



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
Planning Department

AGENDA
CITY OF THE DALLES PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
313 COURT SREET
THE DALLES, OREGON 97058
CONDUCTED IN A HANDICAP ACCESSIBLE MEETING ROOM
THURSDAY, FEBRUARY 5, 2015
6:00 PM

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES – December 4, 2014
- V. PUBLIC COMMENT (Items not on the Agenda)
- VI. **LEGISLATIVE HEARING (continued):**
Application Number: ZOA 87-14; **City of The Dalles;** **Request:** Amendments to the Land Use and Development Ordinance regarding sign codes.
- VII. **LEGISLATIVE HEARING**
Application Number: ZOA 90-14; **City of The Dalles;** **Request:** Amendments to the Land Use and Development Ordinance regarding medical marijuana dispensaries.
- VIII. STAFF COMMENTS
- IX. COMMISSIONER COMMENTS/QUESTIONS
- X. FUTURE MEETING – February 19, 2015
- XI. ADJOURNMENT

CITY OF THE DALLES PLANNING COMMISSION MINUTES

Thursday, December 4, 2014

City Hall Council Chambers

313 Court Street

The Dalles, OR 97058

Conducted in a handicap accessible room

6:00 PM

CALL TO ORDER:

Chair Lavier called the meeting to order at 6:00 PM.

BOARD MEMBERS PRESENT:

Bruce Lavier, Mark Poppoff, Chris Zukin, John Nelson, Jeff Stiles, Dennis Whitehouse, Sherry DuFault

BOARD MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Planning Director Richard Gassman, City Attorney Gene Parker, Administrative Secretary Carole Trautman

APPROVAL OF AGENDA:

It was moved by Nelson and seconded by Zukin to approve the agenda as submitted. The motion carried unanimously.

APPROVAL OF MINUTES:

It was moved by Nelson and seconded by Stiles to approve the November 20, 2014 minutes as submitted. The motion carried unanimously.

PUBLIC COMMENT:

None

LEGISLATIVE HEARING (continued):

Application Number: ZOA 87-14; City of The Dalles; **Request: Amendments to the Land Use and Development Ordinance regarding sign codes.**

Director Gassman reported no written comments were received. He thanked the Sign Committee (Committee) members, guest to the Committee Chad Walter, Main Street Coordinator Matthew Klebes, and staff for participating in Committee meetings.

Gassman highlighted certain issues related to signage. Sign codes that were not mentioned in the staff report were as follows:

Planning Commission Minutes

December 4, 2014

Signs in the downtown area – Gassman reported it was the general consensus of the Committee to encourage Matthew Klebes to work with the downtown property owners and/or business owners to suggest any changes to the sign code in the Central Business Commercial zone. Klebes reported to the Committee that Main Street was working on themes and colors for the downtown area, and changes to sign codes would be discussed in the future. Gassman reported that signs in the right of way were also discussed, and it was the general consensus of the Committee not to make changes in the current code. He said the Committee briefly discussed placing a time limit on non-conforming signs, but it was the Committee’s general consensus that the proposed sign code changes would not create many new non-conforming signs due to the fact that the proposed changes tended to be more lenient than existing code, rather than more prohibitive. One exception was the topic of digital signs. Proposed changes were more restrictive, he said, mostly because at the time of the last sign code change digital signs were not in existence.

Director Gassman pointed out that City Attorney Parker would review language for technical language and formatting after the recommended changes were finalized. Those changes would be reviewed at a January Planning Commission meeting.

Gassman commented on various proposed changes (in accordance with the format of the staff report) as follows:

A. Definitions: 13.010.030

2. Most Committee members were in favor of encouraging people to put murals on walls and not be too restrictive on classifying a mural as a sign. In cases where there would be a mural with words, only the area with words would be counted as a sign. Murals and historic murals were listed under the Exempt Signs section also.
3. “Ghost Signs” – The Committee proposed a definition for a ghost sign, also listed under the Exempt Signs section. The Committee did not want to be too restrictive on this type of sign.
4. Window Signs – Because of technological improvements in the sign industry, it has become much easier to install signage on the outside of windows. The Committee was proposing to have a definition and list window signs in the Exempt Sign section. Therefore, interior and exterior signs on the window are proposed to be exempt. Under the proposal, signage must be affixed to the window.
5. Framed Sign – A framed sign consisted of a rigid border. Weather typically hindered the usage of temporary signs. If a banner was placed in a frame, it would for the most part withstand the weather conditions, and it would stay fixed in place. The proposal stated that permits for fixed signs would be valid for 90 days (maybe longer).

B. Exempt Signs: 13.030.010

1. CFO Zone (Community Facilities Overlay) – CFO, typically existing for public schools and church facilities, the Committee proposed allowing one 20 square foot name sign as exempt; otherwise a name sign would count as part of the facility’s signage allowance.
3. Garage and yard sale signs – The word “yard” was added to this section.

5. For Sale Signs – Current code language was unclear in differentiating between residential and commercial properties. Therefore the Committee recommended a language change.

6. Subdivision Signs – The Committee proposed a 32 square foot maximum.

C. Temporary Signs: 13.030.020

1. One temporary sign per street frontage was proposed in addition to other signage for up to 90 days in duration. No change in the maintenance of signs code was proposed.

2. Balloons – The Committee proposed that permits for balloons and other inflatable devices be limited to 7 days.

D. Prohibited Signs: 13.030.030

4. Digital Signs – Administrative Secretary Trautman presented a slideshow illustrating various time length segments for a digital display – 6 seconds, 10 seconds, 12 seconds and 15 seconds. The Committee’s recommendation was to prohibit digital signs that change display in less than 15 seconds, or that have more than three lines of text at any time, or exceed the brightness allowed under the regulations of the State of Oregon.

Stiles said the recommendation prohibited moving displays, which was today’s current trend. Director Gassman pointed out there was a fine balance between allowing business and property owners to attract people without distracting drivers from taking their eyes off of the road. It was discussed that the Oregon Department of Transportation (ODOT) regulation allowed static movement for six seconds for any traffic—any sign visible to the state highway.

DuFault asked what other cities had developed for sign code for digital signs. Gassman indicated he conducted a limited search and found nothing on digital sign regulations. He said Portland was facing some lawsuits by sign companies that claimed the City of Portland digital sign code was too restrictive.

Russ Brown, 909 East 9th Street, The Dalles, Oregon (Sign Code Committee member) reported that the Committee discussed the Griffith digital sign. The sign was located in a 30 mph speed zone. It had flashing text and backgrounds. Brown said he thought the business had slowed the movement down from what it was in the beginning, but he felt the sign could be a distraction to motorists.

DuFault stated she thought it would be more distracting and a larger hazard to slow the timing down. Whitehouse advised that several of the area schools are planning on changing to digital signs in the future. Stiles and DuFault indicated they liked moving signs. Stiles felt that if one or two signs were causing an alarming distraction to motorists, he would be in favor of going to the property owner rather than prohibiting any graphic movement at all. Brown stated it would be difficult to approach a property owner about changing a digital sign without some sort of regulation. He cautioned that more digital signs would come to the area, and rules needed to be in place. Brown commented that without codes, enforcement becomes subjective. Director Gassman directed the Commission to the code section on prohibited signs. As the code reads currently, the language on a distracting sign was a subjective tool to regulate and would probably be interpreted by the Planning Director and possibly forwarded to the Planning Commission, he said.

Zukin pointed out that there were two reasons for digital signs: 1) digital signs were an easy way to change copy; and 2) the movement and strobe light effect of digital signs draw peoples' attention. Lavier said that changing copy was one thing, but distraction was a problem. Poppoff indicated he saw no problem with local code following ODOT regulations. Stiles said part of the problem with the high school digital sign was the brightness in a residential zone.

Final comments from Commissioners were: 1) Stiles – It goes against the grain to take away digital movement; 2) Poppoff – It's an issue of roadside safety; 3) DuFault – Not in favor of restricting movement; 4) Whitehouse – Not in favor of restricting movement; 5) Lavier – Not in favor of restricting movement; and 6) Nelson – Suggested different standards for commercial and residential zones. Director Gassman identified the main unresolved issue on the proposed digital sign code was the movement of copy.

Taner Elliott, 397 Summit Ridge Drive, The Dalles, Oregon, suggested looking at the frames per second on digital motion. He said the number and timing of frames could regulate the strobe light effect.

After further discussion, it was the general consensus of the Commission to gather more information on digital signs and revisit the topic at the January 15, 2015 meeting. Zukin will provide vendor information to staff for review.

E. Others

4. The current sign code was unclear. Proposed revisions clarified what needed to be done.

5. Freestanding signs – Proposed revisions added more flexibility to the property/business owner for freestanding signs.

8. One of the most significant proposed changes. The current code restricted flush mount signage to the building front. The proposed change would allow flush mount signs on any exterior at the maximum square footage allowed.

STAFF COMMENTS:

Director Gassman reported that the City Council public hearing regarding residential infill policies was scheduled for Monday, January 26, 2015.

COMMISSIONER COMMENTS:

Commissioner Nelson reported that he attended ODOT's Bike Hub meeting. Many good ideas were presented, and the meeting was very productive. An area near the Lewis and Clark Festival Park was the designated area for the new bike hub. A preliminary design was formulated along with a theme that would tie in with the historic highway theme to help connect The Dalles with the region.

NEXT MEETING:

January 15, 2015

ADJOURNMENT:

Chair Lavier adjourned the meeting at 7:11 PM.

Respectfully submitted by Administrative Secretary Carole Trautman

Bruce Lavier, Chairman



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
PLANNING DEPARTMENT

MEMORANDUM

TO: Planning Commission

FROM: Richard Gassman, Director

RG

DATE: February 5, 2015

RE: Digital Signs

At the December 4, 23014 Planning Commission session, the Commission reviewed information relating to proposed changes in the City's sign code. At that session, the Commission asked for additional information on digital signs.

I have reviewed sign codes from the State of Oregon, several Oregon cities, as well as Model Sign Codes. In addition, City Attorney Gene Parker has reviewed other sign codes from around the State. After looking at these codes, the only summary I can give you is that there is a wide variety of approaches to regulation of digital signs.

For your information I have attached a copy of an article from the International Sign Association entitled *Finding Common Ground*. It is a good summary of many of the issues surrounding digital signs, what is referred to in the article as Electronic Message Centers. I have also attached a copy of that portion of the United States Sign Council *Model On-Premise Sign Code* that covers digital signs, also referred to as Electronic Message Centers. By reading these two sign industry documents, I believe you will get a good background about general issues and the approach preferred by the sign industry.

The State of Oregon and local jurisdictions have taken various approaches to regulation of digital signs. The State has adopted ORS 377.720, a copy of which is attached, that prohibits digital signs unless they comply with the provisions of ORS 377.720 (3)(d). The State of Oregon has also adopted OAR 734-060-0007, a copy of which is attached, which further regulates Digital Billboards.

Some local jurisdictions have prohibited these types of signs, including Bend and Hood River. Some jurisdictions have allowed them only with a conditional use permit, including Pendleton and Stayton. Other jurisdictions have taken a more traditional regulatory approach by allowing these types of signs as part of the overall sign allowance, limiting the zones where these signs are allowed, and placing other restrictions. An example of this type of approach is the section of the Tigard sign code on Electronic Message Centers, a copy of which is attached.

After reviewing all this material it appears there are several issues the Planning Commission may want to consider. The following is at least a partial list of those issues.

1. What zones can these signs be placed in?
2. What size is to be allowed?
3. Are these signs included in the overall sign allowance, or are they an extra allowance?
4. Brightness.
5. How often the display can change.
6. Will some aspects, such as “chasing” lights be prohibited?
7. Will these signs be allowed outright as part of the sign allowance, or will a conditional use permit be required?
8. Will there be additional limitations at night?

Of course, the Commission could also consider a combination approach, where these signs could be allowed outright in commercial and industrial zones, but require a conditional use permit for other areas, such as schools in residential zones.

For information purposes, the digital sign at the High School is 30 square feet in size. Dave Griffith’s sign is 50 square feet.

