

TO: Elizabeth Pauli, City Attorney

FROM: Chris Bacha
Kenyon Disend, PLLC

DATE: August 13, 2007

RE: Background Information – Tacoma Billboard Regulations – 1983 Through 1997

You have asked for an informational memorandum summarizing the events leading to the enactment of the 1997 amendments to the Zoning Code.¹ The following summary is provided based upon the materials that have been made available to our office as of the date of this writing.

1. **1983 Moratorium.** The effort to more strictly control the placement and erection of billboards in the City of Tacoma began in April of 1983. The City Council at that time was concerned about the proliferation of billboards in the area of South Tacoma Way between 52nd Street and 56th Street (later designated as the “South Tacoma Commercial Revitalization District” or “District”) and the resulting adverse impacts. At that time there were 37 billboard permit applications for new billboards being processed. The Council voted on April 12, 1983 to approve a moratorium on processing billboard permit applications within the District and directed the Planning Commission to complete a study of billboard use and the then-existing applicable regulations.² The moratorium was effective until October 1, 1988.

2. **1984 South Tacoma Way Billboard Prohibition.** The end result of the moratorium was the adoption in October of 1984 of an ordinance adding Chapter 2.18 to the City Code.³ The purpose of this new chapter was to promote façade maintenance and establish rehabilitation design standards within the South Tacoma Commercial Revitalization District. In addition, billboards were required to be removed from the District within two years of the effective date of the ordinance.

¹ These amendments implemented new regulations resulting in a substantial number of billboards becoming nonconforming uses to be removed or made conforming after a ten-year amortization period.

² Ordinance No. 24064.

³ Ordinance No. 23270.

3. 1988 Moratorium. In the summer of 1988, the City Planning Department prepared three draft ordinances and presented them to the Planning Commission for review and recommendation to the City Council. The three proposals consisted of (a) elimination of billboards pursuant to an amortization process, (b) a permanent cap on all future billboards, and (c) a land use regulations procedure providing for a special use permit.⁴ In September of 1988, during the Planning Commission review process, a moratorium was enacted restricting the issuance of permits for billboards.⁵ This moratorium was lifted less than two months later.

4. 1988 Ban on New Billboards. On November 15, 1988, the City Council enacted an ordinance amending Title 13 of the Tacoma Municipal Code.⁶ The ordinance made two significant changes to the existing regulation of billboards: (a) it established new height, size, and distance requirements for all billboards in areas of the City where billboards were allowed; and (b) it imposed a ban dating to April 12, 1988 on all new billboards and a cap of the total number of billboards in the City. The billboard ban included provisions for banking indefinitely billboard relocation permits that are applied for upon removal of an existing billboard.⁷

5. 1996 Moratorium. In 1996 concerns regarding billboards were heightened, in large part due to the proliferation of highway billboard signs upon Puyallup tribal trust land. On June 4, 1996, the City Council directed the Planning Commission to study banning billboards and establishing an amortization procedure to eventually eliminate billboards within the City. At that time the Cities of Federal Way and Issaquah had enacted bans on billboards with an amortization period as a method to compensate the owners for the eventual removal of the billboards.

On July 1, 1996, the Planning Commission approved a work program to study the council directive and determined that the project would take a minimum of six months. On July 9, 1996, the City Council took public testimony at its council meeting regarding the health, safety, and aesthetic impacts billboards have in the City. It thereafter adopted a resolution⁸ directing the Planning Commission to conduct a public hearing to determine whether or not an interim zoning ordinance to ban billboards, and put in place a moratorium on billboard permits, was warranted.⁹ The hearing was conducted on July 15, 1996, and upon its conclusion the Planning Commission recommended in favor of the interim zoning regulations and moratorium. The Planning Commission was especially concerned that the 50 to 75 billboards in the City's banking system could be withdrawn and erected because the owners might be concerned about the possibility that a ban might be implemented. The City Council thereafter conducted a public hearing on

⁴ See, Memo dated July 28, 1988 to Acting Director of the Planning Department from the City Attorney.

⁵ Ordinance No. 42192.

⁶ Ordinance No. 24230.

⁷ The ordinance also defined off-premises signs as being of two kinds: (1) directional; or (2) outdoor advertising. An outdoor advertising sign was defined as an off-premises sign that is not a directional sign. Billboards were identified as another name for an outdoor advertising sign. Thus, for purposes of the billboard ban, a billboard was defined as any sign, that is not a directional sign, identifying or advertising a business, person, activity, goods, products, or services not located on the premises where the sign is installed or maintained.

⁸ Resolution No. 33441.

⁹ At that time, Section 13.02.045 of the Tacoma Municipal Code required moratoria and interim zoning to be considered by the Planning Commission before the City Council could take action. Section 13.02.055 TMC now governs moratoria and interim zoning regulations and allows the City Council to take action without first referring the matter to the Planning Commission.

