

MORATORIUM on BILLBOARDS

Planning Commission Recommendation

June 1, 2011



**City of Tacoma
Community and Economic Development Department
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A.

Letter of Recommendation

Planning Commission

June 1, 2011



**City of Tacoma
Planning Commission**

June 1, 2011

Honorable Mayor and Members of the City Council:

On May 17, 2011, the Council adopted Ordinance No. 27982, enacting an emergency six-month moratorium on the acceptance of applications for, or the construction of, any new static or digital billboards within the City. The purpose of the moratorium is to prevent the continued permitting of billboards in the City while the Council reviews and considers proposed billboard regulations.

As required by Tacoma Municipal Code 13.02.055, the Commission conducted a public hearing on June 1, 2011 concerning the moratorium. The hearing was well-attended and those who spoke provided excellent comments. The Commission also received written testimony. The oral and written testimony favored continuing the moratorium. The majority of those who testified felt that it was important to put a temporary hold on the permitting of new billboards while the Council has a chance to review and update the relevant regulations.

The Commission recently concluded a review of the City's billboard regulations. The Commission had significant concerns regarding the introduction of digital technology into certain zones of the City. Moreover, the Commission believes that further evaluation is necessary before any new regulations are adopted. In addition, our review revealed that the sections of the City's current code that do not address performance standards or emerging technology regarding billboards, could result in potential adverse impacts on the health, safety and welfare of the community, confirming the Council's concerns. This emphasizes the need to prevent further vesting under the existing, inadequate, and outdated regulations until this comprehensive review can be completed and revised regulations can be adopted. Although imposition of moratoria should be used infrequently and with caution, in this instance, the moratorium provides an opportunity to improve the City's billboard regulations before any new permits are issued.

Therefore, on behalf of the Planning Commission, it is my privilege to forward our findings and recommendations in response to the emergency moratorium. Enclosed you will find a copy of our Findings and Recommendations report that summarizes the public review process and the Commission's actions, and, a copy of each of the comment letters received, and a summary of comments from the Commission's public hearing. We believe the enclosed documents address the review requested by the Council and required by City Code. We look forward to our continued work in addressing these issues and improving the City's billboard regulations.

Sincerely,

JEREMY C. DOTY
Chair, Planning Commission

Enclosures

B.

Findings and Recommendations

Planning Commission

June 1, 2011



BILLBOARD REGULATIONS EMERGENCY MORATORIUM REVIEW

FINDINGS AND RECOMMENDATIONS

TACOMA PLANNING COMMISSION

June 1, 2011

A. SUBJECT:

Emergency moratorium on the acceptance of applications for or construction of new static or digital billboards within the City of Tacoma.

B. BACKGROUND:

On May 17, 2011, the City Council enacted an emergency moratorium on new static or digital billboards (Ordinance No. 27982). The moratorium prohibits the acceptance of applications for the construction of new static or digital billboards or the conversion of static billboards to digital formats. The moratorium applies City-wide and was enacted for a duration of six months (until November 16, 2011).

C. FINDINGS OF FACT:

1. On May 17, 2011, the City Council adopted Ordinance No. 27982, enacting an emergency moratorium on the acceptance of applications for permits to install, erect, construct or replace static or digital billboards. The purpose of the moratorium is to prevent the continued permitting of billboards within the City which ultimately may be inconsistent with the regulations currently under consideration by the City Council, and to allow the City reasonable time to review the associated regulations to ensure that those regulations achieve their intended purpose. It is possible that without a moratorium, significant investment could be made in the installation of new billboards and that those same billboards could be made non-conforming within a matter of months. The moratorium applies City-wide and is in effect for six months.
2. RCW 35.63.200 and Tacoma Municipal Code (TMC) 13.02.055 permit the establishment of moratoria when it is necessary as a protective measure to prevent vesting under current regulations.
3. With regards to the duration of moratoria, the Code provides:

Moratoria or interim zoning may be effective for a period of not longer than six months, but may be effective for up to one year if a work plan is developed for related studies requiring such longer period. [Excerpt from TMC 13.02.055.D.]
4. With the adoption of Ordinance No. 27982, the City Council declared that an emergency existed and that immediate adoption of a moratorium was necessary to prevent the permitting or construction of new static or digital billboards that might be inconsistent with the billboard regulations under review and that could potentially undermine the moratorium's goals.
5. TMC Chapter 13.02 sets forth the procedures and criteria for amending the City's development regulations, including temporary moratoria.

6. TMC 13.02.055 provides that following adoption of an emergency moratorium, the Planning Commission is required to conduct a public hearing and provide findings and recommendations to the City Council before the Council, after further review, takes final action to retain, rescind or modify the emergency moratorium. The Commission's findings and recommendations are required to address the need for and the appropriate duration of the moratorium.
7. The subject emergency moratorium was initially presented to and discussed by the Planning Commission at its May 18, 2011 meeting. The Commission authorized the distribution of the moratorium for public review and comment, and set June 1, 2011 as the date for the Commission's public hearing on the matter.
8. Written and/or electronic notice of the Planning Commission's public hearing was sent to community members who testified on the emergency moratorium to the City Council at its May 17, 2011 meeting and to citizens who provided comment for the Planning Commission's public hearing on March 16, 2011 concerning proposed revisions to existing billboard regulations. The notice also was provided to all recipients of the Planning Commission agenda, the Planning Commission's electronic mailing list, City Council members, Neighborhood Councils, business district associations, adjacent jurisdictions, other governmental agencies, the Puyallup Tribal Nation, City staff, City Commissions, environment, development, civic and social organizations, major institutions and employers, and other interested individuals and groups. In addition, notice was sent to all properties with existing billboards and all properties within 400 feet of an existing billboard. In total, the notice was sent to more than 3,000 addresses. Additionally, the public notice was posted on the bulletin boards on the first and second floors of the Tacoma Municipal Building and on the City's internet website.
9. The notice included general information regarding the time and place of the public hearing, a description of the purpose of the public hearing, where additional information could be obtained and how to submit public comment.
10. A copy of the moratorium ordinance was available for review at the offices of the Community and Economic Development Department, and was also posted for public review on the City's website.
11. The Planning Commission held a public hearing on this moratorium on Wednesday, June 1, 2011. 21 people provided testimony at the hearing. A majority of those who spoke at the hearing were in favor of the continuation of the moratorium.
12. In addition to the testimony received at the June 1, 2011 public hearing, 46 written comments were submitted in response to the public notice.
13. The Planning Commission reviewed all testimony offered at the June 1, 2011 public hearing and all written testimony submitted to the Commission prior to the comment deadline.
14. The testimony at the public hearing and the information contained in the public record indicate that public opinion supports continuation of the moratorium to prevent additional billboard development under existing regulations while the Council reviews and considers changes to those regulations.
15. Based on the moratorium adopted by the City Council and the public testimony provided during this review, the Commission has identified the following emergent items in need of additional review:
 - The existing definitions and regulations associated with billboards – both static and digital – to ensure consistency between those requirements and the intent of the Comprehensive Plan.

- The performance standards for billboards to ensure the protection of the health, safety and welfare of the City's citizens.
16. The City's billboard regulations have not been modified since 1997. The law regarding signage, as well as the technology used for advertising, has significantly evolved since that time.
 17. As noted above, a review of the billboard code is currently underway. As part of its analysis, the Commission has identified several issues of concern related to the introduction of digital billboards to the City, especially concerning their impact on residential areas (see attached Findings and Conclusions).
 18. The moratorium ordinance allows time for the Council to study and review the issues identified by the Commission. In order to make an informed decision, the Council envisions a thorough evaluation of the current issues related to billboard regulation, best practices and policies from other jurisdictions, and the adequacy of the City's existing regulations. Due to the age of these regulations, the changes in the community, policy and law since adoption of those regulations, and the extensive comments received to date, this review will likely result in the drafting and preparation of amendments to the Land Use Regulatory Code. In order to properly consider this issue, Council review will also necessitate input from community stakeholders, including neighborhood groups, internal staff and officials, and the business community.
 19. Clear Channel Outdoor has raised an issue regarding regulatory takings as it relates to the relocation permits held by Clear Channel. As the Council considers the moratorium, the issue of the relocation permits and relevant case law should be considered.
 20. Clear Channel Outdoor testified that they believed that the moratorium precluded routine maintenance and emergency repair of existing billboards. The moratorium should be clarified to ensure the routine maintenance and repairs are not prohibited while the moratorium is in effect.

D. CONCLUSIONS:

On May 17, 2011, the City Council declared an emergency and adopted an immediate, six-month moratorium on the acceptance of permits to install, erect or construct new static or digital billboards within the City. The moratorium is intended to prevent further permitting under the current billboard regulations and to provide the City Council an opportunity to review and discuss whether those regulations appropriately implement the policies of the City as well as meet the needs of the community.

After a review of the current regulations, and consideration of digital technology and the public comments provided, the Commission concurs with the Council's conclusion that additional time is needed to consider potentially significant changes to the existing billboard regulations. The Commission also concurs with the Council's initial finding that the status quo should be preserved to prevent substantial investment in new billboards, pending the outcome of the Council's consideration of changes to the City's billboard regulations. The Commission is in agreement with the Council that a moratorium is warranted as a protective measure to prevent vesting and continued permitting under the current regulations.

The Commission concurs with the initial moratorium duration of six months; however, should the Council desire to send all or a portion of the sign code back to the Commission for further study, more time will be needed in order for the Commission to complete its review.

E. RECOMMENDATIONS:

The Planning Commission recommends that the City Council continue the emergency moratorium on the issuance of billboard permits adopted under Ordinance No. 27982.

F. ATTACHMENTS:

- A. Billboard Code Revisions, Tacoma Planning Commission, Findings and Recommendations, May 18, 2011



BILLBOARD CODE REVISIONS

TACOMA PLANNING COMMISSION
 FINDINGS AND RECOMMENDATIONS
 May 18, 2011

A. SUBJECT

Amendments to the sign code to explicitly prohibit digital billboards and make minor revisions for clarity and consistency.

B. SUMMARY OF PROPOSED AMENDMENTS

The attached amendments address several sections of *Tacoma Municipal Code (TMC)* 13.06.520 and 13.06.521, as follows:

1. Definitions are revised. The term “billboard” is defined in relation to size and location, rather than content. The term for “off-premises sign” has been revised to pertain to location rather than commercial content, and the definition of “sign” has been slightly revised to adopt a widely-accepted definition.
2. New billboards are listed as prohibited signs except that existing nonconforming signs in certain circumstances may be relocated; the restriction on billboards has been clarified to list digital billboards as prohibited entirely.
3. Language related to the Highway Beautification Act and Scenic Vistas Act has been strengthened to reflect that additional regulations beyond the *TMC* apply to billboards.
4. Language regarding billboards has been “cleaned up” to refer to faces rather than faces and structures.
5. Additional requirements for aesthetics and landscaping for standard billboards have been included.
6. The section regarding dispersal (how far apart billboards must be from each other) has been simplified.
7. The section regarding removal of nonconforming billboards when a site or building is modified has been changed significantly. Thresholds for removal have been aligned with other sections of the code which address nonconforming sites and structures. The requirement for a concomitant agreement has been deleted.

The full text of the proposed code amendments are attached as Exhibit A.

C. FINDINGS OF FACT

1. The *Comprehensive Plan*, adopted in 1993 by Ordinance No. 25360 and amended by ordinance once every year thereafter, is Tacoma's *Comprehensive Plan* as required by the Growth Management Act (GMA) and consists of several plan and program elements.
2. The Growth Management Act (GMA) requires any amendments to the *Comprehensive Plan* and development regulations conform to the requirements of the Act.

3. The GMA allows counties and cities to amend their comprehensive land use plans generally only once each year, except that amendments may be considered more frequently for a limited set of circumstances.
4. The GMA further requires that any change to development regulations shall be consistent with and implement the *Comprehensive Plan*. Development regulations include, but are not limited to, zoning controls, critical area ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances. The proposed amendments fit within this definition of ‘development regulations’.
5. Chapter 13.02 of the *Tacoma Municipal Code (TMC)* sets forth the procedures and criteria for amending the *Comprehensive Plan* and development regulations and for area-wide zoning reclassifications.
6. Pursuant to *TMC* 13.02.040, the Planning Commission may review and make recommendations to formulate effective and efficient land use and development regulations and processes in order to implement the goals and policies of the *Comprehensive Plan*.
7. The City Council adopted Resolution No. 37070 on December 19, 2006, approving the four guiding principles for planning the future growth of the City of Tacoma: (1) to protect neighborhoods; (2) to protect critical areas; (3) to protect port, industrial and manufacturing uses; and (4) to increase densities in the downtown and neighborhood business districts.
8. In July 2010, the City Council accepted a settlement agreement with Clear Channel Outdoor, designed to put an end to ongoing litigation regarding billboards. The settlement agreement would allow new digital billboards in exchange for the removal of a significant number of nonconforming standard billboards.
9. Changes to the City’s sign regulations would be necessary to implement the terms of the settlement agreement. The sign regulations are part of the Land Use Regulatory Code and under the purview of the Tacoma Planning Commission.
10. The Planning Commission was asked to formulate code amendments using the settlement agreement as an initial framework, develop additional performance standards for digital billboards (size, height, image time, etc.), receive public comment on the framework and additional standards, and provide a recommendation to the Council.
11. The key terms of the agreement set forth the intent to reduce the number of existing billboards by establishing an exchange program. There are two parts to the exchange program for billboards under the agreement: (1) the first ten digital billboard faces and (2) subsequent digital billboard faces.
12. The Planning Commission began its review on December 15, 2010, when it established a draft schedule for review of the proposal and an overall scope for the project.
13. The general scope included development of regulations to address allowing digital billboards in certain specified areas of the city, as well as development of performance standards for digital billboards and a public review process of those proposed changes. The overall goal was to achieve a substantial reduction in the number of nonconforming standard billboards in exchange for the allowance of a limited number of digital billboards.
14. The City of Tacoma made major amendments to its sign code for billboards in 1988. The number of billboards and their total square footage were capped at the amount in existence on April 12, 1988 including those for which permit applications were filed prior to April 13, 1988. No additional billboards are permitted, however, an existing billboard can be relocated to a location that meets zoning, buffer and dispersal requirements as long as the total number and square footage of billboard signs is not exceeded.

15. Regulations regarding billboards were last changed in 1997. These changes required that all nonconforming billboards be discontinued and removed by August 1, 2007 or made conforming, in effect establishing a 10-year amortization program for nonconforming billboards.
16. Billboards are currently allowed to be relocated in four zoning districts: C-2, General Commercial, M-1 Light Industrial, M-2 Heavy Industrial, and PMI Port Maritime Industrial, subject to buffer and dispersal requirements.
17. Billboards are limited to 300 square feet per face, and 30 feet in height (45 feet in the PMI district).
18. Billboards which are relocated to conforming sites must be located 250 feet from a sensitive use (school, residential district, open space, etc.) and 375 feet from a shoreline district.
19. Billboards are required to meet dispersal standards relating to distance from other billboard faces or structures, minimal amount of appropriately zoned street frontage, and zoning across the street from a proposed billboard.
20. There are currently about 253 billboard faces in the City; approximately 245 are owned by Clear Channel Outdoor. Clear Channel Outdoor also possesses the rights to locate an additional 169 faces.
21. Of the existing faces, about 193 are nonconforming. The majority of these signs are nonconforming because they are located in zones which do not allow billboards. A number of billboards are nonconforming solely because they are located too close to other billboards and violate the dispersal requirements. Others are nonconforming because they exceed the maximum size or height.
22. Draft amendments were prepared under the auspices of the Planning Commission with public participation consistent with GMA requirements and the procedures of *TMC* Chapter 13.02. The proposed amendments were presented to and discussed by the Planning Commission during their regular meetings, all of which are open to the public.
23. The Planning Commission discussed the proposed amendments at nine of their ten meetings between December 15, 2010 and May 18, 2011. Specific topics included:
 - current billboards
 - current regulations
 - proposed special receiving areas
 - highway advertising control
 - buffering and dispersal
 - size
 - lighting and static image time
 - driver safety and distraction
24. Benchmarking information for each of the subject areas was researched from the cities of Bellevue, Bellingham, Federal Way, Kent, Olympia, Seattle, Spokane, Tukwila, and Vancouver, and in some cases Portland.
25. Studies reviewed included “The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update”, Federal Highway Administration (February, 2009); “Illuminating the Issues: Digital Signage and Philadelphia’s Green Future” by Gregory Young, (December, 2010); and “Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs” prepared by Jerry Wachtel, CPE (April, 2009). Industry information was also reviewed.
26. In March 2011, *Planning*, the magazine of the American Planning Association, published an article entitled “Digital Billboards, Distracted Drivers” by Jerry Wachtel. That article set forth some of the ways digital billboards could be made less distracting: keeping the sign from being too bright, lengthening the static image time, and keeping messages simple. Another article was

published in the *Planning Commissioners Journal*, Winter 2011, entitled “Billboards: The Case for Control,” by Edward T. McMahon. This article described the reasons all billboards (digital and standard) are contrary to good planning practice.

27. A public informational meeting regarding potential code changes was held on January 31, 2011. Approximately 35 people attended the meeting to learn more about the proposal and to voice their concerns and/or support for allowing digital billboards. General comments received at the meeting included the following:

- Concern about light emissions, especially during the darker hours
- Traffic impacts and safety issues
- The allowed height of new billboards
- The perceived negative aesthetic qualities of billboards
- The likelihood of eliminating all billboards within the city
- If the City can determine which of the billboards can come down
- How to regulate the billboards going forward

Additional comments received from meeting attendees were:

- That priority should be given to removal of billboards in or near residential areas
- Impact of light and glare of existing billboards in residential area is significant
- Urged to continue with only allowing currently allowed square footage of billboard faces

28. A draft of proposed code amendments was prepared for public review. The proposed draft was designed to incorporate the intent and conditions of the settlement agreement, as well as “fill in the blanks” for necessary development and performance standards. The key components of the public review draft were:

- Changing definitions of billboard, off-premises sign, and sign, and establishing a definition for digital billboard
- Establishing an exchange ratio for digital billboards
- Setting a maximum brightness level
- Limiting sign hours to be off between 10 p.m. and 5 a.m.
- Setting a minimum static image time of 8 seconds;
- Allowing digital billboards within the same zoning districts as standard billboards
- Designating 18 “special receiving areas” as defined in the settlement agreement, where up to 10 digital faces could be allowed
- Setting maximum sign size for these special receiving areas at 672 square feet for the first 10 faces, and 300 square feet elsewhere
- Simplifying dispersal regulations for both standard and digital billboards
- Removing amortization language
- Simplifying and clarifying regulations for non-conforming signs

29. A staff analysis report was prepared by the Community and Economic Development Department which provided a general description of the proposed changes and discussed applicable provisions of the State Growth Management Act, the City *Comprehensive Plan*, and the City’s Land Use Regulatory Code. The proposed amendments were analyzed using the ten criteria found in Chapter 13.02 of the *Tacoma Municipal Code* pertaining to proposed amendments to the *Comprehensive Plan* or Development Regulations. The staff report was presented to and discussed by the Planning Commission at their February 16, 2011 meeting.

30. The staff analysis found that individual signs proposed for some of the special receiving areas would be inconsistent with the *Comprehensive Plan's* goals and policies for pedestrian-oriented development, particularly in mixed-use centers. The Plan discusses signage in the context of urban design, aesthetics, and pedestrian-orientation in several sections. In most cases, it sets forth goals and policies for integrating signage plans into sub-area development plans, ensuring high quality signage, and encouraging pedestrian-scaled signs in mixed-use districts. Commercial district design goals are to integrate signage into the overall design and scale of the district, and ensure that commercial district development does not act as a detriment to surrounding neighborhoods. The Plan states outright that billboards should be prohibited in the Shoreline districts and freestanding signs should be prohibited in the UCX-TD district (Tacoma Dome Urban Center Mixed-Use). The *Comprehensive Plan* does not mention billboards specifically for other districts because in most districts they are and have been prohibited for many years.
31. After completing its initial review of the proposed changes and the associated staff analysis the Planning Commission, on February 16, 2011, authorized the release of the draft code amendments for public review and comment and set a public hearing date for March 16, 2011.
32. Written and/or electronic notice of the Planning Commission's public hearing was provided to all recipients of the Planning Commission agenda, the Planning Commission's electronic mailing list, City Council members, Neighborhood Councils, business district associations, adjacent jurisdictions, other governmental agencies, the Puyallup Tribal Nation, City staff, City Commissions, environment, development, civic and social organizations, major institutions and employers, potentially affected property owners, and other interested individuals and groups. This notification included the distribution of more than 3,000 postcard mailers and e-mail notifications. Notice was sent to all properties with existing billboards, all properties within 400 feet of an existing billboard, all properties within or within 400 feet of special receiving areas, billboard owners, business districts, neighborhood councils, and non-profits. Additionally, the public notice was posted on the bulletin boards on the first and second floors of the Tacoma Municipal Building.
33. The provided notice stated the time and place of the public hearing, the purpose of the hearing, information pertaining to the preliminary environmental determination, where and how additional information could be obtained, and how to provide comments.
34. Copies of the public review draft code amendments and staff report were forwarded to all branches of the Tacoma Public Library. In addition, an informational page was established on the City of Tacoma website (www.cityoftacoma.org/planning).
35. The Planning Commission's public hearing was advertised in The News Tribune on March 11, 2011.
36. Pursuant to RCW 36.70A.530(4), the Community and Economic Development Department notified the commander of Joint Base Lewis-McChord on February 23, 2011 of the City's intent to amend the Land Use Regulatory Code. A response was received from the Commander indicating no objections to the proposed amendments, but with recommendations relating to avoiding light projecting skyward.
37. In accordance with RCW 36.70A.106, the City of Tacoma, on February 23, 2011, notified the State Department of Commerce and other required State agencies of its intent to amend the Land Use Regulatory Code. This notice included transmittal of the proposed amendments. On February 24, 2011 the Department of Commerce confirmed that the City had met the requirement of RCW 36.70A.106 as to notice to State agencies. No comments were received from the Department of Commerce or other State agencies.

38. Pursuant to WAC 197-11 and Tacoma's SEPA procedures, a Preliminary Determination of Environmental Nonsignificance (DNS) was issued on February 23, 2011. This preliminary determination (SEPA File Number: SEP2011-40000158817) was made based upon review of a completed environmental checklist.
39. The environmental checklist and Preliminary DNS were provided to the Planning Commission, Department of Ecology, Tacoma's Neighborhood Councils, City departments, adjacent jurisdictions, State and federal agencies, the Puyallup Tribal Nation, and other appropriate entities. A legal notice concerning this environmental determination was advertised in the City of Tacoma's official newspaper, the Tacoma Daily Index, on February 23, 2011.
40. No comments were received on this preliminary determination. The preliminary determination became final on April 1, 2011.
41. An informational question and answer session was held on March 9, 2011. The purpose of this meeting was to provide a more detailed explanation of the proposed amendments and to answer questions about the proposed changes. Notice of this meeting was included in the public hearing notice and advertised in *The News Tribune*.
42. The Planning Commission conducted a public hearing on March 16, 2011, with the public comment period left open until March 25, 2011.
43. Thirty-three individuals testified at the public hearing and 245 written comments were submitted during the public comment period. In addition, three petitions in opposition to digital billboards were received, with a total of 103 signatures.
44. Nearly all of the public testimony was in opposition to the public review draft code amendments. Of the 343 commenters, about 95% were opposed to digital billboards. In addition to this general opposition, the following specific concerns, questions and issues were commonly expressed:
 - Aesthetic concerns were noted, that all billboards are unattractive; digital billboards, in particular, are garish and an eyesore and are contrary to livable communities and pedestrian-orientation. In addition, the proposed digital billboard size of 672 square feet for the first 10 faces is too large.
 - Safety concerns were noted, with concern about driver distraction and safety hazards created and/or exacerbated by digital billboards. It was noted that the timing and frequency of image change is distracting.
 - Several comments were made in opposition to the proposed special receiving areas, noting they should not include locations close to residential, historic, or mixed-use districts, and, in general, that they should be eliminated.
 - Many comments expressed concerns related to light pollution, brightness, hours of operation and energy use.
 - A great deal of testimony about the settlement agreement was submitted. The opinion was that the reasoning behind the settlement is not clear and potentially not valid, that the proposed exchange is inadequate and favors Clear Channel, and that there has been insufficient public discussion to decide this important issue.
45. About 5% of the public testimony was in support of billboards or Clear Channel Outdoor. This public testimony related to several issues.
 - Billboard operators provide discounted or pro bono advertising to community organizations, as well as marketing and outreach assistance. Clear Channel, in particular, is committed to giving back to the community.

- Digital billboards provide the ability to effectively communicate public service announcements, such as Amber Alerts, as well as communication for community events, volunteer recruitment, or issue awareness.
 - Billboards provide an income stream for the underlying property owner.
 - The proposal would result in a significant reduction in the number of billboards.
46. On April 6, 2011 a copy of all letters and e-mails submitted during the comment period were provided to the Planning Commission for their consideration, together with a summary of the oral testimony received during the public hearing.
 47. Planning staff prepared a Comments and Responses Report, which summarized the key issues that were raised in public testimony and provided staff responses for consideration by the Commission. This report was presented to the Commission at their regular meeting on April 20, 2011.
 48. The Planning Commission reviewed all of the written and oral testimony, at their meetings on April 6, April 20, and May 4, 2011.
 49. In addition, the Commission reviewed supplemental information about lighting and brightness standards, static image time, and other implications of the proposed amendments. The Commission discussed these topics in depth, and discussed changes that would need to be made to the public review draft to make it more consistent with the *Comprehensive Plan*.
 50. A second draft was developed to respond to public testimony and incorporated many changes. The revised draft is attached as Exhibit B. Those changes include:
 - Eliminating the special receiving areas
 - Making digital billboards subject to buffering and dispersal standards
 - Clarifying removal priorities
 - Adding an incentive to remove largest nonconforming billboards first
 - Limiting all billboards to 300 square feet
 - Further limiting brightness
 - Increasing minimum static image time to 60 seconds
 - Increasing buffers from residential districts and other sensitive uses to 300 feet
 - Adding mixed-use centers to the list of sensitive uses/areas
 - Retaining amortization language
 51. The Commission found that the proposed amendments, even with the additional changes in response to public testimony, were inconsistent with the goals and policies of the *Comprehensive Plan* in several measures.
 52. Amortization has been upheld by courts in Washington and elsewhere as an appropriate method of ending non-conforming signs while allowing adequate return on investment.
 53. A primary goal of the *Comprehensive Plan* is the protection of neighborhoods. Allowing digital billboards, particularly as contemplated in the Settlement Agreement, could be construed as contrary to this goal because of the size, location, and brightness of the proposed billboards, which in many cases would represent an unreasonable impact on adjacent neighborhoods, even considering controls on lighting levels and buffering from sensitive uses.
 54. Mixed-Use Centers are addressed in the *Comprehensive Plan* as the focus area for the city's growth, where development is desired to be pedestrian-oriented. A strong desire is expressed for

improved design, complete streets, and support of transit-oriented development. The proposal to allow digital billboards in several mixed-use districts is the most obvious conflict with the stated policy intent of the *Comprehensive Plan*.

55. Based on these findings, the Commission also finds that allowing digital billboards, as outlined in the Settlement Agreement, would be inconsistent with the policy and procedural requirements of GMA whereby development regulations must be consistent with and implement the *Comprehensive Plan*. Either the proposed regulations or Plan would need to be significantly revised to achieve the required consistency.
56. There is no conclusive evidence that digital billboards do not present safety hazards for drivers. Safety studies and recommendations are inconsistent and inconclusive. Without a great deal more time, expert testimony (expertise which may not be available), and study, the Planning Commission does not feel able to make a sufficiently-informed decision about performance standards for digital billboards regarding lighting levels and static image time. The Federal Highway Administration is in the midst of a study regarding the safety of Commercial Electronic Variable Message Signs (CEVMS) but the release date of that study is undetermined.
57. There is little expert direction about appropriate levels of lighting in regards to both driver safety and neighborhood impacts.
58. Changing message signs are distracting and aesthetically displeasing. To minimize distraction and aesthetic impacts, any static image time should be set at a minimum of 60 seconds per image, and flashing, animation, etc. should be prohibited.
59. Digital billboards use a disproportionate amount of energy, ten times or more than standard illuminated billboards, which is not desirable in a city committed to sustainability.
60. The goal of removing a large number of nonconforming standard billboards in exchange for allowing digital billboards is an idea that needs more study. The claim that the ultimate result will be 38 digital billboards and no standard billboards located within the city is highly unlikely. A more likely scenario in five years would be a city with 10 digital billboard faces and 174 existing nonconforming standard billboards. The Commission is not convinced that this is a desirable result.
61. The billboards proposed for removal bear no relationship to the special receiving areas where new digital billboards could be located; thus some neighborhoods would be inequitably overburdened by the proposal.
62. Public opinion is clear and overwhelmingly opposed to digital billboards in the city. The Planning Commission received a large amount of testimony regarding the issue, nearly universal in opposition to the proposed amendments. It is clear to the Planning Commission that community members do not support allowing digital billboards.
63. In 1997 the City made a strong policy and regulatory statement that billboards which are too big, too close to each other, or too close to sensitive uses should not be allowed to remain. The City determined that existing nonconforming billboards at these locations should be removed, after a reasonable amount of time to recoup investment. The framework presented by the City Council in the settlement agreement represents a dramatic shift in direction from that policy and regulatory statement – not just to eliminate the concept that the removal of nonconforming billboards would be ensured, but to also allow digital billboards (which are more distracting, more profitable, and likely more difficult to ever remove). Furthermore, digital billboards would be allowed in areas where billboards are strictly prohibited – areas which had been expecting that all nonconforming billboards would be removed. The Commission remains unclear on the reasons for such a dramatic shift and is uncomfortable with instituting such a shift without a full and extensive community discussion.

64. While the Commission is unclear on the reasoning behind the Council's desire to consider moving away from the existing regulations and the amortization concept, it has now been 14 years since amortization was instituted. The Commission feels that most of the investment in the standard billboards has been recouped. If the length of time for amortization was a major reason for the Council to reconsider amortization, the Commission feels that it may be more appropriate to explore extending the amortization time period beyond 10 years, possibly to 15 or 20 years. If such an extended time period were sufficient, it would be better to wait another few years and get the results originally intended: no billboards in sensitive areas.
65. A clear relationship needs to be established between any new digital billboard installed and the billboards removed. That is, the proposal to add digital billboards into areas with existing billboards, while not requiring removal of nearby billboards (that is, exempting the digital billboard from dispersal standards) is simply not fair to the receiving neighborhood.
66. It is apparent from industry materials that the size proposed for the first 10 digital billboards is inconsistent with the proposed locations. The 672 sq. ft. size is generally designed for use along highways and other high-speed routes whereas the special receiving areas are all along City streets, mostly 30-35 mph arterials, and mostly at intersections. Just as was found in 1997, this large size is inconsistent with urban locations and is an aesthetic imposition on the surrounding neighborhood.
67. Consistent with policy decisions made in 1997, the maximum size of all billboards, digital or otherwise, should be 300 square feet.
68. In no case should digital billboards be allowed within or within sightlines of residential areas.
69. Billboards are – in size, scale, and purpose – oriented toward automobile traffic. Therefore all billboards belong in more intensely-designated, high-traffic areas: C-2, M-1, M-2, and PMI districts.
70. The Planning Commission revised the public review draft based upon testimony, but ultimately decided that a prohibition of digital billboards was the correct course of action due to uncertainties about the safety of digital signs, other performance standards, inconsistencies with the *Comprehensive Plan*, and disapproval of the community.
71. Based on these findings, the Commission is recommending code amendments to more explicitly prohibit digital billboards. In addition, other changes to the existing sign code are necessary (see Exhibit A), including:
- The current definition of “billboard” is based upon a commercial message. The definitions of billboard, off-premises sign, and sign should be changed to more workable, widely accepted definitions.
 - Mixed-use districts, because they are proposed to contain residential uses, and because they are to be pedestrian-oriented, should also be buffered from billboard placement (i.e., 300 feet).
72. Pursuant to *RCW 36.70A.370* and following the guidelines prepared by the Washington State Attorney General pursuant to *RCW 36.70A.370*, the proposed amendments were reviewed by the City Attorney to assure that adoption of the changes will not result in an unconstitutional taking of property. The current code contains amortization language which is not proposed to change. It has not been conclusively shown that this clause results in an unconstitutional taking of property.
73. Further, it became clear through the review of the billboard regulations that the City does not have adequate regulations for on-premise digital signage. Many of the same concerns and technical issues exist with them as well including brightness, driver distraction, and size. A review of on-premises digital signage should be a high priority.

D. CONCLUSIONS

The Planning Commission concludes that digital billboards should be prohibited and that the recommended land use code amendments are consistent with the Growth Management Act and other applicable state statutes, the County-wide Planning Policies for Pierce County and the multicounty policies for the Central Puget Sound region, and are consistent with and implement the City's *Comprehensive Plan*. The Commission further concludes that the proposed amendments will benefit the City as a whole and are in the best interests of the citizens of Tacoma.

E. RECOMMENDATIONS

The Planning Commission recommends that the City of Tacoma prohibit new digital billboards and that the City Council adopt the proposed Land Use Regulatory Code amendments regarding the Tacoma sign code, as set forth in the enclosed Exhibit A.

The Commission further recommends that the existing regulatory provisions for digital on-premises signs be reviewed and modified to address similar concerns expressed by citizens including brightness, driver distraction, size and changing images.

F. EXHIBITS

- A. Recommended Code Amendments
- B. Revised Public Review Draft –*NOT RECOMMENDED*

C.

**Public Hearing Notice:
Moratorium on Billboards**

Planning Commission

June 1, 2011



NOTICE OF PUBLIC HEARING

MORATORIUM ON BILLBOARDS

At the City Council meeting on May 17, 2011, Ordinance No. 27982 was adopted, which put in place an emergency moratorium that stops the acceptance of applications to install or construct new billboards or to alter, modify or replace existing billboards anywhere in the City for 180 days. The purpose of the moratorium is to allow the City to further review and consider changes to its billboard regulations.

PLANNING COMMISSION PUBLIC HEARING

Wednesday, June 1, 2011 4:00 pm City Council Chambers
Tacoma Municipal Building, 747 Market Street, 1st Floor

WHAT IS THE PURPOSE OF THE PUBLIC HEARING?

The City Council referred the moratorium to the Planning Commission to develop findings and recommendations regarding the emergency moratorium. The Planning Commission is seeking public comment addressing, at a minimum:

- Is the emergency moratorium needed?
- If so, what is the appropriate duration of the moratorium?

The Planning Commission will make its findings and recommendations on the moratorium on June 1, following the hearing.



Please Note: This public hearing is on the need and duration of the emergency moratorium and not to discuss or review any particular changes to the City's billboard regulations.

WHERE CAN I GET ADDITIONAL INFORMATION?

Additional information, including the complete text of the moratorium ordinance adopted by the City Council, is available from the Community and Economic Development Department at the address to the right, and on the Planning Division website:

www.cityoftacoma.org/planning (click on "Billboard Moratorium")

HOW DO I PROVIDE COMMENTS TO THE PLANNING COMMISSION?

You can testify at the hearing or provide written comments using the return address on this card no later than noon on **Wednesday, June 1, 2011** or by facsimile at (253) 591-2002 or via e-mail at planning@cityoftacoma.org.

If you have additional questions please feel free to contact Shelley Kerslake at:

(425) 392-7090

The City of Tacoma does not discriminate on the basis of handicap in any of its programs or services. Upon request, special accommodations will be provided within five (5) business days by contacting the Clerk's Office at 591-5171 (voice) or 591-5058 (TDD).



PLANNING COMMISSION
747 MARKET STREET – ROOM 1036
TACOMA WA 98402
(253) 591-5365

PRSTD STANDARD
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D.

**Ordinance No. 27982
Enacting the Moratorium on Billboards**

City Council

May 17, 2011



ORDINANCE NO. 27982

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AN ORDINANCE relating to land use and zoning; adopting an immediate moratorium on the acceptance of applications for the installation, erection, construction, replacement, modification, or improvement of static or changing electronic, digital, or changeable message billboards in all zoning districts, such moratorium to be effective for a period of six months; referring the moratorium to the Planning Commission to develop findings of fact and recommendations by June 1, 2011, on the need for and duration of the moratorium; setting July 12, 2011, as the date for the public hearing on the moratorium; declaring an emergency in the passage of this ordinance to become effective immediately upon publication; and providing for severability.

WHEREAS the City regulates signs and displays on signs in all zoning districts to reduce potential traffic safety hazards and visual blight, and

WHEREAS billboards are currently permitted in several zoning districts in the City, and

WHEREAS digital signs and billboards or electronic variable message signs are being installed throughout the United States that include digital technology, light-emitting diodes ("LEDs"), and electronic graphic displays that permit signs to display an electronic image similar to a color television set and that permit a displayed image to quickly change from one image to another, and

WHEREAS changeable electronic variable message signs, which allow operators to change content from remote locations in a matter of seconds, are erected for the purpose of trying to get the attention of pedestrians and motorists by changing messages and pictures for short durations using a series of contrasting images produced mainly via LED technologies, and



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WHEREAS the City is currently engaged in an extensive process to study and evaluate modifications to its billboard regulations for both static and digital billboards, and

WHEREAS, at the direction of the City Council, the City's Planning Commission has spent significant time considering proposed billboard regulations and receiving public comment, and

WHEREAS, through the public process for the proposed billboard regulations, the City has received citizen, business interest, and sign industry input regarding the proposed changes, and

WHEREAS, based upon the Planning Commission's work and public input, the City Council desires to study the issues further and engage stakeholders in order to fully explore the impacts of the proposed regulations, and

WHEREAS it is necessary to adopt a moratorium ordinance for all zoning districts within the City to preserve the status quo and prevent significant investment pending the outcome of the above work, and

WHEREAS, pursuant to RCW 35.63.200 and RCW 36.70A.390, the City may adopt an immediate moratorium for a period of up to six months, provided that the City holds a public hearing on and adopts findings of fact related to the proposed moratorium within 60 days after its adoption; Now, Therefore,



BE IT ORDAINED BY THE CITY OF TACOMA:

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2 Section 1. That the "WHEREAS" clauses above are hereby adopted by
3 reference as the City Council's findings of fact, as if fully set forth herein.

4 Section 2. That a moratorium is hereby adopted on the permitting,
5 installation, erection, or construction of any new billboard or digital billboard or
6 the alteration, modification, or replacement of any existing billboard, so that the
7 new or existing billboard (as altered or modified) uses static or changing
8 electronic, digital, or video display or flashing, motion, animated, or changeable
9 electronic variable message copy. The moratorium applies in all zoning
10 districts. Static copy on existing billboards may continue to be changed.

12 Section 3. For purposes of this moratorium, "billboard" means an
13 off-premises sign greater than 72 square feet in size. This type of sign is
14 generally composed of poster panels or bulletins mounted on a building wall or
15 free-standing structure, or painted directly on the wall or free-standing structure,
16 and is also referred to as a static billboard.

18 Section 4. That for purposes of this moratorium, "digital billboard"
19 means an off-premises sign greater than 72 square feet in size, utilizing digital
20 message technology capable of changing the message or copy on the sign
21 electronically.

22 Section 5. That an off-premises sign is a permanent sign not located on
23 the premises of the use or activity to which the sign pertains.
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Section 6. That, pursuant to Section 13.02.055 of the Tacoma Municipal Code, the City Council hereby refers the interim moratorium to the Planning Commission to develop findings of fact and recommendations by June 1, 2011, on the need for and duration of the moratorium.

Section 7. That notice of and hearing on this ordinance, in the normal course, would undermine effective City planning by allowing the establishment of or the submittal of permit applications between the time notice was published and the time the ordinance was passed to vest to City regulations which may be inadequate to protect the public health, safety, and general welfare. Therefore, for this reason, the City Council hereby finds and declares that an emergency exists and that the 180-day interim moratorium imposed by this ordinance shall become effective immediately upon passage of this ordinance and its publication, unless repealed, extended, or modified by the City Council after subsequent public hearings and entry of appropriate findings of fact pursuant to RCW 35.63.200. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses, above, all of which are adopted by reference as findings of fact, as if fully set forth herein.

Section 8. That, pursuant to RCW 35.63.200, the City Council will hold a public hearing on this moratorium on July 12, 2011.

Section 9. That, if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent

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1 jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
2 constitutionality of the remaining portions of this ordinance or its application to
3 any other person or situation.

4 Passed MAY 17 2011
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6 
7 Mayor

8 Attest:

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10 City Clerk

11 Approved as to Form:

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13 Deputy City Attorney
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E.

Oral Testimony

**Received at
Planning Commission Public Hearing**

June 1, 2011

Summary of Oral Testimony

Planning Commission Public Hearing

Wednesday, June 1, 2011, 4:00 p.m.

1. Mr. Robert Hill:

The moratorium does not meet the test for declaring an “emergency” as he previously has testified to City Council. His main objection is the monopoly of lease rights that Clear Channel has. If there were other affected companies, an emergency declaration may be warranted.

2. Ross Buffington:

He expressed his approval of the six-month moratorium. He also indicated his opposition to digital billboards as he had previously testified at the public hearing on billboard regulations.

3. Susan Ryan:

She supports the moratorium. She stated that many were not aware of the size and number of digital billboards that were proposed and felt that there needed to be more studies and thought put into allowing billboards and digital technology.

4. Jill Jensen:

She voiced her support for the moratorium and stated that the City should take as long as necessary to develop a clear policy on this measure. A sound policy should be developed so that the issue does not come up again. Also, she requested more flexibility in scheduling public meetings so that others in the community could voice their opinion. Another of her concerns was that Clear Channel had the support of a fulltime paid staff, non-profits and businesses and that average citizens do not have this advantage in making comments, and she asked the Commissioners to take this into consideration.

5. Erik Bjornson (North End Neighborhood Council):

He commended the Commissioners on their stand and their leadership and acknowledged that the moratorium was a direct result of all the hard work and all the facts that had been evaluated by the Commission. He cited the number of neighborhood groups and the 95 percent of citizens who support the ban on digital billboards. He asked the Commission to continue to make their stand against digital billboards and not be swayed by the special interest groups that Clear Channel would bring in to put a “favorable face” on their request to have a billboard amendment passed. He stated that non-profits would still do just fine without the support and contributions of Clear Channel for advertising.

6. Britton Sukys:

He commended the Commissioners on a “perfect” recommendation letter to the City Council and encouraged the Commission to take as much time, whether six months or even a year, to re-write the Code that would ban digital billboards and reduce the number of non-conforming billboards.

7. Brian Jacobs:

He supports the moratorium. He asked that the Commissioners take as much time as possible to study all of the aspects of the Billboard code amendment. He stated that the Commissioners should act on three critical issues as they further evaluate billboard regulations, i.e., (a) Act to ban all digital signs both on-premise and off-premise; (b) Revisit the regulations that were adopted in 1997 for banning billboards to provide clarity and ensure that these regulations can withstand any legal challenges and the ban should remain

in force including prohibiting digital billboards; and (c) Any adoption of ordinances concerning billboards should take into consideration the “holistic” view of how billboards fit in with the vision of the City and not just be put in place to satisfy a lawsuit from Clear Channel. The majority of Tacoma citizens do not want digital billboards because they do not improve the vision of the City. He commended the stand that the Commission had taken in their recommendation letter and said that digital billboards have no place in the City.

8. Richard Frederick:

He wanted to go on record to urge the City Council to continue with the moratorium and completely ban the billboards in the future.

9. Olivia Lippens (Clear Channel Outdoor):

She indicated that Clear Channel (along with its predecessors) have done business in Tacoma for over a hundred years, has maintained decades-long relationships with multiple non-profits, and has been a member of the Chamber of Commerce for 35 years. They hire union labor, and half of their employees are based in Tacoma and Pierce County. Clear Channel understands the City’s desire to take a step back and evaluate whether or not their position in implementing new technology in Tacoma makes sense, however, there is no moratorium needed to prevent the construction of digital billboards, since the current code does not allow for them to be built. She indicated that the moratorium effectively prevents Clear Channel from exercising their property rights with the permits they currently hold for continued relocation and construction of signs, and prevents Clear Channel from conducting routine maintenance on existing signs as required by OSHA and other regulatory bodies. In essence, the City would be asserting a taking over these privately owned assets without compensation by prolonging the moratorium. The longer the moratorium is in place, the more exposure the City has relative to the 169 banked credits that they currently hold. She also pointed out that digital has widespread use throughout the City of Tacoma – for on-premises signs, on freeways and highways (by WSDOT), and at the Tacoma Dome. She felt that Tacoma does not have an issue with the technology of digital, but who has a right to use it. Extending the evaluation beyond the settlement agreement will result in returning to litigation but it also opens the City up to additional issues. The more delays put on this process, the higher the likelihood that it gets pushed back to litigation. She added that the moratorium will not alter the August 15, 2011 deadline of the settlement agreement.

10. Anders Ibsen:

He favors the moratorium. The community does not want digital billboards and has spoken against encroachment by the visual blight caused by billboards in their neighborhoods. He stated that there is no infringement on free speech by these regulations. If the City were to cave in to threat of law suits that every “out-of-state lawsuit happy corporation” might bring pressure to bear against reasonable laws, we would have anarchy. We would lose our cherished assets and our quality of life would be threatened and it would undermine the very fabric of the rule of law. This moratorium is the first step of the City’s long term goal toward retaining the 1997 reasonable ordinance.

11. Beverly Ibsen:

She is in favor of the moratorium. She felt that it may be necessary to clarify the existing Ordinance to make sure that the City is on firm, legal grounds. She has read the comments of Doug Schafer and expects that he will have additional comments to contribute. She also felt that the City is in the right in defending the existing Ordinance. She hoped that Clear Channel will accept the Commission’s recommendation and the recommendations of the citizens against digital billboards. Clear Channel is not in the right and does not have “clean hands” as exhibited by their purchase of non-conforming billboards knowing in advance that

the boards were required to be removed in 2007. She said they are negotiating in “bad faith”. She hoped that they are not rewarded for the bad faith that they have shown by giving them digital billboard rights. She commented on the many problems caused by digital billboards that were addressed in earlier meetings.

12. Tricia DeOme (Central Neighborhood Council):

She addressed support for the moratorium and said that the moratorium will give time to step back and look at this as a policy. It will give a chance to develop a Code that everyone really wants and is not a result of a lawsuit. She added the caveat that the City should require the removal of all non-conforming billboards and to not allow digital billboards in Tacoma. Although she has not discussed this with the Central Neighborhood Council, she personally feels that moratorium should be extended to on-site digital signage as well because these signs are related to the same issues such as light distractions and driver safety as digital billboards.

13. Eric Heller:

He supports the draft Letter of Recommendation to the City Council that is being considered by the Commission for submittal. He said that this action by the Commission is a “great” example of democracy working – the people have spoken out and the Commission listened and passed that information on to the City Council. He would like to see going forward that the government continues to listen to the people and not corporate interests.

14. Harlan Shoop:

He is in favor of the moratorium. He asked a question of Commission about who is responsible for changing the sign code? Chair Doty answered that it was the Commission’s responsibility to recommend the changes to the City Council. Mr. Shoop responded that it seems like the time to look at sign regulations again in view of what we want our City to look like and that now it seems as if the City has been a little overboard by allowing too many commercial signs.

15. Douglas Schafer:

He started off by clarifying that it wasn’t clearly indicated in Ms. Lippens’ testimony that Clear Channel does not have an office in Tacoma. He thanked the Commissioners emphatically for their strongly written report issued on May 18th and the associated findings. He stated that he had sent an e-mail and a copy of a report to Commission staff indicating that most of the billboards in the City were probably rendered non-conforming in 1988; the 1992 Code appears by its terms to prohibit all billboards in the City; the 1997 Code does not expressly permit billboards anywhere; and none of these Code or Ordinances contain any definition of digital billboard or electronic billboard or anything along those lines. But sometime after 1998, conventional billboards were expressly permitted in four zoning districts (C-2, M-1, M-2 and Port Industrial PMI). It is not clear in the existing code that the City could refuse Clear Channel to erect a digital billboard in those four zones that are presently zoned for a billboard. The only prohibition that the City could have against installation of digital billboards are those that are non-conforming, but those designated as conforming billboards could certainly be converted to digital billboards. So the enacting of the moratorium is essential, and six months is the minimum necessary for a thorough investigation to look at studies (such as a pending study underway from the Federal Highway Administration) and other concerns that are associated with this issue.

16. Andrew Nordhorst:

He is in favor of the moratorium on digital billboards and reducing the number of billboards within the community. In response to Clear Channel’s statement that they had been in

business for 100 years, he indicated that there are a lot of things that have been here for 100 years but that they are now obsolete, outmoded and outdated. Digital billboards are the next generation of static billboards that are now considered obsolete. He commented he was involved in an accident where the other driver was not paying attention and became distracted by a digital billboard. Billboards should be considered as being obsolete and the Commissioners should consider removal of billboards.

17. William Osborne:

He would like to have twelve months for City staff to study proposed billboard code amendments to present to the City Council; six months is not adequate time. Billboards are not welcome, that's been clearly stated in this community. The City is trying to move toward place-making based on people and livability. Billboards are for a car-dominated community and that doesn't jive with Tacoma's future.

18. Patricia Menzies:

If billboards have been around 100 years, then they have outlived their usefulness. The City banned them a long time ago. Don't be fooled by arguments for businesses and nonprofits needing billboards – businesses survive with other advertisement options and there are other media outlets for nonprofits to use. The moratorium allows more time for discussion and perhaps should include a roundtable with nonprofit stakeholders on how they can get their message out without the use of these massive signs. We need a more green way to do advertising and keep Tacoma beautiful.

19. R.R. Anderson:

Billboards have been here 100 years, much like arsenic and the lead poisoning of the earth beneath our feet. They depress property values and make it easier to destroy historic buildings; they destroy hope and make people easier to manipulate; they keep Tacoma "crappy"; plus, they help with accidents and providing organs for donation through traffic accidents. Clear Channel makes it easier for these to happen. This company is going to sue you. Constitutions matter!

20. Jamie Chase:

She supports moratorium, even though her family leases billboards from Clear Channel and she used to be in the advertising business. She read the words of the Outdoor Advertising Association of America to point out that billboards "are ever-present and sneak up on you where you can't avoid the advertising". She supported maintaining the moratorium until Clear Channel pays their fines of \$33 million. She asked how much profit is enough profit? She provided for the record documentation of Clear Channel's revenues which are up due to increases in digital signage. She also submitted for the record two studies pertaining to billboards.

21. Carl Teitge:

He supports the moratorium. The City needs more time, and we should have taken it in the first place. The proposition is to get rid of non-economic signs for signs that are economic – but do we want that? We don't want to be Las Vegas. Static billboards are obsolete, and they were ugly then and ugly now. They will go away on their own, and we don't need an ordinance to make it happen.

22. Glen Sukys:

Tacoma is improving, with all its museums and arts. A step away from billboards is better, classy, and the right direction. He supports the moratorium and he would like the City to get rid of all billboards.

F.

Written Comments

**Letters and E-mails
Received through**

June 1, 2011

Schultz, Shirley

From: Stenger, Donna on behalf of Planning
Sent: Wednesday, May 18, 2011 2:04 PM
To: Schultz, Shirley; Boudet, Brian; Shaddock, Lucas; Spadoni, Lisa; Gibbons, Cheri
Subject: FW: Looking Good in Tacoma

Categories: Green Category

Another comment for the record.

Donna Stenger

Community and Economic Development Department
747 Market Street Rm. 1036
Tacoma WA 98402
253.591.5210
253.591.2002 (fax)
www.cityofdestiny.com

From: R. R. Anderson [<mailto:andersor42@gmail.com>]
Sent: Wednesday, May 18, 2011 1:19 PM
To: Mello, Ryan; Boe, David; Eric Anderson; JakeFey; Lonergan, Joe; LaurenWalker; MarilynStrickland; Campbell, Marty; SpiroManthou; Woodards, Victoria
Cc: Planning
Subject: Looking Good in Tacoma

Current state of one of the billboards that should have been taken down between 1997 to 2007... on top of some poor soul's house.

<http://www.flickr.com/photos/tacomamama/5734760408/>

(via my friend the Tacoma Mama)

I believe the picture speaks louder than words. 1000 words. Not sure how civil those words would be, but one can wonder.

Your humble servant,
RR

From: [Andrew Bacon](#)
To: [Planning](#)
Cc: [Jake Fey](#); [Timothy Farrell](#); [Ryan Mello](#); [Marty Campbell](#); [Julie Anderson](#); [Victoria Woodards](#); [Marilyn Strickland](#)
Subject: NO BILLBOARDS ALLOWED
Date: Tuesday, May 31, 2011 6:19:41 PM

I'm not going to be able to make it to the planning commission's public hearing on billboards, so I wanted to register my opinion with you via email.

I believe it is critical for the city of Tacoma to stand up to the bullies at Clear Channel. Cities DO have the right to pass prohibitions on advertising that makes the city less livable – in fact, billboards are prohibited altogether in the state of Vermont.

As a side note, when my dad first found out about this problem a couple of years ago, he, a staunch Republican, asked me why the city simply didn't tear down any illegal billboards, just as they would tow a car that was parked illegally. I think that sounds like a great solution. Any billboards which are out of code should be torn down by city wrecking crews immediately.

I oppose any deal with Clear Channel which would allow them to install digital billboards in return for their agreement to follow the law. Following the law is not optional, they simply must be forced to do it. Clear Channel is not entitled to extort money from the city in the form of additional, even more obnoxious installations simply because they have enough money to sue the city.

I support the collection of past due fines for the existing illegal billboards. At last count, I believe the total amount of money owed to the City of Tacoma by Clear Channel is approaching \$33 million. If they have enough money for lawyers, they have enough money to pay their fines when they break the law.

I encourage the city to stand up to Clear Channel, insist that illegal billboards be removed and fines be paid, to not allow any additional billboards to be installed, EVER, and to forthwith pass further ordinances requiring the removal of all billboard-style public advertising, and to see to the removal of the rest of the billboards from within the city limits.

Andrew Bacon
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The Information Technology Consultancy
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From: [Erik Bjornson](#)
To: lwung@cityoftacoma.org
Subject: Comment on Billboard Moratorium
Date: Saturday, May 28, 2011 12:53:44 AM
Attachments: [NENC-Billboard2011.pdf](#)

Law Office of Erik Bjornson
711 Court A, Suite 114
Tacoma, WA 98402
(253) 272 -1434
FAX (253) 573-1209

May 28, 2011
Tacoma Planning Commission

747 Market Street
Tacoma, WA 98402-3701

RE: Billboard Moratorium

Commissioners,

I am chair of the North End Neighborhood Council (NENC).