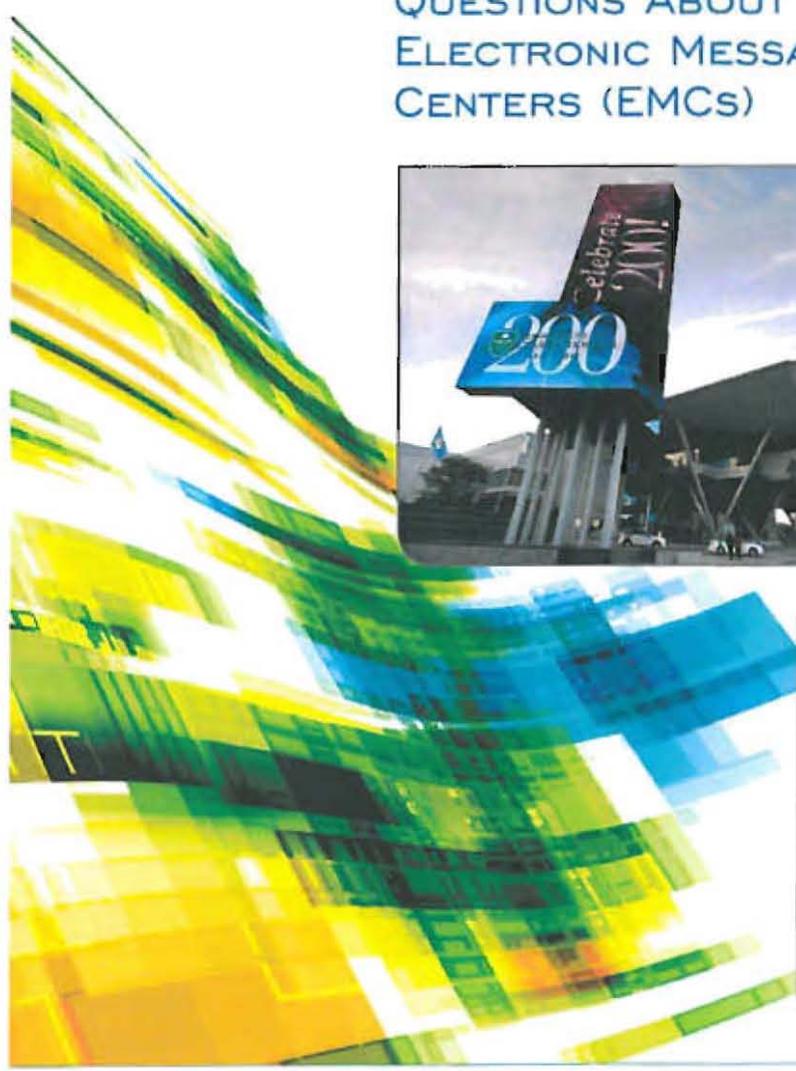
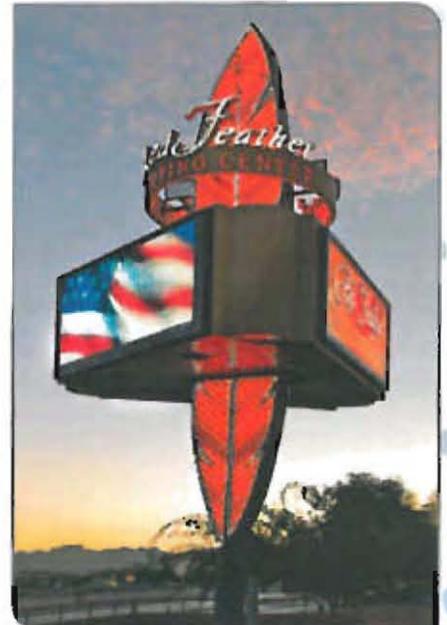
The Commission had previously indicated they would support an exemption from digital sign regulations for time and temperature signs. The Commission might consider a size limitation on these types of signs.

Attachments

International Sign Association *Finding Common Ground*
United States Sign Council except from *Model On-Premise Sign Code*
ORS 377.720
OAR 734-060-0007
Tigard code for electronic message centers

FINDING COMMON GROUND:

ANSWERS TO COMMON
QUESTIONS ABOUT
ELECTRONIC MESSAGE
CENTERS (EMCs)



FINDING COMMON GROUND: ANSWERS TO COMMON QUESTIONS INVOLVING ON-PREMISE ELECTRONIC MESSAGE CENTERS

Is your community trying to determine how to treat on-premise electronic message center signs (EMCs)? Are you trying to strike a balance between the desire for businesses to use EMCs and community aesthetics? Do you have concerns about the safety of EMCs? Are you confused or frustrated about how to properly regulate these types of signs?

If you have answered in the affirmative to any of these questions, you are not alone. Planners, community officials, small businesses and sign companies have struggled with these questions for several years. As the trade association for the on-premise sign industry, ISA has worked with hundreds of communities across the country on EMC issues, lending our expertise in helping to develop reasonable and beneficial code language governing this modern and innovative sign technology.

Just to clarify, EMCs are not digital billboards, which advertise a good or service that is located away from where the sign is located. Rather, EMCs are digital signs that are located on the premises of the business, and that advertise goods and services that are provided at the location.

(Left) Electronic message center (EMC) / on-premise sign advertising a product that is located at the place of business

(Right) Digital billboard / off-premise sign advertising a business away from where the sign is located

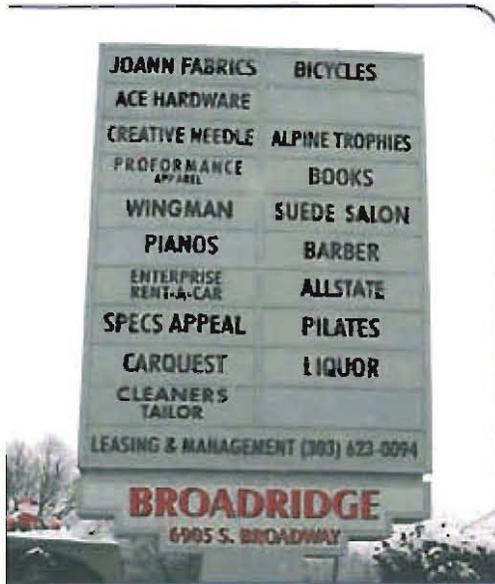


There is often confusion regarding on and off-premise digital signs. However, EMCs and digital billboards have very distinct capabilities and purposes, each targets a specific audience and each has traditionally been treated under separate legal and regulatory regimes. For the purposes of this publication, we are focusing solely and exclusively on EMCs.

We have compiled this guide in order to help all stakeholders make informed decisions about EMCs, addressing common concerns and providing the perspective necessary for the development of effective sign regulations. We hope that the information in this publication can assist each community in finding common ground in the quest for appropriate EMC regulation.

TABLE OF CONTENTS

EMCs AND AESTHETICS	02
EMCs AND CODE ENFORCEMENT	03
EMCs AND COLOR RESTRICTIONS	04
EMCs AND DEFINITIONAL PROBLEMS & SOLUTIONS	05
EMCs AND DIGITAL AREA SIZE LIMITATIONS	06
EMCs AND ENERGY CONSUMPTION	06
EMCs AND (THE) HIGHWAY BEAUTIFICATION ACT	07
EMCs AND MORATORIUMS	08
EMCs AND NIGHT-TIME BRIGHTNESS	09
EMCs AND OFF-PREMISE MESSAGES	10
EMCs AND TEXT-ONLY RESTRICTIONS	11
EMCs AND TRAFFIC SAFETY	12



Before ••



After ••

The traditional multi-tenant sign at the top is forced to use unimaginative fonts and colors in order to fit in all the businesses; the same multi-tenant sign on the bottom is as added an EMC which advertises each tenant every ten seconds, making the sign less cluttered and more attractive.

EMCs AND AESTHETICS

ISSUE

Some communities are concerned with the impact of EMCs on the visual environment. Most concerns regarding aesthetics can be resolved with effective regulation. Proper brightness standards and regulated content presentation standards can resolve the majority of aesthetic concerns. When properly regulated and utilized, EMCs can actually enhance community aesthetics.

The manually-changeable reader board, an ancestor to EMC technology, is common in most communities. Mis-matched letters, bland fonts, and other design limitations make a reader board to electronic message center conversion an improvement in aesthetics. A properly regulated EMC is considered by some to be more attractive than a traditional reader board.

Another example of sometimes aesthetically-displeasing signs is multi-tenant panel signs that can be found in many retail multi-tenant shopping centers. Frequently these signs are packed with a long list of tenants, which are functionally invisible to the motoring public. Such lack of visibility affects the viability of the retail center, and unviable businesses can eventually become an eyesore. Allowing an EMC in a retail shopping center can give tenants the visibility they need, replace functionally invisible signs with an effective sign without increasing over all square footage, and thus improve the aesthetic appearance of the shopping center.

Lack of visibility and the ability to change advertising messages often results in some business owners using alternate methods to get the message out. Ironically, prohibitions or severe restrictions on EMCs can result in the very thing such sign codes are intended to avoid; namely, visual clutter by excessive signage. By allowing properly regulated EMCs to operate in a community, you can avoid these aesthetically objectionable behaviors from occurring. If a business owner is able to use an EMC, the need for excessive banners and other forms of visual clutter are eliminated.

Associating these signs with Las Vegas is a common concern voiced in the debate over EMCs and aesthetics. A closer look at the size, height, spacing and content delivery methods on signs on the Las Vegas strip reveals that this comparison is inaccurate. Signs on the Las Vegas strip have few or no set back requirements, spacing limitations, or height restrictions. It is not uncommon for signs on the Las Vegas strip to exceed two hundred feet in height, and most of the larger signs exceed several thousand square feet in total sign area. Most communities do not even come close to allowing signs such as these. Unless your community allows signs of this magnitude, it is highly unlikely that your community will resemble anything like Las Vegas.

RECOMMENDATIONS

The key to addressing aesthetic concerns regarding EMCs is to ensure that the message brightness, duration, and transition method are properly regulated and enforced in conformity to community aesthetic values. EMCs in and of themselves are not aesthetically displeasing.

EMCs AND CODE ENFORCEMENT

ISSUE

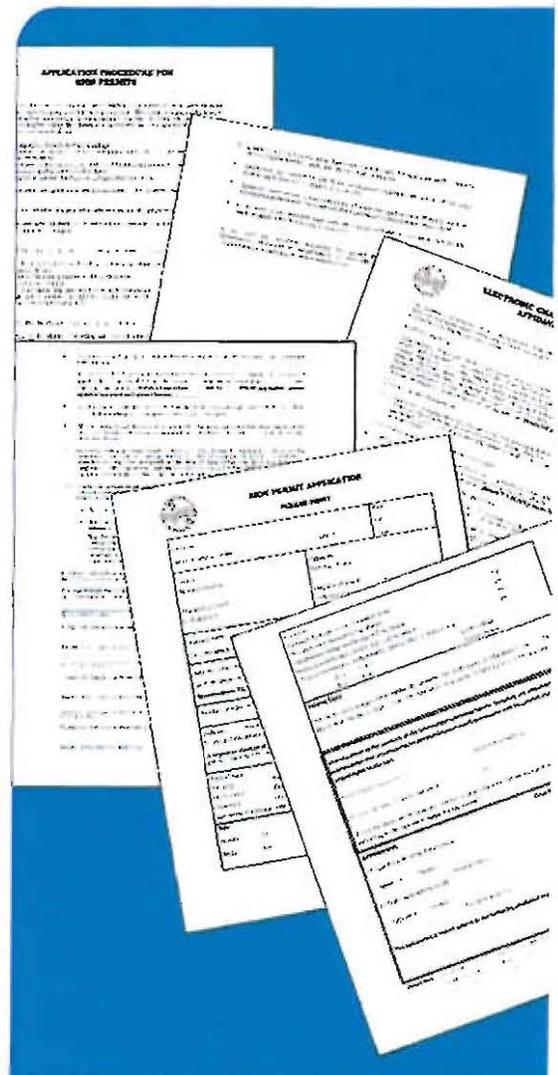
Local sign codes often have provisions regarding the regulation of EMCs. Sign companies help their customers learn what regulations govern their EMCs when the product is sold. Once the EMC is permitted, it is up to the sign owner to make sure that they program their sign so that it is in compliance with the local sign code. EMC manufacturers can only build signs that are capable of compliance.

In some rare instances, out of fear that some extra-judicial programming will take place after an EMC is permitted and operational, some local regulators have attempted to take the position that such signs are prohibited altogether.

RECOMMENDATIONS

The sign industry encourages strict compliance with sign codes and should always educate customers on how to properly operate EMCs. However, occasionally EMCs are programmed beyond the limitations of local regulation by their owners. Acknowledging the difficulty of city code enforcement, one way of encouraging proper and legal use of these signs by their owners is to have the owner sign an affidavit at the same time the sign is permitted in which the owner agrees to abide by the local regulations or else be cited and pay a fine.

