



**City Club of Portland**  
Good citizens are the riches of a city

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## Billboard Regulation in Portland



City Club's mission is "To inform its members and the community in public matter and to arouse in them a realization of the obligations of citizenship."

**The City Club of Portland**  
report on  
**Billboard Regulation in Portland**

**EXECUTIVE SUMMARY**

In September 1996, Portland's City Council will have an important and historic opportunity to significantly improve the visual environment of our community. After more than 40 years of attempts to regulate billboards in Portland, over 800 billboards line the streets of our community. A special agreement that has regulated billboards in Portland for the last ten years expired in June 1996. In September 1996, the City Council plans to decide whether to require billboards to meet the same Sign Code and zoning requirements that apply to most other signs, or to revise the Sign Code to allow large billboards. This decision will significantly impact the look and feel of Portland's streets and neighborhoods for years to come.

In early June 1996, the City Council established a Sign Code Task Force to examine various options for billboard regulation. The task force is scheduled to complete its work by early September 1996. The City Club of Portland's Board of Governor's felt that this highly contentious and important issue would benefit from an independent analysis. The Board commissioned a committee of Club volunteers to study the issue and report back to the Club's general membership in early September 1996. This report presents the findings, conclusions, and recommendations of that study committee.

Cities across the country have for decades worked to limit and reduce the number of billboards in their communities. The City of Portland first attempted to regulate billboards in the 1950s. The City removed 130 billboards through an amortization program in the 1960s and 1970s. In 1971, the City Club of Portland completed a five-year study of Portland's Sign Code. The report recognized the important role that signs play in the community and the significant impact they have on the visual environment of a city. Among its recommendations, the report called for the City to regulate all signs under the same sign code. The report also recommended that the City prohibit the construction of new billboards, which the report said were generally entirely out of scale with the urban environment, and remove existing billboards through a five-year amortization program.

In 1975, Ackerley Communications, Inc. purchased two existing outdoor advertising firms and became the only billboard company in Portland. Ackerley Communications challenged the City's billboard regulations in court. In 1985, after many years of litigation, the Oregon Court of Appeals ruled against the City and invalidated Portland's billboard regulations. The court held that the regulations were content based and therefore violated the broad free speech protections in the Oregon State Constitution. In 1986, the City entered into a ten-year agreement with Ackerley Communications. The agreement exempted billboards from all Sign Code, Zoning Code, and environmental regulations in exchange for a cap on the number of billboards and other restrictions. The agreement expired in June 1996. The City Council is now considering whether to require billboards to meet the same Sign Code requirements that apply to other signs, including the maximum 200 sq. ft. sign size, or whether to amend the Sign Code to allow large billboards.

The City Club study committee carefully reviewed the history of Portland's efforts to regulate billboards, considered testimony from parties on different sides of the issue, and studied approaches to billboard regulation used by other cities and states. This process left members of the Committee concerned about the negative impact billboards and other large signs have on the visual environment of our city. Committee members are particularly concerned about the impact billboards and other large signs

will have on the quality of the urban experience as the population grows, traffic increases, and development in the Portland metropolitan area becomes more dense and compact.

The strong free-speech provisions in the Oregon Constitution make it particularly difficult for local governments in Oregon to regulate billboards by their content as "off-premise" advertising. Committee members believe, however, that the City of Portland has the clear legal authority, and the support of its citizens, to regulate the size, location, and characteristics of signs, including billboards, without referring to the content of the message on the sign.

Based on the research presented in this report, the Committee arrived at the following conclusions:

1. The Committee finds that, by and large, the recommendations of the City Club's 1971 report are still valid. The Committee recognizes that a specific ban on billboards as off-premise signs is not allowed by the Oregon Constitution.
2. Large signs generally contribute to visual clutter, endanger traffic safety, are often out of scale with surrounding development, and degrade the visual environment of our neighborhoods and commercial areas.
3. Billboards should be regulated under the Sign Code. Regulation through a special agreement, similar to the Stipulated Agreement, with Ackerley Communications or any other company, would not be legally sound or fair to owners of other types of signs.
4. In general, no new large signs that do not conform to the Sign Code should be allowed to be constructed in the City of Portland. Some flexibility should be provided through the existing Adjustment Process and Design Review to allow the construction of creative signs that do not add to visual clutter or have a negative visual impact and that are appropriate to the site.
5. Existing large, nonconforming signs that contribute to visual clutter, endanger traffic safety, and are out of scale with surrounding development should be removed over time through an amortization program. Nonconforming signs that have particular aesthetic or historical value to the community should be preserved.
6. Signs with moving parts, such as tri-vision billboards, dramatically increase the negative visual impact of these signs and pose an increased traffic safety hazard.
7. The City has tended to rely too much on input from the sign industry when developing changes to the Sign Code; individuals who represent the general public interest should play a much greater role in the development of future changes to the Sign Code.

The Committee members unanimously favor regulation of billboards under the same general rules that apply to other signs in the city. We do not believe that it is fair, or legally defensible, for the City to provide special exemptions to these rules to accommodate a particular industry or company.

We recognize that businesses have an important and basic need to communicate with their customers. We are generally opposed to the use of large signs or billboards that intrude on the urban landscape. Unlike the total prohibition of "off-premise" advertising implemented by many other communities, the application of Portland's Sign Code to billboards will not lead to a ban on outdoor advertising. Sign and billboard companies will still have the opportunity to construct "off-premise" advertising signs that meet the requirements of the Code. Businesses and nonprofit organizations will still have access to "off-premise" signs as an advertising medium. Regulation of billboards under the Sign Code will advance the strong public interest in achieving and maintaining attractive and pleasant streets and neighborhoods.

The Committee recommends that:

1. The City Council should regulate billboards under the Sign Code as amended on June 5, 1996, and should commit the necessary resources to defend and enforce the Sign Code.
2. The City Council should prohibit the construction of any new signs or relocated signs that do not

comply with the 200 sq ft maximum size and other restrictions of the Sign Code.

3. The City Council should limit exceptions to the Sign Code requirements to those allowed through the City's formal Adjustment and Design Review processes.

4. The City Council should not allow the construction of signs with moving parts, such as tri-vision billboards.

5. The City Council should direct the City Attorney to develop an amortization program within six months (by April 1997) that will require the removal or modification of large signs that do not meet the Sign Code requirements. The amortization period should not exceed ten years. The City Attorney should establish shorter amortization periods for the removal or modification of specific nonconforming signs, such as roof top signs, oversize signs in pedestrian-oriented areas, and very large signs.

6. The City Council should direct the Bureau of Planning and other relevant municipal agencies to include significant citizen participation in the development and consideration of future Sign Code revisions.

7. City Club members and Club officers should communicate their support of these report recommendations to individual City Council members either by testifying at hearings on billboard regulation, submitting written testimony, writing letters, or calling or speaking directly with commissioners.

## I. INTRODUCTION

Cities across the country have for decades worked to limit and reduce the number of billboards in their communities. In 1971, the City Club of Portland completed a five-year study of Portland's sign regulations, which recommended a ban on new billboards and the removal of existing billboards. After over 40 years of attempts to regulate billboards in Portland, over 800 billboards line the streets of our city.

On June 17, 1996, an agreement expired that regulated billboards in Portland for the last ten years. The expiration of this agreement provides citizens with an important opportunity to help shape future billboard regulations. The City Council plans to adopt new billboard regulations in September 1996. These new regulations will have a significant impact on the look and feel of Portland's neighborhoods and communities for years to come.

In early June 1996, the City Council established a task force to examine various options for billboard regulation. The task force is scheduled to complete its work by early September 1996. The City Club Board of Governor's felt that this highly contentious and important issue would benefit from an independent analysis. The Board commissioned a study committee of Club volunteers to study this issue and report back to the Club's general membership in early September 1996. The Club screened the members to ensure that no committee member had a conflict of interest with the subject of the study.

### A. Study Methodology

The study Committee met during July and early August 1996. Committee members interviewed over 30 individuals including City planning staff, the City Attorney, billboard industry representatives, citizen activists, a variety of community and business interests, and city planners and city attorneys in communities across the nation. The Committee reviewed a variety of materials on billboard regulation including sign codes and court cases related to billboard regulation.

### B. Study Scope and Objectives

This study focuses primarily on billboard regulation in Portland. The study addresses other sign regulation issues only as they relate to billboard regulation. The study's objectives are to:

- provide a brief overview of the history of billboard regulation in Portland;
- provide examples of billboard regulation in other cities;
- identify and analyze issues related to billboard regulation;
- identify and evaluate different regulation approaches and implementation strategies; and
- make recommendations to the City Council, City Club members, and the public on how the City should regulate billboards in a way that serves the long-term needs and interests of the community and its citizens.

### C. Specific Study Questions

The Board of Governors asked the study committee to respond to the following questions:

- Should the City Club change its 1971 position in support of a ban on new billboards and the removal of existing billboards in Portland?
- What principles or criteria should guide the City of Portland's billboard regulation policy and its consideration of specific options for billboard regulation?

The study committee also considered the questions the City Council asked the City of Portland Sign Code Task Force:

- Do new Portland Sign Code (Sign Code) regulations treat on- and off-premise signs the same?

- Should some signs be permitted to exceed maximum sign size limits in some zones?
- Should existing billboards be subject to a special set of rules and regulations different from other nonconforming situations?
- Should all nonconforming signs be covered by special rules allowing relocation and replacement?

The Background Section of this report presents a brief history of billboard regulation in Portland, describes billboard regulations in other cities in Oregon and across the nation, and presents statistics on the number and general location of billboards in Portland. The Background Section also presents an overview of Portland's Sign Code, which regulates most signs in Portland, and the 1986 Stipulated Agreement, which regulated billboards until June 1996. An understanding of the basic elements of these documents is necessary to evaluate the City Council's options for future billboard regulation.

The Discussion Section presents issues, concerns, and ideas raised by individuals interviewed by the Committee and by materials reviewed by the Committee. In the Conclusions and Recommendations sections, the Committee summarizes its thoughts on what needs to be done and who should do it. The Appendices include a list of witnesses who spoke with the Committee, a list of resource materials, and a chart of Portland's Sign Code regulations for various land use zones.

## II. BACKGROUND

### A. What Is a Billboard?

The term "billboard" commonly refers to a large advertising sign that is either "freestanding" (supported by one or more posts) or a "wall sign" (attached to the wall of a building). Billboards in Portland are one of two standard sizes:

- 12 ft. x 24 ft. (288 sq. ft. ) known as a "poster;" and
- 14 ft. x 48 ft. (672 sq. ft.) known as a "bulletin."

Some billboards in other communities around the country are much larger.

Billboards are generally used for "off-premise" advertising. That is, they primarily advertise products and services that are not sold or offered on the site at which the sign is located. "On-premise" signs are signs that identify or advertise a business, person, activity, product, or service provided at the location of the sign.

Cities across the country generally use one of two approaches to regulate billboards. Some cities ban or restrict billboards as "off-premise" signs. Other communities regulate billboards by setting maximum sign sizes and heights that apply to all freestanding or wall signs in their communities.

### B. Previous City Club Positions Regarding Billboard Regulation

The City Club is not new to the billboard regulation issue. In 1960, the City Club issued a study that recommended that Oregonians approve a ballot measure that would have banned billboards along Oregon's major highways and would have required the removal of existing billboards within five years. The study found that the measure would "[protect] the natural beauty of our roadsides and [provide] greater safety on Oregon's state highways." ("Billboard Control Measure–State Measure 15," Portland City Club *Bulletin*, 1960.) Voters did not approve the measure.

In 1971, the City Club completed a five-year, in-depth study of Portland's Sign Code. The study recommended that:

- there should be one code for the regulation of all signs displayed within the city;
- sign regulations should encourage creativity;
- administration of the Sign Code should be fiscally self-sustaining;
- one unified administrative body should implement and enforce sign control regulation; the membership of this body should come from the general public, excluding members of the businesses and industries affected by the sign regulations;
- owners of non-complying signs should be given a maximum of five years to remove their signs;
- a variety of signs should be prohibited, including billboards, rooftop signs, and moving or flashing signs, and strict limitations should be imposed on the size, height, and number of signs on a site; and
- variances should be granted within specific guidelines. ("Sign Code Revision," Portland City Club *Bulletin*, 1971.)