The NENC has 1) unanimously voted to categorically OPPOSE ANY DIGITAL BILLBOARDS on March 18, 2011 and 2) for the City of Tacoma to expend whatever resources to defend the 1997 Billboard ordinance which is approximately 2/3rds of the existing static billboards. See attached.

Thus, the Planning Commission should take as much time as needed to accomplish these two tasks whether it be 6 months or a year.

I note that 5 other Tacoma neighborhood councils as well as Tacoma's Community Council (which has representatives from every neighborhoods) issued very similar letters as the NENC. As reflected in the public comment, 95 percent of the hundreds of public commenters on billboards had very similar positions.

As you likely know, literally hundreds of cities around the nation are fighting the best they can to eliminate digital and static billboards in their communities and are universally considered blightful. Also see: <http://www.scenic.org/>

Thank you for your work on the matter. I may be reached at (253) 272-1434.

Sincerely,

Erik Bjornson



North End Neighborhood Council

March 18, 2011

To: Tacoma Planning Commission, Mayor Strickland and Tacoma City Council
Re: **Opposition to Billboards in Tacoma**

Esteemed City Leaders,

The North End Neighborhood Council (NENC) opposes the proposed settlement with Clear Channel over the issue of billboards. Neighborhoods universally consider billboards to be visual blight, and they are opposed by cities across the United States. Introducing electronic billboards in Tacoma would be extremely harmful and would degrade the quality of life in our city.

Hence, the NENC strongly supports the original 1997 city ordinance that greatly reduces the number of billboards in Tacoma. **The NENC opposes any introduction of electronic billboards in the City of Tacoma.**

The City of Tacoma should begin enforcing the current billboard law and expend any legal and financial resources necessary to defend the 1997 billboard law just as it would likely have to defend any law reducing blight in the City of Tacoma.

We believe the proposed “settlement agreement” would place Tacoma in a far worse position than no agreement at all and it should be rescinded. No change in the 1997 billboard law is warranted at this time. In addition:

1. We do not want any billboards of **any type** near schools, churches, parks, shorelines, historic buildings or districts, or residential neighborhoods.
2. Electronic billboards, should the city accept them, should have their impact minimized by requiring smaller sizes for signs, by lowering the heights of signs, by reducing the number of messages shown each hour, and/or by limiting signs to the sides of buildings rather than allowing stand-alone poles.
3. And if the city accepts electronic billboards, there should be a rapid, definite, enforceable timeline for the removal of all static faces.

Respectfully,

Kyle C. Price, NENC Vice Chair on behalf of the NENC

From: [Kelly Braun](#)
To: shirley.schultz@cityoftacoma.org; jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison.lan.s@gmail.com; smorris@piercettransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; [Loneragan, Joe](#); mloneraga@cityoftacoma.org; [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: billboards moratorium
Date: Wednesday, June 01, 2011 8:39:11 AM

Dear Council members,

I am a citizen of Tacoma and will not be able to attend the meeting tonight but wanted to let you know that I support the moratorium on billboard permitting. This would allow time to thoughtfully and thoroughly examine the issue because it seems that there is a huge company with many resources that is in favor of and stands to profit from the billboards and a huge number of individual citizens opposed to them whom you represent.

I believe that billboards take away from the beauty of Tacoma and degrades the urban landscape especially when existing billboards that are no longer successfully attracting advertisers are not well maintained. 30+ electronic billboards seem excessive considering there are currently only a few in the area around Fife and near the Tacoma Dome which in my opinion are a more than adequate quantity for the Tacoma area. I would prefer that there be no electronic billboards as they seem to be a waist of energy & distracting, that billboards be restricted to high-traffic areas (especially electronic if necessary) and restricted in size. It seems much easier to take extra time to think and plan appropriate locations, quantities and requirements than trying to remove them from inappropriate/ineffective locations after installation in allowed. I hope that you will take my thoughts into consideration.

Thank you,

Kelly Braun

kelly.myles.braun@gmail.com
[253.241.7101](tel:253.241.7101)

From: [Deborah Cade](#)
To: [Planning](#)
Subject: Vote Yes on Billboard Moratorium
Date: Wednesday, June 01, 2011 7:16:05 AM

Please support the billboard moratorium at today's hearing. I live in the North Slope Historic District, and one of the proposed digital billboards will be at the edge of our district on 6th and Sprague. This neighborhood has worked so hard for the last 20 years to improve the neighborhood, encourage homeowners to restore historic homes, and change city laws regarding historic preservation. Allowing a very large digital billboard right next door to our neighborhood is a statement by the City that it does not value at all the work that we have done here.

Also, allowing these anywhere near homes is simply unfair to the homeowners who will have to deal with them day and night.

We've heard that Clear Channel plans to bring a number of people to the hearing to oppose the moratorium. Ask these people where they are from -- do they live anywhere near where one of the digital billboards is proposed, or do they even live in Tacoma? It's easy to support a money-making opportunity when you do not have to live anywhere near the negative consequences it creates.

Thank you for supporting the moratorium.

Deborah L. Cade
908 North M Street
Tacoma, WA 98403
253-593-4569
dlcade@comcast.net



Thursday, May 26, 2011

To: Tacoma Planning Commission/ Tacoma City Council
Tacoma, Washington

RE: Planning Commission Public Hearing – Ordinance No. 27982
Wednesday, June 1, 2011 City Council Chambers Tacoma, WA.

To start with I want to thank you for reading my letter. I also want to thank Clear Channel Outdoor Advertising for their continued assistance to law enforcement agencies here in the Pacific NW.

Years ago Crime Stoppers formed a partnership with Clear Channel Outdoor Advertising and with their assistance we have solved a number of serious crimes.

The benefits of this Public/Private partnership are as follows:

- Speed of getting our law enforcement messages to the public!
- Examples: Amber Alerts, Missing Persons, Stolen Vehicles and most importantly.... helping to bring closure to the victim's families

Their latest technology...Digital Advertising has brought a whole new dimension to solving crimes. Law Enforcement is doing their very best despite continued budget constraints. Having the use of digital advertising is essential for all law enforcement agencies.

Bottom line....we need companies like Clear Channel Outdoor and their technology. Please take our plea into consideration when you have your discussions on changes to billboard regulations. Thanks for listening.

Sincerely,

Myrle L. Carner
Director of Law Enforcement Services
Crime Stoppers of Puget Sound



Communities In Schools

Washington

1010 South 336th Street
Suite 205
Federal Way, WA 98003

PH: 253.248.1991
www.ciswa.org

May 27, 2011

Tacoma Planning Commission
Tacoma City Council
747 Market Street, Suite 1200
Tacoma, WA 98402-3766

Dear Members of the Tacoma Planning Commission and City Council:

It has come to my attention that the Tacoma Planning Commission is considering revisions to the city's billboard regulations and would like to receive community feedback prior to making a decision. I would like to contribute the following for your consideration.

Communities In Schools is a nonprofit organization, dedicated to dropout prevention, with affiliate offices in the Tacoma community and throughout the state. For many years, Clear Channel Outdoor has graciously donated in-kind billboard space to our Washington State network. The advertising we have received from Clear Channel Outdoor has helped increase awareness in the community of the need to help keep kids in school so they can achieve in life. Website traffic, volunteer interest, and donations have all been positively influenced by our relationship with Clear Channel Outdoor.

Clear Channel Outdoor has offered us other advertising opportunities as well, including digital advertising. The digital boards in Kent have provided a great boost to our efforts in that community through the timely promotion of special events and other campaigns. Because digital boards offer the flexibility to share customized messages rapidly, we see them as particularly well-suited to nonprofit organizations like Communities In Schools which has various calls-to-action but would otherwise be unable to tailor its messages to the unique needs of the community. Whether it is a call to volunteer, donate, advocate, or participate, digital boards allow us to communicate efficiently and effectively, while using our limited financial resources wisely.

On behalf of Communities In Schools, I'd like to acknowledge that Clear Channel Outdoor has been invaluable to our organization's public relations efforts, which ultimately means more kids receive the support they need to complete their education and become contributing members of our communities. Clear Channel Outdoor has demonstrated a strong commitment to giving back—not just to nonprofits like Communities In Schools, but to the community as a whole. This is a gift to all of us and a partnership we stand by with gratitude.

Sincerely,

Anita Cech
Public Relations/Marketing Manager
Communities In Schools of Washington
anita@ciswa.org

June 1, 2011
City of Tacoma Planning Commission

Jamie Chase
4534 S. Park Ave
Tacoma, WA 98418

Written Testimony of Jamie Chase, former advertising executive, and business owner in Tacoma whose future inheritance is in billboards her family leases to Clear Channel.

Thank you, members of the Planning Commission, for the opportunity to testify on Ordinance No. 27982 that was adopted by the City Council on May 17, which put in place an emergency moratorium on the acceptance of applications to install or construct new billboards or to alter, modify or replace existing billboards anywhere in the City for 180 days.

I am here today to support your work to develop findings and recommendations for submittal to City Council regarding the emergency moratorium.

My testimony is as a citizen of Tacoma, a tax paying business owner, employing five individuals with gross revenues approaching \$500,000, a former advertising executive and an individual whose future inheritance is in billboards. My family leases billboards to Clear Channel.

I'd like to start with a statement to submit as a finding. (High Tech Billboards: The Same Old Litter on a Stick.)

"You can't zap it. You can't ignore it.....It sneaks up on you and gets you when you're not looking....Outdoor is rightful there. Day and night. Lurking. Waiting for another ambush" (Outdoor Advertising Association of America 1995).

These are not the words of a bitter, anti-billboard activist. And given my biography as a former ad executive with a personal stake in the future of the billboard industry remaining lucrative, you can imagine that I am not a bitter anti-billboard activist. These are the words of the Outdoor Advertising Association of America.

It may surprise you that I am here not to testify and provide findings to support Clear Channel today, but instead to request that you maintain the moratorium until an agreement is reached whereby Clear Channel pays the current fines it owes the City of

Tacoma and a ban on digital billboards is adopted by the City of Tacoma, as has been the wisdom of many other cities.

These are the very cities, like Seattle, that compete with Tacoma for the relocation of businesses like Russell Investments. These decisions are made by well educated, executives who desire to live close to where they work with their families in a healthy community.

As a business owner in Tacoma myself, I desire the same for my family and employees. That's why I am willing to say, "How much profit is enough profit to the industry that benefits my own family and has shaped my own career?"

When Clear Channel Outdoor's President, Olivia Lippens, testified in front of the City Council last month she highlighted the importance of Clear Channel's billboard activities to small businesses and non-profits, and additionally it's philanthropic activities in Tacoma. And of course the words "unconstitutional" and "unavoidable litigation" as threats that they would use those record profits to bully Tacoma into adopting the digital billboards.

To that end, I am submitting as a finding Clear Channel's First Quarter 2011 Results showing the Company reported revenues of \$650 million in the first quarter of 2011, a 7% increase from the \$609 million reported for the first quarter of 2010. The reports shows the increased revenue is driven by growth across most of the Company's display types, particularly digital. So it is not that Clear Channel desires digital billboards to support small businesses or its philanthropic activities in Tacoma. This threat litigation is a business strategy to increase profitability, without regard to the impact to our community.

As a former advertising executive, I understand that likeability is the most persuasive form of communication. Ms. Lippens, a very likable individual, testified repeatedly about the years she worked behind closed doors with our city council, and Mayor Strickland, who like me is also a former advertising executive at the firm JayRay where I was previously employed. And that she is "disappointed" and "shocked" that the city council finally started listening to and representing the people that elected them. To that end I commend the City Council for enacting the current moratorium.

What does not make sense to me nor most of the citizens of Tacoma testifying on this matter is why the digital billboard deal was almost reach- instead of the City of Tacoma holding Clear Channel accountable to pay the nearly \$33 million in fines that they owe to the City of Tacoma. Instead our City Council led by a Mayor, that is a former advertising executive, nearly rewarded Clear Channel Outdoor with digital billboards, instead of punishing them with late fees for past due payment on the fines they were incurring. The agreements to digital billboards are the very product line, banned by other municipalities, including in Seattle, that are the profitability key and strategic business line adding to Clear Channel's record profit.

In closing I am submitting the final findings for the Planning commissions consideration:

Reports *Prescription for Healthy Communities: Community development Finance* and *Judging the Aesthetics of Billboards* on the history of litigation pertaining to billboards.’

Please note on page 21 of the report *Prescription for Healthy Communities* that an unhealthy community is defined by the Robert Woods Johnson Foundation to Build a Healthier America as, “Unsafe in daylight, crime ridden neighborhoods with convenience stores and liquor billboards.

A healthy community is defined as safe neighborhoods, high-quality mixed-income housing, clean streets that are easy to navigate. As we propose putting digital billboards on our clean streets to turn Tacoma into a mini Las Vegas, I urge this planning commission, City Council and our Mayor, a former advertising executive, to think of the brand that is created for Tacoma and sent to educated, business owners like myself who prefer to locate their businesses and residences in a safe, unblighted, healthy community. If we want to brand our community as a mini Las Vegas like seedier, unhealthier version of Seattle where digital billboards are banned, proceed with allowing them in our community.

Additionally, I urge the Planning Commission to seek feedback from Tacoma’s Economic Development Department, who should be current on the definition of a healthy community as defined by the reputable RWJF Foundation. This is an example of a report that is used to obtain grant funding for economic development from the U.S. Treasury Community Development Financial Institution Fund. This Fund is considered, and was highlighted by President Obama as the best economic stimulus tool currently employed by his administration. I’m familiar with the CDFI Fund and economic development research, because my company located right here in Tacoma is the number one grant writing firm for the multi-billion CDFI certified credit union industry. I personally write more of these economic development grants, garnering more awards for credit unions to deploy economic development programs and small business loans in their communities than anyone else in the United States. As a result, I am an nationally sought after, paid public speaker on the topic of healthy communities and economic development. I share this to put these findings and my testimony in context.

My point is that it would be productive and in the City’s best interest that the Planning Commission coordinates its findings with the City of Tacoma Economic Development Department. It is much harder to attract new businesses to an unhealthy city than one that is by research standards defined as safe and attractive.

In closing, I am pledging in my testimony that my family’s billboards under my future control will not be a blight on the communities where they are located. I will never operate them in a digital format. I urge Tacoma’s leaders to stand tall, and make the same courageous stand, instead of cowering in fear to the litigation threats of a very likable profit maximizing Clear Channel Outdoor President, Olivia Lippens, who while building friendships and making donations in our community has the strategic business goal to

secure digital billboards AND get out of \$33 million in fines. In closing, Lippens is restricted from placing a digital billboard in the city where she resides, because her city council has a clear and healthy vision for the community where she lives.

tomers, and the public. Motorists benefit from an aesthetically pleasing product when seeking essential goods and services. Billboard customers receive a better buy compared with radio, television, cable television, and print media (OAAA 1996).

Although changeable message billboards, particularly tri-action signs, have been around for more than eight decades, the 1990s will be viewed as the time for acceptance and full delivery of this medium. Changeable message signs are evolving to becoming a major attraction in the media world. The use and acceptance of this innovative and technologically advanced product is at an all-time high. It is truly a technology whose time has come.

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High-Tech Billboards: The Same Old Litter on a Stick

Frank Vespe, Scenic America Director of Policy and Communications

"You can't zap it. You can't ignore it.... It sneaks up on you and gets you when you're not looking.... Outdoor is right up there. Day and night. Lurking. Waiting for another ambush" (Outdoor Advertising Association of America 1995).

The bitter words of an anti-billboard activist?

Hardly. In fact, these are the words of the billboard industry itself. OAAA Marketing—the marketing arm of the Outdoor Advertising Association of America (OAAA)—proudly trumpets the intrusive nature of the billboard.

Now picture this: You are driving along. Up ahead, yet another billboard, a big monopole—14 feet high by 48 feet wide—only, as you watch, the Budweiser advertisement dissolves into a Camel advertisement, which itself dissolves into an advertisement for a strip joint. You crane your neck to see the last advertisement. Suddenly, your car is up close and personal with the guy in front of you. Thud.

Talk about an ambush.

Under the not-so-tender ministrations of the billboard lobby, some states have begun to allow billboards with changing faces. The faces can change every few seconds, with the result that three faces can be seen in about 20 seconds. These billboards allow either multiple advertisers on the same billboard or single advertisers to transmit multiple (or extended) messages on the multiple faces of a single billboard.

Why the recent changes? Is it the will of the people? Or is it another win for the billboard lobby?

Surveys indicate that most Americans—by two-to-one majorities or more in virtually every reputable survey—believe that billboards are ugly, intrusive, and uninformative (Fleming and Associates 1990; Institute for Public Opinion Research 1995; Jones 1994; Telesurveys Research Associates 1991; University of New Hampshire Survey Center

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Clear Channel Outdoor Reports First Quarter 2011 Results

-Revenues increase 7%

-OIBDAN increases 16%

San Antonio, Texas May 6, 2011 Clear Channel Outdoor Holdings, Inc. (NYSE: CCO) today reported results for the first quarter ended March 31, 2011.

First Quarter 2011 Results

The Company reported revenues of \$650 million in the first quarter of 2011, a 7% increase from the \$609 million reported for the first quarter of 2010. Excluding the effects of movements in foreign exchange rates, the revenue increase would have been 5%.¹

- Americas revenue increased \$18 million, or 7%, compared to the first quarter of 2010, driven by revenue growth across most of the Company's display types, particularly digital.
- International revenue increased \$23 million, or 7%, compared to the first quarter of 2010, primarily as a result of increased street furniture sales and an increase from movements in foreign exchange. Excluding the effects of foreign exchange¹, revenues were up 4%.

As a result of the increase in revenues, the Company's OIBDAN¹ grew 16% over the first quarter of 2010. OIBDAN¹ was \$117 million for the first quarter of 2011 compared to \$100 million for the first quarter of 2010.

Clear Channel Outdoor's consolidated net loss was \$10 million, or \$0.03 per diluted share, during the first quarter of 2011. This compares to a consolidated net loss of \$49 million, or \$0.14 per diluted share, for the first quarter of 2010. See Table 1 (Financial Highlights) for an analysis of the change in consolidated net loss.

"We generated top line growth and increased returns from our outdoor assets during the first quarter," stated Tom Casey, Executive Vice President and Chief Financial Officer. "The global advertising climate continued to improve in the outdoor sector and we saw strength across most of our displays in the Americas, as well as gains in street furniture in several international markets. Our digital revenues were particularly strong as we benefited from an expanding footprint and continued demand across many of our markets. Our improved revenue performance, combined with our emphasis on sustaining operating efficiencies, allowed us to expand our overall margins during the quarter. We continue to see positive trends and remain on track in executing our plan to grow market share and further improve the performance of our outdoor platform."

Revenue, Operating Expenses and OIBDAN by Segment

(In thousands)

	Three Months Ended		% Change
	2011	2010	
Revenue¹:			
Americas	\$ 289,314	\$ 270,977	7%
International	<u>360,900</u>	<u>337,791</u>	7%
Consolidated revenue	<u>\$ 650,214</u>	<u>\$ 608,768</u>	7%
Operating Expenses^{1,2}:			
Americas	\$ 195,690	\$ 181,755	8%
International	<u>315,799</u>	<u>305,855</u>	3%
Consolidated operating expenses	<u>\$ 511,489</u>	<u>\$ 487,610</u>	5%
OIBDAN¹:			
Americas	\$ 93,624	\$ 89,222	5%
International	45,101	31,936	41%
Corporate	<u>(21,941)</u>	<u>(20,688)</u>	
Consolidated OIBDAN	<u>\$ 116,784</u>	<u>\$ 100,470</u>	16%

¹See reconciliations of revenue, direct operating and SG&A expenses and OIBDAN excluding the effects of foreign exchange, direct operating and SG&A expenses excluding non-cash compensation expense, segment OIBDAN to consolidated operating income (loss) and the reconciliation of OIBDAN to net income (loss) at the end of this press release. See also the definition of OIBDAN under the Supplemental Disclosure section of this release.

²The Company's operating expenses include direct operating expenses and SG&A expenses, but exclude non-cash compensation expenses associated with the Company's stock option grants and restricted stock and restricted stock unit awards. Corporate expenses also exclude non-cash compensation expenses associated with the Company's stock option grants and restricted stock and restricted stock unit awards.

Americas

Americas revenue increased \$18.3 million compared to the first quarter of 2010, driven by revenue growth across most of its display types. Bulletin revenues increased primarily due to digital growth driven by the increased number of digital displays. Airport and shelter revenues increased due to higher average rates as a result of improved economic conditions.

Operating expenses² increased \$13.9 million during the first quarter of 2011 compared to the same period of 2010. The increase was primarily a result of increased site-lease costs driven by the increase in revenue. The Company also experienced an increase related to structure maintenance and electricity for new digital bulletins as well as existing displays, an increase in commission costs associated with the increase in revenue during 2011 and an increase in other administrative expenses. The first quarter of 2010 included a \$3.8 million favorable litigation settlement.

Americas OIBDAN¹ for the first quarter of 2011 was \$94 million, an increase of 5% when compared with OIBDAN of \$89 million for the same period of 2010. The growth in OIBDAN was driven by an overall improvement in business compared to 2010.

As of March 31, 2011, the Company had deployed 658 digital displays in 36 U.S. markets. This includes 43 digital displays that were installed during the first quarter of 2011.

International

International revenue increased \$23.1 million compared to the first quarter of 2010, primarily as a result of growth in street furniture across most of the Company's markets, particularly China and Sweden, as a result of improved economic conditions. Revenue growth was partially offset by lower revenues in France. Movements in foreign exchange resulted in an \$8.0 million increase in revenues.

Operating expenses² increased \$9.9 million primarily attributable to higher direct production costs associated with the increase in revenue, as well as a \$7.2 million increase from movements in foreign exchange. There was also an increase of \$1.9 million primarily due to increased administrative costs. These increases were partially offset by a \$2.1 million reduction in restructuring expenses and business tax related to a change in French tax law.

Led by the revenue growth from the Company's street furniture business and an overall improvement in business compared to 2010, International OIBDAN¹ for the first quarter of 2011 increased 41% to \$45 million from \$32 million for 2010. Excluding the effects of movements in foreign exchange rates¹, the increase in OIBDAN was 39%.

Other Events

As previously reported, in June 2010 Mark P. Mays announced his decision to transition from his role as the Chief Executive Officer and President of CC Media Holdings, Inc. ("CCMH") and Clear Channel Communications, Inc. ("CCU"), an indirect subsidiary of CCMH, and as the Chief Executive Officer of the Company, an indirect subsidiary of CCMH and CCU, to the Chairman of CCU, CCMH and the Company and asked the Board of Directors of CCMH to initiate a search for his replacement. The Board of Directors of CCMH has been actively searching for a replacement but, to date, has not identified a permanent successor.

Effective March 31, 2011, Mr. Mays ceased serving as the Chief Executive Officer and President of CCMH and CCU and as the Chief Executive Officer of the Company. Mr. Mays will continue to serve as the Chairman of the Board of the Company, CCU and CCMH and as an employee of CCU and CCMH pursuant to the terms and conditions of his Amended and Restated Employment Agreement, effective as of June 23, 2010, by and between CCMH, CCU and Mr. Mays.

On March 31, 2011, the Boards of Directors of CCMH, CCU and CCOH each (i) established a new "Office of the Chief Executive Officer" to serve the functions of the Chief Executive Officer and President until such time that a permanent replacement for Mr. Mays is hired and (ii) appointed Thomas W. Casey, the current Executive Vice President and Chief Financial Officer of the Company, CCU and CCMH, and Robert H. Walls, Jr., the current Executive Vice President, General Counsel and Secretary of the Company, CCU and CCMH, to also serve in such newly-created office for each of the Company, CCU and CCMH in addition to their existing offices which they will retain.

Conference Call

The Company, along with its parent company CC Media Holdings, Inc., will host a teleconference to discuss results today at 9:00 a.m. Eastern Time. The conference call number is 800-260-0702 and the pass code is 201692. The teleconference will also be available via a live audio cast on the investor section of the Clear Channel Outdoor website, located at <http://www.clearchanneloutdoor.com/corporate/investor-relations/>. A replay of the call will be available after the live conference call, beginning at 11:00 a.m. Eastern Time, for a period of thirty days. The replay numbers are 800-475-6701 (U.S. callers) and 320-365-3844 (International callers) and the pass code is 201692. The audio cast will also be archived on the website and will be available beginning 24 hours after the call for a period of thirty days.

TABLE 1 - Financial Highlights of Clear Channel Outdoor Holdings, Inc. and Subsidiaries

<i>(In thousands, except per share data)</i>	Three Months Ended March 31,	
	<u>2011</u>	<u>2010</u>
Revenue	\$ 650,214	\$ 608,768
Direct operating expenses (excludes depreciation and amortization)	391,380	378,886
Selling, general and administrative expenses (excludes depreciation and amortization)	123,180	111,357
Corporate expenses (excludes depreciation and amortization)	21,983	20,772
Depreciation and amortization	102,330	101,709
Other operating income– net	<u>4,802</u>	<u>1,018</u>
Operating income (loss)	16,143	(2,938)
Interest expense – net	51,930	54,905
Equity in loss of nonconsolidated affiliates	(71)	(803)
Other income (expense) – net	<u>3,111</u>	<u>(837)</u>
Loss before income taxes	(32,747)	(59,483)
Income tax benefit	<u>22,355</u>	<u>10,704</u>
Consolidated net loss	(10,392)	(48,779)
Less: amount attributable to noncontrolling interest	<u>(851)</u>	<u>(997)</u>
Net loss attributable to the Company	<u><u>\$ (9,541)</u></u>	<u><u>\$ (47,782)</u></u>
Diluted net loss per share	<u><u>\$ (0.03)</u></u>	<u><u>\$ (0.14)</u></u>
Weighted average shares outstanding – Diluted	355,793	355,461

Foreign exchange movements increased the Company's first quarter of 2011 revenue and direct operating and SG&A expenses by approximately \$10 million and \$8 million, respectively, compared to the same period of 2010.

Other operating income of \$4.8 million in the first quarter of 2011 primarily related to proceeds received from condemnations of bulletins.

Other income of \$3.1 million in the first quarter of 2011 primarily related to a \$3.3 million foreign exchange translation gain on short term intercompany accounts.

The Company's operations are included in a consolidated income tax return filed by CC Media Holdings, Inc. ("CC Media Holdings"). However, for the Company's financial statements, the provision for income taxes was computed as if the Company files separate consolidated Federal income tax returns with its subsidiaries.

The Company's effective tax rate for the three months ended March 31, 2011 was 68.3%. The effective rate was primarily impacted by the settlement of federal and state tax examinations during the quarter. Pursuant to the settlements, the Company recorded a reduction to income tax expense of approximately \$3.3 million to reflect the net tax benefits of the settlements. In

addition, the effective rate was impacted by the Company's ability to benefit from certain tax loss carryforwards in foreign jurisdictions as a result of increased taxable income during 2011, where the losses previously did not provide a benefit.

TABLE 2 - Selected Balance Sheet Information

Selected balance sheet information for March 31, 2011 and December 31, 2010 was:

<i>(In millions)</i>	<u>March 31, 2011</u>	<u>December 31, 2010</u>
Cash	\$ 591.6	\$ 624.0
Total Current Assets	\$ 1,542.1	\$ 1,550.5
Net Property, Plant and Equipment	\$ 2,290.6	\$ 2,297.7
Due from Clear Channel Communications	\$ 408.9	\$ 383.8
Total Assets	\$ 7,087.2	\$ 7,076.6
Current Liabilities (excluding current portion of long-term debt)	\$ 716.7	\$ 724.2
Long-Term Debt (including current portion of long-term debt)	\$ 2,560.8	\$ 2,563.8
Shareholders' Equity	\$ 2,738.9	\$ 2,708.1

TABLE 3 - Total Debt

At March 31, 2011 and December 31, 2010, Clear Channel Outdoor Holdings had total debt of:

<i>(In millions)</i>	<u>March 31, 2011</u>	<u>December 31, 2010</u>
Clear Channel Worldwide Holdings Senior Notes:		
9.25% Series A Senior Notes Due 2017	\$ 500.0	\$ 500.0
9.25% Series B Senior Notes Due 2017	2,000.0	2,000.0
Other Debt	<u>60.8</u>	<u>63.8</u>
Total	2,560.8	2,563.8
Cash	<u>591.6</u>	<u>624.0</u>
Net Debt	<u>\$ 1,969.2</u>	<u>\$ 1,939.8</u>

The current portion of long-term debt, which is included in Other Debt, was \$40 million as of March 31, 2011.

Liquidity and Financial Position

For the quarter ended March 31, 2011, cash flow provided by operating activities was \$39 million, cash flow used for investing activities was \$44 million, cash flow used for financing activities was \$32 million, and the effect of exchange rate changes on cash was \$4 million for a net decrease in cash of \$32 million.

Capital expenditures for the quarter ended March 31, 2011 were approximately \$46 million compared to \$49 million for the quarter ended March 31, 2010.

The Clear Channel Worldwide Holdings, Inc. Notes indentures restrict the Company's ability to incur additional indebtedness but permit the Company to incur additional indebtedness based on an incurrence test. In order to incur additional indebtedness under this test, the Company's debt to adjusted EBITDA ratios (as defined by the indentures) must be lower than 6.5:1 and 3.25:1 for total debt and senior debt, respectively. The Clear Channel Worldwide Holdings, Inc. Series B Notes indenture permits the Company to pay dividends from the proceeds of indebtedness or the proceeds from asset sales if the Company's debt to adjusted EBITDA ratios (as defined by the indenture) are lower than 6.0:1 and 3.0:1 for total debt and senior debt, respectively. If these ratios are not met, the Company has certain exceptions that allow the Company to pay dividends, including a \$500 million exception for the payment of dividends.

Consolidated leverage, defined as total debt divided by EBITDA for the preceding four quarters, was 3.5:1 at March 31, 2011, and senior leverage, defined as senior debt divided by EBITDA for the preceding four quarters, was also 3.5:1 at March 31, 2011. The Company's adjusted EBITDA of \$739 million is calculated as operating income (loss) before depreciation, amortization, impairment charges and other operating income (expense)– net, plus non-cash compensation, and is further adjusted for the following items: (i) an increase for expected cost savings (limited to \$58.8 million in any twelve month period) of \$0.0 million; (ii) an increase of \$43.9 million for non-cash items; (iii) an increase of \$21.1 million related to expenses incurred associated with the Company's cost savings program; and (iv) an increase of \$10.0 million for various other items.

Supplemental Disclosure Regarding Non-GAAP Financial Information

The following tables set forth the Company's OIBDAN for the three months ended March 31, 2011 and 2010. The Company defines OIBDAN as consolidated net income (loss) adjusted to exclude non-cash compensation expense and the following line items presented in its Statement of Operations: Income tax benefit (expense); Other income (expense) - net; Equity in earnings (loss) of nonconsolidated affiliates; Gain (loss) on marketable securities; Interest expense; Other operating income (expense) – net; D&A; and Impairment charges.

The Company uses OIBDAN, among other things, to evaluate the Company's operating performance. This measure is among the primary measures used by management for planning and forecasting of future periods, as well as for measuring performance for compensation of executives and other members of management. We believe this measure is an important indicator of the Company's operational strength and performance of its business because it provides a link between profitability and net income. It is also a primary measure used by management in evaluating companies as potential acquisition targets.

The Company believes the presentation of this measure is relevant and useful for investors because it allows investors to view performance in a manner similar to the method used by the Company's management. The Company believes it helps improve investors' ability to understand the Company's operating performance and makes it easier to compare the Company's results with other companies that have different capital structures, stock option structures or tax rates. In addition, the Company believes this measure is also among the primary measures used externally by the Company's investors, analysts and peers in its industry for purposes of valuation and comparing the operating performance of the Company to other companies in its industry.

Since OIBDAN is not a measure calculated in accordance with GAAP, it should not be considered in isolation of, or as a substitute for, net income as an indicator of operating performance and may not be comparable to similarly titled measures employed by other companies. OIBDAN is not necessarily a measure of the Company's ability to fund its cash needs. As it excludes certain financial information compared with operating income and net income (loss), the most directly comparable GAAP financial measures, users of this financial information should consider the types of events and transactions that are excluded.

In addition, because a significant portion of the Company's advertising operations are conducted in foreign markets, principally the Euro area, the United Kingdom and China, management reviews the operating results from its foreign operations on a constant dollar basis. A constant dollar basis (in which a foreign currency adjustment is made to show the 2011 actual foreign revenues, expenses and OIBDAN at average 2010 foreign exchange rates) allows for comparison of operations independent of foreign exchange movements.

As required by the SEC, the Company provides reconciliations below to the most directly comparable amounts reported under GAAP, including (i) OIBDAN for each segment to consolidated operating income (loss); (ii) Revenue excluding foreign exchange effects to revenue; (iii) Expense excluding foreign exchange effects to expenses; (iv) OIBDAN excluding foreign exchange effects to OIBDAN; (v) Expense excluding non-cash compensation expense to expenses; (vi) Corporate expense excluding non-cash compensation expense to Corporate expense; and (vii) OIBDAN to net income (loss).

Reconciliation of OIBDAN for each segment to Consolidated Operating Income (Loss)

<i>(In thousands)</i>	Operating Income (loss)	Non-cash compensation expense	Depreciation and amortization	Other operating income – net	OIBDAN
Three Months Ended March 31, 2011					
Americas	\$ 40,370	\$ 2,168	\$ 51,086	\$ —	\$ 93,624
International	(7,046)	903	51,244	—	45,101
Corporate	(21,983)	42	—	—	(21,941)
Other operating income – net	<u>4,802</u>	<u>—</u>	<u>—</u>	<u>(4,802)</u>	<u>—</u>
Consolidated	<u>\$ 16,143</u>	<u>\$ 3,113</u>	<u>\$ 102,330</u>	<u>\$ (4,802)</u>	<u>\$ 116,784</u>
Three Months Ended March 31, 2010					
Americas	\$ 37,741	\$ 2,030	\$ 49,451	\$ —	\$ 89,222
International	(20,925)	603	52,258	—	31,936
Corporate	(20,772)	84	—	—	(20,688)
Other operating income – net	<u>1,018</u>	<u>—</u>	<u>—</u>	<u>(1,018)</u>	<u>—</u>
Consolidated	<u>\$ (2,938)</u>	<u>\$ 2,717</u>	<u>\$ 101,709</u>	<u>\$ (1,018)</u>	<u>\$ 100,470</u>

Reconciliation of Revenue excluding Foreign Exchange Effects to Revenue

<i>(In thousands)</i>	Three Months Ended March 31,		%
	<u>2011</u>	<u>2010</u>	<u>Change</u>
Consolidated Revenue	\$ 650,214	\$ 608,768	7%
Excluding: Foreign exchange decrease (increase)	<u>(9,652)</u>	<u>—</u>	
Revenue excluding effects of foreign exchange	<u>\$ 640,562</u>	<u>\$ 608,768</u>	5%
Americas revenue	\$ 289,314	\$ 270,977	7%
Excluding: Foreign exchange decrease (increase)	<u>(1,690)</u>	<u>—</u>	
Americas revenue excluding effects of foreign exchange	<u>\$ 287,624</u>	<u>\$ 270,977</u>	6%
International revenue	\$ 360,900	\$ 337,791	7%
Excluding: Foreign exchange decrease (increase)	<u>(7,962)</u>	<u>—</u>	
International revenue excluding effects of foreign exchange	<u>\$ 352,938</u>	<u>\$ 337,791</u>	4%

Reconciliation of Expense (Direct Operating and SG&A Expenses) Excluding Foreign Exchange Effects to Expense

<i>(In thousands)</i>	Three Months Ended March 31,		%
	<u>2011</u>	<u>2010</u>	<u>Change</u>
Consolidated Expense	\$ 514,560	\$ 490,243	5%
Excluding: Foreign exchange decrease (increase)	<u>(8,499)</u>	<u>—</u>	
Expense excluding effects of foreign exchange	<u>\$ 506,061</u>	<u>\$ 490,243</u>	3%
Americas expense	\$ 197,858	\$ 183,785	8%

Excluding: Foreign exchange decrease (increase)	<u>(1,326)</u>	<u>—</u>	
Americas expense excluding effects of foreign exchange	<u>\$ 196,532</u>	<u>\$ 183,785</u>	7%
International expense	\$ 316,702	\$ 306,458	3%
Excluding: Foreign exchange decrease (increase)	<u>(7,173)</u>	<u>—</u>	
International expense excluding effects of foreign exchange	<u>\$ 309,529</u>	<u>\$ 306,458</u>	1%

Reconciliation of OIBDAN excluding Foreign Exchange Effects to OIBDAN

(In thousands)

	Three Months Ended March 31,		% Change
	<u>2011</u>	<u>2010</u>	
Consolidated OIBDAN	\$ 116,784	\$ 100,470	16%
Excluding: Foreign exchange decrease (increase)	<u>(1,153)</u>	<u>—</u>	
OIBDAN excluding effects of foreign exchange	<u>\$ 115,631</u>	<u>\$ 100,470</u>	15%
Americas OIBDAN	\$ 93,624	\$ 89,222	5%
Excluding: Foreign exchange decrease (increase)	<u>(364)</u>	<u>—</u>	
Americas OIBDAN excluding effects of foreign exchange	<u>\$ 93,260</u>	<u>\$ 89,222</u>	5%
International OIBDAN	\$ 45,101	\$ 31,936	41%
Excluding: Foreign exchange decrease (increase)	<u>(789)</u>	<u>—</u>	
International OIBDAN excluding effects of foreign exchange	<u>\$ 44,312</u>	<u>\$ 31,936</u>	39%

Reconciliation of Expense (Direct Operating and SG&A Expenses) excluding Non-cash compensation expense to Expense

(In thousands)

	Three Months Ended March 31,		% Change
	<u>2011</u>	<u>2010</u>	
Americas	\$ 197,858	\$ 183,785	8%
Less: Non-cash compensation expense	<u>(2,168)</u>	<u>(2,030)</u>	
	195,690	181,755	8%
International	316,702	306,458	3%
Less: Non-cash compensation expense	<u>(903)</u>	<u>(603)</u>	
	315,799	305,855	3%
Plus: Non-cash compensation expense	<u>3,071</u>	<u>2,633</u>	
Consolidated divisional operating expenses	<u>\$ 514,560</u>	<u>\$ 490,243</u>	5%

Reconciliation of Corporate Expense excluding Non-cash compensation expense to Corporate Expense

(In thousands)

	Three Months Ended		% Change
	March 31,		
	2011	2010	
Corporate Expense	\$ 21,983	\$ 20,772	6%
Less: Non-cash compensation expense	(42)	(84)	
	<u>\$ 21,941</u>	<u>\$ 20,688</u>	6%

Reconciliation of OIBDAN to Net income (Loss)

(In thousands)

	Three Months Ended		% Change
	March 31,		
	2011	2010	
OIBDAN	\$ 116,784	\$ 100,470	16%
Non-cash compensation expense	3,113	2,717	
Depreciation and amortization	102,330	101,709	
Other operating income – net	<u>4,802</u>	<u>1,018</u>	
Operating income (loss)	16,143	(2,938)	
Interest expense – net	51,930	54,905	
Equity in loss of nonconsolidated affiliates	(71)	(803)	
Other income (expense) – net	<u>3,111</u>	<u>(837)</u>	
Loss before income taxes	(32,747)	(59,483)	
Income tax benefit	<u>22,355</u>	<u>10,704</u>	
Consolidated net loss	(10,392)	(48,779)	
Less: amount attributable to noncontrolling interest	<u>(851)</u>	<u>(997)</u>	
Net loss attributable to the Company	<u>\$ (9,541)</u>	<u>\$ (47,782)</u>	

About Clear Channel Outdoor Holdings

Clear Channel Outdoor Holdings, headquartered in San Antonio, Texas, is a global leader in the outdoor advertising industry providing clients with advertising opportunities through billboards, street furniture displays, transit displays, and other out-of-home advertising displays.

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Certain statements in this release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Clear Channel Outdoor Holdings, Inc. to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The words or phrases "guidance," "believe," "expect," "anticipate," "estimates" and "forecast" and similar words or expressions are intended to identify such forward-looking statements. In addition, any statements that refer to expectations or other characterizations of future events or circumstances are forward-looking statements.

Various risks that could cause future results to differ from those expressed by the forward-looking statements included in this release include, but are not limited to: changes in business, political and economic conditions in the U.S. and in other countries in which the Company currently does business (both general and relative to the advertising industry); changes in operating performance; changes in governmental regulations and policies and actions of regulatory bodies; changes in the level of competition for advertising dollars; fluctuations in operating costs; technological changes and innovations; changes in labor conditions; changes in capital expenditure requirements; fluctuations in exchange rates and currency values; the outcome of litigation; fluctuations in interest rates; changes in tax rates; shifts in population and other demographics; access to capital markets and borrowed indebtedness; risks relating to the integration of acquired businesses; and risks that we may not achieve or sustain anticipated cost savings. Other unknown or unpredictable factors also could have material adverse effects on the Company's future results, performance or achievements. In light of these risks, uncertainties, assumptions and factors, the forward-looking events discussed in this release may not occur. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date stated, or if no date is stated, as of the date of this release. Other key risks are described in the Company's reports and other documents filed with the U.S. Securities and Exchange Commission, including in the section entitled "Item 1A. Risk Factors" of Clear Channel Outdoor Holdings, Inc.'s Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q. Except as otherwise stated in this document, the Company does not undertake any obligation to publicly update or revise any forward-looking statements because of new information, future events or otherwise.

Prescription for Healthy Communities: Community Development Finance

Lisa Richter

GPS Capital Partners, LLC

Building a healthier nation will require substantial collaboration among leaders across all sectors, including some—for example, leaders in child care, education, housing, urban planning and transportation—who may not fully comprehend the importance of their roles in improving health.

—Beyond Health Care: New Directions to a Healthier America, Recommendations from the Robert Wood Johnson Foundation Commission to Build a Healthier America

We are at a crossroads in the fields of both community development finance and public health. Persistent poverty in many of our nation’s communities, along with increasing economic challenges faced by the working poor, are forcing a realization that traditional approaches to community development finance focused on affordable housing and business development are not sufficient to move and keep families out of poverty. Since the 1990s, Community Development Financial Institutions (CDFIs) and their partners have augmented traditional community development approaches with investments in human development (child care, education, and workforce development), family economic security (savings, insurance, and asset building), and “green” initiatives aimed at better positioning low-income residents to achieve health and financial security. Although the current economic crisis has interrupted and in some cases drastically reversed progress, innovation within the field continues to advance these trends.

Declining health status in the current generation of Americans, escalating health-care costs, and stark, persistent disparities in health outcomes among income and ethnic groups similarly call into question the traditional approach to health care in the United States, which has primarily focused on the treatment of disease. As stated in the 2009 report of the Robert Wood Johnson Foundation Commission, “Building a Healthier America” (RWJF Commission Report): “Although medical care is essential for relieving suffering and curing illness, only an estimated 10 to 15 percent of preventable mortality has been attributed to medical care. A person’s health and likelihood of becoming sick and dying prematurely are greatly influenced by powerful social factors such as education and income and the quality of neighborhood environments.”¹ Faced with this evidence, health practitioners and advocates are increasing their focus on preventing disease through physical and social environments that promote better health outcomes and community-based initiatives that promote healthy behavior.

1 <http://www.commissiononhealth.org/Report.aspx?Publication=64498>.

Developments in both fields set the stage for a coordinated approach. By articulating a vision for healthy communities and more directly fostering the human development, physical well-being, and economic prospects of community residents, both community development finance and public health are poised to improve outcomes. The shift is particularly important for services targeted to children, who have the greatest vulnerability to unhealthy conditions. If we cannot better position our children for health and financial security, we face continuing, rampant increases in chronic disease and medical expenses, lost productivity, and lost income.

Coordinated effort requires adjusting both community development finance and public health practices to leverage the respective resources of each effectively. The RWJF Commission calls for society to adapt a “culture of health” to inform not only community development but also school, workplace, and public-policy priorities. As described in the sections that follow, we suggest that the field of public health adapt a “culture of community development finance” as an essential component of scaling successful models of community, school, and workplace health promotion.

The RWJF Commission Report identified a range of ways to improve health at local, state, and federal levels—“practical, feasible and effective solutions often hiding in plain sight”—but noted that these programs generally are not funded to achieve scale: “Too often, while start-up funds are provided to establish programs, funders move on to other issues once programs are under way. The value of collaboration to create a broader base of support is a key theme of this report and a necessity if successful programs are to expand across sectors and across the nation.”²

The prevailing funding model for community-based public health has relied on public and private grants.³ We suggest that community development finance is an essential, if perhaps unrecognized partner in taking scaling efforts to the next level. Combining mission focus and investment discipline, community development finance brings highly developed skills in identifying and financing organizations that are both committed to improving conditions for vulnerable populations and capable of repaying investments. In general, such organizations are unable to obtain the financing needed for scaling from commercial sources. This may be because these organizations focus in markets that are small and perceived as too risky; lack assets or credit history; have early-stage needs (such as the predevelopment phase of a real estate project; and depend on innovative approaches to problem solving (which carry the risk of untested, new business lines).

Community development finance aggregates subsidies and flexible capital from public and private sources to directly finance such initiatives or to structure credit enhancement that attracts additional, larger volumes of commercial capital. While much more capital is needed to finance the range of qualifying initiatives, community development finance has

2 RWJF Commission Report.

3 Major institutions, such as hospitals and large clinics, are generally able to also raise bond and other debt financing.

invested billions of dollars in projects that effectively enhance health. Examples include mixed-income transit-oriented development; quality early child care, high-performing public charter schools and other educational programs that offer nutritious food and physical exercise programs along with academic support; social services enriched housing; and community health centers. Increasingly these strategies are executed with green approaches that conserve resources, avoid harmful building materials, and are landscaped to promote safe physical activity. In addition, such projects bring both services and jobs to urban and rural low- to moderate-income communities.

The field of community development finance in turn can benefit from the medical framework for defining healthy community that is offered by the field of public health. Often this framework takes the form of a needs assessment developed in the context of a city, state, or region (which corresponds to a bank's assessment area or CDFI's market area). Public health also brings infrastructure to gather and analyze longitudinal data on both health status and health-care costs of populations by income, ethnic group, and geography, providing important social and economic impact data to reinforce output measures traditionally tracked by community development finance practitioners. Finally, health interests bring significant public and private financial resources that community development finance needs but has seldom tapped, including potential grants and investments from health-focused philanthropy, health-focused public funding (including the federal stimulus), and a share of the nation's significant, ongoing health-care expenditures. Health-care expenditures were estimated as 15.3 percent of GDP in 2006, and amount that is \$2 trillion per year and projected to grow.⁴

Plans for coordination between community development finance and public health need not be complex. Indeed, public health interventions are often astonishingly basic, historically depending largely upon clean water and proper sanitation. As Len Syme's article in this journal points out, lack of proper sanitation is no longer the main cause of morbidity and mortality in industrialized nations. Our communities have generated new disease-producing agents, such as pollutants of air, water, and food. We have also learned, he notes, that disease occurs more frequently among those with fewer meaningful social relationships and those in a lower social class. These are risk factors that community development finance and public health can work together to minimize.

The benefits of collaboration between the fields will be greatest if focused on those of lower social class—those known to health policy advocates and philanthropy as “vulnerable populations” and known to community development finance practitioners as low- to moderate-income and minority communities and persons. Extensive evidence documents this popu-

4 World Health Statistics 2009 (Geneva: World Health Organization, 2009), 114. Available at: http://www.who.int/whosis/whostat/EN_WHS09_Full.pdf.

lation's greater health risks that also potentially bring catastrophic financial consequences.⁵

One example of a cost-effective prevention that could be implemented in partnership with community development finance practitioners was highlighted in a 2008 study prepared by the Trust for America's Health. The study found that an investment of \$10 per person per year in proven community-based programs to increase physical activity, improve nutrition, and prevent smoking and other tobacco use could significantly reduce chronic disease and save California households, insurance companies, and public coffers more than \$1.7 billion in annual health-care costs within five years—a return of nearly \$5 for every \$1 of expense. Evidence suggests that implementing these programs could reduce rates of Type II diabetes and high blood pressure by five percent within two years; reduce heart disease, kidney disease, and stroke by five percent within five years; and reduce some forms of cancer, arthritis, and chronic obstructive pulmonary disease by 2.5 percent within 10 to 20 years.⁶ Community-based programs such as those cited in the study are frequently offered by organizations that CDFIs finance, including but not limited to schools open after hours for children to play with adult supervision, farmers markets and other venues providing access to nutritious foods in low-income communities, and child care, youth, and health organizations providing guidance on how to make good choices about nutrition and tobacco use.⁷

If collaboration between community development finance and public health offers the prospect of creating a virtuous circle in which strategic investments help residents of low-income communities to make healthy choices and generate health-care savings, the risks of failing to join forces appear likely to perpetuate the existing vicious circle in which these residents fall further behind in health and income. The RWJF Commission Report cautions:

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- 5 As an example of the high risks and costs of chronic disease among vulnerable populations, overweight is by far the most common public health nutrition problem facing women and children participants of the federal Women, Infants and Children Program (WIC). . . . Taken together, well over one-third of California WIC children are overweight or at risk for obesity, with the highest rates among Hispanic, African American, and Native American children. The reported consequences are staggering: increased rates of Type II diabetes, heart disease, respiratory difficulties, psychosocial problems, and adult obesity cost California an estimated \$25 billion annually and will kill more people than AIDS, violence, car crashes, and drugs combined. http://www.calwic.org/docs/federal/harnessing_WIC_obesity.pdf.
 - 6 "Prevention for a Healthier California: Investments in Disease Prevention Yield Significant Savings, Stronger Communities," 2008: <http://healthyamericans.org>.
 - 7 Health care uses primary, secondary, and tertiary types of prevention, offering different opportunities for disease prevention and medical savings: (1) Primary prevention involves taking action before a problem arises to avoid it entirely, rather than treating or alleviating its consequences. (2) Secondary prevention is a set of measures used for early detection and prompt intervention to control a problem or disease and minimize the consequences. (3) Tertiary prevention focuses on the reduction of further complications of an existing disease or problem, through treatment and rehabilitation. Many factors influence whether specific prevention efforts result in cost savings. Tertiary efforts involving direct medical treatment or pharmaceuticals often have higher costs. Secondary efforts, including early detection and intervention to control a problem or disease and minimize the consequences, are more cost effective if targeted to at-risk populations. Community-based primary and secondary prevention efforts may be low-cost and have demonstrated results in lowering disease rates or improving health choices without involving direct medical care, including promoting increased levels of physical activity, improved nutrition and reduced tobacco use. <http://healthyamericans.org>.

The economic implications of our nation's health shortfalls are sobering. . . . The costs of medical care and insurance are now out of reach for many American households, pushing some families into bankruptcy, draining businesses, reducing employment and severely straining the budgets of federal, state and local governments. . . . The current path of rising costs and rising rates of chronic disease is simply not sustainable. Greater access to effective, efficient medical care is important for our nation's well-being, but medical care cannot deliver wellness, nor can health care system reforms alone bring costs under control. Instead, we need a new vision of health that rests on changing the lives of Americans in ways that lead to healthier, longer lives.⁸

To frame the possibilities for collaborating on that new vision, the following sections discuss a definition of healthy community, identify tested models for replication, profile investors, and assess a way forward.

Defining and Building Healthy Communities: Two Fields, One Objective

In formulating a definition of healthy community that aligns community development finance and public health interests, a logical first step is to refer to the meaning of community development in the Community Reinvestment Act (CRA), which has provided the regulatory framework for bank and other community development finance for decades.⁹ While the CRA does not tell us what constitutes a healthy community, it states that community development includes:

1. Affordable housing (including multifamily rental housing) for low- or moderate-income individuals
2. Community services targeted to low- or moderate-income individuals
3. Activities that promote economic development by financing businesses or farms that have gross annual revenues of \$1 million or less
4. Activities that revitalize or stabilize low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies¹⁰

As of 2007, National Community Reinvestment Coalition reported more than \$407 billion in 375,000 CRA loans and investments that advance community development across urban and rural assessment areas nationwide.¹¹ Often these investments have had a transforma-

8 RWJF Commission Report.

9 www.ffiec.gov/CRA; see also "Revisiting CRA" at <http://www.frbsf.org/publications/community/cra/index.html>.

10 <http://www.occ.treas.gov/fr/cfrparts/12cfr25.htm>.

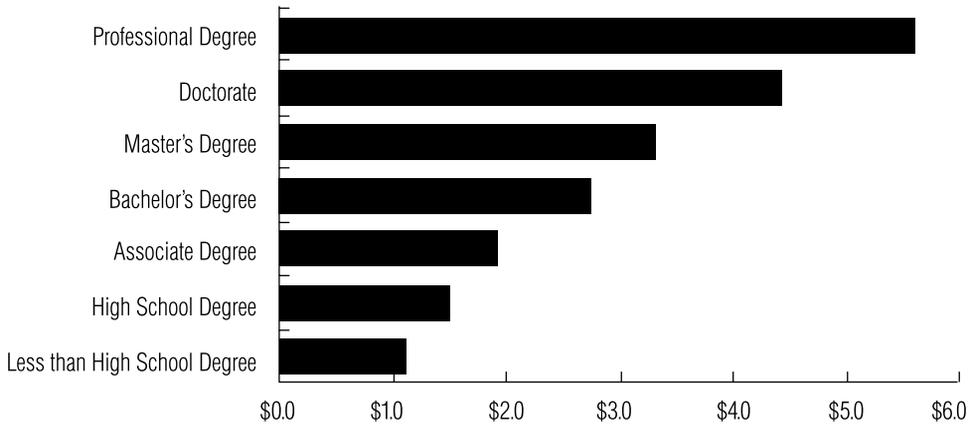
11 John Taylor and Josh Silver, "The Community Reinvestment Act: 30 Years of Wealth Building and What We Must Do to Finish the Job," <http://www.frbsf.org/publications/community/cra/index.html>, 2009.

tional effect on neighborhoods, jump-starting both housing and commercial development in areas of persistent blight. Their impact has been more limited, however, on the health, education, earnings power, and poverty status of neighborhood residents. The evidence suggests that absent a more deliberate focus on human development, low- to moderate-income communities continue to face dim prospects of graduating their youth from high school, much less preparing them for college or secure financial futures.

