

STAFF REPORT

TO: Mayor Bellamy and City Council DATE: 5/13/08
VIA: Gary Jackson, City Manager
FROM: Shannon Tuch, RLA, Interim Planning and Development Director
SUBJECT: Zoning Ordinance Wording Amendment – To create new standards regulating digital billboards

Summary Statement: The consideration of amendments to the Unified Development Ordinance (UDO) to add new definitions and standards found in Articles II (definitions) and XIII (signs) restricting and regulating digital billboards.

Review: In 2006/2007, representatives from Lamar Outdoor Advertising, Inc. approached the City of Asheville's staff and officials with interest in pursuing standards that would accommodate new digital advertising technology that could be utilized with their off-premise billboards. This new LED technology would allow a single sign structure to show separate static images (advertisements) that would change at regular intervals over a fixed period of time. Digital images would replace the former paper/vinyl images and would be controlled and managed electronically from remote locations. This method of advertising would allow for a more sustainable product but would also provide more efficient and lucrative advertising opportunities for Lamar. The efficiency of being able to place multiple advertisers on one sign would reduce the need and value of less visible signs scattered throughout the City; as a result, Lamar has proposed a

Research into the topic of digital billboards has proven somewhat challenging and inconclusive. As a relatively new form of advertising, there is limited research exploring potential risks to motorists with little concrete documentation of those risks. Conversely, the benefits of such technology are well identified and do not appear to be disputed. Despite the public safety concerns, there is merit to allowing new effective technologies that allow for the easy updating of messages that reduces energy costs, eliminates the need for non-biodegradable materials, and dramatically reduces the number of miles traveled. There is the added benefit of an overall reduction of sign structures and faces that reduces the visual clutter along our roadways that competes with other scenic views

The primary concern over digital billboards is the potential increased risk to motorists as added distractions. By nature, billboards are designed to attract attention which has the undesirable consequence of distracting motorists. The National Highway Traffic Safety Administration released in 2006 information that concluded taking one's eyes off the road for more than two seconds, for any reason, significantly increased one's crash risk; however, increases in crash rates may be attributed to a great number of distractions, both internal and external. Assuming some level of agreement that a billboard is just one of many distractions contributing to an increasingly complex driving environment, then the question may be not whether a billboard momentarily distracts motorists but whether a digital billboard distracts motorists for a longer period than a traditional one. Proponents of digital billboards point out that no study has been able to establish a causal relationship between billboards, digital or traditional, and increased crash rates; however, the digital signs are relatively new technology and enough concern appears to have been raised prompting the Federal Highway Administration to announce that it

will initiate a study to examine the safety issues related to electronic signs (results are not expected until 2009). Opposing opinions also present strong 'common sense' arguments that brightly lit signs that change messages every few seconds compel us to notice them and draw our attention away from the road. We also recognize a digital billboard from a greater distance and intuitively understand that the message will change and may keep our eyes glued in anticipation of the next advertisement. Lastly, creativity in advertising appears to know no bounds and has been known to employ certain methods that entice individuals to stay tuned to see more or learn what happens next; attempts to regulate against this and other methods can be extremely challenging.

When considering whether electronic billboards are appropriate for Asheville, there are a number of factors that may be considered. The first is that the application of digital billboards may help further of a number of City goals including:

- Preserving and promoting opportunities for economic growth;
- Promoting sustainable (green) business practices; and
- Preserving scenic views.

Of course, in addition to these goals concern over protecting the public's health, safety, and welfare are also of great concern but in absence of any information that concretely identifies digital billboards as an increased safety risk to motorists, it becomes difficult to understand the extent of the risk or how to mitigate it. Nevertheless, should the Commission choose to adopt standards allowing digital billboards, regulations should be considered to minimize proliferation and their potential threats to public safety. A number of these standards are reflected in the attached ordinance and may be summarized as follows:

- Brightness controls to minimize glare and automatically adjust per the ambient light available;
- Limitations on the number of advertisers and the duration of the message;
- Conversion requirements that reduce the overall number of structures and sign faces;
- Prohibitions on known distractions such as flashing, scrolling, fades-in/out, emission of intermittent light, or animation of any kind; and
- Separation requirements to minimize the possibility of multiple distractions at one time.

Other Items of Note:

- In January 2005, an Ordinance that regulated the removal, repair, and relocation of Off-premise (billboard) signs was adopted along with a settlement agreement that resulted in the removal of some billboards.
- The number of advertisers affects the total face time of an advertisement, not the duration of the static image.
- Signs can be used to inform motorists of public safety announcements (highway crashes, long delays, Amber alerts, etc.).
- The largest (traditional) billboard size allowed in the COA is 380 square feet.
- Driver distraction is a factor in one out of every four crashes.
- Review of digital billboards could be considered on a case by case basis as a Conditional Use Permit.

The Commission has considered this information in two separate meetings where a delay in action was taken at the staff's request to allow time to conduct additional research and to work with the representatives of the outdoor advertising industry on developing standards that would meet their needs while accomplishing other City goals. The result of these meetings are reflected in the attached amendment draft and in the Commission's unanimous recommendation for approval (complete minutes attached).

