



City Plan Commission Recommendation, Findings and Conclusions on a Proposal to Adopt a New Chapter 17C.240 to Title 17 of the Spokane Municipal Code regarding Signs

January 14, 2009

RECOMMENDATION: The Spokane City Plan Commission recommends moving the proposed Sign Ordinance to City Council. In making this recommendation, the Plan Commission makes the following findings and conclusions:

FINDINGS:

1. In May 2001, the City of Spokane adopted its Comprehensive Plan under the Growth Management Act (Chapter 36.70A RCW or "GMA").
2. The Comprehensive Plan and the entire legislative record relative to its initial adoption and subsequent amendments thereto, including environmental review documents, are incorporated into these findings and conclusions by reference.
3. GMA requires the City of Spokane to adopt development regulations that are consistent with and implement the City's Comprehensive Plan. The Sign Ordinance was identified as one of the development regulations that were to undergo review and update following adoption of the Comprehensive Plan. The existing Sign Ordinance is in need of modernization to reflect new sign technology and the needs of the business community and the public. The existing Sign Ordinance has not undergone a thorough review since its adoption in the late 1950's.
4. On-premise advertising signs are mentioned in Comprehensive Plan Policy DP 3.13.

DP 3.13 On-Premise Advertising

Ensure on-premise business signs are of size, number, quality, and style to provide identification of the business they support while contributing a positive visual character to the community.

Discussion: On-premise signs provide an important public function by identifying sources of desired goods and services. Cities where business signs provide identification of on-premise businesses without degrading the visual environment are noted for their high quality community character. Collectively, the effectiveness of business signs is enhanced when they are not too large, too numerous, or too distracting in visual character.

On-premise signs should be of high quality and managed in all urban environments to reduce visual clutter, which contributes to a distracting and unsafe experience for motorists and visual blight for citizens, especially in proximity to living environments. Business signs in residential settings should relate to the smaller scale and lower-intensity activity of these environments. Sign area and design guidelines should reflect the relative intensity of commercial arterials as

well as any unique district character, such as a historic neighborhood. Exclusively residential areas should be free of business signs entirely, except for small, unobtrusive signs to identify legal home occupations.

5. Policy DP 3.13 of the Comprehensive Plan emphasizes that signs should not degrade the visual environment and that signs should not distract motorists.

6. A Sign Code Technical Advisory Committee (TAC) was involved in the review of the draft Sign Ordinance. The TAC included representatives from Scenic America; a local sign company; a church; the Community Assembly; the City Plan Commission; the Spokane Home Builders Association and Spokane Association of Realtors; the Chamber of Commerce; and Property Management and the Downtown Spokane Partnership. The TAC prepared a background "white paper" and has had the opportunity to review and comment on preliminary draft standards for permanent signs in all zoning categories and on sign dimension standards.

7. The Sign Ordinance addresses on-premises signs. On-premises signs are located on the site of the business they serve and are intended to advertise only the business located on the site. These include freestanding signs, wall signs, projecting signs, monument signs and other types of permanent signs.

8. Off-premises signs (billboards) advertise businesses and services that are not on the site that the sign is located on. The draft ordinance continues the existing Sign Ordinance provisions which do not allow new off-premises signs. Maintenance of existing off-premises signs is allowed.

9. The Plan Commission held workshops on the draft Sign Ordinance on February 27, 2008, March 26, 2008, May 14, 2008, September 10, 2008, and October 22, 2008, and a public hearing on November 12, 2008.

10. The draft Sign Ordinance which was the subject of the November 12, 2008 Plan Commission public hearing proposed to allow changing image signs subject to size limitations on size and brightness, minimum spacing requirements and limits on the duration of messages including minimum and maximum length.

11. The Plan Commission continued deliberation on December 10, 2008 and considered a total of twenty-four written and verbal comments received during the public hearing process. Sixteen comments suggested that changing image signs degrade the visual environment and that such signs distract motorists and are detrimental to traffic safety. Four comments favored changing image signs. The Plan Commission, on a 5 to 4 vote, recommends that the changing image signs not be permitted in the proposed sign ordinance.

