\$
		<u>Installation/Removal Fee</u>	
Cross Street Banner on Molalla Ave at Beverly Dr (PGE)		\$210	\$
Cross Street Banner at 99E/Pedestrian Bridge (ODOT)		\$60	\$
Cross Street Banner at Hwy 213 & Washington St		\$60	\$
	<u>Quantity</u>	<u>\$/Banner</u>	<u>Total Install/Removal Fee</u>
City Street Light Pole Banners	_____	x \$25/banner =	\$
(Maximum of 25 banners)			
Total Fees for Banner Project			\$0.00

**CITY OF OREGON CITY
PUBLIC WORKS DEPARTMENT
BANNER APPLICATION/PERMIT FORM
page 2 (continued)**

Insurance Requirements:

The applicant shall provide a Certificate of Insurance for General Liability naming Oregon City Public Works as an additional insured for the project. Minimum coverage shall be combined single limit of \$1,000,000 per occurrence and \$1,000,000 aggregate. Prior to installation, appropriate evidence of such insurance shall be deposited with Oregon City, as well as a provision for 30 days' written notice of cancellation. Notice of cancellation of the Customer's insurance policy shall constitute a breach of contract by the Customer.

Indemnification Agreement:

In consideration of the issuance of a permit/permission by the City of Oregon City for the applicant to hang a banner across a City street, the undersigned permittee hereby agrees to indemnify and hold the City of Oregon City, the City Commissioners and the officers, agents and employees of the City (the indemnitied) harmless from all liability, damage, loss, cost or expense, including but not limited to attorney's fees, that the indemnitied may sustain or incur on account of:

- 1) any damage to or destruction of any property that the City may own or in which it may have an interest;
 - 2) any loss or damage resulting from injury to or death of any person or persons resulting from or in any way connected with the use by the permittee, its agents or employees, of the street area or facility to which the permit/permission pertains.
-
-

Please sign the application and return to Oregon City Public Works at the address below.

After the permit is approved by the City, and the Applicant has paid all Banner Fees and provided the proof of Certificate of Insurance to the City, then a copy of the approved Banner Permit will be returned to the Applicant.

Signature of Applicant

Date

Agency Authorization

Date

P:\Division Folders\Street\Banner Program\Forms\BannerApplication-Permit Form Final.xlsx

Code and policy examples were gathered from League of Oregon Cities (LOC), Lake Oswego and Portland.

Summary of standards

	Over the street	Street pole
Size/clearance	<p><u>LOC</u>: Up to 60 sq. ft. (no dimensions given) <u>LO</u>: 3 x 30 ft. (90 sq. ft.) <u>PDX</u>: no size limit given; clearance of 18 ft. over streets, 10 ft. over sidewalks</p>	<p><u>LOC</u>: Up to 12 sq. ft. (no dimensions given) <u>PDX</u>: 4x5 ft. max, 11 ft. over sidewalk, no more than 150 banners per event</p>
Location	<p><u>LOC</u>: In vicinity of event, or otherwise allowed If identifying a geographic area or district; separate standards for transit mall <u>LO</u>: At discretion of City Manager, defined in policy at one location: Leonard street over State Street <u>PDX</u>: In vicinity of neighborhood or event it is announcing. Cannot be installed at intersections or City poles.</p>	<p><u>LOC</u>: In vicinity of event, or otherwise allowed If identifying a geographic area or district <u>PDX</u>: Only allowed on Twin Portland Traditional street light poles in certain districts; not allowed on poles with photo sensor or in front of traffic control devices or signs</p>
Duration and installation/removal	<p><u>LOC</u>: <i>Banners tied to community event</i> - removed within 2 days of event end <i>Geographic banners</i>- no limit <u>LO</u>: NLT 25 consecutive days, once per year, removed within one day of event (policy says banners are installed and removed on Mondays) <u>PDX</u>: Maximum of three weeks</p>	<p><u>LOC</u>: <i>Banners tied to community event</i> - removed within 2 days of event end <i>Geographic banners</i>- no limit <u>PDX</u>: Not allowed during Rose Festival</p>
Approvals required	<p><u>LOC</u>: <i>Banners tied to community event</i> - approved by City Council <i>Banners identifying geography</i>- NHA assoc. or 51% of property owners/businesses in area <i>All</i> - written consent from agency controlling ROW <u>LO</u>: City manager, property owner, PGE approval for utility pole use, ODOT approval for state highway ROW, plus temporary sign permit <u>PDX</u>: Application, plus letter of authorization from structure owner and one NHA</p>	<p><u>PDX</u>: Available for non-profit orgs only, application required. Note, policy includes obvious content restrictions</p>
Mounting	<p><u>LO</u>: Plans or description required <u>PDX</u>: wind slots required, hemmed, grommets, 5/16" or larger rope and 3/8" or larger steel support cable</p>	<p><u>PDX</u>: Must have wind vents, must be attached to pole with PVC pipes and nylon straps (described in graphic)</p>
Insurance required	<p><u>LO</u>: For property owner where sign is located <u>PDX</u>: provided by one of the NHAs or a non-profit agency, per right-of-way permit requirement.</p>	<p><u>PDX</u>: \$1M liability insurance per event</p>

LOC model code (over the street and street pole)

1. Temporary banners or seasonal holiday decorations which extend over a roadway or are attached to utility or streetlight poles shall be permitted in the right-of-way upon issuance of a permit in accordance with the procedures set out in Sections XX.XX.125 and XX.XX.135 of this chapter and shall comply with the following standards:
 - a. Banners or decorations which extend over a roadway shall not exceed sixty square feet in area. Banners which are attached to a single utility or streetlight poles shall not exceed twelve square feet in area.
 - b. Temporary banners or decorations shall be permitted only if the applicant is conducting an event or activity in the city of [City] that has been identified as a community event by the [City] city council or for purposes of identifying a geographic area or district of the city. Applications for geographic identification banners shall be submitted by an organized neighborhood association, or shall be accompanied by a petition indicating the consent of at least fifty-one percent of the property owners or retail establishments in the geographic area delineated on the banner application.
 - c. Applicants requesting permits for temporary banners or decorations in city of [City] right-of-way shall obtain all permits and approvals as outlined in Chapter XX.XX.045(D) of this Code prior to submittal of an application for a sign permit. Applicants requesting temporary banners placed over rights-of-way controlled by other agencies other than the city of [City] shall obtain written consent from the appropriate agency regarding the proposed banner(s) prior to submittal of an application for a sign permit. The consent shall identify any restrictions desired by the owner of the right-of-way.
 - d. Except for a banner(s) identifying a geographic area or district of the city, banner(s) shall be removed within two days of the applicant's event or activity giving rise to the permit.

Lake Oswego (over the street)**Policy**

<http://www.ci.oswego.or.us/publicworks/special-event-sign-banners-over-roadway>

Special event banner signs are temporary banners that are hung over the roadway to advertise upcoming events in or near Lake Oswego. A banner sign may be posted for a maximum of one week during high season (April to August) and two weeks during low season (September to March), once per calendar year. Maximum size is three feet in height and 30 feet in width.

There is one location in the City where the public is permitted to hang banner signs over the roadway: at Leonard Street over State Street in downtown Lake Oswego. (Banners for City-sponsored events are located elsewhere). The signs are installed and removed by the City's Operations Division on the dates specified by the applicant if they have obtained a Temporary Banner Permit (see permit instructions below). Banners are installed and removed on Mondays. Since banner signs are hung from utility poles owned by Portland General Electric (PGE), written permission from PGE and liability and/or property damage insurance is required to hang the sign. Additionally, because State Street is a state highway, written permission from the Oregon Department of Transportation (ODOT) is required to hang a banner sign. Springtime and summertime are the busiest times of the year for banner signs, so it is strongly recommended that anyone wishing to advertise an event apply early to reserve a spot. Banner applications are accepted up to 6 months in advance. Only complete applications that include all necessary written authorization from PGE and ODOT will be accepted to reserve time slots.

1. Check with Traffic Engineering to see what time slots are available

Note: the calendar is updated daily, so time slots are not guaranteed to be available until a

complete sign banner application form is filed with the City. Time slots and banner locations are reserved on a first come first serve basis.

2. To obtain written authorization from ODOT, fill out the two page ODOT application including a drawing of the banner, and mail to the address below. Only original copies are acceptable, so faxing and emailing the information are not options. Include a copy of the authorization with the Sign Banner Permit application to the City. The contact information for ODOT is as follows:

Lisa Kraxberger, Office Specialist II
 ODOT
 6000 SW Raab Road
 Portland, OR 97221
 (Phone) 971-673-6200
 (Fax) 503-653-5655

3. To obtain written authorization and liability and/or property damage insurance from PGE for the time slot you wish to reserve, fax the 10-page application, including map showing banner location, drawing of banner, and copy of approved ODOT permit to PGE at the address below. A copy of the authorization and insurance must be submitted with the Sign Banner Permit application to the City. The contact information for PGE is as follows:
4. Tanner Bertsch, Utility Asset Management
 Portland General Electric (PGE)
 2213 SW 153rd Drive
 Beaverton, OR 97006
 (Phone) 503-672-5576 for receptionist
 (Fax) 503-672-5555
 Email: Tanner.Bertsch@pgn.com
 Note: The PGE pole numbers for this location are #25 and #1095.
5. Complete the City's Sign Permit Application Form and turn in the application packet to the Planning Department on the third floor of City Hall. See a complete list of the permit requirements below.
6. After obtaining a Temporary Sign Permit at City Hall, take the permit and the banner to the City's Operations Division (5705 Jean Road), at least one week prior to the installation date. The Operations Division will install and remove the banner on the dates specified by the applicant (not to exceed two weeks for low season and one week for high season in duration).

Banners are installed and removed on Mondays.

Code

[47.08.305 Temporary Signs Requiring Permit.](#)

1. a. The City Manager may allow temporary signs larger than those allowed by LOC [47.08.300](#) to be erected. This signage shall not be restricted by content, but is usually and customarily used to advertise special events and store openings on banners. The City Manager shall allow the erection of such signs only if the City Manager finds that the proposed sign will not materially impair the purposes of the Sign Code expressed in LOC [47.03.010](#). Seasonal decorations erected within the public right-of-way shall be considered to be such signs. These signs shall meet all applicable City Code provisions. Lighting of such signs will be reviewed as part of the application and may be allowed depending on impact to surrounding development.
- b. In addition to subsection (1)(a) of this section, the following temporary signs require a permit:
 - i. Residential Zones: Temporary signs permitted by LOC [47.08.300](#)(2)(a)(ii) that are required to be removed following sale, lease or rental of property, when the residential use on the site is apartments for rental, unless the entire parcel is for sale.

- ii. Commercial Zones and Industrial Zones: Temporary signs permitted by LOC [47.08.300](#)(2)(b)(ii) that are required to be removed following sale, lease or rental of property, unless the entire parcel is for sale.
- 2. The following requirements shall be met, as applicable:
 - a. Written consent from the property owner where the sign will be located shall be provided. The consent shall identify any restrictions that the property owner requires of the permit holder. Banners hung from utility poles shall require written approval from Portland General Electric. Banners hung over a state highway will require written approval from the Oregon Department of Transportation.
 - b. Plans or a description showing the location of the sign; banner height above the right-of-way; support devices for the banner; and proposed dates shall be provided.
 - c. The display period shall not exceed 25 consecutive days in duration and no more than once in any 12-month period. All such signs shall be removed no later than one day following the event being advertised.
 - d. A copy of any liability and/or property damage insurance required by the property owner where the sign or banner will be located.
 - e. A signed rebate and indemnity agreement shall be provided if placing a banner over the public right-of-way.
 - f. Temporary signs required to obtain a permit under subsection (1)(b) of this section shall comply with the provisions of LOC [47.06.200](#)(3) through (5).
- 3. The extent of signage allowed and the location of the signage is at the discretion of the City Manager.

City of Portland (over the street and street pole) highlights indicate obvious content restrictions

Over the street policy

TRN-10.01 - Banner Across the Right-of-Way Permits

BANNER ACROSS THE RIGHT-OF-WAY PERMITS

Administrative Rule Adopted by Bureau of Transportation Engineering & Development Pursuant to Rule-Making Authority

I. Definition

The City periodically receives requests to place banners in the right of way for the purpose of identifying a neighborhood or a public charitable event. Permits are issued for three types of banners placed on one of three types of structures: street light poles, utility poles or Transit Mall banner standards (as defined in 17.45.020). For banners that hang over the public right-of-way affixed to utility poles and on the Transit Mall banner standards, permits are issued through Street Systems Management. Permits issued for hanging banners on street lights are issued by the Street Lighting Division of The Bureau of Transportation System Management.

II. Transit Mall Banner Reference

City Code Title & Chapter 17.45

III. Administrative Rule for Banners Outside of the Transit Mall

1. The banner and group making the request must meet the following conditions:

- a. The banner may be in place for a maximum of three weeks.

b. The banner must be installed in the vicinity of the neighborhood or public charitable event it is announcing.

c. Logos of commercial supporters who help defray the cost of a banner shall be unobtrusive (typically less than 18" in diameter on a 3' by 24' banner).

d. Installation of banners at intersections, in the underground wiring districts and on City street light or traffic signal poles is not permitted.

e. Banners shall be installed with the bottom of the banner a minimum of 18 feet above the travel way and a minimum of 10 feet above the sidewalk area.

f. The banner shall be fabricated with crescent shaped slots held closed with a small piece of material or thread, which will blow open if a wind gust hits the banner, or some other equivalent means of reducing wind loading.

g. The banner shall be hemmed, fitted with grommets and constructed with a 5/16" or larger nylon rope for mounting to the support cable. The banner is mounted to a 3/8" or larger steel cable strung between the cable mounts.

h. The applicant must provide the City with a letter of authorization from whomever owns the structure on which the banner will be mounted.

i. A letter of support should be submitted from one of the recognized neighborhood associations.

j. Liability insurance shall be provided by one of the recognized neighborhood associations/district neighborhood coalitions or by a non-profit agency. See insurance requirement for right-of-way permits.

2. Application requirements for banner permits include:

a. Letter requesting a banner permit which includes a description of the event and the requested location, dates, contact person and phone number;

b. Information on the banner including the layout, design, construction, method of hanging the banner and any necessary engineering calculations demonstrating the mounting system will support the banner from failing;

c. Letter(s) of authorization from whomever owns the structure on which the banner will be hung

d. Liability insurance certificate and additional insured form that meet City of Portland Office of Transportation insurance requirements.

3. For further information, you may contact 503.823.7002.

4. Fees are full cost recovery per City Code 17.24.020.

IV. REFERENCE 17.45

Street pole policy

Portland Bureau of Transportation has published policy and standards for installation of banners on street poles.

<http://www.portlandoregon.gov/transportation/article/192892> (includes installation figures)

This is supported by authority separate from the sign code reserving sole use of street poles, and also establishes reciprocal use between the city and utilities: [17.64.040 Use of City Poles or Posts](#).

Purpose

The purpose of this program is to allow **nonprofit** organizations to promote events or occasions that have a direct and substantial civic benefit. The event or occasion should:

- be reasonably available to all citizens (as spectators or participants);
- benefit locally-based nonprofit organizations;
- be significant and large enough that it will be of interest to many citizens;
- be appropriate for display on city-owned street light poles.

The event or occasion using the banners should not be political, religious, commercial, or profit making. Examples of eligible events or occasions have included the Rose Festival, Portland Opera, Bridge Pedal, Red Cross Month, Shamrock Run, OMSI, and the Zoo.

Special permits may be granted for promoting certain business districts. Profit making organizations may hold permits if the organization is acting as the agent providing insurance, sponsorship, management, etc. for a nonprofit organization.

Banners may display corporate logos or similar endorsements if they are not the dominant element in the composition of the banner.

The City Traffic Engineer, or his designee, may regulate the composition, content of the banners, and impose other conditions or regulations necessary in the interest of the appearance of the street and the public's safety.

Time and Locations of Banner Placement

Banners may be installed on Twin Portland Traditional street light poles located in the Central Business District (SW and NW), Lloyd District (NE), SE Grand, and SE Morrison throughout the year. However, there are certain times and locations when and where banners may not be installed. They include:

- During Rose Festival activities
- On the MAX route
 - SW 1st - SW Everett to SW Yamhill Street
 - SW Morrison - SW 1st to SW 18th Avenue
 - SW Yamhill - SW 1st to SW 18th Avenue
 - SW 18th - SW Morrison to SW Jefferson
 - NE Holladay (northside of the street) - NE MLK to NE 13th Ave
- By the Convention Center
 - NE MLK Jr. Blvd- NE Lloyd to Holladay
 - NE Holladay - NE 1st to NE MLK JR Blvd
- On street lights under repair or maintenance

Due to the high demand of the Twin Portland Traditional street light poles along SW/NW Broadway, SW Fourth Avenue, and SW/NW Naito Parkway, only one side of those streets may be reserved. Please designate which side of the street your organization would prefer. We will try to get you the streets you request; however, in case of a conflict, we will recommend other available streets.

Banner Installation

Installation of the banners is the responsibility of the permittee - the City will not do this. Banners must be installed according to the City's specifications:

- Banners must be double backed in Central Business District and Lloyd District
- Banners must be no larger than 4 feet by 5 feet (see drawing)
- The bottom of banners must be at least 11 feet above the sidewalk
- Banners must have wind vents (see Figure 1)
- Banners must be attached to the poles (see Figure 1)
- **Do Not** mount banners on poles with photo sensor (see Figure 2)

- **Do Not** mount banners in front of Traffic Control devices or signs
- Maximum of 150 banners per event.

Banners not installed per City specification and deemed to be a hazard will be removed, and the cost of the removal will be the permittee's responsibility.

Maintenance

The permittee will be responsible for the maintenance, replacement, and upkeep of banners while installed on the City of Portland street light poles.

Streetlight Damage Liability

The permittee will be responsible for all costs to repair damages to the street lights caused by installation, while installed, and removal of the banners on the City of Portland street light poles.

Insurance Requirement

The permittee shall provide satisfactory evidence of public liability insurance, endorsed to name as additional insureds the City, its officers, agents, and employees as to any claim or claims for damage or injury resulting from or growing out of the operations of the applicant under the permit applied for, and containing a further endorsement that the policy shall not be canceled without 30 days prior written notice to the City Traffic Engineer.

The endorsement shall be either (1) in the form attached as Exhibit A; or (2) in the form of Insurance Services Organization (ISO) Form CG 2012. The insurance shall provide coverage of not less than \$1,000,000 (one million dollars) per occurrence.

Proof of such insurance must be submitted to the Street Lighting Section and approved prior to installation of banners.

Revocable Permit

The permit will be revocable at any time at the sole discretion of the City Traffic Engineer or his designee. Should the permit be revoked, the permittee shall remove its banners from the street area as directed by and to the satisfaction of the City Traffic Engineer or his designee. If the permittee fails to remove its banners as directed and to the Engineer's satisfaction, the City or its contractors may remove the permittee's banners; in this case, the permittee shall be

responsible for all costs incurred by the City or its contractors in removing the banners. Furthermore, if the permit is revoked, the City shall not be liable for any costs of whatever nature incurred or suffered by the permittee or anyone else arising from the revocation of the permit.

How to Apply for a Banner Permit

Banner installations will be allowed on a "first come, first serve" basis. Applicants for the permit **may not** request banner locations more than two (2) months in advance of the event. In addition, to provide adequate processing time the applicant may not request less than three (3) weeks in advance of the event. Your request must be submitted in written form via a letter or email and must contain the following information:

- Name of the Permittee, including a contact person and phone number
- Name of the benefiting organization(s)
- Name, description, and date of the event
- Name of the company installing the banners
- Number of banners to be installed
- Proposed banner locations; i.e., street name and cross streets - please check the locations and assure the number of banners to be installed matches the number of poles available
- Dates of banner installation and removal - duration is one month.

The request will be processed within 5 days of receipt. The City will send you a completed permit form, acceptance of terms and conditions form that requires the signature of the contact person. Please sign and return the permit with the proper insurance certificate and additional insured endorsement. If the necessary documents (permit and insurance endorsement) are not in the possession of the Street Lighting section at least 2 weeks before the banners are to be installed, the permittee will not be allowed to hang the banners. For the permit to be valid, it **must** be signed by the City Traffic Engineer or designee.

Please address your banner request to:

Bonnie Nicholas

Signals, Street Lighting & ITS Division
Bureau of Transportation

City of Portland
1120 SW 5th Avenue, Room 800
Portland, OR 97204-1914

Mobile Billboards









Category:	General
Winner or Honorable Mention:	Honorable Mention
Title of the Project:	Sign Compliance in Federal Way
City:	City of Federal Way
Population:	83,259
Name:	Deb Barker
Title:	Associate Planner
Phone:	253-661-4103

SIGN COMPLIANCE IN FEDERAL WAY

The City of Federal Way Sign Compliance Program has been a ten-year commitment that has brought together citizens, business owners, elected Officials and City staff in united efforts to establish and enforce signs regulation, remove sign clutter, and improve the appearance of the City of Federal Way.

Why was it needed?

Prior to city incorporation, there was little evidence of sign enforcement. Signs were installed in the right of way and portable signs cluttered the landscape. Pole signs dominated the visual field of many major city streets. This visual blight contributed to poor property and business image. It was found that the unregulated proliferation of signs detracts from the economic value of the community. The proliferation of signs created a visual distraction for drivers of motor vehicles, detracting from traffic safety.

In 1990, Federal Way incorporated as the sixth largest city in the state. The drive to incorporate was fueled by changing growth patterns, increasing traffic congestion, and desire for local control. At incorporation, the City Council adopted zoning regulations patterned after those in Kirkland, including sign regulations. It was apparent that these standards did not reflect the retail and business character of Federal Way, so development of a revised or new code was authorized. The intent was to provide for signage more appropriate to Federal Way's needs, yet maintain control over significant issues relating to design aesthetics and sign clutter.

City staff recognized early in the process that sign regulations were pointless unless they were actively enforced. Staff also realized that there could be no significant change in appearance of the city unless a realistic amortization period was established and backed by incentive programs. With these points in mind, sign regulations and enforcement measures were created to change the look of Federal Way.

What is the program?

The Sign Compliance Program is a layered approach conducted over several years, resulting in comprehensive sign regulations and enforcement measures. The components include:

- **1990 SIGN ENFORCEMENT:** On February 28, 1990, the City of Federal Way incorporates. A 1995 sign amortization date is established with new city code. City staff review all sign permit applications and pick up signs in the right-of-way.
- **ROW SIGNS:** Weekend sign sweeps are conducted. Over 100 nonconforming signs are picked up each month.
- **1994 REVISIONS TO THE SIGN CODE PLANNED:** In 1994, a Citizen Advisory Committee was formed and works for 9 months with staff on sign code revisions. The Federal Way Planning Commission held 7 public hearings on sign issues.
- **1995 NEW SIGN CODE ADOPTED:** Features of the new sign code include the extension of the amortization period to February 28, 2000, prohibition of pole signs, adoption of citation procedures for nonconforming signs, and portable signs and banners require immediate compliance. A systemic approach to enforcement was adopted with the highest priority area being the downtown followed by outlying business areas, and residential neighborhoods last.
- **1995 SUMMER SIGN INVENTORY:** Notification was sent to all businesses about the new sign regulations and that an inventory would be conducted. The first intern crew was hired to inventory 2,900 signs within the city. The inventory established which signs did not meet the adopted code standards.
- **SUBSTANTIAL PUBLIC OUTREACH:** From 1995 to 2000, the City made a significant effort to notify businesses and property owners of the regulations and compliance deadlines. In 1995, initial letters were sent to all businesses and property owners alerting them to sign code regulations and identifying specific information through nonconformance permits. Over 50 newspaper and newsletter articles about signs were published by local press. Staff held individual meetings with approximately 200 business and property owners to discuss sign conformance options and held a sign contractors workshop.
- **1996-1997 ANALYSIS:** The interns analyzed the signs and issued nonconforming sign notices to over 800 businesses.
- **1998 INCENTIVES TO COMPLY:** Sign code incentive program adopted by City Council. \$200,000 of utility tax money was designated by council to assist businesses owners with sign compliance. Formed partnership with Chamber of Commerce for outreach and administration of program. Low interest loan program was also made available through a local bank.

- **1999 D-DAY PREPARATION:** As the amortization deadline approaches, the sign code is fine tuned for clarity, the City Council approves the Sign Compliance Plan, city staff invite business owners to come and speak with staff to learn about sign options for their business and properties (128 take advantage of these meetings), and staff conduct a sign contractors forum to provide training on the sign code to sign contractors.
- **SIGN COMPLIANCE 2000:** On February 28, 2000, the sign amortization period expires. Applicants rush to submit sign permit applications before the deadline. 89 applications are received in February and March alone. Site inspections confirm 597 nonconforming sign sites. 384 cases are closed in 14 months.
- **Implementation: 2001 -** Over 725 business and property owners have brought their signs into compliance with the sign code.

What are the costs?

Costs of the Sign Compliance Program include the following:

- **SIGN INCENTIVE PROGRAM** - The city created a sign incentive program to assist business owners with costs associated with sign compliance. Staff recognized that implementing the sign compliance program was furthered by providing monetary incentives to those seeking to comply with the requirements. The City Council designated the use of \$200,000 of utility tax funds to assist business owners with sign compliance and low interest loan program available. Owners could apply for 25 percent reimbursement of sign costs up to \$20,000. The sign incentive program was administered by the Chamber of Commerce and the City of Federal Way. A low interest loan program was also offered.
- **CODE ENFORCEMENT STAFF** - Staff time included one full time staff person at \$50,000 per year with benefits.
- **SIGN INTERNS** - The first intern crew was hired in 1995 to inventory 2,900 signs within City limits. Teams worked during summers to inventory signs, and input the findings into a database developed to track sign conformance. Over the 10 years of the Sign Federal Way Sign Compliance Program, 15 interns were hired. The interns worked approximately 40 hours per week up to 30 weeks per year and were paid \$10.00 per hour.

What are the benefits?

The benefits of the sign compliance program is renewed pride in the community, commitment to the visual aesthetic in the city, and improvement in the appearance and function of the built community. The City has found that reasonable regulation of signs serves to alleviate visual clutter and thereby preserves community scenic, economic and aesthetic values. The regulation of signs supports and enhances the economic well-being of all businesses within the City while providing the opportunity for all businesses to identify their premises and advertise their products.

The ten year amortization period, which ended on February 28, 2000, for the removal of nonconforming signs was sufficient to ease the economic impact of the adoption of the sign code and allowed such signs to have their value amortized. As the sign amortization period ended, staff identified 597 nonconforming sign cases. 384 cases were closed in 14 months following the end of the amortization program. Today, 116 non-conforming sign cases remain primarily in multifamily complexes.

Because of the 2000 amortization deadline, the most striking changes in sign compliance have occurred from 1999 to the present. Downtown Federal Way has been transformed from a disorderly array of signs and symbols to predictable business identifiers. Visual clutter is gone from major thoroughfares. Pole signs which once towered over businesses, sometimes 30 feet in the air, have been replaced by monument and pedestal signs that complement the scale of the adjacent businesses, not the roadway.

Several keys to the success of the Federal Way Sign Compliance Program are: • Strong City Council support for the Program • Partnership with the Chamber of Commerce • Resources to get the job done • Community outreach

Summary:

As a civic effort to beautify the City of Federal Way, the Sign Compliance Program incorporated sign code fine tuning, identification of nonconforming signs, systematic enforcement of nonconforming signs, adoption of incentives coupled with agency partnerships and active public outreach. With nonconforming signs removed, changes to the landscape are profound and economic well being of the city is preserved.

Enclosures

Copy of the Federal Way Sign Code Then and Now Photos

Public outreach materials Newspaper Articles

Federal Way Sign Compliance Program

Page 3

60.40. SIGN REGULATIONS.

60.40.05. Purpose. The general purpose of this Chapter is to provide one of the principle means for the implementation of the Beaverton Comprehensive Plan, to ensure the continued aesthetic improvement to the City's environment, and to promote traffic safety, all by classifying and regulating the location, size, design, type and number of signs and related matters.

60.40.10. Signs Exempt from Permits and This Ordinance. The following signs are exempt from this ordinance and do not require permits:

1. Traffic or other governmental street signs, such as railroad crossing signs and notices, as may be authorized by the City.
2. Signs of public utility companies indicating danger, or which serve as an aid to public safety, or which show the location of underground facilities or of public telephones.
3. Signs not visible from public right-of-ways. [ORD 3374; July 1984]
4. Public Art as defined in Section 2.03.239.A. of the Beaverton City Code. [ORD 4482; May 2008]

60.40.15. Signs Subject to Ordinance Regulation - No Permit Required. No permit is necessary before placing, constructing or erecting the following signs; however, such signs shall conform to the regulations as specified.

1. Construction Project Sign. One (1) sign may be erected after appropriate building permits have been obtained. No such sign shall exceed sixty-four (64) square feet total face area and thirty-two (32) square feet per face; nor shall it exceed eight (8) feet in height. The sign shall be removed at the time final occupancy is approved by the City building inspector.
2. Garage Sale Sign. Such signs are allowed in residential zones. They shall not exceed a size per face of four (4) square feet and shall not exceed four (4) feet in height. Such signs shall not be erected prior to one (1) week before this event and shall be removed no later than the day after the event. They shall not be placed in the public right-of-way or vision clearance areas.

Chapter 2.03

BOARDS, COMMISSIONS AND COMMITTEES

Sections:

I. GENERAL PROVISIONS

[2.03.002](#) General Provisions Applicable to Boards and Commissions.

II. BEAVERTON CABLE COMMUNICATIONS COMMISSION

[2.03.010](#) Continued.

[2.03.012](#) Membership.

[2.03.014](#) Powers and Duties.

III. BOARD OF CONSTRUCTION APPEALS

[2.03.030](#) Continued.

[2.03.032](#) Membership.

[2.03.034](#) Qualifications.

[2.03.036](#) Presiding Members.

[2.03.038](#) Conflict of Interest.

[2.03.040](#) Powers and Duties.

[2.03.042](#) Composition; Quorum; Voting.

IV. COMMITTEE FOR COMMUNITY INVOLVEMENT

[2.03.050](#) Beaverton Committee for Community Involvement Established.

[2.03.052](#) Membership.

[2.03.054](#) Powers and Duties.

[2.03.056](#) Bylaws.

V. TRAFFIC CONTROL BOARD

[2.03.070](#) Repealed.

[2.03.072](#) Repealed.

[2.03.074](#) Repealed.

[2.03.076](#) Repealed.

VI. TRAFFIC COMMISSION

[2.03.080](#) Traffic Commission Established.

