

ORDINANCE AMENDMENT REVIEW SHEET

Amendment Case #: **C20-2008-005**

Planning Commission Date: **April 8, 2008**

Codes and Ordinances Committee: **February 18, 2008**
March 18, 2008

Planning Commission Action: **Expected April 8, 2008**

Codes and Ordinances Committee Action:

- February 18, 2008: The Committee directed staff to return to with:
 - A tracking mechanism to better understand the revisions being proposed, and
 - Data that detailed how the current ordinance functioned and locations of scenic routes.
- March 18, 2008: Forwarded to Planning Commission for action without a formal recommendation.

Other Commission Action:

- Design Commission: April 7, 2008
- Planning Commission: April 8, 2008
- Urban Transportation Commission: April 8, 2008, limited to amendments to Chapter 13 regarding registration fees for taxi cabs

City Council Date: April 10, 2008

Sponsoring Council Members: Council Member Mike Martinez and Mayor Pro Tem Betty Dunkerley

Purpose/Background:

On November 8, 2007, the Austin City Council passed Resolution 20071108-128 initiating amendments to Chapter 25-10 (*Sign Regulations*) of the Land Development Code. (Exhibit A) The proposed amendments would:

- Allow signs on limited commercial corridors within the scenic roadway sign districts,
- Bans motor-operated mobile billboards,
- Imposes registration fees upon taxis that advertise unrelated businesses,
- Imposes new requirements on the relocation of billboards, and
- Shifts the responsibility for registering billboards from the property owners to sign owners.

The amendment imposing registration fees for taxicabs also requires a revision to City Code Chapter 13 (*Ground Transportation Passenger Services*).

In carrying out the Council's direction, staff met with stakeholders representing the outdoor advertising industry, mobile billboard industry, taxicab companies, Scenic Austin, and Capital Metro to discuss the proposed amendments. Stakeholders met on three occasions to discuss the proposed amendments. Additionally, Scenic Austin, Reagan National Advertising, and Lamar Advertising met independently to identify segments of scenic roadways best suited for

the relocation of billboards. While the stakeholders could not agree on most issues, they did recommend that the code amendments be considered in three separate categories:

- Off-premise Signs/Billboard Issues
- Mobile Billboard Issues
- Taxicab Requirements

A draft ordinance reflecting the Council-initiated amendments is attached along with a spreadsheet that assists in tracking the ordinance revisions. (See Exhibits B and C, respectively)

Off-premise Signs/Billboards

In 1984, the City of Austin prohibited the construction of new off-premise signs. Billboards comprise the largest percentage of off-premise signs and existing billboards became “legally non-conforming.” To allow and encourage the relocation of billboards out of certain roadways, the City Council amended City Code Section 25-10-152 (*Nonconforming Signs*) in 2005.

The City has a survey of billboards within the planning jurisdiction (City limits and the ETJ). While the survey appears to have some discrepancies in it and would be more useful if certain information was included for each billboard (e.g. height, sign face area, etc), this survey, conducted in 1998 by a single staff member, is the foundation for the City’s billboard inventory. The 2005 amendments added the ability to relocate billboards to a new site subject to certain limitations, continued to prohibit the construction of new billboards and continued to allow billboards to be replaced at their current location.

Under the current code, new billboards are still prohibited, however a billboard can be replaced at its current location or relocated to a new site. For a billboard to be replaced, the property owner must agree to the replacement of the billboard, the replacement billboard must be constructed in the same location with the same type of materials at the same height of the original billboard, and the sign face area of the replacement billboard is 25% less than the original billboard it is replacing. For a billboard to be relocated, the original billboard must have been registered with the City of Austin by the property owner and must be permanently removed from its original location. Additionally, the relocated billboard may only be relocated to expressway corridors and commercial sign districts. Relocated billboards may not be located on a scenic roadway or within 500 feet of a historic sign district or a residential structure located in a residential based zoning district. If a relocated billboard is placed in a commercial sign district, it may not exceed 300 square feet. Within 25 years, the relocated billboard must be removed, unless the sign owner removes another billboard with the same 25-year period.

