

Director's Report and Recommendations Proposed Land Use Code Amendments Related to On-Premises Signs

Introduction

The City Council is proposing to amend the Land Use Code to adopt standards for wall signs in commercial, Seattle Mixed, industrial and downtown zones; and to amend existing definitions of certain types of signs. The proposed legislation would also increase the maximum penalties for violations of certain sign provisions in the Land Use Code. The Department of Planning and Development (DPD) has prepared this Director's Report at the request of Council.

The City generally bans all signs, including off-premises signs (also known as advertising signs or billboards), because they contribute to driver distraction and visual blight. However, the City makes some exceptions to advance other purposes, such as allowing on-premises business signs to promote local business vitality. Currently, there are no size/area limits for on-premises signs in commercial, Seattle Mixed, industrial and downtown zones. Over the last few years, the City has seen an increase in the number of very large on-premises wall signs located in these areas, some of which far exceed the size of billboards.

The intent of this legislation is to improve the consistency of the Land Use Code by 1) clarifying the distinction between on-premises and off-premises signage and 2) adopting new area limits for new wall signs that will reduce driver distraction and visual blight, all while continuing to allow businesses to communicate with the public via on-premises signage.

Background and Analysis

Due to a proliferation of signage posted around the City, the City banned all new off-premises signs in 1977. This ban was carried forward with the adoption of Land Use Code Chapter 23.55 (Ordinance 112830) in 1986. At the time of the ban, billboards came in two sizes, small (288 square feet) and large (672 square feet). The goal in banning new off-premises signs and limiting where non-conforming off-premises signs could be relocated in the City (23.55.014.A) was to reduce, over time, both driver distraction and visual blight, both to prevent new off-premise signs from being installed and to phase out existing nonconforming off-premise sign uses over time. In 1993, the City adopted Ordinance 116780, which required existing off-premises advertising signs to be registered in the City's billboard bank. At that time, 650 billboards were registered in the City's billboard bank. There are currently about 492 registered billboards.

Chapter 23.55 of the Land Use Code (the "Sign Code") contains provisions for signs. Sign standards, including area limits, and the types of signs allowed on individual properties are, in most cases, provided according to zoning designations. Section 23.86A.036 contains full definitions of all types of signs.

As noted above, the City generally bans all signs, including off-premises signs because they contribute to driver distraction and visual blight. The City makes some exceptions to

advance other purposes, such as allowing on-premises business signs to promote local business vitality. The Sign Code allows on-premises signs that promote communication about the goods, services or products available on the site where such a sign is located. The City also allows non-commercial speech on signs so long as such signs conform to all regulations for on-premises signs, including any applicable size limits, location requirements and dispersal regulations.

Section 23.55.001 describes the intent of the City's Sign Code as follows:

- 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;*
- B. To encourage the use of signs that enhance the visual environment of the city;*
- C. To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surroundings;*
- D. To protect the public interest and safety;*
- E. To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction; and*
- F. To provide opportunities for communicating information of community interest.*

While Seattle's current Sign Code controls the way sign messages are displayed, the types of signs permitted and, in some zones, the dimensions of permitted signs, very few size limits apply to on-premises wall signs located in commercial, Seattle Mixed, industrial and downtown zones. One exception is a restriction that limits the size of hotel signs in downtown zones when such signs are located more than 65 feet above the elevation of the sidewalk.

The Comprehensive Plan includes specific policies about signs under the heading of General Development Standards in the Land Use Element. In addition, the neighborhood planning policies for the Downtown Urban Center include sign policies. These policies, which are applicable to the proposed legislation, are as follows:

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Regulate signs to facilitate adequate identification of businesses, reduce visual clutter, protect the public interest, provide opportunities for communicating information of community interest, and enhance the city's appearance and safety. Adapt provisions to correspond with the character and scale intended for each area.