[2.03.082](#) Powers and Duties.

VII. PLANNING COMMISSION

[2.03.090](#) Continued.

[2.03.092](#) Repealed.

[2.03.093](#) Repealed.

[2.03.094](#) Repealed.

[2.03.096](#) Repealed.

[2.03.098](#) Repealed.

VIII. FACILITIES REVIEW COMMITTEE

[2.03.110](#) Continued.

[2.03.112](#) Repealed.

[2.03.114](#) Repealed.

[2.03.130](#) Repealed.

[2.03.132](#) Repealed.

[2.03.134](#) Repealed.

[2.03.136](#) Repealed.

[2.03.138](#) Repealed.

[2.03.140](#) Repealed.

IX. HISTORIC RESOURCE REVIEW COMMITTEE

[2.03.141](#) Repealed.

[2.03.142](#) Repealed.

[2.03.144](#) Repealed.

[2.03.146](#) Repealed.

[2.03.148](#) Repealed.

X. BUDGET COMMITTEE

[2.03.150](#) Budget Committee Established.

XI. URBAN REDEVELOPMENT AGENCY

[2.03.160](#) Need Declared.

[2.03.161](#) Title.

[2.03.162](#) Membership.

[2.03.163](#) Powers.

[2.03.164](#) Limitation on Action.

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[2.03.172](#) Membership.

[2.03.174](#) Term of Office; Vacancy.

[2.03.176](#) Meetings.

[2.03.178](#) Powers and Duties.

XII. CITY LIBRARY BOARD

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[2.03.192](#) Membership.

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XIV. LOCAL CONTRACT REVIEW BOARD

- [2.03.210](#) Continued.
- [2.03.212](#) Powers and Duties.
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XV. BEAVERTON ARTS COMMISSION

- [2.03.230](#) Creation.
- [2.03.232](#) Definition.
- [2.03.234](#) Board Membership.
- [2.03.235](#) City Funding.
- [2.03.236](#) General Members.
- [2.03.238](#) Powers and Duties.
- [2.03.239](#) **Public Art.**
- [2.03.240](#) Arts Commission Account.

XVI. DISABLED CITIZENS' ADVISORY COMMITTEE

- [2.03.250](#) Established.
- [2.03.251](#) Membership.
- [2.03.252](#) Term of Office.
- [2.03.253](#) Presiding Members.
- [2.03.254](#) Staff Liaison.
- [2.03.255](#) Voting, Meetings.
- [2.03.256](#) Powers and Duties.

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- [2.03.260](#) Established.
- [2.03.265](#) Term of Office.
- [2.03.270](#) Organization.
- [2.03.275](#) General Powers and Duties.
- [2.03.280](#) Investigation.
- [2.03.285](#) Information Required for Complaint.
- [2.03.290](#) Final Disposition by the Commission.
- [2.03.295](#) Conflicts with State or Federal Agencies.

XVIII. SENIOR CITIZENS' ADVISORY COMMITTEE

- [2.03.300](#) Senior Citizens' Advisory Committee Established.
- [2.03.305](#) Term of Office.
- [2.03.310](#) Organization.
- [2.03.315](#) General Powers and Duties.

XIX. VISIONING ADVISORY COMMITTEE

- [2.03.330](#) Visioning Advisory Committee Established.
- [2.03.332](#) Term of Office.

may recommend to Council the sale or exchange of any property accepted as a gift, bequest or devise as it may from time to time determine. The income from such money, securities or other property shall be credited to the Arts Commission Account established by BC [2.03.240](#). [BC [2.03.038](#), added by Ordinance No. 3313, 3/22/83]

2.03.239 Public Art.

A. As used in this section:

1. "Public art" means original artwork placed on public property or on public right-of-way or on private property visible from public property and for which the City owns an easement allowing for such placement and that has been approved by the Beaverton Arts Commission.
2. "Selection panel" means a group responsible for reviewing proposed public art and making recommendations to the Beaverton Arts Commission on the selection of public art.

B. Public art that is displayed pursuant to this section may be sited in, on or about any project or other property owned, leased, or rented by, donated to, or otherwise made available to and accepted by the City of Beaverton under such additional terms and conditions as may be required by the Beaverton Arts Commission.

C. All interests in public art acquired pursuant to this section shall be acquired in the name of the City of Beaverton. Title to any easements for display of such art on private property shall be granted to and are subject to written acceptance by the City of Beaverton acting through its Mayor for the use and benefit of the public.

D. A decision by the Beaverton Arts Commission, upon a recommendation by the selection panel, as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of public art shall be the City's final decision.

E. The Beaverton Arts Commission shall adopt rules and guidelines for the selection, acquisition and display of all public art in a form to be approved by the City Attorney. [BC [2.03.239](#), added by Ordinance No. 4481, 4/21/08]

2.03.240 Arts Commission Account.

There hereby is established in the general fund of the City an account to be known as the "Arts Commission Account." All money received by the commission pursuant to BC [2.03.236](#) and BC [2.03.238](#) shall be paid into the City's general fund and credited to the Arts Commission Account. All money in such account hereby is restricted for use in carrying out the commission's purposes. [BC [2.03.240](#), added by Ordinance No. 3313, 3/22/83]

XVI. DISABLED CITIZENS' ADVISORY COMMITTEE

2.03.250 Established.

There is hereby established a Disabled Citizens' Advisory Committee; its powers and duties are described in the following sections. [BC [2.03.250](#), added by Ordinance No. 3783, 8/26/91]

2.03.251 Membership.

CHAPTER 900 SIGN CODE

- 900.001. Purpose
- 900.005. Definitions; Rules of Construction
- 900.010. General Rule
- 900.015. **Exempt Signs**
- 900.020. Prohibited Signs
- 900.025. Sign Permits
- 900.030. Exceptions from Permit Requirement
- 900.035. Sign Adjustments
- 900.040. Sign Variances
- 900.045. Electronic Display Sign Conditional Use Permits
- 900.050. Inspection; Re-inspection
- 900.055. Measurements
- 900.060. Materials
- 900.065. Sign Supports
- 900.070. Electronic Sign Construction
- 900.075. General Illumination Standards; Zone-Specific Standards
- 900.080. Flashing Light; Zone-Specific Standards
- 900.085. Effects
- 900.090. Electronic Display Signs
- 900.095. Rotating and Animated Signs; Zone-Specific Standards
- 900.100. Signs Installed Over or Within the Right-of-Way
- 900.105. Signs in Vision Clearance Areas
- 900.110. Signs in Special Setback Areas
- 900.115. Sign Location for Safety
- 900.120. Sign Maintenance
- 900.125. Land Divisions
- 900.130. Freestanding Signs
- 900.135. Hanging Signs
- 900.140. Projecting Signs
- 900.145. Roof Signs
- 900.150. Wall Signs
- 900.155. Outdoor Advertising Signs

TEMPORARY SIGNS

- 900.160. Temporary Signs, General Standards
- 900.165. Temporary Signs in Residential Zones
- 900.170. Temporary Signs in Commercial Zones
- 900.175. Temporary Signs in Industrial Zones
- 900.180. Temporary Signs in Public Zones

PERMANENT SIGNS

- 900.185. Permanent Signs in Residential Zones
- 900.190. Permanent Signs in the Neighborhood Commercial (CN), Neighborhood Center Mixed-Use (NCMU), and Fairview Mixed-Use (FMU) Zones
- 900.195. Permanent Signs in Commercial Office (CO) Zones
- 900.200. Permanent Signs in Central Business District (CB), Retail Commercial (CR), and General Commercial (CG) Zones

services are provided to a patron of a business, and that typically includes queuing lanes, service windows, or service islands.

(39) Vehicle buffer zone means an area that runs parallel to and abuts a roadway, and creates a pedestrian safety zone and unobstructed accessibility to parked vehicles. The vehicle buffer zone is depicted on Illustration No. 900-1.

(40) Vision clearance area means the area providing visibility for vehicular, bicycle, and pedestrian traffic, as determined by SRC 76.170.

(b) As used in this Chapter, words used in the present tense include the future, the singular number includes the plural, and the word "shall" is mandatory and not directory.

(c) Nothing in this Chapter is intended, and shall not be construed, to restrict speech on the basis of its speaker, content, or viewpoint, and, to the extent that any provision of this Chapter is ambiguous, the provision shall not be interpreted to regulate on the basis of speaker, content, or viewpoint. (Ord No. 4-12)

900.010. General Rule.

(a) No person shall construct, erect, enlarge, alter, or relocate any sign, or install electrical parts, wiring, or illumination in or upon a sign, until all required permits have been obtained, including but not limited to, sign permits, building permits, electrical permits, and any other permit required under federal, state, or local law.

(b) Except as provided in SRC 900.030, no person shall erect, construct, enlarge, alter, repair, move, improve, convert, equip, use, or maintain any sign, or cause or permit the same to be done, in violation of any provision of this Chapter or a permit issued hereunder.

(c) Nothing in this Chapter is intended, nor shall be construed, to permit the erection, construction, enlargement, alteration, or maintenance of any sign at any place or in any manner unlawful under any other federal, state, or local law. When any part of this Chapter conflicts with another provision of federal, state, or local law, the provision that establishes the stricter standard shall control. (Ord No. 4-12)

900.015. Exempt Signs. The following signs are exempt from this Chapter:

(a) Official traffic control devices.

(b) Signs required to be erected by public officers pursuant to law or by order of the court.

(c) Temporary signs located in Wallace Marine Park's Sports Field Complex allowed and regulated pursuant to a park use permit issued by the City.

(d) Public murals, as defined by SRC 15.010, and regulated under the provisions of SRC Chapter 15, and any rules adopted thereunder. (Ord No. 4-12)

900.020. Prohibited Signs. The following signs are prohibited:

(a) Any sign which creates a public nuisance due to statements, words, or pictures of an obscene or pornographic character.

(b) Any sign which violates ORS Chapter 377.

(c) Any sign which is placed on, affixed to, or painted on a motor vehicle, vehicle, or trailer and placed on public or private property with the primary purpose of providing a sign not otherwise permitted by this Chapter.

(d) Any sign located in a manner which could impede traffic on any street, alley, bikeway, or other vehicular way.

(e) Any sign constructed in such a manner or at such a location that it will obstruct access to any fire escape or other means of ingress or egress from a building. No sign structure, or part thereof, shall cover, wholly or partially, any window or doorway in a manner that will substantially limit access to the building in case of fire.

(f) Any sign constructed or maintained which, by reason of its size, location, movement,

CHAPTER 15 PUBLIC ART

- 15.001. Purpose
- 15.010. **Definitions**
- 15.020. Salem Public Art Commission
- 15.030. Public Art Trust Fund
- 15.040. Dedication to Public Art Trust Fund
- 15.050. Title to Art Work
- 15.060. Siting
- 15.070. **Public Mural Program Intent and Purpose**
- 15.080. **Public Murals; Creation; Approval by Salem Public Art Commission**
- 15.090. **Procedures, Mandatory Criteria for Public Murals**
- 15.100. **Public Mural Neighborhood Involvement**

15.001. Purpose. The City Council recognizes that visual arts contribute to and provide experiences that enrich and better the social and physical environment of the community, and desires to foster an advancement of the visual arts within the City of Salem. It is the purpose of this Chapter, and the policy of the City to dedicate one-half of one percent of the total eligible costs of all improvement projects to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of public art. (Ord No. 6-10)

15.010. Definitions. Unless the context otherwise specifically requires, for purposes of this Chapter, the following words and phrases mean:

- (a) Alteration means any change to a public mural, including but not limited to any change to the image(s), materials, colors or size of the public mural. Alteration does not include naturally occurring changes to the public mural caused by exposure to the elements or the passage of time, or maintenance or repair of the public mural that includes slight and unintended deviations from the original image, colors or materials that occur when the public mural is repaired due to the passage of time, or after damage resulting from vandalism.
- (b) Artist means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces works of art, and who is not a member of the improvement project's architectural firm or the Salem Public Art Commission. The term "artist" shall include an artist's agent and a representative of the estate of an artist.
- (c) City building means any building owned or leased by the City, or area therein, which is open to the public; provided, however, "City building" does not include motor pools, surface parking lots, roads, bridges, utility lines, service facilities, maintenance sheds, pump stations, treatment plants and utility facilities, or buildings that have the primary purpose of displaying historical artifacts, cultural items, or works of art.
- (d) City Manager means the City Manager of the City of Salem, or the City Manager's designee.
- (e) Deaccessioning means relinquishing title to a work of public art.
- (f) Eligible costs means the costs for completion of an improvement project, including costs for capitalized tenant improvements, that are paid from eligible funds. Eligible costs does not include costs for: land acquisition, design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees.
- (g) Eligible funds means any funds expended by the City, from whatever source, for an

improvement project and for which public art is not precluded as an object of expenditure in connection with the improvement project.

(h) Improvement project means any project paid for wholly or in part by the City where the amount of eligible funds equals \$100,000 or more for the construction, rehabilitation, remodeling, improvement or purchase of a City building. An improvement project does not include maintenance and repair projects or remodeling or renovation projects in which more than seventy-five percent of the project cost represents improvements to mechanical systems.

(i) Oregon artist means an artist that makes Oregon his or her primary residence or principal place of business.

(j) Public art means original works of art owned or acquired by the City.

(k) Public mural means an original, two-dimensional work of visual art, comprised of paint, ceramic or glass tiles, or tesserae, executed by hand directly upon, or affixed directly to an exterior wall of a building, which has been approved by the Salem Public Art Commission and accepted by the City into its public art collection pursuant to this Chapter. A public mural is not an original work of visual art if it is mechanically reproduced or computer generated and printed on a base that will be attached to the wall, such as, by way of illustration but not limitation, limited images digitally printed on vinyl.

(l) Works of art means all forms of original creations of visual art, including and not limited to, painting, sculpture, prints, ceramics, drawings, stained glass, mosaics, photography, fiber and textiles, calligraphy, mixed media, and any combination of media, including collage. (Ord No. 6-10; Ord No. 10-10; Ord No. 13-11)

15.020. Salem Public Art Commission.

(a) There is hereby created a seven-member Salem Public Art Commission, who shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The City Manager shall serve as an ex officio non-voting secretary to the Commission. The appointed members of the Salem Public Art Commission shall consist of two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education; two members who have experience, training or expertise in museum curation, art restoration, or art appraisal; and two members who have experience, training, or expertise in architecture or landscape architecture, commercial real estate or development, or experience with foundations and cultural development; and one at-large member.

(b) Members of the Salem Public Art Commission shall serve three-year terms, but the terms shall be staggered so that not more than three members' terms of office shall expire in any one year. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until one full year after the date of expiration of his or her immediate previous term of office. In case of a vacancy, a successor to serve the remainder of the term shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The members of the Commission shall not receive any compensation for their services.

(c) Except for the first year, the Salem Public Art Commission shall elect a chair and a vice-chair from among its members who shall hold office at the pleasure of the Commission. The first chair and vice-chair will be appointed by the Mayor. The Salem Public Art Commission shall adopt rules of procedure and organization of the Commission, and rules for the conduct of meetings that are consistent with generally recognized principles for the orderly conduct of business by a deliberative body. All meetings of the Commission shall be open to the public.

(d) The Salem Public Art Commission shall have the authority to select, acquire, receive, borrow, commission the design or fabrication of, and maintain, deaccession, document and register all works of art within the City's public art collection with funds from the Public Art

Trust Fund. The Commission shall have the authority to advise the City Manager on the management, execution, installation, or placement of works of art, and administration of public art education activities.

(e) The Salem Public Art Commission shall recommend guidelines for adoption by the City Council for the selection, acquisition, commissioning and deaccessioning of public art that give preference to Oregon artists and that shall include consideration of the following:

- (1) Whether the work of art is compatible with the design of the City building;
- (2) Whether the work of art is of exceptional quality and enduring value;
- (3) Whether the work of art promotes a broad range of artistic styles and media in order to maintain an overall balance within the City;
- (4) Whether the work of art presents a safety hazard to the public; and
- (5) Whether the work of art requires extraordinary maintenance, including, but not limited to, periodic adjustment, repainting, repair or replacement of moving parts.

(f) The Salem Public Art Commission shall establish procedures for the maintenance, management, documentation and registration of all works of art within the City's public art collection and such other procedures and guidelines consistent with this Chapter to facilitate the implementation of the Commission's responsibilities under this Chapter.

(g) Each year at a time specified by the City Manager, the Salem Public Art Commission shall prepare and submit to the City Manager a recommended budget for the Public Art Trust Fund for the ensuing fiscal year, which the City Manager shall forward to the Salem Budget Committee. The budget shall estimate income and expenditures for the Public Art Trust Fund for that year, conform to the requirements of SRC 15.030, and be in a form prescribed by the City Manager.

(h) Except as limited by other sections of this Chapter, the Salem Public Art Commission's decisions as to the acquisition, fabrication, deaccessioning, and registration of public art, including public murals, shall be final. (Ord No. 6-10; Ord No. 13-11)

15.030. Public Art Trust Fund.

(a) There is established a special fund designated as the Public Art Trust Fund from which expenditures may be made for the acquisition, fabrication, installation, maintenance, conservation, management, deaccessioning, community education, documentation and registration of public art. The Public Art Trust Fund shall consist of funds appropriated by SRC 15.040, other funds as the City Council may appropriate, and funds given to the City from public or private sources.

(b) Monetary contributions shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is deemed appropriate by the City Manager, is required by law, or is a condition of any gift or donation. Prior to disbursing funds from a segregated account in the Public Art Trust Fund, the Salem Public Art Commission shall adopt written findings demonstrating that the proposed disbursement complies with any applicable conditions for the expenditure of those funds.

(c) Excluding funds from conditional gifts or donations, funds deposited into the Public Art Trust Fund, shall be allocated as follows:

- (1) Seventy percent shall be used for costs associated with acquiring public art, including, but not limited to the acquisition, fabrication, and installation of public art.
- (2) Twenty percent shall be used for costs associated with managing public art, including, but not limited to costs of selection, program management, community education and registration of public art.
- (3) Ten percent shall be used for the maintenance, conservation and deaccessioning of public art.

(d) Disbursements shall be made according to the terms of this Chapter and any procedures

adopted by the Salem Public Art Commission. The Salem Public Art Commission will report annually to the City Council on the disbursement of funds from the Public Art Trust Fund. (Ord No. 6-10; Ord No. 13-11)

15.040. Dedication to Public Art Trust Fund. Any city official or employee who authorizes or appropriates expenditures for an improvement project shall include in the total construction budget, and cause to be deposited in the Public Art Trust Fund, a monetary contribution for public art equal to one-half of one percent of the total eligible costs. Where an improvement project will be constructed in phases, the one-half of one percent dedication shall be applied to the estimated total cost of each phase of the project at the time that funds for the phase are encumbered. Nothing in this section prevents the City Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase. (Ord No. 6-10)

15.050. Title to Art Work.

(a) Title to works of art acquired under this Chapter shall be acquired in the name of the City and vest in the City. Acquisition of a work of art shall be accompanied by an assignment of copyright to the work of art; provided, however, the artist may retain a non-exclusive right to make reproductions of the work of art for professional advertisement and promotional purposes.

(b) Except as otherwise agreed by the Public Art Commission, no artist, by virtue of the sale of a work of art to the City, shall be deemed to have acquired any right in the continued ownership of the work of art, or to the continued placement of the work of art in any location or venue, notwithstanding the fact that the work of art may have been created as a site-specific work of art. (Ord No. 6-10; Ord No. 13-11)

15.060. Siting. Subject to any applicable ordinances, public art obtained pursuant to this Chapter may be sited in, on or about any improvement project, public right of way, easement, or other property owned, leased, or otherwise under the control of or made available to the City. (Ord No. 6-10)

15.070. Public Mural Program Intent and Purpose. The intent and purpose of SRC 15.070-15.100 is to encourage the production of public murals for acquisition by the City. Public murals are a medium of expression which serves the public interest in unique ways, including, but not limited to: enhancing the aesthetics of the City; providing avenues for original artistic expression in the City; providing public edification through access to original works of public art; encouraging community participation in the creation of original works of art; and reducing the incidence of graffiti and other crime. Public murals can increase community identity and foster a sense of place if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood involvement process. (Ord No. 10-10)

15.080. 15.080. Public Murals; Creation; Approval by Salem Public Art Commission. No person shall commence creation of any public mural without first obtaining approval from the Salem Public Art Commission, and agreeing to donate the public mural to the City's public art collection, as provided in SRC 15.090. Murals that are created without approval from the Salem Public Art Commission or are inconsistent with the conditions of approval from the Salem Public Art Commission are not public murals and are subject to SRC Chapter 900. Approval of a public mural does not require historic design review. (Ord No. 10-10; Ord No. 13-11; Ord No. 4-12)

15.090. Procedures, Mandatory Criteria for Public Murals. The Salem Public Art Commission shall adopt procedures and standards setting forth the requirements for creation, approval, donation, and acceptance of public murals into the City's public art collection. At a minimum, the standards shall include the following:

(a) Public murals shall remain in place, without alterations, for a period of not less than seven years, except as may be specified by the Salem Public Art Commission in the conditions of approval.

(b) In historic districts, public murals may only be allowed on buildings that are non-historic non-contributing buildings or structures. Murals in historic districts shall not be allowed on a building façade. For purposes of this paragraph, the building façade is defined as the wall that contains the main entrance onto the premises.

(c) No public murals shall be allowed on single family dwellings, duplexes, or multi-family dwellings. As used in this subsection, single family dwellings, duplexes, or multi-family dwellings do not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings.

(d) No public mural may contain electrical components, three dimensional structural elements; employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance of the public mural or changes the mural image or message.

(e) Public murals shall be located in a manner that is accessible to the public.

(f) The approval and acceptance of each public mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the mural will be located, in a form approved by the City Attorney. The terms of the easement shall grant the right to create the public mural on the wall of the building and provide that the person granting the easement will maintain and restore the public mural in its original condition for the period of the easement, and state that upon termination of the easement, the mural shall be removed and the building restored to its prior condition. (Ord No. 10-10; Ord No. 13-11)

15.100. Public Mural Neighborhood Involvement. Prior to approving a public mural for the City's public art collection, the Salem Public Art Commission shall hold a public hearing at which interested members of the public may review and comment upon the proposed public mural. Written notice of the hearing shall be provided to the neighborhood association in which the public mural is proposed to be located, and public notice shall be given no later than thirty days before the hearing. (Ord No. 10-10; Ord No. 13-11)

PUBLIC ART MURALS PROGRAM



Panel from "Human Diversity" mural by Judy Bryant, located at 3044 NE M L King Boulevard.

As Adopted Report
Adopted December 8, 2004
Ordinance #178946
Effective January 7, 2005



City of Portland

For more information on the Public Art Murals Project, please contact:

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PUBLIC ART MURALS PROGRAM

As Adopted Report

Adopted by the City Council
on December 8, 2004
Ordinance #178946

Effective January 7, 2005



City of Portland

Acknowledgements

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Jim Francesconi, Commissioner
Randy Leonard, Commissioner
Dan Saltzman, Commissioner
Erik Sten, Commissioner

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Public Art Murals Project

Summary

The Public Art Murals Project report consists of three parts. The first part, detailed in Part A, explains the expansion of the Regional Arts and Culture Council's (RACC) public art program to include a Public Art Murals program. RACC will review submissions for public art murals, which will be placed on public wall space, and paid for with public funds administered by the RACC. The RACC review process includes guidelines for placement, artistic quality, architectural and historical context, scale, community support, and other factors.

The second part of the project, detailed in Part B, provides changes to three Titles of the City Code that work in concert with the changes to RACC's program:

- Title 5, Revenue and Finance: Amends the definition of "public art" to clarify that only artwork approved and funded through the RACC can be considered "public art."
- Title 32, Signs and Related Regulations: Amends the code to exempt public art, including public art murals, from the Sign Code.
- Title 33, Planning and Zoning: Adds language to exempt public art, including public art murals, from Design Review and Historic Design Review.

The original letter of support from Mayor Katz and approved ordinance is placed in the Appendix, identified as Part C at the back of the document.

Part A. Murals as Public Art Program

I. Overview

A New Approach to Public Art Murals in Portland

A. A Brief Legal History of Murals in Portland

Prior to 1998, the City exempted all murals from its sign regulations. In 1998, the largest owner of billboards in Portland, AK Media, filed a lawsuit against the City claiming that by exempting murals from its sign regulations, the City was discriminating against advertising in favor of murals. This was alleged to violate the free speech provisions of both the Oregon and United States Constitutions. The Multnomah County Circuit Court ruled in AK Media's favor, finding that the City had made an unconstitutional distinction between two types of speech, and was therefore regulating speech based on content. The City was faced with the choice of not regulating signs at all, or regulating murals as signs. To comply with the legal ruling, the City changed its Sign Code to remove the exemption for murals and regulated both murals and commercial signs the same. As a result, murals were limited to 200 square feet in size (at most) in all areas of the City. This limitation on murals to 200 square feet resulted in a substantial reduction in new murals within the City. Artists, community groups and building owners, as well as many citizens at large expressed dissatisfaction with the status quo, which seriously impeded the creation of new mural art in our City. During the past year, the Mayor and her staff worked with interested stakeholders to find a solution to this issue. This project is a result of their work.

B. The Public Art Murals Project

The Public Art Murals project does not significantly alter the City's Sign Code. Instead, the city exempts all public art, including public art murals, from the Sign Code (and from other land use reviews). The Regional Arts and Culture Council (RACC) already administers an existing public art program that has been expanded to include public art murals. Public art murals are to be placed on public wall space and paid for with public funds administered by the RACC. With regard to its public art collection, including public art murals, the City acts as a patron of arts, not as a regulator. This distinguishes this amendment from the old, broader exemption for all murals that was found unconstitutional.

C. Criteria for Selecting Public Art Murals

As part of this proposal, the RACC is adapting its existing public art approval criteria to be used in evaluating public art murals. These criteria include artistic quality, originality, context, permanence, diversity, feasibility, scale and community support. The public art selection process evaluates the artistic quality and originality of proposed murals. It also promotes murals that are aesthetically pleasing, creative and unique additions to Portland's neighborhoods. Like other

Part A

Murals as Public Art Program

public art administered by the RACC, public art murals are to be owned by the public. Public art murals would be placed on wall space that is either already owned by the public (such as on the walls of publicly owned buildings) or on wall space that is dedicated to the public through a public art easement. Artists retain copyright protection for their artwork.

D. RACC Review Process

Acting on behalf of the City through an Intergovernmental Agreement (IGA), the RACC reviews proposals for public art murals pursuant to the criteria mentioned above. Such reviews are conducted by the Public Art Advisory Committee, which includes representatives from the Design Commission, as well as artists and arts patrons. Public notice of proposed public art murals is given to representatives of the community who are interested in or may be affected by the public art. These representatives can include neighborhood and business associations, adjoining neighbors, as well as the Landmarks Commission if the public art is proposed in areas of historical significance. Members of the public have an opportunity to review and comment on proposed murals.

The RACC works to ensure that its review process also achieves the objectives of the design review and landmarks review processes, which no longer apply to public art. Public art murals are not to be approved on historic landmarks or in historic districts until the RACC and the Landmarks Commission agree upon a review process that best serves the public's interest in these unique structures and areas.

Funding Options

The funding options for public art murals are similar to those already available through the existing Public Art Program. Depending on the individual project, public art murals may be funded completely with public dollars or partially funded with public funds and "matching" private funds. Alternatively, individuals may offer to commission a public art mural to be donated to the City's public art collection, or may donate funds to the Public Art Trust Fund to support the public art program.

E. Public Art Easements

Building owners who wish to donate wall space to the public for a RACC-approved public art mural may do so by granting an easement for placement of a public art mural on their building to the City. Easements will be for five or more years. The City can accept or decline any easements for public art murals which are offered to it. Public art easements are managed by the City's property manager, as with other publicly owned property. The Bureau of General Services is responsible for maintaining a written and photographic record of each RACC-approved public art mural and accepted public art easement.

Real estate attorneys, lenders and real estate developers have provided assurances that the public art easement, which allows for termination in select circumstances, should not pose a barrier to securing loans or to sale or transfer of affected properties. Examples of circumstances under which an easement could be terminated early include sale of a building to an owner not willing to assume the

easement, refinancing where the lender requires termination of the easement as a condition of granting a loan, or the reconstruction of the building in a manner that results in the destruction of, or significant damage, to the mural.

F. Lessons from Other Cities

Other cities, such as Los Angeles and Philadelphia, do not regulate murals through their sign codes. They have special public art programs to encourage community murals. Philadelphia in particular has an incredibly vibrant collection of public art murals that add vitality to the community, serve as a tourist draw, beautify the city and provide an avenue for involving youth and others in artistic expression. The City of Portland, by acting as a patron of public art murals, hopes to foster many of these same benefits here.

II. Background and Legal History

A. The Legal Starting Point

Starting at least as early as the mid 1980s, the City attempted to exempt murals from its sign regulations. Prior to 1991, the Zoning Code defined a sign as “Materials placed or constructed primarily to convey a message or other display and which can be viewed from a right-of-way, private roadway or another property.” The code exempted murals, known as “painted wall decorations” from the sign regulations. Prior to 1991, “painted wall decorations” were defined as “displays painted directly on a wall and are designed and intended as a decorative or ornamental feature.” In 1991, these definitions were amended to provide greater clarity as to what constituted a (regulated) painted wall sign and what constituted an (unregulated) mural or “painted wall decoration.” The new definitions were as follows:

Sign -- “Materials placed or constructed primarily to convey a message and which can be viewed from a right-of-way or another property. Signs contain text, numbers, registered trademarks or registered logos.”

Painted Wall Decorations -- “Displays painted directly on a wall which are designed and intended as a decorative or ornamental feature. Painted wall decorations do not contain text, numbers, registered trademarks, or registered logos.”

In 1998, AK Media filed suit against the City claiming that the distinction based on the presence or absence of “text, numbers, registered trademarks or registered logos” was an unconstitutional, content-based regulation of speech under the Oregon and United States Constitutions. In November of 1998, the Multnomah County Circuit Court issued a summary judgment holding that the murals exemption, based on this definition, was unconstitutional under the Oregon Constitution. The City immediately amended the definition of sign, and removed the exemption for painted wall decorations, to comply with the Court’s ruling. Eventually after trial, the exemption was also held to be unconstitutional under the

Part A

Murals as Public Art Program

First Amendment to the United States Constitution. The Multnomah County Circuit Court ruled, however, that the City's sign code, as amended to remove the exemption for murals (or "painted wall decorations") was constitutional.

