

TO: Michael LoGrande and Alan Bell **CC:** CPC
Dennis Hathaway

FROM: Jane Usher

DATE: January 21, 2009

RE: **PROPOSED SIGN ORDINANCE**

The new sign ordinance and staff report are **outstanding** pieces of work. Congratulations on your thoughtful analysis. It would be fun and appropriately appreciative to identify each of the many well-reasoned provisions that you offer. But given the short time frame, as promised, here are my best, briefest insights regarding the questions that remain.

A. OVERALL CONCERNS

- **Continued Proliferation?** The documents do not answer squarely the \$64,000 question. Which will more successfully achieve an appealing and safe City with fewer, attractive signs: the current off-site ban or the new proposal?

(i) Reliance on pending lawsuits as a rationale for the proposed changes is misplaced. As of the favorable Ninth Circuit ruling in Metro Lights, the City is prevailing *again* in its defense of the current regulatory scheme that bans off-site signs. The City actions that do give legal pause in the billboard arena are the Settlement Agreements (which the City was never empowered to enter into) and its arguably overly discretionary standards for allowing sign districts and other exceptions to the off-site ban, not the ban itself.

(ii) The objectives of the new ordinance are to create a simple-to-apply scheme that will produce a pleasing visual environment. How can the public tell whether the complex new limits on size, placement, and number will provide a handsome visual aesthetic? It is your obligation to **demonstrate** the benefits of the proposed rules. This demonstration could be achieved by the preparation of a dozen worst-case scenarios that depict a variety of commercial and residential contexts. Without these visual aids, everyone will be left to guess about the true impact.

- **No enforcement protocol or sturdy penalties.** The revisions are poised to go forward without a serious protocol regarding reduction of existing signs, enforcement, and penalties. Is it appropriate to offer this paper tiger palliative? For as long as the profits from illegal signs dramatically exceed any penalties that can be recovered, the exercise of adopting new sign rules cannot reasonably be expected to alter or curtail illegal behavior.

- **Specific questionable passages.** There is so much good about the proposal. That said, it appears to fall down in specific areas. These weak passages have the potential to swallow up the good work. Each must be scrutinized further to ensure that this won't/can't happen.

B. SPECIFIC CONCERNS

- 1. Inadequate Purpose Clause.** The “purpose” passage is horribly weak. It barely speaks to the all-important rationales of limiting proliferation and protecting the public, the pedestrians, the drivers, the residential neighborhoods, the uncluttered look of the City, the environment. Read as a whole, this clause could be construed as an endorsement of signs. Because any court that attempts to parse the motives of the City will rely upon this passage, *it must be rewritten.*
- 2. Signs for Individual Premises.** Are there other cities where separate sign allowances for each individual “premise” have been used successfully? Where? Please elaborate upon how it has been tested. This distinction seems ripe for abuse. What would prevent a property owner from creating dozens and dozens of alleged “premises”?
- 3. Sign Heights, Types, Spacing, and Total Area.** It is not possible to understand what the new height limits and size limits mean in real world terms without several “worst-case” illustrations. The DCP should develop a dozen or more illustrations depicting different building types and also the impact on a row of buildings to demonstrate the resulting streetscape. In addition, the two foot spacing between signs seems extremely weak.
- 4. Temporary Signs.** The proposed removal of a time limit for some of the so-called temporary signs is a problem. Clearly this loophole will be abused. Temporary signs will actually become permanent. In City of Lake Oswego, the Ninth Circuit endorsed a time limit for temporary residential/agricultural signs.
- 5. Elimination of Freeway Exposure Constraints.** This proposal is based on World Wide Rush, which is on appeal. Why act based on a lower court ruling, especially in light of the diverging views between the Ninth Circuit and its lower court? How will the City be protected from freeway blight?
- 6. Extra Allowance for Flag Lots.** This provision allows more sign square footage on substandard lots. Why? It appears to unnecessarily authorize MORE signage.
- 7. Supergraphics and Walls Signs Generally.** The rationale for collapsing several sign categories into the single category “wall signs” seems just right. Do I correctly understand that the prohibition on covering exterior doors and windows is the new protective measure for our residents? If yes, great.
- 8. Hazard Provision.** This passage is mis-titled “Hazard to Traffic.” Although the passage usefully identifies the potential for a sign to be a danger to persons or property (distinct from jeopardizing vehicles), it doesn’t give life beyond harms to vehicles. Language must be changed and added to address non-traffic hazards.

- 9. Signs at Construction and Vacant Sites.** This provision should be rewritten. It remains too vague and cumbersome. Why allow signs at these locations? Why limit them only in the almost-impossible-to-prove case of public nuisance? Why rely upon an unworkable enforcement protocol? If you must allow them, then this special passage should identify clear additional constraints on their size, placement, and removal.
- 10. Sign Modification Procedure.** The procedure set forward is okay. But it should be added that any Sign Modification must require notice and hearing. This brings up a recurring notice problem – notices go to property owners within 500 feet; it would seem that notice should also go to any certified neighborhood council.
- 11. Transition Rules.** Our City is replete with higher density zones abutting lower density zones, without transition areas to ease drastic zone changes. The proposed ordinance relies strictly upon the property's zone for establishing sign rights. It would be beneficial to layer this with additional protections for our lower density zones within a specified distance of a higher density zone.