There is no legal basis to deny a static-display electronic sign, as it is legally indistinguishable from any other illuminated sign. Car usage is not prohibited merely because cars are designed so that they can exceed the speed limit; tickets are issued to the driver if they *do* exceed the speed limit. Likewise, if a sign owner *actually* violates the zoning or sign code, the remedy is to cite them for the violation, not to presume that they will do so and refuse to issue permits at the outset.



Cities can require EMC users to promise that they will program and use their sign in compliance with the local sign code, including imposing penalties for knowingly violating the ordinance.

EMCs AND COLOR RESTRICTIONS

ISSUE

Some jurisdictions have established restrictions on the types of content displayed on EMCs. Among the restrictions are limits to the number of colors displayed or a prohibition on full-color images. Many of these limitations are based on a belief that multiple colors or “photo-quality” images are more intrusive or distracting to motorists. We believe that restrictions on the appearance of EMC displays fail to advance any compelling governmental interest and represent an impermissible content-based regulation.

COLOR-BASED LIMITS

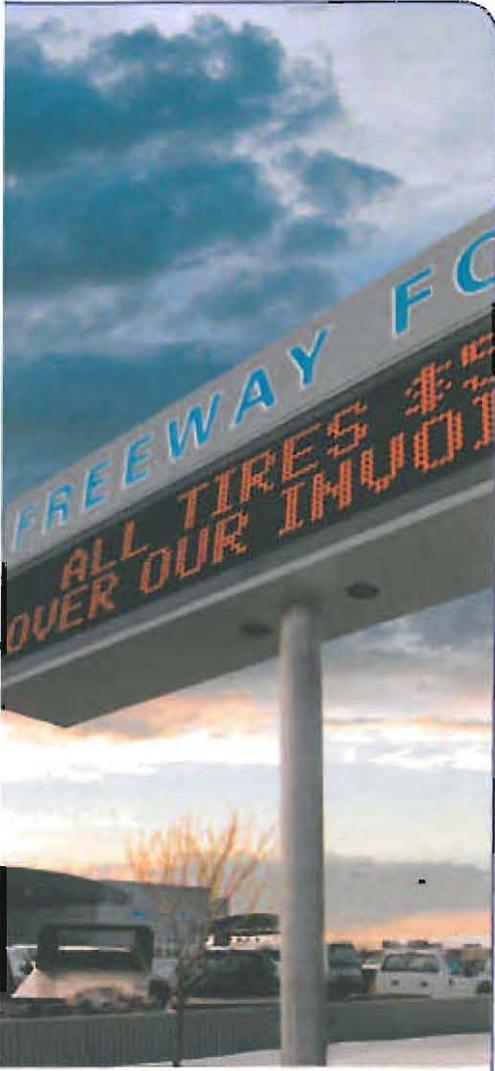
Color restrictions can take the form of limiting the total number of colors displayed (“one color only” or “no more than 3 colors”) or specifying the colors allowed (“amber only” or “no red lights”). As a practical issue, most EMCs are comprised of RGB pixels capable of displaying full color images. In order to display most colors, the image actually consists of a mixture of individual LEDs displaying red, green, or blue in varying amounts. Even if the display appears to be a single color (“white”), when viewed at a close distance the EMC can be seen to be generating multiple colors of light that blend together as the viewing distance increases. Restrictions on the number of colors are problematic to enforce as questions of color shading and the “black” appearance of unlit LEDs complicate the ability to precisely determine the number of colors being displayed.

Additionally, many EMCs are designed to display information in a format similar to conventional signs. A filling station commonly displays the prices of gasoline, diesel fuel, ethanol and kerosene using different colored numerals. If a manual changeable copy panel can display a message using multiple colors, an EMC should be afforded the ability to display the identical message.

RECOMMENDATIONS

Any attempt to regulate EMCs based on the appearance of the display may run afoul of judicial scrutiny of content-based regulations. Other federal protections on the display of registered trademarks also may affect controls on the display of logos (for example, the Federal Lanham Trademark Act.)

Any EMC should be allowed to display text information, graphics, or images identical to a permanent display on a non-EMC sign. EMC-specific regulations should avoid restrictions on the information displayed and be limited to appropriate controls on sign brightness, size, and message change.



This EMC user can only use amber-colored text messages, which can be bland and limit the creativity of their business message.

EMCs AND DEFINITIONAL PROBLEMS & SOLUTIONS

ISSUE

When it comes to drafting and enforcing signs codes, it is important for the language and definitions have clear, reasonable, workable and easily understandable meanings. This is especially true when it comes to definitions in the part of the sign code that covers EMCs. This language can often be technologically incorrect, difficult to implement, and unworkable in practice, resulting in sign codes that don't benefit regulators, sign users or the community.

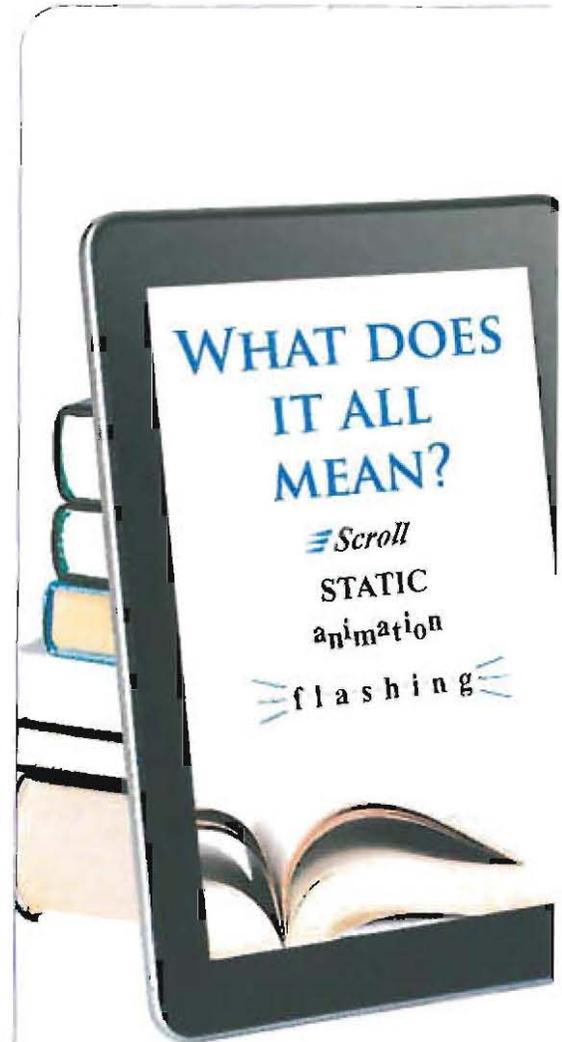
Terms that need consistent clarification in regard to EMC regulatory language can be as basic as the definition of a changeable message sign. There are two kinds of such signs, manually-changed and electronically-changed. Most manually-changed signs involve a background surface with horizontal channels, into which plastic letters and numbers are inserted into the channels on the sign face. The message must be changed by having an employee or technician remove the existing plastic letters and replacing them with the new message.

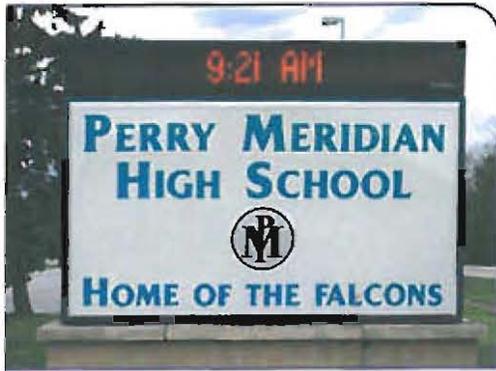
On the other hand, for the most part EMCs use light emitting display technologies such as LEDs. These kinds of changeable message signs are operated via computer at a remote location and can change messages as fast as they can be programmed. For the purposes of this document, we are focusing on the definitional issues that arise when it comes to EMCs

RECOMMENDATIONS

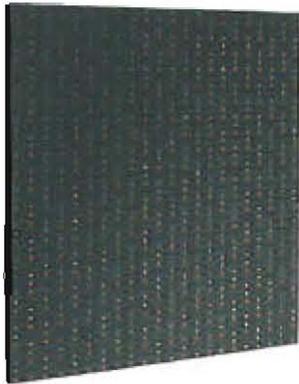
EMC regulatory language should cover certain technical capabilities of such signs such as:

- ANIMATION** — the usage of multiple frames running at a fast enough speed that the human eye perceives the content to be in continuous movement.
- DISSOLVE** — a mode of message transition on an EMC accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.
- FADE** — a mode of message transition on an EMC accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.
- FLASHING** — an intermittent or flashing light source where the identical EMC message is constantly repeated at extremely fast intervals.
- FRAME** — a complete, static display screen on an EMC.
- FRAME EFFECT** — a visual effect on an EMC applied to a single frame to attract the attention of viewers.
- SCROLL** — a mode of message transition on an EMC where the message appears to move vertically across the display surface.
- STATIC MESSAGE** — messages that contain static messages only, and do not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement.
- TRANSITION** — a visual effect used on an EMC to change from one message to another.
- TRAVEL** — a mode of message transition on an EMC where the message appears to move horizontally across the display surface.





The school sign on the top has been allotted a very small area for its EMC as compared to the school sign on the bottom. The school sign on the bottom is therefore able to present more information in a more legible fashion on the screen in comparison.



EMCs use light emitting diodes, or LEDs, which are one of the more energy-efficient forms of lighting available today.

EMCs AND DIGITAL AREA SIZE LIMITATIONS

ISSUE

Some jurisdictions have adopted restrictive square footage area restrictions for EMCs. For example, restrictive allowable square footage for EMCs would be to only allow 25% of the maximum square footage for a sign. We believe that if square footage restrictions for electronic message centers are too restrictive this may lead to limiting the type of message that a business can display. A smaller EMC may only lend itself to effectively displaying text, restricting the business to utilize images. Since EMCs are considered such an effective method for a business to advertise, this will also have a potential negative economic impact on a business.

ECONOMIC CONSIDERATIONS

EMCs have proven to be a very cost effective method of advertising, especially when compared to radio, television, and print media. A typical small business does not have the recognition of a national chain. Therefore, affordable and effective advertising that is provided by an EMC can be an important factor of a successful business.

RECOMMENDATIONS

In support of the business community and particularly small business, no square footage area restrictions or minimal restrictions of the allowable square footage, are recommended for EMCs. This will afford a business the flexibility to display images or text providing full marketing advantage afforded by electronic message centers. By allowing the business community greater flexibility in the allowable square footage of EMCs can also lead to overall support and economic enhancement of the community. An additional advantage of allowing minimal restrictions on the allowable area for EMCs will enable enhanced messaging for community or civic events.

EMCs AND ENERGY CONSUMPTION

ISSUE

Some jurisdictions are concerned about the amount of energy consumption by electronic signs, including EMCs. Modern EMCs use light-emitting diode or "LED" lighting technology to produce changeable messages. LED lighting is one of the most energy efficient forms of lighting, according to the U.S. Department of Energy.

RECOMMENDATIONS

Gains in LED efficiency over the past few years have been dramatic. Many EMC manufacturers have reported efficiency gains of almost 80% over a five-year period, and it appears that the trend towards more efficiency will continue. EMCs are on the cutting edge of the most energy efficient sign technologies.

When compared to other forms of advertising such as print media, radio, or television, and EMC is a more environmentally responsible form of advertising. The energy, paper, and equipment used in other forms of advertising far outweigh the energy consumption and overall environmental impact of an EMC.

EMCS AND THE HIGHWAY BEAUTIFICATION ACT

ISSUE

The Highway Beautification Act (23 USC 131) of 1965 calls for control of outdoor advertising or billboards within 660 feet of the nation's Interstate Highway System and the existing federal-aid primary highway system.

Since its passage, the Highway Beautification Act has been consistently interpreted as exempting on-premise signs under its jurisdiction. However, in recent years a few state and federal officials have mistakenly sought to regulate on-premise signs using the Act as justification.

RECOMMENDATIONS

The Highway Beautification Act cannot be used as justification for government officials to regulate on-premise signs. The HBA does not apply to all signs within 660 feet of a primary aid highway or interstate system. 23 USC 131(c)(2) and 23 USC 131(c)(3) of the Act provide exceptions for on-premise signs, including for on-premise EMCs. It was never the legislative intent of the drafters of the Highway Beautification Act or its subsequent amendments to place on-premise signs under any federal control.



