

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)
the Use of the) Interpretation
Property at) No. 07-003
1608 – 2nd Avenue)

Background

This interpretation was requested by Clear Channel Outdoor (“CCO”), a billboard advertising company. The Seattle Land Use Code provides that new, off-premises advertising signs, or billboards, may be erected only upon removal of another lawful, existing off-premises advertising sign located in certain sites or zones. An existing sign generally qualifies for “relocation” under the Code only if it is “located on a site or in a zone where it is not permitted,” per Seattle Municipal Code (SMC) Section 23.55.014 A 1 b. SMC Section 23.55.014 A 5 says in part that advertising signs must be located at least 500 feet from any “community center.” An existing sign owned by CCO, located on a surface parking lot with the approximate address of 1608 2nd Avenue, is within 500 feet of a site occupied in part by the King County Needle Exchange (KCNE), which is a public service program intended to reduce the spread of HIV/AIDS and other blood-borne infections among injection drug users and their families and communities, according to the KCNE Internet website. The question raised for interpretation is whether the KCNE program is a “community center” for purposes of Section 23.55.014 A 5. If so, the CCO billboard would qualify for relocation under Section 23.55.014 A 1 b as a sign that does not conform to a development standard regulating the location of billboards.

Findings of Fact

1. The subject sign is located on property addressed in Department of Planning and Development (DPD) records as 1608 2nd Avenue. It is described as Lots 4, 5, 8, 9, and 12, Block 45, A. A. Denny’s 6th Addition, less portions condemned for adjacent streets. The property is developed with surface parking and the existing CCO billboard structure, which is constructed near the southwesterly corner of the property, with the sign facing north. The property will hereafter be referred to as Lots 4, 5, 8, 9, and 12.
2. According to the DPD “Arcview” land use map, Lots 4, 5, 8, 9, and 12 are zoned DMC 240'/290'-400': Downtown Mixed Commercial, with a structure height limit of 240 feet for portions of a structure containing nonresidential and live-work uses and a height limit between 290 and 400 feet for structures containing residential uses.

3. According to DPD permit records, permission was granted to construct the sign on Lots 4, 5, 8, 9, and 12 under Seattle Sign Permit No. 11023, issued November 5, 1985. There is one lawful sign face, City Registration No. 466, for a single-faced pole sign 49 feet in height, at 1608 2nd Avenue.
4. In January 2007, CCO applied for a sign permit, No. 6125689, to demolish the sign structure at 1608 2nd Avenue. According to CCO's letter requesting the subject interpretation, the application requested nonconformity status for the existing sign structure and pendency for billboard registration number 466. On January 17, 2007, DPD Sign Inspector Kent Hunnicutt sent CCO Real Estate Manager Olivia Voigts an e-mail denying pendency. CCO responded by filing the request for this interpretation.
5. SMC Section 23.84A.004 provides in part as follows:

“Billboard. See sign, advertising.”

The term “sign, advertising,” is also defined in Section 23.84A.036 as follows:

“. . . a sign directing attention to a business, profession, commodity, service or entertainment conducted, sold or offered elsewhere than upon the lot where the sign is located.”

The term “sign, off-premises,” is defined in Section 23.84A.036 as follows:

“. . . a sign relating, through its message and content, to a business activity, use, product or service not available on the premises upon which the sign is erected.”

6. SMC Section 23.55.034 sets forth the regulations for signs in the Downtown zones. Subsection E says, in part:

“2. Off-premises directional signs and advertising signs, in addition to those permitted by subsection E1, shall be permitted according to Section 23.55.014, Off-premises signs.”

7. SMC Section 23.55.014 sets forth general standards for off-premises signs in all zones, including the Downtown zones. Subsection 23.55.014 A provides in part as follows:

“A. Advertising Signs.

1. No advertising sign shall be erected, or constructed, unless an existing advertising sign is relocated or reconstructed at a new location. An advertising sign may be relocated or reconstructed if:

- a. The existing advertising sign was lawfully erected and after the effective date of the ordinances codified in this section, is registered to pursuant to subsection F of this section;
- b. The advertising sign is located on a site or in a zone where it is not permitted, except as provided in subsection A1c of this section;
- c. In each calendar year one advertising sign which is located on a site or in a zone where it is permitted may be relocated or reconstructed if a citizen submits a written request for relocation to the Director;

. . . .