July 16, 1996, and the following week, July 23, 1996, enacted an ordinance¹⁰ imposing a moratorium on the processing of new applications until July 24, 2007.¹¹

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6. The 1997 Regulations and the 10-Year Amortization. The Planning Commission was faced with a number of challenges. Even before the first Planning Commission meeting, the Planning and Development Services Department had identified multiple legal issues and had requested an opinion of the City Attorney. The most prominent issue identified was whether or not an amortization period could constitute compensation and thus eliminate the obligation to provide monetary compensation to the owner for the value of the billboard. The opinion of the City Attorney was that such an amortization period did not appear to constitute compensation under Washington law for a taking of private property. Thus, if billboards were banned from the City, the end result could be that the City would have to pay billboard owners for the full value of their billboards.

1996

The City Council and the Planning Commission held a joint study session in late September or early October¹² to discuss the Commission's findings and five options that had been developed. The Commission found that at that time there were 273 billboards in the City, 45 were in the bank, and State law required compensation to the owners. The estimated cost of buying the billboards was \$20 to \$60 million dollars. The five options to be considered were identified as follows:

- A. Ban all billboards and establish a five-year amortization period;
- B. Re-write the regulations to limit the size, height, number, and proximity, and allow nonconforming billboards to remain;
- C. Re-write the regulations to limit the size, height, number, and proximity, and require all billboards to be conformed after an amortization period;
- D. Lobby the State legislature to change State law to eliminate payment requirement¹³; and
- E. A voter referendum for general obligations bonds to purchase billboards.

As a result of this joint meeting, the City Council asked the Planning Commission to consider various funding mechanisms including, (a) a voter referendum to approve a B&O tax, (b) increasing the current license fee for billboards, and (c) adding a license fee for each billboard face change.¹⁴ The Council also asked the Planning Commission to consider (d)

¹⁰ Ordinance No. 25933.

¹¹ It should be noted that in various records of the City produced as part of the Planning Commission review and development of the regulations, the expiration date was inexplicably identified as July 27, 1997 and also July 31, 1997.

¹² Records indicate this joint study session was held either on September 20th or October 1st. At the time of this writing we have been unable to determine the correct date.

¹³ This was dropped because it was not on the City's legislative agenda.

¹⁴ This was later rejected by the Planning Commission because it was deemed as punitive and served no governmental purpose.

developing regulations limiting the size, location, and proximity of billboards, (e) investigating a freeze or reduction of the billboard bank, (f) working with billboard owners to limit message content¹⁵, and (g) developing regulations requiring owners to have nonconforming billboards removed as a condition for receiving a permit for a new sign or major remodel on the property.¹⁶ The Planning Commission subsequently directed staff to develop regulations and schedule a public hearing for May 7, 1997 to take public testimony regarding the following Council options:

- A. Re-writing the regulations to limit the size, height, number, and proximity, and to allow nonconforming billboards to remain;
- B. A voter referendum for general obligations bonds to purchase billboards;¹⁷
- C. Increasing the current license fee for billboards;¹⁸
- D. Investigating a freeze or reduction of the billboard bank;¹⁹ and
- E. Developing regulations requiring owners to have nonconforming billboards removed as a condition for receiving a permit for a new sign or major remodel on the property.

The Planning Commission again held a joint study session with the City Council on June 10, 1997 and reduced its recommendation to the City Council to options (A) and (E), above. The Council directed that a public hearing and first reading of the proposed ordinance be held on July 8, 1997. The testimony presented at the public hearing raised a number of questions, primarily having to do with the setback requirements and impacts upon small businesses. Therefore, a substitute ordinance was brought before the City Council on July 22, 1997 which was voted on and approved.²⁰ The most significant change to the proposed ordinance was that a ten-year amortization clause was added at Section 13.06.551.O.6 TMC. This provision was not a part of the Planning Commission's recommendation and resulted in a new requirement that all non-conforming signs be made conforming or be removed ten years following the effective date of the ordinance.

I hope that the foregoing adequately responds to your question. If you have any further questions, please do not hesitate to ask.

¹⁵ This was dropped because it was being addressed by the Health Department.

¹⁶ This requirement, which was eventually enacted, was later subject to modification in 1999 as a result of complaints by business owners having to remove billboards when remodeling their property or modifying their on-premises signage.

¹⁷ The Planning Commission rejected this proposal because no other jurisdictions had such a tax and such taxes were reserved usually for public and private utilities.

¹⁸ The Planning Commission believed that the amounts proposed were probably too high but did not reject altogether an increase in the fees.

¹⁹ Ultimately the Planning Commission rejected this proposal because it was the opinion of the City Attorney that relocation permits for billboards in the bank were vested and compensable property rights.

²⁰ Substitute Ordinance No. 26101.

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