President Lyndon Johnson and his wife "Lady Bird" at the signing of the 1965 Highway Beautification Act, which regulates outdoor advertising (billboards), not on-premise signs

EMCs AND MORATORIUMS

ISSUE

Moratoriums are not necessary to change a sign ordinance unless it can be proven that specific kinds of signs imminently threaten public health and safety. Communities should be able to research options and revise their sign codes without resorting to moratoriums.

Many communities enact temporary moratoriums on certain kinds of signs while they consider how to regulate these specific signs. During this period of time, permits are not issued for the specific types of signs. In some cases, a temporary moratorium leads to a permanent ban on the kinds of signs in question.

RECOMMENDATIONS

ISA believes that sign moratoriums make for poor public policy for several reasons, including the following:

- (1) moratoriums can have the affect of favoring businesses which have the targeted signs already in existence;
- (2) government signs are often not included under moratoriums;
- (3) moratoriums often take place during important economic opportunities (i.e. Christmas, summer tourism season etc) for local businesses; and
- (4) moratoriums could discourage development of new businesses.

Most importantly, sign moratoriums can usually be avoided by effectively involving and communicating with the appropriate community stakeholders.

If a community elects to enact or extend a sign moratorium, it should be used as a last resort, and only then in furtherance of an imminent health or safety concern. A sign moratorium should be limited to the shortest possible duration.



Electronic message centers have often been the target of moratoriums by local officials. However, prohibiting these types of signs (or other types, such as pole signs or window signs) can often hurt existing businesses in the community and could discourage the development of new businesses.

EMCs AND NIGHT-TIME BRIGHTNESS

ISSUE

EMCs that are too bright at night can be offensive and ineffective. EMC brightness at night is an issue where sign users, the sign industry, and community leaders have a common goal: ensuring that EMCs are appropriately legible. The messages that these signs convey can be rendered unattractive and perhaps even unreadable if they are programmed too bright when it is dark outside.

That's why many sign companies recommend to their customers that in order for these signs to be most effective, their brightness be set at such a level to be visible, readable and conspicuous.

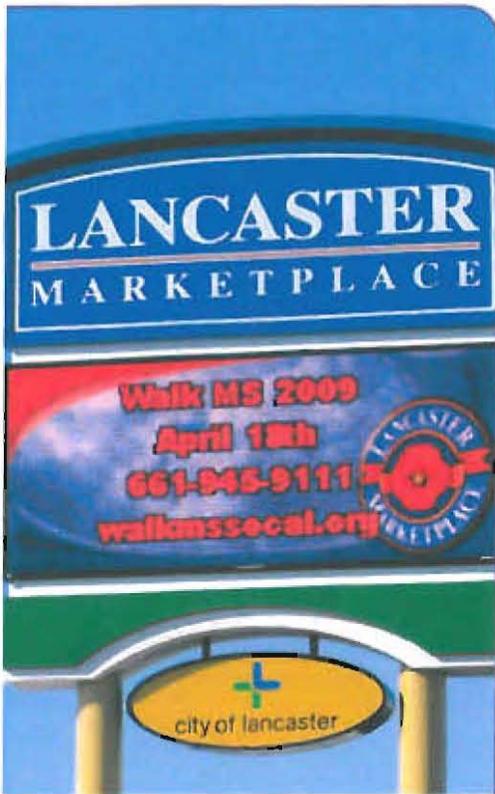
RECOMMENDATIONS

In 2008, the International Sign Association (ISA) retained Dr. Ian Lewin of Lighting Sciences to help the industry develop scientifically-researched, understandable recommendations for EMC brightness. Dr. Lewin is a past chair of the Illuminating Engineering Society of North America (IES), and is greatly respected within the lighting field. His work for ISA was conducted with the input of experts within the sign industry.

As a result of this research, the recommended night-time brightness level for EMCs is 0.3 foot candles above ambient light conditions when measured at an appropriate distance. This is a lighting level that works in theory and in practice. Dozens of jurisdictions across the country have adopted these standards, either in whole or in part.

Included with this research and recommendations are model statutory language and six short steps to help guide the process. You can find these EMC Night-time Brightness Recommendations at www.signs.org/brightness.





This shopping center's electronic message center (EMC) is communicating a message not about any goods or services sold on the property, but about a non-commercial community-oriented event that is happening at a place other than at the location of the sign. It is perfectly acceptable for an on-premise EMC to broadcast such a non-commercial message; however, if the same sign were to communicate a commercial message about a store in the next town or advertise for a product that was not sold at that particular location, it would be in danger of losing its permitted status as an on-premise sign and could instead be classified as an off-premise sign. This new classification would usually entail undergoing a new permitting process, additional fees and other arduous procedures.

EMCs AND OFF-PREMISE MESSAGES

ISSUE

An on-premise sign is a communication device whose message and design relate to a business, an event, goods, profession or service being conducted, sold, or offered at the same location as where the sign is erected. An off-premise sign is any sign that is not appurtenant to the use of the property, a product sold, or the sale or lease of the property on which it is displayed and that does not identify the place of business as purveyor of the merchandise, services, etc. advertised upon the sign.

When an on-premise EMC is programmed to include among its several messages one that advertises a business, an event, goods, profession or service being conducted, sold, or offered at a different location from where the sign is erected, it may be viewed by some government officials as being an off-premise sign, and need to be permitted and regulated as such. This can have adverse impacts on both the individual sign users as well as other future sign users who will need approval from zoning or permitting authorities.

RECOMMENDATIONS

ISA believes that the messages that should be displayed on signs permitted under on-premise sign regulations should be messages relating to a business, an event, goods, profession or service being conducted, sold, or offered at the same location as where the sign is erected. ISA also believes that on-premise signs should be permitted to display noncommercial messages and public service announcements without risk of losing their on-premise status or exemption from outdoor advertising restrictions.

EMCS AND TEXT-ONLY RESTRICTIONS

ISSUE

Some jurisdictions have established restrictions on the types of content displayed on EMCs. Among the restrictions are prohibitions on high-quality images. Many of these limitations are based on a belief that “photo-quality” images are more intrusive or distracting to motorists. We believe that restrictions on the appearance of EMC displays fail to advance any compelling governmental interest and represent an impermissible content-based regulation.

ALPHANUMERIC LIMITS

Alphanumeric controls are designed to limit displays to the 62 Latin letters and Arabic numbers. Photographic images, graphics, and other characters are prohibited. While alphanumeric text allows messages to be expressed, the limited displays are not necessarily as effective as images can be. As noted in the APA’s *Street Graphics and the Law*, (pictographic) images are encouraged as they are more easily comprehended than text. Additionally, images allow businesses to express the products offered at their location using registered trademarks and logos, which are much more readily identified than words expressing the same message.

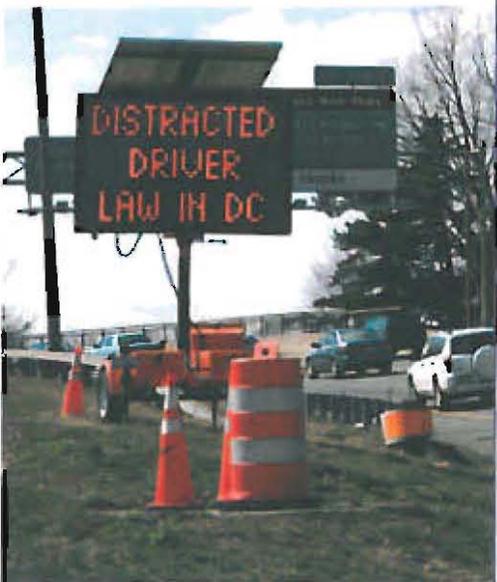
RECOMMENDATIONS

Any attempt to regulate EMCs based on the appearance of the display may run afoul of judicial scrutiny of content-based regulations. Other federal protections on the display of registered trademarks also may affect controls on the display of logos.

Any EMC should be allowed to display text information, graphics, or images identical to a permanent display on a non-EMC sign. EMC-specific regulations should avoid restrictions on the information displayed and be limited to appropriate controls on sign brightness, size, and message change.



The Burger King EMC photo at the top can only use text, while the Burger King EMC photo on the bottom can also show pictures, logos, and other images.



Pictured is an official District of Columbia Department of Transportation digital sign, with a two-second time interval, informing motorists during rush-hour on a high-traffic area about their distracted driving law. That our nation's capital uses this type of signage technology to educate drivers demonstrates that digital technology enhances safe traffic conditions.

EMCs AND TRAFFIC SAFETY

ISSUE

Many jurisdictions that consider regulations on EMCs fear that allowing this technology to be used in signage will lead to an increase in traffic accidents. These fears are unfounded. The LED technology inherent in electronic message centers have been studied for over 30 years and have never been found to be hazardous to traffic safety. Studies from reputable organizations such as Virginia Tech Transportation Institute, Tanjala Associates and even the Federal Highway Administration have found that digital signs are appropriate along the nation's roadways.

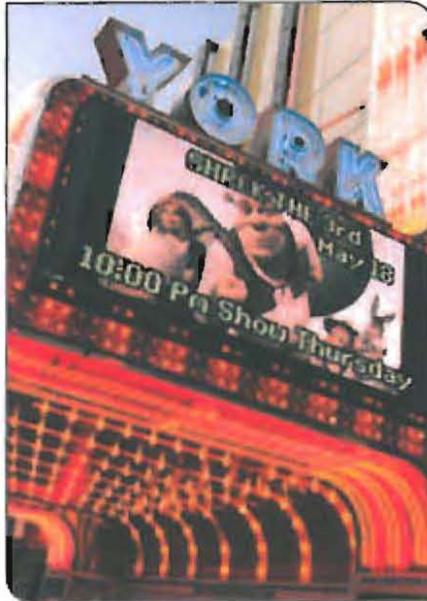
The Federal Government has accepted the use of this technology in signage along the roadways. Over forty State Governments have specifically adopted regulations allowing for its usage. In fact, digital signs are found throughout the United States.

RECOMMENDATIONS

There are two basic types of safety studies in the United States: Statistical and Human Factors. Neither type of study has ever shown that digital signs cause an increase in accidents or are a hazard to the traveling public.

Statistical studies look at multiple locations and attempt to determine whether the introduction of a stimulus (in this instance an EMC) caused an increase in accidents. The study begins by looking at traffic data at specific locations, for a number of years before the digital sign is erected. This data provides a baseline by which to judge whether there was an increase in accidents. The researcher then analyzes the same data that is present for these locations after the digital sign is erected. No statistical study has ever shown that digital signs cause an increase in accidents. In fact, a 2012 study by Texas A&M University researched over 120 locations of EMCs in four states, and found that there is "no statistically significant impact between the installation of on-premise digital signs and an increase in crashes."

Human Factors studies look at the way in which a stimulus affects a driver. Such studies have been done on any number of stimuli: eating and drinking, changing the radio-A/C dials, texting, etc. This type of study looks at how a driver may become distracted by a stimuli and how such distraction could increase the likelihood of an accident. No such study has ever found that digital signs are so distracting as to be the cause of an accident.



ISA INTERNATIONAL
SIGN ASSOCIATION

1001 North Fairfax Street, Suite 301
Alexandria, VA 22314

(703) 836-4012 Phone
(703) 836-8353 Fax

www.signs.org



Model On-Premise Sign Code

Andrew D. Bertucci
Richard B. Crawford, Esq.

Offered as a model of suggested means that may be found appropriate for local regulation of on-premise signs. No expressed or implied warranty is made that any of the provisions of this model will withstand the scrutiny of a constitutional challenge, and/or be in conformance with prevailing or future requirements imposed by local, state, or national law.



UNITED STATES SIGN COUNCIL



UNITED STATES SIGN COUNCIL FOUNDATION

Since 1996, the United States Sign Council, through its research arm, the United States Sign Council Foundation, has published fourteen major academic studies covering the full range of on-premise sign legibility, placement, illumination, community impact, and traffic safety issues.

This work, by university research teams specializing in human factors and traffic engineering disciplines, has enabled the United States Sign Council to develop guideline standards and models designed to facilitate development of performance oriented community sign systems based on empirical scientific research.

Executive Offices:
211 Radcliffe Street, Bristol, PA 19007-5013
215-785-1922 / Fax: 215-788-8395 / e-mail: ussc@ussc.org / www.ussc.org

names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office.

There have been several cases involving signs and the Lanham Act since 1982. No case has made its way to the US Supreme Court. Federal district courts have taken differing approaches to signs and the Lanham Act.