12. An important part of testimony used by the Plan Commission as the basis of this recommendation is the decision from the United States Court of Appeals For the First Circuit No. 07-2098 NASER JEWELERS, INC., Plaintiff, Appellant, v. CITY OF CONCORD, NEW HAMPSHIRE. In this case, the city of Concord New Hampshire, enacted an ordinance prohibiting all Electronic Messaging Centers ("EMCs"), which the city found were detrimental to traffic safety and community aesthetics. EMCs are signs which display electronically changeable messages (as opposed to signs with static or manually changeable messages) and so display illuminated text that can change frequently, for instance by scrolling or flashing. Naser Jewelers, Inc. ("NJI"), a Concord business, sought and was denied a preliminary injunction against the enforcement of the ordinance on grounds of facial unconstitutionality under the First Amendment. The court found Concord's ban on all EMCs is content-neutral. *Globe Newspaper Co. v. Beacon Hill Architectural Comm'n*, 100 F.3d 175, 183 (1st Cir. 1996). As a result, the ordinance is permissible if it is narrowly tailored to serve a significant governmental interest and leaves open alternative channels of communication. An ordinance is

narrowly tailored if it does not burden substantially more speech than necessary to further the government's legitimate interests. *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). The ordinance need not be the least restrictive means to serve those interests. *Id.* at 798; *Hill v. Colorado*, 530 U.S. 703, 726 (2000); *Globe Newspaper*, 100 F.3d at 188. Concord's ordinance meets these criteria and we affirm.

13. The stated purposes of the City of Spokane Draft Sign Ordinance are, among other things, to "allow and promote positive conditions for sign communication while at the same time avoiding nuisances to nearby properties"; "to reflect and support the desired character and development patterns of the various zones, overlay zones and promote an attractive environment"; to allow for adequate and effective signs in residential, commercial and industrial zones while preventing signs from dominating the appearance of the area"; "to ensure that the constitutionally guaranteed right of free speech is protected"; and, "to avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities and the community's appearance."

14. The City of Concord, New Hampshire adopted similar purpose statements as a part of its enacted sign ordinances. The stated purposes of these ordinances are, among other things, to "[m]aintain and enhance the appearance and aesthetic environment of the City" and to "[i]mprove pedestrian and traffic safety."

15. The City of Concord, New Hampshire prohibits all signs that "appear animated or projected" or "are intermittently or intensely illuminated or of a traveling, tracing, scrolling, or sequential light type" or "contain or are illuminated by animated or flashing light." The Plan Commission recommended draft Sign Ordinance also contains this prohibition.

16. In validating the City of Concord, New Hampshire sign ordinance, the court made the following findings:

- The prohibition on EMCs does not discriminate based on content. EMCs might communicate any number of messages -- from a business advertising a sale to a high school congratulating its victorious teams -- and all EMCs are similarly prohibited.
- Concord's ordinance satisfies the requirements for constitutionality. The ordinance is a content-neutral restriction on speech, it serves substantial governmental interests, it is narrowly tailored, and it leaves open reasonable alternative channels of communication.
- Both traffic safety and community aesthetics have long been recognized to constitute significant governmental interests.
- It follows that EMCs, which provide more visual stimuli than traditional signs, logically will be more distracting and more hazardous.
- The opinion noted that although less restrictive alternatives existed, the regulating commission was not required to adopt them if they would serve its interests less effectively.

17. Written testimony received by the Plan Commission included a document titled "ADVERTISING SIGNS AND TRAFFIC SAFETY – STUDIES". The Plan Commission considered this document and finds that it supports the conclusion that advertising signs in general have an impact on traffic safety. This document included the following:

1. "Relationship Between Accidents and the Presence of Advertising Devices." Madigan & Hyland (1963):

Found that there were 1.7 accidents per mile due to driver inattention on the portions of the thru way mainline where advertising devices were visible, and only 0.5 accidents per mile where advertising devices were not visible.

2. "Highway Accident Rates as Related to Roadside Business and Advertising." Wilmer A. Rusch:

Found there were 411 accidents per mile along the highway where 90% of the billboards were located as compared to 1.6 and 2.52 accidents on sections of the road where there were no billboards or relatively few.