Scenic Roadways. The proposed amendments allow for the relocation of billboards to certain scenic roadways. The scenic roadways identified as being “least objectionable” by Reagan and Lamar Sign Companies and Scenic Austin for the relocation of billboards are:

1. Loop 1, also known as MOPAC, north of US Hwy 183,
2. State Hwy 71 east of IH35, from Riverside Drive, along Ben White, to the IH35 intersection,
3. Parmer Lane, and
4. Slaughter Lane

Additional roadways recommended by Reagan and Lamar, but opposed by Scenic Austin, are:

1. On Barton Springs Rd at Riverside Drive,
2. On Riverside Drive at Barton Springs Rd, and

3. FM 620, north of 2222 to Anderson Mill Road

Scenic Austin further stated that if billboards are allowed to be relocated on a scenic roadway, then the road should be completely removed from the scenic roadway designation. Removing a roadway from “scenic” designation would also relieve commercially zoned properties along that road from complying with on-premise sign regulations specific to scenic roadways. In addition to the generally applicable requirements, these existing regulations currently require that on-premise signs located along scenic roadways:

1. Are limited to one free standing sign per lot
2. May not exceed the lesser of:
 - a. 0.4 square feet for each linear feet of street frontage
 - b. 64 square feet
3. May not exceed 12 feet in height
4. Setback the lesser of 12 feet from street right of way or at least 25 feet from street pavement or curb in the right of way.

The Planning Commission’s Codes and Ordinances Subcommittee voted to forward the amendments to the full commission without making recommendations on the scenic roadway issue. The Planning Commission and Design Commission have not yet recommended which, if any, scenic roadways should be considered for the relocation of billboards.

Definitions. The current sign regulations do not define elevated travel ways/lanes or main-traveled ways. The term “adjacent” means sharing a property line or the roadway closest to the subject billboard.

As summarized below, the proposed amendments define or clarify the terms “elevated travel way,” “main-traveled way,” and “adjacent,” each of which is critical to the requirements for billboard relocation proposed by the Council’s resolution.

- “Elevated travel ways” and “elevated travel lanes” mean the portion of a roadway that is structurally elevated or suspended above the nearest ground level street pavement and includes the upper deck of a divided highway.
- “Main-traveled way” means the traveled way of a highway that carries through traffic. It does not include frontage roads, turning roadways, entrance or exit ramps or parking areas.
- “Adjacent”: For purposes of the relocation regulations, a billboard is “adjacent” when the sign face is oriented toward the travel way and the footings of the sign are located no more than 500 feet away from the travel way at its closest point.

Billboard companies recommended that the definition of main-travel way be removed from the proposed amendment. However, not all travel ways are elevated. The “main-traveled way” definition allows for situations where the road may be on ground level.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Height measurement. Currently, the height of a billboard is limited to 42 feet, measured from the adjacent ground level street pavement which is normally an access road if adjacent to a highway. Staff has interpreted ground level street pavement as not including the elevated portion of an expressway. Sign companies seek to install billboards which are visible to traffic on an upper deck.

The proposed amendment would allow a billboard to be relocated at a height of:

- 42.5 feet above the highest adjacent main traveled way and,
- 25 feet above an adjacent elevated traveled way

A sign is not eligible for the 25 foot height increase if the sign is located within 2,640 feet, equivalent to ½ mile, from an interchange or intersection with elevated traveled lanes, exit ramps, or entrance ramps. The intent is to prevent relocated billboards at taller heights from being located near fly-overs, interchanges, and similar convergences of high-speed traffic to protect public safety and limit driver distraction.

Staff considered a number of different approaches to measure distance from an intersection and consulted with the Texas Department of Transportation (TXDOT) regarding its practices and procedures. Due to the difficulties in identifying an appropriate starting point for the measurement, as well as the structural differences between Austin's major interchanges, staff recommends eliminating the 2,640 foot distance requirement in favor of a map that clearly depicts the areas where increased height will be disallowed. A sample map, developed by staff in consultation with the Law Department, is attached for reference. (Exhibit D)

Alternatively, should Council decide to adopt the 2,640 foot distance standard, the draft ordinance provides that the 2,640 foot measurement is measured along the highway from the nearest point of beginning or ending pavement widening at the exit from, or entrance to, the main-traveled way. Staff believes this may lead to additional arguments about where the measurement should begin.

The Planning Commission and Design Commission have not yet commented on the proposed amendment or staff's recommendation.

Relocation of signs to commercial sign districts. The current code allows billboards with sign face areas of 300 square feet or less to be relocated to commercial sign districts.

The proposed amendments would allow billboards of any size sign face area to be relocated to a commercial sign district and retain the original sign face area. A billboard is limited to a maximum of 672 square feet. Therefore, a relocated billboard of up to 672 square feet could be placed in a commercial sign district.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Aggregation of signs. Under the existing code, billboards signs can only be relocated on a one for one basis.