### C. A Brief History of Billboard Regulation In Portland

Over the past 40 years, the City of Portland has initiated a number of efforts to regulate billboards. Before the early 1950s, billboards were not regulated in Portland. The City adopted its first major sign regulations in 1953 in an effort to prevent billboard proliferation along the new Banfield Freeway. In 1959, the City Council expanded the regulations to regulate signs, and ban "off-premise" signs, along all

the approaches to all the Willamette River bridges, along the Baldock Freeway and on portions of Harbor Drive. The City Council designated these areas "S" (Sign Control) zones, and required that nonconforming signs be brought into compliance or removed from these areas within ten years. This approach to sign removal is known as "amortization." (See "Amortization" in the DISCUSSION that follows.)

During the 1960s, the City Council applied the "s" zone sign restrictions to the East Bank Freeway, the Minnesota Freeway, portions of Harbor Drive, Front Avenue, and Barbur Boulevard, the Stadium Freeway and McLoughlin Boulevard. The primary purpose of these regulations was to prevent signs from endangering traffic safety by distracting drivers or from degrading the appearance and scenic views of the city.

In 1969, amortization periods began to run out for a number of nonconforming signs. Billboard companies objected to taking down their signs. Their objections led the City Council to create a Sign Review Committee. The committee reviewed almost all the billboards located in the S Zone and ordered 130 taken down. In the early 1970s, additional billboards reached the end of their amortization periods. Again, the billboard companies appealed the removals to the Sign Committee.

In 1975, Ackerley Communications, Inc., a Seattle-based firm, became Portland's sole billboard company through the purchase of two existing billboard companies. Ackerley Communications immediately began to appeal the billboard removals to the City Council. In early 1976, the City Council responded by requiring the immediate removal of some billboards and granting extensions on others. Ackerley Communications sued the City in Multnomah County Circuit Court over the removals.

In April 1976, Ackerley Communications filed suit in Federal District Court against Portland, Multnomah County, and Salem, seeking to invalidate billboard regulations in each of the jurisdictions. The company claimed that the attempts, by these jurisdictions, to regulate billboards as "off-premise" advertising violated the free speech protections in the Oregon State Constitution. (See "Constitutional Issues" in the DISCUSSION that follows.)

The case dragged on until 1985: The Oregon State Court of Appeals found in Ackerley Communication's favor and declared that Portland could not regulate signs based on their content. The City could no longer distinguish between "on-premise" signs, which advertise a business or product sold on the site, and "off-premise" signs (billboards), which advertise businesses and products not located on the site of the sign. Having lost the case, the City of Portland was liable for \$130,000 in Ackerley Communication's court costs.

The City Council responded to the judgment by initiating the 1985 Sign Code Rewrite Project. The project objectives were to:

- make all sign regulations content neutral and consistent with recent court decisions;
- balance the need for signs with the goal of promoting an attractive and safe environment; and
- streamline the sign regulations to make them easier to use.

City of Portland, Bureau of Planning (Bureau of Planning) staff responded with a detailed proposal that dramatically restructured and reworked the Sign Code. Under the proposal, billboards would no longer be distinguished from other signs and would be subject to the same size, number, type and placement restrictions that applied to all other signs. The City Attorney told the committee that, at the time, there was little citizen attention to this issue and little active citizen support for the proposal.

Lacking citizen support, the City Council chose not to adopt the proposed policy on billboards, and in 1986, entered into a ten-year special agreement with Ackerley Communications. Under this court approved agreement, known as the "Stipulated Agreement," the City agreed to exempt the company's billboards from all Sign Code and Zoning Code requirements in exchange for Ackerley Communication's agreement to a cap on the number of billboards, the establishment of certain "billboard free" areas, and

other restrictions. Ackerley Communications and the City agreed to drop a number of pending suits against each other, and the company released the City from its obligation to pay the company's outstanding court costs.

From 1986 to 1996, the City Council pursued a policy of making changes to the Sign Code that would steadily reduce the size and number of signs in Portland. The Council intended these regulations to help create more pedestrian-friendly environments along Portland's streets and to reduce visual clutter.

On June 17, 1996, the Stipulated Agreement expired. Bureau of Planning staff reviewed the Sign Code and prepared a proposal to further reduce maximum sign sizes and heights in a number of zones. Planning staff again proposed that the City require billboards to meet the same sign code and zoning regulations that govern all other types of signs. Ackerley Communications proposed extending the existing billboard agreement or negotiating a new agreement with the City. The Bureau of Planning did not seek citizen input into the development of the proposals beyond two informational meetings.

On June 5, 1996, the City Council adopted the proposed Sign Code revisions, including a 200 sq. ft. maximum sign size, effective September 18, 1996. All existing Ackerley Communications billboards are larger than 200 sq. ft. In response to objections from the sign industry and Ackerley Communications, the Council created a 90-day Sign Code Task Force to examine the issue of how billboards should be treated under the proposed changes to the Sign Code. The seven-member task force included representatives from the sign and painted wall sign industries, the president of Ackerley Communications, a member of the business community, two citizens, and a member of the Planning Commission. The Council asked the task force to advise the Planning Director who will report back to the Council in early September. The Council noted that if the City does not choose to enter into another special agreement with the billboard companies, billboards would be regulated under the Sign Code as of September 18, 1996.

#### **D. How Do Other Communities Regulate Billboards?**

The Committee looked at billboard regulations in other communities to gain a better understanding of the options available for billboard regulation in Portland. Hundreds of communities across the country have chosen to limit the use of billboards, or ban them entirely. Four states—Hawaii, Alaska, Vermont, and Maine—have banned billboards statewide. Communities generally use one of two approaches to regulate billboards:

- **Limit or ban billboards as "off-premise signs."** Regulation of billboards as off-premise signs targets billboards specifically and bans their use citywide or in specific land use zones, or limits their size or number. Oregon's broad free-speech provision in the state constitution does not allow cities to regulate the content of signs. Portland's earlier attempt to regulate billboards as "off-premise" signs was declared unconstitutional by the Oregon State Court of Appeals. (See Constitutional Issues in the DISCUSSION that follows)
- **Adopt content-neutral sign size limitations.** These regulations establish a maximum size for the area of a sign and apply to all freestanding and wall signs. Courts across the nation have upheld the right of cities to regulate the size, location, height and other characteristics of signs.

Communities that adopt regulations to ban or limit new billboards, must decide what to do about existing billboards and other large signs that do not comply with the new regulations. Most communities use one or both of the following methods:

- **Attrition over time.** Regulations allow billboard and sign owners to maintain existing nonconforming signs as long as they are not moved or significantly altered. If the owner moves or alters the sign, it must be brought into compliance with current sign regulations. Under this approach, signs must be removed if the site is redeveloped. This can be a very slow method for removing signs—some nonconforming signs in Portland have remained in place for decades.

- **Amortization.** Many communities hasten the removal of billboards and other nonconforming signs by setting a period of time after which the owner must remove the nonconforming sign. The sign owner is allowed to continue to use the sign during the amortization period. Courts around the country have found that amortization programs, ranging from two to ten years, are adequate compensation for the removal of billboards and do not represent a constitutional taking. (See Amortization in the DISCUSSION that follows.)

## **E. Examples of Billboard Regulation outside Oregon**

Hundreds of cities in the United States have taken action to limit or reduce the number of billboards in their communities. In many cases, billboard companies have taken the cities to court in attempt to overturn the regulations. The Committee contacted a number of communities to find out how they regulated billboards. Some examples include:

### **1. Denver, Colorado**

In 1988, Denver banned construction of new billboards as off-premise advertising signs. The City of Denver required billboards along a freeway to be lowered to no more than 45 feet in height. Although billboard companies are allowed to relocate existing billboards, they have only moved two billboards since 1988 because of a shortage of good locations for new billboards. Denver chose to implement a limited amortization program that removed billboards along four specific streets. The amortization program and redevelopment has lead to the removal of about 120 of the 777 billboards that were in place in 1988. In 1990, Denver won a court case concerning the 45 ft. height limit along the freeway. Denver does not allow any signs to have moving parts.

### **2. Raleigh, North Carolina**

In 1983, Raleigh banned all new billboards as off-premise advertising signs. Raleigh adopted regulations that reduced the maximum permitted billboard size from 672 sq. ft. to no more larger 150 sq. ft. on a four-lane street, and 75 sq. ft. on a two-lane street. This city set a new billboard height limit of 30 ft. The regulations restricted billboards to "industrial zones." Raleigh also applied, to billboards, its prohibition on rooftop signs and signs with moving parts. An amortization program was established that required all nonconforming billboards to be removed or made conforming within 5.5 years. (The amortization program excluded signs located along the federal highway system—See State and Federal Billboard Regulations below). Since that time, the City of Raleigh has won a number of lawsuits filed against the regulations by two large regional billboard companies. Almost 200 of the 485 billboards in Raleigh, North Carolina have been removed.

### **3. Tacoma, Washington**

In July 1996, the Tacoma City Council placed a one-year moratorium on new billboard construction in the city. The action was in response to public outcry at the recent construction of a number of very large billboard structures along Interstate 5 (I-5). The City of Tacoma has no jurisdiction over these signs because they are on tribal and federal land. The City Council has said it will use the coming year to develop tough new billboard regulations. Tacoma presently has about 250 billboards.

### **4. Clark County, Washington**

In 1991, Clark County banned the construction of all new billboards as off-premise advertising signs. Clark County allowed existing billboards to remain in place as nonconforming signs until they are significantly altered at which point they must be removed. Clark County prohibits moving parts on signs.

### **5. Jacksonville, Florida**

In 1987, a group of citizens in Jacksonville, Florida regulated billboards through a citizen initiative. The initiative was approved by 60 percent of the voters despite an aggressive campaign and heavy spending against it by two large billboard companies. The measure banned new billboards as off-premise

advertising signs and set up an amortization schedule that will remove 450 billboards by 1998 and additional 550 billboards by 2015.

#### **6. Clearwater, Florida**

In 1985, Clearwater, Florida restricted large billboards by establishing a new 150 sq. ft. maximum sign size and required nonconforming signs to be removed or brought into compliance over a seven-year amortization period.

#### **7. Seattle, Washington**

The City of Seattle (Seattle) has the most complex system of billboard control encountered by the Committee. In 1980, Seattle prohibited any increase in the number of billboards in the city. A banking system was set up that allowed Ackerley Communications, the primary owner of billboards in Seattle, to construct a new billboard if the company first removed another sign of equal or greater size and height. Relocations were limited to 12 structures or 24 billboards per year. Seattle's billboard regulations place a number of restrictions on the location and density of billboards.

Seattle planning staff said their city's billboard regulations require extensive paper work and eight separate charts to track all the various elements of the regulations. Seattle has required Ackerley Communications to register each of its billboards at an annual cost of \$40 per billboard. Given that Seattle has over 610 billboards, the company pays approximately \$24,000 each year in billboard fees. A member of Seattle's planning staff told the Committee that Ackerley Communications recently lost a lawsuit the company filed against Seattle's billboard regulations. Seattle is the only city contacted by the Committee that allows moving parts on all types of signs including billboards. Ackerley Communications has constructed a number of moving, tri-vision billboards in Seattle.

#### **F. Examples of Billboard Regulation in Oregon**

The Committee examined sign codes used by other cities in Oregon. Some cities ban billboards directly. Beaverton and West Linn prohibit billboards as off-premise signs; Oregon City prohibits billboards larger than 300 sq. ft. Many Oregon cities have effectively banned billboards by setting maximum sign sizes smaller than the 288 sq. ft. and 672 sq. ft. standard billboard sizes. Maximum sign sizes include: Ashland—100 sq. ft.; Beaverton—100 sq. ft.; Eugene—200 sq. ft. (for one sign face); Gresham—250 sq. ft. (or 10 percent of wall area for a wall sign); West Linn—150 sq. ft.; Lake Oswego—64 sq. ft.; Oregon City—300 sq. ft.

