



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*