We are learning that these poor educational outcomes also affect health, with consequences that are far graver than we previously understood.¹² We have long known that lifetime earnings are correlated with educational level (Figure 1). Recent research documents a strong correlation between health outcomes and both education and income. “When socioeconomic factors were added into the Framingham Risk Scoring risk assessment . . . the proportion of low-income and low-education patients at risk for death or disease during the next 10 years was nearly double that of people with higher socioeconomic status.”¹³ The effects of good education are of a magnitude that, if high school graduation were a prescription drug, it would be a “blockbuster.”¹⁴

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- 12 Nationwide, only about 70 percent of students earn their high school diplomas. Among minority students, only 57.8 percent of Hispanics, 53.4 percent of African Americans, and 49.3 percent of American Indians and Alaska Native students graduate with a regular diploma, compared to 76.2 percent of white students and 80.2 percent of Asian Americans. High school dropouts face long odds of landing a good-paying job in the ultra-competitive job market of the twenty-first century. In addition, they generally die earlier, are less healthy, more likely to become parents when very young, more at risk of tangling with the criminal justice system, and more likely to need social welfare assistance. http://www.all4ed.org/about_the_crisis.
- 13 A University of Rochester Medical Center study published in the June 2009 *American Heart Journal* noted that doctors who ignore the socioeconomic status of patients when evaluating their risk for heart disease are missing a crucial element. The study found that the accepted risk assessment model, known as Framingham Risk Scoring (FRS), does not accurately predict whether a person of low income and/or less than a high school education will develop heart disease or die in the next 10 years. When socioeconomic factors were added into the FRS risk assessment, the proportion of low-income and low-education patients at risk for death or disease during the next 10 years was nearly double that of people with higher socioeconomic status. <http://www.sciencedaily.com/releases/2009/06/090616133936.htm>.
- 14 In the pharmaceutical industry, a blockbuster drug is one that achieves acceptance by prescribing physicians as a therapeutic standard, most commonly for a highly prevalent chronic (rather than acute) condition. From a financial perspective, a blockbuster drug is typically defined as achieving annual worldwide sales exceeding \$1 billion, <http://www.ftpress.com/articles/article.aspx?p=1163084>. While the medical savings from a nearly 50 percent reduction in heart disease risk factors associated with improved high school graduation rates have not been estimated to GPS’ knowledge, economic savings well in excess of \$1 billion per year from improved graduation rates have been. Assuming based upon Figure 1 that every high school graduate realizes \$400,000 in lifetime income that he or she would not otherwise receive, it takes only 2,500 additional high school graduates per year to generate a \$1 billion differential. Per the U.S. Committee on Education and Labor, there are almost three times this number of high school dropouts per day: “Nationwide, 7,000 students drop out every day. . . . Research shows that poor and minority children attend . . . so-called “dropout factories”—the 2,000 schools that produce more than 50 percent of our nation’s dropouts—at significantly higher rates. . . . A recent report by the McKinsey Corporation showed that if black and Latino student performance had reached the level of white students by 1998, the GDP in 2009 would have been between \$310 billion and \$525 billion higher—or approximately 2 to 4 percent of GDP. The report also notes that achievement gaps in this country are the same as having “a permanent national recession.” May 12, 2009, <http://edlabor.house.gov/newsroom/2009/05/high-school-dropout-crisis-thr.shtml>. The full McKinsey Report, “The Economic Impact of the Achievement Gap in America’s Schools,” is available at http://www.mckinsey.com/App_Media/Images/Page_Images/Offices/SocialSector/PDF/achievement_gap_report.pdf.

Figure 1. Worklife Earnings for Full-time Year-round Workers by Educational Attainment¹⁵
(in Millions of 2005 Dollars)*



The pronounced health and financial risks among many whom CRA sets out to serve suggest that traditional investing to comply with the regulation may be necessary for healthy communities, but it is not sufficient. Applying a public health lens broadens the perspective and points the way to promising new avenues. A healthy community is described by the “Healthy People 2010” report of the U.S. Department of Health and Human Services as

One that continuously creates and improves both its physical and social environments, helping people to support one another in aspects of daily life and to develop to their fullest potential. Healthy places are those designed and built to improve the quality of life for all people who live, work, worship, learn, and play within their borders—where every person is free to make choices amid a variety of healthy, available, accessible, and affordable options.¹⁶

Incorporating these dimensions into community development finance practice offers potential to reinvigorate the sector’s efforts to alleviate poverty while engaging the expertise of public health to drive better results. Public health and health-focused philanthropy organizations have developed useful templates to clarify further what constitutes a healthy community and what actions the range of stakeholders must take to create such communities nationwide (Figure 2 and Appendices A and B).

For example, given the observation that health outcomes are closely correlated to neighborhood conditions and a mandate to “identify interventions beyond the health care system

¹⁵ Mark Kantrowitz, “The Financial Value of Higher Education,” *NASFAA Journal of Student Financial Aid* 37, no. 1 (2007); U.S. Census Bureau, “The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings,” July 2002. <http://www.census.gov/prod/2002pubs/p23-210.pdf>.

¹⁶ <http://www.cdc.gov/healthypplaces>.

that can produce substantial health effects,” the RWJF Commission Report articulated ten recommendations for building a healthier America (see Figure 3 and Appendix B). While some of these depend largely on public-sector programs, many, including promoting access to high-quality child care, education, nutritious food, physical activity, and health care, are promoted through CDFI investment strategies, often with capital invested by CRA-motivated banks (See examples in Figure 4).

Figure 2. Healthy Communities¹⁷

Unhealthy Community	Healthy Community
Unsafe even in daylight	Safe neighborhoods, safe schools, safe walking routes
Exposure to toxic air, hazardous waste	Clean air and environment
No parks/areas for physical exercise	Well-equipped parks and open spaces/ organized community recreation
Limited affordable housing is run-down; linked to crime-ridden neighborhoods	High-quality mixed-income housing, both owned and rental
Convenience/liquor stores, cigarette and liquor billboards, no grocery store	Well-stocked grocery stores offering nutritious foods
Streets and sidewalks in disrepair	Clean streets that are easy to navigate
Burned-out homes, littered streets	Well-kept homes and tree-lined streets
No culturally-sensitive community centers, social services, or opportunities to engage with neighbors in community life	Organized multicultural community programs, social services, neighborhood councils, or other opportunities for participation in community life
No local health-care services	Primary care through physicians' offices or health center; school-based health programs
Lack of public transportation, walking or biking paths	Accessible, safe public transportation, walking and bike paths

¹⁷ RWJF Commission Report.

*Figure 3 - Recommendations From the Robert Wood Johnson Foundation Commission*¹⁸

1. Ensure that all children have high-quality early developmental support (child care, education and other services). This will require committing substantial additional resources to meet the early developmental needs particularly of children in low-income families.	6. Become a smoke-free nation. Eliminating smoking remains one of the most important contributions to longer, healthier lives.
2. Fund and design WIC and SNAP (Food Stamps) programs to meet the needs of hungry families for nutritious food.	7. Create "healthy community" demonstrations to evaluate the effects of a full complement of health-promoting policies and programs.
3. Create public-private partnerships to open and sustain full-service grocery stores in communities without access to healthful foods.	8. Develop a "health impact" rating for housing and infrastructure projects that reflects the projected effects on community health and provides incentives for projects that earn the rating.
4. Feed children only healthy foods in schools.	9. Integrate safety and wellness into every aspect of community life.
5. Require all schools (K-12) to include time for all children to be physically active every day.	10. Ensure that decision-makers in all sectors have the evidence they need to build health into public and private policies and practices.

The RWJF Commission’s criteria for what constitutes a healthy community seem basic (Figure 2 and Appendix A), yet it is precisely the inadequacy of such basic conditions in most low- to moderate-income and minority communities that constitute many of the so-called adverse social determinants of health, driving disparity, increased chronic disease, and rising cost burdens.¹⁹

For example, while achieving good health requires choosing healthy behaviors such as eating a nutritious diet, exercising, and not smoking, health professionals agree that it is much harder to make these healthy choices in either urban or rural low- to moderate-income communities. As the RWJF Commission observes: “Many people live and work in circumstances and places that make healthy living nearly impossible. Many children do not get the quality of care and support they need and grow up to be less healthy as a result; many Americans do not have access to grocery stores that sell nutritious food; still others live in communities that are unsafe or in disrepair, making it difficult or risky to exercise. While individuals must make a commitment to their own health, our society must improve the opportunities to choose healthful behaviors, especially for those who face the greatest obstacles.”²⁰

Although the field of community development finance has to date generally placed less emphasis on strategies that directly affect the physical health and human development of

¹⁸ RWJF Commission Report.

¹⁹ See discussions in RWJF Commission Report; Place Matters, <http://www.policylink.org/site/c.lkIXLbMNJrE/b.5137443/apps/s/content.asp?ct=6997411>; and www.unnaturalcauses.org.

²⁰ RWJF Commission Report.

low- to moderate-income persons, practitioners who have applied such focus represent the cusp of innovation and demonstrate the potential. As profiled in Figure 4 and the following articles in this journal, CDFI-financed health-enhancing projects include:

- NCB Capital Impact’s (NCBCI) loans for nonprofit health-center facilities described by Scott Sporte and Annie Donovan, which in partnership with bank, insurance, foundation, and public-sector lenders, finance entities that meet the primary-care needs of many of the nation’s Medicaid recipients and uninsured in underserved areas. NCBCI has expanded on this successful model in three ways: (1) by incorporating New Markets Tax Credit incentives in selected transactions, (2) by adding working capital loans to help borrowers expand or manage delays in state reimbursements, and (3) by partnering with Capital Link, a national technical assistance provider that assists health centers in deal structuring, financial planning and management.
- Pacific Community Ventures’ equity investments in small businesses that provide quality benefits for workers described by Allison Kelly and Kirsten Snow Spalding, including health coverage and the VidaCard Prepaid MasterCard®, which offers employers a means to help both insured and uninsured employees pay for uncovered expenses, including preventive care, insurance premiums, or co-payments.
- The Reinvestment Fund’s lead financing role in fresh food supermarkets of varying sizes and descriptions in urban and rural communities throughout Pennsylvania, a model described by Marion Standish of The California Endowment and Judith Bell of PolicyLink that is being adapted in other states through collaborations between The Reinvestment Fund, other CDFIs, foundations, and banks.
- The Low Income Investment Fund (LIIF) and other CDFIs’ increasing investments in human capital development described by Nancy Andrews, which for LIIF alone include direct financings of \$60 million in early child care, \$200 million in high performing charter schools, \$500 million in services enriched affordable housing and \$40 million in other facilities, such as for health care, domestic violence shelters and youth recreation. Generally, these investments utilize public and philanthropic sector credit enhancement or tax credits to attract much larger sums of senior debt from banks, insurance companies, and pension funds.
- The Disability Opportunity Fund’s housing solutions for disabled persons and their families described by Charles Hammerman. The fund’s financing leverages public-sector subsidies to structure financing for affordable, accessible, and supportive housing for the disabled, including the developmentally disabled and increasing numbers of families of military and the elderly.

These investments spur development that is consistent with the “Healthy People 2010” healthy communities definition, catalyzing resident wellness while creating significant numbers of local jobs, particularly in child care, health care, and retail or other healthy food

delivery systems.²¹ The potential benefits, ranging from decreased childhood obesity to dramatically improved high school graduation and college matriculation rates, to increased employment, income, and health coverage, are correlated with significantly improved long-term health outcomes and, therefore, reduced health-care costs. As tested models, these investments offer the potential to be replicated in communities across the country. Doing so requires commitments of capital by a broad range of investors.

Figure 4. Scaling Success in Healthy Community Investments

The field of community development finance is increasing its focus on projects that improve health and reduce health-care costs in low-income neighborhoods. Successes and plans from CDFI-financed initiatives include:

For health-care delivery:

- NCB Capital Impact has extended over \$429 million in loans to community-based health-care providers for over 20 years to create more than 2.9 million square feet of community health center space where providers meet the health-care needs of more than 350,000 low-income, underinsured, and uninsured patients annually. In addition, NCBCI has provided innovative financing to substance abuse rehabilitation/behavioral care facilities, adult day health care facilities and assisted living/continuing care facilities.
- Nonprofit Finance Fund provided \$500,000 in financing to the District of Columbia Primary Care Association to cover start-up costs of Medical Homes DC, which will leverage some \$145 million for facilities, quality improvements, and administrative services to rebuild and increase access to DC's primary-care system for 210,000 low-income residents. Goals include to provide better health outcomes, reduced disparities and decreased expensive emergency room visits; anchors for economic development in the health centers' neighborhoods; quality entry-level jobs and hiring from the community; and to increase traffic from patients and those who accompany them for potential businesses nearby (research by Capital Link based on 2006 data demonstrated that 11 DC health centers generated a \$210 million impact on the District's economy and approximately 2,100 jobs).²²

21 Job growth in these sectors is expected to be among the most robust nationwide. The Department of Labor identifies Education and Health services as a supersector that is projected to grow by 18.8 percent, and add more jobs, nearly 5.5 million, than any other industry supersector. More than 3 out of every 10 new jobs created in the U.S. economy will be in either the healthcare and social assistance or public and private educational services sectors. Combined food preparation and service workers are fourth in occupations with the largest projected increase in number of jobs from 2006 – 2016. See Appendix E and <http://www.bls.gov/oco/oco2003.htm>. May 13, 2009.

22 <http://www.regionalprimarycare.org/primary-care-medical-homes/medical-homes-dc.aspx>

For supportive and safe housing:

- The Corporation for Supportive Housing reports decreases of more than 50 percent in tenants' emergency room visits and hospital inpatient days and more than 80 percent in use of emergency detoxification services, a \$1,448 decrease in dependence on entitlements per tenant each year, increases of 50 percent in earned income and 40 percent in the rate of participant employment when employment services are provided in supportive housing, more than 80 percent of homeless people with mental illness remaining housed a year later (at least a third of those people living on the streets and in shelters have a persistent mental illness) and 90 percent of tenants with substance abuse problems remaining sober for one year, versus approximately 55 percent who live independently or in halfway houses.
- CDFIs such as Rural Community Assistance Fund and CASA of Oregon have provided thousands of units of safe migrant housing, reducing risks for this vulnerable population (see Appendix D)

For quality education, a linchpin for children to achieve financial security and good health:

- In California, where in 2008 approximately one in three high school graduates completed the courses required to gain admission to a four-year college (with lower college-readiness rates for minority students), the College-Ready Promise is a newly formed coalition of five charter school management organizations (CMOs) that have earned a reputation for excellence in serving low-income and minority students, with more than 75 percent of their graduates over the past two years attending four-year colleges. Alliance College-Ready Public Schools, Aspire Public Schools, Green Dot Public Schools, ICEF Public Schools, and Partnerships to Uplift Communities operate 85 public schools with more than 28,000 students, primarily in Los Angeles County (Aspire also runs schools in East Palo Alto, Modesto, Oakland, Sacramento, and Stockton).
- Collectively, these CMOs have received hundreds of millions in facilities financing from a range of CDFIs, including the Low Income Investment Fund, NCB Capital Impact, Local Initiatives Support Corporation, and Raza Development Fund. Many of the schools provide Revolution Foods' nutritious lunches and several use Playworks' active recess program. The Bill & Melinda Gates Foundation recently awarded the Coalition \$60 million to increase teaching effectiveness so that more students graduate college-ready.
- In rural Arkansas, the CDFI, Southern Bancorp, recruited and financed the charter management organization, KIPP Houston, to a town of 15,000. KIPP Delta

charter school opened in Helena-West Helena's abandoned train station, soon expanding into previously abandoned buildings on the town's main street. KIPP achieved 100 percent college matriculation in its first graduating class, in an almost 100 percent African American student body where the academic scores for this population were typically in the 15th percentile. KIPP Delta plans to open 12 charter schools in the region. In addition to financing charter schools, CDFIs finance a range of supplemental educational services that support both academic achievement and health-promoting behaviors such as safe physical activity and not smoking. These include Boys and Girls clubs and similar organizations around the country.

For child care, where quality experiences set the stage for childrens' later success:

- Self-Help Credit Union began child care lending in 1987, has lent over \$42 million to quality child care providers and is part of The National Child Care Facilities Network, a group of CDFIs emphasizing child care lending that has provided over \$230 million in child care finance, leveraging \$877 million to create or improve 3,680 centers serving over 211,000 children across the country.
- Acelero Learning is one example of a quality Head Start manager that has equity investment from CDFIs, Boston Community Capital and New Jersey Community Capital, as well as the W.K. Kellogg Foundation. Results by combining federal Heat Start funding with state child-care funding include:
 - In Camden, N.J.: Increased enrollment from 18 to 90 children and improved staff qualifications by 100 percent so that all teachers have at least an Associate degree.
 - In Monmouth, N.J.: Increased enrollment from 330 to 506 children using the same amount of federal funds, expanded annual days of service from 190 to 220 days per year, increased average teacher salary by 75 percent, increased number of family advocates from 8 to 14, and built partnerships to provide previously untapped, much needed dental services.

For safe, nutritious food and physical activity:

- ShoreBank began sponsoring a Farmers Market in the 1970s and in 1990 brought one of Chicago's leading full-service grocery stores to its low- to moderate-income African American neighborhood. In 1999, Local Initiatives Support Corporation working with Abyssinian Development Corporation and the Community Association of East Harlem Triangle brought a Pathmark super-market to East Harlem.

- The Reinvestment Fund (TRF) is spearheading an effort to establish supermarkets in urban and rural communities in Pennsylvania in partnership with the Fresh Food Financing Initiative. As of June 2009, FFFI had committed \$57.9 million in grants and loans to 74 supermarket projects in 27 Pennsylvania counties, ranging in size from 900 to 69,000 square feet, which were expected to create or retain 4,854 jobs and more than 1.5 million square feet of food retail. TRF is working with a range of other CDFIs and partners to expand the initiative to other states.
- With equity and debt from bank and foundation social investors, including the W.K. Kellogg Foundation, DBL investors, and RSF Social Finance, Revolution Foods provides nutritious school breakfasts, lunches and snacks, serving more than 5 million healthy meals to more than 50,000 school children, 80 percent of whom qualify for free or reduced-price lunches.
- With working capital financing from the CDFI, OneCalifornia Bank, and a loan guarantee and grants from the Robert Wood Johnson Foundation, Playworks is expanding its services to improve the health and well-being of children by increasing opportunities for physical activity from its on-site programs that serve more than 70,000 students at 170 low-income schools in 10 cities to more than 650 low-income schools in 28 cities, along with training for adults to bring safe, healthy, and inclusive play to more than 1 million students by 2012.

For sustainable development, CDFIs have been in the lead of financing and tracking innovations that safeguard community health and the environment in urban and rural areas:

- Enterprise Green Communities has invested \$700 million to build and preserve nearly 16,000 green affordable homes and partnered with the U.S. Department of Energy and BuildingGreen to create the High Performance Buildings Database.
- SJF Ventures, a CDFI venture capital firm with \$26 million in cumulative investments, reported holdings in 28 companies that added 5,900 jobs in renewable energy and efficiency, organic and healthy consumer products and other companies offering significant employee benefits. Approximately 85 percent of the total 5,900 people employed are low- to moderate-income.
- The Triple Bottom Line Collaborative (TBLC) is an alliance of CDFIs pursuing the integration economic development and poverty alleviation with environmental issues through equity and debt investments as well as impact tracking. Collectively, members and their affiliates have made well in excess of \$1 billion of TBL investments (see Appendix D).

Scaling Investment in Healthy Communities: An Overview of Promising CDFI Strategies

The field of community development finance engages in continuous efforts to attract the capital needed to scale proven initiatives, and it can benefit from potential new sources of capital from public and private investors in the health sector. Despite a general tightening of credit in the economic downturn, model investment structures and partnerships have continued to evolve between banks, CDFIs, and other community development finance intermediaries, public-sector agencies (some of which are managing one-time additional federal stimulus dollars), and philanthropic investors interested in leveraging their grant making with financial investments that reinforce their health-focused charitable missions.

Structuring investments that promote healthy communities requires due diligence from any investor, whether bank, CDFI, foundation, or government agency. Characteristics of community development financial transactions that potentially add risk and cost include but are not limited to: (1) low margin revenues (characteristic of all nonprofit service providers in low- to moderate-income communities), (2) unstable cash flows (particularly where government is the payer and budgets may be slashed or delayed), (3) low property valuations (corresponding to limited available collateral or high loan-to-value ratios), (4) multiple transaction objectives and/or sites (such as services-enriched affordable housing using “green,” nontoxic building materials near a new public transportation hub, which will include a supermarket selling fresh food), and (5) complicated documentation associated with the use of tax credits or subsidized programs. Particularly when conventional credit markets are tight, these cost and risk factors create the need for more flexible capital, such as a foundation program-related investments (PRI, see below) or public-sector credit enhancements.

A flexible and relatively common deal structure is to have a CDFI create an off balance sheet fund or project financing that includes a layer of public-sector funding as a first loss fund, a larger layer of foundation PRI or CDFI subordinated debt as a second loss fund, and a much larger layer of commercial investor senior debt from a bank, insurance company, or other institutional investor. The New York City Acquisition Fund combines an \$8 million, zero percent city loan as a first loss fund with \$32 million in foundation-subordinated debt as a second loss fund. This \$40 million in credit enhancement leverages over \$200 million in bank senior debt authority to finance affordable housing site acquisition.

This model has been replicated for affordable housing in the Gulf Coast, Los Angeles, and the State of Oregon. Similar structures use grants from the Department of Education as first loss funds for charter schools facilities finance and are being planned to finance community health centers using American Recovery and Reinvestment Act of 2009 funds.

CDFIs and similar intermediaries also attract public subsidy by using tax incentives in the form of Low Income Housing Tax Credits, New Markets Tax Credits (NMTC), and Historic Tax Credits. Transactions using these programs are more difficult to close in the current environment due to fewer corporations with profits to shelter and fewer lenders willing to extend the so-called leveraged loans used in combination with equity from tax credits.

In the current environment, a particularly promising trend is the increasing number of foundations that are participating in community development finance through mission investing strategies. Defined broadly as financial investments made with the intention of advancing a foundation's charitable mission while earning a financial return, foundation mission investments can carry below-market-rate or market-rate returns on a risk-adjusted basis.

Program-Related Investments (PRIs) were created by the Ford Foundation in 1968 and defined for private foundations in the Tax Code of 1969 as meeting three criteria: (1) a primary purpose that is charitable, (2) no significant purpose of income generation or capital appreciation, and (3) no purpose of political activity that is prohibited for nonprofit organizations generally. Structured mostly as long-term debt with below market rates of interest on a risk-adjusted basis, private foundations are permitted to count qualifying PRIs against their annual five percent charitable distribution requirement.²³ Although community foundations do not have a charitable distribution requirement, most give away five percent or more of their average assets per year, and an increasing number are using PRIs in a similar fashion as private foundations.²⁴ Health-focused foundations, which can be private or community foundations, are also increasingly using PRI strategies, often to scale successful, health-promoting business models, such as Playworks' supervised recess services for low-income public schools (see Figure 4 and Appendix C).

In order to leverage larger portions of their endowments to advance mission (the so-called "other 95 percent"), more foundations of all types are also making mission investments that carry market rates of expected return on a risk-adjusted basis. Sometimes called Mission-Related Investments or MRIs (a term of art, since MRI is not a regulatory term), these investments meet the same financial hurdles as any conventional foundation investment while also offering social and/or environmental expected returns (Double and/or Triple Bottom Lines, or DBL and TBL, respectively). DBL and TBL investments have tended to be in market-rate, insured deposits with CDFI banks, geographically targeted fixed-income securities, and selected private equity funds, many of which support healthy community goals. For example, CDFI banks may provide SBA-guaranteed loans to minority and other health professionals who set up offices in low- to moderate-income communities. Fixed-income managers may purchase pools of the SBA-guaranteed portion of these loans to create fixed-income securities and provide liquidity to the banks for additional lending. Private equity funds may invest in health-focused businesses, such as Revolution Foods (Figure 4). Other private equity funds such as Pacific Community Ventures support the growth of businesses

23 Private foundations can count qualifying PRIs toward their annual charitable distribution requirement of 5 percent of average assets. While they are obligated to redistribute any repaid PRI principal as new PRIs or grants, this recycles charitable dollars, and foundations may use this feature to set up revolving PRI pools.

24 <http://www.communityphilanthropy.org/downloads/Equity%20Advancing%20Equity%20Full%20Report.pdf>. A few banks also use the term "PRI," generally to refer to long-term, fixed-rate concessionary debt to CDFIs or other community development organizations.

that provide good benefits to low-income workers, and some equity funds support real estate development in low- to moderate-income communities, including both transit-oriented, mixed-income workforce housing, and foreclosure mitigation.

Although direct mission investing in the health sector has been limited to date, there is a 40-year track record of well over \$2 billion in PRI investing in community development sectors that counter the adverse social determinants of health (see Figure 5).²⁵ The investments have generally performed, demonstrating the creditworthiness of a range of sectors that reinforce health in low- to moderate-income communities, from affordable housing and minority small-business lending, to charter school, child care, human service organization, sustainable development, and, most recently, fresh food supermarket finance.

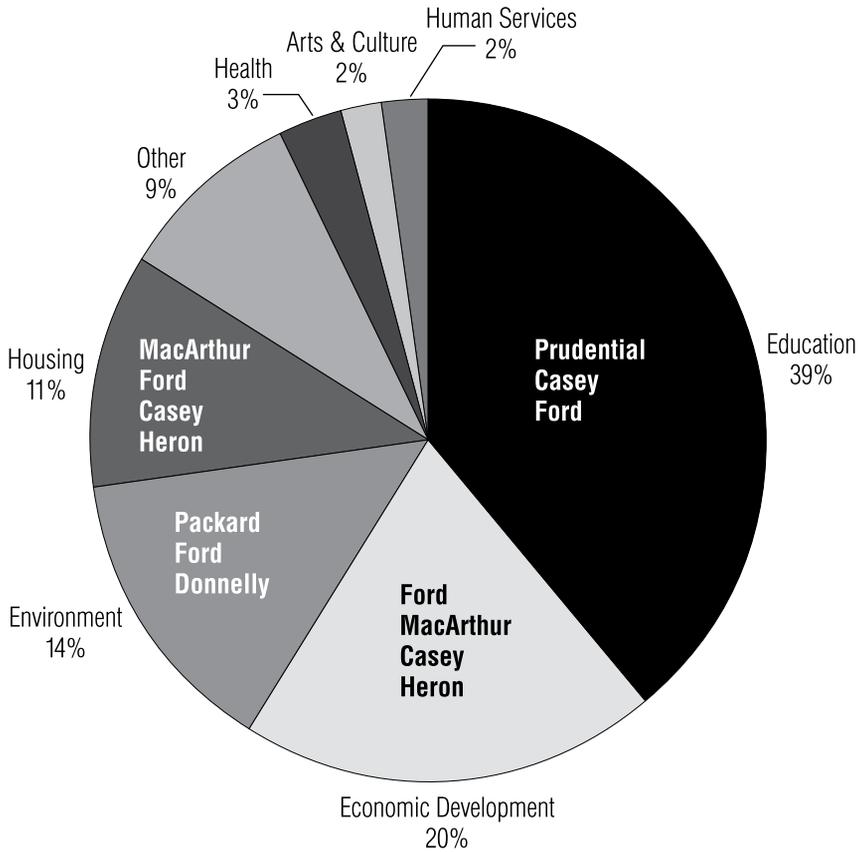
Excluding outliers in the initial years of PRI practice, foundations report repayment rates of 96 percent on mission investing debt over a 40-year period.²⁶ Loss rates have improved with the evolution of due diligence and portfolio monitoring practices by foundations, and particularly as an increasing number of organizations such as CRA-motivated banks and other social investors have chosen to partner with CDFIs and similar specialized entities to execute their mission investing strategies. An industry-wide survey of CDFI intermediaries reported loss rates of under one percent for each year between 2000 and 2006.²⁷ While the current environment presents challenges for all investors, CDFIs have proactively managed the heightened risk. In addition, there are now sophisticated due diligence tools, such as the CDFI Assessment and Rating Service (CARSTTM), and investment partners (including CRA-motivated banks and niche-specialized CDFIs) and services that can assist foundation investors with identification of high performing CDFIs, due diligence, deal structuring, and portfolio monitoring processes.

25 FSG Social Impact Advisors' 2007 retrospective on 40 years of mission investing tracked \$2.3 billion in cumulative investments through 2006, based upon a survey of 92 foundations. Since that time, GPS estimates that foundations originated \$200 million in PRIs per year on average, so that cumulative mission investments now likely exceed \$3 billion. Note that the Education volume in Figure 5 is skewed by one anonymous foundation that anecdotally provided major support for higher education versus K-12 education in low- to moderate-income (LMI) communities. However, an increasing number of foundations are providing PRI financing to intermediaries that finance high-performing charter schools that serve primarily low-income students.

26 FSG Social impact Advisors, 2007.

27 CDFI Data Project, 2007 http://opportunityfinance.net/store/downloads/cdp_fy2007.pdf. Although loss rates were higher in 2007, the CDFI industry has taken extensive measures to manage risk and contain losses. As of June 2009, a survey of CDFIs reported lower charge-offs than at year-end 2008 (1.1 percent at June 30, 2009, versus 1.7 percent at December 31, 2008) and a slowing in the pace of increased delinquencies. CDFI Market Conditions Reports, www.opportunityfinance.org. Despite this generally strong performance, some of the largest foundation and bank investors in CDFIs have extended forbearance on interest and principal for a period of time as they more closely evaluate the challenges that individual CDFIs in their portfolios may be facing due to the adverse economy and tightened credit environment.

Figure 5. Mission Investing Segmentation by Program (2001–2005)²⁸



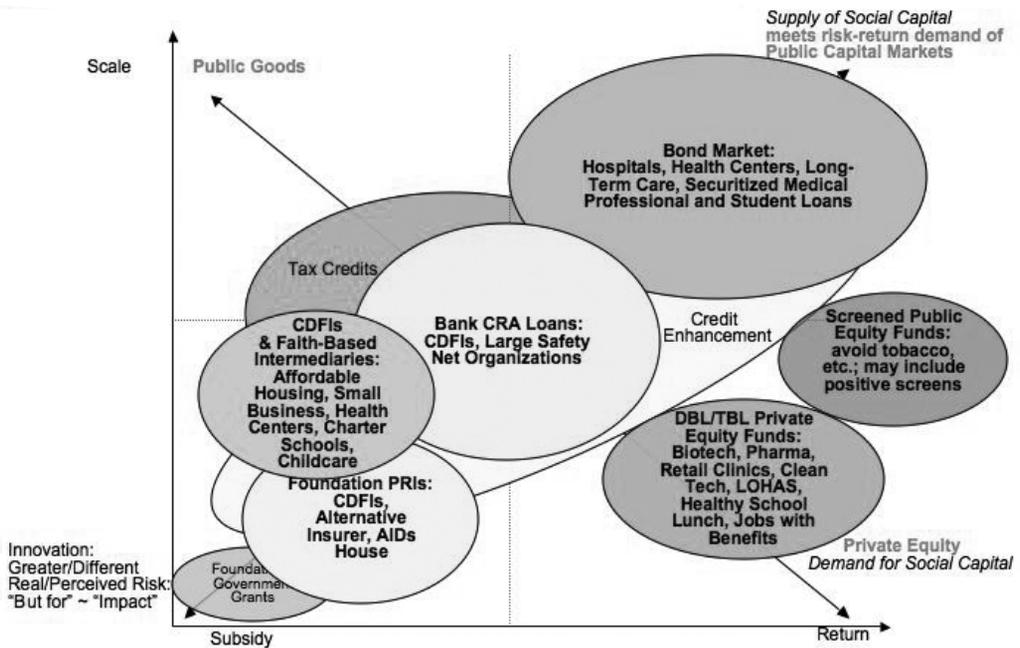
Consistent with their grant making, health-focused foundations currently considering mission investment strategies within the United States focus primarily on health care (financing for community health centers and the supply of health-care professionals in underserved communities), health coverage (alternative insurance, medical savings, and medical debt programs), and healthy community (access to quality child care, education, physical activity, healthy food, and jobs in a sustainable environment).

Given the need to attract large volumes of capital to scale successful initiatives, foundations as well as CDFIs often use PRIs as credit enhancement to leverage investment from the commercial capital markets. Structured as guarantees, subordinated debt, or, in some cases, tax credits that reduce transaction risk for bank or bond lenders, foundations and CDFIs aim

28 FSG Social Impact Advisors, *Compounding Impact*, 2007. <http://www.fsg-impact.org/ideas/item/485>.

to attract a portion of the estimated \$200 trillion in global capital markets (Figure 6).²⁹ In the current environment, when new grant or PRI resources may be limited due to reduced endowments, foundations are increasingly interested in guarantees as a means to leverage their balance sheets for the purpose of mobilizing capital from third-party investors.

Figure 6. Mapping US Health Care Financing Supply & Demand For Health Care, Health Coverage, Healthy Communities³⁰



Key: CDFI – Community Development Financial Institution; LOHAS – Lifestyles of Health and Sustainability; DBL/TBL – Double and/or Triple Bottom Lines of Financial, Social and/or Environmental Return

²⁹ Guarantees are a special form of PRI that can be counted against a private foundation's charitable distribution requirement only if disbursed. Under normal circumstances, a disbursement would imply that the guarantee was called and the underlying loan was in default. However, some foundations disburse funds into reserve accounts for guarantees, counting these disbursed amounts against their charitable distribution requirements.

³⁰ Figure 6 suggests that the supply of grant and below market-rate funds for innovative and early stage projects is very limited and historically has come from the public sector, faith-based investors, philanthropy and CDFIs (who typically raise their capital from these other investors, as well as from CRA motivated banks). As borrowing organizations become more experienced and manage larger projects, they need larger volumes of financing, which they may be able to access from larger, commercial debt markets, particularly if financing structures include credit enhancement. Such financing structures are often sponsored by CDFIs on behalf of their borrowers. The equity markets expect a high level of risk as a matter of course, and increasingly are financing companies with Double Bottom Line and Triple Bottom Line, health-enhancing products. GPS Capital Partners, LLC, 2009.

The Way Forward

Effective collaboration between community development finance and public health requires concerted strategy development, followed by investment from a range of institutional investors representing community development and health interests, including CDFIs and similar intermediaries, government, foundations, banks, and other commercial capital markets investors. Collaboration efforts can benefit from considering the following Strengths, Weaknesses, Opportunities, and Threats (preliminary SWOT analysis):

Strengths:

- A high level of mission commitment within both the community development finance and public health fields, with a focus on vulnerable populations and particularly children in low- to moderate-income and minority communities.
- A growing awareness of shared mission objectives and interest in collaborating, which set the stage for community development finance to develop a “culture of health” and public health to develop a “culture of community development finance.”
- Complementary skills and resources: for community development, this includes skills in identifying and financing high-performing and innovative community organizations, including by aggregating a range of public and private subsidies to credit enhance significant volumes of commercial financing; for public health, this includes a medical framework for defining healthy community, outcome measures that track longitudinal changes in health status and health-care costs among income, ethnic, and geographic groups and access to sector-focused financing sources.

Weaknesses:

- No broad vision for healthy community that specifies the importance of private-sector financial investment has yet been articulated in policy or private initiatives.³¹
- While certain tested healthy community finance models exist, no systematic assessments of demand have been conducted, so there are no estimates of qualified demand. (Demand estimates have been prepared for specific sectors, such as affordable housing, community health centers, and charter schools.)
- Investing in healthy communities requires large investments up front for results that may be difficult to measure in the short term.
- Proposed collaboration between community development finance and public health presents learning curves for each on the other’s delivery systems, business models, agencies, financing sources, and language.

Opportunities:

- Untapped investment potential from a range of mission-driven private investors, including health-focused foundations.

31 Isolated examples exist, such as among the Codman Square Health Center and its partners in Boston.

- One-time federal stimulus funds, a range of which can be leveraged in investments that jump-start health-enhancing projects in low- to moderate-income communities.
- Significant job creation outcomes as a by-product of investment in health-enhancing community services and projects, which allow low- to moderate-income communities to command an increasing share of the nation's more than \$2 trillion in annual medical expense as income to local health centers, related businesses, and health-care workers.
- The health-care-reform debate has raised awareness of the physical and economic effects of the deteriorating health status of Americans, increasing interest in finding community-based and cost-effective ways to prevent disease.

Threats:

- The economy may experience a protracted recovery, limiting the amounts of government and private-sector capital available for investment in healthy communities.
- Ongoing consumer advertising by the range of industries offering products and services that are harmful to health—particularly the high volume of ads that are targeted to children—will continue to jeopardize investments designed to motivate healthier choices. In this regard, community development brings useful lessons about the need for strong regulation and education as parallel strategies with market-driven solutions to social problems.³²
- A new influx of any product, service, or disease that causes widespread health threats (including new strains of illicit drugs or natural pathogens) could create distraction.
- Unclear federal policy goals or weak local policy leadership could prevent the focus needed for the proposed collaborations to be a success.
- Regulations affecting community development financing are in flux, including but not limited to the CRA. This may reduce the willingness of banks and other institutional investors to extend financing for community development projects. A reduction in the number of banks and CRA programs, along with generally tighter credit, also threatens to reduce the supply of capital.

32 The community development finance field was launched in response to redlining, the deliberate withholding of credit by lenders in low- to moderate-income and minority communities. Community development finance offered nonpredatory, asset-building loans and financial services. Predatory providers, however, soon glutted the same markets with products that undermine household financial security. The current lack of nutritious food supplies in low-income communities—leading to their designation as “food deserts”—bears some similarity to financially redlined areas. The concentration of unhealthy food and other products (tobacco, liquor) in these communities, while perhaps not designed as predatory per se, bears parallels to the glut of predatory financial services and threatens residents' human capital as predatory financial services threaten their financial capital. As communities increase access to healthy food through investments in supermarkets, farmers markets, school lunches, and other initiatives, it will be important to maintain efforts to both educate residents about the risks of unhealthy products and curb the availability and advertising of these products.

- Effective community development strategies usually require direct input from and ownership by community members, which often requires a lengthy and potentially costly process.

Perhaps the greatest threat is taking no action to better coordinate community development finance and health-care strategies, given trends of deteriorating health status, which undermine the benefits of traditional community development investments and generate debilitating health-care costs. The good news is that action is already under way. Models of community development finance that promote human development and health have been tested and continue to evolve. Indeed, they and the community development finance organizations that sponsor them may be some of the most valuable assets that are “hiding in plain sight.” An important next step is to ensure that the models and partnerships become better known and more widely applied to scale both the health and economic benefits.

Conclusion

The fields of community development finance and public health can improve poverty alleviation and health outcomes through collaboration focused on financial investments that improve the quality of life for all people who live, work, worship, learn, and play in low- to moderate-income and minority communities.³³ The goals of reducing poverty and improving health outcomes are mutually reinforcing, as both sets of outcomes are enhanced by investments that increase access to quality child care, education, affordable housing, and other local services in a sustainable environment, while producing jobs for local residents.

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33 <http://www.cdc.gov/healthypaces>.

Appendix A: Healthy and Unhealthy Communities³⁴

Unhealthy Community	Healthy Community	Example Community Development Finance Intervention
Unsafe even in daylight	Safe neighborhoods, safe schools, safe walking routes	Foreclosure mitigation strategies are critical at this time to minimize abandoned property, which attracts crime. In addition, mixed-use affordable housing, commercial and facilities developments, including health care centers, bring needed foot traffic to low- to moderate-income communities, and charter schools and child care centers, often as “green” infill development that may offer safe, extended day activities, promote a sense of community and restore derelict sites.
Exposure to toxic air, hazardous waste	Clean air and environment	Use of brownfields, restoration, and green building techniques to retrofit hazardous environments and increased attention to siting of housing, schools, and other projects in areas that are remote from hazardous conditions.
No parks/areas for physical exercise	Well-equipped parks and open spaces/ organized community recreation	Situating of charter school and child care facilities adjacent to parks where possible, with use of parks for recess and other supervised physical activity.
Limited affordable housing is rundown; linked to crime-ridden neighborhoods	High-quality mixed-income housing, both owned and rental	The community development finance field has produced hundreds of thousands of units of affordable housing, including rental and ownership opportunities. It is increasingly using green building techniques that both improve air quality and lower operating costs. As noted, efforts to preserve these developments are critical in the wake of the foreclosure crisis.
Convenience/liquor stores, cigarette and liquor billboards, no grocery store	Well-stocked grocery stores offering nutritious foods	Public-private partnerships such as Pennsylvania’s Fresh Food Financing Initiative and use of creative financing tools such as New Markets Tax Credit are leading to new fresh-food outlets in urban and rural communities.
Streets and sidewalks in disrepair	Clean streets that are easy to navigate	Mixed-income housing developments may replace concentrations of public housing, restoring original street grids to promote pedestrian access to local goods and services.
Burned-out homes, littered streets	Well-kept homes and tree-lined streets	While these factors are typically supported by public dollars, residents tend to maintain and/or invest in the appearance of properties where a range of public and private investors, including community development organizations, are actively involved.

34 “Unhealthy and Health Community Profiles,” RWJF Commission Report; Community Development Finance Activity, GPS Capital Partners, LLC.

<p>No culturally-sensitive community centers, social services, or opportunities to engage with neighbors in community life</p>	<p>Organized multicultural community programs, social services, neighborhood councils, or other opportunities for participation in community life</p>	<p>Many CDFIs have become facilities and cash-flow lenders to nonprofit organizations in order to ensure that quality human services and opportunities for community life are available at the neighborhood level. This includes programs that serve youth, such as YWCAs and Boys & Girls clubs. It also includes faith-based organizations that often anchor community life. Supportive housing is a model in which health and social services are offered on-site for disabled residents, particularly those at risk of repeat visits to emergency rooms. In San Francisco, a network of such housing has reduced costly emergency room visits by residents some 58 percent in the first year. [This result is from San Francisco Department of Public Health's Direct Access to Housing program that provides permanent housing with on-site supportive services for approximately 600 formerly homeless adults, most of whom have concurrent mental health, substance use, and chronic medical conditions. http://www.csh.org/index.cfm?fuseaction=Page.viewPage&pageId=501.]</p>
<p>No local health-care services</p>	<p>Primary care through physicians' offices or health center; school-based health programs.</p>	<p>A small number of community development lenders have become expert in the structuring and financing of community health center facilities and cash-flow needs. Some specialist developers of and lenders to charter schools facilities have indicated interest in incorporating school-based clinics in their facilities designs.</p>
<p>Lack of public transportation, walking or biking paths</p>	<p>Accessible, safe public transportation, walking and bike paths</p>	<p>The "smart growth" segment of community development has led the field in transit-oriented developments. While these are typically public-private partnerships with long planning horizons, they often include mixed-income housing and retail development that brings additional benefits to the community.</p>

Appendix B - Recommendations from the Robert Wood Johnson Foundation Commission³⁵

Recommendation	Commission Rationale and Commentary	Example of CDFI Financing Intervention
<p>1. Ensure that all children have high-quality early developmental support (child care, education, and other services). This will require committing substantial additional resources to meet the early developmental needs particularly of children in low-income families.</p>	<p>Children who do not receive high-quality care, services, and education begin life with a distinct disadvantage and a higher risk of becoming less healthy adults, and evidence is overwhelming that too many children are facing a lifetime of poorer health as a result. Helping every child reach full health potential requires strong support from parents and communities, and must be a top priority for the nation. New resources must be directed to this goal, even at the expense of other national priorities, and must be tied to greater measurement and accountability for impact of new and existing early childhood programs.</p>	<p>CDFIs are leading providers of child-care facilities finance, often incorporating technical assistance on best practices for the design and siting as well as financing of sites. Lack of conveniently located, appropriately designed child-care facilities is a major barrier to meeting the need for additional quality child-care slots, particularly in low- to moderate-income communities.</p>
<p>2. Fund and design WIC and SNAP (Food Stamps) programs to meet the needs of hungry families for nutritious food.</p>	<p>These federal programs must have adequate support to meet the nutritional requirements of all American families in need. More than one in every 10 American households do not have reliable access to enough food, and the foods many families can afford may not add up to a nutritious diet. Nutritious food is a basic need to start and support an active, healthy, and productive life.</p>	<p>CDFIs are increasingly financing supermarkets (see Figure 4 and following) and some CDFIs help to sponsor Farmers Markets that provide fresh food in low- to moderate-income communities. Both venues increasingly accept Food Stamps. CDFIs and similar intermediaries also provide financing to local farmers and sustainable value-added food producers.</p>
<p>3. Create public-private partnerships to open and sustain full-service grocery stores in communities without access to healthful foods.</p>	<p>Many inner city and rural families have no access to healthful foods: for example, Detroit, a city of 139 square miles, has just five grocery stores. Maintaining a nutritious diet is impossible if healthy foods are not available, and it is not realistic to expect food retailers to address the problem without community support and investment. Communities should act now to assess needs to improve access to healthy foods and develop action plans to address deficiencies identified in their assessments.</p>	<p>Pennsylvania's Fresh Food Financing Initiative (FFFI), which partners with the Philadelphia-based CDFI, The Reinvestment Fund, is the model for several supermarket initiatives that increase access to fresh food, provide jobs, and improve the attractiveness of low- to moderate-income urban and rural areas. NCB Community Impact has long financed sustainable food cooperatives.</p>
<p>4. Feed children only healthy foods in schools.</p>	<p>Federal funds should be used exclusively for healthy meals. Schools should eliminate the sale of "junk food," and federal school breakfast and lunch funds should be linked to demonstrated improvements in children's school diets.</p>	<p>New social enterprises such as Revolution Foods provide nutritious breakfasts, lunches and snacks in public schools with financing from double bottom-line equity and debt funds capitalized by bank and foundation investors.</p>

35 Sources: Recommendations and Commentary, RWJF Commission Report; Community Development Finance Examples, GPS Capital Partners, LLC.

Recommendation	Commission Rationale and Commentary	Example of CDFI Financing Intervention
5. Require all schools (K-12) to include time for all children to be physically active every day.	One in five children will be obese by 2010. Children should be active at least one hour each day; only one-third of high-school students currently meet this goal. Schools can help meet this physical activity goal through physical education programs, active recess, after-school and other recreational activities. Education funding should be linked to all children achieving at least half of their daily recommended physical activity at school, and over time should be linked to reductions in childhood obesity rates.	The CDFI, OneCalifornia Bank, provides working capital financing to Playworks with a guarantee from the Robert Wood Johnson Foundation. Playworks provides supervised recess in public schools serving low-income students in several cities, with expansion to additional cities under way.
6. Become a smoke-free nation. Eliminating smoking remains one of the most important contributions to longer, healthier lives.	Progress on many fronts—smoke-free workplaces, clean indoor air ordinances, tobacco tax increases, and effective, affordable quit assistance—demonstrates that this goal is achievable with broad public and private-sector support.	The RWFJ Commission Report suggests that early intervention that provides children with nurturing, stimulating environments and models for healthy behaviors “may be the most effective strategy for improving the health and well-being of our nation.” Boys & Girls Clubs and similar organizations offer still needed tobacco guidance (per the Centers for Disease Control some 20 percent of high school students smoke). CDFIs are a main source of facilities finance for quality child care and youth development facilities nationwide.
7. Create “healthy community” demonstrations to evaluate the effects of a full complement of health-promoting policies and programs.	Demonstrations should integrate and develop successful models that can be widely implemented and that include multiple program approaches and sources of financial support. Each “healthy community” demonstration must bring together leaders and stakeholders from business, government, health care, and nonprofit sectors to work together to plan, implement, and show the impact of the project on the health of the community.	Codman Square Health Center is one example of a health-focused neighborhood revitalization strategy in a low- to moderate-income, minority community, incorporating affordable housing development, financial counseling, and a charter school that prepares students for health careers. CDFIs have provided financing for affordable rental and limited-equity housing projects by the Codman Square Neighborhood Development Center. [http://www.codman.org/ ; http://www.csndc.com/about.php#fp .]

Recommendation	Commission Rationale and Commentary	Example of CDFI Financing Intervention
<p>8. Develop a “health impact” rating for housing and infrastructure projects that reflects the projected effects on community health and provides incentives for projects that earn the rating.</p>	<p>All homes, workplaces, and neighborhoods should be safe and free from health hazards. Communities should mobilize to correct severe physical deficiencies in housing, and health should be built into all efforts to improve housing, particularly in low-income neighborhoods. New federal housing investments should be held accountable to demonstrate health impact.</p>	<p>Enterprise Community Partners’ Green Community Initiative has created a set of building criteria designed to result in high-quality, healthy living environments and reduced utility and maintenance costs associated with single- and multifamily housing, among other goals. The Triple Bottom Line Collaborative articulates broad criteria for projects that advance community equity, economic and environmental goals (see Appendix D). [http://www.greencommunitiesonline.org/about/mission.asp, http://tripleblc.ning.com.]</p>
<p>9. Integrate safety and wellness into every aspect of community life.</p>	<p>While much remains to be done to create safe and health-promoting environments, many schools, workplaces, and communities have shown the way, with education and incentives for individuals, employers, and institutions and by fostering support for safety and health in schools, workplaces, and neighborhoods. Funding should go only to organizations and communities that implement successful approaches and are willing to be held accountable for achieving measurable improvements in health.</p>	<p>The CDFI’s emerging focus on human development and health and its ongoing application of sustainable development and “smart growth” practices support this goal.</p>
<p>10. Ensure that decision-makers in all sectors have the evidence they need to build health into public and private policies and practices.</p>	<p>Decision-makers at national, state, and local levels must have reliable data on health status, disparities, and the effects of social determinants of health. Approaches to monitor these data at the local level must be developed by, for example, adapting ongoing tracking systems. Funding must be available to promote research to understand these health effects and to promote the application of findings to decision-makers.</p>	<p>Many CDFIs already report outputs to the federal CDFI Fund and other investors, and a number prepare analyses to better convey their health and other social impact. CDFIs can benefit from partnering with the health sector, which has significant longitudinal and demographic health status and health-care-cost tracking systems in place. [See CDFI Data Project, 2007 http://opportunityfinance.net/store/downloads/cdp_fy2007.pdf.]</p>

Appendix C - Healthy Community Investment Structure and Impact

Example of Investee and Use of Proceeds	Possible Structure	Credit Enhancement, Tax Credit, or Subsidy	Example of Nonbank Investors
Health Care			
Federally Qualified Health Center or "Look-Alike" Facility Provides community-based care and medical home for coordinated care of chronic disease	Direct loan to health center Loan to CDFI or similar intermediary that lends to health centers	Facilities: New Market Tax Credit; USDA and HRSA guarantees; foundation subordinated loans, guarantees or grants	MetLife Kresge Foundation Rhode Island Foundation California Community Foundation Bank of America
Federally Qualified Health Center or "Look-Alike" Working Capital Enables expansion or continuous service during reimbursement delays	Direct loan to health center Loan to CDFI or similar intermediary that lends to health centers	Foundation subordinated loans, guarantees or grants	New Hampshire Charitable Foundation investment in NCB Capital Impact
Health Coverage			
Nonprofit-Sponsored Insurance Company Provides affordable insurance for freelance workers in New York and selected states.	Long-term, low-interest loan to nonprofit insurance company sponsor, which it invests as equity in insurance company subsidiary	Foundation grants	Ford Foundation New York State Health Foundation Prudential Social Investments New York City Investment Fund
Family Economic Security: Bank or Credit Union; typically a CDFI Promotes household savings and use of Earned Income and Child Care Tax Credits; provides nonpredatory household, business, and nonprofit organization finance	Market- or below-market-rate certificates of deposit, which can fuel general lending by the depository, or trigger or serve as a guarantee for particular loans by the depository	Foundation guarantees of bank or credit union loan(s) to selected borrower(s), such as nonprofit organizations in a particular sector. For enhanced deposit insurance: CDARS, a bank service that extends FDIC insurance up to \$50 million per depositor National Federation of Community Development Credit Unions' nominee accounts, which extend the amount of federal deposit insurance available per credit union depositor	Annie E. Casey Foundation F.B. Heron Foundation WK Kellogg Foundation John D. and Catherine T. MacArthur Foundation

Example of Investee and Use of Proceeds	Possible Structure	Credit Enhancement, Tax Credit, or Subsidy	Example of Nonbank Investors
<p>Healthy Communities</p> <p>Obesity Prevention: For-profit healthy food vendor to schools</p> <p>Provides nutritious breakfasts, lunches and snacks in public schools where childhood obesity is a high risk</p>	<p>Equity investment via private equity fund</p> <p>Working capital line of credit via intermediary</p>	<p>Private equity fund works with portfolio companies to identify local government subsidies for hiring of workers from low- to moderate-income areas or accessing space at below market- rental rates.</p>	<p>W.K. Kellogg Foundation</p> <p>Annie E. Casey Foundation</p> <p>Bay Area Equity Fund. [Revolution Foods had initial investment from the Bay Area Equity Fund I, whose nonbank investors include the F.B. Heron Foundation, Ford Foundation, John D. and Catherine T. MacArthur Foundation, Sand Hill Foundation, Peninsula Community Foundation (now Silicon Valley Foundation) and Annie E. Casey Foundation, as well as Catholic Healthcare West, Contra Costa Employees' Retirement Association, California State Automobile Association, and several insurance companies.]</p>
<p>Education: Nonprofit provider of structured recess in low-income public schools</p> <p>Provides daily, safe physical activity emphasizing team play, which also reinforces fitness</p>	<p>Working capital line of credit from local CDFI bank, which is guaranteed by foundation deposit in the bank. [Some guarantees can be secured by unfunded pledge of assets.]</p>	<p>Foundation guarantees working capital loan, which subsidizes interest rate on bank debt to nonprofit borrower</p>	<p>Robert Wood Johnson Foundation</p>
<p>Education: Charter School or Charter Management Organization</p> <p>High performing charter schools and charter management organizations provide improved educational outcomes, and better educational outcomes are correlated with better health outcomes. Charter facilities also often incorporate green, healthy building techniques.</p>	<p>Subordinated debt or guarantee for facilities financing by CDFIs, banks or the bond market</p>	<p>Federal Department of Education Credit Enhancement for Charter Schools Facilities</p> <p>New Market Tax Credit</p> <p>USDA guarantees for rural charter schools</p> <p>Foundation subordinated loans, guarantees or grants</p>	<p>Prudential Foundation</p> <p>Walton Foundation</p> <p>Annie E. Casey Foundation</p> <p>The Broad Foundation</p> <p>Bill & Melinda Gates Foundation</p>

Example of Investee and Use of Proceeds	Possible Structure	Credit Enhancement, Tax Credit, or Subsidy	Example of Nonbank Investors
<p>Housing:</p> <p>Improved health outcomes are linked with safe and services enriched housing in urban, rural and reservation communities, including for the disabled and farm workers and their families. Achieving housing stability also calls for foreclosure prevention, where possible.</p>	<p>Subordinated and senior debt for all phases of housing development: predevelopment, construction and permanent mortgage</p>	<p>Low Income Housing Tax Credit USDA Rural Rental Housing Indian Housing Loan Guarantee Federal Housing Administration HOME National Stabilization Program</p>	<p>John D. and Catherine T. MacArthur Foundation Annie E. Casey Foundation F.B. Heron Foundation Ford Foundation Rockefeller Foundation The California Endowment</p>

Appendix D: Balancing Environmental, Economic and Health Concerns in Urban and Rural America

Investing in healthy communities can take many forms—from financing toxin-free housing to financing facilities that house quality child care, education and health care, to financing businesses that operate to restore or sustain a healthy environment. Often a higher initial investment is needed to install sustainable and energy efficient design elements for buildings or agriculture. These investments maintain the safety and productivity of natural resources that support rural economies. They also lower both environment toxins and ongoing energy use and other operating expense affecting all economies. As such, they are critical investments for low-income urban and rural communities.