On the one hand, the 2nd Circuit Federal Appellate Court of New York rejected a Lanham Act challenge to a local sign code that required a business owner to change the color or some other element of a federally registered trademark: *Lisa's Party City, Inc. v. Town of Henrietta*, 2 F.Supp.2d 378, 1999 (2d Circuit).

And on the other, two cases have come out of the 9th Circuit in Arizona upholding a challenge to local sign content and color controls: *Blockbuster Videos, Inc. v. City of Tempe*, 141 F.3d 1295, C.A.9 (Ariz.), 1998 (9th Circuit) and *Desert Subway, Inc. v. City of Tempe*, 322 F.Supp.2d 1036, D.Ariz., 2003 (9th Circuit).

In the most recent case, two local Subway franchisees in Tempe, Arizona, challenged sign color restrictions imposed by the City. The City denied Subway the use of their standard yellow and white colors. Subway et. al. filed suit in federal court pursuant to Lanham Act protections and on First Amendment grounds (control of a business's colors = control of the content of the business's sign). In layman's terms, the City said that it could control and/or dictate the business's sign colors, even if these colors did not follow the registered trademark. In the end, the federal court agreed with Subway: the Lanham Act protected their sign and their colors, the court required the City to allow Subway to use its trademarked yellow and white colors.

Some commentators have reviewed these cases and stated that there is just an unfortunate split between the circuits. A careful reading of the *Party City* case, however, reveals that there are substantial weaknesses in the court's decision, and that municipalities should therefore take particular care when attempting to regulate in the area of trademarked names, logos and graphics, particularly since the language of the Lanham Act is clear and unambiguous on its face. A resource for information and analysis of the *Party City* case can be found in a September 1998 Southern California Law Review article titled: "*Regulating Trademarks on Exterior Signs: Should Local Law Trump the Lanham Act and the Constitution*" by Professor Roberta Rosenthal Kwall.

Regulation of Electronic Message Centers (EMCs)

The Model deals with the subject of Electronic Message Center signs (also referred to as digital signs or computer-controlled electronic signs) on a zoning district-by-district basis. Electronic Message Center control and code enforcement issues have become a matter of great interest at the municipal level across the United States. This interest has been spurred primarily by the availability of EMC technology, its increasing quality, and the interest of sign owners in utilizing the technology.

Further information on Electronic Message Centers (EMCs) can be found in the Model Code itself – in the definitional section and Section 20 on EMC regulation.

Municipalities typically govern EMC signs by creating valid time, place and manner regulations. From a legal and practical standpoint, experience indicates that regulation of EMC signs is preferred over an outright ban. Some communities have attempted to implement a prohibition on EMC signs (see the New Hampshire case *Naser Jewelers, Inc. v. City of Concord*) but it should be noted that there has been a heavy cost associated with these types of bans: legal and administrative costs to the municipality to defend such a ban; acrimony created within the community by the denial of this new communication technology without a scientific or traffic safety research basis; loss of the benefits created by enhanced EMC communication. In addition, a substantial percentage of EMC signs are installed at churches, municipal buildings, libraries, fire and rescue facilities, hospitals and out-patient medical offices. Therefore, it would seem that a more prudent and balanced approach to EMC regulation based on sound scientific principles could serve all stakeholders involved in these decisions, both in the long and short terms.

In regard to traffic safety issues and EMC signs, a municipality can rely on this statement to be true: *up to this time, research has shown no correlation between EMC signs and traffic accidents, and EMC signs have not been found to be a distraction having impact on the driving task or to cause unsafe driving behavior that causes an accident.*

Some researchers and regulators have offered opinions and theories about EMC signs and so-called distractions, but there has been no direct scientific research or proof of these distractions and EMC signs. The term “distraction” in and of itself is a pejorative term, suggesting a negative outcome or result. What research on motorist behavior has shown is that drivers engage in a wide variety of activities while operating a motor vehicle, and some for 2 seconds or longer. Some activities that drivers engage in have a positive effect on motorist performance, even though the driver’s eyes are away from the road. Examples of this would be checking the rear view mirror, checking the side mirrors, or checking the speedometer. Other activities that drivers engage in have a demonstrated negative effect on motorist performance – most notably cell phone use and texting while driving. Finally, other activities appear to have no effect either way – positive or negative – on driver performance, and EMC signs fall into this category. Drivers look at EMC signs but their driving performance is not affected, and that is why accident and driver distraction research fails to show any correlation with EMC signs.

Others have argued that municipalities have a legal basis under the First Amendment to ban or severely restrict EMC technology based on aesthetic concerns alone. Here too some caution should be employed by any municipality considering such action. Several questions should be thoroughly explored at the outset: (1) can a benefit to the community be substantiated or quantified in an objective fashion, without reliance on subjective or individual opinions? (2) if one municipality can ban EMC signs based on aesthetic considerations under the First Amendment, then all municipalities across the United States can implement such a

ban. Therefore it follows that all sign users can be denied what is essentially more modern sign technology, and the entire EMC sign industry can be extinguished, if a ban can be implemented under the First Amendment, based on aesthetics. These and other questions should be given appropriate consideration.

Another area where municipal regulation could create unforeseen legal challenge is in regard to the frequency that an EMC sign can change its message. A local Code provision that limits the ability of an EMC to change its message to once every 24 hours, or even once every hour, is essentially a *de facto* ban on EMC technology. Given the significant investment that a sign owner must make in acquiring an EMC sign, severe restrictions on the ability of the sign owner to utilize said EMC will serve as a substantial deterrent to the acquisition of the technology. The very purpose of the EMC technology is to allow a sign owner the ability to communicate information and different messages in a shorter period of time, and if that ability is severely restricted, the utility of the sign is substantially diminished.

The bottom line for municipalities is that there are a wide variety of tools available in creating equitable time, place and manner EMC regulations, and these regulations can be custom-tailored for each municipality or specific zoning district.

Sign Regulations by Zone

The following Model Code contains provisions that are categorized by zoning district. Traditional zoning district nomenclature is used. Individual municipalities may have more zones, finer distinctions between zoning districts, and/or different terminology. It is the intent of the Model to provide general zoning classifications and allow municipalities to then adapt the code language to fit local conditions and the format of each local zoning ordinance overall.

iv. Banners that do not meet the regulations of this subparagraph, must meet the standards for permanent signs.

(4) Temporary Wall or Fascia Signs. One (1) temporary wall sign is allowed per street frontage in the Commercial and Industrial Zones. Temporary wall signs may be up to thirty-two (32) square feet in area. Temporary wall signs may not extend above roof lines. Extensions into the right-of-way are prohibited. A temporary wall sign may be displayed no longer than ninety (90) days per calendar year.

(5) Temporary Freestanding or Portable Signs. One (1) temporary freestanding sign is allowed per property in the Commercial Zones and is not counted in the total square footage of permanent signage allowed on the site. Temporary freestanding signs may be up to thirty-two (32) square feet in area. Extensions into the right-of-way are prohibited. A temporary freestanding sign may be displayed no longer than ninety (90) days per calendar year.

Section 20: Electronic Message Centers

A. In the Office, Professional, Commercial and Industrial Zones, Electronic Message Centers (EMCs) are permitted in accordance with the sign areas noted in Table 2 (see Page 38) or Table 3 (see Page 39) respectively.

B. Additional general EMC regulations:

(1) An EMC sign may be a portion of a building sign or freestanding sign, or may comprise the entire sign area.

(2) All EMC signs shall have automatic dimming controls, either by photocell (hardwired) or via software settings, in order to bring the EMC lighting level at night into compliance with Section 21 of this Code "Sign Illumination Standards".

C. EMC regulations by Zone

(1) In Residential Zones, EMC signs are permitted only in certain circumstances by Special Exception in accordance with Section 16 (G) of this Code. They are otherwise prohibited in Residential Zones.

(2) In Residential Zones, where permitted, EMC signs shall have a minimum display time of twelve (12) seconds. The transition time between messages and/or message frames is limited to one (1) second.

(3) In Residential Zones, where permitted, the following EMC display features and functions are prohibited: scrolling, traveling, flashing,

spinning, rotating, fade, dissolve, any other moving effects, and all dynamic frame effects or patterns of illusionary movement or simulated movement.

(4) In Office and Professional Zones, EMC signs shall have a minimum display time of eight (8) seconds. The transition time between messages and/or message frames is limited to three (3) seconds and these transitions may employ fade, dissolve, and or other transition effects.

(5) In Office and Professional Zones, the following EMC display features and functions are prohibited: continuous scrolling and/or traveling, flashing, spinning, rotating, and similar moving effects, and all dynamic frame effects or patterns of illusionary movement or simulating movement.

(6) In Commercial and Industrial Zones, all EMC display features and functions are permitted, with the exception of (a) flashing, which is prohibited, and (b) full motion video or film display via an electronic file imported into the EMC software or streamed in real time into the EMC. Full motion video as described shall be permitted by special exception only.

Author's clarification notes:

1. Electronic Message Center control and code enforcement issues have become a matter of great interest at the municipal level across the United States. This interest has been spurred primarily by the availability of EMC technology, its increasing quality, and the interest of sign owners / end users in utilizing the technology.

2. Most EMC signs installed today are illuminated via LEDs, or light emitting diodes. LEDs are the current industry standard for the illumination of EMC signs, and it is likely that this will remain so for the near future, until another technology is perfected that is both tolerant to outdoor environmental conditions, sufficiently bright, and cost effective. There may be other sources of illumination in the near future, so the term EMC is intended to refer to any on-premise sign that can display messages and change them at regular intervals via a computer-controlled interface.

3. From a legal and practical standpoint, experience indicates that local control of EMC signs is preferred over an outright ban. Some communities have attempted to implement a prohibition on EMC signs, but it should be noted that there has been a heavy cost associated with these types of bans – legal and administrative costs to the AHJ to defend such a ban; acrimony created within the community by the denial of this new communication technology without a scientific or traffic safety research basis; loss of the benefits created by enhanced EMC communication. In addition, a substantial percentage of EMC signs are installed at churches, municipal buildings, libraries, fire and rescue facilities, hospitals and out-patient medical offices. Therefore, a more prudent and balanced approach to EMC regulation based on sound scientific principles may serve the local AHJ in both the long and short terms.

4. In regard to traffic safety issues and EMC signs, a local AHJ can rely on this statement to be true: up to this time, research has shown no correlation between EMC signs and traffic accidents, and EMC signs have not been found to be a distraction having impact on the driving task or to cause unsafe driving behavior that causes an accident in driver distraction studies. Some have offered opinions and theories about EMC signs and so-called distractions, but there has been no direct scientific research on these distractions and EMC signs. The term "distraction" in and of itself is a pejorative term, suggesting a negative outcome or result. What research on motorist behavior has shown is that drivers engage in a wide variety of activities while operating a motor vehicle, and some for two (2) seconds or longer. Some activities that drivers engage in have a positive effect on motorist performance, even though the driver's eyes are away from the road. Examples of this would be checking the rear view mirror, checking the side mirrors, or checking the speedometer. Other activities that drivers engage in have a demonstrated negative effect on motorist performance – most notably cell phone use and texting while driving. Finally, other activities appear to have no effect either way – positive or negative – on driver performance, and EMC signs fall into this category. Drivers look at EMC signs but their driving performance is not affected, and that is why accident and driver distraction research fails to show any correlation with EMC signs.

5. All stakeholders agree that EMC lighting levels must be adjusted at night. In order for an EMC to be visible and legible during the day, the EMC sign must be energized or illuminated – it must have sufficient brightness to be seen while the sun is present. At night, however, EMC brightness must be adjusted to a much lower level, so that the sign is not over-bright and/or create glare so that a motorist cannot read the sign. Most EMC manufacturers have technology built into their products to accomplish this lighting level adjustment, typically using photocells and/or software timing controls. Section 20 coordinates with the general lighting standards of this Code contained in Section 21 Sign Illumination Standards to insure that all EMCs have an appropriate lighting level at night, based on the needs of the motorist and traffic safety. This standard is a "Luminance" standard, or an objective measurement and control of the actual brightness of the EMC sign, based on on-premise sign research.

6. Section 20 provides regulations for "display time" on an EMC sign. Display time is sometimes also referred to as a "change rate", and is intended to describe the rate at which a message can be changed on the EMC display panel.

7. EMC signs are capable of a wide range of dynamic message and image presentations as well as visual effects including simple scrolling or moving message effects to full video display. Since no negative correlation between on-premise EMC signs and traffic safety has been demonstrated by current research, any restriction on the various operational capabilities of EMC signs are necessarily imposed for aesthetic purposes only.