Downtown Urban Design Policy 12 - Regulate signs to:

- Allow adequate identification of businesses and allow businesses to advertise their products;*
- Add interest to the street level environment;*
- Protect public safety;*

- *Reduce visual clutter; and*
- *Enhance the appearance and safety of the downtown area.*

The City banned new off-premises signs because they contribute to driver distraction and visual blight. As has been recognized by the Supreme Court, the government is justified in banning signs to advance the substantial public purposes of traffic safety and aesthetics.¹ In *Metromedia*, the Court concluded that all signs contribute to driver distraction and visual blight due to the nature of signs: they are intended to attract attention. The government may, however, make exceptions to the ban on all signs if they advance another governmental purpose.² The Court found a city could:

Reasonably conclude that a commercial enterprise – as well as the interested public – has a stronger interest in identifying its place of business and advertising the products or services available there than it has in using or leasing its available space for the purpose of advertising commercial enterprises located elsewhere.³

The *Metromedia* Court recognized and upheld the governmental purpose of allowing companies to advertise the goods or services they provide onsite. As a result, the *Metromedia* Court held that San Diego's ban on new off-premises signs was lawful. Like San Diego, Seattle's regulations ban off-premises signs but allow on-premises signs.⁴ The Ninth Circuit upheld the City of Seattle's regulations on grounds identified in *Metromedia*. More specifically, the Ninth Circuit stated in relevant part:

The Ninth Circuit has interpreted *Metromedia* as standing for the proposition that a City can either ban all signs or ban all signs with exception of on-premises signs to advance the City's interests in traffic safety and aesthetics (citation omitted). In San Diego, as in Seattle, the value of on-premises signs is to identify a company that has a presence in a building and to identify what goods or services are available at the site.⁵

The City has elected to allow signs that promote certain public goals, including on-premises signs, because they promote the identification of businesses that offer goods, products or services on the site where the sign is located. However, some of the very large wall signs that are being installed throughout the City create visual blight, impair public safety by distracting drivers and, in an increasing number of cases, create confusion between on-premises and off-premises signage.

¹ *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 69 L.Ed.2d 800, 101 S. Ct. 2882 (1981).

² *Metromedia*, 453 U.S. at 511-512.

³ *Metromedia*, 453 U.S. at 512.

⁴ See *Ackerley Communications of the Northwest Inc. v. R.F. Krochalis et al.*, 108 F.3d 1095 (9th Cir., 1997); *Onsite v. Seattle*, 134 F.Supp.2d 1210 (2001).

⁵ *Onsite Advertising Services, LLC v. City of Seattle*, 134 F.Supp.2d 1210, 1214 (2001).

The Problem

Over the past ten years, DPD has observed a growing trend: applications for wall signs that are larger than 672 square feet (the size of a large billboard) nearly doubled in the last five years over the previous five years. More specifically, between 2003 and 2007, DPD received 34 applications for such signs; between 2008 and August 2012, that figure climbed to 63. DPD's analysis also suggests that the number of large wall signs has increased as the process for fabricating wall signs has changed. Rather than utilizing heavy signs mounted on wooden or steel frames, some businesses now print wall signs on vinyl banners that are inexpensive to produce and can be made in virtually any size. The largest of these are referred to as "wallscapes." As noted earlier, the standard size of a large billboard is 672 square feet. Some of these wallscapes are double, triple or even ten times the size of large billboards. The lack of size control and relative ease of production for on-premises wall signs has also resulted in some companies seeking on-premises sign permits for signage that appears to the average person to be off-premises advertising.

Off-premises sign companies have incentive to apply for on-premises wall sign permits and make their advertising appear to identify goods or services found on the sites where their signs are located. Many of these companies make between \$30,000 and \$40,000 a month for each large wall sign they install in a desirable location, meaning locations that attract a lot of viewers, including motorists and pedestrians. The City has learned that some off-premises advertising companies pay on-premises tenants or the building owner a portion of the monthly revenue from these signs. In exchange, the tenants or building owners agree to offer small quantities of the advertised product for sale on site or sell associated gift cards or gift certificates or, in some case, they offer use of a computer or phone to buy a product from another retailer located off-site or to provide web access to a particular business being advertised on the wall sign.