The health risks in rural environments can be extremely severe, yet easily overlooked given the pressing problems of larger, urban communities. For example, migrant farm workers are among the most disadvantaged, medically indigent persons and have the poorest health of any group in the United States. The infant mortality rate among migrants is 125 percent higher than the general population, and the life expectancy of migrant farm workers is 49 (compared to the national average 75 years).³⁶ Toxicity from pesticides, physical straining and equipment risks are particularly high for migrant farm workers. Weather- and equipment-related risks are high for other rural occupations, such as fishing, logging and farming and ranching, which ranked first, second and sixth among the 10 most dangerous jobs in the United States reported by the Bureau of Labor Statistics in 2009.³⁷

CDFIs have been investing to mitigate the special risks of rural communities for decades. As examples, Sacramento-based Rural Community Assistance Corporation, founded in 1978, continues to be a leader in financing safe migrant farm worker housing, as well as rural facilities and infrastructure. Community and Shelter Assistance Corporation of Oregon (CASA), founded in 1988, continues to finance a high volume of migrant worker housing and to provide asset building financial services.³⁸

More recently, CDFIs throughout the nation are pursuing triple bottom line (TBL) financing strategies to stimulate local economies that restore or sustain the environment while promoting community wealth building (equity) and generating a financial return. As described by the Triple Bottom Line Collaborative (TBLC), elements of the approach include a commitment to delivering capital with triple-E impacts (economy, environment and equity), willingness to work with business borrowers and commitment to measuring and quanti-

36 Health conditions of migrant farm workers can be improved through not only safe housing structures but also through learned behaviors that promote a healthy home environment, such as removing pesticide-ridden shoes before entering one's home. <http://www.ohsu.edu/croet/aghealth/family.html>

37 <http://www.classesandcareers.com/education/2009/09/25/2009s-10-most-dangerous-jobs/>

38 <http://www.rcac.org/>, <http://www.casaoforegon.org>

fyng the mission outcomes of investments (TBL Scorecard).³⁹ TBLC members include Coastal Enterprises, Inc., Four Directions Development Corporation, Montana Community Development Corporation, Mountain Association for Community Economic Development, Natural Capital Investment Fund, Northern Initiatives, Self-Help, ShoreBank Enterprise Cascadia, and Southern Mutual Help Association, Inc.

There are tensions inherent in the TBL approach. As described by TBLC member, ShoreBank Enterprise Cascadia, “Poverty trumps the environment . . . People struggling for solvency make decisions that solve the crisis at hand. Therefore, an honest long-term commitment to a triple bottom line demands an institutional commitment to delivering economic opportunity that follows directly from environmental well-being. CDFIs—formed in response to the crisis of limited investment engines for distressed communities—are a natural responder to structural environmental issues that threaten economic security.”⁴⁰ In practice, and increasingly in urban as well as rural communities, CDFIs are applying the TBL approach by investing in diverse natural resources, real estate, community facilities, affordable housing and related community development enterprises with three criteria in mind:

- Economic feasibility, or financial merits of the project;
- Equity contribution of the project to individuals and families in the form of good wages, local ownership of resources (businesses or property) and asset creating opportunities;
- Benefits and effects of the project’s operations, products, services, supply chain and related policies and practices on the environment.⁴¹

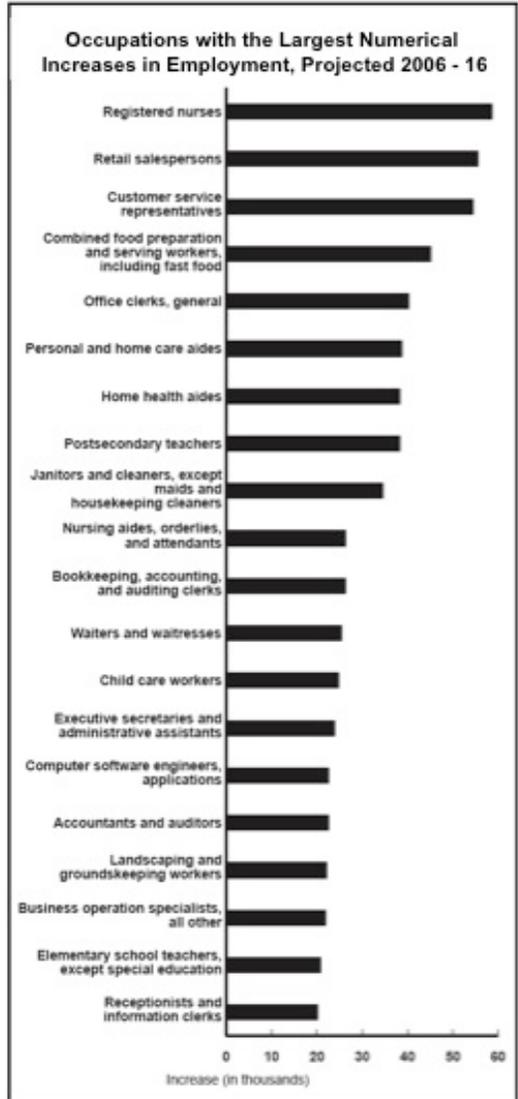
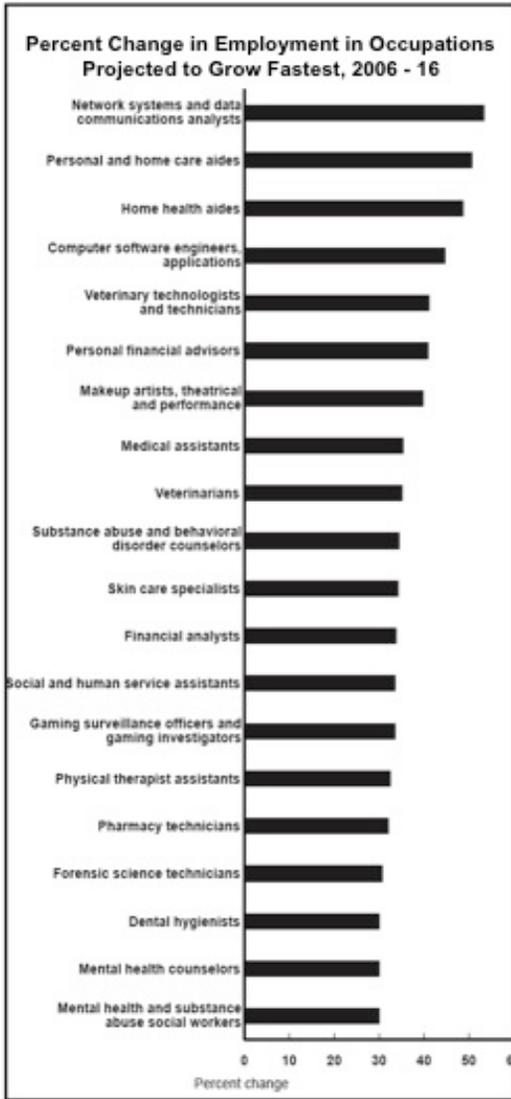
TBLC members apply these principles to financing services that promote community health and well-being—child care, education, health care and social services—along with business. Considering the demonstrated, increased risks to health from a contaminated environment, the comprehensive TBL approach offers great promise as a strategy to create healthier communities and residents for the long-term.

39 Other elements of the approach include: desire to apply the principles to the CDFI’s own operations, conviction that TBL financing is an important business opportunity for CDFIs and committed to forging related capital, policy and R&D initiatives. <http://tripleblc.ning.com/forum/topics/tblc-at-ofn-2008>.

40 ShoreBank Enterprise Cascadia. Measure What Matters: ShoreBank Enterprise Cascadia’s Commitment to Triple-Bottom-Line Metrics <http://www.sbpac.com>. ShoreBank Corporation has a broad commitment to triple bottom line investing under which it has disbursed more than \$1 billion in sustainable financing through bank and nonbank affiliates since 2000.

41 Ibid.

Appendix E: Jobs Growth Outlook by Sector⁴²



42 U.S. Department of Labor, <http://www.bls.gov/oco/oco2003.htm> (last updated May 13, 2009).

Judging the Aesthetics of Billboards

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The signboards upon which this class of advertisements are displayed are constant menaces to the public safety and welfare of the city; they endanger the public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants. They are also inartistic and unsightly.

In cases of fire they often cause their spread and constitute barriers against their extinction; and in cases of high wind, their temporary character, frail structure and broad surface, render them liable to be blown down and to fall upon and injure those who may happen to be in their vicinity. The evidence shows and common observation teaches us that the ground in the rear thereof is being constantly used as privies and the dumping ground for all kinds of waste and deleterious matters, and thereby creating public nuisances and jeopardizing public health; the evidence also shows that behind these obstructions the lowest form of prostitution and other acts of immorality are frequently carried on, almost under public gaze; they offer shelter and concealment for the criminal while lying in wait for his victim; and last, but not least, they obstruct the light, sunshine and air, which are so conducive to health and comfort.

— *St. Louis Gunning Advertisement Co. v. City of St. Louis* (1911)¹

I. INTRODUCTION

Advertising billboards have occupied a highly visible and quite controversial place in American life for well over a century. Billboards are designed to convey commercial messages to public passers-by, and they employ size, bright colors, catchy slogans, and sometimes lights and moving parts to do so.² Because billboards visually impact their surroundings and are “designed to compel attention,” as one court put it,³ throughout their history these outdoor

¹ 137 S.W. 929, 942 (Mo. 1911).

² Contemporary billboards are steel frames on which large paper or plastic signs are placed as advertisements. A hundred years ago, outdoor advertisements were often painted or plastered directly onto fences and walls, and boards purposefully designed as billboards were wooden and often rickety. Billboards are distinguished from *signs* in that signs identify on-site businesses, whereas billboards advertise products or businesses found elsewhere. HUGH AGNEW, *OUTDOOR ADVERTISING* 9-11 (1938).

³ *Gen. Outdoor Adver. Co. v. Dep't of Pub. Works*, 193 N.E. 799, 808 (Mass. 1935) (“Billboards are designed to compel attention. The advertising matter displayed upon them in words, pictures or devices, is conspicuous, obtrusive and ostentatious, being designed to intrude forcefully and persistently upon the observation and attention of all who come within the range of clear normal vision.”). The advertising industry is forthright in seeking this effect. An early how-to manual for outdoor advertisers, in explaining the advantage of outdoor advertising over magazine and newspaper publishing, said the following:

Posting has many advantages over other forms of advertising. First may be mentioned the large display which it makes possible, and its consequent conspicuousness. You simply cannot get away from it, and, consciously or otherwise, it burns its way into the mind through an ever alert vision. It appeals to masses and classes—to everyone who passes.

GEORGE H.E. HAWKINS, *POSTER ADVERTISING* 7 (1910), *available at* <http://scriptorium.lib.duke.edu/dynaweb/ea/printlit/q0039/>.

advertisements have been denounced as ugly, overbearing, intrusive—even dangerous and immoral, as illustrated by the *St. Louis Gunning* opinion. Since the turn of the twentieth century, Americans have been hard at work enacting legislative restrictions on the size, appearance, and location of billboards, or seeking to ban them altogether. At the same time, outdoor advertising companies and property owners have brought hundreds of federal and state lawsuits to defend their right to advertise outdoors. Historically, billboard plaintiffs have argued that legislative restrictions exceed the permissible scope of regulation and unconstitutionally deprive them of their private property; more recently, advertisers have also argued that billboards are protected on free speech grounds.

In the earliest billboard cases, courts sometimes struck down municipal ordinances which restricted outdoor advertising, deferring to the private property rights of landowners and advertisers. Courts soon began to uphold increasingly broad regulations, however, based on increasingly deferential rationales. Judges initially sustained billboard regulations under the spurious pretext of health and safety concerns such as fire safety or fear of crime, as illustrated by *St. Louis Gunning*, even though billboard ordinances have always been motivated by aesthetic dislike of outdoor advertising.⁴ Only later were courts willing to openly accept aesthetics as a valid basis for regulating billboards.⁵ By upholding steadily more restrictive billboard laws,

⁴ As one judge noted in 1941,

Various regulations of outdoor advertising, such as sign boards along the highways, have been upheld upon the somewhat tenuous ground that they affected in some way the public health, morals or safety when as a matter of fact I believe that in most cases the purpose behind the statute was mainly the protection of what might be called the right of view of the natural beauty of the surrounding country.

Hav-a-Tampa Cigar Co. v. Johnson, 5 So. 2d 433, 439 (Fla. 1941) (Brown, C.J., concurring).

⁵ A court remarked on this trend in 1930: “Under a liberalized construction of the general welfare purposes of state and federal constitutions, there is a trend in the modern decisions (which we approve) to foster, under the police power, an aesthetic and cultural side of municipal development” *Gen. Outdoor Adver. Co. v. Indianapolis*, 172 N.E. 309, 312 (Ind. 1930). See generally *infra* § III(C).

culminating in the acceptance of aesthetically-motivated regulations, judges thereby came into consensus with growing public dislike of outdoor advertising.

This Note presents a cultural and judicial history of billboard regulation in the United States, with particular emphasis on how judges and the public have perceived the aesthetic qualities of billboards.⁶ Perhaps unsurprisingly, the American public has consistently found outdoor advertising to be intrusive, ugly, crassly commercial, and a taint on nature.⁷ The story of billboards in America is thus characterized by an ongoing struggle between a profit-seeking industry and a resistant public. That struggle has played out in the political arena, where municipal, state, and federal legislators have enacted increasingly restrictive billboard laws; in the courts, where the industry has consistently challenged the regulatory tide; and in broader public discourse, where billboard detractors and advocates argue over the merit of outdoor advertising.

This Note focuses on the struggle in the courts, where outdoor advertisers have vigorously challenged restrictive regulations for over a century. This stream of litigation has kept judges squarely in the middle of the public struggle between the public and the outdoor advertising industry. This Note applies the judicial history of billboards to illustrate the broader question of the judicial system's relationship with public opinion. In particular, this Note

⁶ Other issues, such as the role of the First Amendment in billboard jurisprudence, also arise but are not the principal focus of this work. Most contemporary scholarship on billboards has focused on free speech considerations, in response to the emergence of this issue in contemporary billboard regulation, but this Note is more historical in focus. For more on billboards and the First Amendment, see *infra* § IV.

⁷ This conclusion that billboards have always been unpopular with the American public is based on public opinion polls, *infra* notes 60, 297-98, newspaper editorials, *infra* note 52, civic activism, *infra* notes 51-59, and scholarly discussion of this topic, *see, e.g., infra* notes 179-84 (discussing architects' criticisms of billboards). Public opinion on this topic can also be inferred from a century of legislative efforts to regulate outdoor signs. *See, e.g., infra* § III(B) (discussing the federal Highway Beautification Act of 1965). That said, there is some evidence that Americans have not been uniformly opposed to outdoor advertising. *Infra* note 305 (discussing contrary opinion surveys); *infra* note 183 (discussing contrary evidence). To some extent the resolution of this question is constrained by scant historical evidence about *popular* (as opposed to elite) opinion on this subject, although this Note accepts elite opinion as a proxy for broader public opinion, to some extent. *Infra* note 61 and accompanying text (discussing this issue). Overall, the author concludes that the balance of evidence demonstrates that a majority of Americans has always disliked billboards.

focuses on how the evolving legal standards which judges have applied to billboards have generally coincided with public desire to regulate the medium. As we shall see, the judiciary has generally acquiesced to majority public sentiment in upholding the regulation of outdoor advertising.⁸

The body of this Note is divided into three parts, corresponding to the emergence of billboard advertising and consequent regulation and litigation; the heyday of billboard regulation in the courts; and the more nuanced era of contemporary regulation. Part II describes how modern outdoor advertising came into being at the turn of the twentieth century: the industry flourished by advertising consumer products of the newly emerging mass-market economy, but the unregulated oversaturation of urban billboards quickly prompted public outcry and resulting municipal controls. After initially ruling in favor of advertisers' private property rights, courts soon began to endorse municipal billboard regulations under an expanding municipal "police power" authority.

Americans have been particularly resistant to billboards since they spread to highways and the countryside, where their aesthetic impact on their surroundings is particularly great.⁹ Part III examines billboard regulation in the highway era, showing how the industry responded to public disapproval through professionalization and self-regulation; how continued disapproval eventually led to the federal Highway Beautification Act; and how courts mirrored public dislike of billboards by upholding increasingly broad regulations, often conveying very unflattering

⁸ Like most scholarship on billboard law, this Note focuses on the judicial rather than legislative history of billboards. Legislatures do play an important role in the relationship described in this paper between courts and the public, since legal disputes over outdoor advertising almost always arise from legislative enactments, and judges are therefore constrained by the parameters of the laws which they adjudicate. Nevertheless, choosing to downplay the role of legislatures in this Note simplifies the analysis and brings the relationship between courts and public opinion to the forefront.

⁹ Most broadly, this resistance reflects a deep-seated pastoral tradition in American culture, which perceives human civilization as a corruption of pristine nature. CATHERINE GUDIS, BUYWAYS 213 (2004); Holly Doremus, *The Rhetoric and Reality of Nature Protection: Toward a New Discourse*, 57 WASH. & LEE L. REV. 11, 24-32 (2000); see also *supra* § III(B) (discussing public perception of highway billboards).

impressions of billboards in the process. The scope of billboard laws expanded during this period, from initially modest citywide ordinances to a nationwide ban on billboards next to federal highways. This remarkable regulatory growth was enabled by the judiciary's liberalized attitude toward aesthetic rationales for legislation.

Part IV explores how the emerging doctrine of First Amendment protection for commercial speech has since shifted the legal precedent back toward advertisers' favor. This modern era began in 1981 with the Supreme Court's momentous decision in *Metromedia, Inc. v. City of San Diego*,¹⁰ where the Court first rejected a billboard law because it restricted advertisers' and bystanders' free speech rights. The decision was a substantial setback for billboard opponents. Some opinions have since acknowledged billboards' aesthetic harm and susceptibility to regulation but nevertheless have found regulations unconstitutional on free speech grounds. Regulatory efforts continue to expand, however, despite the legal setback, while the outdoor advertising industry continues its steady growth and record profitability.

The judicial and cultural history of billboard regulation lends itself to two general themes. As a descriptive matter, the history of billboards illustrates a broader phenomenon in land use and local government law, namely the expansion of municipal police power to include regulations that are explicitly motivated by aesthetic goals. Many scholars have written on this trend toward aesthetic regulation, both as it applies to billboards¹¹ and more generally.¹² In the

¹⁰ 453 U.S. 490 (1981).

¹¹ The most recent discussion of billboard law is Jacob Loshin, Note, *Property in the Horizon: The Theory and Practice of Sign and Billboard Regulation*, 30 ENVIRONS ENVTL. L. & POL'Y J. 103 (2006). Most of the scholarship on billboards, which dates back a full century, has focused on summarizing the case law on billboard regulation and predicting its evolution toward increasing acceptance of aesthetic regulation. This Note presents that history within a broader historical context, linking the judicial and cultural history of billboards to suggest historical reasons *why* aesthetic regulation of billboards likely emerged. For previous discussions of the aesthetic regulation of billboards, organized in chronological order, see Everett L. Millard, *Present Legal Aspect of the Billboard Problem*, 11 ILL. L. REV. 29 (1916); Chauncey Shafter Goodrich, *Billboard Regulation and the Aesthetic Viewpoint with Reference to California Highways*, 17 CAL. L. REV. 120 (1928); Chauncey Shafter Goodrich, *Billboard Regulation and the Aesthetic Viewpoint with Reference to California Highways (Concluded)*, 17 CAL. L. REV. 214 (1929); H.S.V.S.,

nineteenth and early twentieth century, courts held that municipal authority to enact laws which affect individual rights must be closely linked to health and safety rationales. That authority gradually expanded and became more permissive, such that aesthetic goals such as reducing visual clutter or preserving scenic beauty were eventually upheld as valid governmental objectives. Billboard regulations have always been motivated by the sense that outdoor advertising is ugly and a nuisance, but turn-of-the-century judges found the promotion of beauty to be too vague and subjective a standard to justify restrictions on the use of private property.

Second, the cultural history of billboards illustrates the fact that courts upheld increasingly broad billboard regulations within a historical context that pressured them to act. The regulatory authority of legislatures expanded while American society was undergoing a

The Present Trend in Billboard Regulation, 1 ALB. L. REV. 105 (1931); Henry W. Proffitt, *Public Esthetics and the Billboard*, 16 CORNELL L.Q. 151 (1931); George K. Gardner, Note, *The Massachusetts Billboard Decision*, 49 HARV. L. REV. 869 (1936); Ruth I. Wilson, *Billboards and the Right to be Seen from the Highway*, 30 GEO. L.J. 723 (1942); Dennis H. Willms, Comment, *Municipal Corporations—Regulation of Billboards and Advertising Structures for Esthetic Purposes*, 35 MARQ. L. REV. 365 (1952); Thomas Gilliam, *The Case for Billboard Control: Precedent and Prediction*, 36 DICTA 461 (1959); Frank Barkofski, Comment, *Regulation of Outdoor Advertising for Aesthetic Reasons: A Jurisprudential View*, 6 ST. LOUIS U. L.J. 534 (1960); Marvin M. Moore, *Regulation of Outdoor Advertising for Aesthetic Purposes*, 8 ST. LOUIS U. L.J. 191 (1963); David J. Miller, Note, *Aesthetic Zoning: An Answer to Billboard Blight*, 19 SYRACUSE L. REV. 87 (1967); Robert W. Pearson, Comment, *Billboard Laws Today—Reaction or Solution?*, 24 BAYLOR L. REV. 86 (1972); Richard Sutton, Note, *Billboard Regulations, and Aesthetics*, 21 CLEV. ST. L. REV. 194 (1972); John T. Lucking, Note, *The Regulation of Outdoor Advertising: Past, Present and Future*, 6 ENVTL. AFF. 179 (1977); Susan Peters, Comment, *The Truth About Beauty: The Changing Role of Aesthetics in Billboard Legislation*, 9 ENVTL. L. 113 (1978); Ronald G. Aronovsky, *Metromedia, Inc. v. City of San Diego: Aesthetics, the First Amendment, and the Realities of Billboard Control*, 9 ECOLOGY L.Q. 295 (1981); Charles F. Floyd, *Billboards, Aesthetics and the Police Power: Legislative Developments Have Largely Negated Judicial Gains by Scenic Beauty Proponents*, 42 AM. J. OF ECON. & SOCIOLOGY 369 (1983); James Lynch, Comment, *The Federal Highway Beautification Act After Metromedia*, 35 EMORY L.J. 419 (1986); R. Douglass Bond, Note, *Making Sense of Billboard Law: Justifying Prohibitions and Exemptions*, 88 MICH. L. REV. 2482 (1990); Katherine Dunn Parsons, Comment, *Billboard Regulation After Metromedia and Lucas*, 31 HOUS. L. REV. 1555 (1995); M. Ryan Calo, Note, *Scylla or Charybdis: Navigating the Jurisprudence of Visual Clutter*, 103 MICH. L. REV. 1877 (2005).

¹² For scholarly discussion of aesthetic regulation more generally, see, for example, ROBERT M. ANDERSON, *AMERICAN LAW OF ZONING* 3d §16 (1986); DANIEL R. MANDELKER, *LAND USE LAW* §11 (5th ed. 2003); Newman F. Baker, *Aesthetic Zoning Regulations*, 25 MICH. L. REV. 124 (1926); Mark Bobrowski, *Scenic Landscape Protection Under the Police Power*, 22 B.C. ENVTL. AFF. L. REV. 697 (1995); Henry P. Chandler, *The Attitude of the Law Toward Beauty*, 8 A.B.A. J. 470 (1922); John J. Costonis, *Law and Aesthetics: A Critique and a Reformulation of the Dilemmas*, 80 MICH. L. REV. 355 (1981); J. J. Dukeminier, Jr., *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW AND CONTEMP. PROBS. 218 (1955); Wilbur Larremore, *Public Aesthetics*, 20 HARV. L. REV. 35 (1906); Clinton Rodda, *The Accomplishment of Aesthetic Purposes Under the Police Power*, 27 S. CAL. L. REV. 149 (1953).

rapid and tumultuous transition from an agrarian economy to an urbanized industrial power. Pervasive outdoor advertising was indicative of the emerging nationalized consumer culture in turn-of-the-century America.¹³ As with many new phenomena in this tumultuous period, billboards were treated ambivalently by the American public. The saturation of oppressive and irritating billboards was particularly complicated because it reflected a broader cultural unease with the emerging consumerism.¹⁴ Whether consciously or not, judges expanded the applicable legal doctrines to accommodate public dislike of outdoor advertising. The particular legal mechanism which allowed this expanding regulatory standard was the police power, an open-ended legal doctrine that inherently accommodated evolving social values. In this way, the judicial history of expanding acceptance of billboard regulation mirrored the cultural history of increasing public desire to regulate.

Judicial opinions are insightful cultural artifacts, conveying legal information but also hinting at the social values of the historical eras in which the opinions were written, particularly the social values of the judges that wrote them. Michael Klarman endorses this inquiry into the cultural element of judging when he writes that “In the absence of determinate law, constitutional interpretation necessarily implicates the values of judges, which themselves generally reflect broader social attitudes.”¹⁵ This Note presents cultural and legal evidence, centered on the historical correlation between public dislike of billboards and judicial deference

¹³ See generally STUART EWEN, CAPTAINS OF CONSCIOUSNESS: ADVERTISING AND THE SOCIAL ROOTS OF THE CONSUMER CULTURE (1976); JACKSON LEARS, FABLES OF ABUNDANCE: A CULTURAL HISTORY OF ADVERTISING IN AMERICA (1994); ROLAND MARCHAND, ADVERTISING THE AMERICAN DREAM: MAKING WAY FOR MODERNITY, 1920-1940, at 1-2 (1985) (explaining that advertisers facilitated economic modernization by popularizing consumer goods); JAMES D. NORRIS, ADVERTISING AND THE TRANSFORMATION OF AMERICAN SOCIETY, 1865-1920 (1990).

¹⁴ As one commentator stated in 1936, “[T]he attempt to fill the people’s leisure hours with advertisements is merely an attempt to bind them to the service of a manufacturing scheme.” Gardner, *supra* note 11, at 902.

¹⁵ MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 5-6 (2004). It is important to remember, of course, that legal opinions are not intended and should not be primarily viewed as reflective of judges’ *personal* opinions, though judges’ cultural viewpoint inevitably informs their decisionmaking.

to regulation, to support the argument that the judiciary reacted to and endorsed a broad cultural disdain for outdoor advertising.

This conclusion about billboards, in turn, reflects recent scholarship on the longstanding debate over the allegedly undemocratic (or “countermajoritarian”) nature of the judiciary. Historically many scholars have worried that courts reflect elite rather than popular opinion, with troubling implications for American democracy,¹⁶ but a handful of modern authors have persuasively challenged that theory. Barry Friedman argues that, in fact, “[T]here is a substantial congruity between popular opinion and the decisions of constitutional judges.”¹⁷ Michael Klarman agrees that “Judges are part of contemporary culture, and they rarely hold views that deviate far from public opinion.”¹⁸ These authors note that courts’ majoritarianism is partly due to the political limitations of the judicial branch. As one article recently observed of the Supreme Court, “Although the Supreme Court is ostensibly immune to the ebbs and flows of public opinion, most observers agree that it must enjoy a reasonable measure of public support or risk losing the legitimacy that undergirds its decisions.”¹⁹ The majoritarian thesis is premised on a legal-realist approach to the law, emphasizing the actual rather than idealized basis of legal

¹⁶ See, e.g., ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AND THE BAR OF POLITICS* 16 (1962) (“The root difficulty is that judicial review is a counter-majoritarian force in our system.”), cited by Barry Friedman, *Marbury in the Modern Era: Mediated Popular Constitutionalism*, 101 MICH. L. REV. 2596, 2596 n.3 (2003).

¹⁷ Friedman, *supra* note 16, at 2598. “Mediated popular constitutionalism” is Friedman’s theory that the process of judicial review is much more reflective of public opinion, and more responsive to it, than commonly argued in the longstanding countermajoritarian thesis. See *id.* Friedman also describes judicial review as a “dialogue” between courts and the public, emphasizing the fact that our judicial system plays an interactive role in public discourse. Barry Friedman, *Dialogue and Judicial Review*, 91 MICH. L. REV. 577, 653-55, 668-80 (1993). The history of billboard regulation illustrates this close relationship between courts and the public.

¹⁸ KLARMAN, *supra* note 15, at 6. G. Edward White describes judges’ majoritarianism in terms of limitations imposed upon them by their cultural circumstances: “I continue to think that judges are significantly constrained in their decision-making . . . because they are, like other actors in a culture at a phase in its history, imprisoned by the unexpressed but deeply held premises that set the boundaries of an ideological agenda.” G. EDWARD WHITE, *THE AMERICAN JUDICIAL TRADITION* xxv (3d ed. 2007).

¹⁹ John M. Scheb II & William Lyons, *Public Perceptions of the Supreme Court in the 1990s*, 82 JUDICATURE 66, 66 (1998); cf. Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy Maker*, 6 J. PUB. L. 279 (1957) (arguing that the Supreme Court is a political—i.e. *politicized*—institution).

decision-making, including judges' personal judgment and their impression of the public interest.²⁰ This realistic and pragmatic view of the law can be traced to Oliver Wendell Holmes, the famous Supreme Court justice and author of *The Common Law*,²¹ who argued that law was "a manifestation of dominant beliefs at a given time."²²

The majoritarian thesis, which purports to describe how judges rule, frequently also carries an explicitly normative endorsement of the judiciary's responsiveness to public opinion. The same holds true in this Note, which finds that courts' majoritarian affirmation of public opinion through most of the history of billboard law has benefited American society by promoting the public interest. Flexible legal doctrine, combined with democratically-minded judges who are receptive to public needs and cognizant of their own dislike of billboards, has resulted in legal opinions allowing local governments to control the spread of billboards. The subject of this Note illustrates a general observation that the American judiciary is willing and able to respond to public needs, as one would hope to see from a legal system that is culturally intertwined with and accountable to the broader public.

II. THE EMERGENCE OF MODERN BILLBOARDS

²⁰ See generally WILFRID E. RUMBLE, AMERICAN LEGAL REALISM: SKEPTICISM, REFORM, AND THE JUDICIAL PROCESS (1968) (describing the realist movement).

²¹ OLIVER WENDELL HOLMES, THE COMMON LAW (Mark DeWolfe Howe ed., Harvard Univ. Press 1963) (1881).

²² WHITE, *supra* note 17, at 132 (paraphrasing Holmes's conclusion in THE COMMON LAW). Holmes made the following classic declaration in that work:

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, *even the prejudices which judges share with their follow-men*, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

HOLMES, *supra* note 20, at 5 (emphasis added), *cited by* KLARMAN, *supra* note 15, at 5.

Outdoor advertising as a communications medium dates back at least to the Egyptian and Roman empires, when announcements were carved into stone for public display.²³ In the United States, marketers enlisted outdoor advertising as early as the 1830s, when P.T. Barnum used painted sheets of paper to promote his circuses.²⁴ By the end of the Civil War there were already hundreds of “billposting” companies, which employed roving freelancers to post full-text or illustrated advertisements for a broad range of services and events.²⁵ The late-nineteenth-century outdoor advertising industry was “absolutely unorganized and chaotic,” as an industry writer later observed,²⁶ leading to uncontrolled saturation. Billposters painted or pasted their advertisements onto any available public spaces, including fences, buildings, barns, and even roadside rocks and cliffs.²⁷ The advertisements were often placed without regard to property ownership, and the signs often covered one another.²⁸ Beginning in the 1870s, several states

²³ AGNEW, *supra* note 2, at 24-26. For a classic history of early advertising, see FRANK PRESBREY, *THE HISTORY AND DEVELOPMENT OF ADVERTISING* (1929).

²⁴ AGNEW, *supra* note 2, at 27. The term “billboard” apparently originated with the practice of posting theatrical “bills” on wooden *boards*, fences, or walls. JOHN S. WRIGHT & DANIEL S. WARNER, *ADVERTISING* 218 (1962).

²⁵ AGNEW, *supra* note 2, at 27-29; PRESBREY, *supra* note 22, at 500. An extensive archive of advertisements from the years 1840 to 1921, showing the great variety of goods and services advertised then, is available online through Duke University’s Broadsides Collection, part of a larger catalogue entitled *Emergence of Advertising in America: 1850-1920*, at <http://scriptorium.lib.duke.edu/ea/> (last visited Apr. 29, 2007). Billposting contracts sometimes resulted in litigation, as early lawsuits show. *See* *Smith v. Spitz*, 31 N.E. 5 (Mass. 1892) (holding advertising company not liable for injury caused by billboards left in the road by billposter); *Dunn v. T. J. Cannon Co.*, 151 P. 1167 (Okla. 1915) (requiring that advertising company pay customers for posters placed outside the agreed-upon geographic area).

²⁶ A.E. Canney, *The Romance of the Poster*, in *THE ADVERTISING YEARBOOK FOR 1924* 306 (John Clyde Oswald ed., 1925).

²⁷ *THE BILLBOARD NUISANCE* 11 (Clinton Rogers Woodruff, ed., 1908); JAMES P. WOOD, *THE STORY OF ADVERTISING* 182-84 (1958). Posting advertisements on natural or man-made objects not intended for that purpose has long since been legislated out of common practice. *See, e.g.*, VA. CODE ANN. § 33.1-373 (2006). Such bans date to the 1890s. *See, e.g.*, REPORT OF THE HAWAIIAN COMMISSION, S. Doc. No. 55-1C, at 365 (1898) (quoting a Hawaiian law stating that it was a misdemeanor to “affix or attach any show bill, handbill, poster, advertisement, or other notice to any building, fence, bridge, tree, rock, pole, or other structure or object” without permission).

²⁸ GUDIS, *supra* note 9, at 9-13. *See, e.g.*, *Ryan v. Reagan*, 62 N.Y.S. 39, 40 (1900) (holding that defendant billposters wrongfully “covered the plaintiff’s property with signs, posters, billboards, placards and other advertising mediums”).

were compelled to pass laws to discourage unscrupulous billposters from tearing down each others' advertisements.²⁹

Only later, toward the end of the nineteenth century, were advertisements posted in leased, legal locations on wooden boards erected for that purpose.³⁰ Early billboards were wooden and often dangerously unstable, as evidenced by a number of tort claims at the turn of the century arising from advertisements which fell over onto pedestrians.³¹ These early claims foreshadowed the public animosity which quickly developed in response to the growth of billboard advertising. These cases also foreshadowed later opinions in classifying billboards as “nuisances,”³² since later courts would concur with majority public opinion that *all* billboards—not just individual ones, and not just dangerous ones—are nuisances. In addition, courts' concern with public safety in these cases became a leading basis for upholding billboard regulations in the future.³³

A. *Billboards in Urban America*

²⁹ See, e.g., OLIVER L. BARBOUR, A TREATISE ON THE CRIMINAL LAW AND CRIMINAL COURTS OF THE STATE OF NEW YORK 517 (3d ed. 1883) (1874 law against defacing or destroying any legal “bill-board”); ASA IGLEHART, A TREATISE ON THE LAW RELATING TO THE POWERS AND DUTIES OF JUSTICES OF THE PEACE AND CONSTABLES IN THE STATE OF INDIANA 805 (1877) (1865 law against defacing or destroying any legal advertisement). For more on the early history of billboards in America, see AGNEW, *supra* note 2, at 27-46; GUDIS, *supra* note 9, at 9-34; Phillip Tocker, *Standardized Outdoor Advertising: History, Economics and Self-Regulation*, in OUTDOOR ADVERTISING: HISTORY AND REGULATION 11, 11-36 (John W. Houck ed., 1969); Outdoor Advertising Association of America (“OAAA”), History of Outdoor Advertising, <http://www.oaaa.org/outdoor/sales/history.asp> (last visited Mar. 5, 2007).

³⁰ Designated posting locations also allowed for increasingly large advertisements. GUDIS, *supra* note 9, at 14-19. Billboards were novel enough to generate substantial description and flexible spelling in early opinions. For example, in *Langan v. Atchison*, 11 P. 38 (Kan. 1886), a billboard was elaborately described as “a large frame structure for the purpose of supporting thereon boards for the purpose of advertising shows, fairs, expositions, excursions, and such other matters and things as are usually and commonly advertised by the posting of large paper bills.” *Id.* at 39. The opinion variously identified the structure as a “billboard,” “bill-board,” or a “bill or show board.” See *id.* at 40, 41.

³¹ See, e.g., *Cason v. City of Ottumwa*, 71 N.W. 192 (Iowa 1897) (finding city liable for injury from falling billboard which was leaning against a wall); *Temby v. Ishpeming*, 103 N.W. 588 (Mich. 1905) (holding city not liable for injury resulting from privately-owned billboard blown onto plaintiff by the wind); *Filippo v. American Bill Posting Co.*, 81 N.E. 463 (N.Y. 1907) (finding bill posting company liable for falling billboard).

³² *Langan*, 11 P. at 42; *Temby*, 103 N.W. at 589.

³³ See, e.g., *Langan*, 11 P. at 42 (stating that city was responsible for protecting pedestrians “from the imperfectly constructed and insecure bill-board” because of “its power to prevent and remove nuisances and to regulate all structures”).

The early history of American billboards is aptly summarized by Alan Boyd, former U.S. Secretary of Transportation, who once remarked of outdoor advertising that “[u]nlike beauty, ugliness spreads if left unchecked.”³⁴ At the turn of the twentieth century, in an era before concerted public opposition and governmental controls, modern billboards spread without restraint through urban areas and along public highways. Billboards were much more numerous and played a more conspicuous role in American cityscapes a century ago. Early billboards were often clustered in large groups, often linked end-to-end in rows and sometimes stacked on top of one another.³⁵ Vacant city blocks were sometimes surrounded by rows of billboards fronting on the sidewalk; in other cases, enormous billboards were placed on rooftops and high up on the exterior walls of buildings for greater visibility.³⁶ In places like Atlantic City, hundreds of electric billboards also lit up at night for maximum effect; these “spectaculars,” as they were called, had a much greater visual impact than contemporary billboards, which are generally only illuminated from below.³⁷ The proliferation of billboards was driven by manufacturers of mass-produced consumer goods, who endorsed outdoor advertising as an effective, inexpensive means of promoting their products to a wide audience, including the waves of newly-arrived and

³⁴ *Review of Highway Beautification—1967: Hearings on H.R. 7797 Before the Subcomm. on Roads of the H. Comm. On Public Works*, 90th Cong. 932 (1967) (statement of Allan S. Boyd, Secretary of Transportation), *quoted in* Ruth R. Johnson, *Federal Highway Beautification Goals*, in *OUTDOOR ADVERTISING: HISTORY AND REGULATION*, *supra* note 28, at 136.

³⁵ *See, e.g.*, C.O. BRIDWELL, CLOWRY CHAPMAN, & I.C.S. STAFF, *Outdoor Advertising*, in *OUTDOOR ADVERTISING AND ADVERTISING LAW*, at 31, 45, 48 (1926) (photographs showing rows of billboards); *OUTDOOR ADVERTISING: HISTORY AND REGULATION*, *supra* note 28, at 28, 30 (two- and three-story billboards). In contrast, the billboard industry now declares that “we do not support the construction of stacked bulletins.” OAAA, *The OAAA Code of Industry Principles*, <http://www.oaaa.org/government/codes.asp> (last visited Mar. 29, 2007).

³⁶ *See, e.g.*, *Chicago v. Gunning System*, 73 N.E. 1035, 1036 (Ill. 1905) (finding that plaintiff advertiser maintained four hundred billboards on vacant property in the city of Chicago); AGNEW, *supra* note 2, at 8, 124, 264 (photographs of enormous Coca-Cola advertisements that once towered over New York and Chicago); 51 *THE CHAUTAUQUAN* 18-81 (1908) (various articles presenting photographs and testimony about billboard saturation). New York City now endorses Times Square advertisements as a tourist draw, economic generator, and city icon, but the city makes a special exception for this neighborhood. GUDIS, *supra* note 9, at 240.

³⁷ Examples of electric billboards can be found on the Library of Congress website, which offers an extensive repository of advertising images. *See* Library of Congress, American Memory Home, <http://memory.loc.gov/ammem/index.html> (search under “Advertising” for “Atlantic City” and view photographs entitled “Boardwalk”) (last visited Mar. 29, 2007).

illiterate or non-English-speaking immigrants.³⁸ Billboards proliferated in an era without regulation because advertisers lacked any constraint from within or outside the industry.³⁹

Similar billboard saturation occurred in rural areas, as well. An illustrative photo of an Illinois highway, crowded with advertisements in 1932, remarked that “there are twenty billboards to the mile.”⁴⁰ One author predicted in 1907 that “If the ‘landscape’ signs between New York and Philadelphia continue their rapid increase the time may come when there will be one continuous advertising fence between the two cities.”⁴¹ Rural billboard saturation resulted from the popularization of automobiles and highway travel, which created a huge new market for viewing advertisements. As Jacob Loshin explains, “[T]he new reality of the automobile made highways a valuable forum through which producers and retailers could communicate with customers.”⁴² Indeed, the sales volume of billboard advertisements increased from \$2 million a year in 1900 to \$60 million in 1925, in great measure due to the rise of highway billboards.⁴³

Billboards’ impact on the American cityscape and landscape understandably drew the ire of the American public, which reacted negatively to their unsightliness and unchecked proliferation. One commentator wrote in 1908 that “there is a strong crusade in full swing all

³⁸ Quentin J. Schultze, *Legislating Morality: The Progressive Response to American Outdoor Advertising, 1900-1917*, 17 J. POP. CULTURE 37, 38 (1984). The Outdoor Advertising Association of America explains that “In 1900, a standardized billboard structure was created in America, and ushered in a boom in national billboard campaigns. Confident that the same ad would fit billboards from Connecticut to Kansas, big advertisers like Palmolive, Kellogg, and Coca-Cola began mass-producing billboards for the national market.” OAAA, *History of Outdoor Advertising*, *supra* note 28. One advertiser, extolling the value of outdoor advertising in helping to promote products and thus expand the global economy, noted that “the poster has helped to create a world-wide trade and extend the commerce of nations.” Canney, *supra* note 25, at 309.

³⁹ Loshin, *supra* note 11, at 119-20.

⁴⁰ GUDIS, *supra* note 9, at 183; *see also id.* at 178 (satirical cartoon of country road blighted by continuous billboards).

⁴¹ SEYMOUR EATON, *Sermon No. 2: “Board-Fence Advertising,”* in *SERMONS ON ADVERTISING* (1907), available at <http://scriptorium.lib.duke.edu/dynaweb/aaa/printlit/q0014>; *see also* J. Horace McFarland, *Why Billboard Advertising as at Present Conducted is Doomed*, 51 THE CHAUTAUQUAN 19, 20 (1908) (“Along the roads . . . all are alike begirt with whiskey, phonographs, fly screens, corsets, tobacco, beer and razors, often to the second and third tiers of shouting signs, between which one can but seldom see the landscape, because of the prevailing signscape—from which there is no escape!”).

⁴² Loshin, *supra* note 11, at 118.

⁴³ BRIDWELL, *supra* note 34, at 62.

across this country against the further maintenance of billboards and signboards.”⁴⁴ An anti-billboard activist correctly predicted the following year that rising aesthetic standards would force a change in the legal status of outdoor advertising:

The people will not much longer endure the ignominy of unchecked billboard ugliness The rising tide of indignation will sweep away the signs. Public opinion in America is dominant, and when aroused, restless. The public are thinking and speaking now, in respect to billboard intrusions, and they have several ways of making themselves heard⁴⁵

Broadly speaking, the negative reaction to billboards reflected public discomfort with the emergence of urbanization and consumerism in twentieth-century America.⁴⁶ By the turn of the twentieth century, cities were already passing local zoning regulations in response to growing public annoyance.⁴⁷ Most of the early ordinances required billboards to be below a certain height and set back a certain distance from the curb,⁴⁸ though several early laws instituted total municipal bans.⁴⁹ Advertisers began to challenge the ordinances immediately, and their court

⁴⁴ *Offence to the Public Eye a Nuisance*, 51 THE CHATAUQUAN 63, 70 (1908). Another author agreed that year that “[t]he growth of opposition to what is popularly and properly called the billboard nuisance, is one of the most striking developments of the past year” *Billboards versus Beauty*, 51 THE CHATAUQUAN 18, 18 (1908). In 1916 another writer declared that “[t]he people have been generally awakened to resentment against the selfish imposition upon them of these unnecessary and disfiguring objects” Millard, *supra* note 11, at 29.

⁴⁵ McFarland, *supra* note 40, at 37.

⁴⁶ One author aptly illustrated this unease:

In the days when populations were widely scattered in isolated villages, hamlets, and rural areas, the preservation of beauty could reasonably be left to the discretion of the individual land-owner. But today the great density of our urban population . . . and the general complexity of our civilization render it necessary for the state to take steps to preserve what remains of our nation’s beauty

Moore, *supra* note 11, at 203.

⁴⁷ See McFarland, *supra* note 39, at 44-45 (reporting in 1909 on “efforts to censor, tax, or abolish the nuisance” in dozens of cities nationwide); see also, e.g., Loshin, *supra* note 11, at 110-15 (describing early billboard and sign regulations in New Haven).

⁴⁸ See, e.g., *City of Passaic v. Paterson Bill Posting Co.*, 62 A. 267, 267 (N.J. Ct. App. 1905).

⁴⁹ See, e.g., *Varney & Green v. Williams*, 100 P. 867, 867 (Cal. 1909) (regulation outlawing billboards within the town). These early cases all involved *city* regulations, in particular, because billboards were initially concentrated in urban areas and cities were therefore the first to respond with billboard controls. See *infra* § II(C)-(D).

challenges were initially successful, but as billboards continued to spread and public animosity grew, judges began to approve increasingly broad citywide and statewide billboard restrictions.⁵⁰

Outspoken public disapproval of billboards propelled the push toward municipal regulation and subsequent judicial affirmation.⁵¹ Unsightly outdoor advertising attracted the ire of social reformers and other public-minded activists, in particular, and opposition to billboards coalesced around their efforts.⁵² Scathing newspaper editorials criticized the “shrieking” billboards,⁵³ political cartoons satirized their omnipresence and enormous size,⁵⁴ and the *Ladies’ Home Journal* targeted particularly unattractive examples in a monthly column.⁵⁵ The American Civic Association, an urban-reform organization founded in 1904, organized letter-writing campaigns against advertisers, boycotted companies that used billboards to advertise their

⁵⁰ See, e.g., *Murphy v. Westport*, 40 A.2d 177, 178 (Conn. 1944) (upholding a town’s ban on any outdoor advertising signs except for on-site signs); *Preferred Tires, Inc. v. Village of Hempstead*, 19 N.Y.S.2d 374 (Sup. Ct. 1940) (upholding a town’s total billboard ban); see generally *infra* § II(C)-(D).

⁵¹ One observer understood that rising aesthetic standards would force a change in the legal status of outdoor advertising. He foreshadowed the future of regulation in 1909 when he observed that

The people will not much longer endure the ignominy of unchecked billboard ugliness The rising tide of indignation will sweep away the signs. Public opinion in America is dominant, and when aroused, restless. The public are thinking and speaking now, in respect to billboard intrusions, and they have several ways of making themselves heard

McFarland, *supra* note 40, at 37.

⁵² As one industry writer warned advertisers in 1910,

Don’t get into any wrangles with the local Civic Improvement Society, and have them writing all your advertisers to discontinue the use of your medium. You can find plenty of good locations without spoiling the landscape. A whiskey advertisement right next to a church is bound to rankle in the breasts of the congregation.

HAWKINS, *supra* note 3, at 29. See generally THE BILLBOARD NUISANCE, *supra* note 26 (anti-billboard treatise); Schultze, *supra* note 37 (describing the urban-reform movement); 51 THE CHAUTAUQUAN 18-81 (1908) (collecting anti-billboard articles by members of the American Civic Association and other reformers).

⁵³ THE BILLBOARD NUISANCE, *supra* note 26, at 32-36 (reproducing critical editorials).

⁵⁴ GUDIS, *supra* note 9, at 169, 178; JOHN A. JAKLE & KEITH A. SCULLE, SIGNS IN AMERICA’S AUTO AGE 138-39 (2004).

⁵⁵ JAMES FRASER, THE AMERICAN BILLBOARD: 100 YEARS 14 (1991).

products, and offered model regulations that were crafted to ensure judicial approval.⁵⁶ Outdoor advertisements even fell victim to occasional vigilante justice.⁵⁷

In particular, the anti-billboard movement implicated a turn-of-the-century “City Beautiful” movement of reformers who sought to improve overcrowded and ugly urban areas in the name of civic order, cleanliness, and beauty.⁵⁸ Many of the early billboard opponents were women—“scenic sisters,” as the industry called them.⁵⁹ The anti-billboard movement was also mostly a middle- and upper-class phenomenon, with wealthier and better-educated people advocating on everyone’s behalf to raise the quality of everyday life in urban areas.⁶⁰ However, the social-class specificity of the reform movement does not mean that public dislike was limited to this group: a 1908 survey of visitors to Niagara Falls found the public overwhelmingly opposed to the rampant billboard advertising which blighted the Falls.⁶¹ Faced with a lack of

⁵⁶ One enormously successful boycott in Hawaii, spearheaded by a women’s organization in the 1920s, resulted in the earliest statewide ban on billboards. The Hawaii ban still exists. GUDIS, *supra* note 9, at 180-81; *see generally id.* at 166-81 (further describing the civic response to billboards); THE BILLBOARD NUISANCE, *supra* note 26, at 23-28 (model regulations).

⁵⁷ In turn-of-the-century Massachusetts, a minister nicknamed the “Minister Militant” tore down and cut down hundreds of illegally-posted bills. THE BILLBOARD NUISANCE, *supra* note 26, at 28-31; Frederic A. Whiting, *The Minister Militant*, 51 THE CHATAUQUAN 59 (1908). More recent anti-billboard actions have involved painting over billboards and modifying their text to undermine their marketing message. GUDIS, *supra* note 9, at 233-36. The contemporary anti-advertising movement, more broadly, is celebrated in the glossy magazine *Adbusters*. *See* <http://www.adbusters.org> (last visited Mar. 29, 2007).

⁵⁸ GUDIS, *supra* note 9, at 168. The American Civic Association later described billboards as “one of the most serious menaces to the successful achievement of ‘The City Beautiful.’” THE BILLBOARD NUISANCE, *supra* note 26, at 4. *See also* William H. Wilson, *The Billboard: Bane of the City Beautiful*, 13 J. URB. HIST. 394 (1987).

⁵⁹ Women became civic boosters on the subject of billboards because aesthetics were viewed as a women’s issue, which made billboards an acceptable subject of their attention. GUDIS, *supra* note 9, at 170. A commentator later described this movement as “a vendetta of garden clubs against billboards.” Ross D. Netherton, *Highway Beautification and Outdoor Advertising*, in OUTDOOR ADVERTISING: HISTORY AND REGULATION, *supra* note 28, at 231. In fact, many garden clubs did subsequently support the Highway Beautification Act of 1965. Moore, *supra* note 11, at 193 n.18; *infra* § III(B).

⁶⁰ GUDIS, *supra* note 9, at 167-68; Schultze, *supra* note 37 (describing the anti-billboard movement as a middle-class effort to impose its values on the lower class and immigrants). The fact that the anti-billboard movement was driven by wealthier and more educated people does not mean that poorer people were less opposed to billboards, however. The disparity could simply reflect lesser political power, political activity, and historical visibility among the poor. Then again, a study in the 1970s did find that dislike of billboards was greater among better-educated people. Cyril Hermann, *Human Response to Visual Environments in Urban Areas*, in OUTDOOR ADVERTISING: HISTORY AND REGULATION, *supra* note 28, at 66.

⁶¹ The American Civic Association found that eighty-four percent of visitors were displeased by the advertisements surrounding the Falls. THE BILLBOARD NUISANCE, *supra* note 26, at 31-32. Another description of the survey

historical evidence regarding the full extent of public dislike of billboards, it may be reasonable to some extent to accept activists’ and newspaper editors’ criticism as a proxy for broader social opinion on this issue.⁶² All Americans were experiencing the pressures of a rapidly urbanizing society, and they likely perceived billboards as an unnecessary nuisance in the overcrowded, hectic world of modernizing turn-of-the-century cities. Urban areas brought people closer, which led to the expansion of nuisance law and the police power—including approval of billboard regulation—as a means of reducing people’s imposition on one another.⁶³

Outdoor advertisers inadvertently compounded public disfavor by taking public opinion for granted. As one historian explained, “In its ‘frontier days’ the attitude of many of [the industry’s] promoters was ‘the public be damned.’ This naturally resulted in widespread and even vicious resentment.”⁶⁴ A Chicago newspaper from the early 1900s concurred:

[T]he billboard men have only themselves to thank for the persistent agitation against [sic] their business. They have not been quick to recognize the bounds and demands of decency. They have, in many instances, outraged public sentiment. They have too often assumed an arrogant and offensive manner, and resented perfectly legitimate “interference.”⁶⁵

The president of the American Civic Association agreed, noting in 1908 that “the intemperance of the advertising interests which exploit the noisy billboard is the strongest present force toward their complete abolition.”⁶⁶ In an era before pervasive regulation, the outdoor advertising

reported that “Barely two percent of the replies reported any favorable interest in the signs.” McFarland, *supra* note 40, at 42-43.

⁶² As one author notes, “Reformers believed themselves to be public fiduciaries acting on behalf of the masses.” Schultze, *supra* note 37, at 40. Immigrants and less educated Americans were the target of billboard advertising. *Id.* at 38. They were probably less bothered by billboards, but it is unclear to what degree.

⁶³ Newman F. Baker, *Municipal Aesthetics and the Law*, 20 ILL. L. REV. 546, 547 (1926) (“[I]n the present day of concentration of population and enforced co-operation we find beauty becoming a matter of community concern.”); Chandler, *supra* note 12, at 470-71 (discussing urbanization and its impact on aesthetic regulation). The regulatory expansion by courts was mostly a proxy for broader general public opinion. Then again, as Michael Klarman has noted, “Though judges live in a particular historical and cultural moment, they are not perfect mirrors of public opinion.” KLARMAN, *supra* note 15, at 6.