The proposed amendments allow sign owners to aggregate the combined sign face area of two or more billboards in exchange for erecting one billboard with a sign face area of up to a maximum of 672 square feet. In cases when the aggregated signs do not reach the maximum of 672 square feet, the relocated nonconforming sign face shall be 10% less than the aggregated sign face square footage of all the signs removed.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Registration requirements. Property owners were required to register their billboards by 1999 and pay a registration fee of \$220 every two years. Since 1999, of the 804 billboards identified in the inventory, 98 billboards or 12.1% are currently registered. Through the process of billboard registration, the City became aware of 2 additional billboards not identified in the City's original inventory.

The proposed amendments shift the registration responsibility to the sign owner. The sign owner must register the sign with 180 days of the passage of the proposed amendments, pay any unpaid registration fees since 1999, and pay an annual registration fee. Additionally, a sign owner may not relocate a sign if that sign owner is in violation of the registration requirements.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Energy Efficient Lighting. The current code is silent on the issue of energy-efficient lighting.

Under the proposed amendment, sign owners would be required to install energy-efficient, pollution reduction lighting on billboards:

- If relocated before 2008: by August 31, 2008;
- If relocated after 2008: upon installation of the sign;
- All remaining existing signs: within 36 months after registration of the sign

To implement this proposed amendment, sign companies would be required to obtain electrical permits to install the energy-efficient lighting. An electrical inspector would follow up with an inspection to verify compliance with Austin Energy's energy-efficiency standards.

Billboard companies expressed concern that they may not be able to comply with this requirement within the timeline suggested and have requested additional time to reach compliance.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Penalties. The general penalties set out for all violations of the City Code also apply to violations of Chapter 25-10. Chapter 25-10 currently does not establish specific penalties for noncompliance with any elements of the sign regulations.

The proposed amendments add new Section 25-10-237, which provides for a penalty of up to \$500 per day for failure to register a sign in accordance with 25-10-152(F) and for replacing a sign that had been removed as part of a relocation permit application in violation of section 25-10-152(B)(6)(b).

While the proposed amendments clarify penalties for violating Section 25-10, staff notes that there may be discrepancies in the City's billboard inventory and that there may be a number of legal non-complying billboards for which staff has no record. This may include some signs installed since the 1999 registration requirement took effect.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Notification. The current code only requires staff to notify the applicant, neighborhood organization, and sign owner when a notice to repair or replace a billboard has been received.

The proposed amendments add a new requirement to notify billboard owners of the upcoming billboard registration expiration date. The City would be required to send notification no earlier than 90 days and no later than 30 days prior to the expiration date.

Staff recommends that the ordinance be amended to also notify the property owner if an application to repair, replace, or relocate a sign has been submitted. This will notify the property owner that an inspector may be required to visit the site to confirm compliance. Both changes could result in an increase in the registration fee to administer the notification requirement.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Mobile Billboard Issues

Currently, sign regulations do not prohibit “mobile billboards.”

The proposed amendments prohibit advertisements on motor operated vehicles within the full-purpose City limits, if such vehicles are driven solely or primarily for the purpose of advertising. This amendment exempts:

- Buses used for the purpose of transporting multiple passengers,
- Vehicles which display advertisement or business identification of its owner so long as the vehicle is engaged in the usual business of its owner and is not intended for displaying “third-party” advertisements,
- Pedi-cabs, horse drawn carriages, and other non-motorized vehicles that may display third party advertisements.

The Austin Police Department (APD) would be required to enforce this proposed amendment since Code Enforcement is unable to stop moving vehicles. APD enforcement for this type of issue is usually based on a complaint driven process.

Additionally, staff recommends a delayed effective date of this amendment to allow for a phase out period of mobile billboards.

The Planning Commission and Design Commission have not yet commented on this proposed amendment.

Taxicab Requirements

Chapter 13 (*Transportation Code*) regulates all ground transportation passenger services. The current code allows the display of third party advertisements on taxicabs as long as the advertisement does not block the view of the driver, visibility of signs, vehicle lights, or signal requirements.

The proposed amendment would further require the franchise holder to pay a fee for each taxicab displaying an advertisement. The Public Works Department would include the registration fee during its annual inspection of each taxicab.

Regulatory fees are based upon the cost to administer the program. Currently, the Public Works Department estimates that it would cost approximately \$10 to administer the registration

process if there are no additional requirements to regulate size, location, etc of the sign(s). The fee and number of staff associated to administer the program is therefore dependent upon the complexity of the approved regulations.

The Planning Commission, Design Commission, and Urban Transportation Commission have not yet commented on this proposed amendment.