3. "Rural Truck Highway Accident Access Point and Advertising Sign Study." Minnesota Department of Highways (1951):

Concluded that there was a positive relationship between sign frequency and accident rates with the highest accident rates occurring where frequency of sign per mile was greatest. Intersections at which four or more signs were located had an average accident rate approximately three times that for intersections having no signs.

Four hundred and twenty miles of all types of roads were analyzed. The study found that no matter what road terrain was under observation, there was a strong positive relation between billboards and accidents.

4. "A Study of the Relationship Between Advertising Signs and Traffic Accidents on U. S. 40 between Vallejo and Davis." D. Jackson Faustman (1961):

Accidents occurred at a rate of 0.988 in sections with billboards vs. 0/701 in those without. (40.9% difference) Billboards caused drivers to take their eye off the road for varying lengths of time depending upon the sign message. The study concluded that advertising signs do have an effect on highway safety, and that their existence adjacent to a highway causes accidents.

5. "Laboratory Study," Johnston and Co. (1976) Australian Road. Research Vol. 6, No. 3. Sept. 1976:

Dealt with the psychological phenomenon of space capacity. Basically, this means that the brain does have the capacity to assimilate extra information. However, when the driver is so concerned about gas or food he may overload this space capacity and greatly impair his ability to handle a motor vehicle.

The selective attention process may cause an individual to ignore the road when other concerns override his space capacity.

6. "Laboratory and Field Studies" Holahan, et al, (1978) Human Factors 20, (4):

Found that signs in the background of a normal traffic signal cause rapid reaction time to increase. The closer the signs are to the roadway, the more distracting they are to the driver. Signs do present a danger to motorists.

LEGAL BASIS FOR SIGN REGULATION*

+ The U. S. Fourth Circuit Court of Appeals said that "No empirical studies are necessary for reasonable people to conclude that billboards pose a traffic hazard, since by their very nature they are designed to distract drivers and their passengers from maintaining their view of the road." – *Major Media of the Southeast v. City of Raleigh*, 621 F. Supp 1446, 1451 *aff'd* 792 F. 2d 1269 (4th Cir. 1986), *cert denied*, 107 S. Ct. 1334 (1987)

+ An Ohio State court expressed a similar point of view: "Signs of all sizes, shapes, and colors, designed expressly to divert the attention of the driver of motor vehicles from the

highway to objects away from it may reasonably be found to increase the dangers of accidents.” –*Ghaster Properties, Inc. v. Preston*, 176 Ohio State 425, 200 N. E. 2nd 328, 335 (1964)

+ Dozens of other cases have upheld local communities’ right to regulate billboards as a traffic hazard. Some of these include: *Markham Advertising v. State (WA)* 439 P 2d 248; *Elliott Advertising v. Dade County (FL)* 425 F 2nd 1141; *Moore v. Ward (KY)* 377 S.W.2n 881; and *General outdoor Advertising v. Dept. of Public Works (MA)* 193 NE 799.

**"Fact Sheet: Billboards and Traffic Safety", Scenic America*

18. The City Plan Commission explicitly considered and rejected allowing changing image signs based on the above findings.

19. The City of Spokane Draft Sign Ordinance does not foreclose use of other means of communication. Static and manually changeable signs are allowed and businesses can also place advertisements in newspapers and magazines and on television and the Internet, distribute flyers, circulate direct mailings, and engage in cross-promotions with other retailers. The sign ordinance also allows banners, flags, sandwich boards, and inflatable signs as alternatives to changing image signs.

20. On October 29, 2008, the responsible official issued a determination of non-significance (DNS) under SEPA (Chapter 43.21C RCW) relating to this Ordinance and notice of said DNS was published in the Spokesman Review on October 29, and November 5, 2008.

21. The Plan Commission hereby adopts the foregoing as its findings.

22. On December 10, 2008, the Plan Commission, by a vote of 5-4, recommended approval of the Draft Sign Ordinance as amended to City Council.

CONCLUSIONS:

The Plan Commission, by a vote of 5-4, recommends moving the Draft Sign Ordinance as amended to City Council.

These findings were approved on January 14, 2009.



Michael Ekins, President
City Plan Commission