⁶⁴ AGNEW, *supra* note 2, at 232.

⁶⁵ THE BILLBOARD NUISANCE, *supra* note 26, at 32.

⁶⁶ McFarland, *supra* note 40, at 39.

industry evidently believed it could afford to disregard negative public opinion in favor of economic opportunity. There were large profits to be made in advertising the growing market for mass-produced consumer goods.⁶⁷

The developing public resistance to billboards is also attributable to rising aesthetic standards in American culture at the turn of the twentieth century, which reflected rising cultural values in a maturing and prosperous country. As the American Civic Association explained in 1908, “Billboards are detrimental to the advancing taste in municipal art and offensive to the growing artistic sense of American communities.”⁶⁸ This trend toward rising aesthetic sensibility was reiterated by an 1899 opinion upholding height regulations for buildings in downtown Boston, in which the Massachusetts Supreme Court explained that “[m]any things [related to quality of life] which a century ago were luxuries or were altogether unknown, have now become necessities.”⁶⁹ Outdoor advertising arose at the same time as this growth in civic beauty, magnifying the conflict. As one reformer observed, billboard advertising “educates in bad taste and in ugliness just when there is the strong beginning of a nation-wide movement toward good taste and beauty.”⁷⁰

The billboard industry was also pressured to self-regulate by its own clients. By the 1920s American businessmen began to recognize that civic beauty was good for business,⁷¹ and they encouraged one another to disavow billboards in order to protect the business community’s

⁶⁷ BRIDWELL, *supra* note 34, at 62; GUDIS, *supra* note 9, at 28. One outdoor advertiser suggested that outdoor advertising was responsible for much of the meteoric revenue growth of companies such as R.J. Reynolds Tobacco Co., Wrigley, and Palmolive in the early twentieth century. S.N. Holliday, *Three Essentials to Business Building*, in THE ADVERTISING YEARBOOK FOR 1922 255 (1923).

⁶⁸ THE BILLBOARD NUISANCE, *supra* note 26, at 3.

⁶⁹ Attorney Gen. v. Williams, 55 N.E. 77, 78 (Mass. 1899); *see also* Barkofske, *supra* note 11, at 535 (“[A] concern for the beautiful, the pleasant, the artful has increased tremendously.”); Goodrich, *supra* note 11, at 129 (“The United States has seen grow, alongside its higher standards of living, a different conception of the fitness of things.”); Larremore, *supra* note 12, at 35-38 (observing “the growth of the civic and municipal aesthetic sense” at the turn of the century).

⁷⁰ McFarland, *supra* note 40, at 19.

⁷¹ *See* Goodrich, *supra* note 11, at 121 n.4 (citing articles in business magazines from the 1920s proclaiming the economic benefits of billboard restrictions).

reputation.⁷² Editorials in trade magazines for tobacco and theatres questioned whether outdoor advertising was cost-effective, given the negative backlash frequently generated by those advertisements.⁷³ Unfortunately for the outdoor advertising industry, even though it has always emphasized the artistry and visual attractiveness of advertising billboards, the American public and judiciary have consistently concluded that such artistry is outweighed by their negative effect on civic beauty.⁷⁴

B. The Municipal Police Power

Although advertisers and landowners have vigorously litigated the wave of anti-billboard legislation that began at the turn of the twentieth century, their challenges have generally failed to stop the growth of restrictive laws.⁷⁵ Advertisers generally fail in court because local governments are empowered to regulate aspects of everyday life in the interest of public health, safety, morals, and welfare.⁷⁶ So long as challenged regulations are found to be within the scope of this authority, known as the “police power,” judges will defer to the will of the legislature.⁷⁷ Judicial understanding of the police power has broadened over time: it was defined narrowly in the nineteenth century but expanded incrementally as judges approved an increasingly broad spectrum of challenged regulations. In particular, the police power gradually incorporated

⁷² For example, the Business Men’s Club in Cincinnati sent letters to every company that patronized the city’s billboards, requesting that they show civic pride by refraining from using outdoor advertisements. *THE BILLBOARD NUISANCE*, *supra* note 26, at 12.

⁷³ McFarland, *supra* note 40, at 42.

⁷⁴ *See generally* FRASER, *supra* note 54 (emphasizing the artistic history of billboards). *But see supra* note 182 (presenting evidence which suggests that Americans have not always been universally opposed to outdoor advertising).

⁷⁵ Then again, legislation was in turn unable to stop the inexorable spread of billboards. Schultze, *supra* note 37, at 42. Billboard-related legislation has been both regulatory and criminal in focus. In the latter area, due to “popular demand,” by 1930 most states had outlawed posting advertisements on public or private property without consent. Proffitt, *supra* note 11, at 168-75 (collecting nationwide billboard laws in 1931).

⁷⁶ *See, e.g.,* Rochester v. West, 51 N.Y.S. 482, 484 (App. Div. 1898) (the police power “inheres in the state, and in each political division thereof, to protect, by such restraints and regulations as are reasonable and proper, the lives, health, comfort, and property of its citizens”).

⁷⁷ *See* Steve Sheppard, *The State Interest in the Good Citizen: Constitutional Balance Between the Citizen and the Perfectionist State*, 45 HASTINGS L.J. 969, 995-1001 (1994) (describing the origins of the police power).

aesthetics as a permissible regulatory goal during the twentieth century, as evidenced by courts' acceptance of aesthetic rationales for billboard controls.⁷⁸

Billboard regulations have always been primarily motivated by public dislike of the ugliness and intrusiveness of outdoor advertising.⁷⁹ Even before judges became willing to include aesthetic concerns within the scope of the police power, however, courts facilitated the aesthetic goals of billboard laws by upholding them under specious but generally accepted rationales such as public health and safety. The baseless nature of such rationales and their aesthetics-serving outcome have led many observers to suggest that courts sympathized with public desire to regulate billboards and were willing to shape legal doctrine to match their desired ends.⁸⁰

The police power has always supplied the legal justification for billboard regulation, so the evolution of that authority deserves particular attention. The legislative authority to impose regulations designed to further the public good has always been constrained by countervailing interests in private property rights and limited government.⁸¹ In the nineteenth century, courts heavily favored these libertarian interests over the government's goal of improving society through regulation.⁸² During this era, in the famous decision *Lochner v. New York* (1905)⁸³ and

⁷⁸ *Infra* §§ III(C), IV.

⁷⁹ As the president of the American Civic Association noted in 1908, "It is the unreasonable obtrusiveness of existing billboard effort that creates the primary objection [to them]." McFarland, *supra* note 40, at 19.

⁸⁰ *See, e.g.*, *St. Louis Gunning Adver. Co. v. City of St. Louis*, 137 S.W. 929 (Mo. 1911) (approving dubious health and safety rationales for billboard regulations); *Perlmutter v. Greene*, 182 N.E. 5 (N.Y. 1932); *see generally infra* § III(C) (describing scholarly commentary on this issue).

⁸¹ In contrast, the eventual triumph of aesthetic regulation of billboards "articulated an important legal principle: that the right of private property did not always override the interest of the public in preserving the aesthetic value of the landscape." LEARS, *supra* note 13, at 294.

⁸² For example, in *Yates v. Milwaukee*, 77 U.S. 497 (1870), the Supreme Court rejected a city's attempt to declare property a nuisance so that the city could remove it.

⁸³ 198 U.S. 45 (1905).

others, the Supreme Court put clear limits on the scope of the police power.⁸⁴ For example, in *Mugler v. Kansas* (1887)⁸⁵ the Court held that statutes must have a “real or substantial relation” to public health, morality, or safety to avoid violations of property rights.

Over time, judges became increasingly deferential to governmental regulation and expanded their understanding of municipal police power authority. This expansion of legislative authority was driven by external social forces, particularly the need for greater regulation of everyday life as the United States evolved from a decentralized, agrarian society into an industrialized, urbanized one. As one court noted in 1925, “The constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the State . . . to limit individual activities to a greater extent than formerly.”⁸⁶ The police power was able to accommodate this vast reorganization of American life because the power is inherently flexible, since it is indexed to an open-ended and constantly evolving standard of “the public welfare.”⁸⁷ The same court explained that “With the growth and development of the State, the police power necessarily develops, within reasonable bounds, to meet the changing conditions. The power . . . is elastic and capable of expansion in order to keep pace with human progress.”⁸⁸

⁸⁴ As the Court explained in *Lochner*, “[T]here is a limit to the valid exercise of the police power by the state Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the states would have unbounded power The claim of the police power would be mere pretext.” *Id.* at 56.

⁸⁵ *Mugler v. Kansas*, 123 U.S. 623, 661 (1887).

⁸⁶ *City of Aurora v. Burns*, 149 N.E. 784, 788 (Ill. 1925) (internal citation omitted), *cited with approval in* *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 392 (1926). In contrast, “One need only recall the ugliness of the typical city of the early 1900s . . . to realize that aesthetic considerations were given scant heed by our forefathers—and to realize as well that the force of circumstances was building up great pressure for the recognition of such considerations.” Robert A. Bergs, Note, *Aesthetics as a Justification for the Exercise of the Police Power or Eminent Domain*, 23 GEO. WASH. L. REV. 730, 735 (1955).

⁸⁷ *Infra* note 90.

⁸⁸ 149 N.E. at 788.

Oliver Wendell Holmes highlighted the loosening and broadening of the police power when he famously declared in *Noble State Bank v. Haskell* (1911)⁸⁹ that “the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.”⁹⁰ By declaring that governmental authority is directly tied to “usage,” “prevailing morality,” or “strong and preponderant opinion” of the public welfare, Holmes implied that *public opinion* by itself—including, for example, public dislike of billboards—justified governmental regulations and provided the standard for judging them.⁹¹ In other words, *Noble State Bank* created a majoritarian legal bridge between public wants and judicial approval. The only constraint on the police power, Holmes suggested, was the reasonable interpretation of the courts and the ensuing evolution of the common law: “With regard to the police power, as elsewhere in the law, lines are pricked out [sic] by the gradual approach and contact of decisions on the opposing sides.”⁹²

Holmes’s permissive reading of the police power, “to the effect that preponderant public opinion determines [its] scope,” was soon adopted by the lower courts because it “met the needs

⁸⁹ 219 U.S. 104 (1911).

⁹⁰ *Id.* at 111. This instrumental function of the common law is similarly illustrated by Guido Calabresi’s suggestion that in tort law, principles of causation are deliberately vague to allow for flexible application to evolving social needs. Guido Calabresi, *Concerning Cause and the Law of Torts: An Essay for Harry Kalven, Jr.*, 43 U. CHI. L. REV. 69, 105-08 (1975). Most broadly, the entire American common-law system of law is inherently flexible because the system is intended to satisfy public needs in the context of constantly evolving social conditions.

⁹¹ Afterwards an observer cited Holmes’s quote for the proposition that “the conception of what constitutes the general welfare is frankly recognized to be a flexible one, changing with the times and dependent on public opinion.” Goodrich, *supra* note 11, at 131. Holmes tried to mute the impact of this definition with an unusual supplementary opinion two months after the original *Haskell* decision, where he wrote that “[t]he analysis of the police power [in the original opinion], whether correct or not, was intended to indicate an interpretation of what has taken place in the past not to give a new or wider scope to the power.” *Haskell*, 219 U.S. at 580. Nevertheless, Holmes’s broad definition of the police power in the original *Haskell* opinion took on a life of its own. In following years, many courts relied on the language to support their own expansive readings of the police power. See Goodrich, *supra* note 11, at 131 n.40 (citing sources which followed the language in *Haskell*).

⁹² 219 U.S. at 112. One observer noted that these “often-quoted words” meant that “the only real restraints upon the exercise of this power are those imposed by the courts themselves.” Moore, *supra* note 11, at 203.

of the times,” namely the public pressure toward greater regulation of overcrowded urban life.⁹³ Continuing accommodation of regulation under an elastic definition of the “public welfare” eventually gave courts the authority to uphold laws with explicitly aesthetic justifications.⁹⁴

Other Supreme Court opinions also illustrated this trend toward a more expansive understanding of the police power. In *Welch v. Swasey* (1909),⁹⁵ the Court upheld height restrictions on buildings pursuant to the police power and in deference to the state legislature, “whose people are to be affected by the operation of the law.”⁹⁶ In *Euclid v. Ambler Realty Co.* (1926),⁹⁷ the Supreme Court declined to define the police power, writing that “it varies with circumstances and conditions,”⁹⁸ and in *Berman v. Parker* (1954),⁹⁹ the Court deferred to the legislature because the definition of the police power is case-specific.¹⁰⁰ *Berman* was particularly important for billboard jurisprudence because it explicitly declared the Supreme Court’s acceptance of aesthetics as a valid basis for regulation.¹⁰¹

By mid-century most American courts accepted aesthetic goals as a valid secondary rationale for restricting the appearance and location of billboards, and in subsequent decades a majority came to accept beauty as a valid stand-alone rationale.¹⁰² Although the police power allowed for judicial affirmation of outdoor advertising regulations, the courts were nevertheless

⁹³ Goodrich, *supra* note 11, at 131.

⁹⁴ *Id.* at 130-31 (describing “the increasing elasticity of the police power”). As one court described the change in 1917,

The assumption that the police power extends only to the protection of the health, safety and morals of the public, which was at one time quite general, is now out of date. The modern view is that the state may control the conduct of individuals by any regulation which upon reasonable grounds can be regarded as adapted to promoting the common welfare, convenience, or prosperity.

State v. Wilson, 168 P. 679, 681 (Kan. 1917).

⁹⁵ 214 U.S. 91 (1909).

⁹⁶ *Id.* at 106.

⁹⁷ 272 U.S. 365 (1926).

⁹⁸ *Id.* at 387.

⁹⁹ 348 U.S. 26 (1954).

¹⁰⁰ *Id.* at 32.

¹⁰¹ *See infra* § III(C).

¹⁰² *See infra* § III(C).

slower to respond to the billboard blight than the American public was. One commentator wrote in 1916 that “public opinion seems to have outrun the courts in the question of billboard control,”¹⁰³ and another observed in 1955 that the courts “seem to have lagged far behind public execration of eyesores.”¹⁰⁴ Sometimes courts do lag behind public opinion, which may be a feature of the common law system,¹⁰⁵ but on this issue the delay was likely attributable to judges’ wariness regarding the apparently subjective basis of aesthetic regulation.¹⁰⁶

C. *Early Pro-Industry Opinions*

Outdoor advertising companies challenged city billboard ordinances as they were implemented at the turn of the twentieth century. The advertisers argued that such regulations amounted to uncompensated takings of private property in violation of the companies’ due process right to display advertisements on private property—whether their own or rented for that purpose. The government’s enduring defense has been that billboard regulations fall within the constitutional scope of the police power, first based on public health, safety, and welfare rationales and more recently also for aesthetic reasons. Courts were evenly split in the earliest billboard cases, with outcomes dependent on whether the challenged ordinances were reasonably related to health and safety rationales such as the threat of toppling over. In the process, courts often embellished their opinions with colorful rhetoric to underscore billboards’ annoying

¹⁰³ Millard, *supra* note 11, at 29.

¹⁰⁴ Dukeminier, *supra* note 12, at 236.

¹⁰⁵ As Goodrich argued, *supra* note 11, at 130, “[J]udicial opinion must lag a considerable distance behind the public opinion that eventually shapes it.” Then again, Michael Klarman argues that courts sometimes anticipate future opinion, as was the case with abortion, the death penalty, and gay rights. E-mail from Michael Klarman, Professor, University of Virginia School of Law, to author (Oct. 30, 2006) (on file with author).

¹⁰⁶ Catherine Gudis suggests that courts were skeptical of aesthetic regulation because an overwhelmingly male judiciary considered aesthetics to be women’s concern and thus outside the scope of legal attention. GUDIS, *supra* note 9, at 174. Another author was more bluntly cynical: “Perhaps it is too much to expect that in our materialistic United States the billboard, so strongly linked with big business, will be outlawed in the interest of mere beauty.” H.S.V.S., *supra* note 11, at 109.

character, which suggests that the judiciary was sympathetic toward or agreed with public animosity toward the eyesores.¹⁰⁷

The first court challenge to a billboard law, *Atlanta v. Dooly*,¹⁰⁸ was decided in 1885. In this case a “billposting” company sued the city of Atlanta for tearing down a billboard that the city council regarded as a nuisance.¹⁰⁹ The court held that the city lacked authority to appropriate the company’s property rights in this manner. In doing so, the court indignantly criticized the city’s “unauthorized and wanton invasion of private rights” and the “the *ex parte* application of a few citizens” for instigating the removal.¹¹⁰ The court’s irritation at these regulatory efforts reflects the fact that governmental efforts to suppress the emerging billboard nuisance were rare and not yet widely accepted in 1885, and that public activism was then in an incipient and marginal state.

The next billboard decision, *Crawford v. Topeka* (1893),¹¹¹ struck down a Topeka, Kansas ordinance that required billboards to be set back from the street. The court held that the challenged ordinance was overbroad because most billboards are safe,¹¹² in contrast with later courts, which frequently accepted cities’ safety arguments with minimal scrutiny. The court

¹⁰⁷ For example, a 1908 opinion discussed trolley-car advertisements along Fifth Avenue in New York City this way:

It is along this avenue of churches that on Sunday these glaring billboards are driven. It is this scheme of beauty which is sacrificed to the demands of modern commercialism. It is along this entrance to parks and along the parks themselves, preserved to attract lovers of nature and of the beautiful, that these unnatural and inartistic moving picture signs are displayed.

Fifth Ave. Coach Co. v. City of New York, 111 N.Y.S. 759, 765 (Sup. Ct. 1908). An observer afterwards suggested a correlation between public opinion and the outcome of this case, noting that “the [streetcar] signs came off, obedient to an outraged public opinion reflected by a just judge.” McFarland, *supra* note 40, at 20.

¹⁰⁸ 74 Ga. 702, 1885 Ga. LEXIS 385 (1885).

¹⁰⁹ *Id.*, prior history at *1.

¹¹⁰ *Id.* at 707. This unfavorable glimpse of early activism in Atlanta evokes an equally unflattering description of the “agitators . . . composed of artists and dreamers” who first opposed billboards in Chicago. Millard, *supra* note 11, at 29.

¹¹¹ 33 P. 476 (Kan. 1893).

¹¹² *Id.* at 476. In a conclusion often invoked by later courts in rejecting billboard regulations, the court declared that “Although the police power is a broad one, it is not without limitations, and a secure structure which is not an infringement upon the public safety, and is not a nuisance, cannot be made one by legislative fiat.” *Id.*; *cited in, e.g.*, Bryan v. Chester, 61 A. 894, 895 (Pa. 1905).

inferred that the billboard law was actually motivated by dislike of billboards, but they were unwilling to accept this justification for regulation.¹¹³ The conclusion in *Crawford* and similar opinions that billboards were not a nuisance reflects the dominance of *Lochner*-era private property rationales in the late nineteenth century, but it also suggests that billboards were not yet widely disfavored.

Other turn-of-the-century cases agreed with *Crawford* that citywide billboard regulations were not reasonably related to health or safety goals and were therefore unconstitutional.¹¹⁴ In 1905 courts began to explicitly confront—and reject—cities’ aesthetic motivation for billboard laws. Early opinions held that aesthetics could not justify municipal regulation under the police power. In *Chicago v. Gunning System*,¹¹⁵ the Supreme Court of Illinois recognized the aesthetic justification behind a litigated billboard law and held that such “sentimental” regulation was punitive and thus unreasonable.¹¹⁶ Despite speculation that billboard regulations might be valid because obscene advertisements could “injure the public morals,”¹¹⁷ the court nonetheless held that Chicago’s billboard restriction was overbroad because the disputed sign was in a remote part of the city.¹¹⁸ In another case decided in 1905, Pennsylvania’s Supreme Court concluded that a

¹¹³ 33 P. at 477-78 (“The unreasonableness of the ordinance in question is easily seen when it is considered that the mere posting of a harmless paper upon a structure changes it from a lawful to an unlawful one.”).

¹¹⁴ See, e.g., *Bill Posting Sign Co. v. Atlantic City*, 58 A. 342 (1904); *People v. Green*, 83 N.Y.S. 460 (Sup. Ct. 1903). These courts distinguished *Rochester v. West*, 58 N.E. 673 (N.Y. 1900), the first case to uphold a billboard law, because the challenged ordinance in *Rochester* was more narrowly tailored. *Rochester* limited the height of billboards and therefore addressed the danger of tall signs being blown over, whereas the laws in *Green* and *Bill Posting* banned all outdoor signs indiscriminately.

¹¹⁵ 73 N.E. 1035 (Ill. 1905).

¹¹⁶ *Id.* at 642 (“The purpose . . . seems to be mainly sentimental, and to prevent sights which may be offensive to the aesthetic sensibilities of certain individuals residing in or passing through the vicinity of the billboards.”).

¹¹⁷ *Id.* at 639-40.

¹¹⁸ *Id.* at 641. The city’s 1900 ordinance restricted the size and location of billboards and required that the boards be constructed of metal. *Chicago v. Gunning System*, 1905 Ill. LEXIS 2554, syllabus at *2-5 (1905).

citywide billboard ban was not safety-related and that billboards’ alleged unsightliness was too subjective to a basis for banning them.¹¹⁹

In a third 1905 opinion, *City of Passaic v. Paterson Bill Posting Co.*,¹²⁰ the court found that a restriction on the size and location of a city’s outdoor advertising was “due rather to aesthetic considerations than to considerations of the public safety.”¹²¹ The court observed that “no case has been cited, nor are we aware of any case which holds that a man may be deprived of his property because his tastes are not those of his neighbors.”¹²² Then, in a notable statement often cited by later opinions, the court held that “Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation.”¹²³

This early judicial aversion to billboard regulation underwent a complete reversal within several decades, and by mid-century many courts upheld billboard regulations by deferring to legislatures’ aesthetic goals.¹²⁴ This remarkable shift in billboard jurisprudence is undoubtedly attributable in part to the normal evolution of the common law, but the expansion can be more particularly explained by extralegal factors, namely the contemporaneous influence and pressure on the courts created by widespread public frustration with overbearing and omnipresent advertisements.¹²⁵ One author, writing in 1926, obliquely explained this judicial shift by noting

¹¹⁹ *Bryan v. Chester*, 61 A. 894, 895 (Pa. 1905) (“[Billboards] may not be unsightly to the eyes of any other person than those of the members of [city] councils.”). The text of the ordinance explicitly declared that advertising boards were “unsightly, and very often are either a nuisance or create one.” *Id.*

¹²⁰ 62 A. 267 (N.J. 1905).

¹²¹ *Id.* at 268.

¹²² *Id.*

¹²³ *Id.*; see also, e.g., *Haller Sign Works v. Phys. Culture Training Sch.*, 94 N.E. 920, 923 (Ill. 1911) (“[T]he police power cannot interfere with private property rights for purely aesthetic purposes.”).

¹²⁴ See *infra* § III(C).

¹²⁵ As Professor Klarman notes, evolutions in the law can be explained by a combination of internal, jurisprudential factors and external sociopolitical developments, the latter of which include “the personal values of judges, the broader social and political context of the times, and external political pressure.” KLARMAN, *supra* note 15, at 5. With billboard regulation, the external cultural context of billboards changed—the public grew to dislike them—which in turn softened the courts’ view of billboard regulation.

that “in the early part of this century public opinion was not so decidedly adverse to the use of bill-boards as it is today, and the unsightliness of bill-boards had not been the subject of so many magazine articles and editorials.”¹²⁶

D. The Emergence of Regulatory Deference

Although the previously-described opinions found that billboard controls exceeded cities’ regulatory authority, just as many early decisions upheld their right to restrict billboards, even based in part on aesthetic rationales.¹²⁷ Many of these opinions came from New York courts; given the high concentration of billboards in New York City, it makes sense that anti-billboard sentiment developed early there, among the public and judiciary alike.¹²⁸ These pro-regulation opinions applied the same narrow “health and safety” definition of the police power as less permissive courts, but with greater laxity, finding that the *potential* of safety risks was a sufficient basis for regulation.¹²⁹ These opinions also considered a broader range of regulatory rationales, often characterizing outdoor advertising under the catchall and self-fulfilling “nuisance” label, which effectively bypassed the argument that the government could not regulate billboards unless they were unsafe.¹³⁰

In addition to setting a permissive regulatory precedent, these early pro-government opinions also occasionally adopted colorful and unflattering rhetoric to describe billboards. The

¹²⁶ Baker, *supra* note 12, at 131.

¹²⁷ For example, an early federal opinion held that billboards could be regulated under the police power in part because they interfere with “the views in and about a city” and thus affect people’s comfort and well-being. *In re Wilshire*, 103 F. 620, 623-24 (S.D. Cal. 1900).

¹²⁸ As the *Yale Law Journal* put it, “The courts of New York have . . . taken a more popular, if less legal, view of billboard legislation” than their more conservative judicial contemporaries. *Municipal Corporations—Police Power—Billboards—City of Passaic v. Paterson Bill Posting Co.*, 26 *Atl. 267 (N.J.)*, 15 *YALE L.J.* 248 (1905).

¹²⁹ *Wilshire* found that billboards “are usually, if not invariably, cheap and flimsy affairs, constructed of wood, and erected on vacant lots of land along or near to the streets, in order to catch the eye of the passers-by. Such structures, if of sufficient height, may be very readily blown over by wind” and result in injury. *In re Wilshire*, 103 F. at 623. Billboards did indeed sometimes blow over due to wind, *supra* note 30, but this danger was exaggerated, which leads to the suggestion that courts were willing to stretch legal rationales to satisfy underlying regulatory goals.

¹³⁰ *Supra* § II(C).

alarmist language of *St. Louis Gunning*, excerpted in the epigraph above, is a classic example of this phenomenon. Other opinions also sometimes took liberties with colorful language, going beyond what was legally necessary to establish that billboards were valid targets of municipal regulation.¹³¹ In doing so, these billboard opinions suggest that judges may have personally agreed that billboards were nuisances and could be—or should be—controlled. At the least, courts were willing to uphold legislatures’ desire to suppress the billboard blight, which implies some concurrence between the judiciary and public opinion.

The earliest decision to uphold a billboard law was *Rochester v. West*, a New York Supreme Court case from 1898.¹³² In this case an advertising company unsuccessfully challenged a city ordinance that imposed a licensing requirement for advertisers and restricted the height of city billboards.¹³³ The court found that the restrictions were justified under the police power because billboards are intrusive and potentially offensive: “[T]he modern system of advertising by posters is such that one can hardly pass along the streets of any large town without being compelled to gaze upon advertisements which are enormous in size and not infrequently offensive in their character.”¹³⁴ The *Rochester* opinion described outdoor advertisements as a nuisance to neighbors and “a constant menace to the lives and limbs of those who are obliged to pass along in front of them,” given the risk of unstable billboards blowing over in the wind.¹³⁵

¹³¹ Consider this language from the Supreme Court:

The young people as well as the adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce The radio can be turned off, but not so the billboard or street car placard The Legislature may recognize degrees of evil and adapt its legislation accordingly.

Packer Corp. v. Utah, 285 U.S. 105, 110 (1932).

¹³² 51 N.Y.S. 482 (App. Div. 1898).

¹³³ *Id.* at 486.

¹³⁴ *Id.* at 484.

¹³⁵ *Id.* at 485. The decision was affirmed on appeal because of the risk that falling billboards pose to pedestrians. *Rochester v. West*, 58 N.E. 673, 674 (N.Y. 1900).

Subsequent opinions agreed that height restrictions and other minor impositions on billboards were permissible applications of the police power. In *Gunning System v. Buffalo* (1902),¹³⁶ the New York Supreme Court found that billboards were “common nuisances” and therefore reasonably restricted for “the promotion of peace and good order.”¹³⁷ A federal court similarly held in 1902 that removal of billboards “is not taking private property for a public use, but must be construed as a salutary restraint on a noxious use by the owner, and within the police power of a city.”¹³⁸

Judges were unafraid to express their strong feelings regarding outdoor advertising. A particularly colorful opinion from 1905, *Tompkins v. Pallas*,¹³⁹ forbade New York City’s park commissioner from selling advertising space on a fence adjacent to a park. The court’s description of the fence’s billboards—or “colored illustrated signs of crude design,”¹⁴⁰ in the court’s words—is undeniably and gratuitously disdainful:

[The billboards] comprise advertisements of cheap cigars and Russian teas, of Irish whiskey and Geneva gin, of a hair restorative and a complexion balm, of horses and automobiles, of shore dinners and pawnshops, of wall papers and hose supporters, of rye whiskey and headache powders, of chiropodists and chemists, and of various other trades and commodities. Many of the advertisements are emphasized, if not embellished, by pictorial representations of the articles referred to therein.¹⁴¹

¹³⁶ 77 N.Y.S. 987 (App. Div. 1902).

¹³⁷ *Id.* at 988. Ruling on an injunction in the same case the year before, the court had found no evidence that billboards were a fire danger, a “place of resort for lewd and vicious characters,” or a trash dump. The court concluded that “[t]he worst that is said of the structures themselves is that they are not agreeable to look at, but clearly that affords no reason for their summary abatement as a nuisance.” *Gunning Sys. v. Buffalo*, 71 N.Y.S. 155, 157 (App. Div. 1901).

¹³⁸ *Whitmier & Filbrick Co. v. Buffalo*, 118 F. 773, 776 (W.D.N.Y. 1902).

¹³⁹ *Tompkins v. Pallas*, 95 N.Y.S. 875 (Sup. Ct. 1905).

¹⁴⁰ *Id.* at 876.

¹⁴¹ *Id.*

Such scornfulness was perhaps understandable given the intrusiveness of many early billboards and advertisers' disdain for local regulation.¹⁴²

The outcome of *Tompkins* was undoubtedly affected by the advertisements' impact on parklands, since courts were particularly receptive to arguments about billboards' aesthetic harm to natural areas.¹⁴³ Indeed, early decisions such as *Tompkins* that banned advertising near urban parklands foreshadowed the later acceptance of aesthetic rationales for regulating highway billboards, where advertisements' negative impact was magnified by their scenic and pastoral surroundings. Conversely, judges' earlier resistance to allowing aesthetic regulation of urban billboards likely reflected a general cultural assumption that billboards were more visually and commercially appropriate in urban areas.¹⁴⁴ In other words, the divergent outcome of billboard cases—here illustrated by the different treatment of rural versus urban billboards—again suggests that courts were receptive to and acted on prevailing cultural values.

The most remarkable and influential early billboard decision, the one that definitively shifted courts in favor of billboard regulation, was *St. Louis Gunning Advertisement Co. v. City of St. Louis* (1911),¹⁴⁵ the case quoted in the epigraph. This decision ran 120 pages in length,

¹⁴² For example, in apt illustration of Hugh Agnew's description of the "frontier days" of early outdoor advertising, AGNEW, *supra* note 2, at 232, the same court decided a case three years later in which an advertising company had illegally and audaciously erected three *hundred-foot-long* billboards in downtown Manhattan. *C. J. Sullivan Adv. Co. v. City of New York*, 113 N.Y.S. 893 (Sup. Ct. 1908).

¹⁴³ See *People v. Sterling*, 220 N.Y.S. 315 (Sup. Ct. 1927) (upholding billboard ban in the Adirondacks because of the region's natural beauty); *McNamara v. Willcox*, 77 N.Y.S. 294 (Sup. Ct. 1902) (upholding the revocation of an advertising license on a wall adjacent to a park); *cf. Attorney Gen. v. Williams*, 55 N.E. 77, 78 (Mass. 1899) (upholding an ordinance intended to "promote the beauty and attractiveness of a public park" by limiting the height of parkside buildings). An observer correctly predicted in 1907 that "considering the growth of the aesthetic sentiment," the aesthetic rationale in *Attorney General v. Williams* would be extended to billboards. Larremore, *supra* note 12, at 42. *But see Commonwealth v. Boston Adver. Co.*, 74 N.E. 601 (Mass. 1905) (holding that a ban on parkside advertisements was an unreasonable taking of private property).

¹⁴⁴ This attitudinal dichotomy between rural and urban billboards is illustrated by the Highway Beautification Act of 1965, which banned billboards near interstate highways but allowed billboards in commercial and industrial areas. See *infra* § III(B) (discussing the Act).

¹⁴⁵ 137 S.W. 929 (Mo. 1911); see also Baker, *supra* note 12, at 134 n.41 (collecting cases that followed the holding in *St. Louis*).

including an extensive discussion of billboards' alleged risks to safety and morality.¹⁴⁶ The court sustained a St. Louis billboard restriction because “[d]ecency and good morals,” in addition to the city’s health and general welfare, demanded the suppression of billboard nuisances.¹⁴⁷ At the same time, the court soundly rejected the aesthetic rationale for regulation as unreasonably subjective.¹⁴⁸ Regardless of the legal basis for the holding in *St. Louis Gunning*, the court’s melodramatic conclusions about the evils of billboards indicate that soon after the turn of the century, at least one court had already been influenced by and was responding to negative public opinion of outdoor advertising. Indeed, the overstated rhetoric in the court’s decision sounds remarkably similar to the alarmist tone of *The Billboard Nuisance*, the advocacy piece published three years earlier by the American Civic Association.¹⁴⁹ This chronological and rhetorical congruity suggests that the judge may have viewed himself as a similar social reformer (a “judicial activist,” in contemporary parlance), acting on behalf of the public to clean up the urban landscape.

In sum, in the first decades of billboard litigation courts were divided as to whether outdoor advertising could or should be regulated. *St. Louis Gunning* unequivocally answered that question in the affirmative, albeit under a dubiously dramatic characterization of the health, safety, and moral risks of outdoor advertising. Courts came to accept the broader public’s understanding of billboards as a nuisance, and after *St. Louis Gunning* most courts upheld billboard regulations, first under deferential health and safety rationales and later for aesthetic

¹⁴⁶ 137 S.W. at 941. Police officers and health officials testified that billboards attracted muggers and vagrants; that the space behind them collected “refuse, rubbish, and filth;” and that the boards were often at risk of toppling over. *Id.* These claims are credible because early billboards often reached to the ground, were often linked end-to-end in long walls of advertisements, and frequently were pasted or posted onto preexisting fences bordering vacant lots.

Supra note 35 and accompanying text.

¹⁴⁷ 137 S.W. at 945.

¹⁴⁸ *Id.* at 961 (“[A]ll do not have the same tastes or ideas of beauty; what would please one might not please another.”); see also *City of Youngstown v. Kahn Bros. Bldg. Co.*, 148 N.E. 842, 844 (Ohio 1925) (stating a similar concern).

¹⁴⁹ THE BILLBOARD NUISANCE, *supra* note 26.

reasons, as well. Sometimes the health and safety rationales were factually questionable,¹⁵⁰ suggesting that courts were stretching their legal conclusions to match their desired end of upholding restrictive billboard laws.¹⁵¹ Both the outcomes of these cases and the rhetoric that judges used in arriving at those outcomes indicate that, whether intentionally or not, courts quickly fell in line with the majoritarian dislike of billboards that emerged at the turn of the century.¹⁵² As the president of the American Civic Association explained in 1909, “Even these legal defenses of the billboards [that people can erect signs on private property] are weakening under the steady even if slow growth of public indignation.”¹⁵³

III. THE HEYDAY OF BILLBOARD REGULATION

After courts accepted that billboard regulations were valid exercises of the government’s power to promote public health and safety, they began to expand the definition of the police power to include aesthetic regulatory goals. During the heyday of regulation, from *St. Louis Gunning* in 1911 to *Metromedia* in 1981,¹⁵⁴ legal opinions upheld regulations for a variety of

¹⁵⁰ A 1914 opinion sustained billboard restrictions partly out of concern for firemen’s access to buildings in case of fire. *Cream City Bill Posting Co. v. Milwaukee*, 147 N.W. 25, 28 (Wis. 1914). Other courts accepted the questionable argument that highway billboards could distract drivers and cause accidents. *See, e.g., Gen. Outdoor Adver. Co. v. Dep’t of Pub. Works*, 193 N.E. 799, 813-14 (Mass. 1935). Authorities disagree as to whether billboards actually affect driving. *See* U.S. DEP’T OF TRANSP., FED. HWY. ADMIN., RESEARCH REVIEW OF POTENTIAL SAFETY EFFECTS OF ELECTRONIC BILLBOARDS ON DRIVER ATTENTION AND DISTRACTION, FINAL REPORT § 2.4.1 (2001) (reporting that electronic billboards “may be associated with a higher crash rate under certain conditions”); Netherton, *supra* note 58, at 223-24 (discussing studies suggesting that billboards cause automobile accidents). *But see* OAAA, PRESENTING THE TRUTH ABOUT OUTDOOR ADVERTISING 20-21 (1957) (discussing studies that show *no* relationship between highway advertising and accidents), *cited in* GUDIS, *supra* note 9, at 218 n.28. Whether or not a real risk of distraction existed, courts accepted the traffic-safety rationale simply because it was plausible, out of deference to the legislature’s reasonable exercise of the police power. *See, e.g., Whitmier & Ferris Co. v. State*, 230 N.E.2d 904, 905 (N.Y. 1967).

¹⁵¹ *See infra* notes 212-21 and accompanying text (discussing scholars’ observations on this issue).

¹⁵² *See Baker, supra* note 12, at 133 (explaining that “the public demanded bill-board regulation and the courts realized the growing force of this demand,” hence courts’ definition of the police power expanded to satisfy that demand).

¹⁵³ McFarland, *supra* note 40, at 38.

¹⁵⁴ *See supra* § II(D) (discussing *St. Louis Gunning Adver. Co. v. City of St. Louis*, 137 S.W. 929 (Mo. 1911)); *infra* § IV(A) (discussing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 511 (1981)).

reasons, often with colorful rhetoric that criticized billboards' impact on their surroundings.¹⁵⁵ The outcome of these cases reflects judges' sympathy toward public opinion on this issue, or at least their willingness to defer to public opinion. This period is characterized by judicial deference to increasingly comprehensive and burdensome laws at every level of government, culminating in the federal Highway Beautification Act of 1965, which banned billboards near rural highways. The industry responded to widespread public dislike and judicial disfavor through greater self-regulation and restraint, but they were unsuccessful in stemming the regulatory tide.

A. Industry Self-Regulation

Even as outdoor advertisers were contesting municipal regulations in the courts, the industry also sought to improve its image and dampen public disapproval through organization and standardization.¹⁵⁶ Outdoor advertisers banded together as early as 1872, when the first billposters' association was formed.¹⁵⁷ These alliances eventually transformed the industry, in the words of one author writing in 1938, "From a promiscuous part-time employment of unorganized men . . . to the present well organized, well conducted and highly responsible association of businessmen"¹⁵⁸ Part of the industry's maturation came in acknowledging—undoubtedly due in part to court decisions which told them so¹⁵⁹—that billboards have a significant impact on civic life and thus are of public concern and justly regulated by the government.¹⁶⁰ Once outdoor advertisers recognized that "cooperation [and compromise are] better than warfare" against public opinion, as one author put it, the industry began to act more

¹⁵⁵ See, e.g., *supra* notes 138-42 and accompanying text.

¹⁵⁶ See AGNEW, *supra* note 2, at 31-42 (describing the industry's self-regulation); GUDIS, *supra* note 9, at 22-27 (same).

¹⁵⁷ The International Bill Posters' Association of North America. FRASER, *supra* note 54, at 10.

¹⁵⁸ AGNEW, *supra* note 2, at 45-46.

¹⁵⁹ See *infra* § III(C).

¹⁶⁰ AGNEW, *supra* note 2, at 232.

responsibly and professionally.¹⁶¹ They evidently hoped that self-regulation would lessen public pressure for further governmental regulation, which was even less preferable.¹⁶²

Early industry-imposed controls were modest in scale. In the late nineteenth century the advertising associations agreed among themselves to cease posting advertisements for burlesque shows, because those ads were a significant source of public offense in billboards' early years.¹⁶³ The industry also created standardized metal structures, more attractive and less likely to blow over than wooden ones.¹⁶⁴ Poster sizes were also standardized nationwide, which resulted in economies of scale as well as increased uniformity of appearance, and hence greater attractiveness and professionalism.¹⁶⁵ Outdoor advertising organizations were particularly concerned with controlling rogue advertisers, which the industry blamed for the negative public attitudes. As one author explained in 1909, illegal posting "is responsible for a great portion of aesthetic opposition to a well-ordered medium."¹⁶⁶

In the early twentieth century, outdoor advertisers adopted increasingly elaborate professional codes of conduct in response to public complaint and unfavorable litigation.¹⁶⁷ The

¹⁶¹ *Id.* at 233; *cf.* Loshin, *supra* note 11, at 119-20 (suggesting that advertisers cooperated with one another to avoid unprofitable collective-action problems that previously arose from uncoordinated competition).

¹⁶² Charles Pascall, *Poster Censorship*, in *THE ADVERTISING YEAR BOOK FOR 1924*, *supra* note 25, at 319 ("The billposters, therefore, to protect and advance the interest of their trade . . . and preferring their own committee to the local authority as the controlling organization, persisted in their policy of condemning any poster which was calculated to cause offence.").

¹⁶³ GUDIS, *supra* note 9, at 26-28. For example, the problem of provocative advertisements provoked legislation in Newark, New Jersey, in 1908 against outdoor advertisements showing "suggestive pictures of partially draped women." *THE BILLBOARD NUISANCE*, *supra* note 26, at 12.

¹⁶⁴ BRIDWELL, *supra* note 34, at 35-36. Later billboards were sometimes garnished by trellises, decorative columns, and tasteful landscaping. GUDIS, *supra* note 9, at 202-04.

¹⁶⁵ BRIDWELL, *supra* note 34, at 63; FRASER, *supra* note 54, at 14 ("Standardization and self-regulation were closely related and perceived by most association members as the means by which the outdoor advertising industry could gain general acceptance."); EDWARD J. ROWSE & CARROLL A. NOLAN, *FUNDAMENTALS OF ADVERTISING* 247-49 (1950).

¹⁶⁶ BRIDWELL, *supra* note 34, at 11; *see also* FRASER, *supra* note 54, at 188 (explaining in 1991 that there will always be "industry 'bad guys' . . . despite a solid stream of conscientiousness").

¹⁶⁷ Other media industries also regulated themselves in response to public disapproval. The Motion Picture Association of America ("MPAA") adopted a rating system for films and the Recording Industry Association of America ("RIAA") instituted a parental-advisory program. *See* Wikipedia: The Free Encyclopedia, MPAA Film Rating System: Origins, http://en.wikipedia.org/wiki/MPAA_film_rating_system (last visited Mar. 29, 2007);

Poster Advertising Association established “Standards of Practice” for its member advertisers, including the instruction to select locations “so as not to cause friction either with the municipal authorities or the people of the neighborhood.”¹⁶⁸ The Association’s “very busy” censorship committee was empowered to fine or expel agencies for creating advertisements that generated public complaint.¹⁶⁹ The Outdoor Advertising Association of America (“OAAA”), which is now the industry’s principal trade organization, established “still higher ideals” when it formed in 1925.¹⁷⁰ The OAAA declared that billboards should not be erected on private property without consent, nor on residential streets, nor within highway rights-of-way.¹⁷¹ Moreover, billboards should not “mar or impair scenic beauty” nor create “a hazard to traffic,” and advertising copy should not “offend moral sense of public.”¹⁷²

Outdoor advertisers’ self-regulation has continued to expand, in line with the expanding scope of government-imposed restrictions and judicial sanction. By 1969, in the context of widespread judicial approval of aesthetically-driven billboard laws, the OAAA’s ethics code conceded the public interest in banning billboards from scenic areas: “We share the public interest in natural scenic beauty, parks, and historical monuments. We do not erect our advertising displays in such areas.”¹⁷³ By 1969 the OAAA also accepted “reasonable” billboard

RIAA, Issues: Parental Advisory Label (“PAL”) Program, <http://www.riaa.com/issues/parents/advisory.asp> (last visited Mar. 29, 2007).

¹⁶⁸ BRIDWELL, *supra* note 34, at 9.

¹⁶⁹ Kerwin H. Fulton, *Twenty Years of Poster Progress*, in *THE ADVERTISING YEARBOOK FOR 1922*, *supra* note 66, at 250, 253-54.

¹⁷⁰ BRIDWELL, *supra* note 34, at 62-63; *see also* Loshin, *supra* note 11, at 120-24 (describing the origins of the OAAA); The Outdoor Advertising Association of America, <http://www.oaaa.org> (last visited Mar. 29, 2007).

¹⁷¹ BRIDWELL, *supra* note 34, at 62-63. Note that refraining from placing signs within rights-of-way would still allow for signs that are visible from the highway, albeit placed on private property outside the rights-of-way.

¹⁷² *Id.* The OAAA elaborated on these rules a decade later, adding a ban on billboards near historical sites, parks, and in “any other areas where the resentment of reasonable-minded persons would be justified.” AGNEW, *supra* note 2, at 239-41.

¹⁷³ Tocker, *supra* note 26, at 49. On the contrary, the OAAA promised, “We locate our structures with discretion and good taste with regard to frequency and concentration.” *Id.*

regulation, a position maintained by the organization today.¹⁷⁴ The organization continues to impose new restrictions; for example, in 1990 they asked member companies to limit the use of advertisements for cigarettes and other products that cannot be sold to minors.¹⁷⁵

In addition to regulation, advertisers also curried public favor by improving the artistic quality of their signs, promoting the social utility of outdoor advertising, and donating their services to social causes. The industry evidently believed, in the words of one speaker, that artistically superior billboards would mollify their critics: “Make the poster panel a manifestation of good art, and objections to it will vanish—even from those who are most militant in raising the cry against the ‘billboard.’”¹⁷⁶ Outdoor advertisers also highlighted the informational value of billboards and portrayed the industry as a valuable source of employment and economic growth.¹⁷⁷ During the World Wars and the Great Depression, the industry donated billboard space for public-service messages, for both patriotic and promotional purposes, and the industry continues this public service today.¹⁷⁸

B. Highway Billboards and Public Criticism

¹⁷⁴ *Id.* at 50; OAAA, The OAAA Code of Industry Principles, *supra* note 34.

¹⁷⁵ FRASER, *supra* note 54, at 188.

¹⁷⁶ Dudley Crafts Watson, *Art, a Key to American Business*, in THE ADVERTISING YEARBOOK FOR 1922, *supra* note 66, at 259, 261; *see also* GUDIS, *supra* note 9, at 199 (“The organized outdoor advertising industry also sought to redefine the billboard as tasteful and even a work of art, in both its architectural structure and poster imagery.”).

¹⁷⁷ *See* GUDIS, *supra* note 9, at 196-201, 209; Fulton, *supra* note 168, at 251 (describing “free public advertising of an enlightening and interesting nature”); OAAA, Legislative Issues: Bans and Moratoria, <http://www.oaaa.org/government/Issues/issue.asp?id=16> (last visited Mar. 29, 2007) (“Outdoor advertising is an important medium of communication . . .”).

¹⁷⁸ FRASER, *supra* note 54, at 24-37 (reproducing wartime public-service advertisements); GUDIS, *supra* note 9, at 207 (describing the donation of advertising space during the Depression). Even the famously funny Burma-Shave advertisements frequently presented public-service messages; this was a “shrewd policy,” according to a later observer, because “it established the firm as being public-spirited, [which was] an asset in confronting the ominously growing anti-billboard forces.” FRANK ROWSOME, JR., THE VERSE BY THE SIDE OF THE ROAD: THE STORY OF THE BURMA-SHAVE SIGNS AND JINGLES 32 (1965). The OAAA recently reported that the contemporary outdoor advertising industry donates \$350 million a year to charitable organizations. Press Release, OAAA, Outdoor Ad Revenue Continues Double-Digit Growth (Dec. 6, 2005), *available at* http://www.oaaa.org/news/release.asp?RELEASE_ID=1484. However, the non-profit group Scenic America, which opposes billboards, suggests that the billboard industry donates advertising space to charity mostly to curry favor with politicians and the public, and only does so when they do not have paying customers. Scenic America, “Public Service” Billboards: Signs of An Ulterior Motive, http://www.scenic.org/billboards/industry/ps_billboards (last visited Mar. 29, 2007).

The advertising industry evidently hoped that voluntary regulations would be sufficient to appease a reasonable-minded public. Industry writers portrayed their detractors as merely a vocal minority, and the OAAA privately described billboard opponents as “zealots.”¹⁷⁹ Public criticism of billboards continued, however, particularly among the artistic elite. In 1969 an architecture professor characterized billboards as “a public nuisance and a national shame” and declared that they were causing “visual indigestion” and “the uglification of the American landscape.”¹⁸⁰ Another architect, Peter Blake, used billboards to symbolize the desecration of nature in postwar America, describing the billboard industry—“America’s affluent uglifiers”—as an amoral and all-powerful industry at odds with the public interest and causing the “brutal destruction of our landscape.”¹⁸¹ This strident language again evokes the exaggerated rhetoric seen in *St. Louis Gunning* and the American Civic Association’s pamphlet on *The Billboard Nuisance*,¹⁸² reiterating the fact that billboards have generated strong reactions throughout their history.¹⁸³

¹⁷⁹ GUDIS, *supra* note 9, at 213 (quoting an internal OAAA memo, date unknown). One industry publication blamed opposition to outdoor advertising on three “interest groups”: the media, academia, and the uninformed. JAMES CLAU, R.M. OLIPHANT, & KAREN CLAU, SIGNS. LEGAL AND AESTHETIC CONSIDERATIONS 63 (1972). Another publication dismissed the critics of advertising as “nature lovers.” WRIGHT & WARNER, *supra* note 23, at 229.

¹⁸⁰ Patrick Horsbrugh, *Criticism of Highway Signs and Advertisements*, in OUTDOOR ADVERTISING: HISTORY AND REGULATION, *supra* note 28, at 185, 190. *See generally id.* at 183-202.

¹⁸¹ PETER BLAKE, GOD’S OWN JUNKYARD: THE PLANNED DETERIORATION OF AMERICA’S LANDSCAPE 15, 69 (1963). Blake suggested that “When people talk about the flood of ugliness engulfing America, they first think of billboards—and, more specifically, of the billboards that line our highways and dot our landscape.” *Id.* at 11. The OAAA even considered suing Blake for libel based on his strong and outspoken criticism of the outdoor advertising industry. GUDIS, *supra* note 9, at 228. *But see* ROBERT VENTURI ET AL., LEARNING FROM LAS VEGAS (1972) (architect’s celebration of Las Vegas’s “ugly” signs).

¹⁸² *St. Louis Gunning Adver. Co. v. City of St. Louis*, 137 S.W. 929, 942 (Mo. 1911); THE BILLBOARD NUISANCE, *supra* note 26.

¹⁸³ Sometimes such emotions fall strongly in favor of billboards, however. Blake’s work stands in marked contrast to the glowing tone adopted by the industry writer who compared billboards to the Rockies and the Brooklyn Bridge, as things of beauty and grandeur. BRIDWELL, *supra* note 34, at 4. Moreover, even as billboards were generating public reproach and being regulated in cities, some small towns welcomed the signs because they invoked big-city sophistication, which indirectly attests to the advertisements’ prominent role in promoting modern consumer culture. GUDIS, *supra* note 9, at 52. Not all billboards were disliked, either; the iconic Burma-Shave highway advertisements, with their clever jingles, became much-loved classics. Then again, the Burma-Shave advertisements were small, spartan, folksy, and humorous, which undoubtedly made them better-liked than bigger and more overbearing signs. ROWSOME, *supra* note 177, at 18 (comparing Burma-Shave advertisements with the

Blake's book also reflected the shifting concerns of billboard critics, from fears about the signs' effect on public safety in the *St. Louis Gunning* era to contemporary concerns about their visual impact on natural landscapes. Indeed, public animosity toward outdoor advertising seems to have increased when billboards spread *en masse* from urban areas to rural highways, where their negative impact on their surroundings was more pronounced. For people like Peter Blake, billboards symbolized the worst of American consumerism and seemed irreconcilably in conflict with pastoral purity.¹⁸⁴ Critics felt that billboards offended the deeply-rooted pastoral values and ambivalence toward consumerism felt by many Americans. As one historian succinctly described of anti-billboard sentiment, "Critics felt that markets ought not mix with Mother Nature."¹⁸⁵

Regardless of the public criticism, the large size and comparatively low cost of billboards made them well-suited to automobile traffic, and the industry grew quickly along with the growth in cars and highways. As one author noted at mid-century, "Public opinion forced the removal of some signs and managed to force some legislation through that checked the worst offenses, but outdoor advertising was too useful and economical a medium to be controlled

"intensely serious hard sell" of most advertisements). See generally *id.* (history and complete text of Burma-Shave jingles); Burma-Shave Home, <http://burma-shave.org> (last visited Mar. 29, 2007) (catalogue of Burma-Shave advertisements). See also Loshin, *supra* note 11, at 142, 150-51 (arguing that Americans have been less universally opposed to billboards than argued here).

¹⁸⁴ One author recently showed how billboards symbolize a moral dichotomy between consumerism and nature: "Billboards honor us as good consumers Aesthetically pleasing communities and vistas, on the other hand, honor our humanity." John F. Rohe, *Billboard Regulation in Michigan: Navigating the Line Between Free Speech and Aesthetic Considerations*, 83 MICH. B. J. 27, 28 (2004); see also GUDIS, *supra* note 9, at 194 (suggesting that billboards represented the corruption of pastoral purity by urbanization).

¹⁸⁵ See GUDIS, *supra* note 9, at 6, 213 (billboard opponents believed in "environmental purity as a national heritage"). The author explains that public dislike of highway billboards is grounded in American pastoralism, derived from the country's agrarian past, which is unflatteringly compared with this icon of modern commercialism and its suggestion of moral decay. *Id.* at 182-95; see also Doremus, *supra* note 9 (discussing America's interest in the psychological and spiritual benefits of unspoiled nature).

easily.”¹⁸⁶ The spread of billboards transformed rural highways into commercial “buyways,” in the words of a 1923 advertisement,¹⁸⁷ which led to public concern about the advertisements’ aesthetic impact. An industry executive observed in 1926 that

Because of this vast growth, public interest has needed careful consideration. Opposition to the placing of billboards where they obstruct the view has grown strong, and this has been heightened by the great number of new and scenic highways that have been constructed and the countless number of people who tour over these roads.¹⁸⁸

In response to this disapproval of highway billboards, the OAAA agreed to exclude outdoor advertisements from scenic highways.¹⁸⁹

The billboard nuisance evolved from a largely local, urban issue into a nationwide problem as public highways continued to grow in number. By mid-century, nationwide public opposition to highway billboards was sufficiently widespread and pronounced to provoke federal intervention. The issue came to a head in the “Great Billboard Battle of 1958,”¹⁹⁰ which capped several years of Congressional debate over whether to regulate outdoor advertising as part of the Federal-Aid Highway Act, the legislation which instituted President Dwight D. Eisenhower’s new interstate highway system.¹⁹¹ The final Act outlawed most billboards within 660 feet of highway rights-of-way, but it was watered down by exceptions for signs identifying on-site and local businesses, official signs, and other signs in the public interest.¹⁹²

¹⁸⁶ WOOD, *supra* note 26, at 347; *see also* AGNEW, *supra* note 2, at 147-95 (describing the growth in automobile use during the 1920s and 1930s); Loshin, *supra* note 11, at 115-19 (describing the growth of highway billboards); note 42 and accompanying text (describing the billboard industry’s increasing sales volume during this period).