In placing operational restrictions on EMC sign use in Residential and Professional Zones as an aesthetic consideration, this Model accepts the premise that these zones are not normally commercially active, and do not require the more visually dynamic forms of on-premise communication necessary for the rapid transfer of commercial speech in Commercial and/or Industrial Zones.

Since neither an aesthetic nor traffic safety justification can be advanced for placing similar restrictions on the dynamic operational capabilities of EMC signs in Commercial

and/or Industrial Zones, the Model – except for prohibition of flashing and provision that video display be subject to special exception – places no specific prohibitions on EMC operational usage in those zones. The AHJ, however, in assessing local conditions

involving community aesthetic considerations, may place specific usage restrictions as it determines to be appropriate, or, as the Model suggests regarding video usage, make certain operational usage features of EMC signs within its jurisdiction are subject to special exception.

The prohibition on EMC video display is intended to cover the display of videos, films, motion video clips, and streaming video images that are not a part of the standard EMC software. It is not intended to prohibit the use of standard effects that are a part of the EMC software capabilities, which sometimes can be confused with actual video. These permitted effects are generally shown in the background of a message (flag waving, leaves falling, clouds passing) and are not the primary EMC content or message, but merely a design element intended to compliment the primary communication.

Each AHJ may make a determination in regard to zones where EMC video capabilities enhance the character of the zone, and where they may be prohibited, based on local conditions.

Section 21: Sign Illumination Standards

Signs may be illuminated consistent with the following standards:

A. A sign in any district may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred fifty (750) cd/m² or Nits, regardless of the method of illumination.

B. Signs that have external illumination, whether the lighting is mounted above or below the sign face or panel, shall have lighting fixtures or luminaires that are fully shielded.

C. All illuminated signs must comply with the maximum luminance level of seven hundred fifty (750) cd/m² or Nits at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by the NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions, when required or appropriate.

D. On-premise signs do not constitute a form of outdoor lighting at night, and are exempt from any other outdoor lighting regulations that the AHJ has adopted, or will adopt in the future.

these additional freestanding signs shall be sixty (60) percent of the sign area permitted by Table 2 for Signs in Commercial and Industrial Zones. Sign height shall be in conformance with Table 2.

Table 2 - Freestanding Signs in Commercial & Industrial Districts Values indicated are maximum limits on sign size and height A = Sign Area in Square Feet / H = Sign Height in Lineal Feet										
Zoning District 	Downtown		Neighborhood Commercial		Highway Commercial		Industrial		Limited Access Highway	
Speed Limit 	A	H	A	H	A	H	A	H	A	H
25	24	14	50	22	78	26	78	26		
30	28	16	72	26	112	30	112	30		
35	32	18	98	30	153	36	153	36		
40			128	34	200	42	200	42		
45			162	38	253	48	253	48		
50			200	42	312	52	312	54		
55					378	56	378	60	457	66
60					450	60	450	66	544	70
65									639	74
70									741	78
75									850	86

(2) Building Signs:

a. Building signs include wall or fascia signs, roof signs, and signs otherwise permanently applied to walls or other building surfaces.

b. The total area of all parallel wall signs applied to any given facade shall not exceed the area computed as a percentage of the building facade in elevation view, including window and door areas and cornices to which they are affixed or applied in accordance with Table 3 for Parallel Signs in Commercial and Industrial zones.

c. In the case of a shopping center or a group of stores or other business uses on a lot held in single and separate ownership, the provisions of this section relating to the total area of signs permitted on a premises shall apply with respect to each building, separate store, separate storefront, or separate use. Only wall signs shall be permitted for individual establishments in a Shopping Center or on a property

with more than one use, entity or business (multi-use or multi-tenant properties; these properties may also have one (1) freestanding sign per street frontage).

Table 3 - Parallel Signs	
Distance of sign from road or adjacent commercial or Industrial zone.	Percentage of building elevation facade permitted for sign area
0 to 100 feet	Fifteen (15%)
101 to 300 feet	Twenty (20%)
Over 301 feet	Twenty-Five (25%)

Author's clarification notes:

Tables #2 and #3 above are included in order to provide the local AHJ with specific dimensional values for sign area, sign size and sign height, all based on existing scientific research related to on-premise signs. The intent of this Code is to provide guidelines for the regulation of on-premise sign dimensions that are based on scientific principles, and thereby assist the local AHJ in crafting a Sign Code that is fact-based, and to eliminate subjective or individual preferences, which can vary greatly.

These standards are objective in nature. They have their basis in furthering the interests of traffic safety. They will insure that on-premise signs in the Commercial and Industrial zones have adequate visibility and legibility for motorists, again in the interests of public safety.

The primary goal of these standards is to insure that all on-premise signs have sufficient area and height to provide a motorist with adequate time and travel distance to detect a sign, read and understand its contents, and then execute an appropriate driving maneuver. Factors that would impede this process (making the sign smaller, lowering its height) would be at odds with traffic safety principles, and should be avoided by a local AHJ, assuming that the goal of public and motorist safety is paramount.

(3) Roof Signs, Special Considerations:

a. Roof signs are permitted by Special Exception in the Commercial and Industrial Zones and are in lieu of a building or wall sign. For permitted roof sign area, see Table 3 above for parallel signs in Commercial and Industrial Zones. The height of any roof sign above the highest architectural point of the building to which it is mounted shall not exceed the percentage of the vertical dimension of the building facade parallel to the sign in accord with sections (1) and (2) below. Measurements shall be computed from the highest building point to the top of the sign.

Electric Sign - Any sign activated or illuminated by means of electrical energy.

Electronic Message Center or Sign (EMC) - An electrically activated changeable sign whose variable message and/or graphic presentation capability can be electronically programmed by computer from a remote location. Also known as an EMC. EMCs typically use light emitting diodes (LEDs) as a lighting source. (See also following terms principally associated with Electronic Message Centers: Display Time, Dissolve, Dynamic Frame Effect, Fade, Frame, Frame Effect, Scroll, Transition, Travel)

Externally Illuminated Sign – See Illuminated Sign.

Exterior Sign - Any sign placed outside a building.

Facade - See Building Facade.

Fade – A mode of message transition on an Electronic Message Sign accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Fascia Sign - See Wall Sign

Flashing Sign - See Animated Sign, Electrically Activated.

Font – A set of letters, numerals, symbols, or shapes conforming to a specific set of design criteria.

Foot Candle – An English unit of measurement of the amount of light falling upon a surface (illuminance). One foot candle is equal to one lumen per square foot. Can be measured by means of an illuminance meter.

Foot Lambert – An English unit of measurement of the amount of light emitted by or reflecting off a surface (luminance) equivalent to 3.4262591 candelas per square meter.

Frame – A complete, static display screen on an Electronic Message Sign.

Frame Effect – A visual effect on an Electronic Message Sign applied to a single frame. See also Dynamic Frame Effect.

Freestanding Sign - A sign principally supported by one or more columns, poles, or braces placed in or upon the ground. May also be referenced as a Ground or Monument Sign. Refer also to Section 8 for visual reference examples.

Frontage (Property) - The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

ATTACHMENT 3

at that time, designated as a state highway, shall be entitled to the issuance of an outdoor advertising sign permit by the Department of Transportation upon application by the owner of the sign and the payment of the fee established by the department under ORS 377.729.

(2) Notwithstanding the provisions of ORS 377.700 to 377.780, the owner of any outdoor advertising sign visible from a road or street that is designated as a state highway after May 30, 2007, is entitled to the issuance of an outdoor advertising sign permit for the sign upon application by the owner of the sign, payment of the fee established by the department under ORS 377.729 and receipt of the affidavit required under ORS 377.723, if the sign was lawfully located within a commercial or industrial zone at the time of designation as a state highway. [1977 c.265 §7; 1993 c.376 §1; 2001 c.104 §127; 2001 c.750 §4; 2007 c.199 §6]

Note: 377.712 was enacted into law by the Legislative Assembly but was not added to or made a part of any series in ORS chapter 377 by legislative action. See Preface to Oregon Revised Statutes for further explanation. (Signs, Generally)

377.715 Application of ORS 377.700 to 377.844; prohibition against erection or maintenance of certain signs not in compliance with law. ORS 377.700 to 377.844, and the rules adopted pursuant thereto, apply to signs erected or maintained outside the right of way along state highways and visible to the traveling public from a state highway. A person may not erect or maintain a sign visible to the traveling public from a state highway, except where permitted outside the right of way of a state highway, unless the sign complies with the provisions of ORS 377.505 to 377.540 and 377.700 to 377.844, and the rules adopted pursuant thereto. A person may not erect or maintain a sign on the right of way of a state highway, other than a traffic control sign or device. [1971 c.770 §8; 1973 c.790 §2; 1974 c.33 §2; 1975 c.336 §2; 1983 c.111 §2; 1987 c.336 §3; 1999 c.877 §3; 2007 c.199 §7]

377.720 Prohibited signs; exceptions. A sign may not be erected or maintained if it:

(1) Interferes with, imitates or resembles any traffic control sign or device, or attempts or appears to attempt to direct the movement of traffic.

(2) Prevents the driver of a motor vehicle from having a clear and unobstructed view of traffic control signs or devices or approaching or merging traffic.

(3) Contains, includes or is illuminated by any flashing, intermittent, revolving, rotating or moving light or moves or has any animated or moving parts. This subsection does not apply to:

(a) A traffic control sign or device.

(b) Signs or portions thereof with lights that may be changed at intermittent intervals by electronic process or remote control that are not outdoor advertising signs.

(c) A tri-vision sign, except that a tri-vision sign may not be illuminated by any flashing, intermittent, revolving, rotating or moving lights.

(d) A digital billboard, only if the digital billboard:

(A) Is not illuminated by a flashing light or a light that varies in intensity;

(B) Has a display surface that does not create the appearance of movement;

(C) Does not operate at an intensity level of more than 0.3 foot-candles over ambient light as measured at a distance of:

(i) 150 feet, if the display surface is 12 feet by 25 feet;

(ii) 200 feet, if the display surface is 10.5 feet by 36 feet; or

(iii) 250 feet, if the display surface is 14 feet by 48 feet;

(D) Is equipped with a light sensor that automatically adjusts the intensity of the billboard according to the amount of ambient light;

(E) Is designed to either freeze the display in one static position, display a full black screen or turn off in the event of a malfunction;

(F) If available where the digital billboard is located, uses renewable energy resources to power the digital billboard, including but not limited to the following:

(i) Wind energy;

(ii) Solar photovoltaic and solar thermal energy;

(iii) Wave, tidal and ocean thermal energy;

(iv) Geothermal energy; and

(v) The purchase of carbon credits; and

(G) If wind energy is used, as specified in subparagraph (F)(i) of this paragraph, uses moving parts for the purpose of generating the wind energy to power the billboard.

(4) Has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a state highway, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle or otherwise to interfere with the operation thereof.

(5) Is located upon a tree, or painted or drawn upon a rock or other natural feature.

(6) Advertises activities that are illegal under any state or federal law applicable at the location of the sign or of the activities.

(7) Is not maintained in a neat, clean and attractive condition and in good repair.

(8) Is not able to withstand a wind pressure of 20 pounds per square foot of exposed surface.

(9) Is on a vehicle or trailer that is located on public or private property. This subsection does not apply to a vehicle or trailer used for transportation by the owner or person in control of the property. [1971 c.770 §15; 1973 c.790 §3; 1977 c.256 §2; 1981 c.392 §1; 1999 c.877 §4; 2007 c.199 §8; 2011 c.562 §2]

377.723 Affidavit of city or county necessary for issuance of sign permit; requirements of affidavit.

Notwithstanding any other provision of ORS 377.700 to 377.844, the Department of Transportation shall not issue a permit under ORS 377.725 or 377.767 unless the applicant for the permit submits affidavits that meet the following requirements:

(1) The applicant must submit an affidavit from each city or county that would have jurisdiction over the proposed sign.

(2) Each affidavit must contain a certification by the respective city or county that the proposed sign would comply with all applicable ordinances, plans, rules and other requirements of the city or county.

(3) Each affidavit must be on a form prepared by the department. [1981 c.329 §2; 1987 c.336 §4; 1993 c.741 §55]

377.725 Permit; application; fee; cancellation; rules. (1) A person may not erect, control, relocate or reconstruct an outdoor advertising sign unless the Department of Transportation has issued a permit for the erection, control, relocation or reconstruction of the sign.