5. All advertising signs shall be located at least fifty feet (50') from any lot in a residential zone, and at least five hundred feet (500') from any public school grounds, public park, or public playground, or community center. For purposes of this section, a public park or public playground means a park or playground at least one (1) acre in size and a community center must be publicly owned.”

Subsection 5 was first enacted in 1986 with respect to public schools, parks, and playgrounds, and required advertising signs to be located 100 feet from them. Community centers were added under Seattle City Ordinance No. 116780, effective August 21, 1993. Ordinance 116780 also amended the setback requirement from 100 feet to 500 feet.

8. The King County Needle Exchange uses the address of 1511 2nd Avenue as its business address, according to information on the King County public health website. According to DPD permit records, permission was granted to change the use of a portion of the existing building addressed as 120 Pike Street from a restaurant to a “human services” use under Seattle Building Permit No. 667523, issued March 25, 1993. The legal description on Permit 667523 is the East ½ of Lots 10 and 11, Block 26, A. A. Denny’s 3rd Addition. Based on the Arcview land use map maintained by DPD, the building addressed in Permit 667523 as 120 Pike Street is also addressed as 1501-1511 2nd Avenue. Permit 667523 was never given final approval by a City Building Inspector. DPD records show that the permit expired as of November 22, 1996.
9. Permission was granted to alter a portion of the first floor of the 120 Pike Street building and occupy as assembly spaces, and to change a portion of the first floor from retail to a community center, with the address of 1511 2nd Avenue, under Permit No. 679693, issued May 8, 1995. Permit No. 679693 was also apparently never given final approval and shows as an expired permit in DPD records. Approved plans for both Permit 667523 and 679623 show the human services use and community center in the first floor spaces of the 120 Pike Street building in the Northwest corner spaces addressed as 1509 and 1511 2nd Avenue.

10. According to the King County Health Department internet home page, the King County Needle Exchange operates Monday through Saturday afternoons and includes a small “outreach clinic” for homeless person who are clients of the needle exchange. The King County Health Department website includes the following information about the needle exchange program:

“Needle exchange is a public health program for drug users. . . . Needle exchange programs provide new, sterile syringes in a one-for-one exchange for used, contaminated syringes. But needle exchange programs are not just about syringes. They also help drug users get into drug treatment and health care and provide important risk reduction information. Other services include counseling and testing for HIV infection, distribution of condoms, and safe disposal of contaminated equipment.”

11. The term “community center” is defined in the Land Use Code under the broader definition of “institution” in SMC Section 23.84A.018 as follows:

“ ‘Institution’ means structure(s) and related grounds used by organizations for the provision of educational, medical, cultural, social and/or recreational services to the community, including but not limited to the following uses:

3. ‘Community club or center’ means an institution used for athletic, social, civic or recreational purposes, operated by a nonprofit organization, and open to the general public on an equal basis. Activities in a community club or center may include classes and events sponsored by nonprofit organizations, community programs for the elderly, and other similar activities.

a. ‘Community center’ means a community club or center use, providing direct services to people on the premises rather than carrying out only administrative functions, that is open to the general public without membership.”

12. The terms “human service use” and “medical services” are also relevant. They are defined in SMC Sections 23.84A.016 and 23.84A.025, respectively, as follows:

“ ‘Human service use’ means a use in which structure(s) and related grounds or portions thereof are used to provide one or more of the following: emergency food, medical or shelter services; community health care clinics, including those that provide mental health care; alcohol or drug abuse services; information and referral services for dependent care, housing, emergency services, transportation assistance, employment or education; consumer and credit counseling; or day care services for adults. Human

service uses provide at least one (1) of the listed services directly to a client group on the premises, rather than serve only administrative functions.”

“ ‘Medical services’ means a commercial use in which health care for humans or animals is provided on an outpatient basis, including but not limited to offices for doctors, dentists, veterinarians, chiropractors, and other health care practitioners, or in which mortuary or funeral services are provided. Permitted accessory uses include associated office, research and laboratory uses.”