Since the murals exemption was removed, murals had been regulated as signs in the City. As a result the largest allowable mural anywhere in the City (absent an adjustment) was 200 square feet.

B. The Public Art Mural Amendment

Mayor Katz spent many months exploring an alternative approach with staff and a variety of stakeholders, namely to exempt all "public art", including public art murals from the sign code. The concept was that public art (that is publicly funded art in public spaces approved by the RACC) would not fall under the Sign Code but would instead go through a RACC approval process.

C. The Legal Basis for the Proposal

There are no Oregon cases applying Article I, Section 8 of the Oregon Constitution in the public art context that we have been able to locate. There is authority under the First Amendment to the United States Constitution, however, suggesting that when the government is acting as a patron of art, or is displaying art in publicly owned places, there is greater (but not unfettered) leeway to distinguish based on content than when the government is acting in a regulatory capacity.

For example, in *National Endowment for the Arts v. Finley*, 118 S Ct 2168, 141 L Ed 2d 500 (1998), the United States Supreme Court upheld a criterion in NEA grants taking into consideration general standards of "decency and respect" for diverse beliefs and values of the American public. The Court held that the decency and respect factors were merely to be taken into account and did not constitute per se a tool "for invidious viewpoint discrimination." 118 S Ct at 2176. The Court noted that direct viewpoint discrimination would not be allowable even under a public funding program, but held that these criteria "do not silence speakers by expressly 'threatening censorship of ideas.'" *Id.*

The Court also upheld the criterion against a content-based challenge, noting that "[a]ny content-based considerations that may be taken into account in the grant making process are a consequence of the nature of arts funding. The agency may decide to fund particular projects for a wide variety of reasons, 'such as the technical proficiency of the work, the anticipated public interest in or appreciation of the work, the work's contemporary relevance, its educational value, its suitability for or appeal to special audiences, such as children or the disabled, its service to a rural or isolated community, or even simply that the work could increase public knowledge of an art form.'" *Id.* at 2178.

D. Application to the Approved Amendments

Under the approved amendments, the City acts as a patron of art, and in its proprietary capacity, displays art in spaces it either already owns or which are donated to it for that purpose. The City is not acting as a regulator. The

regulations of the Sign Code remain unchanged, and all expression previously available under the Sign Code remains available. The amendment exempts only public art (that is, art funded by the City/Public Art Trust Fund and owned by the City) in public locations (in/on publicly owned buildings or spaces or in/on easements donated to the City). This distinguishes this amendment from the blanket exemption for murals (“painted wall decorations”) previously held to be unconstitutional.

III. RACC Process and Evaluation Criteria

A. Overview

The Regional Arts and Culture Council (RACC) administers an existing public art program for the City of Portland through an Intergovernmental Agreement (IGA). This program is being expanded to include public art murals. The established RACC public art review and selection process is a flexible and interactive process that allows the mural artist/proponent and the Public Art Advisory Committee (PAAC) to have a dialogue about all aspects of a proposed public art mural project. Discussions about the proposed mural can cover issues such as its size/scale, artistic quality, materials, lighting (if any), location/context, and community support.

The PAAC is a standing RACC committee, which meets monthly and is responsible for all aspects of the City’s public art program. Members’ terms last for three years, and the committee includes artists, arts professionals, curators, RACC’s designee to the Design Commission, one or two RACC board members, and citizens with interest and experience in the visual arts. The PAAC is currently made up of artists (one of whom has experience with community mural arts) a curator, arts writer, architect, visual arts patrons, and a RACC board member. The PAAC approves the selection panels’ recommendations for all public art commissions or purchases; considers potential gifts to the public art collection; and now reviews mural proposals.

In response to public input, RACC has agreed to add at least one person with specific expertise in community murals to the Public Art Advisory Committee, and encourages mural artists, community mural advocates and other underrepresented ethnic, cultural and linguistic groups interested in murals to submit mural proposals and to attend PAAC meetings and comment on proposed murals.

Another issue raised through public input was whether the “commercial” or “noncommercial” nature of a mural should be an approval criterion. Because the RACC approval criteria adequately address the City’s interest in ensuring the artistic quality, originality and site-specific appropriateness of any given mural, such a criterion is not necessary. It is often difficult to objectively distinguish between what is “commercial” and what is “noncommercial,” and the mere fact that a given mural may bear some relationship to a commercial establishment or enterprise is simply not determinative of whether it meets the criteria for public art.

Part A

Murals as Public Art Program

RACC staff meet with representatives of any mural project and forward the proposal to the PAAC if selection criteria appear to be met. Criteria include the requirement that the building owner sign an easement granting the City the right to place a mural on the building. The RACC then notify neighborhood coalitions, business associations and other interested parties of the PAAC meeting where the mural is to be considered and input may be provided by these groups. The PAAC weigh the proposal against the approval criteria and vote to approve or reject the proposal.

If the Public Art Advisory Committee decides not to approve a public art mural proposal, the applicant may ask for specific feedback on ways to improve his or her proposal, resubmit the proposal, and ask for reconsideration by the Committee at its next meeting.

B. Proposed Selection Criteria

The RACC staff and committees use the following criteria in considering murals:

- Artistic quality: strength of the artist's concept and demonstrated craftsmanship;
- Context: architectural, geographical, socio-cultural and historical;
- Media: paint, collage, relief, etc.;
- Scale: appropriateness of scale to the surrounding neighborhood;
- Diversity: race, age, style, media, experimentation, range of professional experience;
- Feasibility: budget, timeline, etc.;
- Originality: uniqueness;
- Structural and surface soundness: resistance to vandalism and weather;
- Building owner's signed easement form: Minimum 5 years unchanged, on site;
- Building owner's signed agreement for maintenance: over life of mural;
- Community Support: Key neighborhood representatives notified of RACC review meetings and opportunity to provide comment;
- Lighting provisions (if any): as allowed by City code;

Part A
Murals as Public Art Program

- Public Safety: meets City codes for safety; and
- Accessibility: meets City codes for accessibility.

Part A
Murals as Public Art Program

Part B. Approved Code Amendments

I. Impact Assessment

A. Background

Prior to 1998, the City exempted all murals from its sign regulations. In 1998, the largest owner of billboards in Portland, AK Media, filed a lawsuit against the City, claiming that by exempting murals from its sign regulations, the City was discriminating against advertising in favor of murals. This was alleged to violate the free speech provisions of both the Oregon and United States Constitutions. The court ruled in AK Media's favor, finding that the City had made an unconstitutional distinction between two types of speech, and was therefore regulating speech based on content. The City was faced with the choice of not regulating signs at all, or regulating murals as signs. To comply with the legal ruling, the City changed its Sign Code to remove the exemption for murals, and regulated both murals and commercial signs the same. As a result, murals were limited to 200 square feet in size (at most) in all areas of the City. Muralists and many other community members expressed concern about the negative impact this limitation had on the City's aesthetic quality and artistic environment.

As a result of the City regulating murals as signs, the creation of murals in Portland has virtually come to a standstill. The few individuals and groups who still attempt to create large-scale murals have faced costly adjustment fees or citations and fines for violating the City's Sign Code. Portland has an international reputation as an "incubator" for emerging artists and innovative arts events, such as the Modern Zoo, Time Based Art, Design Festival and Fashion Incubator, as well as a strong supporter of traditional performing arts. Regulating murals as signs effectively curtailed this unique, community-based art form in Portland; at the same time murals enjoyed a renaissance in Los Angeles, Philadelphia and other major U.S. cities.

B. The Approved Proposal

Mural artists and the larger artistic community have a desire to create murals that will beautify Portland's neighborhoods, provide an outlet for the expression of diverse community artistic and cultural values, and bolster the area's creative economy. This project helps satisfy that desire by exempting public art, including public art murals from the Sign Code, and from other land use reviews. These amendments allow public art murals to be approved through a streamlined review process conducted by the Regional Arts & Culture Council (RACC), acting on behalf of the City of Portland.

The goal of this project is to provide a new, constitutionally sound avenue for the creation of public art, including public art murals, by expanding the City's existing public art program to include murals. Public art murals are to be placed on public wall space. They are funded through the same funding mechanisms currently used by RACC for the rest of the City's public art collection. In sponsoring and

Part B

Approved Code Amendments

maintaining its public art collection, including future public art murals, the City acts as a patron of art, or in a proprietary capacity, not as a regulator.

RACC administers the City's public art program. The existing RACC public art review and selection process is adapted for public art murals. It is a flexible and interactive process that allows the mural artist and the Public Art Advisory Committee to have a dialogue about all aspects of a proposed public art mural project, including size/scale, artistic quality, materials, lighting (if any), location/context, community support, etc.

The streamlined review process involves an initial meeting with RACC, followed by a meeting with the Public Art Advisory Committee. The goal is to have a decision within those two meetings. Applicants whose proposal is not approved have the option to resubmit the proposal or ask for feedback for resubmission.

The proposal has the benefit of providing an alternative avenue to approve public art, including murals, outside the regulatory environment, while limiting costs by incorporating the process into the existing RACC framework.

C. Advancing Portland's Comprehensive Plan Goals

Encouraging the creation of additional avenues for public art helps secure Portland's role as the regional cultural center, which advances the City's Urban Development Goal, Goal 2. Public art murals strengthen neighborhood identity, which help foster the Neighborhood Goal 3 to reinforce the stability and diversity of the City's neighborhoods. The RACC review process allows the public to comment and influence the selection decision, which maintains the current citizen involvement required by Goal 9. The exclusion of public art from the Sign Code promotes good planning by avoiding overlapping reviews and balancing the benefits and costs of regulations, in conformance with Policy & Objective 10.10, Amendments to the Zoning and Subdivision Regulations. Lastly, and perhaps most importantly, the proposal furthers Goal 12, Urban Design by building on Portland's Character (12.1), Enhancing Variety (12.2), Promoting the Arts (12.5), Preserving Neighborhoods (12.6), and Community Planning (12.7). The RACC review process involves analysis of all of these items in consideration of public art funding, and creates public investments that enhance the Portland experience. Meanwhile, limiting the land use regulations for publicly owned art removes a regulatory barrier that is preventing the growth of this medium.

D. Stakeholder Outreach and Feedback

Between October 2003 and January 2004, the Mayor held six meetings with a working group of stakeholders, including mural artists, representatives of Metro Murals and representatives from the City Club research committee on billboard policy. The Mayor reconvened the murals workgroup in August 2004 and again in October 2004, to discuss and resolve remaining issues.

Between January 2004 and March 2004, meetings were held with the Citywide Land Use Group, the Alliance for Portland Neighborhood Business Associations (APNBA) and several local sign companies, including representatives of Clear

Channel. In March and June 2004, the project team met with a representative of Metro Murals, to share proposed changes and discuss best practices in other U.S. cities. In July, the Mayor's staff met with representatives from the newly formed Portland Mural Defense.

In June 2004, a meeting was convened with the chairs of the Portland Historic Landmarks Commission, Design Commission and Planning Commission. Meetings were also held between May 2004 and August 2004 with internal stakeholders, including the City Commissioners' Executives, and staff with code or policy expertise from the Bureau of Development Services, Bureau of Planning, Bureau of General Services, Office of Transportation, and the Office of Neighborhood Involvement.

Generally, stakeholder responses to the proposal were positive and supportive. Some stakeholders were confused by, or disagreed with existing interpretations of the Oregon constitution and prior rulings by Oregon courts on the protection of free speech. Some were concerned that the RACC review process would be overly cumbersome, subjective or time-consuming. Others wanted the proposal to include a statement making a clear distinction between advertising and art as it pertains to murals. Some mural artists and sign company representatives were concerned that the public art easement was overly restrictive, dampening property owner's willingness to donate an easement. Neighborhood activists were concerned about the possible proliferation of commercial mural images; a potential mural monopoly; and approval of undesirable or inappropriate murals, especially in residential areas.

Other alternative approaches that were considered during the development of the proposal included: increasing the maximum allowable size of all wall signs, and not requiring a RACC review for smaller murals.

Portions of the proposal changed in response to stakeholder input, such as streamlining the RACC's public art selection process, adding a mural artist to the Public Art Advisory Committee, adding provisions for the early termination of easements under certain circumstances, and ensuring that there is a mechanism for an artist to seek reconsideration of a RACC decision to deny a given mural proposal.

Throughout the summer, staff held several briefings with the RACC Board of Directors, the PAAC, the Design Commission and Historic Landmarks Commission. In general these groups were supportive of the project, with the one condition: that the Landmarks Commission have suitable input for any proposals on a Historic Landmark or within a Historic/Conservation District.

The Planning Commission held a public hearing of this proposal on September 28th. At the public hearing, testimony was provided on all aspects of the proposal. This testimony represented a number of divergent viewpoints and contained several suggestions, many similar to those brought up at the stakeholder groups. Additional suggestions included removing the easement requirement for property owners, allowing alternative financing proposals, and providing assurance that a diversity of cultural and minority interests are considered in the selection process.

Part B

Approved Code Amendments

At the Planning Commission work session on October 26th, staff provided additional information regarding the easement; flexible funding options for public art and public art murals; encouraging diversity in the RACC review process; allowing for reconsideration of proposals if not approved; and providing an annual evaluation of the proposed program. These changes have provided additional flexibility to the proposal to ensure it addresses a variety of situations.

The City Council held a hearing on December 1, 2004. The testimony received during this hearing indicated that the Public Art Mural proposal was the best existing compromise available to the various groups. The City Council voted to adopt the proposal on December 8, 2004.

E. Implementation and Enforcement

On behalf of the City, the Regional Arts & Culture Council (RACC) has incorporated public art murals into their existing Public Art program, to be administered by existing staff. In its FY 2004-2005 budget, the City provided \$50,000 to support the creation of RACC-approved public art murals. It is hoped that a future increase in the Percent for Art program as well as increased private donations to the Public Art Trust Fund will provide ongoing funding for public art murals in the future.

The Bureau of General Services is responsible for maintaining a written and photographic record of each RACC-approved public art mural and accepted public art easement. Many options exist for the termination of an easement and/or removal of an approved mural. If a RACC-approved public art mural is altered by a building owner without permission, the City has the authority to bring an action for specific performance to require the building owner to restore the City-owned mural to its approved condition and to collect liquidated damages for the City's enforcement costs. In addition, existing enforcement options regarding graffiti and the defacing of public property are available. Outside of RACC, General Services and Graffiti Abatement, implementation of this measure has a negligible effect on City Bureaus.

In order to publicize the new public art murals review process and easement requirement, the project team will work with mural artists and business community to develop public information materials and an outreach strategy to property owners and mural artists.

F. Measuring Effectiveness

The public art murals program will be successful if it results in the creation of original, artistic public art murals that beautify the City's neighborhoods, and enhance opportunities for community artistic expression. Another measure of success might be increased donations to the Public Art Trust Fund, or support for expanding the Percent for Art program.

Since the Regional Arts & Culture Council already provides an annual report to the City Council, an update on the public art murals program can easily be added to the Annual Report. The Public Art Advisory Committee will also include an evaluation component to its semi-annual planning retreat.

II. Title 5, Revenue and Finance, Code Amendments

How changes are shown in this section

Language added to the City Code is underlined; language deleted is shown in ~~striketrough~~.

The left-hand page provides staff commentary for the code language shown on the right-hand page.

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code.

Part B
Approved Code Amendments - Commentary

TITLE 5
REVENUE AND FINANCE

CHAPTER 5.74
ACQUISITION OF ART

5.74.020 Definitions

Subsection C, which provides the definition for Public Art, is amended to clarify that only artwork approved and funded through the Regional Arts and Culture Council (RACC) can be considered as "Public Art". The RACC operates on behalf of the City of Portland to approve and fund the public art installations, which can include wall murals.

TITLE 5
REVENUE AND FINANCE

CHAPTER 5.74
ACQUISITION OF ART

5.74.020 Definitions

A-B. [No change.]

C. Public Art means original visual creations which are sited in a manner accessible to the public and/or public employees, and which have been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.

D-G. [No change.]

Part B
Approved Code Amendments - Commentary

III. Title 32, Sign and Related Regulations, Code Amendments

How changes are shown in this section

Language added to the City Code is underlined; language deleted is shown in ~~striketrough~~.

The left-hand page provides staff commentary for the code language shown on the right-hand page.

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code.

Part B
Approved Code Amendments - Commentary

TITLE 32
SIGNS AND RELATED REGULATIONS

CHAPTER 32.12
AUTHORITY AND SCOPE

32.12.020 Exemptions

This section is altered to provide an exemption from the Sign Code for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC). With this provision, RACC-approved public art projects are not subject to the requirements of Title 32.

TITLE 32
SIGNS AND RELATED REGULATIONS

CHAPTER 32.12
AUTHORITY AND SCOPE

32.12.020 Exemptions

The following are exempt from the regulations of this Title, but may be subject to other portions of the City Code:

- A-F.** [No change.]
- G.** Painted wall highlights; ~~and~~
- H.** Illuminated wall highlights; ~~and~~ and
- I.** Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

IV. Title 33, Planning and Zoning, Code Amendments

How changes are shown in this section

Language added to the City Code is underlined; language deleted is shown in ~~striketrough~~.

The left-hand page provides staff commentary for the code language shown on the right-hand page.

In order to limit the size of this document and eliminate excessive printing, only those sections of the Code that are being amended are included in this document. This document is not intended to replace the entire code.

Part B

Approved Code Amendments - Commentary

CHAPTER 33.420 DESIGN OVERLAY ZONE

33.420.045 Exempt from Design Review

This section is altered to provide an exemption from Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC). With this provision, RACC-approved public art projects are not subject to the requirements of the Design Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural context of the building and site. Also, the RACC selection board includes a member from the Design Commission.

CHAPTER 33.420
DESIGN OVERLAY ZONE

33.420.045 Exempt From Design Review

The following items are exempt from design review:

- A-Q.** [No change.];
- R.** Awnings for each ground floor tenant, which meet the following requirements; ~~and~~
 - 1-2. [No change.]
- S.** Within the St. Johns plan district, alterations to single-dwelling detached structures-; and
- T.** Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Landmarks

33.445.140 Alterations to a Historic Landmark

33.445.140.B Exempt from Historic Design Review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on a Historic Landmark. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

Conservation Landmarks

33.445.230 Alterations to a Conservation Landmark

33.445.230.B Exempt from Historic Design Review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on a Conservation Landmark. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Landmarks

33.445.140 Alterations to a Historic Landmark

Alterations to a Historic Landmark require historic design review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No change.]

B. Exempt from historic design review.

1-4. [No change.]

5. Parking lot landscaping that meets the standards of this Title and does not include a wall or a fence; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and
7. Public Art as defined in Chapter 5.74.

Conservation Landmarks

33.445.230 Alterations to a Conservation Landmark

Alterations to Conservation Landmarks require historic design review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No change.]

B. Exempt from historic design review.

1-3. [No change.];

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and
6. Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Districts

33.445.320 Development and Alterations in a Historic District

33.445.320.B Exempt from historic design review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on buildings within Historic Districts. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site and surrounding district. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

Conservation Districts

33.445.420 Development and Alterations in a Conservation District

33.445.420.B Exempt from historic design review

This section is altered to provide an exemption from Historic Design Review for Public Art projects that have received approval for siting and funding through the Regional Arts and Culture Council (RACC) on buildings within Conservation Districts. With this provision, RACC-approved public art projects are not subject to the requirements of the Historic Resource Protection Overlay Zones. RACC's selection criteria include much of the design approval criteria relating to the architectural and historic context of the site and surrounding district. RACC and the Historic Landmarks Commission have begun discussing methods to ensure this context is taken into account during the review process.

Historic Districts

33.445.320 Development and Alterations in a Historic District

Building a new structure or altering an existing structure in a Historic District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. When historic design review is required in a Historic District. [No change.]

B. Exempt from historic design review.

1-4. [No change.]

5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74.

Conservation Districts

33.445.420 Development and Alterations in a Conservation District

Building a new structure or altering an existing structure in a Conservation District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. When historic design review is required in a Conservation District. [No change.]

B. Exempt from historic design review.

1-3. [No change.]

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence; ~~and~~
5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards; ~~and~~
6. Rooftop mechanical equipment that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet; and

7. Public Art as defined in Chapter 5.74.

Part B
Approved Code Amendments - Commentary

Part C: Appendices

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- II. Appendix B:** Approved Ordinance..... Pg. 35



Office of Mayor Vera Katz
City of Portland

August 30, 2004

Dear Colleagues and Interested Citizens:

The City of Portland is blessed with a vibrant arts scene. We've earned an international reputation as an "incubator" for emerging artists and innovative arts events, such as the Modern Zoo, Time Based Art, Design Festival and Fashion Incubator, as well as a strong supporter of our vibrant established visual and performing arts. Community murals have been an integral part of Portland's growing creative economy, adding beauty to Portland's neighborhoods, providing an outlet for the expression of diverse community cultural values and aspirations, and creating a unique visual landscape that attracts visitors from across the country and the world.

The City had a long history of encouraging murals by exempting them from regulation, until a court decision forced the City to regulate murals as signs. Regulating murals as signs has effectively curtailed this unique, community-based art form in Portland. At the same time, murals have enjoyed a renaissance in Los Angeles, Chicago and other major U.S. and European cities.

This proposal sets forth a constitutional avenue for the City to again encourage mural arts by acting as a patron of public art murals in public places.

I encourage you to read the proposal, and look forward to hearing your comments.

With warm regards,

Vera Katz
Mayor

ORDINANCE No. 178946

Authorize expansion of the City public art program to include the Public Art Murals program (Ordinance; amend Titles 5, 32 and 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. In 1980, the City passed its first “percent for art” ordinance and for the last 25 years has sponsored the creation and placement of public art in the City of Portland.
2. The City’s public art program provides significant benefits to the community. It contributes to the beauty of the city’s aesthetic environment, exposes citizens to art in public places and encourages and supports the arts community by providing funding for artists’ work and venues for the display of that work through their inclusion in the City’s public art collection.
3. The City has long recognized that murals accessible to the public can also provide significant benefits to the community, including enhancing the aesthetic environment, providing an avenue to involve community members in the creation of art, increasing the opportunities for artistic expression by persons of different ages and diverse ethnic, social and cultural backgrounds, and discouraging the placement of graffiti on buildings and structures.
4. In order to encourage these benefits, the City in 1986 exempted “painted wall decorations” (murals) from its sign regulations.
5. In 1991, in order to provide a bright-line distinction between what was an exempt mural and what was a regulated sign, the City amended its sign regulations and defined a sign (in part) as something containing “text, numbers, registered trademarks and registered logos” and a painted wall decoration (in part) as something not containing “text, numbers, registered trademarks and registered logos.” The purpose of this language was to avoid the need for the City to make potentially subjective, case-by-case determinations of whether something was a decoration or a sign and to provide a clear objective and test as to what was an exempt decoration or mural.
6. In 1998, a lawsuit was brought in Multnomah County Circuit Court, which alleged that the distinction between a mural (painted wall decoration) and a sign based upon the presence of absence of text, numbers, registered logos or registered trademarks was an unconstitutional, content-based regulation of speech. On November 17, 1998, the court issued a ruling that this allegation was correct and invalidated the definitions of sign and painted wall decoration to the extent they were based on this distinction.
7. In order to bring its sign code into conformance with the court’s ruling, the City had to either remove the exemption for murals, or forgo all regulation of wall signs. Faced with this choice, on November 18, 1998, the City reluctantly amended its Sign Code to remove the exemption for painted wall decorations (murals). Since that time, all exterior murals in the City have been regulated as signs.

8. Under the City's sign regulations, the largest allowable sign (absent an adjustment) is 200 square feet. These regulations apply to murals.
9. Murals are frequently well over 200 square feet in size. The larger size of many murals is an integral part of the medium. Artists, community groups and building owners, as well as many citizens at large, have expressed dissatisfaction with the 200 square foot limitation, which has brought the creation of new mural art in Portland to a virtual standstill.
10. Other cities, such as Los Angeles and Philadelphia, do not regulate all murals through their sign codes. They have public art programs that support and encourage community murals. These programs and the public art murals they foster serve as a tourist draw, beautify the cities and provide an avenue for involving youth and others in positive artistic endeavors. These are among the objectives of this Public Art Murals program.
11. Through its public art program, the City sponsors art by providing funding for art and by maintaining and displaying the public art collection in public spaces and buildings. Through the Public Art Murals program, the City will expand its sponsorship of public art and its public art collection to include murals, which will be owned by the City and placed on public property (either owned by the City or dedicated to the City for that purpose through the conveyance of a public art easement to the City). Absent circumstances requiring or permitting early termination of the easement in favor of the City by the property owner, public art easements will generally be for five years or more, as this is the minimum expectation of artists for the lifespan of this medium of artistic expression.
12. The City's Sign Code, which provides clear and objective standards for the regulation of signs, without regard to their content, is not the appropriate vehicle for the City (through RACC) to evaluate, select or commission public art for its public art collection.
13. The selection of what art to fund, purchase or otherwise include in the City's public art collection requires an evaluation of numerous factors, such as artistic quality, originality, context and scale, among others.
14. The Regional Arts and Culture Council (RACC) has extensive experience and expertise in making evaluations such as this on behalf of the City.
15. The needs met by design review and historic landmarks review can in the case of public art be even better served through the RACC selection process, which is specifically tailored to ensure that public art is of high quality, is sited in appropriate locations and in the proper context and is in scale with its surroundings. The RACC selection process is conducted by the Public Art Advisory Committee, which includes a representative of the Design Commission. When historic properties are involved, RACC can draw as needed on the expertise of the Historic Landmarks Commission. It would be needlessly burdensome to require public art to go through both the RACC review process and design review or historic landmarks review.
16. This program will not limit in any way speech (whether murals or signs) currently allowable. In particular, any mural/sign allowable prior to the adoption of this program will not be limited by this program. This program will instead provide a vehicle for the City to sponsor public art murals and add murals to its public art collection. Those wishing to participate in the public arts program will be self-selecting, by submitting a proposal to RACC for a public art mural to be owned by the City on behalf of the public.

17. The Public Art Murals program is the result of a process that began in October 2003 when the Mayor convened a group that included mural artists, a representative of Metro Murals (a non-profit group dedicated to mural art), the Executive Director of RACC and representatives of the City Club. The group met six times between October 2003 and January 2004, and then again in August and October 2004 to discuss and resolve remaining issues.
18. Between January and March 2004, meetings were held with the Citywide Land Use Group, the Alliance for Portland Neighborhood Business Associations and several local sign companies.
19. During the summer of 2004, the proposal was presented to both the Design Commission and the Historic Landmarks Commission at public hearings, and both commissions supported the proposal. RACC agreed to work with the Historic Landmarks Commission to develop an approval procedure for murals on historic buildings or in historic districts that RACC and the Landmarks Commission agree protects and respects the special values of these structures/districts.
20. On August 11, 2004, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
21. On September 28, 2004, the Planning Commission held a hearing on the proposal. Staff from the Mayor's Office, City Attorney's office and the Regional Arts and Culture Council (RACC) presented the proposal, and public testimony was received by 16 people.
22. On October 26, 2004, the Planning Commission held a work session to discuss the remaining items under the proposal and consider public testimony. The Commission voted unanimously to forward the Public Art Mural package to City Council.
23. On December 1, 2004, the City Council held a public hearing on the Planning Commission recommendation. Staff from the Mayor's Office, City Attorney's office and the Regional Arts and Culture Council (RACC) presented the proposal, and public testimony was received.
24. On December 8, 2004, City Council voted to adopt the changes for Public Art Murals, with an effective date of December 18, 2004.

Statewide Planning Goals Findings

25. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals. The following state goals and policies are relevant and applicable to the Public Art Mural Project.

26. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement:
- In October of 2003, the Office of the Mayor established a task force of interested mural artists to investigate possible options to allow the city to encourage new public art murals to be commissioned through the city. This task force met eight times.
 - Initial citizen involvement was afforded through the hearings and meetings referenced in findings 17, 18 and 19, above.
 - On August 27, 2004, the Bureau of Planning, on behalf of the Office of the Mayor, sent notice to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as other interested persons to inform them of a Community Open House on September 15, 2004. The purpose of the open house was to allow the public the opportunity to review the proposed recommendations and ask questions of staff.
 - Also on August 27, 2004, the Bureau of Planning on behalf of the Office of the Mayor sent notices to all neighborhood associations and coalitions and business associations in the City of Portland, as well as other interested persons, to inform them of a Planning Commission public hearing on the Public Art Mural project. The hearing was also published in the newspaper.
 - On September 1, 2004, the Bureau of Planning published a document titled *Public Art Murals: Proposed Draft*. The report was made available to the public and mailed to all those requesting a copy. An electronic copy was posted to both the Bureau of Planning and the Mayor's Web site.
 - On September 8, 2004, a special open house was held by the Mayor's office for representatives of the mural community. This open house allowed the community to ask questions directly of the mayor's staff, the city attorney, and a representative of the Regional Arts and Culture Committee. Twenty-four people from the mural arts community attended.
 - On September 15, 2004, a Community Open House was held at which staff from the mayor's office, city attorney's office, Planning, and the Regional Arts and Culture Commission were available to answer questions; copies of the Proposed Draft were available. Twenty-one members of the community, mostly representatives from the mural community, attended.
 - On September 28, 2004, the Planning Commission held a public hearing during which citizens and business representatives commented on the Public Art Mural project.
 - On December 1, 2004, the City Council held a public hearing on this proposal, during which citizens and business representatives provided oral and written testimony.
27. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and ensures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments are supportive of this goal because development of the recommendations followed established city procedures for legislative actions.

28. **Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural resources, scenic and historic areas. The amendment is supportive of this goal regarding historic landmarks, because the public art selection process will include criteria insuring the preservation of sites with historical significance and will require involvement of the Historic Design Commission.

Metro Urban Growth Management Functional Plan Findings

29. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to the Public Art Mural project.
30. **Title 12—** Protection of Residential Neighborhoods is intended to protect the region's existing residential neighborhoods from air and water pollution, noise and crime, and to provide adequate levels of public services. The Public Art Mural project supports the purpose and intent of this title by providing an avenue for neighborhoods to review and approve public art murals, which help in deterring graffiti on building walls and fostering increased community interaction.

Portland Comprehensive Plan Goals Findings

31. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program and reaffirmed the plan's compliance with statewide planning goals.
32. The following goals, policies and objectives of the Portland Comprehensive Plan are relevant and applicable to the Public Art Mural project.
33. **Goal 1, Metropolitan** Coordination, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.
34. **Goal 2, Urban Development**, calls for the maintenance of Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendment supports this goal by expanding the public art program to apply to public art murals, thus strengthening Portland's role as the regional cultural center. Criteria for approving art installations will be partially based on neighborhood context, helping to retain the character of established residential neighborhoods.