Most Oregon cities allow nonconforming signs to remain in place but require that nonconforming signs be removed or brought into conformance when significantly altered. Some cities have established amortization programs to remove nonconforming signs:

- Beaverton: 5-, 7-, or 10-year amortization based on date of original permit;
- Eugene: 10-year amortization (1990 to 2000) for most signs, and a 7-year amortization (1990 to 1997) for signs larger than 200 sq. ft.;
- Gresham: 10-year amortization;
- Lake Oswego: 5-year amortization; and
- Oregon City: 10-year amortization.

#### **G. Statistics on Billboards in Portland**

Ackerley Communications controls virtually the entire billboard market in Portland. In 1990, two additional billboard companies negotiated agreements with the City that allowed them to construct a limited number of billboards in Portland. Recently, two additional companies attempted to enter Portland's billboard market. The City Attorney required them to negotiate with Ackerley Communications

to gain access to some of Ackerley Communication's credits in the billboard bank. The negotiations were not successful and the City has not allowed these two companies to construct billboards in Portland.

**1. How Many Billboards Are There in Portland?**

The City has never completed an independent inventory of all the billboards in Portland. Ackerley Communications reported that it owns 822 billboards in Portland. Staff did not have definitive figures on the number of billboards maintained by two other billboard companies. Table 1 shows the distribution of billboards among Portland's three billboard companies.

**Table 1  
Number of Billboards in Portland**

Billboard companies	Billboards per company	% of total billboards in Portland	Date of company / city agreement
Ackerley Communications, Inc.	744 posters (12 ft x 28 ft), and 78 bulletins (14 ft x 48 ft) *	98%	(6/17/86)
Meadow Outdoor	10 (or fewer) ** advertising	1%	(5/20/90)
National Outdoor	10 (or fewer) ** advertising	1%	(5/20/90)

\*data provided by Ackerley Communications \*\*estimate by City of Portland, Bureau of Planning

**2. Where Are the Billboards?**

Billboards are not evenly spread around the city. Ackerley Communications provided the Committee with a breakdown of the locations of its billboards by areas of the city as of July 25, 1996. Of Ackerley Communication's 822 billboards, 638 (78 percent) are west of Interstate 205 (I-205), 31 (4 percent) are downtown, and 153 (19 percent) are east of I-205. Southeast Portland has by far the greatest concentration of billboards in the city. Table 2 (next page) shows the number of billboards by area of Portland.

**Table 2  
Distribution of Billboards in Portland**

Area of the city	Number of billboards	% total billboards
Southeast	338	41%
East Portland	136	16%
Inner Northwest	98	12%
West/Northwest	91	11%
North	63	8%
Southwest	49	6%
Central Northwest	47	5%

(Note: The six years are those defined by the City of Portland Office of Finance and Administration in the City of Portland's October 1995 "Your City, Your Choice Survey".)

### **3. Trends in the number and type of billboards**

Over the last ten years, Ackerley Communications has reduced the overall number of its billboards in Portland. Planning staff told the Committee that, since 1986, Ackerley Communications has removed about 350 existing billboards and constructed or applied for permits to construct about 150 new billboards. This represents a net decrease of about 200 billboards. Ackerley Communications reported to the Committee that it now has 822 billboards, down from 1094 in 1986 (including billboards in areas annexed by the City), and 612 billboard structures, down from a high of 838.

Ackerley Communications applied for, and was granted by the City, 48 permits for construction of new billboards during the last six months of 1996, in anticipation of the expiration of the Stipulated Agreement. During the course of this study, committee members noted the construction of a number of new billboard structures around the city, and the replacement of some double, side-by-side poster-size billboards (12 ft. x 24 ft.) with single bulletin-size billboards (14 ft. x 48 ft.).

### **4. The Demand for Large Signs**

Most of the new sign permit applications received by the City are for signs that already fall within the 200 sq. ft. maximum size regulations the City Council adopted on June 5, 1996. The Bureau of Planning reported that, between January 1, 1995 and June 30, 1996, the City issued sign permits for about 1,225 new signs. Ninety-three percent of these applications (1,138) were for signs less than 100 sq. ft. Six percent (72) were for signs between 100 and 200 sq. ft. The City received only 15 applications for signs larger than 200 sq. ft. Planning staff reported that all of these larger signs were for large sites, and more than half of the sites were in the Jantzen Beach area. Under the Sign Code, individuals or businesses that want to put up signs greater than 200 sq. ft. have to request an exception to the Sign Code through the Adjustment Process or Design Review. (Points of Agreement: for the Sign Code Task Force, July 30, 1996)

## **H. Portland's Sign Code**

The Sign Code is Portland's primary tool for regulating signs. An understanding of at least the basic elements the Side Code is required to understand and evaluate the options for billboard regulation in Portland. The Sign Code, like many other regulations, is complex, detailed, and can be rather tedious reading. In the following section, the Committee attempts to describe in plain language the basic elements of the Code.

### **1. Overall Purpose and Objectives**

Signs in Portland are regulated by the Sign Code, which is part of the Zoning Code (Title 33, Planning and Zoning). The stated purpose of the Sign Code is to "balance the need to protect the public safety and welfare, the need for a well-maintained and attractive community, and the need for adequate identification, communication and advertising for land uses." The Sign Code objectives are to:

- ensure that signs are designed, constructed, installed and maintained so that the public safety and traffic safety are not compromised;
- allow and promote positive conditions for sign communication while at the same time avoiding nuisances to nearby properties and promoting an attractive environment;
- reflect and support the desired character and development patterns of the various zones and plan districts;
- allow for adequate and effective signs in commercial and industrial zones while preventing signs from dominating the appearance of the area; and
- ensure that the constitutionally guaranteed right of free speech is protected (33.286.010: Purpose).

The Sign Code regulations are developed by Bureau of Planning staff, reviewed and approved by the Planning Commission, and then reviewed and approved by the City Council. The Sign Code regulations apply to all signs in Portland with a few exceptions. The regulations did not apply to billboards while the Stipulated Agreement was in effect.

## **2. Types of Restrictions in the Sign Code**

The Sign Code describes what is and is not allowed in various land use zones in the Portland. The Code primarily regulates:

- sign size;
- sign height;
- sign location;
- number of signs per site;
- type of sign (e.g. freestanding signs, signs attached to buildings, rooftop signs, etc.); and
- sign characteristics (rotating and flashing signs, moving parts, lighting, etc.).

The Sign Code prohibits rooftop signs and signs with strobe lights and moving parts in all zones. Most signs are not allowed in residential zones. In addition to the Sign Code regulations, signs must comply with other Zoning Code regulations, including environmental regulations and development restrictions in areas with specific scenic value and areas with specific design review requirements. Billboards, under the Stipulated Agreement, were exempted from all these regulations.

In June 1996, the City Council adopted new, smaller maximum sign sizes. The Council reduced the maximum sign size from 300 sq. ft. to 200 sq. ft. The Council also established smaller maximum sign sizes (100 sq. ft. and 50 sq. ft.) for certain pedestrian-oriented commercial areas. Standard billboards are either 288 sq. ft. or 672 sq. ft. They are significantly larger than the new 200 sq. ft. maximum size. (See Appendix C for a summary of basic sign regulations for various commercial, employment and industrial zones in Portland.)

## **3. Permit Process**

An individual or a business that wants to put up a sign must obtain a sign permit from the Portland Bureau of Buildings. A sign inspector from the Bureau of Buildings reviews the application to see whether the sign would meet Sign Code and Zoning Code requirements. If it does, the inspector approves the permit. Once the sign is constructed, a sign inspector must visit the site and sign off on the sign. The City requires a permit when any significant changes are made to a sign, including a change to the sign face. Billboard companies are required to obtain a permit when they construct or significantly alter a billboard structure. Unlike owners of other types of signs, billboard companies do not need a permit to change the face of a billboard.

## **4. Nonconforming Signs**

Anyone who travels the streets of Portland can see many existing signs that do not conform to Sign Code regulations. When the City Council changes the Sign Code, or other zoning regulations, signs that do not meet the new requirements are considered "nonconforming" uses. Under the Zoning Code (Chapter 33.258:070.G Nonconforming Signs), these signs can continue to exist and be maintained. Owners that move, replace, or structurally alter permanent signs and sign structures must bring them into conformance with the current sign regulations. Sign owners can change the face of a nonconforming sign without having to bring the structure into compliance.

## **5. Exemptions from Sign Code Requirements**

The general nature of the sign regulations inevitably excludes some creative and interesting signs that may exceed certain Sign Code limitations. The Zoning Code provides opportunities for individuals and businesses that want to construct signs that exceed certain Sign Code requirements (e.g. size limitations) to apply for exemptions through the Sign Adjustment process or, in some cases, the Design Review process. These processes are intended to provide flexibility to allow for creative and interesting signs, or

sign characteristics needed to compensate for limitations of a particular site.

The "**sign adjustment**" process can be used for signs anywhere in the city. The adjustment process allows limited exceptions to numerical regulations, such as height or size restrictions (33.286.240: Sign Adjustments). The adjustment process sets out specific criteria that a proposed project must meet. In general, projects must either enhance the overall character of an area, or allow for mitigation of unusual site conditions that limit the visibility of a standard sign. Applications for adjustments are reviewed by the Adjustment Committee (a group of citizens appointed by the mayor), which is a subcommittee of the Planning Commission. The adjustment process has replaced what was previously known as the variance process.

The "**design review**" process provides an even more flexible set of criteria for allowing otherwise nonconforming projects in designated Design Review areas. Projects in these areas must simply comply with design guidelines for the particular design zone or historic design zone. Applications for design review exemptions are reviewed by the Design Review Commission, another body of citizens with specified areas of expertise, also appointed by the mayor.

## **6. Enforcement**

Sign inspectors with the Bureau of Buildings inspect all sign structures, including billboards, when they are first constructed. Further enforcement is generally in response to specific complaints about a sign. When someone calls in a complaint, the inspectors check whether the sign has a valid permit and whether it complies with the Sign Code. If the sign is out of compliance, the sign inspector will contact the owner and require that the sign be brought into conformance or be removed.

### **I. Background on Ackerley Communications, Inc.**

Ackerley Communications, Inc. owns and operates 98 percent of the billboards in Portland. This section provides a brief introduction to this important player in Portland's billboard regulation arena.

Ackerley Communications' 1995, 10-K Annual Report states that Ackerley Communications was founded by Barry Ackerley in Seattle in 1975. The company has "holdings in television, radio, airport advertising, professional sports and entertainment." Through its operating subsidiaries, Ackerley Communications" engages in three principal businesses: (i). out-of-home media, including outdoor and airport advertising; (ii) television and radio broadcasting; and (iii) sports marketing and promotion, primarily through its Full House Sports and Entertainment division, which includes the ownership of the Seattle Supersonics, a franchise of the National Basketball Association and the Seattle SeaDogs, a franchise of the Continental Indoor Soccer League."

Ackerley Outdoor Advertising is a division of Ackerley Communications, Inc. and is "one of America's five largest outdoor [advertising] companies. With over 10,150 displays, Ackerley Communications is the largest operator of outdoor advertising in South Florida, Massachusetts and the Pacific Northwest." Ackerley Communications also has national sales offices in New York and Los Angeles. (*Market Guide*, Ackerley Outdoor Advertising.) Ackerley Outdoor Advertising has between 35 and 40 employees in its Portland division. In 1995, Ackerley Outdoor Advertising's national operations generated revenues of \$28 Million.

### **J. Stipulated Agreement on Billboards**

For the last ten years, billboards in Portland have been regulated by the Stipulated Agreement. This agreement was negotiated between Ackerley Communications and the City of Portland in 1986. Like the Sign Code, the Stipulated Agreement is a complex and somewhat detailed and tedious document to read. An understanding of the basic elements of this agreement, and how it departs from the regulations in the Sign Code, will help the reader better understand some of the regulation options suggested by Ackerley Communications. This section summarizes the major elements of the agreement and discusses some

elements in more depth.

Because the Oregon State Court of Appeals said that Portland cannot distinguish between on-premise and off-premise signs, the Stipulated Agreement defines billboards as signs owned by Ackerley Communications at the time of the agreement and any signs owned by the company in areas later annexed by the City of Portland.