13. SMC Section 23.42.010 provides as follows:

“Principal uses not listed in the respective zones of Subtitle III, Division 2 of SMC Title 23, Land Use Code shall be prohibited in those zones. If a use is not listed, the Director may determine that a proposed use is substantially similar to other uses permitted or prohibited in the respective zones, therefore, and should also be permitted or prohibited.”

14. Section 23.55.001 sets forth the intent of the sign regulations. It says, in part:

“The intent of the standards in this chapter [23.55] is:

- A. To encourage the design of signs that attract and invite rather than demand the public’s attention, *and to curb the proliferation of signs; . . .*”
[Emphasis Added.]

. . . .

- D. To protect the public interest and safety;”

The preamble to Seattle City Ordinance No. 116780, effective August 21, 1993, and limiting new off-premises advertising signs and relocation of existing off-premises advertising signs, also says, in part:

“ . . . because the proliferation and location of billboards in the City can contribute to visual blight, traffic hazards and a reduction of property values, it is in the public interest to further regulate the spacing, dispersion, height, size, location and relocation of billboards”

Conclusions

1. The sign structure located on Lots 4, 5, and 8 is legally registered pursuant to the 1980 settlement agreement between Ackerley Communications and the City of Seattle as a single-faced off-premises advertising sign structure. (Findings of Fact Nos. 1 and 3.) Lots 4, 5, and 8 are located in a Downtown Mixed Commercial (DMC) zone, where off-premises advertising signs are permitted pursuant to SMC

Section 23.55.034 E, subject to the development standards of Section 23.55.014.
(See Findings of Fact Nos. 6 and 7.)

2. Section 23.55.014 A establishes a standard prohibiting construction of a new sign unless an existing sign is “relocated or reconstructed at a new location.” The regulation then sets standards explaining when existing signs may be relocated, which includes the requirement in Section 23.55.014 A 1 b that the existing sign be “located on a site or in a zone where it is not permitted.” Since CCO proposes to relocate the sign face now located on Lots 4, 5, and 8, it must demonstrate compliance with subsection A 1 b. CCO does not dispute that off-premises signs are permitted in the DOC 2 zone. Instead, CCO contends that the sign structure is located on a site where it is not permitted under Section 23.55.014 A 5, which requires in part that all off-premises signs be located at least 500 feet from any community center (further stating that the community center must be publicly owned). (See Findings of Fact Nos. 4 and 7.)
3. To support its argument that the sign on Lots 4, 5, and 8 is on a site where it is not permitted, CCO argues that the King County Needle Exchange is a type of “community center.” It is undisputed that the sign on Lots 4, 5, and 8 is within 500 feet of the site. (See Finding of Fact No. 8.) Thus, the sole issue is whether the King County Needle Exchange is a “community center.” Based on DPD permit records and the descriptions of the activities at KCNE on the King County Health Department website (Findings of Fact Nos. 8-10), the KCNE is most appropriately regarded as a community center, and therefore the sign on Lots 4, 5, and 8 (billboard registration number 466) is eligible to be relocated as a sign on a site where it is not permitted, pursuant to SMC Section 23.55.014 A 1 b.
4. The available permit history in DPD records indicates that the most recent building permit establishing a use at the 120 Pike Street property is Permit No. 679693 (Finding of Fact No. 9). Permit 679693 specifically identifies the “use per land use code” on its face as a community center. While there is no record of final approval of Permit 679693, the community center use is permitted outright in the DMC zone under SMC Section 23.49.042 A and B, just as it was under slightly different Code language in 1995. Permit No. 679693 also indicates on its face that it was a simple building permit with no land use review requiring a public notice and comment process, such as environmental review under the State Environmental Policy Act (SEPA). Therefore, while the permit was never technically given final approval, the same permit could still be given final approval currently or, at most, a new permit for the same use could be applied for currently and then given a final approval.
5. Further support for classifying KCNE as a community center is found in the discussion on the King County Health Department website of the services provided, as summarized in Finding of Fact No. 10. As described by the Health Department, the KCNE is primarily focused on trading dirty syringes for new ones, with a secondary emphasis on treatment, counseling, and some other medical or health related activities. All activity is non-profit. The needle exchange activity is not specifically defined as a use in the Land Use Code. However, KCNE is