¹⁸⁷ The advertisement reads, “The highway has become the buyway It is millions of miles long. And billions of dollars are spent because of what the public sees when it travels this buyway.” GUDIS, *supra* note 9, at 1-2.

¹⁸⁸ BRIDWELL, *supra* note 34, at 62.

¹⁸⁹ AGNEW, *supra* note 2, at 235-41. Standard Oil scored a public-relations coup when it, too, decided in 1924 to refrain from placing its advertisements on scenic highways. GUDIS, *supra* note 9, at 178-79.

¹⁹⁰ BLAKE, *supra* note 180, at 14.

¹⁹¹ Federal-Aid Highway Act of 1958, Pub. L. No. 85-381, 72 Stat. 89 (1958); Clifton W. Enfield, *Federal Highway Beautification: Outdoor Advertising Control, Legislation and Regulation*, in *OUTDOOR ADVERTISING: HISTORY AND REGULATION*, *supra* note 28, at 149-67 (describing the legislative process in Congress).

¹⁹² § 12, 72 Stat. at 95.

President Lyndon B. Johnson subsequently proposed the draconian Highway Beautification Act of 1965,¹⁹³ which would have required states to ban nearly all billboards within a thousand feet of interstate highways or else lose all federal highway funding.¹⁹⁴ In final form, however, the Highway Beautification Act was similar to the earlier Federal-Aid Highway Act; it instructed states to regulate billboards within 660 feet of highway rights-of-way or else lose ten percent of their highway funding.¹⁹⁵ Advocates for strict billboard laws viewed the bill as a failure,¹⁹⁶ while the OAAA supported it in final form after initially opposing it.¹⁹⁷ Most notably, the bill preempted state courts by requiring “just compensation” for the removal of any signs and failed to impose any size or height restrictions.¹⁹⁸ It also created a substantial loophole by excluding commercial and industrial areas from the billboard ban.¹⁹⁹ Moreover, subsequent amendments to the Act have undermined its effectiveness by permitting billboards in non-scenic areas that would otherwise be regulated.²⁰⁰

¹⁹³ 23 U.S.C. § 131 (2002). Johnson advocated for aesthetic regulation in a special message to Congress. 111 CONG. REC. 2045 (1965).

¹⁹⁴ Loshin, *supra* note 11, at 131-35 (describing the legislative history and provisions of the Act); Lynch, *supra* note 11, at 425-33 (same).

¹⁹⁵ 23 U.S.C. § 131(b). Similar restrictions have been adopted by many state legislatures. *See, e.g.*, VA. CODE ANN. §§ 33.1-369, -370 (2006) (outlawing off-premise signs within 660 feet of parkways and federal highways). For further description of the Highway Beautification Act’s provisions, see Roger A. Cunningham, *Billboard Control Under the Highway Beautification Act of 1965*, 71 MICH L. REV. 1296 (1972); Enfield, *supra* note 190, at 169-78; Johnson, *supra* note 33, at 116-29.

¹⁹⁶ CHARLES F. FLOYD, *HIGHWAY BEAUTIFICATION: THE ENVIRONMENTAL MOVEMENT’S GREATEST FAILURE* (1979); SCENIC AMERICA, *HIGHWAY BEAUTIFICATION ACT: A BROKEN LAW* (1997); SCENIC AMERICA, *FIGHTING BILLBOARD BLIGHT: AN ACTION GUIDE FOR CITIZENS AND PUBLIC OFFICIALS* 44-47 (1999) [hereinafter *SCENIC AMERICA*] (discussing the need to reform the Act).

¹⁹⁷ FRASER, *supra* note 54, at 113; *see also* GUDIS, *supra* note 9, at 223-25 (describing the politics behind the Act); Loshin, *supra* note 11, at 136-38 (suggesting that the advertisers’ lobby was responsible for the bill’s outcome); Tocker, *supra* note 28, at 53-54 (explaining that the OAAA agreed with the Act’s provision that billboards should be banned from scenic highways but not from commercial or industrial areas).

¹⁹⁸ 23 U.S.C. §§ 131(g), (n). States followed Congress’s lead by passing similar just-compensation requirements. *See, e.g.*, VA. CODE ANN. § 33.1-370.1 (2006) (adopted in 2003). Because of this compensation rule, as Jacob Loshin explains, the Highway Beautification Act “prohibited new billboards in certain areas while protecting old billboards everywhere.” Loshin, *supra* note 11, at 131.

¹⁹⁹ 23 U.S.C. § 131(d).

²⁰⁰ The Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240 (1991), 49 U.S.C. § 101 (2002), allows billboards in non-scenic areas, and the 1995 Scenic Byways Amendment allows states to exclude roads from state or federal scenic byways designation. *See also* OAAA, *Laws and Regulations*,

Observers disagree with regard to the Highway Beautification Act's effectiveness in reducing the number of highway billboards. In 1985 the General Accounting Office concluded that 587,000 signs had been removed in the twenty years since the Act passed, but the agency also found that 172,000 signs remained due to lack of funding to compensate sign owners.²⁰¹ Moreover, 320,000 billboards had been added since the Act was passed.²⁰² In effect, although the government had spent two hundred million dollars to pay for billboard removal, an estimated half a million highway advertisements still remained in 1985.²⁰³ Because of the ongoing just-compensation requirement, contemporary critics allege that the Highway Beautification Act actually discourages billboard removal and is thus counterproductive.²⁰⁴ However, the OAAA presents a more favorable view of the Act, citing a 1996 Federal Highway Administration report showing that there were 127,000 fewer legal highway signs, 750,000 fewer illegal ones, and only 74,000 legal signs remaining at that time due to the Act.²⁰⁵ As the OAAA emphasizes, the Highway Beautification Act continues to severely restrict billboards along 306,000 miles of federally-funded highways.²⁰⁶ Moreover, regulatory activity at the state and local level may be picking up the slack.²⁰⁷

<http://www.oaaa.org/government/laws.asp> (last visited Mar. 29, 2007) (summarizing current highway billboard laws).

²⁰¹ U.S. GEN. ACCOUNTING OFFICE, THE OUTDOOR ADVERTISING CONTROL PROGRAM NEEDS TO BE REASSESSED: REPORT TO THE CHAIRMAN, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, UNITED STATES SENATE ii-iii (1985).

²⁰² Harvey K. Flad, *Country Clutter: Visual Pollution and the Rural Landscape*, 553 ANNALS AM. ACAD. POL. & SOC. SCI. 117, 125 (1997).

²⁰³ *Id.* The U.S. Senate approved a moratorium on further billboard construction along interstate highways in 1990, but the ban never became law. Visual Pollution Control Act of 1990, S. 2500, 101st Cong. (1990); *see also* S. REP. NO. 101-532 (Senate report of the proposed bill following conference); 1990 Bill Tracking S. 2500 (LEXIS) (summary of the legislative history).

²⁰⁴ *See, e.g.*, Craig J. Albert, *Your Ad Goes Here: How the Highway Beautification Act of 1965 Thwarts Highway Beautification*, 48 U. KAN. L. REV. 463 (2000).

²⁰⁵ OAAA, Laws and Regulations, *supra* note 199 (describing the Federal Highway Administration's "Nationwide Statistical Report"). The president of the OAAA later reported that 710,000 signs came down after passage of the Highway Beautification Act, and that there were fewer signs in 1991 than 1965. FRASER, *supra* note 54, at 188.

²⁰⁶ *See* OAAA, Laws and Regulations, *supra* note 199.

²⁰⁷ One author suggested in 1986 that federal enforcement of the Highway Beautification Act "currently suffers from conservative restraint or indifference," but that state activity might compensate for this inaction. Lynch, *supra* note

C. *Aesthetic Regulation in the Courts*

Courts have approved gradually more ambitious billboard regulations, as previously described. Soon after the *St. Louis Gunning* opinion in 1911, three Supreme Court cases also found billboard regulations to be valid, thereby unambiguously establishing the constitutionality of billboard regulations while at the same time moving the judiciary closer to accepting aesthetic rationales for regulation. In *Thomas Cusack Co. v. Chicago* (1917),²⁰⁸ the Supreme Court sustained a Chicago ordinance requiring that outdoor advertisers gain permission from neighbors before erecting billboards in a residential area. The Court determined the ordinance was within the city's authority to promote "the safety, morality, health and decency of the community,"²⁰⁹ even though the city's stated rationale was an implausible concern with fire hazards and crime. The Court's permissive treatment of municipal police power in this opinion, despite the lack of a convincing factual justification, led several observers to suggest that the Supreme Court was bowing to public opinion.²¹⁰

Although *Cusack* did not address whether billboard regulations could be justified by aesthetic dislike, the Supreme Court considered this issue just two years later. In *St. Louis Poster Advertising Co. v. City of St. Louis* (1919),²¹¹ the Court upheld the same St. Louis ordinance that was challenged in *St. Louis Gunning*, a law that limited the size and location of

11, at 423 n.23. Local government activism against billboards, which has helped compensate for the failures of the federal Act, mirrors the emergence of local environmental law as a productive alternative to traditional top-down, "command and control" federal environmental regulation. See John R. Nolan, *In Praise of Parochialism: The Advent of Local Environmental Law*, 26 HARV. ENVTL. L. REV. 365 (2002).

²⁰⁸ 242 U.S. 526 (1917).

²⁰⁹ *Id.* at 529-30.

²¹⁰ One author remarked that "the Supreme Court has shown the disposition to go to great lengths in sustaining any statute or ordinance to promote public safety and welfare for which any substantial reasons may be assigned." Note, *A Billboard Ordinance Upheld by the Supreme Court of the United States*, 2 VA. L. REG. 940, 941 (1917). Another wrote that "the United States Supreme Court has said that the police power cannot be exercised solely for the protection of the aesthetic, but the same court has tacitly approved such laws [in *Cusack* and *Euclid v. Ambler Realty Co.*, *supra* note 86] by engaging in some remarkable *tours de force*." V.V.C., Note, *The Modern Tendency Toward Protection of the Aesthetic*, 44 W. VA. L.Q. 58, 60 (1937).

²¹¹ 249 U.S. 269 (1919).

city billboards.²¹² The plaintiffs' billboards were fireproof and able to withstand heavy winds, which would have satisfied earlier courts' concerns about instability and flammability, but the Court nonetheless sustained the ordinance based on precedent, without addressing the facts of the case.²¹³ Most significantly, in this case the Supreme Court for the first time acknowledged aesthetics as a permissible *secondary* rationale for billboard regulation:

Possibly one or two details [of the ordinance] . . . have aesthetic considerations in view more obviously than anything else. But as the main burdens imposed stand on other ground, we should not be prepared to deny the validity of relatively trifling requirements that did not look solely to the satisfaction of rudimentary wants that alone we generally recognize as necessary.²¹⁴

St. Louis Poster Advertising Co. was not the first opinion to accept aesthetics as a secondary rationale for regulation, either. A decade earlier, in *Welch v. Swasey* (1909),²¹⁵ the Supreme Court had upheld a height restriction on urban buildings primarily because of a valid fear of fire, albeit with the added and unobjectionable possibility of "considerations of an aesthetic nature."²¹⁶

The third Supreme Court decision to address a billboard law, *Packer Corp. v. Utah*,²¹⁷ shows that by 1932 the Court unequivocally shared lower courts' concern with the aesthetic impact of billboards. *Packer* upheld a statewide prohibition on outdoor advertising of tobacco products.²¹⁸ The Court agreed with the lower court that outdoor advertising was distinguishable from print advertising, and thus could be regulated differently, because of the way billboards involuntarily intrude on passerby's sight. The Court's holding carries a hint of displeasure:

²¹² *Id.* at 273.

²¹³ *Id.* at 274.

²¹⁴ *Id.*

²¹⁵ 214 U.S. 91 (1909).

²¹⁶ *Id.* at 108. In the same vein, the lower court had held that "if the primary and substantive purpose of the legislation is such as justifies the act, considerations of taste and beauty may enter in, as auxiliary." *Welch v. Swasey*, 79 N.E. 745, 746 (Mass. 1907).

²¹⁷ 285 U.S. 105 (1932).

²¹⁸ *Id.* at 107; *see also* UTAH CODE ANN. § 76-10-102 (2005) (current version of the law).

“Advertisements of this sort are constantly before the eyes of observers on the streets and in street cars to be seen without choice or volition [P]eople . . . have the message of the billboard thrust upon them by all the art and devices that skill can produce.”²¹⁹

Following the Supreme Court’s precedent in *St. Louis Poster Advertising Co. and Welch v. Swasey*, a growing number of courts began to uphold billboard regulations under hybrid rationales that acknowledged aesthetics as a secondary goal. For example, in *Perlmutter v. Greene* (1932),²²⁰ the New York Court of Appeals affirmed the state’s right to erect a large screen in front of a highway billboard to shield drivers from “obnoxious sights of public nuisances.”²²¹ After characterizing the issue of “whether artistic considerations alone are sufficient to warrant the general prohibition of billboards on private property” as “unsettled,” the court concluded that “Beauty may not be queen but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality or decency.”²²² Another court agreed in 1930 that “aesthetic considerations may be considered along with other factors determining the question of the general welfare,” although “a city may not prohibit billboards . . . merely because such boards are unsightly.”²²³

Many scholars have criticized courts’ reasoning during this intermediate period, in which the judiciary accepted aesthetically-motivated billboard laws under the pretext of health and safety.²²⁴ In 1916, five years after *St. Louis Gunning*, Everett Millard remarked that “the courts

²¹⁹ 285 U.S. at 110.

²²⁰ 182 N.E. 5 (N.Y. 1932).

²²¹ *Id.* at 6.

²²² *Id.* at 5-6. The *Harvard Law Review* noted that *Perlmutter* “left open” the possibility of purely aesthetic regulation, and that “legislation frankly aimed at preserving the beauty of the highways will not always be beyond the pale of due process.” Recent Cases, *Highways—Rights and Remedies of Abutters—Erection by State of Screen to Hide Billboard*, 46 HARV. L. REV. 158, 158 (1932).

²²³ *Gen. Outdoor Adver. Co. v. Indianapolis*, 172 N.E. 309, 312, 315 (Ind. 1930); *see also* *Gen. Outdoor Adver. Co. v. Dep’t of Pub. Works*, 193 N.E. 799, 815 (Mass. 1935) (holding that “considerations of taste and beauty may enter in, as auxiliary,” in legislation) (internal quotation marks omitted).

²²⁴ *See generally* Bobrowski, *supra* note 12 (describing scholarly discussion of aesthetic regulation).

are careful to tie down to physical objections [such as risk of toppling or flammability] as the chief basis of their decisions. Objections based upon the protection of beauty are only thrown in, at best, for good measure.”²²⁵ Henry Chandler wrote in 1922, “With many protestations and by means of the fantastic argument that bill-boards are a menace to public safety, the courts have nevertheless given aid to the movement for protection against this disfigurement.”²²⁶ A third author explained in 1932 that “courts have constantly sought to find some evidence of tangible harm on which to base a finding against this form of advertising. The lengths to which they have gone justify the oft repeated suspicion that the judges, as well as the public, are moved by aesthetic considerations.”²²⁷

Scholars offered various reasons for courts’ backdoor approach to aesthetic regulation. One observer linked the phenomenon to “the strictly utilitarian bias of Anglo-Saxon and of American law,” under which “other and better acknowledged grounds than that of the merely aesthetic” have been used to regulate billboard nuisances.²²⁸ At least two authors have suggested that judges obscured their true reason for upholding billboard laws because beauty seemed to be too subjective a basis for zoning regulations, as the court concluded in *St. Louis Gunning*.²²⁹ Another scholar has noted that throughout American history, in a variety of contexts, aesthetic rationales for protecting nature have

²²⁵ Millard, *supra* note 11, at 30.

²²⁶ Chandler, *supra* note 12, at 472.

²²⁷ H.S.V.S., *supra* note 11, at 106; *see also* Sutton, *supra* note 11, at 195 (“Even though the only true rationale behind the regulation of signs along public highways is to preserve and enhance the beauty of the environment, most jurisdictions have refused to recognize this purpose alone to be constitutionally legitimate and have relied instead on circuitous grounds of questionable legal validity.”).

²²⁸ Goodrich, *supra* note 11, at 122. Goodrich also identified the courts’ reluctance to accept aesthetically-motivated zoning as being grounded in Americans’ pragmatism. *Id.* at 127-28.

²²⁹ 137 S.W. 929, 961-62 (Mo. 1911). Dukeminier defended the aesthetic rationale for regulation as imperfect but adequate: “The cry for precise criteria [of beauty] might well be abandoned because it does not make sense. Beauty cannot be any more precisely defined than wealth, property, malice, or a host of multiordinal words to which courts are accustomed.” Dukeminier, *supra* note 12, at 226-29. Catherine Gudis agreed that judges considered aesthetics to be too subjective and feminine a standard for their attention. GUDIS, *supra* note 9, at 170, 174.

frequently been couched in economic rationales for purposes of political expediency.²³⁰

Whatever the real reason for courts' duplicitous rationales, scholars unanimously agree with J.J. Dukeminier's observation that "It seems plain that the primary offense of billboards is ugliness. Any jerry-built billboard may of course be a menace to safety and a fire hazard, but the billboard regulations are not limited to keeping the signboard screws tight."²³¹

Regardless of the reason for the judiciary's delay in acknowledging the aesthetic goals behind billboard regulations, scholars' indignation regarding this lag is itself significant. The legal commentary on this issue implies that the courts *should have* matched public opinion on this issue much sooner than they did, and that judges' delay was either dishonest or, worse, undemocratic. In other words, scholars seem to assume that courts *should have been* majoritarian. Pursuant to this implied understanding of the role of courts in society—which I argue is a proper one, at least with regard to billboards—courts serve the public and promote the public good through their responsiveness to dominant cultural attitudes.²³²

Despite courts' initial ambivalence regarding aesthetic regulation of billboards, over time the common law responded to pervasive public dislike, and the ugliness and intrusiveness of outdoor advertising gradually became accepted as an adequate stand-alone basis for exercising the police power to control billboards. As early as 1927, the Supreme Court of New York could declare that "We have reached a point in the development of the police power where an esthetic purpose needs but little assistance from a practical one to withstand an attack on constitutional

²³⁰ See Doremus, *supra* note 9.

²³¹ Dukeminier, *supra* note 12, at 220.

²³² Of course, we should not be surprised that courts were not unabashedly in step with public desire to regulate billboards due to ugliness, since courts often react to social change rather than creating it.

grounds.”²³³ Another court announced in 1941 that “the time has come to make a candid avowal of the right of the legislature to adopt appropriate legislation based upon these so called aesthetic, but really very practical, grounds.”²³⁴

The Supreme Court conclusively established the constitutionality of aesthetic regulation in *Berman v. Parker*,²³⁵ a 1954 opinion which affirmed Congress’s right to take private property to redevelop a blighted neighborhood in Washington, D.C. The Court presented a famously expansive reading of the police power and said aesthetics were a valid basis for exercising it:

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.²³⁶

Subsequent cases often relied on *Berman* to uphold billboard regulations for aesthetic reasons alone.²³⁷ After *Berman*, most courts no longer felt compelled to search for traditional health-and-safety rationales to uphold billboard laws, instead affirming them under a deferential “rational relationship” degree of constitutional scrutiny applied to rationales including aesthetics.²³⁸ A minority of states still requires that scenic regulations be grounded in health or safety rationales, or in economic reasons such as the protection of property values or promotion

²³³ *People v. Sterling*, 220 N.Y.S. 315, 318 (Sup. Ct. 1927) (upholding a law which banned billboards from Adirondack Park to conserve natural beauty). *But see O’Mealia Outdoor Adver. Co. v. Rutherford*, 27 A.2d 863, 665 (N.J. 1942) (relying on *Passaic v. Paterson Bill Posting Co.*, 72 N.J.L. 285 (1905), in finding that “Aesthetic considerations are a matter of luxury and indulgence rather than necessity, and it is necessity alone which justifies the exercise of the police power . . .”).

²³⁴ *Hav-A-Tampa Cigar Co. v. Johnson*, 5 So. 2d 433, 439 (Fla. 1941).

²³⁵ 348 U.S. 26 (1954).

²³⁶ *Id.* at 33 (internal citation omitted); *see also* Jacob M. Lashly, *The Case of Berman v. Parker: Public Housing and Urban Redevelopment*, 41 A.B.A. J. 501 (1955) (describing the legal and political significance of *Berman*).

²³⁷ *See, e.g., John Donnelly & Sons, Inc. v. Outdoor Adver. Bd.*, 339 N.E.2d 709, 717 (Mass. 1975); Opinion of Justices, 169 A.2d 762, 764 (N.H. 1961). In 1984 the Supreme Court cited *Berman* for the conclusion that “It is well settled that the state may legitimately exercise its police powers to advance esthetic values.” *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984).

²³⁸ *See Bobrowski, supra* note 12, at 707-08 (discussing post-*Berman* constitutional review of billboard laws). For an example of post-*Berman* deference, *see Jasper v. Commonwealth*, 375 S.W.2d 709, 711 (Ct. App. Ky. 1964) (stating that police power authority encompasses the aesthetic goal of enhancing scenic beauty).

of tourism, but this view is steadily shrinking.²³⁹ Of course, even jurisdictions that require a rationale other than aesthetics nevertheless accomplish the same result of upholding aesthetically-driven regulations, albeit indirectly.²⁴⁰

The Supreme Court has relied on *Berman* to uphold a variety of laws created in the interest of promoting aesthetics. In *Village of Belle Terre v. Boraas* (1974),²⁴¹ the Court upheld an ordinance limiting neighborhood residences to single families because “[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.”²⁴² In *Penn Central Transportation Co. v. New York City* (1978),²⁴³ the Court held that property owners were properly barred from erecting a large office tower on top of the historic Grand Central Terminal in New York, a plan which the Court characterized as “an aesthetic joke.”²⁴⁴ The Court deferred to the city by holding that its Landmarks Preservation Law appropriately promoted the general welfare²⁴⁵ and did not result in

²³⁹ In the decades since *Berman*, as one author notes, “Tracking the majority position on this issue has become a cottage industry.” Bobrowski, *supra* note 12, at 701 n.32. Bobrowski catalogues the various surveys which scholars have performed over the years to track states’ acceptance of aesthetics as a stand-alone regulatory rationale. The surveys show a significant trend toward greater acceptance of aesthetics:

See, e.g., RICHARD C. SMARDON & JAMES P. KARP, *THE LEGAL LANDSCAPE* 25, 26-27 (1993) (thirty states permit regulation for aesthetic purposes alone, five states do not, fifteen are undecided or have not considered the issue) (30/5/15). *See generally* Kenneth Regan, *You Can’t Build That Here: The Constitutionality of Aesthetic Zoning and Architectural Review*, 58 *FORDHAM L. REV.* 1013 (1990) (20/26/5); Samuel Bufford, *Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation*, 48 *UMKC L. REV.* 125 (1980) (16/16/9); Note, *Beyond the Eye of the Beholder: Aesthetics and Objectivity*, 71 *MICH. L. REV.* 1438 (1973) (14/23/14); Louis H. Massotti & Bruce I. Selfon, *Aesthetic Zoning and the Police Power*, 46 *J. URB. L.* 773 (1969) (7/35/8).

Bobrowski, *supra* note 12, at 701 n.32.

²⁴⁰ As one author notes, “[T]he property values rationale is but the latest in a series of ruses, in line with the regulations and decision in *St. Louis Gunning*, designed to camouflage the aesthetic purposes behind a local regulation.” Bobrowski, *supra* note 12, at 715.

²⁴¹ 416 U.S. 1, 9 (1974).

²⁴² *Id.* at 9. In the same opinion, the Court noted that in *Berman*, “We refused to limit the concept of public welfare that may be enhanced by zoning regulations.” *Id.* at 5.

²⁴³ 438 U.S. 104 (1978).

²⁴⁴ *Id.* at 117-18; *see also id.* at 129 (“States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city.” (citing *Berman v. Parker*, 348 U.S. 26, 33 (1954)).

²⁴⁵ *Id.* at 125, 138.

a taking.²⁴⁶ The Court concluded that “[s]tates and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city.”²⁴⁷ Similarly, in *Members of City Council v. Taxpayers for Vincent* (1984)²⁴⁸ the Court upheld a law that banned private signs from public places on the grounds that eliminating visual clutter is a valid basis for regulation.²⁴⁹ Citing *Berman*, Justice Stevens wrote that “It is well settled that the state may legitimately exercise its police powers to advance esthetic values.”²⁵⁰

In addition to their increased deference to billboard regulation, courts have also become freer in denouncing the visual harm of outdoor advertising, in the same way that courts in the *St. Louis Gunning* era emphasized billboards’ risks to health and safety. Judges’ gratuitous criticism of the visual impact of advertising on communities and the countryside suggests that judges may sympathize with majoritarian dislike of billboards. As early as 1935, the Supreme Court of Massachusetts upheld a highway billboard ban to protect travelers “from annoying obtrusion of

²⁴⁶ *Id.* at 128-31. *Penn Central*’s unsympathetic attitude toward takings of private property parallels the denial of takings claims in billboard lawsuits. Although some early opinions did find that regulations “took” advertisers’ and landowners’ private property by keeping them from erecting outdoor advertisements, *supra* § II(C), the expanding police power soon superseded those property complaints. The police power remains sufficient justification for billboard regulation today, but now, courts often deny that any property rights are taken at all when billboards are restricted or banned. Instead, courts increasingly characterize billboards as exploiting a public resource—access to public roads and the public’s attention—such that banning billboards is not taking private property but depriving advertisers of the right to exploit public property. For example, in *Kelbro, Inc. v. Myrick*, 30 A.2d 527 (Vt. 1943), the court declared that

Ostensibly located on private property, the real and sole value of the billboard is its proximity to the public thoroughfares. Hence, we conceive that the regulation of billboards and their restriction is not so much a regulation of private property as it is a regulation of the use of the streets and other public thoroughfares.

Id. at 529. Courts’ attitude toward takings claims echoed one activist’s earlier observation that “Billboard advertising as now conducted is a business of unfair and special privilege, seeking to exploit for the benefit of a few the costly beauty of our cities while it destroys the natural beauty of our scenery.” McFarland, *supra* note 40, at 46. See generally Charles F. Floyd, *The Takings Issue in Billboard Control*, 3 WASH. U. J.L. & POL’Y 357, 358 (2000).

²⁴⁷ 438 U.S. at 129.

²⁴⁸ 466 U.S. 789 (1984).

²⁴⁹ *Id.* at 817.

²⁵⁰ *Id.* at 805 (citing *Berman*, 348 U.S. at 32-33).

commercial propaganda.”²⁵¹ A 1975 case in the same court characterized billboards as “visual pollution” and noted “the serious effects billboards have on the aesthetics of a locality.”²⁵² In 1967, a court described postwar growth in outdoor advertising as a “blight . . . upon the national landscape” whose “deleterious effects” have increased.²⁵³ Moreover, the court wrote, “Advertising signs and billboards, if misplaced, often are egregious examples of ugliness, distraction, and deterioration. They are just as much subject to reasonable controls, including prohibition, as enterprises which emit offensive noises, odors, or debris.”²⁵⁴

Just as remarkable, however, many courts have agreed that billboards can be regulated for aesthetic reasons without investigating the factual question of their aesthetic character or impact. Such courts apparently take for granted that billboards are ugly, or at least that billboards have *some* sort of visual impact and thus merit aesthetic regulation, regardless of the nature of the impact. Either way, these permissive decisions suggest that most judges approve of—indeed, probably share—the majority public dislike of billboards.

IV. CONTEMPORARY BILLBOARD REGULATION

Early billboard laws were generally modest, seeking only to limit the size or location of outdoor advertisements, but public pressure and judicial concurrence have resulted in increasingly restrictive regulations.²⁵⁵ By mid-century, many billboard lawsuits involved

²⁵¹ *Gen. Outdoor Adver. Co. v. Dep’t of Pub. Works*, 193 N.E. 799, 827 (Mass. 1935) (deferring to the legislature’s authority to regulate billboards within public view of highways); *see generally* Gardner, *supra* note 11 (evaluating this decision).

²⁵² *John Donnelly & Sons, Inc. v. Outdoor Adver. Bd.*, 339 N.E.2d 709, 718, 721 (Mass. 1975).

²⁵³ *Cromwell v. Ferrier*, 225 N.E.2d 749, 754-55 (N.Y. 1967).

²⁵⁴ *Id.* One could argue that judges used denunciatory rhetoric in their opinions to help justify their holdings, but their frequent and legally inessential emphasis on billboards’ ugliness nonetheless suggests the possibility that cultural viewpoints are being reflected in the judges’ rhetoric.

²⁵⁵ *See* U.S. BUREAU OF PUBLIC ROADS, COMPILATION OF LAWS OF THE SEVERAL STATES IN FORCE ON JANUARY 21, 1928 DEALING WITH THE REGULATION OF OUTDOOR ADVERTISING (1929) (collecting statutes related to billboard control from all fifty states).

challenges to outright bans on off-site advertising—that is, total bans on signs advertising businesses that are not located on the same property. For example, in *Hav-A-Tampa Cigar Co. v. Johnson* (1941),²⁵⁶ billboard owners challenged the constitutionality of a Florida statute that outlawed billboards within fifteen feet of highways throughout the state. The court followed “the obvious intent of the legislature” in upholding the expansive law as a valid exercise of the police power.²⁵⁷ Courts have generally accepted comprehensive billboard bans which carve out an exception for on-site signs under the theory that off-site advertising is merely a nuisance while on-site signs are necessary for commerce.²⁵⁸

In recent decades, billboard laws and resulting litigation have focused on highway billboards more than urban ones, reflecting the industry’s shift in emphasis toward highways. These cases also generally favor government regulation, due to the anti-billboard precedent in the courts and to judges’ particular sensitivity to billboards’ economic and visual impact on the natural landscape. For example, in 1961 the Supreme Court of New Hampshire pre-approved the constitutionality of a law which outlawed off-site highway billboards throughout the state.²⁵⁹ The ban was justified for safety reasons—to promote visibility and reduce distractions from highway signs—but also for the sake of scenery, since “New Hampshire is peculiarly dependent upon its scenic beauty to attract the hosts of tourists, the income from whose presence is a vital factor in our economy.”²⁶⁰ The court also noted that “interstate highways are built with taxpayers’ money to promote the general welfare and safety of the public by affording means of

²⁵⁶ 5 So.2d 433 (Fla. 1941).

²⁵⁷ *Id.* at 436.

²⁵⁸ *See, e.g., United Adver. Corp. v. Metuchen*, 198 A.2d 447, 450 (N.J. 1964) (“There are obvious differences between an on-premise sign and an off-premise sign. Even if the baleful effects of both be in fact the same, still in one case the sign may be found tolerable because of its contribution to the business or enterprise on the premises.”). The Supreme Court has also upheld this distinction. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 511 (1981) (affirming a prohibition on offsite advertising).

²⁵⁹ *Opinion of Justices*, 169 A.2d 762 (N.H. 1961). The enacted statewide ban is found at N.H. REV. STAT. ANN. §§ 236:69 to 236:89 (2005).

²⁶⁰ 169 A.2d at 764.

swift, safe and pleasurable travel for all, and not to secure commercial advantages for a limited number of advertisers.”²⁶¹ Other courts have agreed that unlicensed highway advertisements are properly characterized as unauthorized and noxious exploitation of public views rather than constitutionally sacrosanct uses of private property.²⁶²

A. The First Amendment Problem

After decades of failed efforts to show that billboard restrictions and bans are unconstitutional takings of private property, in recent decades outdoor advertisers have successfully undermined the judicial acceptance of billboard laws by challenging the laws on First Amendment grounds. This new trend in billboard jurisprudence arose from a collision of regulatory history and evolving common law in the 1970s: state and local governments were instituting sweeping billboard bans at the same time as the Supreme Court was developing a commercial speech doctrine. With this doctrine, the Court recognized a degree of First Amendment protection for commercial speech such as advertising, based on the public’s right to have access to this information. The commercial speech doctrine led the Court to reconsider the free speech implications of billboard controls, and since then courts have often overturned regulatory ordinances as unconstitutionally overbroad because of their effect on the public’s or advertisers’ free speech rights.²⁶³

²⁶¹ *Id.* at 763.

²⁶² *See, e.g.,* *Perlmutter v. Greene*, 182 N.E. 5, 7 (N.Y. 1932) (“No contract exists between the State and the owner that the latter may forever use his property to erect billboards anywhere along the highway; no right *in rem* exists, for the adjacent owner has no title to the highway.”). The public seems to agree, as illustrated by this author:

Taxpayers, however, pay for the roads. We buy the cars. We supply the gas. Billboard companies acquire a sliver of the adjoining land and presume to invite themselves onboard as the motorists’ guest. Their vanity has no mute button. There is no off switch. Our eyes cannot be averted. One billboard company’s website promises that: “outdoor boards are unavoidable, unstoppable.” In short, the motorist’s personal freedom of thought involuntarily becomes a billboard company’s merchandise.

Rohe, *supra* note 183, at 30.

²⁶³ *See generally* *Lynch*, *supra* note 11 (describing the trend toward billboard laws being struck down for free speech reasons).

As previously described, earlier billboard cases mostly involved due process challenges to municipal authority, pursuant to the police power, to “take” private property by imposing billboard controls or bans.²⁶⁴ Even though it seems self-evident today that billboards are a form of speech and therefore create First Amendment concerns, the early cases did not address this issue because the Supreme Court had not yet applied the First Amendment to commercial speech.²⁶⁵ The Court reiterated the unprotected state of commercial speech as recently as 1942, explaining then that “the Constitution imposes no such restraint on government as respects [the regulation of] purely commercial advertising.”²⁶⁶ The Court retreated from this position and began to recognize free speech rights for commercial speech in a series of decisions beginning with *Bigelow v. Virginia* in 1975,²⁶⁷ in which the Court built on prior decisions to hold that “speech is not stripped of First Amendment protection merely because it appears [as paid commercial advertisements].”²⁶⁸ As the Court explained the following year in *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*,²⁶⁹ the informational value of commercial speech to consumers gives it constitutional weight because “there is a right to receive information and ideas.”²⁷⁰ *Virginia Pharmacy* held that the state could not prevent pharmacists from advertising the costs of drugs because consumers had a First Amendment right to commercial information.

²⁶⁴ See *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 498 n.7 (1981) (describing the Court’s early billboard jurisprudence).

²⁶⁵ *Id.* at 498 (“Early cases in this Court sustaining regulation of and prohibition aimed at billboards did not involve First Amendment considerations. See *Packer Corp. v. Utah*, 285 U.S. 105 (1932); *St. Louis Poster Adver. Co. v. City of St. Louis*, 249 U.S. 269 (1919); *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526 (1917).”). Moreover, as a whole, First Amendment doctrine was less developed earlier in the twentieth century.

²⁶⁶ *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942).

²⁶⁷ 421 U.S. 809 (1975).

²⁶⁸ *Id.* at 818.

²⁶⁹ 425 U.S. 748 (1976).

²⁷⁰ 425 U.S. at 757; see also *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 564 (1980) (“*Central Hudson*”) (elaborating upon the commercial speech doctrine).

The commercial speech doctrine added an additional level of constitutional scrutiny for assessing the constitutionality of outdoor advertising. While a broadened police power remained sufficient to meet most Fourteenth Amendment due process challenges, courts now had to examine whether regulations affecting commercial speech, in particular, nonetheless adversely affect the First Amendment. This doctrine was first applied to billboards in the landmark decision *Metromedia, Inc. v. City of San Diego* (1981),²⁷¹ where the Supreme Court for the first time overruled a billboard regulation on free speech grounds.²⁷² Several advertising companies had challenged a city ordinance which intended to “preserve and improve the appearance of the city” by outlawing all outdoor advertisements except for on-site signs.²⁷³ The Court’s opinion began by approving the billboard law’s safety and aesthetic rationales.²⁷⁴ It also found that the city’s regulation satisfied the constitutional test for limitations on commercial speech established a year earlier in *Central Hudson Gas & Electric Corp. v. Public Service Commission*.²⁷⁵ *Central Hudson* had held that regulation of commercial speech is only valid if the limitation directly advances a substantial government interest and is not overbroad,²⁷⁶ in *Metromedia* the billboard law specifically advanced the city’s substantial interest in beautification and safety.²⁷⁷ However, the majority in *Metromedia* nonetheless struck down the ordinance because it unconstitutionally

²⁷¹ 453 U.S. 490 (1981).

²⁷² For more on the development of the Supreme Court’s commercial speech doctrine and its application to billboards in *Metromedia*, see Lynch, *supra* note 11, at 433-45.

²⁷³ 453 U.S. at 493-96.

²⁷⁴ *Id.* at 507-08 (White, J.) (plurality opinion); *see also id.* at 528, 530 (Brennan & Blackmun, JJ., concurring) (agreeing that traffic safety and aesthetics are valid regulatory goals); *id.* at 560 (Burger, C.J., dissenting) (“The plurality acknowledges—as they must—that promoting traffic safety and preserving scenic beauty ‘are substantial governmental goals.’”).

²⁷⁵ *Central Hudson*, 447 U.S. 557, 564 (1980) (establishing the Court’s commercial speech test). The *Central Hudson* test was restated in *Metromedia*, 453 U.S. at 507, as follows:

- (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it
- (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and
- (4) reaches no further than necessary to accomplish the given objective.

²⁷⁶ 447 U.S. at 566.

²⁷⁷ 453 U.S. at 507-12 (applying *Central Hudson*’s test to the billboard ordinance).

burdened non-commercial speech—which enjoys greater constitutional protection than commercial speech—since the advertising ban included non-commercial billboard content.²⁷⁸ Based on the new commercial speech doctrine, for the first time the Court identified and distinguished the “noncommunicative” aspects of billboards—their physical presence and aesthetic impact on their surroundings, which could be regulated—from their “communicative” aspects, namely their speech content, which the government could restrict only within prescribed limits.²⁷⁹

By introducing the new variable of advertisers’ and consumers’ free speech rights, *Metromedia* created a sea change in billboard jurisprudence and shifted the legal playing field toward advertisers.²⁸⁰ Many courts have since struck down billboard regulations by finding that protection of commercial speech overrules the police power’s deference to public desire to suppress outdoor advertisements.²⁸¹ On at least three occasions since *Metromedia* the Supreme Court has favored outdoor advertisers on free speech grounds, although the opinions range beyond the issue of billboards. In *City of Cincinnati v. Discovery Network, Inc.* (1993),²⁸² the Court struck down a ban on commercial handbills because the law was overbroad, with negative effects on advertisers’ First Amendment rights that outweighed the city’s stated aesthetic goals

²⁷⁸ 453 U.S. at 513-15. Chief Justice Burger and Justice Rehnquist both offered strong dissents that called attention to the Court’s previous deference to cities’ regulatory power over billboards. Burger described billboards as “visual pollution” and “ugly and dangerous eyesores,” *id.* at 559, 561, and complained that the majority opinion “exhibits insensitivity to the impact of these billboards on those who must live with them and the delicacy of the legislative judgments involved in regulating them.” *Id.* at 556.

²⁷⁹ *Id.* at 502 (“As with other media, the government has legitimate interests in controlling the noncommunicative aspects of the medium, but the First and Fourteenth Amendments foreclose a similar interest in controlling the communicative aspects.”) (internal citation omitted).

²⁸⁰ For more on *Metromedia*’s implications for future billboard regulation, see, for example, Aronovsky, *supra* note 11; Bond, *supra* note 11; Keith B. Leffler, *The Prohibition of Billboard Advertising: An Economic Analysis of the Metromedia Decision*, 1 SUP. CT. ECON. REV. 113 (1982); Loshin, *supra* note 11, at 155-59 (discussing *Metromedia* and subsequent Court opinions).

²⁸¹ See, e.g., *Metromedia, Inc. v. Mayor of Baltimore*, 538 F. Supp. 1183 (D. Md. 1982) (finding that a billboard regulation unconstitutionally burdened noncommercial speech); *Georgia v. Café Erotica, Inc.*, 507 S.E.2d 732 (Ga. 1998) (finding that billboards advertising a strip club are protected speech).

²⁸² 507 U.S. 410 (1993).

for regulating.²⁸³ In *City of Ladue v. Gilleo* (1994),²⁸⁴ the Court declared a city ordinance unconstitutional because it suppressed an entire medium of speech by preventing homeowners from displaying signs on their property.²⁸⁵ Most recently, in *Lorillard Tobacco Co. v. Reilly* (2001),²⁸⁶ the Court struck down a statewide ban on outdoor tobacco advertising because it was overbroad and thus failed the *Central Hudson* test for the constitutionality of commercial speech restrictions.²⁸⁷

Note that the advent of free speech concerns in billboard litigation does not signal a judicial retreat from courts' prior alignment with public opinion regarding the value of billboard controls. On the contrary, this new variable in billboard law merely reflects the inevitable application of a broader and conflicting trend in the common law, namely the development of a commercial speech doctrine.²⁸⁸ To the extent that the mixed legacy of recent billboard opinions suggests a softening of public pressure on judges to find in favor of regulators, such softening undoubtedly reflects a legacy of past regulatory successes and a shift in public attention toward newer forms of advertising media, such as television and the Internet.²⁸⁹ Over the course of a century of legislation and litigation, regulators succeeded in constraining the originally

²⁸³ *Id.* at 419, 425.

²⁸⁴ 512 U.S. 43 (1994).

²⁸⁵ *Id.* at 55; see also Stephanie L. Bunting, Note, *Unsung Politics: Aesthetics, Sign Ordinances, and Homeowners' Speech in City of Ladue v. Gilleo*, 20 HARV. ENVTL. L. REV. 473 (1996).

²⁸⁶ 533 U.S. 525 (2001).

²⁸⁷ *Id.* at 561 ("The broad sweep of the regulations indicates that the Attorney General did not 'carefully calculate the costs and benefits associated with the burden on speech imposed' by the regulations.") (citing *Discovery Network*, 507 U.S. at 417). But see *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984) (upholding a law banning private signs from public places, albeit on police-power grounds rather than First Amendment ones). See generally Calo, *supra* note 11 (discussing these cases).

²⁸⁸ As Michael Klarman notes, "judicial decision making involves a combination of legal and political factors." *Supra* note 124. In this case, the First Amendment has become a sufficiently powerful legal factor to partially supersede public dislike of billboards and judges' interest in accommodating that dislike. The fact that public opinion cannot always determine the outcome of these cases does not mean that the underlying political disfavor toward outdoor advertising has changed. Moreover, to the extent that Americans support the principle of free speech, the new generation of cases merely reflects a more nuanced combination of public opinions on this topic.

²⁸⁹ As early as 1955, a scholar suggested that "This victory over ugliness is undoubtedly due largely to the growth of other more effective advertising mediums—newspapers, magazines, radio, and television—with a resultant lessening of demand by business interests for billboard space and community protection." Dukeminier, *supra* note 12, at 233-34.

unregulated and grossly intrusive billboard industry, so public opinion served its purpose and accomplished its goal. Overall, the accommodation of free speech concerns should be viewed more as an added nuance to contemporary doctrine rather than as an indication of backtracking of public desire or judicial willingness to control billboards.

The commercial speech doctrine certainly has not prevented contemporary courts from accepting aesthetic rationales for billboard regulation or continuing to criticize outdoor advertisements in their opinions. The Supreme Court illustrates the now unquestioned agreement that advertisements can be regulated simply because they are unattractive nuisances. In *Metromedia* the Supreme Court found that “billboards by their very nature, wherever located and however constructed, can be perceived as an ‘esthetic harm.’”²⁹⁰ In *City of Ladue* the Court referred to the “visual clutter” of highway billboards,²⁹¹ and in *Members of City Council v. Taxpayers for Vincent* (1984),²⁹² the Court concluded, “The problem addressed by this ordinance—the visual assault on the citizens of Los Angeles presented by an accumulation of signs posted on public property—constitutes a significant substantive evil within the City’s power to prohibit.”²⁹³ This rhetoric reinforces the conclusion that judges (like the American public) see billboards as an aesthetic problem that deserves regulatory control, albeit regulation that is now qualified by countervailing free speech concerns.

B. The OAAA and Scenic America

The longstanding struggle over the aesthetics of billboards has pitted the advertising industry and landowners against the American public, with public interests generally represented by activists, scholars, legislatures, and judges. This conflict continues to present both legal and

²⁹⁰ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 510 (1981).

²⁹¹ 512 U.S. at 58.

²⁹² 466 U.S. 789 (1984); *see also supra* notes 237, 287 and accompanying text (previous references to this opinion).

²⁹³ *Id.* at 807. *Taxpayers for Vincent* addressed the problem of lawn signs, not billboards, but the Court’s concern with visual pollution is shared by both opinions.

cultural components. The industry and the public continue to contest not only the legal scope of advertisers' rights—Where can billboards be placed? How large can they be?—but also the cultural identity of billboards in American culture—Are billboards indeed a nuisance and visual blight, or are they informative and artistic?

Scenic America and the Outdoor Advertising Association of America (OAAA) are the principal advocacy groups working on billboards today, and they aptly illustrate the contemporary debate over the merits of outdoor advertising.²⁹⁴ Scenic America is a non-profit organization which leads the nationwide crusade against billboards, the modern-day successor in spirit to the turn-of-the-century American Civic Association. Scenic America endeavors to “safeguard America’s natural beauty and community character” by advocating for strict regulation of outdoor advertising, among other goals, because “Nothing destroys the distinctive character of our communities and the natural beauty of our countryside more rapidly than uncontrolled signs and billboards.”²⁹⁵ Scenic America declares that billboards are a public nuisance because they distract drivers, add visual clutter to communities, impose upon individuals’ privacy, and often lead to further commercial blight in formerly undeveloped areas.²⁹⁶ Some of these concerns—distraction of drivers, visual clutter, and unattractiveness—echo the types of concerns which courts frequently rely on in upholding billboard regulations.²⁹⁷

Scenic America offers contemporary opinion polls which indicate that the American public overwhelmingly considers billboards to be ugly, intrusive, and uninformative,²⁹⁸ echoing

²⁹⁴ Scenic America, <http://www.scenic.org> (last visited Mar. 30, 2007); OAAA, <http://www.oaaa.org> (last visited Mar. 30, 2007).

²⁹⁵ Scenic America, Mission Statement, <http://www.scenic.org/mission> (last visited Mar. 30, 2007); Scenic America, Background on Billboards, <http://www.scenic.org/billboards> (last visited Mar. 30, 2007).

²⁹⁶ SCENIC AMERICA, *supra* note 195, at 5-9.

²⁹⁷ *Supra* § III(C).

²⁹⁸ Scenic America, Opinion Polls: Billboards are Ugly, Intrusive, and Uninformative, <http://www.scenic.org/billboards/background/opinion> (last visited Mar. 30, 2007). The overwhelming support for a statewide ban on billboards in Alaska, which passed by a margin of seventy-two percent to twenty-eight percent,

the conclusions of earlier surveys.²⁹⁹ The organization also disputes the industry's argument that billboards are important to the economy; on the contrary, Scenic America argues that "billboard control improves community character and quality of life, both of which directly impact local economies."³⁰⁰ Scenic America also explains how to campaign for and enact new billboard laws, and the organization offers model local and state ordinances as guidance.³⁰¹ The American Planning Association and the Southern Environmental Law Center, among other organizations, share Scenic America's goal of strictly regulating the outdoor advertising industry.³⁰²

The Outdoor Advertising Association of America, on the other hand, is the primary trade organization of the outdoor advertising industry. The OAAA represents more than a thousand outdoor advertising companies which together account for over ninety percent of industry revenue.³⁰³ The OAAA offers leadership and guidelines, marketing research, consumer

offers added evidence of public opinion emphatically aligned against billboards. SCENIC AMERICA, *supra* note 195, at 4.

²⁹⁹ A 1957 poll found that seventy percent of respondents favored billboard restrictions on the new interstate highway system and a 1960 poll in *Harper's Magazine* found that eighty-three percent of respondents favored "the total abolition of billboards." Moore, *supra* note 11, at 193. See also *supra* note 60 (citing a 1908 survey finding that a majority of visitors to Niagara Falls disliked the advertisements surrounding the Falls).

³⁰⁰ SCENIC AMERICA, *supra* note 195, at 62; see also Scenic America, Billboards by the Numbers, <http://www.scenic.org/billboards/background/numbers> (last visited Mar. 30, 2007); Scenic America, Billboard Control is Good for Business, <http://www.scenic.org/billboards/background/business> (last visited Mar. 30, 2007); Scenic America, Communities Prohibiting Billboard Construction, <http://www.scenic.org/billboards/background/communities> (last visited Mar. 30, 2007).

³⁰¹ SCENIC AMERICA, *supra* note 195. In order to make the model ordinances constitutional, according to established billboard case law, the model laws comprehensively declare that billboards distract drivers, threaten beautiful landscapes, hurt property values and tourism revenue, and are unnecessary as sources of information. The ordinances ban "off-site" advertisements while allowing "on-site" signs for businesses located on the same property as the sign, which is a distinction that courts make and billboard opponents accept. *Supra* note 245. The model ordinances allow off-site noncommercial (i.e. informational) messages, as well, to forestall possible First Amendment challenges in light of *Metromedia*. Model billboard regulations date back as early as 1908, when the American Civic Association first offered samples of fledgling billboard controls. THE BILLBOARD NUISANCE, *supra* note 26, at 18-20, 23-28.

³⁰² The American Planning Association has posted a Policy Guide on Billboard Controls on its website, <http://www.planning.org/policyguides/billboards.html> (last visited Mar. 30, 2007), and at least two other groups have also published manuals for creating anti-billboard legislation. See STANFORD ENVIRONMENTAL LAW SOCIETY, A LEGAL HANDBOOK FOR BILLBOARD CONTROL (1976); SOUTHERN ENVIRONMENTAL LAW CENTER, VISUAL POLLUTION AND SIGN CONTROL: A LEGAL HANDBOOK ON BILLBOARD REFORM (1987).

³⁰³ OAAA, About OAAA, <http://www.oaaa.org/about/> (last visited Mar. 30, 2007); Press Release, Outdoor Ad Revenue Continues Double-Digit Growth, *supra* note 177.

relations, and governmental lobbying to the outdoor advertising industry.³⁰⁴ The association reports that outdoor advertising continues to thrive, despite the ongoing onslaught of restrictive laws and outright bans. The industry has experienced a twenty-fold increase in revenue since 1970, it continues to experience double-digit revenue growth, and its clients spent \$6.8 billion on outdoor advertising in 2006.³⁰⁵ The OAAA also counters Scenic America's public polling with more favorable surveys of public opinion, although the industry's surveys mostly show that some Americans consider billboards to be *informative*, carefully sidestepping the question of whether billboards are unattractive.³⁰⁶

While not directly disavowing the idea that billboards are ugly, the OAAA argues that billboards are historically and artistically important; they are informative and unobtrusive; they add "excitement and appeal to urban areas;" and they "bring creative art, humor and energy to the roadway landscape."³⁰⁷ Of course, as the case law makes clear, courts have generally been indifferent to, if not in open disagreement with, this sympathetic view of billboards.³⁰⁸ The OAAA is also misguided in its legal conclusion about billboards' visual impact. The organization takes the position that "It is not acceptable to use aesthetics to rationalize against the promotion of legal products or the exercise of free expression guaranteed by the First Amendment to the Constitution." This conclusion directly contravenes the majority judicial

³⁰⁴ OAAA, Mission Statement, <http://www.oaaa.org/about/mission.asp> (last visited Mar. 30, 2007).

³⁰⁵ *Id.*; OAAA, Outdoor Advertising Expenditures, 1970-2006, http://www.oaaa.org/outdoor/facts/Historical_Expenditures.pdf (last visited Mar. 30, 2007); OAAA, Facts and Figures, <http://www.oaaa.org/outdoor/facts> (last visited Mar. 30, 2007).

³⁰⁶ The types of billboards that consumers usually find informative are highway advertisements that include directional information for motorists, as compared to urban billboards that focus on product advertising. *See* Floyd, *supra* note 245 (making this distinction between urban and rural billboards); OAAA, Polls and Surveys, <http://www.oaaa.org/government/polls.asp> (last visited Mar. 30, 2007) (presenting this inferable distinction in their survey results). Advertisers argue that billboards are informative as a means of promoting their public value, but the federal government has addressed this public need by creating official highway signs that advertise food, lodging, and gas facilities available at each exit, and by creating tourist information centers along the highways. *See* Johnson, *supra* note 34, at 143-47 (describing the development of tourist information centers).

³⁰⁷ OAAA, Legislative Issues: Aesthetics, <http://www.oaaa.org/government/Issues/issue.asp?id=13> (last visited Mar. 30, 2007).

³⁰⁸ *Supra* §§ II(D), III(C).

opinion that billboards may be regulated for aesthetic reasons, although it does reflect the fact that free speech concerns have complicated legislatures' regulatory efforts.³⁰⁹

C. Modern Billboard Regulation

The United States has experienced more than a century of debate and legal struggle over advertisers' right to display outdoor advertisements to public passers-by. The legacy of billboard regulation in this country is mixed, illustrated by the somewhat unsuccessful efforts of the Highway Beautification Act and by the advent of First Amendment concerns with *Metromedia*. Even the advertising industry can claim partial victory in the struggle for public favor, regulatory controls, and judicial sympathy.³¹⁰ Nevertheless, judicial approval of billboard laws in a majority of constitutional challenges brought by advertisers has allowed for widespread and far-reaching restrictions on the appearance, size, and location of outdoor advertising in contemporary America. At least a thousand cities have instituted total bans or tough restrictions on outdoor advertisements, including cities as large as Houston, which recently prohibited new billboards from being erected and required that existing ones be removed by 2013.³¹¹

Local governments have the most control over billboards—that is where “the real billboard action occurs,” as Scenic America puts it—because municipalities are responsible for issuing permits for all billboards within their jurisdiction, whether for local, state, or federal roads.³¹² Local governments are also authorized to regulate local billboards pursuant to the

³⁰⁹ OAAA, Legislative Issues: Aesthetics, *supra* note 307; *supra* § III(C) (discussing aesthetic zoning jurisprudence). The OAAA also presents industry positions on many other topics, including traffic safety, taxes, scenic byways, and alcohol and tobacco advertising. OAAA, Key Issues, <http://www.oaaa.org/government/Issues> (last visited Mar. 30, 2007).