Moreover, in recent years, several permitted "on-premises" wallscapes have displayed the same advertisements as have appeared on off-premises billboards located around Seattle. Such advertising is not intended to help people find the featured good, service or product on the site where the sign is installed; rather, these ads are part of regional and national advertising campaigns. Thus, the connection between the product advertised and the on-premises availability of that product is clearly becoming less clear and more tenuous.

In fact, the governmental purpose of identifying businesses that offer the advertised goods or services on-site, as opposed to at another location, has been diluted by the increase in applications for these very large wall signs that appear more like off-premise advertising signs. Because there are few size limits that apply to on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones, there is incentive for off-premises advertising companies to enter into agreements with on-site businesses that make installed wallscapes appear more like on-premises signs. Adopting a reasonable area limit of 287 square feet will reduce the incentive for off-premises advertising companies to seek on-premises wall sign permits. It will also promote restored communication between on-site businesses and the public about true on-site activities. Further, the area limit should reduce the average person's confusion between on- and off-premises advertising and prevent further dilution of the City's purpose of promoting

communication about on-site activities for the benefit of on-site commercial enterprises and the public.

The intent of this legislation is to remove the confusion between on-premises and off-premises signs by adopting an area standard of 287 square feet for wall signs in commercial, Seattle Mixed, industrial and downtown zones. This limit is based on the size of the great majority of wall signs that have been permitted by DPD during the last 10 years and is intended to prohibit the very large wall signs that have begun to proliferate in Seattle. The area limit is also intended to restore the distinction between on-premises and off-premises signs, strengthen the important purpose of allowing on-premises commercial enterprises to communicate information about what is actually occurring on the site, and reduce the incentive among property owners or tenants to lease out on-premises sign space in exchange for revenues from what are, essentially, off-premises advertisements.

A size limit of 287 square feet is also appropriate for on-premises signs to serve the goals of improving traffic safety and the appearance of the city. The size and design of many large wall signs are intended to attract the attention of pedestrians, bus riders and motorists. In fact, some large wall signs featured in the marketing materials of advertising agencies include the number of individuals who will view a particular sign in their pricing schemes. These signs can be distracting to drivers due to their size and design.⁶ Many of these signs are specifically intended to attract the attention of motorists and many of the signs have been placed on large, blank walls.

However, DPD has observed that recently erected signs, for example the new ‘Polyclinic’ and ‘Harborview Medical Center’ signs on First Hill, can be clearly legible from a distance even when the size of the signs is less than 287 square feet. This size of sign also meets the needs of businesses throughout the city; about 97 percent of the wall signs that have been permitted in Seattle over the last ten years are less than 287 square feet in area.⁷ Therefore, a 287 square foot size limit is sufficient to allow businesses to identify their locations. Additionally, businesses or individuals have the option of utilizing a variety of other types of signs under the City’s Sign Code, many of which do not include a size limit.

The City has been aware of the growing trend to utilize wallsapes on large blank walls and considered adopting a 100 square foot wall sign area limit in 2011, which was ultimately deemed non-viable. However, since that time, DPD has permitted 48 new wall signs that are 288 square feet or larger, including 25 wallsapes in excess of 672 square feet. In addition, the size of some of these wall signs continues to increase.

The following pages include images of several large on-premises wall signs that demonstrate the identified problem. Many of these images make clear that individuals or entities are seeking on-

⁶ One advertising company states in their marketing materials that their wall sign sites in downtown Seattle “have tremendous highway, surface street & Stadium traffic.” Other marketing claims made by such companies include describing large wall signs as “bigger and bolder outdoor advertising inventory” and promoting a 1,200 square foot sign as a “spectacular” product that “dwarfs our competition.”