35. **Goal 3, Neighborhoods**, calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses and ensure the City's residential quality and economic vitality. The amendments support this goal by providing an avenue for approving public art murals, which help strengthen neighborhood identity. The Public Art program will improve physical conditions of existing structures by providing a public easement (3.1), create an avenue to improve social conditions of neighborhoods by creating community murals that help reduce property crimes such as graffiti (3.2), and promote neighborhood diversity by allowing opportunities to commission art representing a diversity of interests (3.3). The public approval process created by the Regional Arts and Culture Council (RACC) will provide an avenue for active neighborhood and business involvement (3.5).
36. **Goal 5, Economic Development**, calls for the promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the city. The amendment supports this goal by providing a legal avenue for mural artists to commission work through the City program (5.2). Resulting murals may encourage investment in existing buildings for employment and housing opportunities (5.1).
37. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The amendments are consistent with this goal because the amendment process provided opportunities for public input and followed adopted procedures for notification and involvement of citizens in the planning process. These procedures are explained in detail for State Planning Goal 1. The resultant procedures for approving public art, including murals, while not a land use decision, will provide a mechanism for public participation in the decision process.
38. **Goal 10, Plan Review and Administration**, is broken down into several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The amendments are supportive of Policy 10.10, because the exclusion of Public Art installations from Land Use and Sign Code reviews prevents an overlapping of reviews with the RACC review of public art. The changes balance the benefits of regulation against the costs of implementation and compliance.
39. **Goal 12, Urban Design**, calls for the enhancement of Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The amendments are consistent with this goal because they provide a new avenue for the creation of public art. The scale, theme, originality and diversity of the art will be review criteria used by RACC and community interests to judge for approval. As a result, these public art installations will enhance and extend Portland's attractive identity (12.1), promote areas of special identity within the city (12.2), humanize the city through promotion of the arts and excellence in design (12.5), preserve and support the qualities of individual neighborhoods (12.6), enhance Portland's appearance and character through development of public and private projects that are models of innovation and leadership in the design of the built environment (12.7) and support community planning (12.8).

NOW, THEREFORE, the Council directs:

- a. Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004, is hereby adopted;
- b. Title 33, Planning and Zoning, is hereby amended as shown in Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004;
- c. Title 32, Signs and Related Regulations, is hereby amended as shown in Exhibit A, *Public Art Mural Program: Recommended Draft*, dated November 8, 2004;
- d. Title 5, Finance and Administration, is hereby amended as shown in Exhibit A, *Public Art Murals Program: Recommended Draft*, dated November 8, 2004;
- e. The commentary and discussion in Exhibit A, Public Art Murals Program: Recommended Draft, dated November 8, 2004, are hereby adopted as legislative intent and further findings;
- f. If any section, subsection, sentence, clause or phrase of this Ordinance, or the code amendments it adopts, including but not limited to the exemption of public art from the City's sign regulations, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of the remaining portions of the Portland City Code, including but not limited to the City's sign regulations. Council declares that it would have passed the Portland City Code, and each Section, Subsection, sentence, clause, and phrase thereof, including but not limited to the City's sign regulations, regardless of the fact that any one or more Sections, Subsections, sentences, clauses, or phrases of this Ordinance, including but not limited to the exemption of public art from the City's sign regulations, may be found to be invalid or unconstitutional;
- g. The Regional Arts and Culture Council shall implement the Public Art Murals program on behalf of the City of Portland under the terms of its existing intergovernmental agreement with the City, shall reach consensus with the Historic Landmarks Commission on the RACC selection process for art on historic landmarks and in historic districts and shall refrain from approving art in such locations until consensus is reached;
- h. The Regional Arts and Culture Council shall include progress information on the Public Arts Murals program in its annual report to Council; and City *staff* shall take all necessary steps to implement the Public Art Murals Program, including but not limited to evaluating and where appropriate accepting dedications of easements for the placement of public art; monitoring and protecting the City's property interests in the public art collection and working with mural artists and the business community to develop public information materials and an outreach strategy to property owners and mural artists.

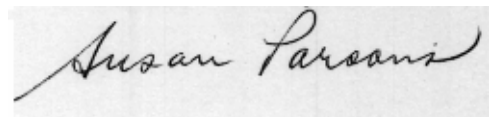
Portland
Passed by the Council, DEC 08 2004

Mayor Vera Katz

Tracy Reeve, Office of City Attorney
Phil Nameny, Bureau of Planning
November 18, 2004

GARY BLACKMER
Auditor of the City of

By

A handwritten signature in cursive script, reading "Susan Parsons", written in dark ink on a light-colored background.

Deputy

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Background

The public art mural program is a Beaverton, city-wide program administered by the Beaverton Arts Commission (BAC) as part of its Public Art Program. The Beaverton City Council voted in April 2008 to exempt all public art from the City's sign code and create a public art program for display of art on public rights of way and on private building facades and other private property under the terms of easements to be granted to the City for that purpose. New murals are reviewed by the Public Art Selection Committee, a standing committee that is responsible for overseeing the City's Public Art Mural Program. Committee members include a representative from the City and the Arts Commission, as well as artists, arts patrons, a City resident and an experienced muralist. The program has a matching grant fund opportunity available.

Eligibility

Any individual or organization interested in creating an outdoor mural in the City of Beaverton must apply for approval through the Public Art Mural Program, regardless of whether funding is being requested. To be eligible for approval and/or funding from the Public Art Mural Program, the mural must be located in the City of Beaverton. Murals approved through this program must remain on the approved site for no less than five years.

Applicants may be:

1. An individual artist or a group of individual artists.
2. A building owner.
3. A not- for-profit organization. This includes registered neighborhood associations, citizen-based groups and organizations with IRS 501(c)3 status. However, IRS 501(c)3 is not required.

Funding Criteria + Restrictions

Applicants must have a plan to match the Public Art Mural Grant request with a one-to-one match that may be all cash or a combination of cash and in-kind contributions. This one-to-one match must be reflected on the application budget page.

1. Funds will be awarded based on need as evidenced in the application.
2. Applicants are expected to provide a one-to-one match for funds requested through the Public Art Mural Program.
3. Purchases of food or equipment will not be funded through the Public Art Mural Program. (Rental of painting equipment or the purchase of painting supplies are fundable expenses.)
4. Public Art Mural funds may not be used to pay for a staff position. (Paying an artist(s) to design and paint a mural are fundable expenses.)

SelectionCriteria:

Murals will be approved based on the following criteria.

Accessibility: is viewable by the public, meets City accessibility codes;

Artist Quality: strength of the artist's concept and demonstrated craftsmanship;

Contemporary Relevance: appropriateness for our time;

Context: architectural, geographical, socio-cultural and historical;

Feasibility: budget, timeline, experience, etc.;

Originality: uniqueness;

Permanence: will last a minimum of five years, resistance to vandalism and weather;

Scale: appropriateness of scale to the surrounding neighborhoods;

Suitability: appropriateness to surrounding neighborhood;

Technical proficiency: technical skills and artistic experience;

The Commission encourages artists of all ages and races to apply. All artistic styles are welcome.

Mural Requirements

Every applicant must demonstrate that they will:

- a. Use media that ensures mural longevity and durability.
- b. Paint on a surface and structure that is stable and ready (or will be stable and ready) for painting.
- c. Use acceptable graffiti/UV coating on the finished mural that provides resistance to vandalism and weather.
- d. Create a mural that is accessible to the public.

Every applicant must provide a signed easement from the building owner. The building owner must commit to keep the mural unchanged for a minimum of 5 years and to maintain the mural during that time.

Mural Approval Process

1. **Meet with Beaverton Arts Commission staff** for initial review of imagery, location, funding and building owner's approval.
2. **Submit Public Art Mural Application.** Include 15 copies of color rendering of proposed mural, photographs of site and physical surroundings, project timeline, project budget, written description of proposed mural, site, wall preparation, materials and processes, protective coating, individuals/groups involved, evidence of community support (e.g., letter from building owner, neighborhood association, adjacent neighborhoods/businesses, etc.)
3. **Request mural proposal presentation at a Public Art Selection Committee meeting.** Meeting notice is sent to applicable neighborhood association by the Beaverton Arts Commission.
4. **Present mural to Public Art Selection Committee.** Following the presentation, a decision is made based upon adopted selection criteria for public art murals (see mural criteria and requirements).

5. **Building owner provides a notarized signed Art Easement agreement.** The agreement is then signed by the Mayor and filed with the City Attorney's office.
6. **Artist signs form agreeing to terms of Art Easement agreement and waiver of rights under the federal Visual Artist Rights Act** that would interfere with the performance of any rights under the Art Easement agreement.
7. **Applicant signs agreement with BAC to receive payments** *if receiving public funding*.
8. **Arts Commission sends official notification of approval to proceed** *if not receiving public funding*.
9. **Artist begins painting mural.**
10. **Applicant contacts Beaverton Arts Commission** Executive Director, Jayne Scott, at 503-526-2288, notifying her of completion of mural.
11. **Applicant provides digital images** of completed mural for Arts Commission's online gallery of public art murals.

Funding Availability

The number of public art murals awarded funding is dependent on the funds available and the number of applicants submitting each year.

Special Acknowledgement

The Beaverton Arts Commission would like to recognize and thank the **Regional Arts and Culture Council** (RACC) for their guidance in setting up this mural program. RACC's Public Art Mural Program was used as a model for the Beaverton program.

CHAPTER 15 PUBLIC ART

- 15.001. Purpose
- 15.010. Definitions
- 15.020. Salem Public Art Commission
- 15.030. Public Art Trust Fund
- 15.040. Dedication to Public Art Trust Fund
- 15.050. Title to Art Work
- 15.060. Siting
- 15.070. Public Mural Program Intent and Purpose
- 15.080. Public Murals; Creation; Approval by Salem Public Art Commission
- 15.090. Procedures, Mandatory Criteria for Public Murals
- 15.100. Public Mural Neighborhood Involvement

15.001. Purpose. The City Council recognizes that visual arts contribute to and provide experiences that enrich and better the social and physical environment of the community, and desires to foster an advancement of the visual arts within the City of Salem. It is the purpose of this Chapter, and the policy of the City to dedicate one-half of one percent of the total eligible costs of all improvement projects to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of public art. (Ord No. 6-10)

15.010. Definitions. Unless the context otherwise specifically requires, for purposes of this Chapter, the following words and phrases mean:

- (a) Alteration means any change to a public mural, including but not limited to any change to the image(s), materials, colors or size of the public mural. Alteration does not include naturally occurring changes to the public mural caused by exposure to the elements or the passage of time, or maintenance or repair of the public mural that includes slight and unintended deviations from the original image, colors or materials that occur when the public mural is repaired due to the passage of time, or after damage resulting from vandalism.
- (b) Artist means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces works of art, and who is not a member of the improvement project's architectural firm or the Salem Public Art Commission. The term "artist" shall include an artist's agent and a representative of the estate of an artist.
- (c) City building means any building owned or leased by the City, or area therein, which is open to the public; provided, however, "City building" does not include motor pools, surface parking lots, roads, bridges, utility lines, service facilities, maintenance sheds, pump stations, treatment plants and utility facilities, or buildings that have the primary purpose of displaying historical artifacts, cultural items, or works of art.
- (d) City Manager means the City Manager of the City of Salem, or the City Manager's designee.
- (e) Deaccessioning means relinquishing title to a work of public art.
- (f) Eligible costs means the costs for completion of an improvement project, including costs for capitalized tenant improvements, that are paid from eligible funds. Eligible costs does not include costs for: land acquisition, design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees.
- (g) Eligible funds means any funds expended by the City, from whatever source, for an

improvement project and for which public art is not precluded as an object of expenditure in connection with the improvement project.

(h) Improvement project means any project paid for wholly or in part by the City where the amount of eligible funds equals \$100,000 or more for the construction, rehabilitation, remodeling, improvement or purchase of a City building. An improvement project does not include maintenance and repair projects or remodeling or renovation projects in which more than seventy-five percent of the project cost represents improvements to mechanical systems.

(i) Oregon artist means an artist that makes Oregon his or her primary residence or principal place of business.

(j) Public art means original works of art owned or acquired by the City.

(k) Public mural means an original, two-dimensional work of visual art, comprised of paint, ceramic or glass tiles, or tesserae, executed by hand directly upon, or affixed directly to an exterior wall of a building, which has been approved by the Salem Public Art Commission and accepted by the City into its public art collection pursuant to this Chapter. A public mural is not an original work of visual art if it is mechanically reproduced or computer generated and printed on a base that will be attached to the wall, such as, by way of illustration but not limitation, limited images digitally printed on vinyl.

(l) Works of art means all forms of original creations of visual art, including and not limited to, painting, sculpture, prints, ceramics, drawings, stained glass, mosaics, photography, fiber and textiles, calligraphy, mixed media, and any combination of media, including collage. (Ord No. 6-10; Ord No. 10-10; Ord No. 13-11)

15.020. Salem Public Art Commission.

(a) There is hereby created a seven-member Salem Public Art Commission, who shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The City Manager shall serve as an ex officio non-voting secretary to the Commission. The appointed members of the Salem Public Art Commission shall consist of two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education; two members who have experience, training or expertise in museum curation, art restoration, or art appraisal; and two members who have experience, training, or expertise in architecture or landscape architecture, commercial real estate or development, or experience with foundations and cultural development; and one at-large member.

(b) Members of the Salem Public Art Commission shall serve three-year terms, but the terms shall be staggered so that not more than three members' terms of office shall expire in any one year. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until one full year after the date of expiration of his or her immediate previous term of office. In case of a vacancy, a successor to serve the remainder of the term shall be appointed by the City Council, after receiving recommendations on the applicants from the Mayor. The members of the Commission shall not receive any compensation for their services.

(c) Except for the first year, the Salem Public Art Commission shall elect a chair and a vice-chair from among its members who shall hold office at the pleasure of the Commission. The first chair and vice-chair will be appointed by the Mayor. The Salem Public Art Commission shall adopt rules of procedure and organization of the Commission, and rules for the conduct of meetings that are consistent with generally recognized principles for the orderly conduct of business by a deliberative body. All meetings of the Commission shall be open to the public.

(d) The Salem Public Art Commission shall have the authority to select, acquire, receive, borrow, commission the design or fabrication of, and maintain, deaccession, document and register all works of art within the City's public art collection with funds from the Public Art

Trust Fund. The Commission shall have the authority to advise the City Manager on the management, execution, installation, or placement of works of art, and administration of public art education activities.

(e) The Salem Public Art Commission shall recommend guidelines for adoption by the City Council for the selection, acquisition, commissioning and deaccessioning of public art that give preference to Oregon artists and that shall include consideration of the following:

- (1) Whether the work of art is compatible with the design of the City building;
- (2) Whether the work of art is of exceptional quality and enduring value;
- (3) Whether the work of art promotes a broad range of artistic styles and media in order to maintain an overall balance within the City;
- (4) Whether the work of art presents a safety hazard to the public; and
- (5) Whether the work of art requires extraordinary maintenance, including, but not limited to, periodic adjustment, repainting, repair or replacement of moving parts.

(f) The Salem Public Art Commission shall establish procedures for the maintenance, management, documentation and registration of all works of art within the City's public art collection and such other procedures and guidelines consistent with this Chapter to facilitate the implementation of the Commission's responsibilities under this Chapter.

(g) Each year at a time specified by the City Manager, the Salem Public Art Commission shall prepare and submit to the City Manager a recommended budget for the Public Art Trust Fund for the ensuing fiscal year, which the City Manager shall forward to the Salem Budget Committee. The budget shall estimate income and expenditures for the Public Art Trust Fund for that year, conform to the requirements of SRC 15.030, and be in a form prescribed by the City Manager.

(h) Except as limited by other sections of this Chapter, the Salem Public Art Commission's decisions as to the acquisition, fabrication, deaccessioning, and registration of public art, including public murals, shall be final. (Ord No. 6-10; Ord No. 13-11)

15.030. Public Art Trust Fund.

(a) There is established a special fund designated as the Public Art Trust Fund from which expenditures may be made for the acquisition, fabrication, installation, maintenance, conservation, management, deaccessioning, community education, documentation and registration of public art. The Public Art Trust Fund shall consist of funds appropriated by SRC 15.040, other funds as the City Council may appropriate, and funds given to the City from public or private sources.

(b) Monetary contributions shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is deemed appropriate by the City Manager, is required by law, or is a condition of any gift or donation. Prior to disbursing funds from a segregated account in the Public Art Trust Fund, the Salem Public Art Commission shall adopt written findings demonstrating that the proposed disbursement complies with any applicable conditions for the expenditure of those funds.

(c) Excluding funds from conditional gifts or donations, funds deposited into the Public Art Trust Fund, shall be allocated as follows:

- (1) Seventy percent shall be used for costs associated with acquiring public art, including, but not limited to the acquisition, fabrication, and installation of public art.
- (2) Twenty percent shall be used for costs associated with managing public art, including, but not limited to costs of selection, program management, community education and registration of public art.
- (3) Ten percent shall be used for the maintenance, conservation and deaccessioning of public art.

(d) Disbursements shall be made according to the terms of this Chapter and any procedures

adopted by the Salem Public Art Commission. The Salem Public Art Commission will report annually to the City Council on the disbursement of funds from the Public Art Trust Fund. (Ord No. 6-10; Ord No. 13-11)

15.040. Dedication to Public Art Trust Fund. Any city official or employee who authorizes or appropriates expenditures for an improvement project shall include in the total construction budget, and cause to be deposited in the Public Art Trust Fund, a monetary contribution for public art equal to one-half of one percent of the total eligible costs. Where an improvement project will be constructed in phases, the one-half of one percent dedication shall be applied to the estimated total cost of each phase of the project at the time that funds for the phase are encumbered. Nothing in this section prevents the City Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase. (Ord No. 6-10)

15.050. Title to Art Work.

(a) Title to works of art acquired under this Chapter shall be acquired in the name of the City and vest in the City. Acquisition of a work of art shall be accompanied by an assignment of copyright to the work of art; provided, however, the artist may retain a non-exclusive right to make reproductions of the work of art for professional advertisement and promotional purposes.

(b) Except as otherwise agreed by the Public Art Commission, no artist, by virtue of the sale of a work of art to the City, shall be deemed to have acquired any right in the continued ownership of the work of art, or to the continued placement of the work of art in any location or venue, notwithstanding the fact that the work of art may have been created as a site-specific work of art. (Ord No. 6-10; Ord No. 13-11)

15.060. Siting. Subject to any applicable ordinances, public art obtained pursuant to this Chapter may be sited in, on or about any improvement project, public right of way, easement, or other property owned, leased, or otherwise under the control of or made available to the City. (Ord No. 6-10)

15.070. Public Mural Program Intent and Purpose. The intent and purpose of SRC 15.070-15.100 is to encourage the production of public murals for acquisition by the City. Public murals are a medium of expression which serves the public interest in unique ways, including, but not limited to: enhancing the aesthetics of the City; providing avenues for original artistic expression in the City; providing public edification through access to original works of public art; encouraging community participation in the creation of original works of art; and reducing the incidence of graffiti and other crime. Public murals can increase community identity and foster a sense of place if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood involvement process. (Ord No. 10-10)

15.080. 15.080. Public Murals; Creation; Approval by Salem Public Art Commission. No person shall commence creation of any public mural without first obtaining approval from the Salem Public Art Commission, and agreeing to donate the public mural to the City's public art collection, as provided in SRC 15.090. Murals that are created without approval from the Salem Public Art Commission or are inconsistent with the conditions of approval from the Salem Public Art Commission are not public murals and are subject to SRC Chapter 900. Approval of a public mural does not require historic design review. (Ord No. 10-10; Ord No. 13-11; Ord No. 4-12)

15.090. Procedures, Mandatory Criteria for Public Murals. The Salem Public Art Commission shall adopt procedures and standards setting forth the requirements for creation, approval, donation, and acceptance of public murals into the City's public art collection. At a minimum, the standards shall include the following:

(a) Public murals shall remain in place, without alterations, for a period of not less than seven years, except as may be specified by the Salem Public Art Commission in the conditions of approval.

(b) In historic districts, public murals may only be allowed on buildings that are non-historic non-contributing buildings or structures. Murals in historic districts shall not be allowed on a building façade. For purposes of this paragraph, the building façade is defined as the wall that contains the main entrance onto the premises.

(c) No public murals shall be allowed on single family dwellings, duplexes, or multi-family dwellings. As used in this subsection, single family dwellings, duplexes, or multi-family dwellings do not include mixed-use buildings which contain a single family dwelling, duplex, or multi-family dwellings.

(d) No public mural may contain electrical components, three dimensional structural elements; employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance of the public mural or changes the mural image or message.

(e) Public murals shall be located in a manner that is accessible to the public.

(f) The approval and acceptance of each public mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the mural will be located, in a form approved by the City Attorney. The terms of the easement shall grant the right to create the public mural on the wall of the building and provide that the person granting the easement will maintain and restore the public mural in its original condition for the period of the easement, and state that upon termination of the easement, the mural shall be removed and the building restored to its prior condition. (Ord No. 10-10; Ord No. 13-11)

15.100. Public Mural Neighborhood Involvement. Prior to approving a public mural for the City's public art collection, the Salem Public Art Commission shall hold a public hearing at which interested members of the public may review and comment upon the proposed public mural. Written notice of the hearing shall be provided to the neighborhood association in which the public mural is proposed to be located, and public notice shall be given no later than thirty days before the hearing. (Ord No. 10-10; Ord No. 13-11)



AGENDA

MILWAUKIE PLANNING COMMISSION

Tuesday, October 22, 2013, 6:30 PM

Continued from October 8, 2013

MILWAUKIE CITY HALL

10722 SE MAIN STREET

1.0 Call to Order - Procedural Matters

2.0 Planning Commission Minutes – Motion Needed

2.1 May 14, 2013

2.2 May 28, 2013 Joint Session with Design & Landmarks Committee

3.0 Information Items

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda

5.0 Public Hearings – Public hearings will follow the procedure listed on reverse

5.1 Summary: Parking Determination Appeal
Applicant/Owner: Western Planning/Pendleton Woolen Mills
Address: 2516 SE Mailwell Dr
File: AP-13-01
Staff: Ryan Marquardt

6.0 Worksession Items

6.1 Summary: Mural Code Project
Staff: Ryan Marquardt

6.2 Summary: Land Use Development Review Training
Staff: Ryan Marquardt

7.0 Planning Department Other Business/Updates

8.0 Planning Commission Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings:

November 12, 2013 1. Public Hearing: DR-13-05 10400 SE Main St Veterinarian Clinic Design Review

2. Worksession: Moving Forward Milwaukie project briefing *tentative*

November 26, 2013 1. TBD

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Lisa Batey, Chair
Clare Fuchs, Vice Chair
Scott Barbur
Sine Bone
Shaun Lowcock
Wilda Parks
Gabe Storm

Planning Department Staff:

Steve Butler, Interim Planning Director
Ryan Marquardt, Senior Planner
Li Alligood, Associate Planner
Brett Kelter, Associate Planner
Alicia Martin, Administrative Specialist II

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, MAY 14, 2013
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Clare Fuchs, Vice Chair
Scott Barbur
Sine Bone
Shaun Lowcock
Wilda Parks
Gabe Storm

STAFF PRESENT

Stephen C. Butler, Planning Director
Ryan Marquardt, Senior Planner
Kari Svanstrom, Associate Planner
Damien Hall, City Attorney

1.0 Call to Order – Procedural Matters

Chair Batey called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

2.0 Planning Commission Minutes - None**3.0 Information Items**

Chair Batey introduced and welcomed Scott Barbur as the new Planning Commissioner.

Scott Barbur noted his background and current law business in Milwaukie.

Chair Batey noted the opening of the Milwaukie Farmers Market. She also encouraged citizens to call a hotline to report odors from the Kellogg Treatment Plant.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings

- 5.1 Summary: Tae Kwon Do Use Determination
Applicant/Owner: Kimco Realty/PKII Milwaukie Marketplace LLC
Address: 10840 SE Oak St, Milwaukie Marketplace
File: CCS-13-01
Staff: Kari Svanstrom

Chair Batey called the public hearing to order and read the conduct of minor quasi-judicial hearing format into the record.

Kari Svanstrom, Associate Planner, presented the staff report via PowerPoint. She reviewed the criteria and the allowed uses in the Community Shopping Commercial CCS zone. The proposed use would fall under the Office/School use allowed in the zone. Staff recommended approval with revised findings and conditions.

Ms. Svanstrom answered questions from the Commission.

Bill Brown, Kimo Realty, applicant, felt that the proposed use was an appropriate fit for daily life routines and was a complimentary community use.

Sang Yun, USWC TaeKwonDo, applicant's tenant, described the hopes of the business and potential number of students.

It was moved by Vice Chair Fuchs and seconded by Commissioner Lowcock to approve the use determination for a taekwondo studio for File CCS-13-01 with the revised findings with corrected reference from MMC 19.104 to MMC 19.201 as noted. The motion passed unanimously.

5.2 Summary: Tacoma Station Area Plan (TSAP)

Applicant: City of Milwaukie

File: CPA-13-01, ZA-13-01

Staff: Ryan Marquardt

Chair Batey called the hearing to order and read the conduct of legislative hearing format into the record.

Ryan Marquardt, Senior Planner, introduced project consultant Matt Hastie with Angelo Planning Group, and presented the staff report via PowerPoint. Staff was seeking recommendation by the Planning Commission to City Council for adoption of the Tacoma Station Area Plan (TSAP). City Council public hearings were scheduled for June 4 and June 18.

Mr. Marquardt reviewed the Executive Summary. He noted that the two application file numbers were because the TSAP was an ancillary document to the Comprehensive Plan, and also involved policy and map amendments involving the M (Manufacturing) Zone and a new overlay for the station area that included land use and design regulations. There would also be a Station Community Plan Boundary ordinance in order to fulfill a Metro Title 6 requirement.

Mr. Hastie and **Mr. Marquardt** reviewed the proposed amendments, and their zoning recommendations and policy issues, as follows:

- **M Zone:** new list of classifications for permitted, limited, and conditional use classifications; allowed office and retail use; and landscaping standards.
- **Overlay Zone:** would apply to entire Station Area with subarea-specific provisions for allowed, limited, retail, and residential uses.
- **Nonconforming uses and setbacks:** would be treated the same as elsewhere in the city

- **Zoning recommendations and policy issues for:** height, density, and floor area ratios, per zones; window coverage requirements; parking strategies and ratio requirements; and transit strategies and phasing to encourage transit use;
- **Project implementation:** steps and phasing;
- **Transportation Priority Improvements:** connectivity between Main Street, light rail stations, neighborhoods; and improved crossings.
- **Subareas and Opportunity Sites**

Mr. Marquardt noted the current Transportation System Plan (TSP) update and that changes and projects identified within the TSAP would be incorporated into the TSP.

Mr. Marquardt reviewed the comments received after the date of the staff report and responses by staff.

Mr. Marquardt and **Mr. Hastie** responded to questions from the Commission.

Chair Batey called for public testimony.

Neutral

Michael Schiess, 2405 SE Clatsop St, noted Project 11, the pedestrian bridge proposed through his property, was problematic. The area had heavy industrial traffic and posed a high safety risk for cyclists. The project also meant lost privacy for his property. He suggested using pilings in Johnson Creek left from a bridge washed out in the 1996 flood that crossed at the end of Clatsop St into Johnson Creek City Park as a better option for a bridge for both the construction of the bridge as well as cyclist safety and line of site.

Catherine Stauffer, 2405 SE Clatsop St, stated she was a cyclist herself and supported improvements to bike accessibility. However, through experience, the proposed area was very hazardous as it was a major industrial area. She also questioned the long term intent and if the City was supportive of industrial lands.

Peter Stark, 2939 NW Cornell Rd, represented the Oregon Worsted Company. He was in support of TSAP but was concerned about the modifications to the M Zone. He believed development west of McLoughlin Blvd would be stifled by the proposed M Zone changes to office and retail uses, and noted the proposed changes would make existing business nonconforming. Local businesses could do more if the area was incorporated into the overlay zone.

Mr. Butler noted that adding the overlay to the area Mr. Stark suggested would take a lot of extra time and public outreach. The TSAP study area focused around the station area and had not included the west side of McLoughlin Blvd, due primarily to budgetary reasons.

In Opposition

Rick Anderson, Anderson Dye Manufacturing, 2524 SE Moores St, stated Project 5C in Subarea 3A was a proposed bicycle/pedestrian path through their property, noting there was no right-of-way where the path was proposed. He added that one proposed option for parking would remove an automobile repair business and a plastics company, and under the proposed zone changes the businesses would not be allowed to relocate in the area. The estimated cost of the tunnel does not include expenses for land acquisition or damages to existing business. He asked the Commission to reject Project 5C.

Ken Klunder, Arjae Sheet Metal, 8545 SE McLoughlin Blvd, referred to Mr. Scheiss' testimony and added his concern of residential zoning for Subarea 2. He was in support of the TSAP, but the proposed residential area was on a dead-end street and he was concerned about industrial traffic congestion and safety.

Staff responded to public testimony.

Chair Batey closed the public testimony.

The Planning Commission discussed some key issues, including:

- Agreed that retaining the conditional use option of a sports and entertainment complex in Subarea 3 was beneficial.
- Agreed to lower the priority of the tunnel path project 5C due to the property owner's concerns as well as project cost concerns, but left the project as an option for long term consideration.

The Commission agreed to discuss the following issues at the next hearing.

- Proposed bicycle/pedestrian connection and bridge across Johnson Creek near SE 24th Ave and SE Clatsop St.
- Should the Manufacturing M Zone modifications be limited to the TSAP area or apply more broadly to other M zone areas in the city?
- Maximum retail size
- Maximum office space

It was moved by Commissioner Lowcock and seconded by Commissioner Barbur to close public testimony and continue the hearing for CPA-13-01, ZA-13-01, Tacoma Station Area Plan (TSAP), to a date certain of May 28, 2013. The motion passed unanimously.

6.0 Worksession Items – None

7.0 Planning Department Other Business/Updates

Mr. Butler noted there was a public meeting for the Transportation System Plan (TSP) Update project scheduled for June 3, 2013.

He also noted the Adams Street Connector Project was presented to the Design and Landmarks Committee. The DLC supported the project.