### **1. Basic Elements of the Stipulated Agreement**

The Stipulated Agreement included a number of provisions:

- set an overall limit on the total number of Ackerley Communications billboards allowed in Portland, and limited the number of billboards the company could relocate each year;
- set up a billboard banking system to track billboard removals and the construction of new billboards;
- designated seventeen billboard free areas and established development guidelines for new billboards;
- grand fathered all but 14 of the over 1,000 Ackerley Communications billboards in existence in 1986;
- set certain standards for the location and density of new billboard structures (for example: no moving parts, no rooftop signs, no signs bigger than 700 sq ft., no more than two paint-size (12 sq. ft. x 24 sq. ft.) billboards on a single structure.); and
- superseded all other City regulations during the ten years of the agreement, including the Sign Code, the Zoning Code, and Design Review requirements.

### **2. The Billboard Cap**

Ackerley Communications agreed to limit the total number of its billboards to no more than those it had in place on May 1, 1986. The City agreed to allow Ackerley Communications to raise the cap to include billboards owned by the company in areas annexed by the City after 1986. Ackerley Communications reported to the Committee that the billboard cap is presently 1,094 billboards.

The Stipulated Agreement required the City to carry out an independent inventory of all billboards in the city. The City never performed the inventory, but instead has tracked billboards based on an original list of billboard properties provided by Ackerley Communications in 1986 and subsequent notices of billboard removal or construction submitted by the company. The list provided by Ackerley Communications provides each billboard's size, location, and date of construction but does not indicate the sign height.

### **4. The Billboard Bank**

The ability of Ackerley Communications to relocate billboards was a key element of the Stipulated Agreement. The agreement established a unique, and somewhat complicated system to track the removal of existing billboards and the construction of new billboards. Whenever Ackerley Communications removed a sign it filed a "Notice of Billboard Removal" with the Planning Bureau. Staff noted the removal as a credit in a notebook that represents the "billboard bank." When Ackerley Communications wanted to construct a new billboard structure it filed a "Billboard Relocation Application" with the Bureau of Planning and staff subtracted a credit from the "bank." The Stipulated Agreement provided that, each year, Ackerley Communications would be allowed to build a number of new billboards equal to or less than five percent of the total number of signs it maintained. (e.g. if Ackerley Communications had 900 signs in place, it could draw credits from the "billboard bank" to build up to 45 new billboards in a year).

During the 10-year term of the Stipulated Agreement, planning staff did not usually verify billboard removal or construction with a site visit. Staff reported that Ackerley Communications was very

cooperative about providing the City with the information it needed to maintain the billboard bank. Staff reported that the bank system was complicated to maintain. No such system is required for any other type of sign in Portland.

### **5. Billboard-free Areas**

Ackerley Communications agreed not to place new billboards in seventeen "billboard free" areas. These areas include:

- within 100 feet of bridges, bridgeheads, and bridge approach ramps over the Willamette and Columbia River and the Columbia Slough;
- along sections of specific roadways, including Marine Drive, Airport Way, Skyline Boulevard, Front Avenue, S.E. McLoughlin Boulevard, North Greeley Avenue;
- in specific areas such as part of the Sylvan area, Multnomah Village, "pedestrian districts," historic preservation and conservation districts;
- within 200 feet of a statute or fountain if it would block the view of these structures; and
- within areas designated with specific land use zones (primarily residential areas).

Under the agreement, Ackerley Communications removed 14 of its billboards. The agreement allowed all other existing billboards in "billboard free" areas to remain. The Committee attempted to find out how many billboards grandfathered in 1986 are still located in "billboard free" areas. In response to a request from the Committee, Ackerley Communications provided information on the number of rooftop billboards. The company maintains 59 rooftop billboards, down from a total of 101 in 1986. New rooftop signs and billboards are prohibited by the Sign Code and the Stipulated Agreement.

### **6. Permits**

When Ackerley Communications wants to build a new billboard structure, it must apply for the same permits and pay the same permit fees as are required for other sign structures. Unlike other signs, billboards are not required to obtain a permit when the sign face is changed. Also Ackerley Communications has not had to comply with any of the Design Review, Sign Code, or Zoning requirements that apply to non-billboard sign permit applications.

Sign permits are administered by the Bureau of Buildings. The Bureau charges \$50 for a permit for a nonelectric sign; \$100 for electric signs; \$30 for structural review for larger signs. If a sign requires the installation of an electrical circuit (the case for most billboards), an additional \$42 fee is charged. Billboards are the only type of sign that requires action by the Bureau of Planning. The Bureau charges billboard companies the minimum plan check fee of \$75 to process the paperwork needed to enter a billboard removal or construction in the "billboard bank" The total of all the fees required to construct a new electric billboard is \$247.

### **K. State and Federal Billboard Regulations**

State and federal regulations further complicate the City of Portland's ability to regulate billboards along the federal highway system. In 1965, the U.S. Congress passed the Highway Beautification Act. The Act was supposed to encourage states to regulate and reduce the number of billboards along the federal highway system. Initially the Act provided for a five-year amortization period to compensate sign owners for the removal of existing billboards in lieu of cash compensation. The billboard industry successfully lobbied Congress to change the Act to require state and local governments to provide cash compensation to billboard owners for billboards removed through government action. The effect of this change been to protect rather than remove billboards along the highway system. Communities that set up amortization programs to remove billboards over time generally exempt billboards along the highway system from these programs because of the high cost of providing cash compensation to billboard owners.

The State of Oregon requires all billboards along the federal highway system to have a state billboard permit (ORS 377.700-840). The state regulations define billboards as "off-premise" signs. To obtain a state permit, billboard owners must obtain an affidavit from the appropriate local government that affirms that the billboard complies with local regulations. Portland Bureau of Planning staff fill out the affidavits for billboards along the highway system in Portland.

State Department of Transportation staff told the Committee that 273 of Ackerley Communications' 822 billboards in Portland are on roads included in the federal highway system. Ackerley Communications representatives were not able to confirm this number before the publication of this report. The highway system in Portland includes: interstate freeways (I-5, I-84, I-405, I-205); Powell Boulevard (Hwy 26); Martin Luther King Boulevard/Grand Avenue/McLoughlin Boulevard (Hwy 99E); Sandy Boulevard and East Burnside (Hwy 30); 82nd Avenue (Hwy 213); S.W. Macadam Avenue (Hwy 43); S.W. Front Avenue (Hwy 10); S.W. Barbur Boulevard; and N. Lombard Street (Hwy 30 Bypass).

The City of Portland will need to consider the provisions of the Highway Beautification Act if it attempts to require the removal of billboards along the highway system.

## **L. Other Types of Large Signs**

Billboards are not the only large signs that impact Portland's visual environment. Large "painted wall signs" and banners, although far fewer in number than billboards, also have a significant visual presence in the city. These signs can compete with billboards for advertising dollars. The demand for large, painted wall signs and banners may increase if the City further limits the use of large billboards. This section discusses some of the special challenges Portland faces in regulating painted wall signs and banners.

### **1. Painted Wall Signs**

The City regulates most signs, including billboards, by regulating the structure of the sign. Painted wall signs have no structure, they are simply painted onto the wall of a building. A key challenge for the City has been how to differentiate between painted wall signs used for advertising and decorative wall murals.

The state constitution does not allow cities to regulate the content of signs. Bureau of Planning staff reported that the City has responded to this challenge by defining a painted wall sign as a sign that includes "text, numbers, logos, or registered trademarks." The City considers any painted wall sign that does not include these elements as a "painted wall decoration." Planning staff said that these objective criteria regulate the elements of a sign without considering the actual content of the message. Examples of painted wall decorations include wall murals, such as Bill Naito's painted butterfly in Old Town and the mural on the side of the Oregon Historical Society Building. The City does not limit the size of painted wall decorations.

Examples of large painted wall signs include the four- or five-story tall signs off the west end of the Morrison Bridge, and Nike's four-story Ken Griffey sign. During the late 1980s, Portland's Sign Code permitted painted wall signs to cover up to 50 percent of a wall face. The large painted wall signs we see today were all granted permits during this time period. All new painted wall signs must meet the Sign Code size restrictions for their location. Painted wall sign companies must obtain a permit to put up a new sign and to paint a new face on one of their existing wall signs.

A representative of OB Walls, Inc., Portland's major painted wall sign company, told the City's Sign Code Task Force that his firm has 21 signs on walls leased from building owners. The smallest signs are 240 sq. ft. Four or five of the largest signs are 2,400 to 3,000 sq. ft. The majority are 800 to 900 sq. ft. All are hand painted. The company changes the face of the Blockbuster Video sign on West Burnside every two months. The company changes the other sign faces about every six to twelve months.

The regulation of painted wall signs and wall decorations is complex. Planning staff reported that a fitness center recently painted a large mural of exercise machines on its building. Because the painting included the brand names on the individual pieces of equipment, the Planning Bureau said the mural was a painted wall sign and exceeded the sign size limit. The fitness center responded by painting out the text. The Planning Bureau then allowed the mural as a painted wall decoration.

The Oregon Constitution does not allow local governments to consider the content of signs in its regulations. The City faces some significant challenges in arriving at regulations that are constitutionally sound and at the same time differentiate between large painted wall advertisements and popular wall murals and art. (See Legal Issues in the DISCUSSION that follows.)

## **2. Banners**

Some individuals and businesses hang large banners from their buildings as advertisements or decoration. The Sign Code allows banners as temporary signs. The Code does not restrict the size of banners. Sign Code requirements for banners are limited as follows: "One large banner is allowed per primary building wall. Banners are allowed only in the RX, C, E, and I zones. Banners may not be hung for a continuous period exceeding 60 days." (33.286.235.B Temporary Signs: Banners).

Planning staff reported that the Sign Code does not restrict individuals or businesses from hanging large billboard style advertisements from buildings as long as they change the banner every 60 days. Billboard companies often rotate the message on poster-size billboards every thirty days. A company that wanted to use a banner as a large permanent sign could simply have two banners made with the same face. The company could keep their message displayed indefinitely as long as it switched the two banners every 60 days.

### III. DISCUSSION

Billboard regulation is complex, involves many issues, and affects different groups in the community. This section begins with a summary of the arguments the Committee heard supporting and opposing billboard advertising in general. The section continues with an overview of the nature of the billboard business, and concludes with a discussion of the important legal issues related to billboard regulation.

#### A. The Visual Impact of Billboards in the Community

Billboards have a significant impact on our community. Billboard proponents and opponents argue over whether these impacts are positive or negative. Many of the same characteristics Ackerley Communications presents in its *Market Guide* as reasons why billboards are a very effective form of advertising are also cited by billboard opponents as the reasons they oppose billboards. The company's materials state:

"Outdoor [advertising] is 'on' 18 hours a day....There are no knobs to turn on or off, no stations to tune into, no newspaper to buy. It is simply there, physically in front of the audience. Consumers are continuously exposed to your message. Something that is difficult for other media to match....Outdoor [advertising] can be posted near a store or business providing a 'last word' before consumers make their purchasing decision....It's BIG. Outdoor – when done well – is hard to ignore. Its physical size demands the attention of consumers. The advertising message and your image is larger than life."

The visual impact of billboards is illustrated in the two photographs of the Broadway Bridge (see next page) in Portland. The first photograph was taken in 1969. The second was taken in 1971 after the removal of two large billboards. [Photos not available in this online edition.]

#### B. General Arguments for and against Billboards

The common arguments heard by the Committee for and against billboard advertising include:

##### Arguments for Billboards.

- Billboards are one of the most cost-effective and flexible ways for businesses to advertise.
- Billboards are the only form of advertising that can reach virtually every person in a geographic area.
- Nonprofit organizations are able to reach a wide audience through donated or discounted billboard space.
- The billboard industry provides jobs—to its own employees and indirectly through vendors who provide the variety of services required to operate and maintain billboards.
- Billboards create a more interesting visual environment—they counter visual sterility and brighten unsightly clutter.
- Billboards provide an outlet for artistic creativity and American popular culture.
- Billboard lighting enhances nighttime safety.

##### Arguments against Billboards.

- Billboards create visual clutter and lead to the visual blight of residential and commercial areas.
- Billboards are out of scale with surrounding houses, commercial structures, and the streetscape.