⁷ Of the 5,131 wall sign permits issued by DPD in the last ten years, 183 signs were larger than 287 square feet in area.

premises sign permits for signs that the average person would view as off-premises advertising signs. For many of these signs it is unclear where the good, product or service can be obtained and the sign copy is part of a national or regional advertising campaign that can also be found on registered off-premise billboards throughout the city. The large size of these signs can attract the attention of drivers and pedestrians and also contributes to visual clutter. While the size of the example signs varies, they are all much larger than the average-sized 83 square foot wall sign located in the City. They are also larger than traditional large-sized billboards (672 square feet).

Example One: This sign is located at 1931 Second Avenue in downtown Seattle. Note the size of the wallscape (“Montana”) in comparison to the billboard located in the lower left corner of the photo. The sign face area is 2,752 square feet.



Example Two: This sign is located at 418 Eighth Avenue South and the area of the sign face is 1,350 square feet.



Example Three: This sign is located at 2600 First Avenue and the area of the sign face is 850 square feet.



Example Four: This sign is located at 1528 First Avenue and the sign face area is 1,520 square feet.



Example Five: This sign is located at 1601 Third Avenue and the sign face area is 6,240 square feet.



Example Six: This sign is located at 1920 First Avenue and the sign face is 1,650 square feet.



Example Seven. This sign is located at 701 Westlake Avenue North and the sign face is 779 square feet in size.



Example Eight. This sign is located at 103 Pike Street. The sign face is 900 square feet.



The Proposed Legislation:

The ordinance would make the following changes to the Land Use Code:

- Provide a 287-square foot area limit for on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones;
- Clarify definitions of wall signs and on-premises signs; and
- Increase penalties for violations of certain Land Use Code sign provisions addressed by the proposed legislation.

Size Limits for On-Premises Wall Signs

While provisions for on-premises wall signs in residential zones include area limits, such limits are absent from commercial, Seattle Mixed, industrial and downtown zones. There are several locations throughout the City, particularly in the aforementioned zones, where buildings constructed at or near property lines have large blank walls. Over the last few years, very large wall signs have increased in frequency in these areas – and so have the number of complaints received by DPD regarding associated sign code violations. Therefore, this proposal would apply prospectively to new wall signs in commercial, Seattle Mixed, industrial and downtown zones, and not to wall signs that have already been permitted by DPD.

DPD examined wall sign permit data collected since 2003 and found that approximately 97 percent of the on-premises sign permits it issued over the last ten years were for signs under 287 square feet in area. The average size for all on-premises wall signs was 83 square feet. There are, however, very large permitted wall signs, including signs in excess of 1,500 or even 6,000 square feet. While these may represent a relatively small percentage of all permitted signs, their impact, due to their size, has been significant. That said, the intent of this proposal is to regulate all on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones in a consistent manner by applying a 287 square foot area limit. In addition to on-premises messages, non-commercial content would still be permitted.

Further, the proposed legislation would not result in increased driver distraction and could even reduce driver distraction compared to existing conditions because the proposed legislation adopts a 287 square foot area limit that prohibits the placement of very large on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones. Larger wall signs result in longer driver distraction than smaller wall signs because larger signs can be seen earlier and at a further distance than smaller signs. Therefore, adoption of an area limit may reduce the level of distraction that drivers currently experience under the existing code. The 287 square foot area limit would only apply to those wall signs being permitted or installed after the effective date of the legislation.

This proposal is consistent with the majority of on-premises wall signs installed throughout the City and is more aligned with Comprehensive Plan policies and Sign Code intent statements related to the appearance, character and scale of signs in the City's commercial, Seattle Mixed, industrial and downtown zones. Restricting wall sign size will also reduce traffic hazards which may be caused by large wall signs that distract the attention of motorists and pedestrians.

Imposing reasonable area limits for wall signs will also enhance the appearance of public streets and thoroughfares by reducing visual blight.

Clarify Definitions of Certain Signs.