(2) A person who applies for a permit to the Director of Transportation shall complete forms furnished by the director. The permit application shall include a precise description of the outdoor advertising sign and such other information as the director considers necessary or desirable to determine compliance with ORS 377.700 to 377.844. The director shall issue a permit for an outdoor advertising sign that complies with ORS 377.700 to 377.844. A valid permit may be transferred to another person upon written notice to the director.

(3) A permit may not be issued for an outdoor advertising sign located adjacent to an interstate highway or freeway unless the director determines that access to the sign from the interstate highway or freeway can be obtained without violating the access control line of the interstate highway or freeway.

(4) A permit shall be renewed annually on the first day of January. Application for renewal of a permit shall be filed prior to expiration of the term of the permit. If application for renewal of a permit is filed within 30 days after the expiration of the term, the permit shall be granted if any additional fee specified by the department in rules adopted under ORS 377.729 is paid at the time the application is filed. Any permit not renewed in accordance with this section shall be canceled.

(5) Permit fees for purposes of this section are as established by the department by rule under ORS 377.729.

(6) A permit shall be issued for one year. The applicable fee shall accompany the permit application. A fee may not be prorated for a fraction of a year or be refunded if the outdoor advertising sign is removed.

(7) The display surface of an outdoor advertising sign may be changed or cutouts may be attached or removed within the sign area without obtaining a permit. However, a permit shall be obtained if the outdoor advertising sign is reconstructed.

(8) A reconstruction permit may be issued for the addition of another display surface on the opposite side of an existing, conforming sign under permit, that is no larger than the existing display surface.

(9) The director shall require removal of a sign or shall cancel a permit and require removal of an outdoor advertising sign as provided by ORS 377.775 if the director finds a sign has been erected, maintained or serviced from the highway right of way at any portion of the right of way where the department has acquired rights of access to the highway or rights of access have not accrued to the abutting property. If there is no permit for the outdoor advertising sign, then the director shall require removal of the outdoor advertising sign. In addition, the

(10) Denied Permit Applications. If the Department denies an application, it will consider that site as conflicting with other applications:

- (a) Until the time to request a hearing elapses without a hearing request from the applicant; or
- (b) If a hearing is requested, until the time to request an appeal on the final order has elapsed or until the final appellate court enters a judgment on the matter, whichever is later.
- (c) The Department will keep the original application and any accompanying documents and return a copy after an application is denied.

(11) Issued Permits.

- (a) The permit will specify the 180th day by which the sign must be constructed.
- (b) Within 190 days of permit issuance, the permittee must notify the Department in writing if the action described in the permit has been completed, and include at least one photograph demonstrating that completion. For a reconstruction permit or a relocation permit based on a relocation credit, the notice must state that the new sign has been constructed. For a direct relocation the notice must state that the new sign has been constructed and the former sign on which the permit was based has been removed. If the Department has not received the notification within 180 days the Department will alert the permittee about the upcoming 190-day deadline. If the permittee fails to submit the written notice and photograph within the time allowed, the Department will cancel the permit to relocate or reconstruct, and the permit will revert to its prior status. No fees will be refunded.
- (c) "Constructed" means that the structure and all sign faces are permanently in place and the permit plate is attached. "Removed" means the taking down, removing, or eliminating all sign structure elements that are visible from the state right of way

Stat. Auth.: ORS 184.616, 184.619, 377.715, 377.725

Stats. Implemented: ORS 377.715, 377.725

Hist.: HWD 2-2009, f. 3-20-09, cert. ef. 3-23-09; HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12

734-060-0007

Digital Billboard Procedures

(1) This rule describes the process for applying for a permit for a digital billboard.

(2) Definitions for the purposes of this rule:

- (a) "Sign" means the sign structure, the display surfaces of the sign, and all other component parts of the sign.
- (b) "Retire" means to use a relocation credit such that it no longer exists or to remove an existing sign.
- (c) "Bulletin" means an outdoor advertising sign with a display surface that is 14 feet by 48 feet.
- (d) "Poster" means an outdoor advertising sign with a display surface that is 12 feet by 25 feet.
- (e) "Digital Billboard" means an outdoor advertising sign that is static and changes messages by any electronic process or remote control, provided that the change from one message to another message is no more frequent than once every eight seconds and the actual change process is accomplished in two seconds or less.

(3) Qualifications for receiving a digital billboard state sign permit:

(a) The proposed site and digital billboard must meet all requirements of the OMIA including, but not limited to, the following:

- (A) the digital billboard is not illuminated by a flashing or varying intensity light.
- (B) the display surface of the digital billboard does not create the appearance of movement.
- (C) the digital billboard must operate at an intensity level of not more than 0.3 foot-candles over ambient light as measured by the distance to the sign depending upon its size.
- (D) The distance measurement for ambient light is: 150 feet if the display surface of the sign is 12 feet by 25 feet, 200 feet if the display surface is 10.5 by 36 feet, and 250 feet if the display surface is 14 by 48 feet.

(b) Applicant must submit a completed application for a digital billboard state sign permit using the approved form that may be obtained by one of the following methods:

- (A) Requesting from Sign Program Staff by phone at 503-986-3656;
- (B) Email: OutdoorAdvertising@odot.state.or.us;

(C) Website http://www.oregon.gov/ODOT/HWY/SIGNPROGRAM/contact_us.shtml

(c) The Department shall confirm that any existing permitted Outdoor Advertising Sign or relocation credit being retired for the purpose of receiving a new digital billboard state sign permit has been removed within the 180 days allowed to construct the new permitted sign. The Department will not charge a Banking Permit Fee for the cancellation of state sign permits retired for the purpose of receiving a new digital billboard permit.

(4) This section sets forth the criteria for determining the required relocation credits or existing permitted signs that an applicant shall retire to receive one new digital billboard state sign permit:

(a) Applicants who own 10% or less of all active relocation credits at the time the application is submitted shall either remove one existing state permitted outdoor advertising sign with a display area of at least 250 square feet or provide one active relocation credit of at least 250 square feet and retire that permit. Applicants meeting these criteria are not limited to either "Bulletin" or "Poster" billboards.

(b) Applicants who own more than 10% of all active relocations credits shall apply for a new digital billboard state sign permit as follows:

(A) For a digital billboard that is intended to be a bulletin, the applicant has three options:

(i) Remove two existing bulletins, retire the permits for those signs, and retire three relocation credits; or

(ii) Remove one existing bulletin and two existing posters, retire those permits and retire three active relocation credits; or

(iii) Remove four existing posters, retire the permits for those signs, and retire three relocation credits.

(B) For a digital billboard that is intended to be a poster, the applicant has two options:

(i) Remove two existing posters, retire the permits for those signs, and retire three relocation credits;

(ii) Remove one existing bulletin, retire the permit for that sign, and retire three relocation credits.

(c) For an active relocation credit to be eligible it must be at least 250 square feet. All permits and relocation credits submitted under these procedures will be permanently cancelled and are not eligible for renewal.

(d) Any state sign permits submitted for retirement must include the written statement notifying the Department that the "lease has been lost or cancelled."

(5) The Department will determine the percentage of relocation credits owned by an applicant by dividing the total number of unused relocation credits by the total number of unused relocation credits owned by the applicant on the day the application is received.

(6) Two digital billboard state sign permits are required for any back to back or V-type digital sign. A separate application is required for each digital sign face.

(7) The first time a digital billboard is permitted it is not subject to the 100-mile rule in ORS 377.767(4). The site of the newly permitted billboard will become the established location for future reference.

(8) Relocation of permitted digital billboards. The Department will issue one digital relocation credit for each permitted digital sign that is removed. The digital relocation credit issued will be for the same square footage as the permitted digital sign that was removed. A digital relocation credit can only be used to relocate a digital billboard. A permitted digital sign can only be reconstructed as a digital billboard.

(9) Use of renewable energy resource. The applicant must provide a statement with the application that clarifies what, if any, renewable energy resources are available at the site and are being utilized. If none, then a notarized statement to that effect must be included with the application.

(10) All permitted digital billboards must have the capacity to either freeze in a static position or display a black screen in the event of a malfunction.

(a) The applicant must provide emergency contact information that has the ability and authority to make modifications to the display and lighting levels in the event of emergencies or a malfunction.

(b) The Department will notify the sign owner of a malfunction that has been confirmed by ODOT in the following instances:

(A) The light impairs the vision of a driver of any motor vehicle; or

(B) The message is in violation of ORS 377.710(6) or 377.720(3)(d).

(11) All digital billboard signs must comply with the light intensity and sensor requirements of ORS 377.720(3)(d).

(a) The Department will take measurements of the permitted digital billboard when notified that the sign has been constructed and the permit plate has been installed.

(b) The Department will use an approved luminance meter designed for use in measuring the amount of light emitted from digital billboards using the industry standard for size and distance as follows:

(A) 150 feet for 12'x 25'.

(B) 200 feet for 10.5'x 36'.

(C) 250 feet for 14'x 48'.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.729, 377.753

Stats. Implemented: ORS 377.710, 377.720, 377.750, 377.767

Hist.: HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12

734-060-0010

Criteria for Issuance of New Permits for Benches Utilized as Outdoor Advertising Signs

(1) New permits may be issued for a bus or transit bench utilized for an outdoor advertising sign (bench signs) and such signs may only be erected after a permit has been obtained from the Department of Transportation. These rules do not authorize the placement of any new bench, only the addition of an outdoor advertising sign to an already existing bench structure.

(a) Bench signs are prohibited where the sign would be visible to:

(A) An interstate highway;

(B) A full control access highway;

(C) Any state highway where the area adjacent to the highway is a designated scenic area under ORS 377.505 to 377.540; or

(D) Any state highway designated as a scenic byway, unless the sign was legally in place before the byway designation.

(b) Size. The maximum allowable size for a bench sign is 16 square feet and the sign shall not exceed two feet in height or eight feet in length excluding supports.

(c) Height. The maximum allowable height is four feet including supports.

(d) Special Requirements:

(A) Bench signs may only be located in a commercial or industrial zone or, if located in unzoned city street right of way, only where such right of way is adjacent to a commercial or industrial zone;

(B) Bench signs may only be located inside incorporated city limits or within an urban growth boundary;

(C) Bench signs may only be located at a bus or transit stop on an official city or urban transit system route. The applicant must provide official documentation, such as a route map produced by the transit system, showing that the site meets this requirement;

(D) Bench signs shall not be located on state highway right of way.

(f) These rules do not apply to any bench sign for which a preexisting outdoor advertising sign permit has already been issued under ORS 377.725.

(2) All signs subject to these regulations are also subject to the provisions of ORS 377.700 to 377.840 and 377.992 and to all applicable federal laws, regulations and agreements entered into by the Transportation Commission and the Federal Highway Administration.

(3) All signs erected under these regulations are also subject to any city or county ordinance or regulation.

(4) All bench signs granted permits under these rules are subject to removal in accordance with ORS 377.775.

Stat. Auth.: ORS 184.616, 184.619, 377.753

Stats. Implemented: ORS 377.753

Hist.: 1 OTC 17-1979(Temp), f. & ef. 7-19-79; 1 OTC 26-1979, f. & ef. 10-30-79; HWY 5-1993(Temp), f. & cert. ef. 7-23-93; HWY 6-1993, f. & cert. ef. 10-21-93; HWD 1-2009, f. & cert. ef. 2-20-09; HWD 6-2012, f. & cert. ef. 3-26-12

TIGARD

C. Balloons.

1. One inflatable, stationary balloon or one cluster of children's balloons firmly secured shall be allowed only if all of the following conditions are satisfied:
 - a. A City of Tigard sign permit is obtained for each single or cluster of balloons;
 - b. Each owner or legal occupant of property or a building shall be allowed one balloon per year;
 - c. A balloon sign shall be allowed to remain up for a period of no longer than 10 days per year;
 - d. A permit issued for a balloon will serve as one of the three sign permits allowed per business in a calendar year;
 - e. Balloons may be permitted as roof signs with a city sign permit;
 - f. The size of a balloon shall not exceed 25 feet in height; and
 - g. The balloon shall be secured to a structure on the ground and shall not be allowed to float in the air higher than 25 feet above the nearest building roof line.

D. Electronic message centers.

1. Electronic message center (variable message) sign regulations shall be as follows:
 - a. Electronic message center signs shall be permitted only in the C-G and MU-CBD zones, and at schools that front an arterial street where the sign is not less than 200 feet from an abutting residential use and is oriented to the arterial street.
 - b. The maximum height and area of an electronic message center sign shall be that which is stipulated in Section 18.780.130.
 - c. An electronic message center shall be allowed to substitute for one freestanding sign or one wall sign.
 - d. One electronic message center sign, either freestanding or wall-mounted, shall be allowed per premises.
 - e. With regard to light patterns:
 - i. Traveling light patterns ("chaser effect") shall be prohibited;
 - ii. Messages and animation shall be displayed at intervals of greater than two seconds in duration.