8.0 Planning Commission Discussion Items

9.0 Forecast for Future Meetings:

- | | |
|---------------|--|
| May 28 2013 | 1. Joint Session with Design and Landmarks Committee |
| | 2. Worksession: PSU Downtown Road Map Project Presentation |
| | 3. Worksession: Commercial Core Enhancement Program (CCEP) |
| | project update |
| June 11, 2013 | 1. Public Hearing: VR-12-05 Nordby Setback Variance |

Meeting adjourned at approximately 10:03 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

Lisa Batey, Chair

CITY OF MILWAUKIE
PLANNING COMMISSION
DESIGN & LANDMARKS COMMITTEE
JOINT MEETING
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, May 28, 2013
6:30 PM

COMMISSIONERS PRESENT

Lisa Batey, Chair
 Scott Barbur
 Sine Bone
 Shaun Lowcock
 Wilda Parks
 Gabe Storm

STAFF PRESENT

Steve Butler, Planning Director
 Ryan Marquardt, Senior Planner
 Li Alligood, Associate Planner (DLC Liaison)
 Damien Hall, City Attorney

COMMISSIONERS ABSENT

Clare Fuchs, Vice Chair

DLC MEMBERS PRESENT

Greg Hemer, Chair
 Becky Ives
 Chantelle Gamba

DLC MEMBERS ABSENT

None

1.0 Call to Order – Procedural Matters*

Chair Lisa Batey called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

DLC Chair Greg Hemer called the meeting of the Design and Landmarks Committee (DLC) to order.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

2.0 2.0 Planning Commission and Design and Landmarks Committee Minutes

2.1 February 23, 2013 (PC)

Commissioner Wilda Parks moved to approve the February 23, 2013, Planning Commission minutes as presented. **Commissioner Shaun Lowcock** seconded the motion, which passed unanimously.

2.2 March 6, 2013 (PC)

DLC Member Becky Ives moved to approve the March 6, 2013, DLC minutes as

presented. DLC Member Chantelle Gamba seconded the motion, which passed unanimously.

3.0 Information Items

DLC Chair Hemer noted that the DLC had two vacancies and encouraged community members to apply.

Steve Butler, Planning Director, noted upcoming public events:

- The Planning Department would be hosting an open house and workshop to discuss the updates to the Transportation System Plan (TSP) on Monday, June 3, and invited the Commission and Committee members to attend.
- An active transportation workshop had been scheduled for Monday, June 13, at TriMet.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Worksession Items

- 5.1 Summary: Commercial Core Enhancement Program (CCEP) Update
Staff: Li Alligood

Li Alligood, Associate Planner, provided a brief overview of the Commercial Core Enhancement Program (CCEP) and responded to questions related to Milwaukie's inactive Main Street program; the phasing of the CCEP projects; and the geography of central Milwaukie.

- 5.2 Summary: *Fresh Look Milwaukie: Downtown Road Map* Presentation
Staff: Li Alligood

Ms. Alligood introduced ALIGN planning. **Jeffrey Butts, ALIGN planning**, introduced the ALIGN planning team: **Ryan Lemay, Erica Smith, and Iren Taran**

Mr. Butts and **Mr. Lemay** provided a project overview via PowerPoint, and the team responded to questions regarding desirable uses in downtown Milwaukie, public outreach methods, how to address signage in downtown, how to engage high school students, and how to further engage community residents.

Mr. Butler and **Ms. Alligood** responded to questions about market information and the City's role in economic development.

The Commission and Committee commended and thanked the team for their work.

Chair Hemer adjourned the DLC meeting at 7:45pm. The DLC members left the meeting.

6.0 Public Hearings

6.1 Summary: Tacoma Station Area Plan (TSAP)

Applicant/Owner: City of Milwaukie

File: CPA-13-01, ZA-13-01

Staff: Ryan Marquardt

Chair Batey called the hearing to order and read the conduct of legislative hearing format into the record. The hearing was continued from May 14, 2013. The public testimony portion of the hearing had been closed, and the Commission had entered deliberation.

Ryan Marquardt, Senior Planner, introduced **Serah Breakstone, Angelo Planning Group**.

Mr. Marquardt provided a presentation via PowerPoint. He discussed points brought up during the May 14, 2013, public testimony; reviewed the six issues the Commission had identified for further deliberation, which were discussed in the staff report and epacket for the May 14 and May 28 hearings; and identified options for addressing each issue.

The Commission returned to deliberations, referring to the six issues listed in the May 14, 2013, staff report, beginning on 6.1 page 2 of the packet, and directed staff to incorporate the following items into the draft plan and code amendments:

1. Recreation/Entertainment Complex in Subarea 3: Proposed approval criteria for a recreation/entertainment complex as described in Attachment 1
2. Transportation Project 5c – Undercrossing through Springwater Trail Berm: Proposed revisions to the Springwater Corridor Trail undercrossing as described in Attachment
3. Transportation Project 11 – Pedestrian Bridge across Johnson Creek at SE 24th Ave: Proposed addition of a potential second pedestrian/bicycle connection across Johnson Creek as described in Attachment 3
4. M zone amendments: The proposed M zone amendments should apply to all M zone properties, both within the north industrial area and the Johnson Creek industrial area
5. Maximum retail size: Reduce the proposed retail maximums from 30,000 sq ft to 20,000 sq ft in Subareas 2 and 3, and require conditional use approval per MMC 19.905 Conditional Uses for retail development between 20,000 sq ft and 30,000 sq ft
6. Office size: Retain proposed maximums for office sizes in Subarea 4

The Commission agreed with the proposed approaches to the future street connections and parking standards.

Mr. Hall noted that the approval criteria E.1 for a recreation/entertainment complex outlined in red on 6.1 page 7 could be difficult to write findings for, and suggested it be revised to “the recreation/entertainment complex us is not inconsistent with the adopted vision for Subarea 3” or similar language. **The Commission** agreed with Mr. Hall’s proposal and directed staff to incorporate the revisions.

Mr. Marquardt reviewed the issues and amendments to be included in the motion.

Commissioner Parks moved to recommend City Council approval of applications CPA-13-01 and ZA-13-01 with the findings and Comprehensive Plan and zoning map amendments from the May 14 and May 28 meetings and as amended and presented in the attachments at the May 28 meeting and as amended at the May 28 meeting by the Planning Commission, specific amendments being for issue 1, amended conditional use approval criteria; for issue 5, for Subareas 2 and 3, a maximum permitted retail square footage of 20,000 square feet, with a conditional use permitted up to 30,000 square feet. **Commissioner Sine Bone** seconded the motion, which passed unanimously.

Mr. Marquardt noted that City Council hearings were scheduled for June 4 and June 18, 2013. The Council packet would not include the amendments recommended by the Commission at the May 28 meeting.

7.0 Planning Department Other Business/Updates

Mr. Butler passed out updated zoning ordinance pages, and recommended cancellation of the June 11, 2013, public meeting.

Commissioner Lowcock moved to cancel the June 11 meeting. **Commissioner Parks** seconded the motion, which passed unanimously.

8.0 Planning Commission Discussion Items

9.0 Forecast for Future Meetings: Planning Commission

- | | |
|---------------|--|
| June 11, 2013 | 1. Cancelled |
| June 25, 2013 | 1. Public Hearing: CPA-13-02 Stormwater Master Plan |
| | 2. Public Hearing: VR-12-05 9925 SE 37 th Ave Nordby Variance |

Design and Landmarks Committee

- | | |
|--------------|--------------|
| June 3, 2013 | 1. Cancelled |
| July 1, 2013 | 1. Cancelled |

Meeting adjourned at approximately 9:20 p.m.

Respectfully submitted,

Li Alligood, Associate Planner

CITY OF MILWAUKIE JOINT PLANNING COMMISSION/DESIGN & LANDMARKS COMMITTEE
Minutes of May 28, 2013
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Lisa Batey
Planning Commission Chair

Greg Hemer
DLC Chair



To: Planning Commission
Through: Steve Butler, Community Development Director and Interim Planning Director
From: Ryan Marquardt, Senior Planner
Date: October 2, 2013, for October 8, 2013, Appeal Hearing
Subject: File: AP-13-01
Applicant: William Horning
Owner(s): Annetta Young, Pendleton Woolen Mills
Address: 2516 SE Mailwell Drive
Legal Description (Map & Taxlot): 11E25CB00100
NDA: McLoughlin Industrial

ACTION REQUESTED

Uphold the Director Determination in Land Use File #DD-13-04 based on the recommended Findings in Attachment 1. This would uphold the determination in File #DD-13-04 that certain vehicle parking spaces along the SE Mailwell St of 2516 SE Mailwell St are not off-street vehicle parking spaces for the purposes of Milwaukie Municipal Code (MMC) Title 19.

BACKGROUND INFORMATION

A. Site and Vicinity
The site is located at 2516 SE Mailwell Drive. The site contains warehouses for the Pendleton Woolen Mills company. The surrounding area consists of industrial and warehouse uses common to the city's north industrial area.

B. Zoning Designation
The site's base zone is the Tacoma Station Area Manufacturing Zone (M-TSA), and is within Subarea 4 of the Tacoma Station Area Overlay.

C. Comprehensive Plan Designation

The Comprehensive Plan Designation of the site is Industrial (I) and is within the Tacoma Station Area Plan area (TSAP).

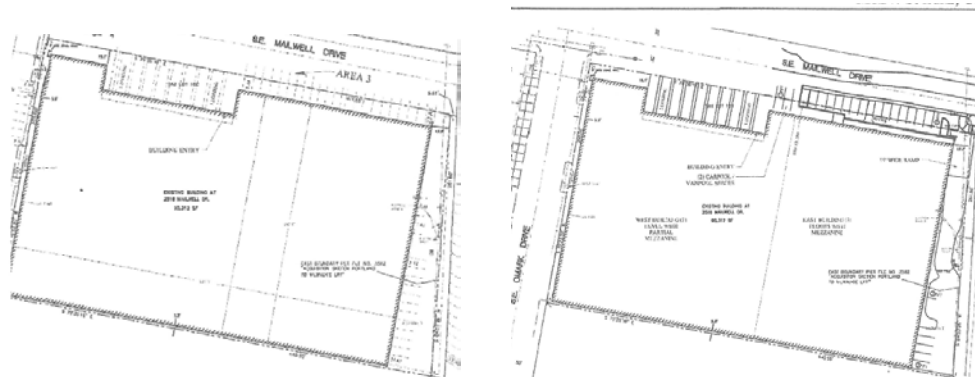
D. Land Use History

City permits indicate the only prior land use decision is File #DEV-13-03 and P-13-05. These applications were related to the construction and shared parking agreement for a parking area on railroad right-of-way constructed for use by Pendleton Woolen Mills.

E. Appeal Background

The applicant is appealing a decision regarding a Director Determination (File #DD-13-04). See Attachment 2 for the appeal and Attachment 3 for File #DD-13-04.

The issue of vehicle parking at the site arose as a result of construction for the Portland Milwaukie Light Rail (PMLR) line and modifications to the rail crossing at Mailwell Dr. The rail crossing is on the northeast corner of the site. The addition of rails for light rail and resulting grade changes at the intersection resulted in the construction of a retaining wall along the northern boundary of the site. The wall is necessary to support the raised street grade as Mailwell Dr approaches the rail crossing.



Pendleton property prior to and after changes to PMLR crossing.

The location of the retaining wall interfered with the location of approximately 15 vehicle parking spaces along the northern side of the building. See upper right corner of the graphics above from the applicant's materials in Attachment 3.B.ii for conditions before and after the right-of-way work. In reconstructing the street, these spaces were shifted further north so the front of the parking space is near the edge of the retaining wall. Other changes resulting from PMLR occurred on the east side of the site that eliminated parking spaces in the railroad right of way that had been used by Pendleton for several years. However, the spaces at issue for this appeal are those located along the northern side of the building to the east of the truck loading bays.

Request for Director Determination

On April 3, 2013, Pendleton applied for a Director Determination regarding the status of its off-street parking spaces. The request was, "...that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site

spaces be confirmed as meeting the current code parking and loading requirements for the existing building.”

Director Determination

The Director Determination was issued on July 16, 2013. The relevant portion of the determination regarding spaces on the northern side of the building is summarized below. The criteria for a Director Determination are that the nonconforming use or development was permitted under applicable regulations at the time it was established; and the nonconforming use has been legally maintained over time and has not been discontinued or abandoned (MMC 19.904.B.2.a and b).

The history of the parking and loading spaces at the Pendleton Site is:

- A 1968 aerial photograph of the site— loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line. See Attachment 3.A.i.
- A 1977 aerial photograph of the site— no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970. See Attachment 3.A.ii.
- Site plan submitted by the applicant depicting the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 15 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project. See Attachment 3.B.ii.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking.

Portions of these parking areas have been modified from when they were established. The determination of these modifications is that the remaining 15 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all (average of 15-16 lineal ft of an 18 ft stall) of the area of these stalls is now within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

After evaluating the space and number of off-street parking spaces available, the determination found that 54 spaces are required, and the site has 33 available off-street parking spaces. The City does not consider this reduction in the number of available parking spaces to be a violation, as MMC Subsection 19.504.2 allows reductions below minimum code standard when done for public conveyance or use. In this instance, the City considers the construction of the retaining wall that necessitated moving the

nonconforming spaces on Mailwell into the right of way as “equivalent to dedication or conveyance for a public use” (MMC 19.504.2).

F. Points of Appeal

The applicant appealed the Director Determination on July 31, 2013. The key points of the appeal are:

- The applicant assumed that all of the spaces along the north side of the building abutting Mailwell Drive were nonconforming parking spaces that were available for use by Pendleton.
- Pendleton and TriMet agreed to a settlement addressing the impacts of TriMet's work, and the settlement did not include the loss of an additional 15 spaces along Mailwell Drive due to the modifications of these spaces.
- TriMet represented that these 15 spaces could continue to be Pendleton's to use and so these spaces were kept out of the compensation negotiations. The determination changes the previous understanding of the impacts of TriMet's taking and this new position was not compensated for in the TriMet settlement. Further, this puts severe and unacceptable stress on the seasonal high demand for parking at the Pendleton facility.
- The city did not notify Pendleton that they would be losing the nonconforming spaces when they permitted TriMet, under its condemnation authority, to remodel the spaces in front of the Mailwell facility. During all negotiations for the takings of land and construction impacts to the Pendleton Mailwell facility these 15 spaces were represented and assumed to belong to Pendleton's Mailwell facility following TriMet's reconstruction.

The applicant requests that the Planning Commission find that the 15 remodeled spaces continue to be viewed as legally nonconforming off-street parking spaces. This revision to the Planning Director Determination would allow Pendleton to meet the current code requirements for parking for this facility.

KEY ISSUES

A. Role of Trimet and City of Milwaukie

It is important to clarify the roles that Trimet and the City of Milwaukie had in the work along Mailwell Dr. Trimet and its contractors were responsible for the design and construction of the right-of-way work. Coordination with individual property owners regarding impacts to specific properties, including compensation for impacts, was also Trimet's responsibility. The City was only responsible for review and permitting of the right-of-way work.

The PMLR project is unique as a large civil infrastructure project, and it has required close coordination between Trimet and other agencies. Though the division of roles described above is accurate, the City did have involvement with Trimet early in the project about the design of infrastructure improvements and commented on preliminary construction plans.

Despite the City's involvement and awareness of construction plans, the role of assessing and compensating for impacts to individual properties was Trimet's. The City was not a party to such negotiations.

B. Request for Determination of Nonconforming Status

The Planning Department often receives questions where nonconforming development may be altered. Some of these situations are complex and cannot be fully answered without investigation into the development history of the property. In these cases, the Planning Department's position is that the nonconforming issues need to be assessed through a Director Determination.

In the case of the Pendleton building, the City was in communication with the applicant's representative in August 2012 regarding the parking spaces and minimum parking requirements. The applicant asserts that Trimet represented that these spaces would continue to be off-street parking for Pendleton. Staff does not believe that the City ever took a position regarding these parking spaces prior to the decision in File #DD-13-04. Staff's search of the address file for this property and PMLR project files also did not find any documentation that this was communicated to the appellant or Trimet. It should be noted that the appellant's materials also do not document that the City communicated to the appellant or to Trimet that the parking spaces would be counted as off-street parking spaces.

Staff believes that the City did not take a definitive position with regard to the amount of off-street parking spaces for the Pendleton site prior to the decision for File #DD-13-04. The city, appellant, and Trimet all were aware that there were questions about the status of the parking spaces on Mailwell Dr. The City was consistent with past practice in responding to this situation by addressing the matter through a Director Determination once requested by the appellant. If Trimet did assert that the spaces along Mailwell Dr would count as off-street parking for Pendleton, it has not been documented that this assertion was based on information from the City. It appears the issue of adequate compensation to Pendleton by Trimet could have been addressed at the appropriate time if the request for the determination were made before negotiations with Trimet were finalized.

C. Determination of Off-Street versus On-street Parking

The central issue in the determination is whether the vehicle parking spaces in front of the building on Mailwell Dr have been legally maintained as off-street parking. The determination did acknowledge that the spaces were established prior to regulation of off-street parking spaces in Milwaukie. However, the determination also holds that the spaces were not maintained as off-street parking spaces because of their shift further into the right-of-way. Staff acknowledges that this shift is not something over which the applicant had control, but asserts that the nonconformity was not maintained nevertheless.

The appellant's site plans from the Director Determination show that approximately 2.5 – 3 ft (13-16%) of each 18 ft-deep parking space is on the Pendleton site. This contrasts with the configuration prior to the right-of-way work when about 12 ft (66%) of each 18-ft-deep parking space. This type of parking configuration with a space partly on private property and partly in the right-of-way does exist in some areas of the city, but is an anomaly. The Zoning Ordinance does not provide guidance on consideration of these spaces as on or off-street parking. Staff's position in evaluating the pre-PLMR configuration was to consider them as legal off-street parking spaces. The majority of the space was off-street, with the

off-street portion being nonconforming to dimensional standards and buffering standards that were enacted after the parking spaces were first established.

Following the right-of-way changes on Mailwell Dr, staff's evaluation was that a vast majority of any vehicle parked in one of these spaces will be in the right-of-way, which effectively makes the space on-street parking. The Milwaukie Engineering Department staff concurs with this assessment and indicated they would consider these spaces to be on-street spaces. Staff suggests that, in considering this appeal, the Planning Commission evaluates the specifics of this property, and does not need to come to a consensus on a general rule for evaluating similar situations.

CONCLUSIONS

Staff recommendation to the Planning Commission is as follows:

Uphold the Director Determination in File #DD_13-04 regarding the status of off-street parking at the Pendleton site at 2516 SE Mailwell Dr.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Subsection 19.903.4.B.2, Legal Status of a Nonconforming Use or Development

This is an appeal of a land use application reviewed as Type I Review. It requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. The Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

An appeal of a land use decision that received a Type I Review is an unrestricted de novo hearing, allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. **The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.** The Commission has the following decision-making options:

- A. Uphold the decision in File #DD-13-04 with the findings in Attachment 1.
- B. Uphold the decision in File #DD-13-04 with modified findings if the Planning Commission determines that the initial decision had findings in error as a matter of fact or law.
- C. Reverse the decision in File #DD-13-04 04 with modified findings, identifying the portions of the initial decision had findings in error as a matter of fact or law.
- D. Continue the hearing. The appellant has provided a waiver to the 120-day clock to allow the city to make its final decision by November 28, 2013. The Planning Commission is the City's final decision making authority for this appeal and must make a decision by this date.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	E- Packet
1. Recommended Findings Upholding Appealed Decision	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Appellant's Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. File #DD-13-04				
a. Notice of Decision	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. 1966 aerial photo	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. 1967 aerial photo	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Ordinance #1183 – Off-street Parking Regulations	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Applicant's Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Narrative	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Parking Studies (Sheets 1 and 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Shared Parking Lot Layout	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Site History	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
v. Property Deeds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
vi. 1975 Milwaukie Zoning Ordinance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. List of Record	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-90>.

Recommended Findings
File #AP-13-04, Appeal of Director Determination File #DD-13-04

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The appellant, Annetta Young for Pendleton Woolen Mills, has appealed a decision issued by the City of Milwaukie Planning Director in Land Use File #DD-13-04. File #DD-13-04 is a Director Determination regarding the status of certain vehicle parking spaces at 2516 SE Mailwell Dr. This site is in the Tacoma Station Area Manufacturing Zone (M-TSA). The land use application file number for the appeal is AP-13-04.
2. The determination sought in File #DD-13-04 was regarding the amount of off-street parking spaces for the site at 2516 SE Mailwell Dr. The notice of decision for File #DD-13-04 was issued on July 16, 2013. The Director Determination held that parking spaces on the eastern side of the building on the site were legal nonconforming off-street parking spaces, loading spaces and some adjacent vehicle parking spaces on the north side of the building were nonconforming off-street parking and loading spaces, and that certain spaces on the northern side of the building that had recently been relocated no longer are considered off-street parking spaces. The Director Determination also analyzed the required number of off-street parking spaces for the current site and the number of legal off-street parking spaces available on the site and through shared parking agreements.
3. The appeal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1010, Appeals
 - MMC Section 19.903, Code Interpretations and Director Determinations
4. The application has been processed and public notice provided in accordance with MMC Section 19.1010, Appeals. A public hearing was held on October 8, 2013, as required by law.
5. MMC Section 19.1010, Appeals
 - a. MMC 19.1010.1 establishes standards for filing an appeal.
 - (1) MMC 19.1010.1.A. describes the information required for an appeal. The information submitted by the appellant contains the date and case file number of the decision being appealed, documents that the appellant has standing to appeal per MMC 19.1010.4.A as the applicant from the decision being appealed, and identifies the issue in the original decision that the appellant believes was incorrectly identified.
 - (2) MMC 19.1010.1.B requires payment of an application fee at the time of filing, which was submitted by the appellant at the time the appeal was filed.
 - (3) MMC 19.1010.1.C requires the appeal materials to be filed within the 15-day appeal period for the decision being appealed. File #DD-13-04 was issued on July 16, 2013 and its appeal period ended at 5 PM on July 31, 2013. The appellant submitted the information necessary for an appeal on July 31, 2013.

The Planning Commission finds that the appellant has satisfied the standards for filing an appeal of File #DD-13-04.
 - b. MMC 19.1010.2 establishes the procedures for an appeal hearing. The Planning Commission is the appeal authority for File #DD-13-04, which was a Type I Review.

On October 8, 2013, the Planning Commission held a hearing per the public hearing procedures in MMC 19.1009. The requirements of this section have been satisfied.

- c. MMC 19.1010.3 establishes the types of hearing for appeals. The file being appealed was a Type I Review. Per MMC 19.1010.4.C specifies that the hearing for this appeal is an unrestricted de novo hearing. The public hearing allowed presentation of new evidence, testimony, and argument by any party. The Planning Commission considered all relevant evidence, testimony, and argument that are provided at the hearing, and did not limit the scope of the hearing to the issues that were raised on appeal. The Planning Commission's standard of review is whether the initial decision in File #DD-13-04 has findings and/or conditions that are in error as a matter of fact or law. The requirements of this section have been satisfied.
- d. MMC 19.1010.4 contains specific provisions for appeal of a Type I decision.
 - (a) MMC 19.1010.4.A establishes that the decision may only be appealed by the applicant or the applicant's representative. The appellant was the applicant for the appealed decision.
 - (b) MMC 19.1010.4.B requires that at least 20 days prior to the appeal hearing, the City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing. The City mailed this required notice on September 18, 2013.
 - (c) MMC 19.1010.4.C requires that the appeal hearing shall be an unrestricted de novo hearing. The public hearing on October 8, 2013 was an unrestricted de novo hearing per MMC 19.1010.3.A.

6. MMC Section 19.903, Code Interpretations and Director Determinations

- a. MMC 19.903.2.B establishes situations for which a Director Determination can be requested. The Planning Commission finds that the request meets the situation described in MMC 19.903.2.B.4; determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19.
- b. MMC 19.903.3 establishes the review process for Director Determinations. The process for File #DD-13-04 met the process described in this subsection. The current review of the Director Determination is being reviewed under appeal per the procedures in MMC 19.1010.\
- c. MMC 19.903.4.B.2 contains the approval criteria for a Director Determination of the Legal Status of a Nonconforming Use or Development. The criteria in this subsection are MMC 19.903.4.B.2.a: "The nonconforming use or development was permitted under applicable regulations at the time it was established", and MMC 19.903.4.B.2.b: "The nonconforming use has been legally maintained over time and has not been discontinued or abandoned".

A 1968 aerial photograph of the site shows loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line

A 1977 aerial photograph of the site shows no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970.

The site plan submitted by the applicant for File #DD-13-04 shows the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 15 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking areas.

Portions of these parking areas have been modified from when they were established. The determination of these modifications is as follows: The loading spaces and the 3 westernmost vehicle spaces in front of the building have been maintained in the same general configuration as they were established, and are considered legally maintained.

The parking area on the east side of the building has been modified as a result of the Portland Milwaukie Light Rail project. The 7 spaces (5 perpendicular and 2 parallel) that remain in this area are determined to have been legally maintained.

The remaining 15 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all of the area of these stalls is within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

- d. The Planning Commission affirms the determination of heading #1: "Status of Parking and Loading Spaces along Mailwell Drive and east side of the subject site" from the Notice of Decision for File #DD-13-04 with Finding 6.c. The Planning Commission finds that the only error as a matter of fact in this heading was an identification of 18 spaces that were shifted further into the right of way, when in fact only 15 spaces were affected. The Planning Commission finds no error as a matter of fact or law for heading #2: "Determination that the Off-Street Parking and Loading Spaces meet current requirements" in the same notice of decision.



PLANNING DEPARTMENT
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Appeal of Land Use Decision

File #AP- 13 01

RESPONSIBLE PARTIES:

APPELLANT: Annetta M. Young	Division Manager	Pendleton Woolen Mills
Mailing address: P.O. Box 3030	Portland, OR	Zip: 97208
Phone(s): 503-535-5543	E-mail: Annetta.young@penwool.co	
APPELLANT'S REPRESENTATIVE (if different than above): William F. Horning, Western Planning		
Mailing address: P.O. Box 2392	Lake Oswego, OR	Zip: 97035
Phone(s): 503-294-0222	E-mail: Bill@westernplanning.com	

APPEAL INFORMATION:

Appeal of File #: DD-13-04	Review Type of Appealed Decision: Type 1	
Site Address: 2516 SE Mailwell Drive	Map & Tax Lot(s): 1S1E2SCB00100	
Comprehensive Plan Designation: Industrial	Zoning: Industrial	Size of property: 2.24 Acres

STANDING FOR APPEAL (check applicable box):

☒ Applicant or applicant's representative from Type I, II, or III decision

Person or organization adversely affected or aggrieved by Type II decision

☐ Person or organization that participated or provided testimony or evidence on the record for Type III decision. List the date and briefly describe the form of participation, testimony, or evidence:

BASIS OF APPEAL (briefly describe):

Identify approval criteria or standard that was overlooked, incorrectly interpreted, or incorrectly applied in the land use decision and/or aspect of the proposal that was overlooked or incorrectly evaluated. Appeal of a Type II decision may instead describe the manner in which the appellant is adversely impacted or aggrieved by the decision.

Please see attached narrative by Western Planning Associates, Inc. Dated 7/31/13.

SIGNATURE:

ATTEST: I have standing to appeal the land use decision identified on this application and have provided the necessary items and information for filing an appeal per Milwaukie Municipal Code (MMC) Subsection 19.1010.1. To the best of my knowledge, the information provided within this appeal package is complete and accurate.

Submitted by:

Date: 07/31/13

IMPORTANT INFORMATION ON REVERSE SIDE

APPEAL HEARINGS (excerpted from MMC Subsections 19.1001.5 and 19.1010.3) :**Appeals of Type I and II decisions:**

Appeals of Type I and II decisions are heard by the Planning Commission. The appeal hearing is an unrestricted de novo hearing, which means that new evidence, testimony, and argument that were not introduced in the original decision can be introduced in the appeal. The standard of review for the Planning Commission is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law. The Planning Commission's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

Appeals of Type III decisions:

Appeals of Type III decisions are heard by the City Council. The appeal hearing is an on-the-record de novo hearing, which means that new evidence that was not introduced in the original decision cannot be introduced in the appeal. New testimony is allowed. New argument is also allowed that is based on evidence already in the record and on testimony that is new or already in the record. The standard of review for the City Council is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments. The City Council's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

DECISIONS NOT SUBJECT TO LOCAL APPEAL:

The initial hearing for Type IV and V decisions is held by the Planning Commission. The Planning Commission does not issue a decision on these types of review and, instead, issues a recommendation to the City Council. This recommendation is not a final decision and is not appealable.

The review authority for Type IV and V decisions is the City Council. Since there is no higher authority within the City, the City Council's decisions on these types of reviews are the City's final decision on the land use application. Appeals of these types of applications may be made to the Oregon Land Use Board of Appeals or other court.

Downtown Design Review applications are considered at a public meeting by the Design and Landmarks Committee. The Design and Landmarks Committee does not issue a decision on these types of review and, instead, issues a recommendation to the Planning Commission. This recommendation is not a final decision and is not appealable.

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	FEE AMOUNT	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file	AP-13-a	\$ 500			\$ —	RECEIVED JUL 31 2013 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$ 500			\$	
TOTAL AMOUNT RECEIVED: \$ 500			RECEIPT#:			RCDY: RWM
Associated application file #s (appeals, modifications, previous approvals, etc.): 00-13-04						
Neighborhood District Association(s): —						
Notes: <i>waive of 120 clock/extended by 90 days</i>						

*After discount (if any)

APPEAL NARRATIVE
Planning Director Determination
DD-13-04
Filed July 16, 2013
2516 SE Mailwell Drive

For: Pendleton Woolen Mills
 By: Western Planning Associates, Inc.
 07/31/13

Documentation of standing for a Type 1 decision (19.1010.4.A): A Type I decision may only be appealed by the applicant or the applicant's representative. The original application was signed by Annetta Young, Division Manager, Pendleton Woolen Mills, representing the property owner and by William F. Horning, as the applicant's representative. The attached appeal form is signed by the applicant's representative as specified.

Detailed statement describing the basis of the appeal.

- a. **For appeal of a Type I or III decision the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.**

Detailed Statement

The applicant requested a Planning Director interpretation that the residual, post Light Rail, on site and nonconforming parking spaces at Pendleton's Mailwell distribution facility and the additional 23 off site spaces could be combined to meet the city parking quantity standards for the existing 170,874 SF industrial building. Under the current code the city requires Pendleton's building to provide 48-54 spaces. The Directors Determination found, among other things, that 18 of the spaces along Mailwell Drive are no longer considered off-street parking because they have been shifted to be more in the public right of way. The applicant believes this part of the application has been incorrectly evaluated.