Staff Recommendation:

If the City Council proceeds with adoption of the proposed amendments, staff recommends the following additional clarifications and recommended language.

Enforcement of Billboard Regulations.

Staff recently met with Texas Department of Transportation Right of Way Division staff members responsible for enforcing billboard rules. TXDOT rules regulate billboard placement and prohibit the construction of a billboard within 1,000 feet of an interchange, overpass, etc. City staff requested information on TXDOT staff measurements for such billboard location issues, and whether a graphic example could be provided as an appendix to the final City regulations. At that meeting TXDOT staff explained that they were engaged in a similar exercise, to standardize the measurement points they used. TXDOT informed City staff that they expect to have a better understanding by the next legislative session.

Staff recommends that the proposed sign regulations incorporate a map (Exhibit D), instead of the textual description of the 2,640 foot distance limitation, for purposes of identifying the areas around intersections and interchanges in which billboards can be located with 25 foot increased height.

TXDOT currently sends an inspector with GPS equipment to visit the site and take measurements. Staff recommends adding an inspector position dedicated to pre- and post-inspection of billboards.

Staff recommends further clarifying the registration requirements to require the sign owners to provide a list of all their billboards along with a complete description of the billboard, including but not limited to sign face area, number of sign faces, height, and any additional information required by the Watershed Protection & Development Review (WPDR) Department. In addition, the billboard's location should also include the City recognized address, property's legal description, longitude and latitude of the sign, and any additional information required by the WPDR Department.

Staff also recommends:

1. Requiring sign owners to place a marker on each billboard with a number assigned by WPDR Department, and to mark the billboard's pole with visual markers every five feet to assist with verifying the height of the billboard.
2. Clarifying that the sign owner must first remove the original billboard prior to erecting the newly relocated billboard. Staff is aware of one sign that has been "relocated," but has not actually been removed from the original location.
3. Clarifying that the newly relocated billboard must have the same number of sign faces as the original billboard it is replacing. One sign company believes that a two-sided billboard can replace a one-sided billboard under the current regulations. It is possible

4. Granting additional time, on or before June 2009, to the billboard companies to comply with installing energy-efficient, pollution reduction lighting on each non-conforming off-premise sign.
5. The current ordinance states that a newly relocated billboard must be removed within 25 years of its construction unless another billboard is removed by the sign owner within the same time frame. Staff recommends further clarifying that the “other billboard” be of like size, number of sign faces, etc.
6. Currently, relocations are not allowed within 500 feet of a residential structure in a residential base zoning district. Because this is based on zoning, residential property in the ETJ is not covered. Staff recommends that the regulations be amended to apply this to residential structures in the ETJ. Staff also recommends that the regulations be clarified to specifically include mobile homes as residential structures.

Mobile Billboard Enforcement.

Austin Police Department (APD) relies on a complaint driven process to prioritize and manage their call volume. Since APD will be the only entity equipped to issue violations of (literally) mobile billboards, this amendment adds a new responsibility for APD. Solid Waste Services Code Enforcement, however, will be able to issue citations if the mobile billboard is parked on a site.

Mobile billboard companies would prefer and recommend that the City consider methods of regulation other than an outright prohibition. Their recommendations included limiting these companies to operating within specific times and areas of the City.

If this amendment is adopted, staff recommends delaying implementation by up to 6 months to give current mobile billboard companies operating in Austin time to relocate their services.

Taxicab Registration Enforcement.

The Public Works Department regulates all ground transportation passenger services. Taxicabs, limousines, charter vehicles, and the like are regulated under Section 13-2 and inspected annually by the Public Works Department. Because the advertisements can be easily removed and reinstalled later, there is no guarantee that a registration fee can be assessed at the time of inspection. After inspection, the responsibility of enforcement would fall upon the APD. APD would only be able to enforce a registration violation if a moving violation occurred, triggering APD to stop the vehicle.

Representatives of the taxicab industry in the stakeholder group contended that, if the City assesses a registration fee for taxicabs advertising third party businesses, then it is fair that such a fee be applied equally to all ground transportation passenger services, including limousines, shuttles, and pedi-cabs.

Policy Issue to Consider.

The billboard relocation provisions currently allow billboards to be relocated up and down expressway corridors and in commercial sign districts. The proposed amendments would further expand the areas in which billboards could be relocated.

Staff's analysis does not indicate that billboards are being relocated out of any particular neighborhood or area. The original stated goal of the relocation ordinance was to encourage relocation of billboards out of neighborhoods and scenic roadways. Staff's analysis indicates that this has not occurred in any great number. (Exhibit E)

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