- Billboards often block or degrade scenic views.
- Billboards degrade an area's image, quality of life, and hurt an area's desirability as a shopping or tourist destination.
- The large size of billboards conflicts with Portland's effort to create more pedestrian-friendly neighborhoods and commercial areas.
- Billboards are targeted to automobile traffic—they endanger traffic safety by distracting drivers.
- A major percentage of billboards advertise alcohol and tobacco products and have a negative impact on children.
- The presence of billboards depresses nearby property values.
- Billboards are completely dependent for their impact on the public's tremendous investment in the street and road system, but contribute nothing to the cost of maintaining this system.
- Property taxes paid by billboard companies on billboard structures are much lower than is warranted given the high revenues generated by the structures.
- Increased densities mandated by the Metro 2040 Plan will intensify the sense of clutter, congestion and unsightliness already present from signs and billboards.

### C. Nature of the Billboard Business

The evaluation of different billboard regulation options requires some understanding of the activity or business that is the target of the regulations. This section looks at how the billboard business works.

The value of a billboard is based on its ability to get a high percentage of possible viewers to see its message. Location is the most important determinant of a billboard's value. The best locations are along streets with high traffic flow. Size also affects the impact of a billboard. The bigger the sign, the greater the visual impact. Ackerley Communications offers advertisers a variety of product options. Two of these products are larger than the 200 sq. ft. maximum sign size in the Sign Code. Two other products are smaller.

**"Poster-size billboards"** (12 ft. x 24 ft.–288 tri-vision ft.) are rented to customers in groups of 10, 15, 30 or more billboards for periods of one or more months. Ackerley Communications can help its advertisers reach potential customers over a broad geographic area by moving the advertising message, every month, to a new set of billboards in different locations around the city. With enough billboards and rotations to new locations, an advertiser can reach virtually 100 percent of the population of an area on a daily basis. Poster-size billboards are printed on paper and install on the billboard structure. Ackerley Communications has 744 poster-size billboards in Portland.

**"Bulletin-size billboards"** (14 ft. x 48 ft.–672 sq. ft.) are often rented by advertisers on a long-term basis for more targeted advertising. A hotel near the airport might want to have its message on a large billboard on the road leading to or from the airport. Because of their large size, bulletins have a particularly strong visual impact. Individual bulletin billboards often rent for 6 to 12 months at a time. Bulletin-size billboards are individually painted. Ackerley Communications has 78 bulletin-size billboards in Portland.

Ackerley Communications offers some smaller format products. One product, called an **"8-sheet"** (6 ft. x 12 ft.–72 sq. ft.), is a smaller version of the poster-size billboard. The company also offers a sign called an **"AdShelter"** (52 in. x 73 in.–26 sq. ft.), which is designed for bus shelters. Ackerley Communications reports that both of these products are primarily targeted toward pedestrians instead of auto traffic. Company representatives told the Committee that these products are not very popular with advertisers who want the bigger impact of the larger billboard signs. Ackerley Communications has used some of these smaller format signs in Tacoma, Washington. Ackerley Communications does not offer these smaller format signs in Portland at this time.

Another variation on the poster-size billboard structure is the "**tri-vision**" billboard. A tri-vision billboard is made up of narrow, triangular, vertical panels. These panels rotate every few seconds, showing one of three different advertisements with each rotation. Tri-visions, because of their movement, are more attention grabbing and have a significant visual impact. Portland, and most of the other cities contacted by the Committee, bans moving parts on any signs and does not allow tri-vision billboards. The City of Seattle allows moving parts on signs, and Ackerley Communications has constructed a number of tri-vision billboards in that city.

### **1. Revenue from Billboards**

Outdoor advertising can be a very profitable business. Materials provided to the Committee by Ackerley Communications, report that the basic monthly rate for a poster-size billboard (12 ft. x 24 ft.) is \$675. Ackerley Communications's rates for renting groups of poster-size billboards depend on the number of signs in the group. A grouping of 15 signs will allow an advertiser to reach 10 percent of the population each day for a cost of \$10,125 for one month. A grouping of 130 signs will reach 100 percent of the population for a cost of \$87,750 for one month. The standard monthly rate of \$675 per poster billboard equates to possible annual revenue of \$8,100 per billboard. Ackerley Communications owns 744 poster billboards in Portland.

Rates for a single, bulletin-size billboard (14 ft. by 48 ft.) range from \$4,410 to \$6,575 per month depending on the location—arterial (lower rate), airport (medium rate), interstate (highest rate) and the number of months of the rental agreement (1 to 12 months). Based on these rates, a single bulletin billboard can bring in from \$53,000 to \$79,000 per year. Ackerley Communications owns 78 bulletin-size billboards in Portland.

### **2. Cost of Erecting, Operating, Maintaining Billboards**

Ackerley Communications constructs and owns its billboard structures. The Division of Assessment and Taxation of the Multnomah County Assessor's Office estimates that the value of existing billboard structures in Portland varies from approximately \$3,100 for an old steel structure to \$53,000 for a newer, large, monopole structure, such as those seen along the freeways.

Ackerley Communications typically enters into long-term leases with landowners for the sites on which it builds its billboard structures. The company reported to the Committee that it leases sites from 750 property owners in Portland. Company representatives chose not to share information with the Committee about the range of amounts it pays to landowners to lease billboard sites. A representative of a neighborhood business association told the Committee that Ackerley Communications paid one business in their neighborhood \$1,400 per year to lease a billboard site.

Ackerley Communications reported that it does business with 1,600 local vendors who provide the company with a variety of products and services from welding to printing.

### **3. Who Uses Billboards?**

Portland's billboards are used by a variety of different advertisers, both local and national, as well as non-profits, and political campaigns. The Committee was not able to determine the percentage of the total billboards devoted to different types of advertising, or how much advertising is by local companies versus national companies or brand name products. Materials from Scenic America, a national anti-billboard lobbying group, report that, nationally, the largest customers for billboard advertising are tobacco companies (31 percent) and alcohol (11 percent) companies. Ackerley Communications provided the Committee with a long list of its customers. These include a variety of local and national firms and non-profits. The company did not provide a breakdown of the percentage of the company's business by type of customer.

Ackerley Communications reported that it donates, or provides at a discounted rate, about 10 percent of its billboards. This number varies by year and season. Ackerley Communications generally donates the sign space and the nonprofit organization pays the printing costs. Scenic America reports that across the

nation four percent of billboards are used for non-profits. Ackerley Communications reported that, between 1988 and 1996, it donated approximately \$2.8 million in free billboard space to a large number of Portland area nonprofits organizations and public agencies.

#### **4. Standardization of Billboards across the Country**

All of Ackerley Communications billboards in Portland are larger than the maximum 200 sq. ft. sign size in the Sign Code. The two dominant billboard sizes—poster (12 ft. x 24 ft.) and bulletin (14 ft. x 48 ft.)—are the standards for the billboard industry across the nation. Standard sizes allow advertisers to save money by printing large quantities of a particular advertisement and distributing them to billboard companies in cities across the nation. Many national firms allow local stores and distributors to piggyback on this type of national campaign by adding their company name and store location to the advertisement. A national firm pays for the printing of the advertisement and part of the cost of renting the billboard. As a result, local stores get advertising exposure at a much-reduced cost.

The majority of the cost of printing is in the setup. Once a print job is set up, the printer can print additional copies of an advertisement at relatively little extra cost. Ackerley Communications representatives were concerned that under Portland's Sign Code the company may have to print advertisements in nonstandard sizes. They told the Committee that nonstandard sizes could double the cost of production, and that local businesses would not be able to benefit from national advertising campaigns.

#### **5. Taxation**

Taxation of billboard structures is yet another arena in which anti-billboard activists and billboard companies have clashed. Billboard opponents claim that billboard companies pay tax on much less than the true value of their billboards. They claim that billboard companies receive favored status as compared to homeowners or other businesses and that billboard companies often demand compensation for the removal of a billboard that is far above the value at which the billboard is taxed.

Tax assessors say that the true value of a billboard is affected by a combination of the physical structure of the sign and its location. Billboard companies seldom own the land on which their signs stand. The small pieces of land on which they stand usually have little value for any other use. Most assessors value billboards based on the value of the physical billboard sign structure rather than their fair market value at which the company could sell a billboard located at a specific site. Assessor's offices around the country have struggled to find a better way to assess the value of billboards without arriving at any solutions. Multnomah County appraisal staff face the same challenges.

The City of Houston proposed requiring billboard companies to provide detailed information about the income earned by each billboard structure to help city officials more accurately assess the value of individual billboards for tax purposes.

### **D. Legal Issues**

The Sign Code is a legal tool that shapes the visual environment of Portland. Any attempt to regulate billboards and large signs must consider important legal issues related to sign regulation. The following sections discuss constitutional issues, amortization, and painted wall signs.

#### **1. Constitutional Issues**

The regulation of billboards frequently implicates at least two constitutionally protected civil rights, *viz.* freedom of speech under the First Amendment to the U.S. Constitution, and freedom from uncompensated takings of private property for public purposes guaranteed by the Fifth Amendment. Analogous provisions are found in the Oregon Constitution, Article I, sections 8 and 18 respectively. Consequently, any ordinance adopted by the City of Portland to regulate billboards must pass constitutional muster under both of these provisions.

**Content-based regulation.** The Oregon Constitution protects all non-abusive forms of expression

from content-based regulation, and only content-neutral, reasonable time, place and manner regulations are permissible. *Bank of Oregon v. Independent News*, 298 Or 434, 693 P2d 35(1985).

"section 8. Freedom of Speech and Press. No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever, but every person shall be responsible for the abuse of this right."  
(Oregon Constitution, Article I, section 8.)

Oregon's constitution was patterned after Indiana's. The constitutions of several other states, including Indiana's, have this same provision, but none of these states have interpreted these provisions to be as absolutely protective as has Oregon. States with provisions similar to Oregon Constitution Article I, section 8 include Indiana, Ohio, Kentucky and Pennsylvania; also the 1789 French Declaration of the Rights of Man and Citizens.

The First Amendment to the United States Constitution permits greater regulation of commercial billboards than of billboards with noncommercial content. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 SCt 2882 (1981). At most, expression can be regulated based on its secondary adverse or nuisance effects, e.g., protecting unwilling viewers from adult materials or removing billboards from streets where they pose a distraction to motorists and a traffic safety hazard. *City of Portland v. Tidyman*, 306 Or 174, 759 P2d 242 (1988). Frequently, moving signs or signs with moving parts or flashing lights are lawfully prohibited on the grounds they distract, and thereby endanger, motorists.

The Oregon Court of Appeals, however, has interpreted Article I, section 8 to grant equal and full protection to commercial and noncommercial speech alike. *Ackerley Communications, Inc. v. Multnomah County*, 72 Or App 617, 696 P2d 1140 (1985). The basis for this holding was the Court's conclusion that Article I, section 8 prohibits any form of content-based regulation. Regulations that distinguish between commercial and noncommercial speech are inherently content-based, as are regulations that distinguish between on-premise and off-premise signs or that target political lawn signs, tobacco or alcohol advertisement signs, or which act to restrict adult businesses. These kinds of regulations are inherently content-based and are prohibited by Article I, section 8.

**Reasonable time, place and manner regulations.** The states' power to regulate land use comes from the legislative, or police power reserved to the states by the Tenth Amendment to the federal constitution. States have the power to zone and regulate land use as a means to protect the public health, safety and welfare. Regulations designed to preserve the aesthetic environment are also permissible. The government, however, is not allowed to impose otherwise unconstitutional restrictions on speech and other forms of protected expression under the guise of zoning. Rather, reasonable time, place, and manner regulation of expression, that leaves open adequate opportunities for expression, is permissible under Oregon's Constitution Article I, section 8.

Zoning and land use laws that regulate billboards as structures, and not as communication, are lawful forms of time, place and manner regulation. Just as Portland's Zoning Code prohibits certain uses in certain zones, so too it can prohibit certain kinds or sizes of structures. The City's current proposal to regulate billboards under the Sign Code would prohibit signs with an area larger than 200 sq. ft. and would allow signs of that size only in certain zones. Such a regulation regulates billboards as structures and, on its face, is content neutral. The proposal would likely withstand legal challenge.