The applicant states: "In 2012 TriMet condemned a portion of the east part of this site for construction of the new light rail line serving the Milwaukie area and remodeled and removed a portion of the parking located on the north side of the existing building. The east portion of the property had an on site parking lot for over 37 vehicles, 22 of which were on land leased for parking purposes from the Union Pacific railway. This lease was terminated and additional Pendleton property was taken on this east portion of the site. This taking substantially reduced the number of parking spaces on this area of the site. The revised area can now only provide 7 off street parking spaces. TriMet also reconstructed a portion of the parking on the north side of the building that was impacted by elevating Mailwell Drive at the rail crossing. This lost an additional 3 spaces from the 15 spaces impacted along the north side of the building and moved the existing nonconforming parking a corresponding distance further into the right of way of Mailwell Drive. As part of the compensation for this taking and these site parking impacts TriMet agreed to permit and construct a 23 space parking lot to the northeast of the Pendleton building and secured a lease from Union Pacific in Pendleton's name for use of this new off street parking lot."

At the time the applicant made this application to the Planning Director, it was assumed that all of the spaces along the north side of the building abutting Mailwell Drive were nonconforming parking spaces that were available for use by Pendleton. Within the last year Pendleton and TriMet agreed to a settlement addressing the impacts of TriMet's taking (the loss of 33 parking spaces and some land area). This settlement did not include the loss of an additional 15 spaces along Mailwell Drive due to the remodel of these spaces. The settlement did include the loss of 3 spaces along Mailwell Drive when the remodel resulted in 18 spaces becoming 15 in their final form. TriMet represented that these 15 spaces could continue to be Pendleton's to use and so these spaces were kept out of the compensation negotiations. Since the work was being done by TriMet and they were the party securing the permits Pendleton and its representatives assumed that they had a correct interpretation of the availability of these 15 spaces to Pendleton. Up until the Planning Director's decision that these remodeled spaces were relocated far enough in the right of way that they are no longer nonconforming parking spaces, which can be used and controlled by Pendleton, Pendleton and TriMet were unaware that TriMet's actions had lost an additional 15 spaces. The fact that these spaces continue to be nonconforming to current code and that a portion of these spaces are still on the Pendleton property helped hide this knowledge from the affected parties. Further, the westerly three of the remodeled spaces are no further in the right of way now than where they were before the remodel and have historically been located. The determination decision references "18" remodeled space but in fact the remodel reduced the non conforming 18 to 15 spaces, partly due to the addition of a planter and water quality facility. The Planning Directors Determination changes the previous understanding of the impacts of TriMet's taking and this new position was not compensated for in the TriMet settlement. Further and just as important this puts severe and unacceptable stress on the seasonal high demand for parking at the Pendleton facility.

The recent remodel of the cold storage facility to the west across Omark Drive has added to Pendleton's concern as spaces abutting their building along Omark Drive are now used almost exclusively and completely by the cold storage facility employees, taking this on street parking away from the available inventory.

A Pendleton representative recently participated in Milwaukie's Tacoma Station Area Planning process. To the best of our knowledge Pendleton was the only employer/property owner to participate in the meetings. At several of these meetings Pendleton expressed concerns about the lack of on and off street parking in the current neighborhood and noted that the proposed changes would make the problem worse for employees, employers and property owners.

Worth noting is that with TriMet's recent street improvements to Mailwell Drive including major grade changes, new railroad crossings, new pavement, curbs, retaining walls, sidewalk on the north side and water quality facilities on both sides of the street it is unlikely that this street will be remodeled in the foreseeable future.

In summary, the city did not notify Pendleton that they would be losing the nonconforming spaces when they permitted TriMet, under its condemnation authority, to remodel the spaces in front of the Mailwell facility. TriMet remodeled these spaces for light rail construction and TriMet assumed and during the settlement process they represented that the remodeling of these 18 spaces was work that improved Pendleton's facility. The 18 spaces became 15 and TriMet compensated Pendleton for the loss of these 3 spaces as well as the 30 spaces lost on the east side of the building. During all negotiations for the takings of land and

construction impacts to the Pendleton Mailwell facility these 15 spaces were represented and assumed to belong to Pendleton's Mailwell facility following TriMet's reconstruction.

Pendleton respectfully requests that the Planning Commission assist the applicant in reconciling this unacceptable loss of parking. The applicant would like to have the 15 remodeled spaces continue to be viewed as legally nonconforming spaces. This revision to the Planning Directors Determination would allow Pendleton to meet the current code requirements for parking for this facility through a combination of on site legally nonconforming spaces and the 23 space off site lot that TriMet will be constructing as part of the compensation package to Pendleton.



July 16, 2013

Ms. Annetta M. Young
Division Manager
Pendleton Woolen Mills
PO Box 3030
Portland, OR 97208

File: DD-13-04

Site: 2516 SE Mailwell Drive

Ms. Young,

This letter is a Director Determination in response to the application received by the City of Milwaukie on April 3, 2013. The requested determination is as follows:

- 1) "Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces..."
- 2) "Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building."

This Director Determination is issued pursuant to Milwaukie Municipal Code (MMC) Section 19.903, Code Interpretations and Director Determinations.

1) Status of Parking and Loading Spaces along Mailwell Drive and east side of the subject site

The approval criteria for Director Determinations about nonconforming situations are: The nonconforming use or development was permitted under applicable regulations at the time it was established; and the nonconforming use has been legally maintained over time and has not been discontinued or abandoned (MMC 19.904.B.2.a and b).

The history of the parking and loading spaces is depicted in the following attachments:

- A 1968 aerial photograph of the site (Attachment 1) – loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line
- A 1977 aerial photograph of the site (Attachment 2) – no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970.
- Site plan submitted by the applicant depicting the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly

matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 18 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking areas (See Attachment 3).

Portions of these parking areas have been modified from when they were established. The determination of these modifications is as follows:

- The loading spaces and the 3 westernmost vehicle spaces in front of the building have been maintained in the same general configuration as they were established, and are considered legally maintained.
- The parking area on the east side of the building has been modified as a result of the Portland Milwaukie Light Rail project. The 7 spaces (5 perpendicular and 2 parallel) that remain in this area are determined to have been legally maintained.
- The remaining 18 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all of the area of these stalls is within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

2) Determination that the Off-Street Parking and Loading Spaces meet current requirements

The determination for this question about current requirements deals only with the parking quantity requirements in MMC Section 19.605. The off-street parking and loading spaces are nonconforming with regard to several design and landscaping requirements, such as landscaping and standard prohibiting vehicle backing movements in the right of way.

The current vehicle parking requirements are based on the information provided in the determination request.

Use	Size (sq ft)	Minimum Parking Ratio	Minimum Spaces Required	Maximum Parking Ratio	Maximum Spaces Allowed
Office	1,257	2/1,000 sq ft	3	3.4/1,000 sq ft	4
Production	2,784	1 /1,000 sq ft	2	2 /1,000 sq ft	6
Distribution + Restroom/lunchroom	164,879 + 1,534	0.3 /1,000 sq ft	49	0.4 /1,000 sq ft	67
TOTAL	170,454*		54		77

*Application states total area as 170,874

With the inclusion of 2 carpool spaces, the minimum requirement is reduced by 10% from 54 spaces to **48 spaces** (MMC 19.605.3.B.4). All that is required to enact this reduction is to clearly sign the spaces as being reserved for carpool/vanpool use.

The number of off-street vehicle spaces for the site is as follows:

Area	Spaces
Spaces along Mailwell Drive	3
Area to the east of the building	7
Parking spaces in Shared Parking Agreement	23
TOTAL	33

The available off-street parking does not meet the minimum vehicle parking quantity requirements in the current zoning regulations. The City does not consider this reduction in the number of available parking spaces to be a violation, as MMC Subsection 19.504.2 allows reductions below minimum code standard when done for public conveyance or use. In this instance, the City considers the construction of the retaining wall that necessitated moving the nonconforming spaces on Mailwell into the right of way as "equivalent to dedication or conveyance for a public use" (MMC 19.504.2).

MMC 19.608 contains standards for off-street loading spaces. The minimum required amount of loading spaces for nonresidential buildings greater than 50,000 sq ft is 2. There are 8 existing off-street loading spaces, and the site is in compliance with the number of loading spaces required by code.

Appeal Information

This Director Determination was processed as a Type I Review. Notice of this decision is provided per MMC19.1004.5. The decision may be appealed by **5:00 p.m. on July 31, 2013**, which is 15 days from the date of this decision, following the appeal procedures in MMC 19.1010. The decision will become final as of this date if no appeal is filed.

All materials related to this land use application, including findings and conclusions, are available for review. The materials can be reviewed at the Johnson Creek Facility, 6101 SE Johnson Creek Blvd, Milwaukie, OR 97206. If you should have any questions about any of the information contained in this letter, please contact Ryan Marquardt at 503-786-7658 or marquardtr@ci.milwaukie.or.us.

File #DD-13-04
July 16, 2013

Page 4

Sincerely,



Stephen C. Butler, FAICP
Planning Director / Interim Community Development Director

Attachments:

1. 1968 Aerial photograph of 2516 SE Mailwell Dr
2. 1977 Aerial photograph of 2516 SE Mailwell Dr
3. Off-street parking regulations from Milwaukie Ordinance #1183

Copy: Bill Weston, Western Planning Associates, PO Box 2392, Lake Oswego, OR
97035
File# DD-13-04



MILWAUKIE

3-30-77

MILWAUKIE-77

5.1 Page 22



10-5.4.120(3)

Milwaukie Ordinances

10-5.5.010

TABLE 1

<u>Major Street</u>	<u>Distance from Center Line</u>
Harmony Road	40 ft. plus yard requirement in zone
Harrison Street (west of 44th)	40 ft. " " " " "
Harvey Street	30 ft. " " " " "
Home Avenue	30 ft. " " " " "
Johnson Creek Blvd. (east of 45th)	40 ft. " " " " "
Johnson Creek Blvd. (west of 45th)	30 ft. " " " " "
King Road	40 ft. " " " " "
Linwood Avenue	40 ft. " " " " "
Lake Road	30 ft. " " " " "
Logus Road	30 ft. " " " " "
Main Street	30 ft. " " " " "
McLoughlin Boulevard	60 ft. " " " " "
Monroe Street	30 ft. " " " " "
Oak Street	30 ft. " " " " "
Oatfield Road	40 ft. " " " " "
Ochoco Street	30 ft. " " " " "
Railroad Avenue	30 ft. " " " " "
River Road	40 ft. " " " " "
Roswell Avenue	30 ft. " " " " "
Stanley Avenue	30 ft. " " " " "
Washington St. (west of Railroad Ave.)	30 ft. " " " " "
7th Avenue	40 ft. " " " " "
21st Street	30 ft. " " " " "
32nd Street	30 ft. " " " " "
34th Street (south of Washington St.)	30 ft. " " " " "
41st Street	40 ft. " " " " "
42nd Street	40 ft. " " " " "
43rd Street (south of Covell Avenue)	40 ft. " " " " "

Section 4.130. Building Height Limitations, General Exceptions. Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles and other similar objects not used for human occupancy are not subject to the building height limitations of this ordinance, except as provided in an LF zone.

ARTICLE 5. OFF-STREET PARKING AND LOADING

Section 5.010. Off-street Parking Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land is changed within any zone in the city, except the C-C zone, off-street parking spaces shall be provided in accordance with the requirements of this Section and Section 5.030 unless greater requirements are otherwise established. If parking space has been provided in connection with an existing use, the parking space shall not be eliminated if it would result in less than is required by this Section. Where square feet are specified, the area measured shall be the gross floor area primary to the functioning of the particular use of property but shall exclude space devoted to off-street parking or loading. Where employees are specified, persons counted shall be those working on the premises,

including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space.

<u>Use</u>	<u>Parking Spaces Required</u>
(1) Residential	
(a) One or two-family dwelling.	Two spaces per dwelling unit, one of which must be covered.
(b) Apartment dwelling	Two spaces per dwelling unit.
(c) Rooming or boarding house, fraternity, motel or tourist court.	One space per guest room or suite, plus one additional space per 2 employees.
(d) Hotel.	One space per two guest rooms or suites, plus one space per two employees.
(e) Trailer court.	Two spaces per trailer or mobile home.
(f) Convalescent, nursing and other health homes and institutions, homes for the aged, children's homes and welfare or correctional institutions.	One space per 3 beds for patients plus one additional space per 2 employees.
(2) Public and Semi-Public Buildings and Uses	
(a) Auditorium or meeting room (other than church or school).	One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each 4 seats or 8 feet of bench length.
(b) Church.	One space per 80 sq. ft. of floor area in the main assembly area or, where seating is fixed to the floor, one space per 4 seats or 8 feet of bench length.
(c) Club, lodge, or association.	Spaces to meet the combined requirements of the uses being conducted such as hotel, restaurant, auditorium, etc.
(d) Hospital.	One and one-half spaces per bed.

10-5.5.010(2)e

Milwaukee Ordinances

10-5.5.010(3)f

- (e) Library. One space per 400 square feet of reading room plus one space per 2 employees.
- (f) Kindergarten, pre-school nursery, equivalent private or parochial schools. Two spaces per teacher.
- (g) Elementary, junior high, or equivalent private or parochial school. One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
- (h) Senior high school, or equivalent private or parochial school. One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
- (i) College, universities, institutions of high learning and equivalent private or parochial schools. One space per 3 seats in classrooms.
- (j) Passenger terminal. One space for each 500 sq.ft. of floor area.
- (k) Post Office. One space for each 50 sq.ft. of patron service floor area plus one space per employee.

(3) Commercial

- (a) Retail store, except as provided in subsection (b) below. One space for each 200 sq.ft. of gross floor area plus one space per employee.
- (b) Service or repair shop or retail store handling bulky merchandise such as automobiles or furniture. One space for each 600 sq.ft. of gross floor area plus one space per employee.
- (c) Bank or office except medical or dental. One space for each 400 sq.ft. of floor area plus one space per employee.
- (d) Medical or dental offices or clinic. One space per 300 square feet of floor area plus one space per employee.
- (e) Eating or drinking establishment. One space per 200 sq.ft. of floor area plus one space per employee.
- (f) Mortuary. One space per 4 chapel seats or 8 feet of bench length.

(4) Commercial Recreation

- | | |
|---|--|
| (a) Amusement Park. | One space per 1,000 sq.ft. of patron serving area. |
| (b) Billiard or pool hall. | One space per table plus one space per employee. |
| (c) Bowling alley. | Five spaces for each alley plus one space per employee.. |
| (d) Dance hall, skating rink, or gymnasium. | One space per 50 sq.ft. of patron area plus one space per employee.. |
| (e) Go-kart track. | One space per kart plus one space per employee. |
| (f) Golf driving range. | One space per 10 linear feet of driving line. |
| (g) Indoor arena or theater. | One space per 4 seats or 8 feet of bench length. |
| (h) Miniature golf course. | One space per 2 holes plus one space per employee. |
| (i) Race track or stadium. | One space per 4 seats or 8 feet of bench length. |
| (j) Shooting gallery. | One space per 500 square feet of floor area plus one space per employee. |
| (k) Swimming pool. | One space per 50 sq.ft. of pool plus one space per employee. |
| (l) Tennis court. | One space per court. |

(5) Industrial

- | | |
|-------------------------------|--|
| (a) Manufacturing use. | One space per employee. |
| (b) Storage or wholesale use. | One space per employee plus one space per 700 sq.ft. of patron serving area. |

Section 5.020. Off-Street Loading Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land changed within any zone in the city, off-street loading spaces shall be provided in accordance with the requirements of this Section and Section 5.030 unless greater requirements are otherwise established.

10-5.5.020(1)

Milwaukie Ordinances

10-5.5.030(5)

(1) Merchandise, Materials, or Supplies -- Buildings or structures to be built or substantially altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths, in accordance with standards adopted by the Planning Commission. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use. Off-street parking areas used to fulfill the requirements of this ordinance shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

(2) Passengers -- A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading passengers shall be located on the site of any school or other public meeting place which is designed to accommodate more than 25 persons at one time.

Section 5.030. Off-Street Parking and Loading, General Provisions. The following general provisions shall govern the application of off-street parking and loading requirements:

(1) Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission based upon the requirements of comparable uses listed.

(2) In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately.

(3) Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the City in the form of deeds, leases or contracts to establish the joint use.

(4) Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located not farther than 200 feet from the building or use they are required to serve, measured in a straight line from the building.

(5) Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials or for the parking of delivery vehicles used in conducting the business or use.

(6) Required parking and loading spaces shall not be located in a required front yard or street side yard except for required off-street parking for one or two-family dwellings.

(7) A plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met shall accompany an application for a building permit.

(8) Design requirements for parking spaces and loading areas shall be as follows:

- (a) Any area used for standing and maneuvering of vehicles shall have paved surfaces drained so as to avoid water standing or flowing onto adjacent properties.
- (b) Except for parking to serve one or two-family residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than 5 nor more than 6 feet in height except where vision clearance is required.
- (c) Parking spaces along the outer boundaries of a lot shall be contained by a curb at least 4 inches high and set back a minimum of $4\frac{1}{2}$ feet from the property line.
- (d) Artificial lighting which may be provided shall not create or reflect substantial glare in a residential zone or on any adjacent dwelling.
- (e) Parking spaces and aisles for turning and maneuvering of vehicles shall be in accordance with standards adopted by the Planning Commission.
- (f) Groups of 5 or more parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street other than an alley will be required.
- (g) On parking lots having 5 or more parking spaces, such spaces shall be clearly marked in a permanent manner.
- (h) Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate and service traffic

10-5.5.030(8)h

Milwaukie Ordinances

10-5.6.020(3)

to be anticipated. Service drives shall be clearly and permanently marked and defined through use of rails, fences, walls, or other barriers or markers on frontage not occupied by service drives.

- (i) Service drives shall have a minimum clear vision area formed by the intersection of the driveway center line, the street right-of-way line, and a straight line joining said lines through points 20 feet from their intersection.

ARTICLE 6. CONDITIONAL USES

Section 6.010. Authorization to Grant or Deny Conditional Uses. Conditional uses in this ordinance may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth in Section 6.010 through 6.030. In permitting a conditional use or the modification of a conditional use, the Planning Commission may impose, in addition to standards and requirements expressly specified by the ordinance, any additional conditions which it considers necessary to protect the welfare of the surrounding property and the City as a whole. These requirements may include increasing the required lot size or yard dimensions, limiting the height of buildings, controlling the location and number of off-street parking and loading spaces, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.

Section 6.020. Standards Governing Conditional Uses. A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified in authorizing the conditional use and as otherwise modified as follows:

(1) Yards. In a residential zone, yard area shall be equal to at least $\frac{2}{3}$ the height of the principal structure. In any zone, additional yard requirements may be imposed.

(2) Height Exception. A church or public building may be built to exceed the height limitations of the zone in which it is located to a maximum height of 50 feet, except as provided in an LF zone, if the total floor area of the building does not exceed one and one-half times the area of the site and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.

(3) Access to property; building openings. The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may

PLANNING DIRECTOR DETERMINATION APPLICATION

Pendleton Woolen Mills
2516 SE Mailwell Drive
Milwaukie, Oregon

RECEIVED
APR 03 2013
CITY OF MILWAUKIE
PLANNING DEPARTMENT

WESTERN PLANNING ASSOCIATES
PO BOX 2392
Lake Oswego Oregon 97035
503 294 0222



PLANNING DEPARTMENT
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

PHONE: 503-786-7630
FAX: 503-774-8236
E-MAIL: planning@ci.milwaukie.or.us

Application for Land Use Action

Master File #: _____

Review type*: ☐ I ☐ II ☐ III ☐ IV ☐ V

CHECK ALL APPLICATION TYPES

THAT APPLY:

- | | | |
|---|--|---|
| <input type="checkbox"/> Amendment to Maps and/or Ordinances:
<input type="checkbox"/> Comprehensive Plan Text Amendment
<input type="checkbox"/> Comprehensive Plan Map Amendment
<input type="checkbox"/> Zoning Text Amendment
<input type="checkbox"/> Zoning Map Amendment
<input type="checkbox"/> Code Interpretation
<input type="checkbox"/> Community Service Use
<input type="checkbox"/> Conditional Use
<input type="checkbox"/> Development Review
<input type="checkbox"/> Director Determination
<input type="checkbox"/> Downtown Design Review
<input type="checkbox"/> Extension to Expiring Approval
<input type="checkbox"/> Historic Resource:
<input type="checkbox"/> Alteration
<input type="checkbox"/> Demolition
<input type="checkbox"/> Status Designation
<input type="checkbox"/> Status Deletion | <input type="checkbox"/> Land Division:
<input type="checkbox"/> Final Plat
<input type="checkbox"/> Lot Consolidation
<input type="checkbox"/> Partition
<input type="checkbox"/> Property Line Adjustment
<input type="checkbox"/> Replat
<input type="checkbox"/> Subdivision
<input type="checkbox"/> Miscellaneous:
<input type="checkbox"/> Barbed Wire Fencing
<input type="checkbox"/> Bee Colony
<input type="checkbox"/> Mixed Use Overlay Review
<input type="checkbox"/> Modification to Existing Approval
<input type="checkbox"/> Natural Resource Review
<input type="checkbox"/> Nonconforming Use Alteration
<input type="checkbox"/> Parking:
<input type="checkbox"/> Quantity Determination
<input type="checkbox"/> Quantity Modification
<input type="checkbox"/> Shared Parking
<input type="checkbox"/> Structured Parking | <input type="checkbox"/> Planned Development
<input type="checkbox"/> Residential Dwelling:
<input type="checkbox"/> Accessory Dwelling Unit
<input type="checkbox"/> Duplex
<input type="checkbox"/> Manufactured Dwelling Park
<input type="checkbox"/> Temporary Dwelling Unit
<input type="checkbox"/> Sign Review
<input type="checkbox"/> Transportation Facilities Review
<input type="checkbox"/> Variance:
<input type="checkbox"/> Use Exception
<input type="checkbox"/> Variance
<input type="checkbox"/> Willamette Greenway Review
<input type="checkbox"/> Other: _____
Use separate application forms for:
<ul style="list-style-type: none"> • Annexation and/or Boundary Change • Compensation for Reduction in Property Value (Measure 37) • Daily Display Sign • Appeal |
|---|--|---|

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Annetta M. Young, Division Manager
Pendleton Woolen Mills

Mailing address: P. O. Box 3030 Portland, OR Zip: 97208

Phone(s): 503-535-5543 E-mail: annetta.young@penwool.com

APPLICANT'S REPRESENTATIVE (if different than above): William Horning, Western Planning

Mailing address: P. O. Box 2392 Lake Oswego, OR Zip: 97035

Phone(s): 503-294-0222 E-mail: bill@westernplanning.com

SITE INFORMATION:

Address: 2516 SE Mailwell Drive Map & Tax Lot(s): 1 - 1E - 25CB, T.L. 100

Comprehensive Plan Designation: Industrial Zoning: M Size of property: 2.24 Acres

PROPOSAL (describe briefly):

Applicant requests a determination of legal nonconforming parking and loading spaces at this site. Applicant also proposes meeting code required parking based on providing carpool spaces and shared parking (see separate application).

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: Annetta M. Young

Date: 3-20-13

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

APPLICATION PREPARATION REQUIREMENTS:

- Five copies of all application materials are required at the time of submittal. Staff will determine how many additional copies are required, if any, once the application has been reviewed for completeness.
- All application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All application materials must be collated, including large format plans or graphics.

ADDITIONAL INFORMATION:

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: <http://www.ci.milwaukie.or.us/communityservices/neighborhoods-program>.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) WILLIAM HOBHING, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

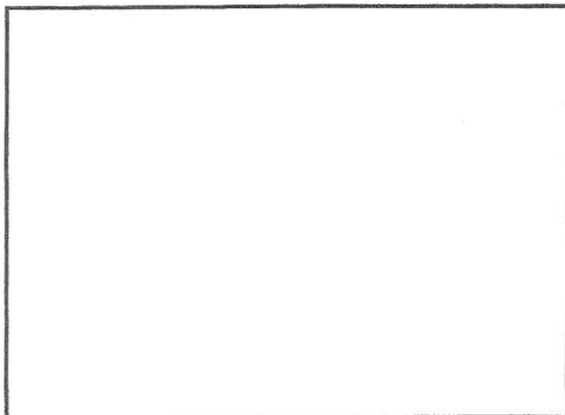
Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: William Hobhing

Date: 4/2/13

Official Use Only

Date Received (date stamp below):



Received by: _____

Planning Director Determination Legally Nonconforming Site Development

Pendleton Woolen Mills
2516 SE Mailwell Drive
City of Milwaukie, Oregon

Western Planning Associates, Inc
3/29/13

Submittal Requirements

1. **All required land use application forms and fees**
Attached to this application is the city fee and signed application form.
2. **Proof of Ownership**
The application is signed by Annetta Young Division Manager for Pendleton Woolen Mills, the property owner.
3. **Detailed and comprehensive description of the application.**
Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building.
See attached application narrative and detailed site plans.
4. **Detailed statement that demonstrates how the proposal meets all applicable specific approval criteria and all applicable development standards.**
This application is for an existing building in a manufacturing zone. Off-street parking and loading standards (Chapter 19.600) apply to this application and are discussed in detail in the attached narrative.
5. **Site Plans**
Attached are two 24"X36" Site Plans identifying the specific site conditions and standards that are a part of this two application request. Also attached is an 8 1/2"X11" Concept Site Plan for the off site shared parking lot to be developed by TriMet.
6. **Copy of pre-application conference.**
A pre-application conference is not required for either of these correlated applications. The applicant met informally with staff on 2/14/13.

Planning Director Determination Legally Nonconforming Site Development

Nonconforming Parking and Loading Application Narrative

Pendleton Woolen Mills 2516 SE Mailwell Drive City of Milwaukie, Oregon

Applicants Request

Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building.

Application Background

This 2.3 acre industrial site was developed in two phases. The first building was the west building with a footprint of 49,070 SF and it was constructed in 1963-1964. The second phase added a separate contiguous building with a footprint of 41,242 SF in 1969-1970. These buildings were both permitted structures and as such it is assumed they met the required parking and loading standards in place at the time of building permit. These buildings are combined as one structure today and have had intermittent interior remodeling. Portions of the structure are two story and some sections contain mezzanines. The current total square footage is 170,874 SF.

In 2012 TriMet condemned a portion of this site for construction of the new light rail line serving the Milwaukie area and remodeled and removed a portion of the parking located on the north side of the existing building. The east portion of the property had an on site parking lot for over 37 vehicles, 22 of which were on land leased for parking purposes from the Union Pacific railway. This lease was terminated and additional Pendleton property was taken on this east portion of the site. This taking substantially reduced the number of parking spaces on this area of the site. The revised area can now only provide 7 off street parking spaces. TriMet also reconstructed a portion of the parking on the north side of the building that was impacted by elevating Mailwell Drive at the rail crossing. This lost an additional 3 spaces from the 15 spaces impacted along the north side of the building and moved the existing nonconforming parking a corresponding distance further into the right of way of Mailwell Drive. As part of the compensation for this taking and these site parking impacts TriMet agreed to permit and construct a 23 space parking lot to the northeast of the Pendleton building and secured a lease from Union Pacific in Pendleton's name for use of this new off street parking lot.

Due to these impacts to the building, Pendleton would like to confirm that the current parking and loading area along Mailwell Drive and on the east side of the site are legally nonconforming. The applicant is also seeking concurrence that with the designation of two carpool/vanpool spaces and the approval of a shared parking request for the to be constructed off site 23 space parking lot that the building will be in compliance with the parking and loading requirements of the City of Milwaukie.

19.903 Code Interpretations and Director Determinations

Under section 19.903.2 B2, the Planning Director is authorized to make a determination of the legal status of a nonconforming development. This is identified as a Type I application. Section 19.903.4B2 identifies the Approval Criteria for a Directors determination of legal status of a Nonconforming Development.

19.903.4B2 legal Status of Nonconforming Use or Development shall be based on the following criteria:

a. The nonconforming use or development was permitted under applicable regulations at the time it we established. Evidence to address this criterion may include the following items:

(1) Copies of building and/or land use permits issued at the time the use, structure or site improvement was established.

The current building is the result of joining together two buildings that were built at different times. The first building was constructed in 1962-1963 and is the westerly structure on the site. While we have not located any official record of the original building permit or the applicable city parking and loading code, this west portion of the building contained the current eight loading berths meeting and exceeding the then required loading standards. The eight loading berths are over 12 feet wide and 40 feet long outside of the existing 60 foot Mailwell Drive right of way. The parking that was provided with this initial phase of construction (49070 SF footprint) is not known as the applicant has only been able to locate structural and floor plans for this first phase, drawn by Perry Percy, Junior Architect for Dan Davis and Company, the builder in 1963. Since the east one half of this site was not initially occupied by a building we assume the then required parking was provided both along the Mailwell Drive frontage and on the east side of the site. In April of 1969 Pendleton took possession of the west building on this site.

Also in 1969 Architect Thomas R. Mackenze designed the east building for the Dan Davis and Company. Pendleton moved ahead in 1969-1970 and built the east building adding an additional 41,242 SF of footprint and approximately 123,726 SF of building area. This brought the building area total to the current 170,874 SF. In 1972 Pendleton took possession of this east building. Since this new easterly structure occupied all but the easterly most +/- 40 feet of the site, it is likely that a

significant portion of the code required minimum parking spaces were accommodated on this east lot area. However, the main and primary entrance to the warehouse is off of Mailwell Drive east of the loading ramps at the approximate center of the building making continued use of the Mailwell Drive parking spots the primary parking area from then until today. Since Pendleton staff increases during the holiday season, it is believed that around 1972 they secured a lease from Union Pacific to utilize a portion of the railroad right of way for additional parking to accommodate their seasonal increase in employees.

(2) Copies of Zoning Code provisions and/or maps in place at the time the use, structure or improvement was established.

This site is currently zoned Manufacturing and has been an industrial warehouse and distribution center for Pendleton Woolen Mills since 1965. The first building, constructed in 1963, likely fell under some variation of the 1948 Zoning Code which did not specify any required building setbacks. The Milwaukie city staff has provided the applicant with a copy of the 1975 Article 5 Off-Street Parking and Loading Code (see attachment), which may not have applied to the 1970 east building and likely did not apply to the 1963 west building. In 1975 the site was zoned ML and the 1975 Zoning code did not require any building setbacks. This 1975 code required at the time of building permit that any Industrial storage or wholesale use provide one space per employee plus one space per 700 SF of patron serving area. Pendleton's building does not have any patron serving area as this facility is exclusively a distribution center. The average number of employees during the non peak in 1970 was 55 or fewer. This could have required a maximum of 55 off street parking for spaces, if seasonal workers were included.