³¹⁰ For example, most people continue to believe that billboards are unattractive and irritating, but some agree that billboards can be informative. THE BILLBOARD NUISANCE, *supra* note 26, at 31-32; Scenic America, Opinion Polls, *supra* note 297; OAAA, Polls and Surveys, *supra* note 305.

³¹¹ SCENIC AMERICA, *supra* note 195, at 3, 11-12; *see also, e.g.*, CHARLOTTESVILLE, VA., CODE § 34-1024 (2006) (banning new off-site signs in the city); § 34-1026 (allowing exceptions from the city ban for historic markers, professional name-plates, political signs, and traffic signs).

³¹² SCENIC AMERICA, *supra* note 195, at 13.

police power. Scenic America therefore emphasizes local activism, recommending a three-step process of increasingly comprehensive citywide billboard bans, beginning with temporary and then permanent moratoriums on new construction and culminating with the removal of existing billboards.³¹³ Many state governments have also developed comprehensive outdoor advertising laws, in part to avoid partial loss of highway funding pursuant to a requirement of the Highway Beautification Act.³¹⁴

Because municipal authority to regulate billboards is sometimes superseded now by advertisers' First Amendment challenges, Scenic America encourages regulators to take note of the evolving legal doctrine in this field.³¹⁵ Fortunately for governments and activists, *Metromedia's* legacy has complicated regulatory efforts but has hardly debilitated them. Scenic America counsels that billboard regulations will probably be upheld by any contemporary court, even taking into account the issue of advertisers' free speech rights, as long as the laws conform to guidelines for commercial speech restrictions established by the Supreme Court. As they explain, restrictive laws must directly advance substantial state interests, not impose on commercial speech any more than necessary, leave open alternate means of communication (such as newspapers and magazines), and be content-neutral and impartially administered.³¹⁶

Despite a century of lawmaking intended to curb the appearance, placement, and scale of outdoor advertisements, local, state, and federal laws have not seriously affected the continuing

³¹³ *Id.* at 14-15.

³¹⁴ *See Lynch, supra* note 11, at 423 n.27 (collecting outdoor advertising statutes in forty-seven states in 1986). Virginia's highway-advertising law, for example, is grounded in the same range of police-power justifications that have been tested and approved in court over the decades: promoting highway safety, tourism, "natural scenic beauty," and most generally the "general welfare of the Commonwealth." VA. CODE ANN. § 33.1-351 (2006).

³¹⁵ SCENIC AMERICA, *supra* note 195, at 34-40.

³¹⁶ *Id.* at 35-36. These guidelines take into account the constitutional test for commercial-speech regulation established in *Central Hudson*, 447 U.S. 557 (1980), *supra* notes 274-75. The guidelines also reflect the Supreme Court's opinion in *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), which held that completely prohibiting residential yard signs left homeowners no effective way of communicating constitutionally-protected political speech.

growth and profitability of the outdoor advertising industry.³¹⁷ Although four states have outlawed billboards entirely, and over 1500 communities have banned new billboard construction,³¹⁸ the amount of money spent on outdoor advertising reached \$6.8 billion in 2004, as previously mentioned,³¹⁹ driven in part by rental fees upward of \$100,000 a month for prime billboard locations.³²⁰ Several outdoor advertising corporations are worth billions of dollars and have enjoyed significant gains in stock value in recent years.³²¹ Given the compelling economic incentives that drive the outdoor advertising industry and the entrenched public resistance manifested by groups such as Scenic America, the cultural, legislative, and judicial struggle over billboards' place in the American landscape and cityscape is likely to continue indefinitely.

V. CONCLUSION: BILLBOARDS, AESTHETICS, AND THE POLICE POWER

Over the course of the twentieth century, American courts came into agreement with the American public that billboards are unattractive and could be regulated for that reason alone. This gradual acceptance of aesthetic regulation of outdoor advertising mirrored broader developments in constitutional law and American history. In the nineteenth century, courts defined the government's regulatory power quite narrowly, reflecting their deference to property rights and the relatively modest scope of the law in that period. Then, as cities modernized and became more crowded at the turn of the twentieth century, individual liberty necessarily gave

³¹⁷ OAAA, Outdoor Ad Revenue Continues Double-Digit Growth, *supra* note 177; OAAA, Outdoor Advertising Expenditures, 1970-2006, *supra* note 304.

³¹⁸ SCENIC AMERICA, *supra* note 195, at 11-12; Scenic America, Communities Prohibiting Billboard Construction, *supra* note 299; Scenic America, Billboard Control is Good for Business, *supra* note 299. The four states with total billboard bans are Vermont, Hawaii, Alaska and Maine. *Id.*

³¹⁹ *Supra* note 305.

³²⁰ GUDIS, *supra* note 9, at 239-40.

³²¹ *Id.* at 226, 240-41. After the billboard company Outdoor Systems went public in the late 1990s, its stock rose 1,460 percent, rivaling the gains of Internet giants such as Yahoo! and Amazon.com. *Id.* at 241.

way to regulatory compromises in the interest of the public good.³²² The history of billboard laws and the judiciary's increasing deference to them thereby illustrates a broader shift toward the pervasive regulation of everyday life in modern America.

The legal history of billboards is notable for the judicial system's remarkable willingness and ability to accommodate the public's dislike of these signs. Not only have courts accepted billboard controls as valid state objectives, but the judiciary has frequently articulated and concurred with public concerns about the nuisances of outdoor advertising. There are both cultural and legal explanations for this commonality between courts and the public. On a cultural level, courts reflect public opinion of billboards because the legal system is subsumed within the broader society: judges are citizens too, and they are susceptible to the same cultural biases as the public at large.³²³ As G.E. White explains, "judging is bound to reflect the governing social and intellectual assumptions of various periods in American history, and . . . its relation to its social context is one of total integration."³²⁴ Through the process of determining the legal outcomes of cases, particularly those involving indeterminate constitutional issues that require greater judicial discretion to resolve, judges express the same underlying values as the American public they serve. In the case of billboard law, those values include the importance of aesthetic beauty, pastoral purity, community pride, and freedom from unwelcome commercial

³²² See *supra* note 85 (citing *City of Aurora v. Burns*, 319 Ill. 84, 93 (1925) ("The constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the State . . . to limit individual activities to a greater extent than formerly.")).

³²³ With regard to billboard law, one author observed that "the decisions of our courts do reflect the changing conditions, the changing attitudes, and even the changing tastes of the people they affect." Barkofske, *supra* note 11, at 534; see also *supra* note 17 and accompanying text (similar arguments). This fact of the judiciary's cultural place within a broader American society leads to two observations. First, it offers support for Barry Friedman's theories of judicial review as "mediated popular constitutionalism" and "dialogue," *supra* note 17, which describe his general conclusion that judicial review is much more majoritarian than commonly thought. In effect, as an earlier author explained, "public opinion when sufficiently crystallized and permanent, makes the law." Chandler, *supra* note 12, at 474. Second, this sociological approach to judicial review also suggests that legal history is necessarily subsumed within social history. See generally KLARMAN, *supra* note 15 (illustrating the ways in which judicial outcomes are determined through a mixture of legal doctrine and sociopolitical influences).

³²⁴ WHITE, *supra* note 17, at 6.

messages.³²⁵ Billboard law thus illustrates the “reflective function” of the American judicial system, as one author put it, whereby “courts have reflected the changing views of the nation in placing more emphasis on the aesthetic side of life.”³²⁶ Indeed, the confluence of public opinion and judicial opinion regarding billboards seems to support one scholar’s classic observation that “judges, as well as the public, are moved by aesthetic considerations.”³²⁷

As a matter of legal mechanics, courts were able to satisfy public demand for billboard controls because the police power is a flexible and now very expansive legal doctrine, giving judges more than enough discretion to define and accommodate the public interest.³²⁸ The elasticity of the police power mirrors the general indeterminacy of constitutional law, where, in the absence of objective legal standards, imprecise social values necessarily become the (often-unacknowledged) standard of judgment.³²⁹ Justice Holmes made this link between cultural desires and judicial outcomes legitimate and doctrinally explicit, thereby helping to pave the way for courts to accommodate public dislike of billboards, when he declared in *Noble State Bank v. Haskell* (1911) that municipal police power is indexed to public opinion.³³⁰ Lower courts eagerly adopted Holmes’s declaration that public opinion determined the scope of legislative

³²⁵ See, e.g., Kimberly Smith, *Mere Taste: Democracy and the Politics of Beauty*, 7 WIS. ENVTL. L.J. 151, 155 (2000) (“Americans have persistently endorsed beauty as an independent policy goal since the latter half of the nineteenth century.”).

³²⁶ Barkofske, *supra* note 11, at 535.

³²⁷ H.S.V.S., *supra* note 11, at 106; cf. *supra* note 226 and accompanying text (prior reference to this quotation).

³²⁸ This observed correlation between legal flexibility and politically-favorable judicial outcomes coincides with Michael Klarman’s general conclusion that “Constitutional law generally has sufficient flexibility to accommodate dominant public opinion” KLARMAN, *supra* note 15, at 449.

³²⁹ See *id.* at 5 (“[B]ecause constitutional law is generally quite indeterminate, constitutional interpretation almost inevitably reflects the broader social and political context of the times.”).

³³⁰ 219 U.S. 104, 111 (1911) (“[T]he police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.”). For further discussion, see *supra* note 90 and accompanying text.

regulatory authority because it “so met the needs of the times,” namely the public pressure toward greater regulation of modern American life.³³¹

Judicial accommodation of the public desire to suppress billboards is a proper and desirable illustration of the American common-law system at work.³³² Our legal system is designed so that courts can promote the public good as they see fit, in response to changing conditions in American society. As Guido Calabresi has observed, “the object of law is to serve human needs.”³³³ In the case of billboards, the public “needed” to be free to regulate this unpopular advertising medium, and courts accommodated that desire. Judicial approval of billboard controls illustrates how courts have helped Americans adjust to changing social conditions—first urbanization and a booming consumer economy, and later the growth of automobiles and highways—by evolving the common law to uphold increasingly expansive governmental intervention into modern American life. Land use regulation the not the only area that reflects the legal principle that law should reflect evolving social needs; the law of negligence, for example, is based on standards of “reasonableness,” an inherently open-ended doctrine which requires judges and juries to apply social and moral standards of behavior.³³⁴

Indeterminate legal standards such as the elastic police power are vulnerable to criticism for lacking a moral standard or built-in restraints, but in fact, the majoritarian and public-serving outcome of the judicial process *is itself* the moral principle at work. Moreover, the restraint built into a publicly-responsive legal system is embodied in the institutional limitations of a judiciary

³³¹ Goodrich, *supra* note 11, at 131. Another scholar appropriately described Holmes’s work as “sociological jurisprudence,” Barkofske, *supra* note 11, at 534, although this legal movement is most commonly associated with the turn-of-the-century scholar Roscoe Pound. See WALTER F. MURPHY ET AL., COURTS, JUDGES AND POLITICS: AN INTRODUCTION TO THE JUDICIAL PROCESS 14 (6th ed. 2006) (describing Pound’s work).

³³² As one author noted, billboard jurisprudence favorably shows that “the views of the people which courts’ rulings affect are reflected in the decisions.” Barkofske, *supra* note 11, at 543.

³³³ Calabresi, *supra* note 89, at 105.

³³⁴ See Kenneth S. Abraham, *The Trouble With Negligence*, 53 VAND. L. REV. 1187, 1190 (2001) (noting that assessing “the level and nature of care that are reasonable in a given situation” in negligence cases necessarily involves “the finder of fact’s own general normative sense of the situation”).

that is ultimately dependent on public opinion for its approval and continued relevancy.³³⁵

Indeed, publicly responsive yet indeterminate legal doctrines not only promote the public good better than more rigid rules would; judicial responsiveness to public opinion surely also reflects reasonably-held public expectations about courts' responsiveness to public needs.³³⁶

³³⁵ See WHITE, *supra* note 17, at xxv-xxvi; Scheb & Lyons, *supra* note 17.

³³⁶ Carol Rose, in her famous article *Crystals and Mud in Property Law*, explained in part the counterintuitive observation that “muddy” (i.e., indeterminate) legal rules may in fact be more clear and certain than rigid rules, since they match public expectations that the law will respond to parties’ unique and evolving needs. Carol Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577, 609 (1988).

From: [Schultz, Shirley](#)
To: [Schultz, Shirley](#)
Subject: FW: Planning Commission comment on Billboards
Date: Wednesday, June 01, 2011 1:11:55 PM

From: Clair Family [mailto:clairfamily@gmail.com]
Sent: Wednesday, June 01, 2011 12:17 PM
To: Planning
Subject: Fwd: Planning Commission comment on Billboards

typo in address corrected

Date: June 1, 2011
To: jdoty@bcradesign.com, tom@oconnorandassociates.net,
knute000@sprynet.com, morrison.ian.s@gmail.com,
smorris@piercetransit.org, pelswick@windermere.com, Sean
Gaffney <smgaffney@earthlink.net>, cbeale@ci.puyallup.wa.us,
mnutsch@hotmail.com
Cc: planning@citofacoma.org, Eric.Anderson@cityoftacoma.org
Subject: Planning Commission comment on
Billboards

Dear Chairman Doty and Members of the Planning Commission,

Thank you for the opportunity to comment on the issue of installing electronic billboards in Tacoma's neighborhoods and shopping districts.

The Historic Stadium High School and Old Town neighborhoods have suffered with the light pollution generated by the Sperry Ocean Dock business for 22 years and from the massive increase in nighttime light pollution since the destruction of New York's World Trade Center on September 11th. The 683 foot long ships pollute our neighborhoods, parks, sensitive urban forest of Garfield Gulch and schools with glaring spotlights shining and reflecting into our homes all night long. Night after Night. 365 days per year. We do not need to turn lights on in our homes in the middle of the night. White and yellow lighting from Sperry Dock and its tenant ships is serious enough to damage the quality of life for citizens and has chased away the nocturnal animals from the bluff and greenbelt Garfield Gulch, but colored advertisements on electronic billboards which would change every few seconds or minutes, flashing day after day and year after year into homes and businesses would be horrendous.

Why did Planning Department staff members recommended approval of this Clear Channel agreement? Electronic billboards would destroy the unique qualities of our historic neighborhoods and neighborhood economic centers and could cause significant environmental and health damage to our citizens. A few references about the effects of light pollution follow. Longcore 2004 article is

attached in pdf.

Sincerely,

P. Clair

- Greater amounts of nighttime illumination are associated with higher rates of breast cancer in women. Researchers at the University of Haifa in Israel "found the breast cancer rate in localities with average night lighting to be 37 percent higher than in communities with the lowest amount of light; and they noted that the rate was higher by an additional 27 percent in areas with the highest amount of light." [i][i]
- According to University of Southern California geography professor Travis Longcore, along with co-author Catherine Rich, "Ecological light pollution has demonstrable effects on the behavioral and population ecology of organisms in natural settings. As a whole, these effects derive from changes in orientation, disorientation, or misorientation, and attraction or repulsion from the altered light environment, which in turn may affect foraging, reproduction, migration, and communication." [ii][ii]
- Artificial and excessive lighting, as well as manmade structures such as ferry docks, have been shown to negatively affect migration patterns, predator-prey relationships, and population sizes of sea life. [iii][iii]
- "Roughly 2/3 of Americans can no longer see our Milky Way Galaxy from their homes at night." [iv][iv]

[i][i] Weiss, R. "Lights at Night Are Linked to Breast Cancer." *The Washington Post*. Wednesday, February 20, 2008. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/19/AR2008021902398.html?hpid=moreheadlines>

[ii][ii] Longcore, T., and C. Rich. (2004.) Ecological light pollution. *Frontiers in Ecology and the Environment* 2(4), p. 193.

[iii][iii] [Skykeepers.org](http://www.skykeepers.org). (2008, June). *Vanishing California Salmon*. Retrieved from <http://www.skykeepers.org/vancalsal.html>

[iv][iv] *Light Pollution Continues to Spread; Starry Night Lights Expands Night Sky Friendly Outdoor Lighting Options*. Retrieved from <http://haoodnla.com/article/lxy09212394y9j01/234983> Accessed 22 May 2010.

Ecological light pollution

Travis Longcore and Catherine Rich

Ecologists have long studied the critical role of natural light in regulating species interactions, but, with limited exceptions, have not investigated the consequences of artificial night lighting. In the past century, the extent and intensity of artificial night lighting has increased such that it has substantial effects on the biology and ecology of species in the wild. We distinguish “astronomical light pollution”, which obscures the view of the night sky, from “ecological light pollution”, which alters natural light regimes in terrestrial and aquatic ecosystems. Some of the catastrophic consequences of light for certain taxonomic groups are well known, such as the deaths of migratory birds around tall lighted structures, and those of hatchling sea turtles disoriented by lights on their natal beaches. The more subtle influences of artificial night lighting on the behavior and community ecology of species are less well recognized, and constitute a new focus for research in ecology and a pressing conservation challenge.

Front Ecol Environ 2004; 2(4): 191–198

As diurnal creatures, humans have long sought methods to illuminate the night. In pre-industrial times, artificial light was generated by burning various materials, including wood, oil, and even dried fish. While these methods of lighting certainly influenced animal behavior and ecology locally, such effects were limited. The relatively recent invention and rapid proliferation of electric lights, however, have transformed the nighttime environment over substantial portions of the Earth’s surface.

Ecologists have not entirely ignored the potential disruption of ecological systems by artificial night lighting. Several authors have written reviews of the potential effects on ecosystems or taxonomic groups, published in the “gray” literature (Health Council of the Netherlands 2000; Hill 1990), conference proceedings (Outen 2002; Schmiedel 2001), and journal articles (Frank 1988; Verheijen 1985; Salmon 2003). This review attempts to integrate the literature on the topic, and draws on a conference organized by the authors in 2002 titled *Ecological Consequences of Artificial Night Lighting*. We identify the roles that artificial night lighting plays in changing eco-

logical interactions across taxa, as opposed to reviewing these effects by taxonomic group. We first discuss the scale and extent of ecological light pollution and its relationship to astronomical light pollution, as well as the measurement of light for ecological research. We then address the recorded and potential influences of artificial night lighting within the nested hierarchy of behavioral and population ecology, community ecology, and ecosystem ecology. While this hierarchy is somewhat artificial and certainly mutable, it illustrates the breadth of potential consequences of ecological light pollution. The important effects of light on the physiology of organisms (see Health Council of the Netherlands 2000) are not discussed here.

■ Astronomical and ecological light pollution: scale and extent

The term “light pollution” has been in use for a number of years, but in most circumstances refers to the degradation of human views of the night sky. We want to clarify that this is “astronomical light pollution”, where stars and other celestial bodies are washed out by light that is either directed or reflected upward. This is a broad-scale phenomenon, with hundreds of thousands of light sources cumulatively contributing to increased nighttime illumination of the sky; the light reflected back from the sky is called “sky glow” (Figure 1). We describe artificial light that alters the natural patterns of light and dark in ecosystems as “ecological light pollution”. Verheijen (1985) proposed the term “photopollution” to mean “artificial light having adverse effects on wildlife”. Because photopollution literally means “light pollution” and because light pollution is so widely understood today to describe the degradation of the view of the night sky and the human experience of the night, we believe that a more descriptive term is now necessary. Ecological light pollution includes direct glare, chronically increased illumina-

In a nutshell:

- Ecological light pollution includes chronic or periodically increased illumination, unexpected changes in illumination, and direct glare
- Animals can experience increased orientation or disorientation from additional illumination and are attracted to or repulsed by glare, which affects foraging, reproduction, communication, and other critical behaviors
- Artificial light disrupts interspecific interactions evolved in natural patterns of light and dark, with serious implications for community ecology

The Urban Wildlands Group, PO Box 24020, Los Angeles, CA 90024-0020 (longcore@urbanwildlands.org)

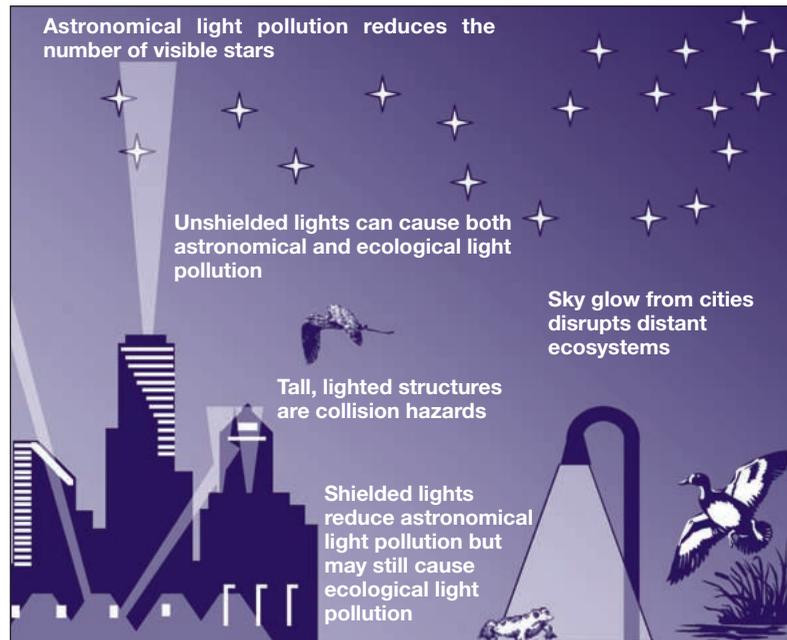


Figure 1. Diagram of ecological and astronomical light pollution.

tion, and temporary, unexpected fluctuations in lighting. Sources of ecological light pollution include sky glow, lighted buildings and towers, streetlights, fishing boats, security lights, lights on vehicles, flares on offshore oil platforms, and even lights on undersea research vessels, all of which can disrupt ecosystems to varying degrees. The phenomenon therefore involves potential effects across a range of spatial and temporal scales.

The extent of ecological light pollution is global (Elvidge *et al.* 1997; Figure 2). The first atlas of artificial night sky brightness illustrates that astronomical light pollution extends to every inhabited continent (Cinzano *et al.* 2001). Cinzano *et al.* (2001) calculate that only 40% of Americans live where it becomes sufficiently dark at night for the human eye to make a complete transition from cone to rod vision and that 18.7% of the terrestrial surface of the Earth is exposed to night sky brightness that is polluted by astronomical standards. Ecosystems may be affected by these levels of illumination and lights that do not contribute to sky glow may still have ecological consequences, ensuring that ecological light pollution afflicts an even greater proportion of the Earth. Lighted fishing fleets, offshore oil platforms, and cruise ships bring the disruption of artificial night lighting to the world's oceans.

The tropics may be especially sensitive to alterations in natural diel (ie over a 24-hour period) patterns of light and dark because of the year-round constancy of daily cycles (Gliwicz 1999). A shortened or brighter night is more likely to affect tropical species adapted to diel patterns with minimal seasonal variation than extratropical species adapted to substantial seasonal variation. Of course, temperate and polar zone species active only during a portion of the year would be excluded from this gen-

eralization. Species in temperate zones will also be susceptible to disruptions if they depend on seasonal day length cues to trigger critical behaviors.

■ Measurements and units

Measurement of ecological light pollution often involves determination of illumination at a given place. Illumination is the amount of light incident per unit area – not the only measurement relevant to ecological light pollution, but the most common. Light varies in intensity (the number of photons per unit area) and spectral content (expressed by wavelength). Ideally, ecologists should measure illumination in photons per square meter per second with associated measurements of the wavelengths of light present. More often, illumination is measured in lux (or footcandles, the non-SI unit), which expresses the brightness of light as perceived by the human

eye. The lux measurement places more emphasis on wavelengths of light that the human eye detects best and less on those that humans perceive poorly. Because other organisms perceive light differently – including wavelengths not visible to humans – future research on ecological light pollution should identify these responses and measure light accordingly. For example, Gal *et al.* (1999) calculated the response curve of mysid shrimp to light and reported illumination in lux adjusted for the spectral sensitivity of the species.

Ecologists are faced with a practical difficulty when communicating information about light conditions. Lux is the standard used by nearly all lighting designers, lighting engineers, and environmental regulators; communication with them requires reporting in this unit. Yet the use of lux ignores biologically relevant information. High-pressure sodium lights, for instance, will attract moths because of the presence of ultraviolet wavelengths, while low-pressure sodium lights of the same intensity, but not producing ultraviolet light, will not (Rydell 1992). Nevertheless, we use lux here, both because of the need to communicate with applied professionals, and because of its current and past widespread usage. As this research field develops, however, measurements of radiation and spectrum relevant to the organisms in question should be used, even though lux will probably continue to be the preferred unit for communication with professionals in other disciplines.

Ecologists also measure aspects of the light environment other than absolute illumination levels. A sudden change in illumination is disruptive for some species (Buchanan 1993), so percent change in illumination, rate, or similar measures may be relevant. Ecologists may also measure luminance (ie brightness) of light sources that are visible to organisms.

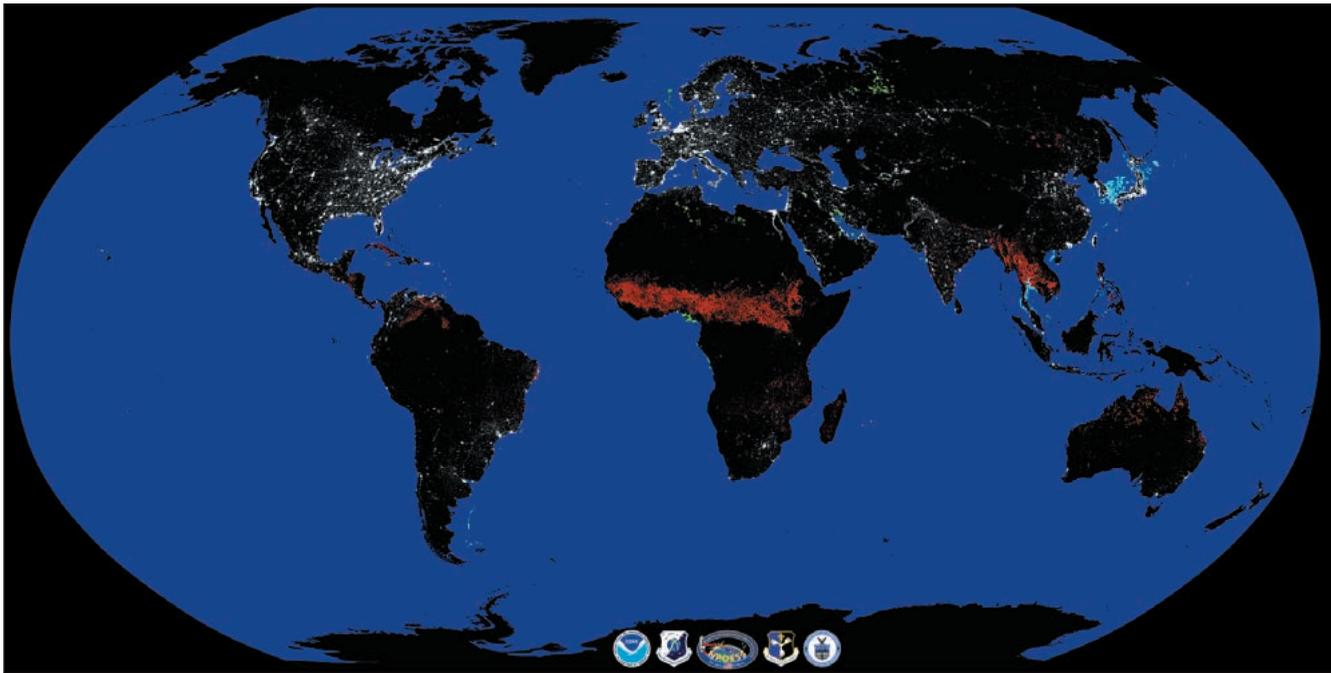


Figure 2. Distribution of artificial lights visible from space. Produced using cloud-free portions of low-light imaging data acquired by the US Air Force Defense Meteorological Satellite Program Operational Linescan System. Four types of lights are identified: (1) human settlements – cities, towns, and villages (white), (2) fires – defined as ephemeral lights on land (red), (3) gas flares (green), and (4) heavily lit fishing boats (blue). See Elvidge et al. (2001) for details. Image, data processing, and descriptive text by the National Oceanic and Atmospheric Administration's National Geophysical Data Center.

■ Behavioral and population ecology

Ecological light pollution has demonstrable effects on the behavioral and population ecology of organisms in natural settings. As a whole, these effects derive from changes in orientation, disorientation, or misorientation, and attraction or repulsion from the altered light environment, which in turn may affect foraging, reproduction, migration, and communication.

Orientation/disorientation and attraction/repulsion

Orientation and disorientation are responses to ambient illumination (ie the amount of light incident on objects in an environment). In contrast, attraction and repulsion occur in response to the light sources themselves and are therefore responses to luminance or the brightness of the source of light (Health Council of the Netherlands 2000).

Increased illumination may extend diurnal or crepuscular behaviors into the nighttime environment by improving an animal's ability to orient itself. Many usually diurnal birds (Hill 1990) and reptiles (Schwartz and Henderson 1991), for example, forage under artificial lights. This has been termed the "night light niche" for reptiles and seems beneficial for those species that can exploit it, but not for their prey (Schwartz and Henderson 1991).

In addition to foraging, orientation under artificial illumination may induce other behaviors, such as territorial singing in birds (Bergen and Abs 1997). For the northern mockingbird (*Mimus polyglottos*), males sing at night before mating, but once mated only sing at night in artificially

lighted areas (Derrickson 1988) or during the full moon. The effect of these light-induced behaviors on fitness is unknown.

Constant artificial night lighting may also disorient organisms accustomed to navigating in a dark environment. The best-known example of this is the disorientation of hatchling sea turtles emerging from nests on sandy beaches. Under normal circumstances, hatchlings move away from low, dark silhouettes (historically, those of dune vegetation), allowing them to crawl quickly to the ocean. With beachfront lighting, the silhouettes that would have cued movement are no longer perceived, resulting in disorientation (Salmon *et al.* 1995). Lighting also affects the egg-laying behavior of female sea turtles. (For reviews of effects on sea turtles, see Salmon 2003 and Witherington 1997).

Changes in light level may disrupt orientation in nocturnal animals. The range of anatomical adaptations to allow night vision is broad (Park 1940), and rapid increases in light can blind animals. For frogs, a quick increase in illumination causes a reduction in visual capability from which the recovery time may be minutes to hours (Buchanan 1993). After becoming adjusted to a light, frogs may be attracted to it as well (Jaeger and Hailman 1973; Figure 3).

Birds can be disoriented and entrapped by lights at night (Ogden 1996). Once a bird is within a lighted zone at night, it may become "trapped" and will not leave the lighted area. Large numbers of nocturnally migrating birds are therefore affected when meteorological conditions bring them close to lights, for instance, during inclement weather or late at night when they tend to fly lower.



Figure 3. Attraction of frogs to a candle set out on a small raft. Illustration by Charles Copeland of an experiment in northern Maine or Canada described by William J Long (1901). Twelve or fifteen bullfrogs (*Rana catesbeiana*) climbed on to the small raft before it flipped over.

Within the sphere of lights, birds may collide with each other or a structure, become exhausted, or be taken by predators. Birds that are waylaid by buildings in urban areas at night often die in collisions with windows as they try to escape during the day. Artificial lighting has attracted birds to smokestacks, lighthouses (Squires and Hanson 1918), broadcast towers (Ogden 1996), boats (Dick and Donaldson 1978), greenhouses, oil platforms (Wiese *et al.* 2001), and other structures at night, resulting in direct mortality, and thus interfering with migration routes.

Many groups of insects, of which moths are one well-known example (Frank 1988), are attracted to lights. Other taxa showing the same attraction include lacewings, beetles, bugs, caddisflies, crane flies, midges, hoverflies, wasps, and bush crickets (Eisenbeis and Hassel 2000; Kolligs 2000; Figure 4). Attraction depends on the spectrum of light – insect collectors use ultraviolet light because of its attractive qualities – and the characteristics of other lights in the vicinity.



Figure 4. Thousands of mayflies carpet the ground around a security light at Milleccoquins Point in Naubinway on the Upper Peninsula of Michigan.

Nonflying arthropods vary in their reaction to lights. Some nocturnal spiders are negatively phototactic (ie repelled by light), whereas others will exploit light if available (Nakamura and Yamashita 1997). Some insects are always positively phototactic as an adaptive behavior and others always photonegative (Summers 1997). In arthropods, these responses may also be influenced by the frequent correlations between light, humidity, and temperature.

Natural resource managers can exploit the responses of animals to lights. Lights are sometimes used to attract fish to ladders, allowing them to bypass dams and power plants (Haymes *et al.* 1984). Similarly, lights can attract larval fish to coral reefs (Munday *et al.* 1998). In the terrestrial realm, dispersing mountain lions avoid lighted areas to such a degree that Beier (1995) suggests installing lights to deter them from entering habitats dead-ending in areas where humans live.

Reproduction

Reproductive behaviors may be altered by artificial night lighting. Female *Physalaemus pustulosus* frogs, for example, are less selective about mate choice when light levels are increased, presumably preferring to mate quickly and avoid the increased predation risk of mating activity (Rand *et al.* 1997). Night lighting may also inhibit amphibian movement to and from breeding areas by stimulating phototactic behavior. Bryant Buchanan (pers comm) reports that frogs in an experimental enclosure stopped mating activity during night football games, when lights from a nearby stadium increased sky glow. Mating choruses resumed only when the enclosure was covered to shield the frogs from the light.

In birds, some evidence suggests that artificial night lighting affects the choice of nest site. De Molenaar *et al.*

(2000) investigated the effects of roadway lighting on black-tailed godwits (*Limosa l. limosa*) in wet grassland habitats. Breeding densities of godwits were recorded over 2 years, comparing lighted and unlighted conditions near a roadway and near light poles installed in a wet grassland away from the road influence. When all other habitat factors were taken into account, the density of nests was slightly but statistically lower up to 300 m away from the lighting at roadway and control sites. The researchers also noted that birds nesting earlier in the year chose sites farther away from the lighting, while those nesting later filled in sites closer to the lights.

Communication

Visual communication within and between species may be influenced by artificial night lighting. Some species use light to communicate, and are therefore especially susceptible to disruption. Female glow-worms attract males up to 45 m away with bioluminescent flashes; the presence of artificial lighting reduces the visibility of these communications. Similarly, the complex visual communication system of fireflies could be impaired by stray light (Lloyd 1994).

Artificial night lighting could also alter communication patterns as a secondary effect. Coyotes (*Canis latrans*) group howl and group yip-howling more during the new moon, when it is darkest. Communication is necessary either to reduce trespassing from other packs, or to assemble packs to hunt larger prey during dark conditions (Bender *et al.* 1996). Sky glow could increase ambient illumination to eliminate this pattern in affected areas.

Because of the central role of vision in orientation and behavior of most animals, it is not surprising that artificial lighting alters behavior. This causes an immediate conservation concern for some species, while for other species the influence may seem to be positive. Such “positive” effects, however, may have negative consequences within the context of community ecology.

■ Community ecology

The behaviors exhibited by individual animals in response to ambient illumination (orientation, disorientation) and to luminance (attraction, repulsion) influence community interactions, of which competition and predation are examples.

Competition

Artificial night lighting could disrupt the interactions of groups of species that show resource partitioning across illumination gradients. For example, in natural commu-



Figure 5. Crowned hornbill (*Tockus alboterminatus*) hawking insects at a light at the Kibale Forest National Park, Uganda.

nities, some foraging times are partitioned among species that prefer different levels of lighting. The squirrel treefrog (*Hyla squirrela*) is able to orient and forage at lighting levels as low as 10^{-5} lux and under natural conditions typically will stop foraging at illuminations above 10^{-3} lux (Buchanan 1998). The western toad (*Bufo boreas*) forages only at illuminations between 10^{-1} and 10^{-5} lux, while the tailed frog (*Ascaphus truei*) forages only during the darkest part of the night at below 10^{-5} lux (Hailman 1984). While these three species are not necessarily sympatric (ie inhabiting the same area), and differ in other niche dimensions, they illustrate the division of the light gradient by foragers.

Many bat species are attracted to insects that congregate around light sources (Frank 1988). Although it may seem that this is a positive effect, the increased food concentration benefits only those species that exploit light sources and could therefore result in altered community structure. Faster-flying species of bats congregate around lights to feed on insects, but other, slower-flying species avoid lights (Blake *et al.* 1994; Rydell and Baagøe 1996).

Changes in competitive communities occur as diurnal species move into the “night light niche” (Schwartz and Henderson 1991). This concept, as originally described, applies to reptiles, but easily extends to other taxa, such as spiders (Frank pers comm) and birds (Hill 1990; Figure 5).

Predation

Although it may seem beneficial for diurnal species to be able to forage longer under artificial lights, any gains from increased activity time can be offset by increased predation risk (Gotthard 2000). The balance between gains from extended foraging time and risk of increased preda-

tion is a central topic for research on small mammals, reptiles, and birds (Kotler 1984; Lima 1998). Small rodents forage less at high illumination levels (Lima 1998), a tendency also exhibited by some lagomorphs (Gilbert and Boutin 1991), marsupials (Laferrier 1997), snakes (Klauber 1939), bats (Rydell 1992), fish (Gibson 1978), aquatic invertebrates (Moore *et al.* 2000), and other taxa.

Unexpected changes in light conditions may disrupt predator–prey relationships. Gliwicz (1986, 1999) describes high predation by fish on zooplankton during nights when the full moon rose hours after sunset. Zooplankton had migrated to the surface to forage under cover of darkness, only to be illuminated by the rising moon and subjected to intense predation. This “lunar light trap” (Gliwicz 1986) illustrates a natural occurrence, but unexpected illumination from human sources could disrupt predator–prey interactions in a similar manner, often to the benefit of the predator.

Available research shows that artificial night lighting disrupts predator–prey relationships, which is consistent with the documented importance of natural light regimes in mediating such interactions. In one example, harbor seals (*Phoca vitulina*) congregated under artificial lights to eat juvenile salmonids as they migrated downstream; turning the lights off reduced predation levels (Yurk and Trites 2000). Nighttime illumination at urban crow roosts was higher than at control sites, presumably because this helps the crows avoid predation from owls (Gorenzel and Salmon 1995). Desert rodents reduced foraging activity when exposed to the light of a single camp lantern (Kotler 1984). Frank (1988) reviews predation by bats, birds, skunks, toads, and spiders on moths attracted to artificial lights. Mercury vapor lights, in particular, disrupt the interaction between bats and tympanate moths by interfering with moth detection of ultrasonic chirps used by bats in echolocation, leaving moths unable to take their normal evasive action (Svensson and Rydell 1998).

From these examples, it follows that community structure will be altered where light affects interspecific interactions. A “perpetual full moon” from artificial lights will favor light-tolerant species and exclude others. If the darkest natural conditions never occur, those species that maximize foraging during the new moon could eventually be compromised, at risk of failing to meet monthly energy budgets. The resulting community structure would be simplified, and these changes could in turn affect ecosystem characteristics.

■ Ecosystem effects

The cumulative effects of behavioral changes induced by artificial night lighting on competition and predation have the potential to disrupt key ecosystem functions. The spillover effects from ecological light pollution on aquatic invertebrates illustrates this point. Many aquatic invertebrates, such as zooplankton, move up and down within the water column during a 24-hour period, in a

behavior known as “diel vertical migration”. Diel vertical migration presumably results from a need to avoid predation during lighted conditions, so many zooplankton forage near water surfaces only during dark conditions (Gliwicz 1986). Light dimmer than that of a half moon ($<10^{-1}$ lux) is sufficient to influence the vertical distribution of some aquatic invertebrates, and indeed patterns of diel vertical migration change with the lunar cycle (Dodson 1990).

Moore *et al.* (2000) documented the effect of artificial light on the diel migration of the zooplankton *Daphnia* in the wild. Artificial illumination decreased the magnitude of diel migrations, both in the range of vertical movement and the number of individuals migrating. The researchers hypothesize that this disruption of diel vertical migration may have substantial detrimental effects on ecosystem health. With fewer zooplankton migrating to the surface to graze, algae populations may increase. Such algal blooms would then have a series of adverse effects on water quality (Moore *et al.* 2000).

The reverberating effects of community changes caused by artificial night lighting could influence other ecosystem functions. Although the outcomes are not yet predictable, and redundancy will buffer changes, indications are that light-influenced ecosystems will suffer from important changes attributable to artificial light alone and in combination with other disturbances. Even remote areas may be exposed to increased illumination from sky glow, but the most noticeable effects will occur in those areas where lights are close to natural habitats. This may be in wilderness where summer getaways are built, along the expanding front of suburbanization, near the wetlands and estuaries that are often the last open spaces in cities, or on the open ocean, where cruise ships, squid boats, and oil derricks light the night.

■ Conclusions

Our understanding of the full range of ecological consequences of artificial night lighting is still limited, and the field holds many opportunities for basic and applied research. Studies of natural populations are necessary to investigate hypotheses generated in the laboratory, evidence of lunar cycles in wild populations, and natural history observations. If current trends continue, the influence of stray light on ecosystems will expand in geographic scope and intensity. Today, 20% of the area of the coterminous US lies within 125 m of a road (Riitters and Wickham 2003). Lights follow roads, and the proportion of ecosystems uninfluenced by altered light regimes is decreasing. We believe that many ecologists have neglected to consider artificial night lighting as a relevant environmental factor, while conservationists have certainly neglected to include the nighttime environment in reserve and corridor design.

Successful investigation of ecological light pollution will require collaboration with physical scientists and

engineers to improve equipment to measure light characteristics at ecologically relevant levels under diverse field conditions. Researchers should give special consideration to the tropics, where the constancy of day–night lighting patterns has probably resulted in narrow niche breadths relative to illumination. Aquatic ecosystems deserve increased attention as well, because despite the central importance of light to freshwater and marine ecology, consideration of artificial lighting has so far been limited. Research on the effects of artificial night lighting will enhance understanding of urban ecosystems – the two National Science Foundation (NSF) urban Long Term Ecological Research sites are ideal locations for such efforts.

Careful research focusing on artificial night lighting will probably reveal it to be a powerful force structuring local communities by disrupting competition and predator–prey interactions. Researchers will face the challenge of disentangling the confounding and cumulative effects of other facets of human disturbance with which artificial night lighting will often be correlated, such as roads, urban development, noise, exotic species, animal harvest, and resource extraction. To do so, measurements of light disturbance should be included routinely as part of environmental monitoring protocols, such as the NSF's National Ecological Observatory Network (NEON). Future research is likely to reveal artificial night lighting to be an important, independent, and cumulative factor in the disruption of natural ecosystems, and a major challenge for their preservation.

Ecologists have studied diel and lunar patterns in the behavior of organisms for the greater part of a century (see Park 1940 and references therein), and the deaths of birds from lights for nearly as long (Squires and Hanson 1918). Humans have now so altered the natural patterns of light and dark that these new conditions must be afforded a more central role in research on species and ecosystems beyond the instances that leave carcasses on the ground.

■ Acknowledgements

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From: [Schultz, Shirley](#)
To: [Schultz, Shirley](#)
Subject: FW: Electronic Billboards
Date: Wednesday, June 01, 2011 1:21:05 PM

From: Richard Cooke [mailto:apclam@nventure.com]
Sent: Wednesday, June 01, 2011 9:26 AM
To: Planning
Subject: Electronic Billboards

I would like to go on the record saying I urge the planning Commission send the matter of electronic billboards in Tacoma back to the City Council. It is the Planning Commissions' job to set rules for the implementation of the billboards if the City Council approves them. As the Planning Commission is an appointed board their only function is to set code, not policy. I strongly feel that the work been done in the past 20 years to change Tacoma into a wonderful place to live will take a step backwards in time if we allow a corporation to dictate what the citizens clearly do not want. A previous City Council had the courage to outlaw Casinos and faced down a lawsuit. This positive step took courage and commitment, something I hope our current Council and Planning Commission can show in the face of the now threatened law suit.

Sincerely,

Richard Cooke
2109 North Union Ave.
Tacoma, WA



May 31, 2011

Mayor Marilyn Strickland
Tacoma Planning Commission
Tacoma City Councilmembers,
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402-3766

Dear Mayor Strickland,

It has come to my attention that the Tacoma Planning Commission is considering revisions to the City's billboard regulations. The commission would like to get community feedback and then hold a public hearing before making their recommendation to the City Council who will make the final decision.

Brain Injury Association of Washington serves the Tacoma community. I would like to share some feedback on the community services that Clear Channel Outdoor has provided to many not-for-profit organizations including Brain Injury Association of Washington.

Clear Channel Outdoor has continuously supported our agency by providing discounted or pro-bono outdoor advertising. It is critical for us to make sure our community understands the impact of Traumatic Brain Injury (TBI). This is a serious public health issue for our community.

Our recent billboard campaign helped create a dramatically increased web traffic, volunteer interest and funding opportunities. By utilizing billboards to stress that "A Concussion = A Brain Injury", it helped us to inform our community that we need to identify education priorities and support the need for services among those living with TBI. Our community sought out Brain Injury Association of Washington for services once the campaign started.

Our partnership with Clear Channel Outdoor has been great. This corporation has a strong commitment to give back to our community – including pro-bono space. Losing this opportunity would be a major loss to public health education in the community.

Please consider my feedback when you make a final decision and please feel free to call me with any questions.

Sincerely,

Deborah Crawley
Executive Director

Brain Injury Association of Washington
Mailing Address: PO Box 3044, Seattle, WA 98114
Office Address: 401 Broadway, Seattle, WA

From: [Tricia DeOme](#)
To: [Planning](#); [jdoty@bcradesign.com](#); [tom@oconnorandassociates.net](#); [knute000@sprynet.com](#); [morrison.ian.s@gmail.com](#); [smorris@piercetransit.org](#); [pelswick@windermere.com](#); [smgaffney@earthlink.net](#); [cbeale@ci.puyallup.wa.us](#); [mnutsch@hotmail.com](#); [shirley.schultz@cityoftacoma.org](#); [marilyn.strickland@cityoftacoma.org](#); [jake.fey@cityoftacoma.org](#); [spiro.manthou@cityoftacoma.org](#); [lauren.walker@cityoftacoma.org](#); [Campbell, Marty](#); [Loneragan, Joe](#); [Woodards, Victoria](#); [Mello, Ryan](#)
Subject: Moratorium Comment
Date: Tuesday, May 31, 2011 10:03:11 PM

Good Evening,

I would like to extend my personal support of the moratorium on billboards (digital and static). The moratorium will allow the Planning Commission, the City Council and the public to address signs (on-site and billboards) as a policy. I do not agree with changing the sign code based on a potential lawsuit.

The proposed sign code did not support what is best for Tacoma. Replacing non-conforming billboards with larger digital non-conforming signs is not the answer.

I also recommend the moratorium be extended to on-site signage. I recommend the City of Tacoma address legal issue in the existing code so non-conforming billboards are removed, digital billboards are not allowed in Tacoma and on-site signage is regulated based on safety and distraction.

Clear Channel may provide free advertising space for nonprofits, but this does not justify the acceptance of digital billboards. There is plenty of advertising space on conforming billboards for small businesses and nonprofits. There are also a number of other ways to advertise including Pierce Transit, the internet (including social media) and old fashioned recommendations. Wireless amber alerts has already been set up through the Department of Justice- <https://www.wirelessamberalerts.org/index.jsp>

Tacoma does not need or want digital billboards.

Thank you for considering additional public comment. I appreciate all the work you do for this great city.

Tricia DeOme
253-267-2114

From: [Tricia DeOme](#)
To: [Planning](#); [jdoty@bcradesign.com](#); [tom@oconnorandassociates.net](#); [knute000@sprynet.com](#); [morrison.ian.s@gmail.com](#); [smorris@piercetransit.org](#); [pelswick@windermere.com](#); [smgaffney@earthlink.net](#); [cbeale@ci.puyallup.wa.us](#); [mnutsch@hotmail.com](#)
Cc: [shirley.schultz@cityoftacoma.org](#); [Marilyn.Strickland@cityoftacoma.org](#); [Jake.Fey@cityoftacoma.org](#); [Spiro.Manthou@cityoftacoma.org](#); [Lauren.Walker@cityoftacoma.org](#); [Campbell, Marty](#); [Loneragan, Joe](#); [Woodards, Victoria](#); [Boe, David](#); [Mello, Ryan](#)
Subject: Central Neighborhood Council Public Comment - Billboard Moratorium
Date: Tuesday, May 31, 2011 9:48:02 PM

Good Evening,

Thank you for taking additional time and resources to accept public comment on this issue.

Billboards, especially digital billboards, are a significant issue that will change our landscape and personality.

The Central Neighborhood Council (CNC) supports the moratorium on billboards (digital and static) until the Planning Commission and City Council can address billboards as a policy and not a reaction to a potential lawsuit. The moratorium will also provide additional time to research the impacts and potential new technology of digital billboards that will be difficult to regulate (i.e. adjusting advertising based on vehicle radio frequencies, face and license plate recognition). We do not want to be a test subject.

To this matter, the CNC recommends the City of Tacoma enforce and defend the current sign code and zoning restrictions. If the Planning Commission and City Council feels that modifications are necessary to defend the existing code in court, then please adjust them. The end goal is to eliminate non-conforming billboards and never allow digital billboards in Tacoma.

The CNC does not agree with a sign code that will allow some digital billboards in non-conforming areas to decrease the number overall number of static billboards. Please refer to the CNC letter dated March 25, 2011 (submitted during the public comment period on the proposed sign code) for additional reasoning and backup information of our position.

Thank you.

Tricia DeOme
Central Neighborhood Council
253-267-2114

From: [Lynn Di Nino](#)
To: shirley.schultz@cityoftacoma.org; jdoty@bcradesign.com; tom@oconnorandassociates.net;
knute000@sprynet.com; morrison.ian.s@gmail.com; [Scott Morris](#); pelswick@windermere.com;
smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org;
mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org;
Spiro.Manthou@cityoftacoma.org; [Lonergan, Joe](#); mlonerga@cityoftacoma.org; [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: Moratorium on digital billboards
Date: Wednesday, June 01, 2011 5:17:58 AM

Hello Interested Parties, I continue to support a moratorium on any decisions regarding the implementation of digital billboards in Tacoma. I support the vote of the City Council of about ten days ago. The night I testified in opposition I noted that 90% of those present do NOT want digital billboards (most billboards, for that matter). Please listen to your constituents and honor the already asserted vote to put a moratorium in place. thank you, Lynn Di Nino

From: [Kevin Freitas](#)
To: [Planning](#)
Subject: Billboard Moratorium Testimony
Date: Wednesday, June 01, 2011 7:25:58 AM

Commissioners:

My name is Kevin Freitas and I live at 3142 N. Cheyenne St. in Tacoma. I fully support the recent billboard moratorium passed by our city council. With it I hope this planning commission can execute or advise the gathering of Tacoma's resources toward amending our sign code to strictly prohibit digital billboards of any kind. Further, I encourage this commission to recommend to the city council that Tacoma stand by it's fully lawful/constitutional 1997 sign ordinance and do whatever it can to help research precedent toward opposing the bullying lawsuit put forward by Clear Channel to help make Tacoma a better place to live. It was blatantly clear by the threatening tone of the president of Clear Channel Outdoor Seattle's testimony at the recent city council meeting that they do not have Tacoma's best interests in mind.

Please understand that there are also immediate concerns of blight with regards to many Clear Channel billboards in this city which may be in violation of various ordinances/codes in billboards left abandoned and in tatters for months at a time. This on top of the over \$32 million in fines racked up since, after having 10 years to comply, Clear Channel has simply ignored its legal obligations with regard to our existing sign code and decided to sue Tacoma. Both issues should be considered as proof of Clear Channel's lack of concern/respect for our city and way of life and taken into account in case any further "settlement" crafted by them comes across anyone's desk at the city.

To reiterate, I fully support this moratorium and encourage this body to help in the fight against digital billboards and support our lawful 1997 sign ordinance.

Sincerely,

Kevin A. Freitas
3142 N. Cheyenne St.
Tacoma, WA

From: [Wung, Lihuang](#)
To: [Schultz, Shirley](#)
Cc: [Stenger, Donna](#); [Boudet, Brian](#)
Subject: FW: Planning Commission Review of Digital Billboards
Date: Tuesday, May 31, 2011 10:39:02 AM
Attachments: [Signs NCHRP Digital Billboard Report April 2009.pdf](#)

Lihuang Wung

Community and Economic Development Department
747 Market Street, Room 1036
Tacoma, WA 98402
(253) 591-5682

From: jim h [mailto:jimh1890@hotmail.com]
Sent: Tuesday, May 31, 2011 10:28 AM
To: lwung@cityoftacoma.org
Subject: Planning Commission Review of Digital Billboards

I previously expressed my strong disagreement with the City of Tacoma approving the siting of new digital billboards or DBBs. They are a variety of what are more properly referred to as "changeable electronic variable message signs (CEVMS)". I referenced the most detailed study produced yet by the the Transportation Research Board of the National Academy of Sciences in cooperation with the Federal Highway Administration and the American Association of State Highway and Transportation Officials. It is entitled "Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs" (April 2009). I am attached the 194 page detailed Final Report to this message and expect it to be part of the final record of any proceedings. Pay special attention to pages 134-142 which summarize actions by other communities across the United States.

I would also note that the long awaited very sophisticated Federal Highway study on the impact of such signs on drivers' 'eye movements' has been completed, but not yet released to the public. To move forward or take any action on approving new digital signs without reviewing what the Feds have to say about the visual distraction of such signs and how to control them at this time would be in my opinion extremely poor public policy making. Wait for the Federal study!

Sincerely,
James L. Halmo
9806 247th St Ct East
Graham, WA 98338
253-875-1890

*Safety Impacts of the Emerging Digital
Display Technology for Outdoor
Advertising Signs*

FINAL REPORT

Submitted Under NCHRP Project 20-7 (256)

Prepared by Jerry Wachtel, CPE
President, The Veridian Group, Inc.
Berkeley, California

April, 2009

NOTE TO COMMISSION: THE ENTIRETY OF THE REPORT WAS ATTACHED TO MR. HALMO'S EMAIL, BUT HAD ALREADY BEEN PROVIDED AS PART OF PUBLIC TESTIMONY, VOLUME II, PAGE 236, AND IS NOT REPEATED HERE.