## **2. Amortization**

The City's recently amended Sign Code does nothing to reduce or eliminate signs existing as of the date of adoption that do not meet the new size limitations. Were the City to adopt its current proposed sign regulation, all then-existing signs that do not meet the maximum area limit would become "nonconforming uses." Under Oregon law, counties, as opposed to Cities, are precluded from requiring the elimination of nonconforming uses (ORS 215.130). This means that Cities are presumed to have the

authority to require the eventual elimination of nonconforming uses. *Cope v. City of Cannon Beach*, 115 Or App 11, 836 P2d 775 (1992), *aff'd* 317 Or 339,855 P2d 1083 (1993). The only limitation on this authority is imposed by the "Takings Clause" of the state and federal constitutions, which require "just compensation" for the removal of the nonconforming use.

Under an amortization schedule, the property owner is provided "just compensation" for the removal of a nonconforming billboard by being allowed to use and derive revenue from the billboard for a set period of time following imposition of the prohibition. Typically, the amortization period is the number of years over which the owner would be expected to recover its investment-backed income expectation. The length of the amortization period is a function of the value of the billboard structure, its useful life span, and the potential income expected over that life span. Once the amortization period expires, the owner would be required to remove the billboard without additional compensation from the government.

Any amortization program that does not provide "just compensation" through a sufficiently long amortization period would be subject to a takings challenge. A billboard company could even bring a challenge against any amortization program adopted by the City if it did not provide for the payment of just compensation for the loss of the billboard. The City could avoid such a challenge however by including in its amortization program the opportunity for billboard companies to prove, on a case-by-case basis, that they are entitled to a longer amortization period.

The City Attorney told the Committee that the City is not presently considering the inclusion of an amortization program as part of the decision of whether to regulate billboards under the Sign Code. An amortization program must be carefully crafted to address a number of important legal concerns. The eventual elimination of billboards through an amortization program is consistent with the City's stated goals, and would allow those goals to be achieved more quickly than through normal attrition.

### **3. Painted Wall Signs—Art or Advertising?**

Painted wall signs present several legal and practical complications that make their regulation more difficult and at greater risk to legal challenge than regulation of billboards. The City's approach to regulating the structures of billboards and other signs breaks down when a sign becomes part of a building. Article I, sec. 8 allows a building owner to paint their building any color or design they might wish. Regulation of that color and design comes dangerously close to content-based regulation of protected expression.

The Zoning Code differentiates between painted wall signs, which include text, numbers, logos, or trademarks, and wall decorations, which do not (Chapter 33.910: Definitions). Planning staff said that these objective criteria regulate the elements of a sign without considering the actual content of the message. Planning staff reported that if the City's method of distinguishing between painted wall signs and painted wall decorations is successfully challenged in court, the City may opt to require that all painted wall signs and murals comply with Sign Code size restrictions.

The City Attorney stated that, while the City cannot regulate the content of a painted wall sign, it can regulate the size of that content. Such a position assumes the area extent of a painted wall sign is as easily delimited as the borders of a billboard. Because a layer of paint on a wall is not as easily regulated as a "structure," in the same way as a billboard structure, the City's regulations for painted wall signs may attract a court challenge.

One reason advanced in support of the regulation of painted wall signs is that, to omit them, invites an increase in building walls painted with advertisements. Ackerley Communications reported to the City's Sign Code Task Force that the company has identified 15 sites where the it may choose to put up painted wall signs.

## IV. REGULATION OPTIONS

In this section, the Committee presents criteria that it used to evaluate different billboard regulation options. The Committee then describes and discusses the major regulation options available to the City Council.

### A. Criteria for Evaluating Regulation Options

The Committee used the following criteria to evaluate the City Council's options for billboard regulation. In choosing these criteria, the Committee sought to balance the interests of the larger community (the "public interest") with the interests of individuals and businesses affected by billboard regulation.

- **Improve the visual environment by reducing the number and size of large, freestanding signs and wall signs.** The Portland City Council has adopted policies aimed at reducing the number and size of signs in Portland in order to improve the aesthetics of the city. These policies are intended to: reduce the clutter of signs; eliminate signs from areas that block views; protect residential areas from the intrusion of advertising signs; and reduce the number of large, freestanding signs, such as billboards.
- **Enhance public safety by limiting signs that are a distraction or hazardous to driving.** Reduce the number of signs that may distract drivers from the road, or which make it difficult to see and read traffic safety and public directional signs.
- **Does not infringe on freedom of speech as defined in the Oregon Constitution.** Judicial interpretations of the Oregon Constitution have severely limited the ability of local governments to regulate the expression of speech. These interpretations make it very difficult to regulate the *content* of signs in any way in Oregon. The courts have found that cities can control the size, placement, and appearance of signs (such as no moving parts or no flashing lights).
- **Uniform standards that are applied equally to all sign owners.** City zoning and building codes are uniformly applied and avoid special provisions for particular businesses or industries. Laws and regulations that are not uniformly written and implemented are subject to legal challenge. Zoning and building codes do regulate different kinds of land uses, but within categories, there is uniformity of regulation.
- **Allows limited outdoor advertising as a commercial means of communication subject to rules.** Sign regulations should allow some outdoor advertising (billboards) as a legitimate form of commercial communication. Regulations should not attempt to totally eliminate all billboards, but rather to regulate them in terms of their size, location, number, and general appearance (excluding face content).
- **Regulations that are easy to understand and administer.** The regulations regarding billboards should be clear and concise and subject to easy administration by the City. This criterion favors alternatives that simplify and consolidate regulations.
- **Costs of administering regulations are borne by sign permit applicants.** The 1971 City Club Report recommended that all sign code regulations be fiscally self-sustaining. Part of the problem at that time was that the City had limited staff to enforce a complex number of sign regulations. Planning staff told the Committee that the Bureau of Buildings recovers 100 percent of its code administration costs through permit fees, while the Bureau of Planning recovers half of its code administration costs.

### B. The City Council's Regulation Options

The City Council has a few basic options for the regulation of new and existing billboards. This section of the report describes these options and discusses their relative advantages and disadvantages.

In May 1996, representatives of Ackerley Communications told the Portland Planning Commission that the company wanted to either extend the existing Stipulated Agreement or negotiate with the City a new agreement, independent of the Sign Code. The City Attorney made it clear that such an agreement was not likely to be legally sound because it would give special treatment to one company. Ackerley Communications has since agreed that billboards should be regulated under the Sign Code in some form.

The remaining regulation options include:

- Regulate billboards under the Sign Code as amended on June 5, 1996; or
- Regulate billboards under the Sign Code as amended on June 5, 1996 with additional special amendments negotiated between the City and Ackerley Communications.

With regard to billboards that become nonconforming uses, the Council can implement one or a combination of the following options:

- Regulate billboards under the Sign Code as amended on June 5, 1996 and allow redevelopment and attrition to reduce the numbers of billboards over time;
- Amend the Sign Code to introduce incentives that will encourage Ackerley Communications to voluntarily reduce the number of billboards over time; and
- Develop an amortization program that targets some or all of the City's billboards and requires their removal over a set period of time.

The advantages and disadvantages of these options are discussed in the sections that follow.

### **1. Regulate billboards under the Sign Code of June 5, 1996**

#### **The Advantages**

The Committee applied the criteria described above to the option of regulating billboards under the Sign Code as amended on June 5 and identified the following advantages:

- Would improve the visual environment and traffic safety by banning the construction of any new, large signs, and by requiring that all new signs meet Sign Code and Zoning Code restrictions;
- Would treat all sign messages the same, regardless of content, thereby complying with state constitution free speech provisions;
- Would require all businesses to meet the same set of rules, rather than having a special agreement for the billboard industry, avoiding confusion over which signs are "billboards" and which are simply freestanding or wall signs;
- Would allow individuals and businesses to put up on- or off-premise signs as long as they meet code requirements;
- Would eliminate the need to maintain a complex separate agreement and tracking system specifically for billboards. One set of rules would be applied to all signs; and
- Would eliminate the extra cost of administering the Stipulated Agreement. The existing permit fee system would help recover some of the costs of regulating billboards under the Sign Code.

#### **The Disadvantages**

Ackerley Communications suggested that regulation of billboards under the June 5 Sign Code would result in the following disadvantages:

- Eliminates "billboard free" zones;
- Billboard industry would not be able to relocate billboards as traffic patterns change, and therefore would have no incentive to remove billboards;

- No incentive for Ackerley Communications to work with neighborhood groups;
- Would lead to a proliferation of smaller freestanding and wall signs and encourage the increased use of banners, wall painted signs; on-premise and off-premise sign businesses would be forced to compete for sign space and locations;
- Increases advertising costs to businesses and nonprofits;
- Possibility of costly lawsuits; and
- Selection of 200 sq. ft. limit was arbitrary and not based on any economic impact studies.

**Eliminates "billboard free" zones.** Ackerley Communications pointed out that the "billboard free" areas designated in the Stipulated Agreement are not part of the Sign Code, and that signs may go up in these areas. Planning staff responded that the June 5 amendments incorporate some restrictions on sign placement from the Stipulated Agreement, including the prohibition of "the placement of freestanding signs near freeways, freeway ramps, bridges and bridge-approach ramps." A number of formerly "billboard free" areas qualify for the smaller sign size limitations under the Sign Code as well as Zoning Code restrictions such as scenic resource or design overlay zones, plan districts, and environmental regulations. Areas that would no longer have any special protection against the largest signs allowed under the Sign Code include: Multnomah Village and parts of N. Greeley, and McLoughlin Boulevard.

**Billboard industry would not be able to relocate billboards as traffic patterns change, and therefore would have no incentive to remove billboards.** Billboards are most effective when they are along high traffic streets. Some communities around the country have negotiated deals with billboard companies that encourage these companies to remove signs in certain target areas by allowing them to relocate the signs in other less sensitive, but high traffic flow, areas. Some agreements allow a one-for-one relocation (e.g. Seattle). Other communities require a billboard company to remove two or more billboards to be allowed to erect a new billboard in another location. Portland's Sign Code presently contains no such incentives.

**No incentive to work with neighborhood groups.** If the City allows Ackerley Communications to relocate billboards, the company would have the option to remove a billboard in response to neighborhood concerns and relocate it elsewhere. Without relocation rights, the company's only options would be to leave the billboard in place or to remove it and lose the billboard's potential revenue. The Committee heard about only one instance in which Ackerley Communications removed a billboard structure in response to neighborhood concerns. The company removed the billboard only after months of local resident protests, complaints to advertisers, and picketing of the billboard site. The Committee was not able to determine how responsive Ackerley Communications would be to neighborhood requests to remove particular billboards.

**Would lead to proliferation of smaller freestanding and wall signs and increased use of banners, wall painted signs; forces on-premise and off-premise businesses to compete for sign space and locations.** Representatives of Ackerley Communications suggested that a reduction in the overall number of billboards and billboards at prime locations will create an unfulfilled demand for advertising. This demand will encourage individuals and businesses to erect an increased number of small signs to communicate their messages leading to greater visual clutter. Planning staff responded that individuals and businesses can already erect signs smaller than billboards as long as they meet the Sign Code requirements, and no proliferation of small signs has occurred. Both Seattle and Denver are cities much larger than Portland. These cities have fewer billboards than Portland, yet planning staff in those cities did not report any problems with a proliferation of smaller signs.

Some witnesses suggested that any future proliferation of smaller signs should be dealt with directly through amendments to the Sign Code rather than through efforts to preserve large billboards. Some communities limit the proliferation of smaller signs by placing strict limitations on the number of signs that an individual or business can construct on a particular site. In Clearwater, Florida, businesses are

allowed one sign and can choose whether to advertise their business or allow their sign to be used for off-premise advertising. A member of the Clearwater planning staff reported that only one or two businesses had chosen to allow their sign rights for off-premise advertising.

Most people who spoke to the Committee agreed that the regulation of painted wall signs under the Sign Code is not adequate and that Planning staff, the City Attorney, and the City Council will need to develop better regulations to avoid an increase in the number of large painted wall signs.

**Increases advertising costs to businesses and nonprofits.** Ackerley Communications reported that a reduction in the maximum size of billboards will increase the cost of this type of advertising to businesses and nonprofits. The increased cost would result from the need to print signs in nonstandard sizes and the possible inability of local businesses to benefit from national advertising campaigns. Anti-billboard activists say the increased cost or reduced availability of large off-premise advertising signs need to be weighed against the negative impact large signs have on the hundreds of thousands of Portland residents who are impacted by them every day.