As noted above, these spaces were provided by a combination of spaces along the Mailwell Drive frontage (22 spaces) and along the east side of the building (37 spaces). With the estimated 55 workers at the time the second building was built it is likely that the Mailwell nonconforming spaces were being counted. After the second (east) building was built the additional parking was provided by a lease with Union Pacific and this added 23 spaces to the east side lot to accommodate peak seasonal demand bringing the available on site parking total to 59 spaces (37+22). These 59 spaces have been used on site until the 2012 alterations by TriMet due to the construction necessary for the light rail.

Section 5.030 subsection 3 of the 1975 code notes 'that owners of two or more uses, structures...may agree to utilize jointly the same parking and loading spaces when the operation do not overlap' provided the city was supplied with adequate legal evidence to establish joint use. It is possible that this provision was in the pre-1975 code and applied to the Pendleton 1970 east building as all of previously legal loading spaces are a part of the initial west building and the new east building has no loading berths. On the other hand Subsection 6 of the 1975 code notes that the total required parking is not be located in the front or street side yard. While

the current buildings have a minimum 15 foot front yard off of Mailwell Drive this is the result of a restriction of the Omark Industrial Subdivision. The city staff has indicated that in 1975 there were no zoning required building setbacks on this site. The applicant believes that the perpendicular parking spaces off of Mailwell Drive have been used since the original west building was constructed and have therefore predated the 1975 code. Subsection 7 of this 1975 code required that an application for a building permit be accompanied by a plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met. This would indicate that the 12 foot wide by 25 foot deep loading berths were then code legal ($25' + 15' = 40'$). This would also indicate that the required parking was met in the east side yard and through the now nonconforming spaces along Mailwell Drive. Subsection 8 Design Requirements, part c indicated that parking spaces along the outer boundaries of a lot shall be contained by a 4 inch high curb and set back a minimum of 4 1/2 feet from the property line. While this might apply to the new spaces approved after 1975 it would not necessarily have applied to the Mailwell Drive spaces in use from 1965 until 1975. This provision supports the above described sequence of events resulting in the legal nonconforming spaces along Mailwell Drive. Similarly, subsection f, of the 1975 code, talks about requiring groups of 5 or more spaces to be served by a driveway so that no backing movements or other maneuvering within a street will be required. This provision further reinforces the applicant's assertion that the existing and continued use of the Mailwell Drive spaces that did not meet this 1975 code requirement, were already enjoying a nonconforming status by then, and certainly had not become an enforcement issue, requiring the day to day use to be terminated.

(3) Demonstration that the use, structure or site improvement was established before the applicable development code for the community was adopted.

The two phases of construction, which were over 47 years and 42 years ago have clearly occurred under previous Milwaukie Zoning codes. While we have been unable to locate the 1965 code it is clear that the 1975 code updated earlier versions and the update would have contained additional and better defined site development standards. Both buildings were constructed prior to 1975 code and at that time parking and loading requirements were more lenient than today's standards.

The applicant knows that building permits for both structures were obtained. Therefore, the buildings and associated site development were legally permitted and as such met or exceeded the applicable parking and loading requirements. Attached in the Appendices is an exhibit from a Phase 1 Environmental Site Assessment report by PBS Engineering and Environmental dated 10/11 that contains a listing of analysis of Historic Aerial Photos that shows that in 1963 the west building was constructed and in 1970 the east building was constructed. It also includes deeds

showing transfer of both of the constructed buildings from the Dan Davis Corporation to Pendleton Woolen Mills.

With the recent changes brought about by the necessity to accommodate the TriMet light rail line along and including a portion of the east side of the site the applicant has now lost sufficient parking to no longer conform to the minimum required number of spaces under today's code. TriMet's work recently included rebuilding the parking in front of the building along Mailwell Drive, partly in the right of way and partly on the subject site. This parking prior to reconstruction was 15 feet deep on site so that the bulk of the spaces were on site. However this had to be modified with TriMet's Mailwell Drive reconstruction due to a grade change at this location forcing the creation of a retaining wall that caused 15 of the Mailwell Drive spaces to encroach further in the right of way (see Sheet 2 of submitted plans).

The applicant asserts that the current loading berths are legally nonconforming and meet the buildings loading berth requirements. The current code requires (19608.2B3) two loading berths for this building and the current building has eight nonconforming loading berths.

Similarly, the current available parking on site and partially in the Mailwell Drive right of way, are by nonconforming status available to meet a portion of the sites parking requirement. The current city parking code requires that this building provide a minimum of 51 spaces, prior to applying any parking credits. The applicant proposes to add two carpool/vanpool spaces (19.605.3B4) and to add 23 off site shared parking spaces (19.605.4B, under a separate but associated application) thereby providing a total of 48 spaces for the existing building. When current code parking requirements are applied to the existing total building square footage (19.605.1,G3 – see Sheet 2) along with the carpool credit the total required spaces for this building is 46.

Pendleton is trying to minimize the damage from this partially compensated taking necessitated by the goals of the larger community. Consequently, the applicant is requesting a Planning Director determination that the site has legal nonconforming status, and that the site through the use of the carpool spaces and shared parking (under separate but associated application) can meet the current code parking and loading requirements for total number of spaces, by acknowledging that some of the spaces are legally nonconforming to current off-street loading and parking requirements and by assuming the shared parking provisions are met (see separate but associated application).

APPENDIX

Figure One	Parking Study Sheet One (8 1/2"X11" format)
Figure Two	Parking Study Sheet Two (8 1/2"X11" format)
Figure Three	TriMet Concept Layout of to be developed Off Site 23 Space Shared Parking lot
Attachment Four	PBS Engineering Phase I Environmental Site Assessment dated 10/11 excerpt of photo history of site.
Attachment Five	1969 and 1972 Warranty Deeds for constructed west and east buildings
Attachment Six	1975 Milwaukie Zoning Ordinance - Article 5 Off-Street Parking and Loading

PENDLETON WOOLEN MILLS- MAILWELL

MILWUAKIE, OREGON

PROJECT TEAM

Applicant: Contact: Michael Donovick Portland Center Manager	Pendleton Woollen Mills 2516 SE Mailwell Drive Milwaukie, OR 97122	PH (503) 535-0007 EXT. 12
Planning/Landscape Architecture: Contact: William J. Hornsby, L.A.	Western Planning Associates, Inc. PO BOX 1273 Seaside, OR 97138	PH (503) 298-0222 bill@westernplanning.com
Surveyor: Contact: Andy Paris	Andy Paris & Associates, INC. 10000 Highway 101, Suite 100 Clackamas, OR 97015	PH (503) 656-1341

SHEET INDEX

1. Cover Sheet & Existing Conditions
2. Parking Study Areas

Western Planning Associates, Inc.
Western Planning Associates, Inc.

SITE INFORMATION

Site Description: BEING PART OF LOT 6, "OMARK INDUSTRIAL PARK"
IN THE SW 1/4 SECTION 25, T.1S, R.1E, W.M.
CITY OF MILWAUKIE CLACKAMAS COUNTY, OREGON

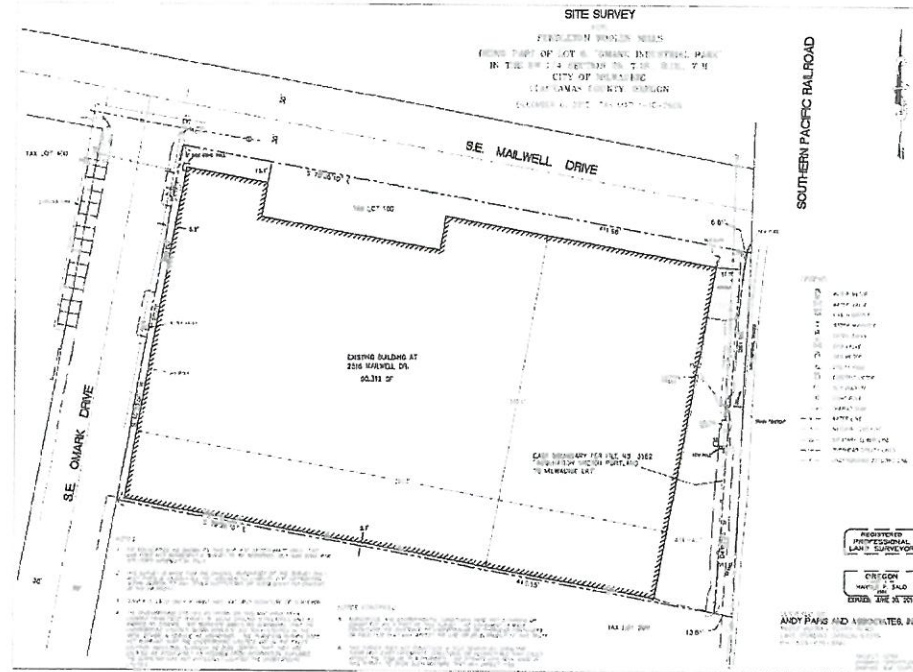
Site Area: 2.24 AC/RIS

Zoning: M

SHARED
PARKING SITE



VICINITY MAP



EXISTING CONDITIONS

Site Survey by Andy Paris & Associates, INC. 12/06/12



Land Planning
Landscape
Architecture

PO BOX 1000
LAKE GERSHON, OR
97035
503-294-0222

SCALE: AS SHOWN

DESIGNED BY: WJH
CHECKED BY: WJH

DATE: FEB 10, 13
REVISION:

REGISTERED
190
WILLIAM J. HORNSBY
OREGON
LANDSCAPE ARCHITECT

PENDLETON WOOLEN MILLS
EXISTING CONDITIONS
2516 SE MAILWELL DRIVE
MILWAUKIE, OR

1
of
2

PENDLETON MAILWELL -

MILWUAKIE, OREGON



Land Planning
Landscape
Architecture

PO BOX 5192
LAKE OSWEGO, OR
97035
503-694-0232

SCALE: AS SHOWN

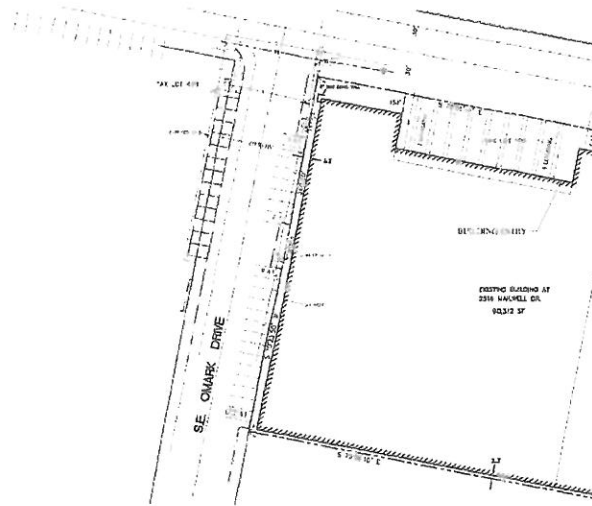
DESIGNED BY: WESTERN
DRAWN BY: JSM
CHECKED BY: MJP

DATE: 07-10-13
REVISED:

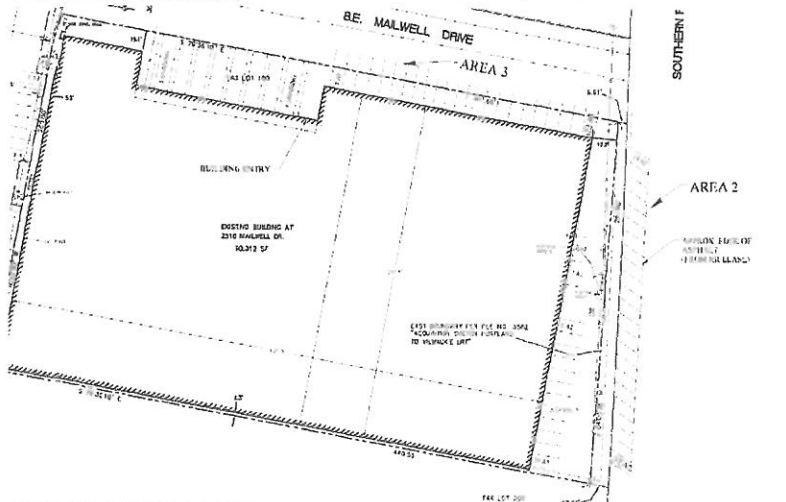
REGISTERED
190
WILLIAM F. HORNUNG
OREGON
LANDSCAPE ARCHITECT

PENDLETON WOOLEN MILLS
PARKING STUDY SHEET
2516 SE MAILWELL DRIVE
MILWUAKIE, OR

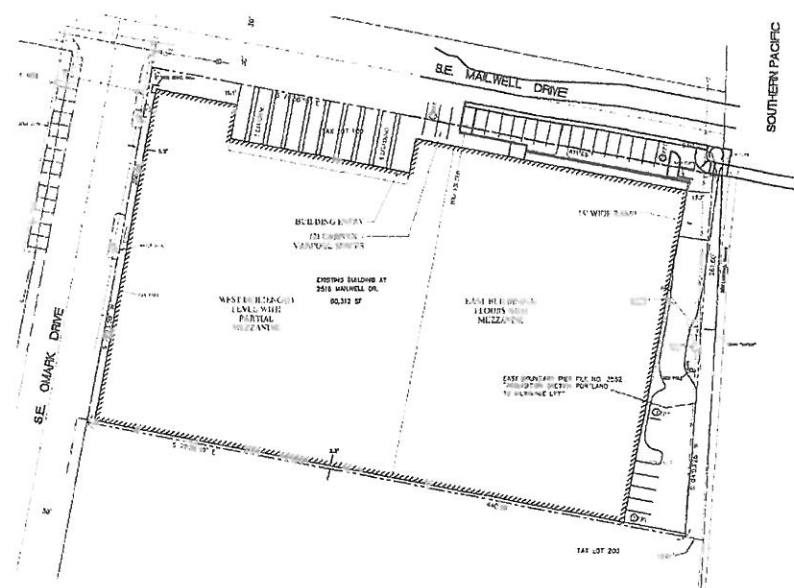
2
of
2



AREA 1- ON STREET PARKING OMARK DRIVE
TOTAL EXISTING SPACES (22)



AREA 2 & 3- PARKING EAST & MAILWELL PARKING & LOADING
(PRE-TRIMET)
TOTAL EXISTING SPACES- AREA 2- EAST SIDE (37),
AREA 3- MAILWELL (22) (8 LOADING BERTHS)



PROPOSED PARKING & LOADING POST TRIMET

AREA 4- TRIMET LOT OFFSITE (23) SPACES (SEE 8 1/2' X 11' ATTACHED TO APPLICATION)

SQUARE FOOTAGE QUANTITIES

DESCRIPTION	60 FT
Area 1- On Street	19,605.4
Area 2- East Building	1,000
Area 3- Mailwell Drive	1,000
Area 4- New Trimet Lot	1,000
Total	22,605.4

PARKING SUMMARY

	PRE-TRIMET	POST-TRIMET
AREA 1- OMARK DR (ON STREET*)	(22)	(22)
AREA 2- EAST BUILDING	37	07
AREA 3- MAILWELL DRIVE	22	18
AREA 4- NEW TRIMET LOT	0	23
(SHARED PARKING 19,605.4)		

TOTAL PARKING SPACES 55 48

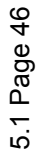
LOADING SUMMARY

AREA 3- MAILWELL DR 8 8

MILWUAKIE PARKING & LOADING REQUIREMENTS

LOADING REQUIREMENT 19608.2B3 = 2 SPACES
MAXIMUM PARKING TABLE 19.605.1G3
170,874 SF X .4 PER 1000 = 68 SPACES
MINIMUM PARKING
170,874 SF X .3 PER 1000 = 51 SPACES
2 CARPOOL SPACES -5
(19,605.3B4) 46 REQUIRED

* OMARK DRIVE ON STREET PARKING REQUESTED BUT NOT
TOTALLED IN SUMMARY CHART





Engineering +
Environmental

MLWR-0238

Phase I Environmental Site Assessment

TriMet File #3582
Pendleton Woolen Mills
2516 SE Mailwell Drive
Milwaukie, Oregon 97222

Prepared for:
TriMet
710 NE Holladay Street
Portland, Oregon 97232

October 2011
Project No. 20319.008

rec'd 11/11/11

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3.0 HISTORICAL RECORDS REVIEW

The information is presented as obtained from each source, and should not be considered a cumulative discussion of issues.

3.1 Physical Setting Source(s) Topography and Surface Features

The USGS 7.5-minute topographic map (Lake Oswego, Oregon Quadrangle, 1984) for the site indicates the area of the *subject property* is relatively flat at an elevation of approximately 55 feet above mean sea level, with the topography rising to the east. Large buildings are depicted on the *subject property* and the areas west and south, correlating to the warehouse/commercial structures in the area and industrial nature of the general vicinity.

The topographic map indicated that the nearest surface water (Johnson Creek) is located approximately one-quarter mile west from the *subject property*.

Soils and Geology

According to the Soil Survey for Clackamas County, Oregon (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>), accessed September 2, 2011, the *subject property* is underlain predominantly by Urban land. In most areas of this complex, the soils have been graded, cut, filled or otherwise disturbed. This complex is present on first terraces above the flood plains at elevations between 50 to 100 feet above mean sea level. Original soils were silt loam, loam, silty clay loam, and gravelly loam and were commonly over stratified sand and gravel at a depth of 4 to 6 feet.

Surface soils are underlain by alternating sands, clays and gravels deposited during Pleistocene catastrophic flood events are present, with sand and gravels of the Troutdale Formation underlying the flood deposits. The sedimentary deposits together reach depths of over 200 feet in the area of the *subject property*. Columbia River Basalts are present at depth. A copy of the soil map is included in Appendix D.

Groundwater

Based on nearby monitoring well logs, the shallowest occurrence of groundwater is expected to be at approximately 8 to 15 feet below ground surface (bgs). Based on topography and proximity to the Willamette River, the direction of shallow, unconfined groundwater flow is expected to be towards the west; therefore, properties to the east are considered to be up gradient to the *subject property*.

3.2 Historical Use Information

Aerial Photographs

Aerial photographs were obtained from the University of Oregon Map Library, and Portlandmaps.com; copies are included in Tab 2. Photograph scales are typically small and detailed information is not generally obtained from the photographs. The photographs are summarized in the table below.

Year	Subject Property	Adjacent Properties
1936	The southeast quadrant of the lot is in agriculture use; the remaining areas appear to be fallow fields	The area to the northeast is wooded; the area to the northwest appears to be fallow fields; the area to the east is occupied by railroad tracks or by unpaved roads; the area to the south is either in agricultural use or fallow; the area to the west appears to be fallow fields
1939	There are no apparent changes to the <i>subject property</i>	No significant changes are noted
1948	The site is occupied by probable war-time housing; at least 14 houses occupy the area adjacent to three curved and paved streets	The areas to the north, west, and south are occupied by probable war-time housing units; the area to the east remains occupied by railroad tracks with the area east of that undeveloped
1956	The structures have been demolished but the streets remain	The areas to the north, west, and south remain occupied by streets but the houses have been demolished; the area to the east is generally unchanged, however the undeveloped portion appears to have been cleared of vegetation
1963	The site is now occupied by a square structure on the west portion; the east portion has some unpaved areas but remains undeveloped	The area to the north and west are now occupied by commercial or industrial structures; the area to the east remains unchanged; the area to the south remains occupied by the paved streets but is vacant
1970	Nearly the entire lot is now occupied by a commercial structure; a small area on the east side appears to be unpaved	The areas to the north, west, and south are now occupied by large commercial or industrial structures; the area to the east is unchanged
1980	The site appears unchanged	The areas to the north, east, and west are unchanged; the area to the south is occupied by a larger commercial or industrial structure
1990	The site appears unchanged	The areas to the north, west, and south are unchanged; the area to the east is now occupied by commercial structures
1998	The site appears unchanged	There are no apparent changes to the surrounding properties
2001	The site appears unchanged	There are no apparent changes to the surrounding properties
2005	The site appears unchanged	There are no apparent changes to the surrounding properties

3/

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that DAN DAVIS CORPORATION, a corporation duly organized and existing under the laws of the State of Oregon, hereinafter called Grantor, in consideration of Thirty Thousand (\$30,000.00) Dollars to Grantor paid, does hereby grant, bargain, sell and convey unto PHILLIPSON WOOLLEN MILLS, an Oregon corporation, hereinafter called Grantee and Grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Clackamas and State of Oregon, described as follows, to-wit:

A tract of land in the William Meek D.E.C. Clackamas County, Oregon, more particularly described as follows:

Beginning at the Northwest corner of Lot 6, CHURCH INDUSTRIAL PARK, a recorded plat in said county; thence Southerly along the West line of said Lot 6, 260 feet; thence Easterly and parallel to the Northerly line of said Lot 6, 224.00 feet to the point of beginning of the tract to be described; thence continuing Easterly and parallel to the Northerly line of Lot 6, 224.00 feet; thence Northerly along the East line of Lot 6, 261.83 feet to the Northwest corner of Lot 6; thence Westerly along the North line of Lot 6, 194.27 feet; thence Southerly and parallel to the West line of Lot 6 approximately 260.00 feet to the point of beginning.

TO HAVE AND TO HOLD the above described and granted premises unto the said Grantee and Grantee's successors and assigns forever.

And said Grantor hereby covenants to and with said Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances, save and except:

1. Utility easements as delineated on the recorded plat along the East 20 feet.
2. Set-back provisions as delineated on the recorded plat, 15 feet from Northerly lot line.
3. Mortgage, including the terms and provisions thereof, dated November 1, 1962, recorded November 7, 1962, in Mortgage Book 563, page 411, Mortgage Records of Clackamas County, Oregon, to secure the payment of \$270,000.00, with interest, by Dan Davis Corporation, an Oregon corporation, to New England Mutual Life Insurance Company, a Massachusetts corporation (includes other property). Grantor expressly assumes and agrees to perform all the terms and conditions on the part of the mortgagor under the above described

1-Deed

66 8002

mortgage and to secure as soon as possible a first
 lease of the mortgage lien on the property con-
 veyed hereunder.

and that Grantor will warrant and forever defend the above granted
 premises and every part and parcel thereof against the lawful
 claims and demands of all persons whatsoever.

Done by order of the Grantor's Board of Directors, with full
 corporate seal attached, this 22 day of April, 1967.



DAN DAVIS CORPORATION

[Signature]
 President

STATE OF OKLAHOMA
 County of McIntosh

APR 22 1967

Personally appeared Dan Davis and *[Signature]*, each for himself, and on behalf of the other, who is the President and chief executive officer of the corporation and that the said *[Signature]* is the duly authorized agent of the corporation by authority of the Board of Directors of the corporation.



Before me:

[Signature]
 Notary Public for Oklahoma
 My commission expires 11/22/71

The true and actual consideration for this transfer is \$50,000.

WITNESSES:
[Signature]
 Secretary

2-Deed

[Handwritten number 2]

STATE OF OKLAHOMA
 County of McIntosh

I, Robert L. Brown, County Clerk, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of McIntosh, State of Oklahoma.

DEED
 of said County of
 MAY 6 AM 11 67

RECORDED IN CONVEYANCE
 BOOK 11 PAGE 117
 OKLAHOMA COUNTY

[Signature]
 Recording Clerk

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that DAN DAVIS CORPORATION, a corporation duly organized and existing under the laws of the State of Oregon, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto PENDLETON WOOLLEN MILLS, an Oregon corporation, hereinafter called Grantee, and Grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Clackamas and State of Oregon, described as follows, to-wit:

That portion of Lot 6, CHARK INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, described as follows:

BEGINNING at the Northwest corner of said Lot 6; thence Southerly along the West line of said Lot 6, a distance of 260 feet; thence Easterly parallel to the Northerly line of said Lot 6, a distance of 224.0 feet to the Southwest corner of the tract conveyed to Pendleton Woollen Mills by Deed recorded under Recorder's Fee No. 69-8003; thence Northerly along the West line of said Pendleton tract 260.0 feet, more or less, to the Northerly line of said lot; thence Westerly along said Northerly line 224.0 feet to the point of beginning.

TO HAVE AND TO HOLD the same unto the said Grantee and Grantee's assigns and successors forever.

And said Grantor hereby covenants to and with said Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances except:

1. Taxes for the year 1972-73 payable in the amount of \$9,751.26, with \$292.56 discount. Code No. 12-2, Account No. 3011-7-2-6-1, Tax Lot No. 100.
2. City liens, if any, of the City of Milwaukie.
3. Set back provisions as delineated on the recorded plat, 15 feet from the Northerly lot line.

and that Grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

1-Deed

72 35-110

715-665

The true and actual consideration paid for this transfer,
stated in terms of dollars, is \$235,000.

Done by order of the Grantor's board of directors, with its
corporate seal affixed, this 17 day of November, 1972.

DAN DAVIS CORPORATION

By [Signature] President

By [Signature] Secretary

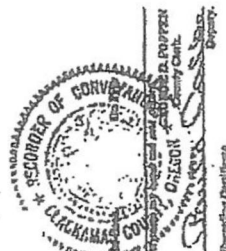
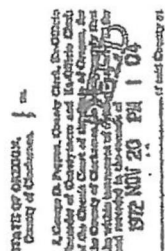
STATE OF OREGON)
) ss
County of Multnomah)

November 17, 1972.

Personally appeared Dan Davis and Moe H. Tonkon, who being
duly sworn, each for himself and not one for the other, did say that
the former is the President and that the latter is the Secretary of
Dan Davis Corporation, a corporation, and that the seal affixed to
the foregoing instrument is the corporate seal of said corporation
and that said instrument was signed and sealed in behalf of said
corporation by authority of its board of directors; and each of
them acknowledged said instrument to be its voluntary act and
deed.

Before me:

[Signature]
Notary Public for Oregon
My commission exp: 8-21-73



2

2-Deed

72 35440

ARTICLE 5. OFF-STREET PARKING AND LOADING

Section 5.010. Off-Street Parking Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land is changed within any zone in the City, except the C-C zone, off-street parking spaces shall be provided in accordance with the requirements of this Section and Section 5.030, unless greater requirements are otherwise established. If parking space has been provided in connection with an existing use, the parking space shall not be eliminated if it would result in less than is required by this Section. Where square feet are specified, the area measured shall be the gross floor area primary to the functioning of the particular use of property, but shall exclude space devoted to off-street parking or loading. Where employees are specified, persons counted shall be those working on the premises, including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space.

UsesParking Spaces Required

1. Residential

- | | |
|---|---|
| a. One or two family dwelling | Two spaces per dwelling unit, one of which must be covered. Covered space may be eliminated one year after final inspection if two spaces are provided. |
| b. Apartment dwelling | 0 - 24 dwelling units: two spaces per dwelling unit.

over 24 dwelling units:
1.5 spaces - one bedroom
1.75 spaces - two bedrooms
2 spaces - three bedrooms. |
| c. Rooming or boarding house, fraternity, motel, or tourist court | One space per guest room or suite, plus one additional space per 2 employees. |
| d. Hotel | One space per two guest rooms or suites, plus one space per two employees. |
| e. Trailer court | Two spaces per trailer or mobile home. |
| f. Convalescent, nursing and other health homes and institutions, homes for the aged, children's homes and welfare or correctional institutions | One space per 3 beds for patients plus one additional space per two employees. |

2. Public and Semi-Public Buildings and Uses

- | | |
|---|--|
| a. Auditorium or meeting room (other than church or school) | One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each 4 seats or 8 feet of bench length. |
| b. Church | One space per 80 square feet of floor area in the main assembly area or, where seating is |

10-5 5.010 2 b

Milwaukee Ordinances

10-5.5.010.3.e.

UsesParking Spaces Required

	fixed to the floor, one space per 4 seats or 8 feet of bench length.
c. Club, lodge, or association	Spaces to meet the combined requirements of the uses being conducted such as hotel, restaurant, auditorium, etc.
d. Hospital	One and one-half spaces per bed.
e. Library	One space per 400 square feet of reading room plus one space per two employees.
f. Day care center, kindergarten, equivalent private or parochial school	Two spaces per teacher or staff member.
g. Elementary, junior high, or equivalent private or parochial school	One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
h. Senior high school, or equivalent private or parochial school	One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
i. College, universities, institutions of high learning and equivalent private or parochial schools	One space per three seats in classrooms.
j. Passenger terminal	One space for each 500 square feet of floor area.
k. Post office	One space for each 50 square feet of patron service floor area plus one space per employee.
3. Commercial	
a. Retail store, except as provided in subsection "b" below	One space for each 200 square feet of gross floor area plus one space per employee.
b. Service or repair shop or retail store handling bulky merchandise such as automobiles or furniture	One space for each 600 square feet of gross floor area plus one space per employee.
c. Bank or office except medical or dental	One space for each 400 square feet of floor area plus one space per employee.
d. Medical or dental offices or clinics	One space per 300 square feet of floor area plus one space per employee.
e. Eating or drinking establishment	One space per 200 square feet of floor area plus one space per employee.

10-5.5.010.3.f,

Milwaukee Ordinances -

10-5.5.020.1.

UsesParking Spaces Required

- | | |
|--|---|
| f. Mortuary | One space per 4 chapel seats or 8 feet of bench length. |
| 4. Commercial Recreation | |
| a. Amusement park | One space for each 1,000 square feet of patron serving area. |
| b. Billiard or pool hall | One space per table plus one space per employee. |
| c. Bowling alley | Five spaces for each alley plus one space per employee. |
| d. Dance hall, skating rink or gymnasium | One space per 50 square feet of patron area plus one space per employee. |
| e. Go-kart track | One space per kart plus one space per employee. |
| f. Golf driving range | One space per 10 linear feet of driving line. |
| g. Indoor arena or theater | One space per 4 seats or 8 feet of bench length. |
| h. Miniature golf course | One space per 2 holes plus one space per employee. |
| i. Race track or stadium | One space per 4 seats or 8 feet of bench length. |
| j. Shooting gallery | One space per 500 square feet of floor area plus one space per employee. |
| k. Swimming pool | One space per 50 square feet of pool plus one space per employee. |
| l. Tennis court | One space per court. |
| 5. Industrial | |
| a. Manufacturing use | One space per employee. |
| b. Storage or wholesale use | One space per employee plus one space per 700 square feet of patron serving area. |

Section 5.020. Off-Street Loading Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land changed, within any zone in the City, off-street loading spaces shall be provided in accordance with the requirements of this Section and Section 5.030, unless greater requirements are otherwise established.