E. Freestanding freeway-oriented signs.

1. For signs requiring a permit under the Oregon Motorist Information Act, the city will determine pursuant to a Type 1 process whether the sign meets all applicable city standards and provide that determination to any applicant for a state permit consistent with ORS 377.723.

**City of The Dalles
Planning Commission Staff Report**

**Amendment to the
Land Use and Development Ordinance**

ZOA 90-14

Prepared by: Gene Parker, City Attorney

For: City of The Dalles Planning Commission

Procedure Type: Legislative Hearing

Meeting Date: February 5, 2015

Request: Amendment to the Land Use and Development Ordinance

Issue: Recommendation to City Council Concerning Proposed Regulations for Medical Marijuana Dispensaries

Applicant: City of The Dalles
Planning Department
313 Court Street
The Dalles, OR 97058

BACKGROUND INFORMATION

In 2014, the Oregon Legislature adopted Senate Bill 1531, which granted the authority to cities and counties to adopt “reasonable regulations” on the operation of medical marijuana dispensaries which are registered under the State of Oregon. Senate Bill 1531 provides that “reasonable regulations” include reasonable limitations upon the hours during which a medical marijuana facility can be operated, reasonable limitations upon where a medical marijuana facility can be located within the zoning districts which state law allow for the facilities to be located, and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana. Senate Bill 1531 also granted cities and counties the authority to adopt a moratorium upon the operation of

a registered medical marijuana dispensary until May 1, 2015. The City adopted such a moratorium by adoption of Special Ordinance No. 14-562 on April 14, 2014.

Under Oregon law, a medical marijuana facility must be located in an area that is zoned for commercial, agricultural or mixed use or as agricultural land, and it may not be located at the same address as a marijuana grow site. State law also provides that a medical marijuana facility must not be located within 1000 feet of the real property comprising a public or private elementary, second or career school attended primarily by minors.

Enclosed for the Planning Commission's review is a list of suggested changes to the City's Land Use and Development Ordinance (LUDO) to establish regulations concerning the operation of state licensed medical marijuana dispensaries. The proposed amendments would treat the dispensaries in the same manner as medical and dental offices, clinics and laboratories. The dispensaries would be allowed as an outright permitted use, and be restricted to three commercial zones; the Central Business Commercial District, the General Commercial District, and the Commercial Light Industrial District.

At the suggestion of Commissioner Chris Zukin, the proposed amendments incorporate siting distance restrictions which are currently imposed upon adult businesses in the LUDO. For your information, I have enclosed a map prepared by Wasco County staff that shows the location of existing schools and Sorosis Park, Thompson Track, and Kramer Field, and the location of various zoning districts in the city. The amendments include other provisions which have been adopted by other cities, including provisions requiring the dispensary to be located in a building; prohibiting outdoor storage of merchandise, raw material or other material associated with the dispensary operation; not allowing drive-up use; providing for proper disposal of marijuana remnants or byproducts; and requiring the dispensary to be registered with the State of Oregon, and to comply with all of the applicable administrative rules adopted by the Oregon Health Division, which regulates the dispensaries.

A copy of the proposed LUDO amendments has been sent to the Department of Land Conservation and Development as required by Oregon law. City staff is seeking the Commission's input upon the proposed regulations, and a recommendation to City Council concerning the adoption of the regulations.

NOTIFICATION

Notice of this public hearing was published in The Dalles Chronicle on January 25, 2015.

COMMENTS

As of the date of the preparation of this staff report, no comments were received.

ALTERNATIVES

- A. Staff Recommendation. Staff is recommending that the Planning Commission adopt a motion recommending to the City Council that the proposed amendments concerning regulation of medical marijuana dispensaries be approved.
- B. The Planning Commission could propose changes to the proposed amendments and adopt a motion recommending to the City Council that the proposed amendments concerning regulation of medical marijuana dispensaries as revised, be approved.
- C. The Planning Commission could vote to recommend to the Council that they amend the LUDO to include medical marijuana dispensaries as a permitted use in the Central Business Commercial, General Commercial, and Commercial Light Industrial zoning districts, and that the Council not adopt any regulations concerning the operation of medical marijuana dispensaries.

SUGGESTED LUDO AMENDMENTS TO ADDRESS
MEDICAL MARIJUANA DISPENSARIES

Revised 12/15/14

1. Add new definitions for Medical Marijuana Dispensary and Motor Vehicle in Section 2.030:

Medical Marijuana Dispensary - Any facility registered by the Oregon Health Authority under ORS 475.300 to 475.346, as now constituted, that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to qualifying patients.

Motor Vehicle – Every vehicle that is self-propelled, including tractors, fork-lift trucks, motorcycles, road building equipment, street cleaning equipment and any other vehicle capable of moving under its own power, notwithstanding the vehicle may be exempt from licensing under the motor vehicle laws of Oregon.

2. CBC - Central Business Commercial District. Revise Section 5.050.030(A)(11) to read as follows:

11. Medical and Dental Offices, Clinics, Laboratories, and Medical Marijuana Dispensaries. An application for a Medical Marijuana Dispensary shall also comply with the following criteria:

- a) The dispensary facility must be located more than 500 feet from any R-L, R-H, or R-M Residential District, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property in the R-L, R-H, or R-M Residential District.
- b) The Medical Marijuana Dispensary must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property on which the other facility is located:
 1. A public or private elementary, secondary or career school attended primarily by minors.
 2. A public library.
 3. A public park or recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.

- c) The dispensary facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary facility is prohibited.
- d) The dispensary facility shall not have a drive-up use.
- e) The dispensary facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the dispensary facility's exterior refuse containers.
- f) The dispensary facility shall be registered with the Oregon Health Authority under the State of Oregon's medical marijuana facility registration system under ORS 475.300 to 475.346, as now constituted, and meet the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

CG - General Commercial Zone District. Revise Section 5.060.020(A)(12) to read as follows:

12. Medical and Dental Offices, Clinics, Laboratories, and Medical Marijuana Dispensaries. An application for a Medical Marijuana Dispensary shall also comply with the following criteria:
- a) The dispensary facility must be located more than 500 feet from any R-L, R-H, or R-M Residential District, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property in the R-L, R-H, or R-M Residential District.
 - b) The Medical Marijuana Dispensary must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property on which the other facility is located:
 1. A public or private elementary, secondary or career school attended primarily by minors.
 2. A public library.
 3. A public park or recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.

- c) The dispensary facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary facility is prohibited.
- d) The dispensary facility shall not have a drive-up use.
- e) The dispensary facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the dispensary facility's exterior refuse containers.
- f) The dispensary facility shall be registered with the Oregon Health Authority under the State of Oregon's medical marijuana facility registration system under ORS 475.300 to 475.346, as now constituted, and meet the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

CLI - Commercial/Light Industrial. Revise Section 5.070.020(A)(14) to read as follows:

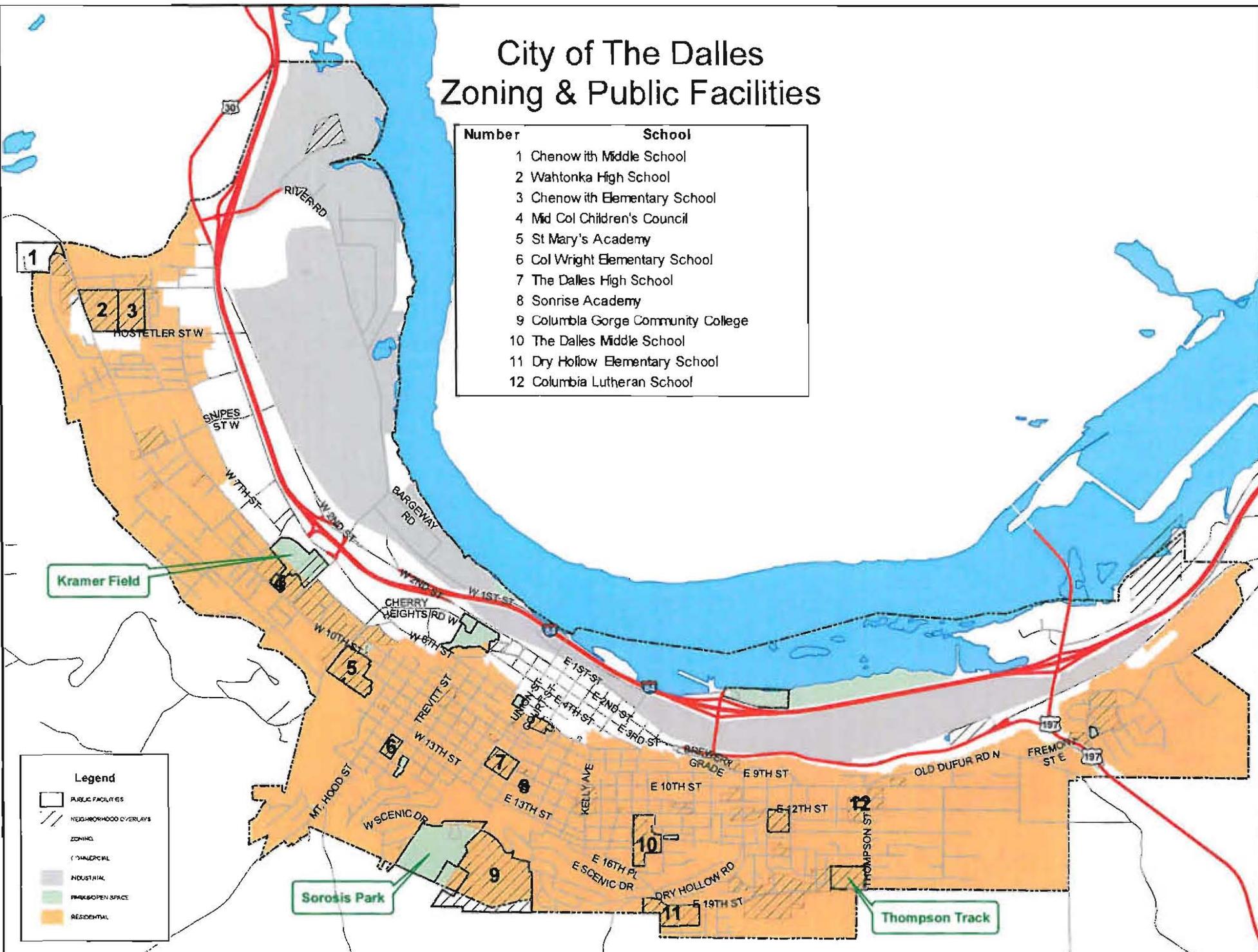
- 14. Medical and Dental Offices, Clinics, Laboratories, and Medical Marijuana Dispensaries. An application for a Medical Marijuana Dispensary shall also comply with the following criteria:
 - a) The dispensary facility must be located more than 500 feet from any R-L, R-H, or R-M Residential District, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property in the R-L, R-H, or R-M Residential District.
 - b) The Medical Marijuana Dispensary must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property line on which the dispensary facility is located to the closest edge of the property on which the other facility is located:
 - 1. A public or private elementary, secondary or career school attended primarily by minors.
 - 2. A public library.
 - 3. A public park or recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 - c) The dispensary facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational

vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary facility is prohibited.

- d) The dispensary facility shall not have a drive-up use.
- e) The dispensary facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the dispensary facility's exterior refuse containers.
- f) The dispensary facility shall be registered with the Oregon Health Authority under the State of Oregon's medical marijuana facility registration system under ORS 475.300 to 475.346, as now constituted, and meet the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

City of The Dalles Zoning & Public Facilities

Number	School
1	Chenoweth Middle School
2	Wahtonka High School
3	Chenoweth Elementary School
4	Mid Col Children's Council
5	St Mary's Academy
6	Col Wright Elementary School
7	The Dalles High School
8	Sonrise Academy
9	Columbia Gorge Community College
10	The Dalles Middle School
11	Dry Hollow Elementary School
12	Columbia Lutheran School



Legend

- PUBLIC FACILITIES
- NEIGHBORHOOD OVERLAYS
- ZONING
- COMMERCIAL
- INDUSTRIAL
- PARK/OPEN SPACE
- RESIDENTIAL