The June 5 Sign Code does not ban billboards—it requires new billboards to be no larger than 200 sq. ft. Unless the City implements an aggressive amortization program, many of the over 800 existing billboards in Portland will still be standing for years and possibly decades to come. In Denver, which imposed sign and location limitations on new billboards in 1988 and implemented a very limited amortization program, the total number of billboards has only decreased by about 120, leaving over 600 standard-size billboards still available for advertisers.

**Possibility of costly lawsuits.** Billboard companies across the county have been very aggressive in filing lawsuits against local government attempts to limit their business. While Ackerley Communications representatives assured the Committee that they were interested in working with the City to come to some agreement about how billboards would be regulated under the Sign Code, they made it clear that they would go to court to protect their interests if necessary. The City Attorney told the Committee that individuals and businesses often sue the City over new regulations. The City Attorney assured the Committee that the City has adequate staff and resources to respond to any lawsuits over the regulation of billboards under the Sign Code.

**Selection of 200 sq. ft. limit was arbitrary and not based on any economic studies.** Representatives of Ackerley Communications and some business community representatives charged that Planning staff did not perform any thorough economic studies on the likely impact of reducing the maximum sign size. Planning staff said the 200 sq. ft. maximum size was selected based on an examination of sign codes in other cities in Oregon and around the country and in an effort to advance the City Council's policy of reducing the number and size of signs in Portland.

## **2. Regulate under Sign Code with Further Amendments.**

The City Council may decide that, instead of simply regulating billboards under the Sign Code as amended on June 5, it will further amend the Sign Code to accommodate concerns of the billboard and sign industries. This section discusses some possible amendments proposed by Ackerley Communications and others.

**Relocation.** If billboards are regulated under the June 5 Sign Code, no new standard-size billboards could be built anywhere in the city. Ackerley Communications is very interested in being able to construct new billboard structures to respond to changing traffic patterns. Earlier in the summer, the company proposed a "Cap and Replace" system that would put a lid on the total number of billboards but would allow the company to construct a new large billboard if it takes down an existing billboard of the same size. Such a relocation policy may allow Ackerley Communications to relocate billboards that would otherwise have been removed because of redevelopment. A one-for-one relocation would lead to a very slow reduction in the number of billboards in Portland.

Ackerley Communications also suggested limiting the number of relocations to a number much

smaller than that allowed in the past under the Stipulated Agreement. Ackerley Communications claims that the benefits of this approach would be to provide predictability, fewer signs, flexibility to address certain problem signs, and ease of administration.

If the City allows relocation of standard-size billboards, the negative visual and traffic impacts of these signs would simply be moved from one location to another. Construction of new standard-size billboard structures would conflict with the City's effort to reduce the visual and traffic impacts of large signs. A relocation program would also allow Ackerley Communications to maintain its special advantage in being able to construct signs that are much larger than those available to all other businesses in the city.

An option discussed at one time by the City's Sign Code Task Force is a ban on any new or relocated bulletin-size billboards (14 ft. x 48 ft.) and the removal of all bulletin-size billboards in Portland over the next 10 years. Bulletin-size billboards, although the largest billboards in Portland, represent only nine percent of the total number of billboards in the city. Ackerley Communications reported that a very large portion of its revenue comes from bulletin-size billboards, and that the company was not willing to agree to the proposal.

**Where to relocate?** Where would the City allow Ackerley Communications to construct new billboards since the Sign Code does not allow signs over 200 sq. ft. anywhere in Portland? The negative impact of new large signs would be most significant in areas in which the maximum sign size is now 100 sq. ft. or 50 sq. ft. Ackerley Communications suggested incorporating the billboard free areas in the Stipulated Agreement into the Sign Code and adding new areas that reflect current planning and zoning designations. In an August 2, 1996 memo to the City's Sign Code Task Force, David Knowles, the planning director for the City of Portland, suggested allowing poster-size billboards (12 ft. x 24 ft.) only in the following areas:

- only in zones: General Commercial, Neighborhood Commercial 2, Office Commercial 2, General Employment 1, and Industrial;
- only in locations across the street from a Commercial, Employment, or Industrial zone;
- at least 100 feet from a Residential zone on the same frontage;
- not allowed in Pedestrian Districts; and
- new structures in Design Zones subject to Design Review and new structures in Historic Resource Protection Zones subject to Historic Design Review.

While these proposed restrictions would help limit the number of billboards in these more sensitive areas, they would do nothing to remove existing billboards in these areas.

**Administration.** Under the June 5 Sign Code, the City would not have to maintain a special tracking system for billboard relocations. Ackerley Communication's "Cap and Replace" proposal would also avoid the need for a tracking system while still allowing billboard relocation. Under "cap and replace," the City would only grant an individual or business a permit to construct a new standard-size billboard if the individual or businesses applied, at the same time, for a demolition permit on an existing similar or larger-size billboard.

**Incentives for faster billboard removal.** Portland's Sign Code Task Force is examining options that would provide Ackerley Communications with incentives to remove billboards at a faster pace. A requirement that Ackerley Communications take down two or three billboards in exchange for the construction of one new billboard would speed the removal process. The advantages of faster sign removal need to be weighed against the negative visual impact of the construction of new billboards. Also, the effectiveness of such a program at reducing the overall number of billboards in Portland, will depend on how many new Billboards Ackerley Communications decides to build. If the number is small, the overall number of billboards in the city will remain high.

**Tri-vision signs.** Early in the summer, Ackerley Communications proposed that it would take down

three standard billboards for each tri-vision billboard structure it was allowed to construct. Tri-vision signs have a more dramatic impact on the visual environment and traffic safety than standard billboards, and their construction in Portland would violate the Sign Code prohibition against signs with moving parts. City approval of an exception for tri-vision signs for Ackerley Communications may lead other sign owners to demand the right to put moving parts on their signs.

**Visual backing.** Billboards that are backed by a wall have less visual impact than freestanding billboards and billboards that extend above the roof line of a building. Visual backing helps signs appear more in scale with surrounding development. The presence of a large billboard, whether backed or not, may still add to visual clutter.

### **3. Nonconforming Signs**

Neither of the billboard regulation options described above would lead to the certain removal of a large number of Portland's billboards. Regulation of billboards under the existing Sign Code would lead to a slow attrition of billboards over many decades. Changes to the Sign Code that would allow the construction of a new billboard only in exchange for the removal of two or three existing billboards may or may not lead to a greater and faster reduction in the overall number of billboards in Portland.

Amortization is the only tool that would ensure rapid (years versus decades) removal or modification of large numbers of billboards. Portland used amortization to successfully remove 130 billboards in the 1960s and 1970s. Communities across the nation have implemented amortization programs that have been upheld by various courts after being challenged by billboard companies.

An amortization program can vary in scope. In Portland, an amortization program could broadly apply to all nonconforming signs that have not been exempted through the adjustment or Design Review process, or it could target specific types of nonconforming signs, such as:

- roof top signs;
- signs in particular zones that are larger than the maximum size allowed for that zone (e.g. Neighborhood Commercial, Mixed Commercial/Residential, etc.);
- signs over a certain size (e.g., over 250 ft., over 300 ft., over 400 ft., etc.); or
- signs on undeveloped lots.

Attempts to remove any of the 273 billboards along the highway system in Portland could run afoul of the federal Highway Beautification Act requirement that local governments provide cash compensation to billboard owners whose signs are ordered removed. The City of Denver won a lawsuit over its requirement that billboards along a freeway be modified to meet new sign maximum height requirements. The court found that this was a modification not a removal, and the City of Denver was not required to pay cash compensation. Some similar opportunities may be available if the amortization program requires billboards to be modified to meet the new maximum size limitations.

The City might consider covering all or part of the cost of preparing an inventory of nonconforming signs and administering an amortization program through a special fee on nonconforming signs. The City of Seattle established a special billboard sign fee program which helps cover the cost of maintaining Seattle's very complicated billboard tracking system.

The development of an effective and legally sound amortization program would require detailed work and attention by the City Attorney's office.

### **4. Implementation Options**

Billboard regulations and a billboard amortization program can be implemented either through an ordinance passed by the City Council or through voter approval of a citizen initiative. Most of the billboard regulations examined by the Committee were implemented through city council ordinances. The

only example, the Committee found, in which citizens used the initiative process to implement billboard regulations and a billboard amortization program, was in Jacksonville, Florida. Billboard regulations in Portland could be passed either by the City Council or by Portland's citizens through an initiative.

### **5. Painted Wall Signs**

Painted wall signs pose a difficult regulatory challenge for Portland. Large painted wall signs clearly have a significant visual impact on the community. The City's primary challenge is to find a way to regulate commercial painted wall signs as well as artistic wall murals in a way that is constitutionally sound. The City's Sign Code Task Force considered a requirement that painted wall sign companies reduce the area of their existing signs by 10 percent with each copy change until the sign conforms to the Sign Code. A policy that allows painted wall signs to be generally larger than other types of signs would give painted wall sign companies an unfair advantage over owners of other types of signs.

The Committee did not have sufficient time to give this complex issue the detailed study and careful consideration required to develop a full understanding of the regulation issues and the options available to the City.

## V. CONCLUSIONS

The Committee reviewed the history of Portland's efforts to regulate billboards, listened to testimony from different sides of the issue, and studied billboard regulation approaches used in other cities and states. After carefully considering this information, Committee members are very concerned about the negative impact billboards and other large signs have on the visual environment of our city. We are particularly concerned about the impact billboards and other large signs will have on the quality of the urban experience as the population grows, traffic increases, and development in the Portland metropolitan area becomes more dense and compact.

The strong free speech provisions in the Oregon Constitution make it particularly difficult for Oregon's local governments to regulate billboards by their content as "off-premise" advertising. We believe, however, that the City of Portland has the clear legal authority, and support of its citizens, to regulate the size, location, and characteristics of signs without referring to the content of the message on the sign.

Based on the research presented in this report, the Committee makes the following conclusions:

1. The Committee finds that, by and large, the recommendations of the City Club's 1971 report are still valid. The Committee recognizes that a specific ban on billboards as off-premise signs is not allowed by the Oregon Constitution,
2. Large signs generally contribute to visual clutter, endanger traffic safety, are often out of scale with surrounding development, and degrade the visual environment of our neighborhoods and commercial areas.
3. Billboards should be regulated under the Sign Code. Regulation through a special agreement, similar to the Stipulated Agreement, with Ackerley Communications or any other company, would not be legally sound or fair to owners of other types of signs.
4. In general, no new large signs that do not conform with the Sign Code should be allowed to be constructed in the City of Portland. Some flexibility should be provided through the existing Adjustment Process and Design Review to allow the construction of creative signs that do not add to visual clutter or have a negative visual impact, and that are appropriate to the site.
5. Existing large, nonconforming signs that contribute to visual clutter, endanger traffic safety, and are out of scale with surrounding development should be removed over time through an amortization program. Nonconforming signs that have particular aesthetic or historical value to the community should be preserved.
6. Signs with moving parts, such as tri-vision billboards, dramatically increase the negative visual impact of these signs and pose an increased traffic safety hazard.
7. The City has tended to rely too much on input from the billboard and sign industries when developing changes to the Sign Code; individuals who represent the general public interest should play a much greater role in the development of future changes to the Sign Code.

**Painted wall signs.** Painted wall signs, wall decorations, and banners can have a significant visual impact and are an important aspect of the urban environment. The complex issue of how to regulate these signs was beyond the scope of this study but deserves a focused examination by the City of Portland and citizens' groups to determine how to appropriately and effectively regulate these signs.

## VI. RECOMMENDATIONS

The Committee believes that the City of Portland has an important and historic opportunity to significantly advance its program to improve the visual environment of our community. The Committee unanimously favors the regulation of billboards under the same general rules that apply to other signs in the city. We do not believe that it is fair, or legally defensible, for the City to provide special exemptions to these rules to accommodate a particular industry or company.