1. Merchandise, Materials, or Supplies. Buildings or structures to be built or substantially altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths, in accordance with standards adopted by the Planning Commission. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use. Off-

10-5.5.020.1.

Milwaukie Ordinances

10-5.5.030.8.b.

street parking areas used to fulfill the requirements of this Ordinance shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

2. Passengers. A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading passengers shall be located on the site of any school or other public meeting place which is designed to accommodate more than 25 persons at one time.

Section 5.030: Off-Street Parking and Loading, General Provisions. The following general provisions shall govern the application of off-street parking and loading requirements:

1. Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission based upon the requirements of comparable uses listed.
2. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately.
3. Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the City in the form of deeds, leases or contracts to establish the joint use.
4. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Required off-street parking spaces other than for dwellings shall be located not farther than 200 feet from the building or use that they are required to serve, measured in a straight line from the building.
5. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials or for the parking of delivery vehicles used in conducting the business or use.
6. Required parking and loading spaces shall not be located in a required front or street side yard except for required off-street parking for one or two family dwellings.
7. A plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met, shall accompany an application for a building permit.
8. Design requirements for parking spaces and loading areas shall be as follows:
 - a. Any area used for standing and maneuvering of vehicles shall have paved surfaces drained so as to avoid water standing or flowing onto adjacent properties.
 - b. Except for parking to serve one or two family residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than 5 nor more than 6 feet in height except where vision clearance is required.

- c. Parking spaces along the outer boundaries of a lot shall be contained by a curb at least 4 inches high and set back a minimum of 4½ feet from the property line.
- d. Artificial lighting which may be provided shall not create or reflect substantial glare in a residential zone or on any adjacent dwelling.
- e. Parking spaces and aisles for turning and maneuvering of vehicles shall be in accordance with standards adopted by the Planning Commission.
- f. Groups of 5 or more parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street other than an alley will be required.
- g. On parking lots having 5 or more parking spaces, such spaces shall be clearly marked in a permanent manner.
- h. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of pedestrians, and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate and service traffic to be anticipated. Service drives shall be clearly and permanently marked and defined through use of rails, fences, walls, or other barriers or markers on frontage not occupied by service drives.
- i. Service drives shall have a minimum clear vision area formed by the intersection of the driveway centerline, the street right-of-way line, and a straight line joining said lines through points 20 feet from their intersection.

ARTICLE 6. CONDITIONAL USES

Section 6.010. Authorization to Grant or Deny Conditional Uses. Conditional uses in this Ordinance may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth in Section 6.010, through 6.030. In permitting a conditional use or the modification of a conditional use, the Planning Commission may impose, in addition to standards and requirements expressly specified by the Ordinance, any additional conditions which it considers necessary to protect the welfare of the surrounding property and the City as a whole. These requirements may include increasing the required lot size or yard dimensions, limiting the height of buildings, controlling the location and number of off-street parking and loading spaces, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this Ordinance and classified in this Ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.

Section 6.020. Standards Governing Conditional Uses. A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified in authorizing the conditional use and as otherwise modified as follows:

- 1. Yards. In a residential zone, yard area shall be equal to at least two-thirds the height of the principal structure. In any zone, additional yard requirements may be imposed.

List of Record
File #AP-13-01, Appeal of File # DD-13-04

The following documents are part of the official record for this application as of September 30, 2013.

1. Application for Appeal
 - a. Submittal forms: land use application form(s), proof of ownership, property owner authorization, Submittal Requirements form, fee receipt (received 7/31/13)
 - b. Narrative addressing appeal
2. Notification information for Appeal
 - a. Mailed notice for Planning Commission public hearing on 10/8/13
 - b. Certification of legal notice mailing, with attached mailing list (dated 9/18/13)
 - c. Notice map
 - d. Returned notice envelopes
3. Director's Determination File #DD-13-04
 - a. Submittal forms: land use application form(s), proof of ownership, property owner authorization, Submittal Requirements form, fee receipt (received 4/3/2013)
 - b. Narrative addressing code standards and criteria (received 4/3/2013)
 - c. Plans and drawings and supporting information
 - (1) Parking Studies (Sheets 1 and 2)
 - (2) Shared Parking Lot Layout
 - (3) Proposed site conditions (received)
 - (4) Site History
 - (5) Property Deeds
 - (6) 1975 Milwaukie Zoning Ordinance
 - d. 120-day waiver request (received 7/31/13)
4. Staff Report(s)
 - a. Report for Planning Commission public hearing on 10/8/13
 - (1) Recommended Findings



ACTION REQUESTED

None. This is a briefing for discussion only. This briefing is in anticipation of future amendments to the sign code related to murals. Staff does request direction from the Planning Commission on proposed amendments to Title 14, Sign Ordinance presented in this report.

BACKGROUND INFORMATION

A. History of prior actions and discussions

- **September 2012:** Planning Commission forwarded a recommendation to City Council on a limited amount of amendments to exempt public murals from the sign ordinance.
- **May 2012:** Beth Ragel, Community Services Program Coordinator, briefed the Planning Commission on the proposed permit process for public murals at a work session.
- **April 2012:** Staff briefed City Council on community outreach and reported the results from the mural survey. Council directed staff to continue work on the project, including developing the code language to take to the Planning Commission for review.
- **September 2011:** City Council gave staff the approval to start public outreach and to begin drafting the needed code language.
- **2006:** When the Planning Commission updated the Sign Code in 2006, the difficulty of permitting public murals as signs was acknowledged as a problem yet to solve. At that time, no model was in place that adequately addressed Oregon's free speech laws. As such, public murals fell under sign regulations by default. Since then, Portland has finalized two review and permit processes—one in 2005 and one in

2008. These have not been challenged and have paved the path for other jurisdictions to adopt a similar approach.

B. Prior recommendation on a public mural review process

In September 2012, the Planning Commission held a public hearing and made a recommendation on amendments to Title 14, Sign Ordinance, that were part of a larger set of amendments to the Milwaukie Municipal Code. The purpose of the set of amendments was to establish the code language needed to allow murals as public art, separate from the regulations of the sign ordinance.

The Planning Commission made a recommendation that City Council approve of the code changes to Title 14. Prior to taking the code amendments to City Council, however, it was suggested by the City Attorney's office that the program could be made more legally defensible. The rationale for this is discussed further on in the report. As a result, staff did not take the code amendments to City Council, and has been revising the proposed approach. Staff is preparing to bring the revised code changes back before the Planning Commission later in 2013 in hopes of City Council adoption in 2014.

C. Structure of proposed 2012 public mural permit process

The 2012 version of the code changes proposed one discretionary review process and permitting path for murals. An ad hoc mural review committee was proposed to review the mural on set criteria and make a recommendation to the Milwaukie Arts Committee, who would make the final decision. The process would allow approved murals to be placed in commercial and industrial zones and on community service use properties. Broadly, the review criteria suggested at that time included artistic merit, feasibility, context and demonstrated community support.

Since staff was aware that reviewing content is generally problematic—and specifically, that reviewing the content of signs was deemed a violation of Article I, Section 8 of the Oregon constitution—staff also proposed to require a public art easement signed by the property owner. This approach is used by the City of Portland and was suggested by the City of Portland attorney and the Public Art Manager at the Regional Arts and Culture Council (RACC). This easement was determined to be a key feature of the proposed program, as the public art easement would mean the review of the mural would be for the purpose of selecting public art rather than regulating sign content on private property.

D. Structure of currently proposed public mural permit processes

After further evaluation, staff and the City attorney decided to make modifications to the public mural permitting process. Accordingly, one significant modification is the creation of two mural review and permitting options. One review process would be similar to the 2012 program and would include some public grant funding for the mural as well as a discretionary review process through the Milwaukie Arts Committee. The other review process would be for painted wall sign that would be reviewed by the Planning Department against objective standards.

These two review and permitting options are based on the model pioneered in Portland resulting from legal challenges to the Portland sign code (which had not exempted murals from sign regulations prior). Staff has not discovered any other models in Oregon for permitting murals in a manner that complies, or attempts to comply, with constitutional requirements for content neutrality.

Key Features of Portland's Two Mural Permitting Programs

RACC Program—Discretionary Review/Grant Program	BDS Program—Objective Review
<ul style="list-style-type: none"> • Grant funding provided and City acts as patron not just regulator. • Content of mural is reviewed by committee; standards are somewhat subjective. • Public art easement form must be signed by building/property owner. • Compensation to building/property owner is prohibited. 	<ul style="list-style-type: none"> • Grant funding is not provided and a permit fee is assessed (about \$200.) • Content of mural is not reviewed and standards are objective. • No public art easement form is required. • Compensation to building/property owner is prohibited.

As done in Portland, if the discretionary review process included a matching grant program. A grant program has the benefits of:

- Making the city a patron of the arts, which helps to justify the discretionary review of the mural;
- Providing more control over large-scale murals that go up in the public realm; and,
- Leveraging public funds to obtain high-quality murals, since there is a requirement for matching funds equal to or exceeding the city's contribution.

See Attachment 1 for example of mural funding programs implemented in other cities.

Implementing only objective review of murals limits the potential legal challenge but would not provide the same level of discretion over what is allowed. Since the objective review would only look at and regulate physical features and not content, this may mean that murals that are objectionable to the community could be permitted and placed in Milwaukie. Artists and/or property owners may prefer this path if they have funding readily available for their project or if a property owner does not want to sign a public art easement for the placement of the mural. They may also prefer this path if they are willing to do a smaller mural than is allowed through the discretionary process and limit the project to paint and no other medium.

E. Original Art Mural / Objective Review process

The basic structure of the discretionary review process has not changed from the 2012 version (see Background Information, Section B). The original art mural process (also referred to as the objective review process) is new and would affect more sections of Title 14. The Planning Commission will be asked to review and make a recommendation on a larger set of amendments to Title 14 than were presented last year.

The basic elements of the proposed objective review process are as follows:

- A. Creates a new category of signs called “painted wall signs”. Key attributes of painted wall signs are:
- Paint must be applied directly to building wall surface or Pelon material (a common substrate for murals); no vinyl, wood, or other material between the building wall and paint is allowed
 - There cannot be compensation given or received for placement of the sign. An affidavit by the building owner is required.
- B. Eligible properties – properties in commercial, industrial, downtown zones or mixed use commercial zones, and properties with uses containing a community service use. Properties designated as a significant or contributing historic resource are ineligible.
- C. Size/placement regulations – A painted wall sign can comprise 40% of the surface area of a building wall. Non-painted wall signs (cabinet signs, banner signs, signs on wood panel, etc) are a separate type of sign that have their own distinct size regulations (typically 20% of a wall).

Staff requests that the Planning Commission consider these proposed rules for painted wall signs and provide direction to staff about changes to the rules. The proposed rules are an initial draft and can be further refined in preparation for adoption hearings later this year.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E- Packet
1. Report on Mural Funding / Arts Programming in Other Cities, and Associated Benefits	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at link to specific PC meeting date.

Report on Mural Funding / Arts Programming in Other Cities, and Associated Benefits

Mural Funding in Other Cities

City of Beaverton:

In Beaverton, the City has allocated between \$7,000 and \$10,000 annually for their mural program. Individual murals have ranged from \$3,000 to \$10,000 to create. The City requires a match by the applicant in cash or in-kind donations. Three murals have been installed since 2008. The City has also funded other initiatives such as a sculpture program.

Here are photos of the three murals installed in Beaverton:



Mural funding and arts programming in other cities

City of Portland:

In Portland, the Public Art Mural Program managed through the Regional Arts and Culture Council (RACC) provides matching funds up to \$10,000 per approved project. Large scale murals can cost upwards of \$30,000 or more, depending on their complexity, size, location, donations and volunteers, and other factors.

While large scale and complex murals may cost \$30,000 or more, experienced mural artists have been able to install large scale murals in the region for less. Below is a mural that Larry Kangas finished at Parkrose High School. Painted on pelon in his studio and then affixed, the mural wraps around the building. At over 200 feet long, it is the largest mural in the Portland region. The entire out-of-pocket cost came to \$15,000 which was covered by RACC through a "Communities and Schools" grant. (Larry Kangas is the artist that painted the historic mural that was on the side of Chopstick's Express in downtown. He also painted the mural that is behind Bernard's garage. He worked with Milwaukie High School Students to plan and install both. He is interested in working in Milwaukie in the future.)

Here are photos of the Parkrose Horse Mural:



City of Sandy:

In 2011 the City of Sandy funded a mural to celebrate its centennial. It is sixty feet long and painted on panels (which includes 24 pieces of composite steel for hanging the work). Painting the mural on panels increased the cost but made the mural moveable should it be necessary to relocate it in the future. The cost was around \$30,000.

Below are photos of the left section and right sections of the mural:



Typical Mural Budget

Larry Kangas, one of the region's most prolific and well-known mural artists, has provided the following mural budget examples.



To do this 25' x 35' mural today on a local building would cost: Design fee.....\$ 1500

Primer and masking....\$ 325

80 hours to paint\$ 8000

UV coating (applied) \$ 450

Lift\$ 1200

Total \$ 11,475

This is assuming that there was no wall prep like scraping and sealing, and that the artist not get involved with the fundraising





To: Planning Commission

Through: Steve Butler, Community Development Director & Interim Planning Director

From: Ryan Marquardt, Senior Planner

Date: October 2, 2013, for October 8, 2013, Worksession

Subject: Planning Commission Land Use Training – Development Review

BACKGROUND INFORMATION

The Planning Commission has several new members within the last year. This training will ensure that all Commissioners have a basic understanding of Milwaukie's development review process. This will aid the Commission in making decisions on applications, recommending code changes, and being effective liaisons to the broader community about development in Milwaukie. Several trainings have been held in the past years on the Planning Commission's role in public hearings (ex parte contact, conflict of interest, hearing procedures, etc.). This training will mention the public hearing process, but will not directly address these topics. Staff will present a brief overview of Milwaukie's development review process at the October 8th Planning Commission meeting. The goal of the training is to provide Planning Commission with a broader understanding of the review processes for all types of development within the city. Staff will make a 10 minute presentation and will leave as much time as desired by the Commission for questions and discussion.

The topics to be covered are:

- Zoning overview – zones; types of uses; overlays; common terms
 - Milwaukie's Land Use applications – overview, frequently seen applications
 - Review types – Type I, II, III and IV – public notifications, review process
 - Building permit review – components of permit review; city departments involved; impact fees; public improvement requirements
- There are no attachments to this staff report.

ORDINANCE NO. 182706

An ordinance amending Sections 14.4.2, 14.4.3 and 14.4.20 of the Los Angeles Municipal Code; and amending Sections 5.111.2 and 22.116 of, and adding Section 22.119 to, the Los Angeles Administrative Code to allow for the creation of new Original Art Murals and the preservation of Vintage Original Art Murals on private property.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The definition of "Mural Sign" is deleted from Section 14.4.2 of the Los Angeles Municipal Code.

Sec. 2. The following definitions are added to Section 14.4.2 of the Los Angeles Municipal Code in proper alphabetical order:

Original Art Mural. A one-of-a-kind, hand-painted, hand-tiled, or digitally printed image on the exterior wall of a building that does not contain any commercial message. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or goods produced or sold.

Public Art Installation. A facility, amenity or project that does not contain any commercial message and which is either an "approved public arts project" as defined by Section 19.85.4 of the Los Angeles Administrative Code or approved pursuant to Section 91.107.4.6 of the Los Angeles Municipal Code. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or goods produced or sold.

Vintage Original Art Mural. An Original Art Mural that existed prior to the operative date of this definition.

Sec. 3. Subsection E of Section 14.4.3 of the Los Angeles Municipal Code is deleted.

Sec. 4. Subdivision 10 of Subsection B of Section 14.4.4 of the Los Angeles Municipal Code is deleted.

Sec. 5. Section 14.4.20 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 14.4.20. ORIGINAL ART MURALS, VINTAGE ORIGINAL ART MURALS, AND PUBLIC ART INSTALLATIONS.

An Original Art Mural that conforms to the requirements of Section 22.119 of the Los Angeles Administrative Code is not considered a sign and therefore is not subject to the provisions of this Article or any other ordinance that regulates signs. Any supposed "mural" that does not conform to the requirements of Section 22.119 of the Los Angeles Administrative Code shall be considered a sign and subject to the provisions of this Article or any other ordinance that regulates signs and digital displays. A Public Art Installation registered pursuant to the requirements of Section 19.85.4 of the Los Angeles Administrative Code or the requirements of Section 91.107.4.6 of the Los Angeles Municipal Code is not a sign, but is subject to Section 14.4.4-E of this Article and any other applicable zoning and land use regulations set forth in the Los Angeles Municipal Code. A building permit from the Department of Building and Safety is required for a new hand-tiled or digitally printed Original Art Mural or any Public Art Installation.

Severability. If any part, sentence, phrase, clause, term or word in Section 14.4.2 or Section 14.4.20 of this Code relating to Original Art Murals is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the constitutionality or lawfulness of the remainder of this Code, the Los Angeles Administrative Code or any other City regulation regulating signage, billboards or Original Art Murals.

Sec. 6. Section 5.111.2 of the Los Angeles Administrative Code is amended to add a new Subsection (h) to read as follows:

(h) Fees charged for the registration of Original Art Murals, pursuant to Section 22.116(b) of the Los Angeles Administrative Code, shall be placed in the Fund and allocated for mural registration program implementation.

Sec. 7. Section 22.116 of the Los Angeles Administrative Code is amended to read as follows:

Sec. 22.116. Fees.

(a) **Schedule of Fees for Application for Architectural Approval.** As required by Section 22.109 of this Code, each application for approval of the design or location of any arch, bridge, structure, or approach belonging to any private individual or corporation by the Board of Cultural Affairs Commissioners shall be accompanied by the payment of a fee in accordance with the following schedule:

Total Valuation of Project		Fee
From	To	
\$0.00	\$1,500.00	\$60.00
1,500.01	10,000.00	80.00
Sss10,000.01	25,000.00	100.00
25,000.01	50,000.00	120.00
50,000.01	150,000.00	140.00
150,000.01	250,000.00	160.00
250,000.01	500,000.00	200.00
500,000.01	1,000,000.00	300.00
1,000,000.01	Over	400.00

(b) **Fee For New Mural Registration.** As required by Section 22.119 of this Code, each application for registration with the Department of Cultural Affairs of an Original Art Mural on private property shall be accompanied by the payment of a \$60.00 fee. Monies collected from each application for mural registration shall be deposited into the Cultural Affairs Department Trust Fund, as established by Section 5.111.2 of the Los Angeles Administrative Code, for mural registration program implementation.

Sec. 8. A new Section 22.119 of the Los Angeles Administrative Code is added to read as follows:

Sec. 22.119. Original Art Murals on Private Property.

(a) **Purposes.**

(1) These regulations relating to Original Art Murals in the City of Los Angeles further the following purposes: (1) encouraging artistic expression; (2) fostering a sense of pride; (3) preventing vandalism at mural sites through the installation of murals that vandals are reluctant to disturb; and (4) preserving existing murals that are a valued part of the history of the City of Los Angeles.

(2) The City wishes to encourage the installation of murals and, at the same time, prevent the proliferation of off-site commercial signs. Therefore, the City's mural regulations exclude commercial advertising on murals to prevent the installation of the equivalent of an off-site commercial sign on a mural. This restriction on commercial advertising is intended to work in tandem with and help preserve the citywide ban on off-site commercial signs set forth in Section 14.4.4

of the Los Angeles Municipal Code. Both the ban and the exclusion of commercial advertising on murals are supported by the United States Supreme Court's ruling in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). In *Metromedia*, the Supreme Court ruled that the only reasonable way that cities can stop the proliferation of off-site commercial signs is to ban them. The Supreme Court also ruled that cities can carve out exemptions to such a ban for noncommercial signs and on-site commercial signs.

(3) These mural regulations also promote public safety and welfare by regulating such displays in keeping with the following objectives:

(i) That the design, construction, installation, repair and maintenance of such displays will not interfere with traffic safety or otherwise endanger public safety.

(ii) That the regulations will provide reasonable protection to the visual environment by controlling the size, height, spacing and location of such displays.

(iii) That the public will enjoy the aesthetic benefits of being able to view such displays in numbers and sizes that are reasonably and appropriately regulated without having to endure visual blight and traffic safety impacts that would be caused by such displays that are not reasonably and appropriately regulated.

(iv) That consideration will be given to equalizing the opportunity for messages to be displayed.

(v) That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.

(vi) That the regulations will conform to judicial decisions, thereby limiting further costly litigation and facilitating enforcement of these regulations.

(vii) To provide registration requirements and regulations for Original Art Murals as defined in Section 14.4.2 of the Los Angeles Municipal Code.

(b) **Original Art Mural Registration.**

(1) **Authority.** The Department of Cultural Affairs shall have the authority to determine that an application for an Original Art Mural or Vintage Original Art Mural meets all of the applicable registration requirements as established in the Mural Ordinance Administrative Rules.

(2) **Administrative Rules.** The Department of Cultural Affairs is authorized and directed to adopt Mural Ordinance Administrative Rules implementing this section.

(3) **Neighborhood Involvement Requirement.** The Mural Ordinance Administrative Rules to be adopted by the Department of Cultural Affairs shall include a neighborhood involvement requirement. Specifically, the rules shall include a requirement that an applicant for mural approval send notice of that application to the Neighborhood Council which has jurisdiction over the area of the City in which the proposed mural will be installed at least 45 days prior to the Department registering the mural. No mural shall be registered until the applicant certifies that he or she has completed this neighborhood involvement requirement. This is a procedural requirement only, and the General Manager shall at all times retain sole authority to approve or deny an application for a mural based on the criteria in Section 22.119 of the Los Angeles Administrative Code and any Mural Ordinance Administrative Rules promulgated by the Department of Cultural Affairs. Further, in no event will registration of a mural be granted or denied based upon the content of the mural.

(4) **Covenant.** In connection with the installation of a new Original Art Mural, the applicant shall be required to record a covenant with the Office of the County Recorder and the Department of Cultural Affairs. The covenant shall require that the mural comply at all times with all provisions of the Original Art Mural Regulations specified in Subsection (b) of this Section 22.119. In addition, the covenant shall remain in force for as long as the mural exists.

(5) **Change of Ownership.** Upon a change of ownership of the property to which an Original Art Mural is affixed, a new owner may, at the owner's election and without the need for permission from the Department of Cultural Affairs, de-register the mural with that department and terminate the covenant.

(c) **Grandfathering of Vintage Original Art Murals.** Any Vintage Original Art Mural installed prior to the effective date of this section, shall have legal nonconforming status and, notwithstanding any provision of this Section 22.119 to the contrary, not require registration under this Section 22.119. But a Vintage Original Art Mural which has not gained legal nonconforming status through law other than this Section 22.119 cannot qualify for legal nonconforming status under this Section 22.119 if it consists or contains any of the following: electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).

(d) **Original Art Mural Regulations.** An Original Art Mural that meets all of the following requirements will be allowed upon satisfaction of the applicable registration procedures:

(1) The mural shall remain in place, without alteration, for a minimum period of two-years. "Alterations" include any change to a permitted mural, including, but not limited to, any change to the image(s), materials, colors or size of the permitted mural. "Alteration" does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time. Minor changes to the permitted mural that result from the maintenance or repair of the mural shall not constitute an "alteration." Such minor changes may include slight unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or as a result of vandalism. A mural may be removed within the first two years of the date of registration under the following circumstances:

(i) the property on which the mural is located is sold; or

(ii) the structure or property is substantially remodeled or altered in a way that precludes continuance of the mural; or

(iii) the property undergoes a change of use authorized by the Department of Building and Safety.

(iv) the owner of a mural may request permission from the Department of Cultural Affairs to remove a mural prior to the expiration of the two year period, which the Department may grant upon making a finding that the continued maintenance of the mural is not feasible and that the early removal of the mural is not in furtherance of off-site commercial advertising.

(2) No part of a mural shall exceed the height of the structure to which it is tiled, painted or affixed.

(3) No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted or affixed.

(4) No part of a mural shall exceed a height of 100 feet above grade.

(5) No mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).

(6) No mural shall be placed over the exterior surface of any building opening, including, but not limited to, windows, doors, and vents.

(7) No mural shall be placed on a lot that is improved with only one single-family residential structure and accessory structures.

(8) No mural shall be arranged and illuminated in a manner that will produce a light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.

(9) Digitally printed image murals shall receive approval of both the Los Angeles Fire Department and the Department of Building and Safety.

(e) **Severability.** If any part, sentence, phrase, clause, term, or word of this Section 22.119 is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such invalidity or unconstitutionality shall not affect the constitutionality or lawfulness of the remainder of this Administrative Code, the Los Angeles Municipal Code, or any other City regulation regulating signage, billboards, or Original Art Murals.


Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles AUG 28 2013, and was passed at its meeting of SEP 4 2013.

HOLLY L. WOLCOTT, Interim City Clerk

By  Deputy

Approved SEP 06 2013

 Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
KENNETH T. FONG
Deputy City Attorney

Date August 19, 2013

Pursuant to Charter Section 559, I
disapprove this ordinance on behalf of the
City Planning Commission and recommend
that it not be adopted

August 19, 2013

See attached report.


Michael LoGrande
Director of Planning

File No(s). CF Nos. 08-0515, 08-0530, 08-1233 and 11-0923

CITY OF LOS ANGELES

CALIFORNIA

HOLLY L. WOLCOTT
Interim City Clerk



ERIC GARCETTI
MAYOR

Office of the
CITY CLERK

Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
General Information - (213) 978-1133
Fax: (213) 978-1040

SHANNON HOPPE
Council and Public Services
Division

www.cityclerk.lacity.org

When making inquiries relative to
this matter, please refer to the
Council File No.

December 20, 2013

To All Interested Parties:

The City Council adopted the action(s), as attached, under Council File No.

11-0923-S2, at its meeting held December 10, 2013.

City Clerk
kw

TIME LIMIT FILES
ORDINANCES

Mayor's Time Stamp
2013 DEC 11 PM 3:37
CITY OF LOS ANGELES

City Clerk's Time Stamp
CITY CLERK'S OFFICE
2013 DEC 11 PM 3:30
CITY CLERK
BY _____
DEPUTY

COUNCIL FILE NUMBER 11-0923-S2 COUNCIL DISTRICT 1, 9 & 14
COUNCIL APPROVAL DATE DECEMBER 10, 2013 LAST DAY FOR MAYOR TO ACT DEC 23 2013
ORDINANCE TYPE: Ord of Intent Zoning Personnel General
Improvement LAMC X LAAC CU or Var Appeals - CPC No.

SUBJECT MATTER: AMENDING THE LOS ANGELES ADMINISTRATIVE CODE TO ALLOW MURALS ON SINGLE-FAMILY RESIDENCES IN COUNCIL DISTRICTS 1, 9, AND 14 AND ON EXTERIOR BUILDING OPENINGS

APPROVED DISAPPROVED

PLANNING COMMISSION
DIRECTOR OF PLANNING
CITY ATTORNEY
CITY ADMINISTRATIVE OFFICER
OTHER

X

RECEIVED
CITY CLERK'S OFFICE
2013 DEC 17 PM 1:51
CITY CLERK
BY _____
DEPUTY

DEC 17 2013

DATE OF MAYOR APPROVAL, DEEMED APPROVED OR *VETO _____
(*VETOED ORDINANCES MUST BE ACCOMPANIED WITH OBJECTIONS IN WRITING PURSUANT TO CHARTER SEC. 250(b) (c))

(CITY CLERK USE ONLY PLEASE DO NOT WRITE BELOW THIS LINE)

DATE RECEIVED FROM MAYOR DEC 17 2013 ORDINANCE NO. 182825
DATE PUBLISHED _____ DATE POSTED DEC 18 2013 EFFECTIVE DATE JAN 27 2014
ORD OF INTENT: HEARING DATE _____ ASSESSMENT CONFIRMATION _____
ORDINANCE FOR DISTRIBUTION: YES _____ NO _____

CATEGORICAL EXEMPTION, PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT and ORDINANCE FIRST CONSIDERATION relative to amending the Los Angeles Administrative Code to allow murals on single-family residences in Council Districts 1, 9, and 14 and on exterior building openings.

Recommendations for Council action, SUBJECT TO THE APPROVAL OF THE MAYOR:

1. FIND that this action is categorically exempt from California Environmental Quality Act pursuant to Article III, Class 3 of the City's Environmental Guidelines. [ENV-2013-3392-CE and ENV-2008-2143-CE]
2. ADOPT the FINDINGS of the Director of Planning, attached to Council file 11-0923-S2, as the FINDINGS of the Council.
3. PRESENT and ADOPT the accompanying ORDINANCE to amend LAAC Section 22.119:
 - a. Subdivision (7), Subsection (d) to allow original art murals on lots that are developed with only one single-family residential structure and that are located within Council Districts 1, 9, and 14.
 - b. Subdivision (6), Subsection (d) to allow murals on exterior building openings.

Fiscal Impact Statement: None submitted by the City Attorney and the Department of City Planning. Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted.

(10 VOTES REQUIRED ON SECOND READING)

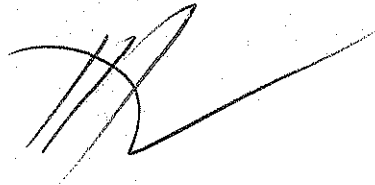
Summary

At a regular meeting held on November 19, 2013, the Planning and Land Use Management Committee considered reports from the City Attorney and the Department of City Planning (DCP) and Ordinance relative to amending the Los Angeles Administrative Code to allow murals on single-family residences in Council Districts 1, 9, and 14 and on exterior building openings. Staff from the DCP gave the Committee background information on the matter.

After an opportunity for public comment, the Committee recommended that Council approve the recommendations contained in the City Attorney report and adopt the Ordinance amending the Los Angeles Administrative Code to allow murals on single-family residences in Council Districts 1, 9, and 14 and on exterior building openings. This matter is now submitted to Council for its consideration.

Respectfully Submitted,

PLANNING AND LAND USE MANAGEMENT COMMITTEE



<u>MEMBER</u>	<u>VOTE</u>
HUIZAR:	YES
CEDILLO:	YES
ENGLANDER:	YES

-NOT OFFICIAL UNTIL COUNCIL ACTS-

ADOPTED
As Amended
DEC 03 2013
See Attached Motion
LOS ANGELES CITY COUNCIL

DEC 03 2013 ORDINANCE OVER TO Dec. 10, 2013

Ord
ADOPTED
DEC 10 2013
LOS ANGELES CITY COUNCIL