GRAHAM BUSINESS ASSOCIATION
P.O. Box 163
GRAHAM, WA 98338-0163
(360) 832-2451

May 31, 2011

Mayor Marilyn Strickland
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402-3766

Dear Mayor Strickland,

The Graham Business Association has been able to use the services of Clear Channel Outdoor to publicize our Grazing in Graham annual event for the past two years.

Clear Channel Outdoor has supported us by providing discounted and pro-bono outdoor advertising. The advertising campaign made people aware of our Grazing in Graham, a community event. We had approximately 2000 people and several sponsors supporting the GIG which showcased many of the businesses in the Graham area.

Clear Channel Outdoor has a strong commitment to give back to our community.

Not only have they provided in-kind advertising, they also have provided other helpful marketing and outreach assistance.

Clear Channel Outdoor continually and selflessly keep the community needs in the forefront when it pertains to community service in our market.

Clear Channel Outdoor is a great partner and community contributor.

Sincerely,

David Haynie

David Haynie
President
DH:peg



May 31, 2011

Tacoma Planning Commission
Tacoma City Council
747 Market Street
Tacoma, WA 98402

Dear Planning Commission & City Council :

In regards to Ordinance No. 27982, emergency Moratorium On Billboards, adopted by the Tacoma City Council on May 17, 2011 I am addressing you as members of the Planning Commission regarding this item under consideration at the June 1, 2011 Public Hearing.

As a 501c3 non profit community based organization, Kent Youth and Family Services had not previously utilized any mass media marketing concepts and has extremely limited resource with which to enter a regular contract for such services. At the very point KYFS was searching for a method to begin to use such media KYFS was fortunate to be contacted by Clear Channel providing an opportunity to utilize "digital" advertising for the first time. Through Clear Channel's assistance and direction, and continuing to this day, KYFS developed attractive digital copy that was placed in the rotating series of advertising copy beginning July 2009. As promised then KYFS continues to be regularly displayed on this digital advertising formats periodically, until such time all available space is purchased by other advertisers.

As the digital displays became more and more popular with advertisers Clear Channel has continued to "work KYFS" into available space, as it has other non profits such as Tacoma's Washington Women's Employment and Education, also a partner of KYFS's here in Kent.

One of the significant beneficial effects of utilizing digital is copy can be changed quickly. Design copies are changed and are "up" instantly. In addition, there was no production cost involved for the agency, again operating on limited advertising resources.

The results are more people are aware of the services we provide in Kent; KYFS's branding and image is more widely recognized; and more people seek out KYFS for services commenting that they learned of the agency through the digital advertising displays.

Although I am aware that additional outdoor advertising is a controversial issue in nearly all communities, on balance Clear Channel's commitment to partnering with non profit community organizations such as KYFS here in Kent do provide a significant benefit to the public who view our advertising copy making them aware of resource available in the community when experiencing a need for assistance of any kind they may be searching for. Thus I would hope, and support, your consideration of Clear Channel's pursuit of bringing this resource to your thriving community.

Sincerely

Michael Heinisch
Executive Director



Schultz, Shirley

From: ed holt [edlalu@hotmail.com]
Sent: Tuesday, May 17, 2011 9:35 AM
To: shirley.schultz@cityoftacoma.org
Subject: Tacoma billboards

Categories: Green Category

Thank you for your efforts to limit the advertising blight in our city. Please do what you can to prevent future billboards, especially the electronic/digital ones. The visual distraction is dangerous and ugly. Not conducive with the quality of life we are trying to keep up in Tacoma. I don't watch ads on TV, I avoid them in printed media and on the internet. I don't need to be accosted by them on our city streets. If it were really about freedom of speech, it wouldn't cost all that money to post a message on some giant panel owned by CBS or Clear Channel or any of the others.

Keep up the good fight. If Vermont, Maine, Alaska, and others can do it SO CAN/SHOULD Tacoma!

Thank you,

Ed Holt
Tacoma

From: [Brian Jacobs](#)
To: [jdoty@bcradesign.com](#); [tom@oconnorandassociates.net](#); [knute000@sprynet.com](#); [morrison.ian.s@gmail.com](#); [smorris@piercetransit.org](#); [pelswick@windermere.com](#); [smgaffney@earthlink.net](#); [cbeale@ci.puyallup.wa.us](#); [mnutsch@hotmail.com](#); [lwung@cityoftacoma.org](#); [mstrickland@cityoftacoma.org](#); [lwalker2@cityoftacoma.org](#); [jfev@cityoftacoma.org](#); [Spiro.Manthou@cityoftacoma.org](#); [Loneragan, Joe](#); [mlonerga@cityoftacoma.org](#); [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#); [Eric.Anderson@cityoftacoma.org](#); [Planning](#); [Schultz, Shirley](#)
Cc: [john.henrikson@thenewstribune.com](#); [peter.callaghan@thenewstribune.com](#); [lewis.kamb@thenewstribune.com](#)
Subject: Billboard Moratorium
Date: Monday, May 30, 2011 8:50:12 PM

Dear Tacoma Planning Commission:

I would like to voice my support for the moratorium that the city council placed on new permitting for billboards within the city. I feel the best course of action is for the planning commission to take as much time that is required to do the following:

- 1) Rewrite/change the city's billboards ordinance to **prohibit all electronic billboards**, both off and on premise signage, within the Tacoma city limits.
- 2) Rewrite the current code on billboard signage in a manner that reinforces the decisions/intent of the 1997 ordinance. This should be done in a clear and concise manner in order to stand up to legal challenges by Clear Channel and other advisement companies.

As I have written previously, I am in opposition to allowing electronic billboards. They introduce huge safety concerns by adding distractions to our roads as well as the blight/light pollution that they bring to our neighborhoods. In the end, they simply do not fit in the general outlook of how we want to improve our city. It moves us in the wrong direction...

We need to take back our city by standing up to outside parties...enough is enough.

I do want to applaud your recent report to the city council with the recommendation that electronic billboards be prohibited. Now let's take the time to write an iron clad ordinance that puts our city back in our hands.

Regards,
Brian Jacobs
253-272-7193

Kurt Jacobson
4553 Kennedy Rd NE
Tacoma, WA 98422
(253) 229-6905 - KurtGJacobson@gmail.com

June 1, 2011

City Council and Planning Commission
City of Tacoma
747 Market Street
Tacoma, WA 98402-3766

Dear Council and Commission Members,

Subject: Billboard Moratorium

I want to comment about the implementation of the billboard agreement reached between the City and Clear Channel Outdoor.

As a local business owner for 37 years, I value billboards as a responsible and cost-effective medium for businesses, governments and not-for-profit organizations to reach most of their audiences and people they serve.

I would like the City of Tacoma to be perceived as receptive to businesses thinking of relocating, expanding or deciding to stay in Tacoma. Attempts to diminish the ability of any company or other organization to responsibly and efficiently let local residents see their messages would cause the City to lose revenue to other markets. The City receives more than 35% of its revenue, about \$150 million, from businesses. They help pay for vital services for our citizens. The positive revenue and economic development impacts of the agreement are important to me.

As a communications business owner, I believe the trade-off involving the loss of many of the obsolete old-fashioned paper (now vinyl) billboards in exchange for the much cleaner and contemporary billboards is worthwhile.

I realize that very small number of citizens prefer to see no public commercial messages. Others appear to be concerned that the billboards will look like the very bright, animated billboards they see along I-5. The new billboards are much more subtle than most people think. They are not "bright." In fact they look much like the older vinyl billboards in daylight and similar to the billboards that currently have external lights. Eventually, I believe the great majority of citizens will realize that there are fewer billboards and those that are left are clean, intriguing and not objectionable.

In balance, the benefits of the agreement reached between the City and Clear Channel for the new billboards seems like a positive step for the majority of Tacoma citizens, businesses and City revenue.

Sincerely,

Kurt Jacobson

From: [Audrey Jensen](#)
To: shirley.schultz@cityoftacoma.org; jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison.ian.s@gmail.com; smorris@piercettransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; mstrickland@cityoftacoma.org; walker2@cityoftacoma.org; jfey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; [Loneragan, Joe](#); mloneraga@cityoftacoma.org; [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: Importance of the moratorium
Date: Wednesday, June 01, 2011 10:26:58 AM

Good morning,

I would like to express to you all my support of the moratorium. I feel that it is critical that you take time to consider all of the information before the decision is made. Please take as long as necessary to develop a policy!

Thank you for your time and efforts - let's keep Tacoma beautiful!

Audrey Jensen

Schultz, Shirley

From: rob jensen [jillandrob@gmail.com]
Sent: Tuesday, May 17, 2011 2:25 PM
To: shirley.schultz@cityoftacoma.org
Subject: Billboard

Categories: Green Category

May 17, 2011

Hello Shirley,

I wanted to ask you if by any chance the City Council's moratorium, if adopted at tonight's meeting, would preclude the Council from having to consider the Planning Commission's Draft letter/ and or comments? I would appreciate a response today.

Thank you,
Jill Jensen

From: rob.jensen
To: shirley.schultz@cityoftacoma.org
Subject: Support Moratorium
Date: Tuesday, May 31, 2011 10:55:42 PM

Dear Ms. Schultz,

I am writing in support of the moratorium on all signs in the City of Tacoma. I believe it is prudent to take as long as is necessary to develop a comprehensive and cohesive policy for Tacoma and her citizens.

I appreciate your hard work and effort, and in particular your willingness to see make certain this is done right and for the benefit of all who live and work in Tacoma and her generations to come,

Thank you,
Jill Jensen

From: [Jensen, Robert W](#)
To: shirley.schultz@cityoftacoma.org; jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison.lan.s@gmail.com; smorris@piercettransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; [Loneragan, Joe](#); mloneraga@cityoftacoma.org; [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: In Support of Billboard Moratorium
Date: Wednesday, June 01, 2011 7:43:41 AM

Dear Tacoma City Planning Commission / Council Members,

I am writing in support of the billboard moratorium and urge the Planning Commission to endorse and adopt the timeline extension required to fully understand this critical issue. The citizens of Tacoma deserve a thoughtful, forward looking plan and resulting sign code regulation for our cityscape.

Best Regards,
Rob Jensen
Integrated Schedules - PW Seattle
206-544-2846

From: [Jeremy Doty](#)
To: [Wung, Lihuang](#)
Subject: FW: OUTDOOR BULLETIN BOARDS AND PROCTOR ARTS FEST
Date: Tuesday, May 31, 2011 8:54:56 AM

FYI



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From: Eugene Kester [<mailto:genemild@yahoo.com>]
Sent: Friday, May 27, 2011 5:53 PM
To: Chris Beale; Donald Erickson; Ian Morrison; Jeremy Doty; Matthew Nutsch; Peter Elswick; Scott Morris; Sean Gaffney; Thomas O'Connor
Subject: OUTDOOR BULLETIN BOARDS AND PROCTOR ARTS FEST

Greetings to the Members of the Tacoma Planning Commission.

I am Eugene Kester, a co-chair of the 2011 Proctor Arts Fest. We have been working with Clear Channel Outdoor for five years. They have been very generous and helpful in assisting us in promoting the Proctor Arts Fest.

I am very aware of the political heat that surrounds the issue of these bulletin boards and cannot speak for either the Proctor Arts Fest or the Proctor District Association. I can only tell you my story.

One of the challenges we have is the appropriate recognition of our sponsors. It is also quite difficult to get the attention of the public. As a non profit we are totally dependent on sponsors to make it possible for us to produce and promote our festival. It occurred to me that if we could have our information on a large public board, our sponsors would receive some of the notice they deserve and the public might be more aware of our event. Clear Channel Outdoor responded and has produced and posted the fest on one large sign each year at nearly no cost to us. Working with them has been a pleasure. Clear Channel Outdoor has been a great partner for us in our attempt to produce and promote our district event. We are very grateful.

Thank you for your time and consideration,

Eugene Kester
Co-Chair 2011 Proctor Arts Fest
www.proctorartsfest.com
253-759-4012

From: [Gary Knudson](#)
To: [Planning](#)
Subject: Billboard Moratorium
Date: Wednesday, June 01, 2011 10:45:48 AM

Planning Commissioners-

Please support in the strongest possible terms the proposed moratorium in digital billboards.

The 'agreement' was arrived at in virtual secrecy in contempt of existing regulations and the rights of citizens, who, in their commercial, residential and non-profit projects have been required to adhere to a comprehensive canon of regulations put in place to protect the integrity and quality of our built environment.

We are facing this challenge primarily because our City Manager, a relative newcomer, had completed a similar deal with CCO in his previous posting in another region of the country.

We hear of non-profits 'packing the room' to protest the 'good' derived from this medium outweighs the blight inflicted. Regardless of numbers represented, this argument is moot, if not completely bogus. As an architect representing these groups for over 40 years in this city, I can testify as to the extreme rigor of compliance that must be attached to the proposal for any church, school and drop-in center proposed by such groups. While providing necessary functions, as non-conforming uses they must illustrate a rigorous adherence to all regulations governing impacts to the immediate environs in which they locate. They are now apparently claiming a *priori* rights to use this blighting medium to spread their message. This is unfortunate, not only for the integrity of the groups involved and their messages, but for the unintended backlash they might feel from some quarters for their association with CCO in this ill-starred effort.

We would not be in these discussions today if our political leadership had diligently pursued their duties to the citizenry in years past, and not continued on a path that seems to declare that consistency with past misfeasance is somehow a justification of those previous missteps.

This hearing is not a plebiscite, and your duty is to uphold the integrity of the letter and intent of our comprehensive Plan and zoning ordinances.

Gary Knudson
Gary Knudson & Associates
3307 N 25th Street
Tacoma, WA 98406
253.752.5014

Schultz, Shirley

From: Carmenl@centuryinsurancesvcs.com
Sent: Wednesday, May 25, 2011 9:49 AM
To: Planning
Subject: Billboards

I would like to see this form of advertising / public communication end. Period. Billboards are a blight on our landscape – not just along our highways but worse, in neighborhoods where there are concentrated numbers of them. For instance, when I travel along South Tacoma Way, I can't help but think that the businesses along some stretches STW are being negatively impacted/overshadowed by how degraded the area appears with these huge signs competing for the attention of passersby. I immediately think of certain districts in our city as “seedy”, “cheap”, “forgotten” “hollow” because the only purpose the areas serve is the place to stick these huge ugly signs.

I get that revenue is developed by a “few” from these boards but at what cost to the city as a whole? In a time when we should be focusing on organically (albeit slowly) developing business districts in areas such as STW, Oakland and other blighted areas of our city we are having a pissing match over these signs. Our young people growing up in these neighborhoods I am speaking about need to be shown by our actions, that their neighborhood is just as valuable and potentially vibrant as the neighborhoods in North Tacoma. Not to mention, in these enviro-aware times in which we live – these signs are at odds, on many levels, with the living GREEN concept we are trying to teach our children but I guess some slick side-talking exec will be able to say – they are living green, too bad it is just in their pocket. I would guess the folks spending all those advertising dollars aren't gleening the revenue they'd hope anyway so bottom line is only a very few are making the green.

UGHHHHH. NO MORE BILLBOARDS!

Carmen Lampman

From: [Fred Langsted](#)
To: [Planning](#)
Cc: [Frederick](#)
Subject: Billboards in Tacoma
Date: Wednesday, June 01, 2011 10:15:41 AM

To whom it may concern;

Unfortunately, we can not attend the meeting today at 4:00. If we had a chance to speak to the planning commission, our message would be simple...

At the very least, you must continue the moratorium, remove all non-compliant billboards, collect the fines for any billboard which is non-compliant and has not been removed as of today, and do not allow anymore of them to be permitted or constructed ever again...including all "old school" billboards, all "new school" electric television jumbo-tron billboards, and any other billboards of any kind.

All of us who live here know how unique and aesthetically beautiful Tacoma is...let's keep that as a priority when planning our future. If you were to ask anyone, "Do you want a billboard in your neighborhood?" the answer will always be "NO!"...who's city is this anyway?

Fred Langsted & Tracie Ferrari
3600 Block of North Stevens Street
Tacoma, Wa 98407

From: [Jeremy Doty](#)
To: [Wung, Lihuang](#)
Subject: FW: YWCA Seattle|King|Snohomish Letter on Clear Channel
Date: Tuesday, May 31, 2011 5:11:26 PM
Attachments: [image002.png](#)

FYI



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From: Cathy MacCaul [<mailto:cmacaul@ywcaworks.org>]
Sent: Tuesday, May 31, 2011 4:50 PM
To: Jeremy Doty; tom@oconnorandassociates.net; knute000@sprynet.com; morrison.ian.s@gmail.com; smorris@piercettransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; Marilyn.Strickland@cityoftacoma.org; Jake.Fey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; Lauren.Walker@cityoftacoma.org; Marty.Campbell@cityoftacoma.org; Joe.Lonergan@cityoftacoma.org; David.Boe@cityoftacoma.org; Ryan.Mello@cityoftacoma.org
Subject: YWCA Seattle|King|Snohomish Letter on Clear Channel

To whom it may concern:

The YWCA Seattle|King|Snohomish would like to send a special word of thanks and appreciation for the advertising spaces donated by Clear Channel Outdoor which were scattered throughout King and Snohomish Counties promoting the YWCA Inspire Luncheon series and helping the agency raise nearly \$1.5 million to support women and families in need.

During the recovery of this fragile economy, the role human service nonprofits play is crucial in helping people stabilize their lives and avoid homelessness. This growing demand for our services coupled with shrinking resources from government entities forces organizations, like the YWCA, to rely heavily on donations from private individuals and corporations. Unfortunately, most human service agencies lack marketing budgets to effectively rally support and rely on the generosity of media partners like Clear Channel Outdoor.

The outdoor advertising space was part of our overall effort to keep the YWCA and our premier fundraising top of mind. Numerous donors positively commented on seeing the billboard and

electronic signage throughout the two county region. We value to willingness and culture of community partnership that Clear Channel Outdoor demonstrates as a corporate citizen.

cathy maccaul
director, community affairs

{p} 206.461.4434 | {f} 206.461.4370
1118 fifth avenue, seattle, wa 98101

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ywcaworks.org

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From: [Patricia Menzies](#)
To: jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison.ian.s@gmail.com; smorris@piercetransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; marilyn.strickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; [Loneragan, Joe](#); [Mello, Ryan](#); [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: Tacoma's Billboard code discussion May 31st
Date: Monday, May 30, 2011 12:15:39 PM

Dear friends and fellow Tacoma citizens,

I am unable to attend tomorrow's Planning Commission meeting but would like my voice to be heard. Like many of my neighbors, I am 100% opposed to digital billboards of any kind. (I don't even like the ones that exist as digital signs on businesses such as the church on 6th Ave.)

I approve of the spirit of the 1997 ordinance which would have removed non-compliant billboards and phase out all remaining billboards. I think they are unsightly and our city would be a more beautiful place without them. I would like to have the ordinance reviewed (as proposed) and clarified where necessary to be sure it is safe from attacks such as that being waged by Clear Channel. I would also support putting the question to the citizens on this fall's ballot if you feel you need that feedback.

I would also like to see the Planning Commission to reject the changes "negotiated" with Clear Channel, the City Council to reject that plan, and for the appropriate departments to move forward with collecting the fines incurred by Clear Channel since 2007. If they choose to sue the City, I support the City in that lawsuit or a counter suit, if that would be the way to go. Please do not give in to the bully tactics by this huge corporation which does not care about anything except their profits.

At the same time, I am aware that local businesses want to get out their message about their products and services. I would like to see a citizen's committee set up which would meet with businesses who advertise on billboards to determine how effective that advertising is currently and what other affordable and visually acceptable means exist for them to reach their intended customers. This also needs to protect the public, however, from intrusive, unwanted messages.

Thank you for your time and attention to this issue.
Patricia Menzies
615 S Grant Ave, # A
Tacoma, WA 98405
253-565-2599

From: [Morf Morford](#)
To: [Planning](#)
Subject: Digital Billboards
Date: Tuesday, May 31, 2011 9:43:00 AM

Greetings -

There are many aspects of the digital billboard debate that I find disturbing. I will address just a few here.

I am a life time resident of Tacoma, my family is based here and my first grandchild was just born here in Tacoma. I and my family have a stake in Tacoma, Clear Channel does not. I care about what Tacoma looks like now and what it will look like in the future.

Clear Channel shows nothing but contempt for the laws, citizens, political process, public face and legacy of Tacoma.

I teach English and public speaking at the college level. I am also a columnist for The News Tribune. I see stunned outrage at every level when this issue comes up in conversation.

My students marvel at the ineffectiveness of our city government. These billboards are the ultimate insult to who we are as a community. If these billboards are erected, they will be a living monument to the cowardice of those who should be making decisions on behalf of our city. You can bet that they will also be targets of hackers and vandals.

In summary, these digital billboards say nothing good about Tacoma, but their presence will be a continuing reminder of missed opportunities and the worst aspect of compromise.

M.Morford (Morf)

From: jodi.nelson1@comcast.net
To: shirley.schultz@cityoftacoma.org; jdoty@bcradesign.com; tom@oconnorandassociates.net;
knute000@sprynet.com; morrison.ian.s@gmail.com; smorris@piercettransit.org; pelswick@windermere.com;
smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org;
mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org;
Spiro.Manthou@cityoftacoma.org; [Loneragan, Joe](#); mtonerga@cityoftacoma.org; [Campbell, Marty](#); [Woodards, Victoria](#); [Boe, David](#)
Subject: SUPPORT FOR BILLBOARD MORATORIUM
Date: Wednesday, June 01, 2011 10:37:58 AM

Dear Planning Commission and City Council Members,

The time is right to enact the moratorium for billboards in Tacoma. There are too many unanswered questions and concerns about the potential impacts digital billboards in particular will have on our community. We need to understand as completely as possible how such technology will now - and as it changes in the future - affect our traffic, safety, energy consumption, light and noise and decreasing property values.

Please help Tacoma develop a solid policy - not just as a reaction to Clear Channel's lawsuit - which will preserve for us and generations to come a city we are proud to call home.

Thank you for your effort,

Jodi Nelson

From: d.olsonjr [mailto:d.olsonjr@comcast.net]
Sent: Friday, May 27, 2011 11:57 AM
To: Planning
Subject: Billboard Moratorium

Dear Members of the City of Tacoma's Planning Commission:

It is time for your commission and the City Council to protect the denizens of this community, rather than rolling over for Clear Channel and other greedy corporate types. When I first saw the map indicating the location of the proposed electronic billboards. I had to laugh. Obviously, the fix was already set. Needless to say, the map indicated none of the billboards would be located in the Northend district. On the other hand, all of the proposed billboards were to be located in the cities ghetto, that is in neighborhoods located on 6th Avenue, or South of that downtrodden city street. Are the proposed billboards a part of the renaissance project scheduled for 6th Avenue? Maybe we can have few casinos on the "Ave". to join the new electronic billboards. They could be grandfathered into the zoning code, so they could be located next to "single-family" homes.

In short, the Planning Commission should be abolished. You serve absolutely no purpose, except to design zoning requests sought by developers, or their agents, that is some of the past city council members and few of the current elected public officials. You folks are not kidding anyone. Obviously, the city should take on Clear Channel regarding the claimed agreement negotiated between Clear Channel and the city. The city should select an outside law firm from Seattle, Portland, or San Francisco to represent the city, since if the alleged agreement mentioned above was negotiated or approved the City Attorney's office, clearly that group has not a clue how to negotiate an agreement that does not leave the taxpayers liable for their incompetence. Welcome to Tacoma!

Some day Tacoma will finally catch up with White Center (a Seattle neighborhood) or even Sumner. Renaissance my posterior. When the moratorium is lifted, I am positively convinced Clear Channel will be granted their wishes, with the blessing of both the Planning Commission and the City Council.

Sincerely,

**Don E. Olson, Jr.
3510 South 7th Street
Tacoma, WA 98405**

Schultz, Shirley

From: hagar512@comcast.net
Sent: Wednesday, May 25, 2011 10:27 AM
To: Schultz, Shirley
Subject: Re: Public Notice - Billboard Moratorium

Categories: Green Category

Dear Shirley,

My recommended input on the potential electronic interference problems with digital billboards is fully covered in my letter to you dated April 14, 2011. I also submitted a copy of that letter, with a brief cite of my professional qualifications and talking points, to the City Council at the recent meeting.

Please let me know if you need any additional information to support your efforts. I'm glad that there is a moratorium because there is so much work to do and it shouldn't be rushed.

Ray Pedersen

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

From: "Shirley Schultz" <shirley.schultz@ci.tacoma.wa.us>
To: "Shirley Schultz" <shirley.schultz@ci.tacoma.wa.us>
Sent: Tuesday, May 24, 2011 10:19:03 AM
Subject: Public Notice - Billboard Moratorium

On June 1, 2011 at 4:00 p.m. the Planning will be holding a public hearing regarding the interim moratorium on billboards adopted by the City Council last week. The hearing will be held in the City Council Chambers on the 1st Floor of the Tacoma Municipal Building (747 Market Street). Please see the attached public notice.

At the City Council meeting on May 17, 2011, Ordinance No. 27982 was adopted, which put in place an emergency moratorium on the acceptance of applications to install or construct new billboards or to alter, modify or replace existing billboards anywhere in the City for 180 days. The purpose of the moratorium is to provide additional time for the City to review and consider changes to its billboard regulations. As required, the moratorium has been referred to the Planning Commission to develop findings and recommendations for submittal to the City Council regarding the emergency moratorium. The Planning Commission is seeking public comment to assist them in formulating those findings and recommendations.

You are invited to come and testify at the hearing or provide written comments using the return address below no later than 12:00 pm on Wednesday, June 1, 2011 or by facsimile at (253) 591-2002 or via e-mail at planning@cityoftacoma.org.

If you have additional questions please feel free to contact Shirley Schultz, Principal Planner, at (253) 591-5121

Additional information, including the complete text of the moratorium ordinance adopted by the City Council, is available from the Community and Economic Development Department at the address below, and on the Planning Division website (www.cityoftacoma.org/planning - click on "Billboard Moratorium")

Please feel free to share this notification with anyone who may be interested.

From: jodi.nelson1@comcast.net
To: shirley_schultz; jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison_ian_s; smorris@piercetransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfey@cityoftacoma.org; [Spiro Manthou](mailto:Spiro_Manthou); [Loneragan, Joe](mailto:Loneragan_Joe); mlonerga@cityoftacoma.org; [Campbell, Marty](mailto:Campbell_Marty); [Woodards, Victoria](mailto:Woodards_Victoria); [Boe, David](mailto:Boe_David)
Subject: ROGER RUE in Support of the Billboard Moratorium
Date: Wednesday, June 01, 2011 11:14:25 AM

Dear Planning Commission and City Council Representatives,

I am writing in support of the billboard moratorium and think it is necessary to once and for all develop a strong and viable policy for signs in Tacoma. Time and attention are necessary and I would suggest our city leadership take as long as need be to create our ordinance. This should not be done for fear of a lawsuit, but because it is what's best for Tacoma and her citizens.

As an architect who has worked for years to develop buildings that complement our city's streets and abide by Tacoma's ordinances, do not wish to see signs whose inherent design is meant to over-power and distract. When looking across the water at our skyline, we want to see our beautiful bay, not flashing digital billboards the size of steam ships.

Please, take your time. We need your help based on what is right for the people who live in Tacoma, not the whims of Clear Channel.

Thank you for your hard work.

Roger Rue
rogerrue@aol.com

Sincerely,

Judy Smith
rlrue@aol.com

From: [Schultz, Shirley](#)
To: [Schultz, Shirley](#)
Subject: FW: billboard moratorium
Date: Wednesday, June 01, 2011 1:39:18 PM

From: susan ryan [mailto:sryan@harbornet.com]
Sent: Wednesday, June 01, 2011 9:01 AM
To: Jeremy Doty
Subject: billboard moratorium

As a citizen of Tacoma I support the moratorium. Years ago I was lead to believe that the Tacoma billboards would be going away. Now we learn that Clear Channel tried to negotiate what they wanted out of a threat of a lawsuit. To make matters worse we are now facing digital billboards with changing images in the most prime locations, how awful. Land use planning laws are for the benefit of the people collectively. Individuals or businesses should not be allowed a special privilege to benefit at the expense of the rest of us. They had years to reap the financial rewards of Tacoma billboards.

In regards to Clear Channel, after learning that they have been pulling this stunt around the country for several years tells me they are not negotiating in good faith. Allowing them this privilege is simply wrong. Driving past Emerald Queen at night in the dark is all I need to be reminded of how blinding, distracting and obnoxious these images are. I put my hand up to shield my eyes from the glare.

Frankly, I am disappointed that the Mayor went forward with such a poor deal. I support fighting this and not giving in to Clear Channel.

Susan Ryan

Schultz, Shirley

From: Doug Schafer [schafer49@gmail.com] on behalf of Doug Schafer [schafer@pobox.com]
Sent: Tuesday, May 17, 2011 2:37 PM
To: jdoty@bcradesign.com; tom@oconnorandassociates.net; morrison.ian.s@gmail.com; smorris@piercetransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; Schultz, Shirley
Subject: Two drafting corrections to proposed sign code revision
Categories: Green Category

I applaud the proposed position reflected in the draft report included in your agenda packet for your May 18 meeting. I certainly do hope that you finalize and issue that report.

I suggest two drafting corrections:

In section 13.06.520 paragraphs A, B.1, and B.2, change "this section" to read "this code." Paragraph B.3 already refers to "this code." Consider in paragraph A indicating that references to "this code" refer to sections 13.06.520, .521, and .522.

In section 13.06.521 paragraph C, consider striking the word "commercial" from the initial sentence that now reads, "The following commercial signs are prohibited, except as may be otherwise provided by this chapter:". I'm not certain about this, but I suspect the word should be struck because other TMC provisions expressly allow political and other noncommercial signs that enjoy First Amendment protection.

Doug Schafer, Attorney and Board Member of Central Neighborhood Council.

Schultz, Shirley

From: Doug Schafer [schafer49@gmail.com] on behalf of Doug Schafer [schafer@pobox.com]
Sent: Tuesday, May 17, 2011 3:35 PM
To: Schultz, Shirley
Cc: Erickson, Don (TacPlanComm'n)
Subject: Tacoma's 1992 Sign Code
Attachments: 1992_Ordinance-25085.pdf

Categories: Green Category

Shirley Schultz and colleagues:

Attached is a PDF of 1992 Ordinance 25085 that re-codified Tacoma's scattered provisions regulating signs into a single "sign code" of three parts -- Part I, II, and III (designated TMC 13.06.550 that eventually became TMC 13.06.520, .521, and .522).

As I read through this 1992 ordinance, it appears to me that billboards were not expressly allowed in any zoning districts at all. If I am missing something, please point it out to me. If I am reading it correctly, I conclude that billboards were entirely disallowed (therefore existing ones were nonconforming) in Tacoma under the 1992 ordinance (as they later were for a full year (7/23/96 to 7/22/97) under the 1996 moratorium ordinance, Ord. 25933). If you agree, please so indicate. If you disagree, please indicate why.

Thanks.

Doug Schafer, attorney and member of the board of Central Neighborhood Council.



American Red Cross

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Fax: 206.325.8211

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PO Box 499
Bremerton, WA 98337
Tel: 360.377.3761
Fax: 360.792.0498

TTY: 206.720.5392
seattleredcross.org

May 27, 2011

Tacoma Planning Commission and Member of the City Council
747 Market Street – Room 1036
Tacoma, WA 98402

Dear Tacoma Planning Commission & City Council Member

The Clear Channel Outdoor digital advertising program has greatly benefited the American Red Cross. Over the past year and a half, Clear Channel has generously provided pro bono space on its digital billboards throughout the Seattle area enabling us to recruit volunteers, prepare the community for disasters and raise critical funds for disaster relief.

Locally, the Red Cross responds to a disaster nearly every other day, and when disaster strikes, time is of the essence. Through ClearChannel's digital program, we have been able to provide critical messages to the public within minutes. Because everything is handled electronically, there are no set-up or production costs.

For example in winter 2009-10, residents and businesses below the Howard Hanson Dam in the Green River Valley were at a higher risk for flooding. Government reports estimated that nearly 30,000 people could be impacted. We reached out to ClearChannel for help, and within a very short period of time, we are able to provide flood preparedness messaging via the digital billboards – all free of charge.

The American Red Cross greatly appreciates ClearChannel's support and its commitment to our local community. Time and again, ClearChannel has proven itself to be a dedicated, community partner.

Sincerely,

Stephanie Schoo
Director, Marketing & Communications

In partnership with



Board Chair Deborah G. Haug **Vice Chair** Jonelle M.C. Johnson **Secretary** Ann L. Sobil **Treasurer** Scott M. Edwards
Chief Executive Officer Randy Hutson

The mission of the American Red Cross is to provide relief to victims of disasters and help people prevent, prepare for and respond to emergencies.

From: [Jeremy Doty](mailto:Jeremy.Doty)
To: [Wung, Lihuang](mailto:Wung.Lihuang)
Subject: FW: Billboard Moratorium
Date: Tuesday, May 31, 2011 8:57:29 AM

FYI



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From: rick semple [mailto:joriadkins@mac.com]
Sent: Sunday, May 29, 2011 5:47 PM
To: Jeremy Doty; tom@oconnorandassociates.net; knute000@sprynet.com; Morrison Ian; smorris@piercettransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com
Cc: Lonergan Joe; Boe David; Anderson Eric; Strickland Marilyn; Manthou Spiro; Woodard Victoria; Campbell Marty; Mello Ryan; Fey Jake; Walker Lauren
Subject: Billboard Moratorium

To the Planning commission, (CC to the city council)

As property owners of properties on which Clear Channel billboards are located, please accept our comment that you strongly recommend to the City council to enact the moratorium for as long as needed to understand the public sentiment and the issues involved in allowing digital signs of any type to be permitted in the city, to understand and clarify the legal blackmail that is being perpetrated on the city by clear channel in offering to swap "plain for digital" and to hopefully limit or eventually eliminate all billboards including digital ones. The esthetic future of our city rides on your work here. The country has been trying to free itself from billboards since the 40's....now is your chance to try.

Thank you all.

Rick Semple

Jori Adkins

From: jodi.nelson1@comcast.net
To: shirley_schultz; jdoty@bcradesign.com; tom@oconnorandassociates.net; knute000@sprynet.com; morrison_ian_s; smorris@piercetransit.org; pelswick@windermere.com; smgaffney@earthlink.net; cbeale@ci.puyallup.wa.us; mnutsch@hotmail.com; lwung@cityoftacoma.org; mstrickland@cityoftacoma.org; lwalker2@cityoftacoma.org; jfev@cityoftacoma.org; [Spiro Manthou](mailto:Spiro_Manthou); [Loneragan, Joe](mailto:Loneragan_Joe); mtonerga@cityoftacoma.org; [Campbell, Marty](mailto:Campbell_Marty); [Woodards, Victoria](mailto:Woodards_Victoria); [Boe, David](mailto:Boe_David)
Subject: Judy Smith in Support of the Billboard Moratorium
Date: Wednesday, June 01, 2011 11:02:01 AM

Dear Planning Commission and City Council Representatives,

As long-standing residents of Tacoma who care deeply about our city, I am writing to express my full support for the Billboard Moratorium.

At today's meeting, non-profits who are NOT citizens of Tacoma will speak in opposition to the moratorium and yet their only relationship is as pro-bono recipients of Clear Channel advertising. These organizations do not have to live and work in Tacoma with the horrendous impacts digital and non-conforming billboards will have on our community - FOREVER.

Please take whatever time is necessary to carefully develop a bullet-proof ordinance, and more important - a policy which will protect us from outside interests in the years to come.

Sincerely,

Judy Smith
rlrue@aol.com

From: [Britton Sukys](#)
To: shirley.schultz@cityoftacoma.org; [Planning](#); Marilyn.Strickland@cityoftacoma.org; Jake.Fey@cityoftacoma.org; Spiro.Manthou@cityoftacoma.org; Lauren.Walker@cityoftacoma.org; [Campbell, Marty](#); [Loneragan, Joe](#); [Woodards, Victoria](#); [Boe, David](#); [Mello, Ryan](#)
Subject: In Support of Digital Billboard Moratorium (Ordinance #27982)
Date: Tuesday, May 31, 2011 5:12:23 PM

Esteemed members of the City Council, City Planners and Honorable Mayor,

The Proposed Moratorium (Ordinance #27982) is in the best interest of all parties and should allow enough time to write a Billboard, Outdoor Advertising and Signage code that takes into account Tacoma's future vision and the long-term Global strategy of the outdoor advertising industry. This code should be written as part of a comprehensive policy and not as the result of a lawsuit.

Clear Channel Outdoor (CCO) is the largest Global Corporation of outdoor advertising. It is pursuing business around the world and must fight for its ability to do business with every single municipality.

It's primary way of doing this is through legal challenges. CCO does not invest in Public Relations Campaigns. In general, CCO concedes that nobody wants Billboards.

CCO pursues a strategy that belies it's own belief that no one would willingly accept billboards. They are instead implanted through rushed agreements and court system bullying.

As a global company, CCO has the benefit of a vast system of lawyers and lobbyists who analyze precedent across cities around the globe. And, Tacoma is just one city among many.

However, nothing prevents us from communicating with those cities where CCO has pursued lawsuits to learn from their successes and failures. Nothing prevents us - except time.

We need this moratorium. The moratorium only prevents CCO from installing the "Street Furniture" we are currently debating. It does nothing to damage their current business in static billboards. And, the moratorium allows the citizens of Tacoma to make the most informed consumer choice about our future business relationship with this global corporation.

Taking time to review our contract? What reputable, successful business would be afraid of that?

In Georgia, CCO has sued to cut down heritage trees that interfere with sight-lines to their billboards (many of which now advertise strip clubs and sex stores along the highway).

In Jacksonville Florida, CCO acted on a perceived allowance in city code for digital billboards. As part of a settlement agreement with the city of Jacksonville to "decrease the number of static billboard faces", CCO installed three of their planed eight massive digital

billboards.

Citizen groups - who contend new Digital billboards are against town charter - are now waiting for the remaining electronic bulletins to be erected so they can mount a legal challenge. These billboards were not specifically banned (nor allowed) by an outdated city code. But to remove them now, CCO can argue a “loss” of property valued by their accounts to be worth “in the high six-figures” range.

We can learn from Jacksonville’s experience that once digital billboards go up, they tend to remain a permanent fixture of the cityscape.

Clear Channel Outdoor is very knowledgeable about how cities work. It’s their business. Rather than promote the benefits of their business or spend money working with municipalities, CCO’s strategy is to use lawyers as their engine of business growth. Tacoma should be aware of this and take the legal steps necessary to give it’s planning commission time to fully evaluate the implications.

CCO’s motive is profit. As Tacomans, our motive is a scenic, livable city. We have a right to that. But without a clear moratorium, CCO will use any legal crack to establish properties as a foothold for future legal dealings.

Billboard supporters, including CCO, will point to a long tradition of advertising and billboards, non-profit support and job creation.

Non-Profits do need to get their message out to the community. But, opportunities to advertise to the community are abundant and are expanding in ways we could not imagine several years ago. We see the rapid expansion of Smart Phones and Wi-Fi access. Non-profits, and community service alerts, are no longer dependent on the old mass-advertisement models.

Amber Alerts are now available on your phone. Social networking and the effectiveness of word-of-mouth has expanded to every corner of the economy. Meanwhile, Near-Field technology, the ability to interact with an advertisement with your phone by merely pointing at it, is on the horizon. These rapid changes cannot be addressed in a rushed blanket code. They need to be studied carefully and addressed with forethought.

Donald Fels is an artist and professor at University of Washington. He has long been fascinated with billboards as art. A few years ago, he created an Art project about Vasco De Gama’s Arrival in Malabar on an international trade mission. For his project, he hired Indian sign painters to paint billboards of the historical event as if it were a Bollywood movie.

For decades, India had a vast community of trained painters who created their vivid iconic billboards. But, in the past 10 years, Clear Channel Outdoor took over billboards in India. CCO moved ahead with Vinyl sheets and the industry for hand-painted signs collapsed. (Interestingly, some of these signs are now part of the permanent collection of the Honor’s program at our own UW Tacoma.)

CCO purchased lots of billboards around the world in the past ten years, in fact. The outdoor advertising industry went through a bubble in 2006 and 2007. 2007 was a banner year for CCO. (Notably, the same year as CCO's lawsuit against the city of Tacoma). But when the money drained out following the recession in 2008, CCO was left in a tangle of red-tape in different cities across the globe.

Cities like Mumbai, India have adopted an approach used in Europe where they develop alternative outdoor advertising, less obtrusive and at a more human scale. And, CCO has adopted a strategy in Mumbai to work with the city, to find a solution that provides them outdoor advertising opportunities on a more human scale, and in line with the wishes of the citizens.

If CCO can do this in Mumbai, why not Tacoma?

Why not take the time to develop a strategy that is friendly both to business and the citizens of Tacoma? Let's not pursue a 2007 strategy in 2011.

Clear Channel Outdoor's current hostile threats push this negotiation to an all or nothing showdown. Citizens are reacting as though they are resisting a full-scale invasion. And if the experiences of other communities provide any insight, they are right to be cautious. But, as we see in Mumbai, CCO has seen places where it can profit when it takes the time to learn what opportunities local citizens might accept.

Of course that takes time, too.

Taking time is in the best interest of Tacoma, its businesses, and the long term interests of Clear Channel Outdoor. Tacoma is supportive of good businesses and good relationships. That takes time. That's what the moratorium gives us.

Take as much time as needed to address the complexity of this issue. There is no rush.

Thank-you all for your hard work,

Britton Sukys
Grey Gables Architectural Control Committee
1617 Division Ave #12
Tacoma WA 98403

253-274-0705
captainbritton@gmail.com



POLICE ADMINISTRATION

Kenneth E. Thomas
Chief of Police
220 4th Avenue South
Kent, WA 98032
Fax: 253-856-6802

PHONE: 253-856-5800

June 1, 2011

Tacoma Planning Commission and Tacoma City Councilmembers
747 Market Street
Tacoma, WA 98402

Dear Commission and Councilmembers;

The City of Kent Police Department has a great working relationship with Clear Channel Outdoor for the partnership and use of digital advertising. The Kent Police Department always looks for new and creative ways to educate and inform the public. Since digital advertising is updated in real time and provide images and information, it allows us to get our message to the community in ways no other media can. It also allows us to change our messages as the crime trends change or as emergency issues arise.

The Kent Police Department is able to reach a larger population with the digital network because it not only reaches those that live within the City, but also those that work and play here as well. When the alert went out regarding the search for vehicle and suspect in Seattle Police Officer Brenton's shooting, the Kent Police Department was able to partner with Clear Channel Outdoor to get the suspect and vehicle description on the digital bulletins with little time delay. In addition, the Kent Police Department Community Education Unit utilizes the digital network to educate the public on protecting their homes, vehicles and other crime prevention messages.

The Kent Police Department is fortunate to have the opportunity to take advantage of the outdoor digital network, allowing us a powerful and persuasive tool for public awareness and community crime prevention. Clear Channel has generously donated digital advertising in the City of Kent for the purpose of community education and awareness for over four years.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Thomas", written over a horizontal line.

Ken Thomas
Chief of Police

Schultz, Shirley

From: charleyweeth@gmail.com on behalf of Charley Weeth [charley@scenicwisconsin.org]
Sent: Monday, May 16, 2011 9:39 PM
To: shirley.schultz@cityoftacoma.org
Subject: Billboards in Tacoma
Attachments: 77 FHWA Memo Blank signs.pdf; 95 FHWA Memo - Lighting and Nonconforming signs.pdf
Categories: Green Category

I've followed the continuing saga of billboards in Tacoma with interest.

You are not alone as the standard play for the billboard companies is to challenge local controls every way possible including lawsuits, reach a settlement, then go back to doing what they want to do anyway, threaten to sue in court, rinse and repeat.

The billboard companies often misinterpret the original intent of the Highway Beautification Act (HBA) of 1965 and peddle these misinterpretations at the state capitols where the somehow become part of the outdoor advertising controls. The result are practices that are often contrary to the original intent and purpose of the HBA.

I took a quick spin around Tacoma via Google Street View and noted many billboards located in residential districts, mixed districts and districts that have no commercial or industrial activity. The billboard companies prefer the state simply accept the zoning of the individual parcel and not the district, as well as overlook the absence of the HBA required permanent, visible commercial or industrial activity.

This FHA Legal Opinion may of some help.

http://mutcd.fhwa.dot.gov/res-memorandum_legal_notice.htm

Note the HBA does NOT rely on the zoning alone, but the purpose of the zoning change and more importantly the actual land use.

I also noticed some photos online of billboards that were clearly abandoned. Attached is the FHWA on blank signs. States and their subdivisions may set time periods for blank signs but of course the key is documenting the lack of a message during that time period.

Also attached is a FHWA memo regarding the addition of lights to nonconforming signs. I'm sure you also have nonconforming signs that were once painted or paper poster and now have vinyl banners stretched over the faces, something that really is a "substantial change".

It also appears there are many billboards that were raised, enlarged or otherwise improved such as replacing wood posts with steel posts, etc.

I suggest looking at the zoning and other history of the land each billboard is located as it is quite likely you will discover a number of billboards that were issued permits that should not have been issued, as well as a number of nonconforming billboards that were improved above and beyond "customary maintenance".

This may give you some bargaining leverage in the upcoming squabble.

Charley Weeth, Executive Director
Citizens for a Scenic Wisconsin

May 31, 2011

City of Tacoma
Planning Commission
747 Market Street
Tacoma, WA 98402

Re: Moratorium for Consideration of Digital Billboards in Tacoma

Dear Members of the Planning Commission,

Historic Tacoma believes that the preservation of Tacoma's historic treasures is linked to and dependent upon the vitality of its larger urban landscape. The recent attempt by city government to reach a private agreement with Clear Channel Outdoor to allow digital billboards throughout the city represents a threat to our richly diverse neighborhood residential and commercial districts as well as the historic treasures they contain.

Therefore, Historic Tacoma supports the proposed moratorium on billboard permitting, and urges the Planning Commission to recommend to the City Manager and Council a comprehensive program of review in order to thoroughly address this issue. The overwhelming expression of public opposition to the agreement, as witnessed on the occasion of the March Planning Commission public hearing has grown as more neighborhood and constituent groups become aware of its impact.

In line with the 1997 ordinance, Historic Tacoma believes and is on record stating that

- Billboards should be prohibited in most parts of the City, excepting certain high-density commercial and industrial areas and that permitted billboards not exceed 300 sq feet in total area.
- All 193 non-conforming billboards now extant (representing 80% of all existing billboards) should be removed within a short amortization period,
- All electronic billboards should be prohibited outright, and
- That we concur with the need to review and revise the 1997 ordinance per May Planning Commission recommendations to Council.

The moratorium should be used to pursue the concerns expressed by virtually all segments and constituencies within the City. The length of the moratorium should not be simply limited to the six-month period stated at the time of proposal. Rather, the moratorium's enabling legislation should predicate its length on the time required for review of the actions leading up to the present crisis, the receipt of public input, the formulation and enactment of policy and legislation to carry out the findings of such review.

Historic Tacoma believes that the core of such a deliberative process should be an advisory committee comprised of representatives from business and residential districts, with input from legal and governmental sources familiar with the range of concerns related to this issue. Discussions might include a comprehensive review of the role of outdoor advertising in today's urban environment, in the context of a steady barrage of advertising from all media sources, including building signage and on-site billboards, and whether local interests, rather than national promotions should dominate any permitted displays.

Thank you for your consideration,

Sharon Winters, Board President

Gary Knudson, Board Member

Schultz, Shirley

From: Braden Wolf [abw@harbornet.com]
Sent: Tuesday, May 24, 2011 9:35 PM
To: Planning
Subject: Electronic Billboards

I've been a Tacoma resident since 1980 - long enough to appreciate this town's temperament. Please avoid disfiguring the city with electronic bill boards. It's certain that once the things are put in place they'll never be taken down and that would be something ugly indeed. This is a wonderful small city; don't trade the congenial atmosphere we have for these tawdry billboards.

Braden Wolf
4211 N. 14th St.
Tacoma, WA 98406

G.

Additional Information

**Comments Received after the Deadline
of June 1, 2011, at Noon**



North Slope Historic District

a 501(c)(3) organization

701 North J Street
Tacoma, WA 98403

RECEIVED

JUN 06 2011

Per LW

June 3, 2011

BOARD OF DIRECTORS:

MARK BARDWIL, CHAIR
TROY AXE
JOHN BUTLER
DEBORAH CADE
TIM CHEN
GEOFF CORSO
SCOTT KUEHN
MARSHALL MCCLINTOCK
JUDITH MARTIN
KAREN MAY
ERICA NELSON
KYLE PRICE
MITCH ROBINSON
DAVE ROOT
MARILYNN SABO
JULIE TURNER

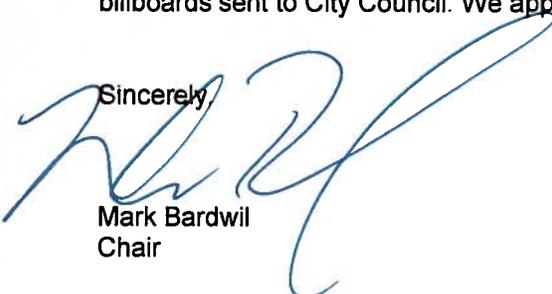
Tacoma Planning Commission
Community and Economic Development Department
City of Tacoma
747 Market Street, Room 1036
Tacoma, Washington 98402

RE: Billboard Moratorium

Dear Commissioners:

We wholeheartedly support the City of Tacoma's 180-day moratorium on any/all signs and billboards. Our city must take the time to carefully consider how all digital and static billboards impact Tacoma's citizens, schools, neighborhoods, parks and playgrounds. It is critical that any changes to the current sign code address traffic, safety, noise, light, blight, decreased property values and potential health implications for those of us who live, work, and play in Tacoma. Also, thank you for the thoroughness of your recent findings and recommendations on billboards sent to City Council. We appreciate your efforts.

Sincerely,


Mark Bardwil
Chair

Cc:
Jake Fey, City Council

From: Katherine Finnigan [<mailto:kdf@nventure.com>]

Sent: Wednesday, June 01, 2011 8:42 PM

To: morrison.ian.s@gmail.com

Cc: shirley.schultz@cityoftacoma.org

Subject: moratorium

I completely support the need for this emergency moratorium that stops the acceptance of applications to install or construct new billboards....anywhere in the city for 180 days.

As a long time resident of Tacoma, it would seem to me that the city planning commission should take a firm stance in not allowing the building of any more billboards in this city and to take an active role in eliminating all billboards. These billboards serve no positive purpose for the citizens of Tacoma. There are so many other ways to advertise that are not intrusive, ugly, cluttering, and destructive to the morale of the citizenry.

Yours very sincerely,
Katherine Finnigan

From: Erika Ray [mailto:erikaray7584@gmail.com]
Sent: Wednesday, June 01, 2011 3:45 PM
To: Planning
Subject: Digi'Boards

Dear City of Tacoma,

Please continue to fight corporate greed and protect our city! Ban Digi'Boards, enforce the codes
- and please continue promote the arts!

We and our children's children thank you!

Sincerely,

Erika Ray

--

Erika@ErikaRay.com
www.ErikaRay.com
(253) 278 - 7584



BOYS & GIRLS CLUBS
OF SOUTH PUGET SOUND

Mayor Marilyn Strickland and
Tacoma Planning Commission and City Council
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402-3766

May 31, 2011

Dear Mayor Strickland and members of the Tacoma Planning Commission and City Council,

It has come to my attention that the Tacoma Planning Commission is still considering revisions to the City's billboard regulations. As a leader in the Tacoma community, I would like to share some feedback on the community services that ClearChannel Outdoor has provided to the Boys & Girls Clubs of South Puget Sound.

- ClearChannel Outdoor has continuously supported our organization by providing discounted or pro-bono outdoor advertising, totaling over \$100,000 in 2010 and again over \$100,000 this year.
- Through their generosity, we are able to utilize a marketing tool that we would have never been able to tap into without their generosity. Through this form of advertising, we are able to create a public awareness campaign which ties into our BE GREAT for Kids Annual Fund Drive.
- The advertising campaign is helping us create awareness which drives increased web traffic, volunteer interest, memberships and funding opportunities.
- The advertising campaigns make people aware of our community services, and additionally, the agency's branding and image is becoming more widely recognized.
- Not only have they provided in-kind advertising, they also have provided other helpful marketing resources, including one of their employees who currently serves on our Executive Board.
- Clear Channel Outdoor continually and selflessly keep ours and others needs in the forefront when it pertains to community service in our market.

Clear Channel Outdoor is a great partner and community contributor. I ask that you consider my feedback when you make a final decision.

Sincerely,

Mark Starnes
President / CEO

Boys & Girls Clubs of South Puget Sound
3875 South 66th Street
Tacoma, WA 98409
Tel (253) 502-4600
Fax (253) 572-8449
BGCSPS.ORG

Al Davies Branch
1620 South 17th Street
Tacoma, WA 98405
Tel (253) 502-4631
Fax (253) 597-6450

Bremerton Branch
900 Olympic Avenue
Bremerton, WA 98312
Tel (360) 362-1854
Fax (360) 782-6833

Cheney Family Branch
Jim and Carolyn Milgard
Family HOPE Center
8502 Skansie Avenue
Gig Harbor, WA 98332
Tel (253) 502-4670
Fax (253) 858-5462

D.A. Gonyea Branch
5136 North 26th Street
Tacoma, WA 98407
Tel (253) 502-4640
Fax (253) 752-5269

Henry T. Schatz Branch
Donald G. Topping
Regional HOPE Center
3875 South 66th Street
Tacoma, WA 98409
Tel (253) 502-4650
Fax (253) 471-2974

Lakewood Branch
Gary and Carol Milgard
Family HOPE Center
10402 Kline Street SW
Lakewood, WA 98499
Tel (253) 502-4660
Fax (253) 589-9374

North Mason Branch
P.O. Box 214
75 E. Campus Drive
Belfair, WA 98528
Tel (360) 362-1855
Fax (360) 277-0572

South Kitsap Branch
500 SW Birch Road
Port Orchard, WA 98367
Tel (360) 443-3441
Fax (360) 443-3468

South Pierce County Branch
320 176th St. E. (Portable 26)
Spanaway, WA 98387
Tel (253) 683-7426
Fax (253) 683-7456

GREAT FUTURES START HERE.

From: Carol Webster [mailto:carolwebster@nventure.com]
Sent: Wednesday, June 01, 2011 8:56 PM
To: Planning
Subject: Billboards

Please do *not* increase the number and/or size of billboards in our city.

**Carol Webster
3019 North 29th Street
Tacoma, WA 98407
(2530 759-4864**