We recognize that businesses have an important and basic need to communicate with their customers. We are generally opposed to the use of large signs or billboards that intrude on the urban landscape. Unlike the total prohibition of "off-premise" advertising implemented by many other communities, the uniform application of Portland's Sign Code will not lead to a ban on outdoor advertising. Sign and billboard companies will still have the opportunity to construct "off-premise" advertising signs that meet the requirements of the Sign Code, businesses will still have access to this advertising medium, and the strong public interest in achieving and maintaining attractive and pleasant streets and neighborhoods will be advanced.

Committee members recommend that:

1. The City Council should regulate billboards under the Sign Code as amended on June 5, 1996, and should commit the necessary resources to defend and enforce the Sign Code.
2. The City Council should prohibit the construction of any new signs or relocated signs that do not comply with the 200 sq. ft. maximum size and other restrictions of the Sign Code.
3. The City Council should limit exceptions to the Sign Code requirements to those allowed through the City's formal Adjustment and Design Review processes.
4. The City Council should not allow the construction of signs with moving parts, such as tri-vision billboards.
5. The City Council should direct the City Attorney to develop an amortization program within six months (by April 1997) that will require the removal or modification of large signs that do not meet the Sign Code requirements. The amortization period should not exceed ten years. The City Attorney should establish shorter amortization periods for the removal or modification of specific nonconforming signs, such as rooftop signs, oversize signs in pedestrian-oriented areas, and very large signs.
6. The City Council should direct the Bureau of Planning and other relevant municipal agencies to include significant citizen participation in the development and consideration of future Sign Code revisions.
7. City Club members and Club officers should communicate their support of these report recommendations to individual City Council members either by testifying at hearings on billboard regulation, submitting written testimony, writing letters, or calling or speaking with commissioners directly.

Respectfully submitted,

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Denise Bauman  
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## **ACKNOWLEDGEMENTS**

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## VII. APPENDICES

### A. Witnesses Interviewed by the Committee

Ed Baldwin, president, Sandy Boulevard Business Association  
Len Bergstein, Northwest Strategies, Inc.  
Joe D' Alessandro, executive director, Portland Oregon Visitors Association  
Chris Daugherty, Ackerley Outdoor Advertising  
Charles Floyd, professor of real estate, University of Georgia  
Charlie Hinkle, attorney, Stoel Rives LLP  
Jerzy Hubert, deputy chief, Department of Public Works, City of Jacksonville, Florida  
Matt Hussman, director of grassroots advocacy, Scenic America  
Kate Ivory, local sales manager, Ackerley Outdoor Advertising  
Marie Katona, commercial property appraiser, Multnomah County Division of Assessment and Taxation  
Lloyd Keefe, former director of planning, City of Portland  
Julie Kendig, attorney Siemon, Larsen & March, (for Clearwater, Florida)  
David Knowles, director, Bureau of Planning, City of Portland  
David Kramer, Development Review, Bureau of Planning, City of Portland  
Bill Manlove, deputy city attorney, City of Portland  
Chuck Martin, president, Alliance of Portland Neighborhood Business Associations  
Becky Miller, citizen activist  
Steve Morasch, attorney (for Ackerley Outdoor Advertising), Schwabe, Williamson & Wyatt  
Jay Mower, citizen activist  
Jim Odom, Oregon Department of Transportation  
Garry Papers, chair, Portland Chapter American Institute of Architects, Urban Design Committee  
Alex Pierce, Oregon Roadside Council  
Cary Pinard, senior city planner, Bureau of Planning  
Jessica Richman, city planner, Bureau of Planning, City of Portland  
Jeffrey Rogers, city attorney, City of Portland  
Barbara Sack, city planner, Bureau of Planning, City of Portland  
Terry Sandblast, governmental affairs director, Ackerley Outdoor Advertising  
Carol Stone, director, Regional Drug Initiative  
Larry Strickland, zoning inspector supervisor, City of Raleigh, North Carolina  
Randy Swain, president, Ackerley Outdoor Advertising

### B. Bibliography

#### City of Portland:

1985 Sign Code Rewrite Project.  
Bureau of Planning, *Sign Code Amendment Report, Recommended Draft*, May 24, 1996.  
City Council Resolution No. 35524 (established billboard task force), June 5, 1996.  
Ordinance No. 170224 (authorized negotiation of temporary agreements with billboard company), June 5, 1996.  
Sign Code (Chapter 33.286).  
Zoning Code (Title 33).

#### Sign Codes from Oregon Cities:

Ashland, Beaverton, Eugene, Gresham, Lake Oswego, Oregon City, West Linn.

**Sign Codes from other American Cities and Counties:**

Clearwater, Florida; Denver, Colorado; Dupage County, Illinois; Everett, Washington; Fairborn, Ohio; Fairfield, Connecticut; Greenbay, Wisconsin; City and County of Honolulu, Hawaii; Jacksonville, Florida; Long Beach, California; Oak Park, Illinois; Raleigh, North Carolina; Salinas, California; San Diego, California; Seattle, Washington; Thurston County, Washington.

**Court Cases:**

*Ackerley Communications, Inc., v. Multnomah County*, 303 Or 165 (1987).  
*Ackerley Communications, Inc., v. Multnomah County*, 72 Or App 617 (1985).  
*Ackerley Outdoor Advertising v. City of Portland*, Notice of Intent to Appeal, Land Use Board of Appeals of the State of Oregon, June 28, 1996.  
*City of Portland v. Ackerley Communications, Inc.*, "Stipulated Judgment," June 17, 1986.  
*City of Portland v. Tidyman, et al.*, 306 Or 174 (1988).  
*In the Matter of the Appeal of Meadow Outdoor Advertising from an Act of the Wasco County Assessor Concerning Certain Property Tax Matters...*, Opinion and Order Nos. 84-6534 and 85-0641 (Consolidated), Oregon Department of Revenue, June 23, 1987.  
*Major Media of the Southeast v. City of Raleigh*, 792 F.2d 1269 (4th Cir. 1986).  
*Metromedia, Inc. v. City of San Diego*, 101 S.Ct. 2882 (1981).  
*Naegele Outdoor Advertising, Inc. v. City of Durham* (On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit)—Brief for Respondent in Opposition, September 16, 1994.  
*Naegele Outdoor Advertising, Inc. v. City of Durham*—Brief in Support of Defendant's Motion for Summary Judgment, September 7, 1990.  
*Naegele Outdoor Advertising, Inc. v. City of Durham*, Defendant-Appellee's Brief, U.S. Court of Appeals for the Fourth Circuit, February 22, 1993.  
*National Advertising Company v. City of Raleigh*, 947 F.2d 1158 (4th Cir. 1991).

**Scenic America:**

"Alcohol & Tobacco Billboards: Assistance for Communities in Adopting Ordinances" (no date).  
"Billboards and the Safety Factor," March 17, 1986.  
"Case Study: Jacksonville Activists Rid City of Billboard Blight," No.2, March 1996.  
"Fact Sheet: 'Public Service' Billboards: Signs of an Ulterior Motive" (no date).  
"Fact Sheet: Billboard Control: Why We Need It; How We Can Get It" (no date).  
"Fact Sheet: Billboards and the Environment" (no date).  
"Fact Sheet: Billboards and Traffic Safety" (no date).  
"Sign Control Helps Tourism" (no date).  
"Sign Control is Good for Business" (no date).  
"Sign Control Update: Supreme Court Reaffirms Validity of Sign Control" (no date).  
*Viewpoints* (Scenic America newsletter), Vol. 13, No. 1, Spring 1996.

**Other:**

Ackerley Communications, Inc. 1995: *Annual Report on Form 10-K*.  
Ackerley Outdoor Advertising  
*Market Guide*, 1996.  
Packet of printed materials supplied to the City Club study committee, July 26, 1996.  
America Planning Association, *Sign Regulation*, Planning Advisory Service Report Number 419, November 1989.

Anderson, Raymond T. *The Economic Values of On-Premise Signs*.  
 "International Sign Association, Reprinted September 1990.

Beals, Ron. "Billboards—A Unique Appraisal Problem," *Compensable Business Loss Review*, Vol. 5, No. 1, July/August 1992.

*Constitution of Oregon*, Article I, section 8. Freedom of Speech and Press.

Delort, Mathias W. "Municipalities/The Billboard Controversy: Supreme Court upholds sign regulations," *Illinois Municipal Review*, January 1993.

Floyd, Charles F. "Compensation for Billboard Removal in Eminent Domain Proceedings," *Zoning and Planning Law Report*, Vol. 17, No.2, February 1994.

Jones, David K. *Legal Limitations on the Regulation of Sign Copy*, International Sign Association, 1990.

Jones, David K. *Sign Regulation and the Mechanics of Visual Communication*. National Electric Sign Association, 1995.

Law, Steve. "City posting plan for tougher sign code," *The Business Journal*, April 5, 1996.

Miller, Becky, memo to Portland City Council on proposed Sign Code amendments, June 5, 1996.

Miller, James. "The Great Billboard Double-Cross," *Reader's Digest*, June 1985.

National Electric Sign Association  
*A Guideline Code for the Municipal Regulation of On-Premise Signs*, 1991.  
 "Amortization Explained," (brochure) 1995.  
 "Signs...and the Small Business," (no date).

North Carolina Department of Revenue, Property Tax Division. *Billboard Structures Valuation Guide*, 1991 (includes updated worksheet for 1993).

*The Oregonian*  
 "Block billboard burst,"(editorial) April 10, 1996.  
 Christ, Janet. "Signs of the times?" April 9, 1996.

Portland City Club *Bulletin*, "Sign Code Revision," Vol. 51, No. 31, January 1, 1971.

Sparks, Kenneth, "Sample Zoning Provisions Pertaining to Regulating Billboards," *Planning & Zoning News*, January 1991.

Swain, Randy, president, Ackerley Outdoor Advertising, memo to Richard Michaelson, chair, Portland Planning Commission, May 10, 1996.

**C. Portland Sign Code regulations as amended on June 5, 1996.**

Regulations described in the right column apply to all zones in the City of Portland listed in the left column.

<b>ZONES</b>	<b>REGULATIONS</b>
Office Commercial 2 (CO2) General Commercial (CG) General Employment 1 & 2 (EG1&2) General Industrial 1 & 2 (IG1&2) Heavy Industrial (IH)	<b><i>Signs attached to buildings:</i></b> <ul style="list-style-type: none"> <li>• <b>Max. size 200 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>Multiple signs</b> permitted as long as cumulative size is within maximum allotted size for the site.</li> </ul> <b><i>Freestanding signs:</i></b> <ul style="list-style-type: none"> <li>• <b>Max size: 200 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>One sign per site</b> or one 300 ft. arterial site frontage</li> <li>• <b>Max height: 25 ft.</b></li> </ul>
<b>Storefront Commercial (CS)</b> <b>Central Commercial (CX) (downtown)</b>	<b><i>Signs attached to buildings:</i></b>

	<ul style="list-style-type: none"> <li>• <b>Max. size 100 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>Multiple signs</b> permitted as long as cumulative size is within maximum allotted size for the site.</li> </ul> <p><i>Freestanding signs:</i></p> <ul style="list-style-type: none"> <li>• <b>Max size: 100 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>One sign per arterial site frontage</b></li> <li>• <b>Max height: 20 ft.</b></li> </ul>
<p><b>Neighborhood Commercial 1 and 2 (CN1&amp;2)</b>  <b>Office Commercial 1 (CO1)</b>  <b>Mixed Commercial/Residential (CM)</b>  <b>Central Residential (RX)</b></p>	<p><i>Signs attached to buildings:</i></p> <ul style="list-style-type: none"> <li>• <b>Max. size 50 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>Multiple signs</b> permitted as long as cumulative size is within maximum allotted size for the site.</li> </ul> <p><i>Freestanding signs:</i></p> <ul style="list-style-type: none"> <li>• <b>Max size: 50 sq. ft.</b> (allowed size tied to lot frontage)</li> <li>• <b>One sign per arterial site frontage</b></li> <li>• <b>Max height: 15 ft.</b></li> </ul>

Source: *Sign Code Amendment Report: Recommended Draft*, Bureau of Planning, May 24, 1996.

Note: To identify the zoning for any site in Portland, check the zoning maps at the Permit Center in the Portland Building, or view the maps via the Internet at:

<http://www.planning.ci.portland.or.us/sections/sections.html>



**City Club of Portland**

Good citizens are the riches of a city

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