The legislation would clarify codified definitions, including the definition of an on-premises sign. More specifically, the proposed legislation would make clear that selling or giving a gift card, gift certificate, coupon, or other document that can be exchanged in part or whole for an item, good, or service that is not sold or produced where the gift card, gift certificate, coupon, or other document is sold or given does not constitute an on-premises good, product, or service. In addition, the legislation makes clear that providing access by phone, computer, or any other device to allow a person to obtain an item or good that is not directly sold, produced, or service rendered where the access by phone, computer, or other device is offered does not constitute an on-premises good, product or service for purposes of meeting the “on-premises sign” definition. The proposed changes to the definitions make it more consistent with the intent of the Sign Code. The proposed amendments may result in a handful of signs that no longer meet the definition of on-premises signs and must therefore be removed or face enforcement action.

Increased Penalty Amount for Violations.

The proposal would establish increased penalties for violations of the wall sign size restriction and other proposed standards. The City has learned that advertising income for individual wall signs can be as high as \$30,000 to \$40,000 per month, depending on the size and location of the sign. In cases where buildings have two large, highly visible wall signs posted, collected income can be upwards of \$50,000 to \$60,000 per month. Thus, the current penalty amount of \$500 per day is too low to deter some violations of the Sign Code. Penalties must be more than just the cost of doing business for someone utilizing a wall sign inconsistently with the Sign Code and are therefore proposed to be increased from \$500 per day to \$1,500 per day, per sign violation, for each day the violation exists. The penalty would be charged to parties that violate the 287 square foot area limit and/or utilize an on-premises sign permit in a manner that is inconsistent with the definition or standards for on-premises signs.

The following table includes a brief description of all of the amendments by Seattle Municipal Code Section in the order presented in the legislation:

Code Section	Description of proposed change
23.55.030 Signs in NC3, C1, C2 and SM zones	Provides an area limit of 287 square feet for on-premises wall signs in the Neighborhood Commercial 3, Commercial 1 and 2, and Seattle Mixed zones.
23.55.034 Signs in downtown zones	Applies the same standards as proposed for 23.55.030 to wall signs in downtown zones while maintaining existing exceptions.
23.55.036 Signs in IB, IC, IG1 and IG2 zones.	Applies the same standards as proposed for 23.55.030 to wall signs located in industrial zones while maintaining existing exceptions.
23.84A.036 “S” (definitions for terms beginning w/ “s”)	<p>Clarifies the definition of wall sign to include additional types of signs, including those projected onto a wall or suspended from a roof (when approximately parallel to the wall plane).</p> <p>Adds the following to the definition of on-premises sign:</p> <p>For purposes of this definition, “business transacted, principal services rendered, goods sold or produced on the premises” does not include: (a) the sale or donation of a gift card, gift certificate, coupon, or other document that can be exchanged in part or whole for an item or good that is not directly sold, produced, or service rendered where the gift card, gift certificate, coupon, or other document is sold or donated; or (b) access by phone, computer, or any other device to allow a person to obtain an item or good that is not directly sold, produced, or service rendered where the access by phone, computer, or other device is offered.</p>
23.90.018 Civil Enforcement Proceedings and Penalties	<p>Establishes a civil penalty of up to \$1,500 per day for each violation of the provisions of subsections 23.55.030.E.3.a.3, 23.55.030.E.3.b, 23.55.034.D.2.a, 23.55.036.D.3.b or, 23.84A.036 for using an on-premises sign inconsistently with the definition of on-premises sign, from the date the violation begins until compliance is achieved.</p> <p>Establishes a subfund whereby such collected penalties will be directed to the Department of Planning and Development’s Operations Division to be used for additional enforcement.</p>

Recommendation

The proposed legislation is intended to allow all new commercial and non-commercial messages to be displayed on on-premises wall signs within a reasonable size limit. The proposed legislation would also clarify the definitions of wall signs and on-premises signs and provide for higher maximum penalties when violations occur. DPD recommends approval of the proposed amendments.