Pros:

- Provides for a more sustainable business practice.
- Provides new opportunity for advertisers and businesses relying on outdoor advertising.
- Would result in a reduction of sign structures and cumulative sign face.

Con:

- Digital billboards will contribute to a complex driving environment and may increase distraction to motorists and increase the risk of crashes.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Fiscal Impact: None.

Recommendation: Staff recommends approval of the standards regulating digital billboards as presented in the attached ordinance.

Attachments:

- (1) Ordinance
- (2) Various research articles
- (3) List of Internet resources
- (4) Planning & Zoning Commission meeting minutes (4/2/08)

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 7, ARTICLE XIII OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO ALLOW AND REGULATE DIGITAL OFF-PREMISE BILLBOARDS.

WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, Article XIII of the City's Unified Development Ordinances sets forth the City's Sign Code; and

WHEREAS, as a matter of public policy to foster economic development, reduce visual clutter and the number of non-conforming signs, and ensure the public's best interest, health, and safety, it is desirable to allow and regulate digital off-premise billboards; and

WHEREAS, this proposed amendment is consistent with the City's 2025 Comprehensive Plan, Smart Growth policies, and other official plans of the City for the reasons set out in the Staff Report, which is hereby adopted and incorporated by reference; and

WHEREAS, this proposed ordinance is determined to be reasonable and in the public interest:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Chapter 7 of the Asheville City Code be amended as follows:

Sec. 7-2-5 Definitions is amended by adding the following definitions:

Nit means a unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays of the source.

Sign, off-premise digital means an off-premise sign display or device that changes the "static" message or copy on the sign by electronic mean.

Static means characterized by a lack of movement, animation, or progression.

Streaming video means electronic video displays utilizing content in motion picture form similar to or otherwise depicting a television screen.

Sec. 7-13-8 (g) (2)(c)(3) be amended by adding a new "viii" and "ix"

- viii. Airport Road from Hendersonville Road to the boundary between Buncombe County and Henderson County; and
- ix. Long Shoals Road from Hendersonville Road to the outer limit of the ETJ.

Notwithstanding the above, no Qualified Sign Overlay District shall be permitted for an area that is subject to the Blue Ridge Parkway Overlay District, any area that is zoned to a residential zoning classification, or those areas that fall outside the jurisdictional limits of the City of Asheville, as of the effective date of this section.

Sec. 7-13-8 (g) (2) is amended by adding the word “Non-digital” to the section title:

(2) *Qualified signs; replacement, relocation or reconstruction – **Non-digital***

Sec. 7-13-8 (g) is revised by adding new subsection “(3)” to read as follows:

(3) *Qualified signs; replacement, relocation or reconstruction - **Digital**.*

- a. Non-conforming off-premise digital signs shall meet the requirements set forth in Section 7-13-8(g)(2) subsections (a) and (b) and Section 7-13-8(g)(2)(c) subsections (3), (4), and (5).
- b. In addition to meeting the requirements of (a) above, non-conforming off-premise digital signs shall also meet the following requirements.
 1. Relocation within overlay. Any digital off-premise sign may be relocated or reconstruction anywhere with the qualified sign overlay as defined in Section 7-13-8(g)(2)(c) (3) above, subject to the following limitations:
 - i. The minimum allowable size is 200 square feet, the maximum allowable size is 300 square feet;
 - ii. The maximum number of faces is two;
 - iii. The maximum number of advertisements in one loop is six plus one public service advertisement;
 - iv. The maximum allowable height is forty feet (with no allowance), measured as provided in section 7-2-5 (“height”). This restriction may be varied as provided in section 7-13-9;
 - v. No digital off-premise sign may be attached to any building; and
 - vi. No digital off-premise sign may be allowed in the Central Business District (CBD).
 2. Conversion replacement formula. For each new off-premise digital sign to be erected, a minimum of two sign structures (single or double faced) with a cumulative face square footage that is at, or exceeds, three times the total square footage of the sign to be erected. All qualified non-digital off-premise signs and their structures used in the calculation for replacement with a digital sign must be removed by the sign owner, at no compensation from the City, within 30 days of the issuance of the new sign permit.
 3. Spacing.
 - i. No off-premise digital sign may be placed within 2000 feet of a Scenic Highway or Parkway;
 - ii. No off-premise digital sign may be placed within one 100 feet of a residential zoning district;

- iii. Off-premise digital signs may not be within 2000 feet of another off-premise digital sign facing the same travel direction;
 - iv. In no case shall an off-premise digital sign be in a line of sight with another off-premise digital sign;
 - v. In no case shall an off-premise digital sign be capable of being read from more than one interstate road; and
 - vi. Spacing requirements for off-premise digital signs in relation to other classifications of signs shall comply.
4. Display.
- i. The images and messages displayed must be static and must remain static for a minimum of ten (10) seconds;
 - ii. The images and messages must be complete in themselves, without continuation in content to the next image or message or to any other sign;
 - iii. The transition from one static display to another must be instantaneous without any special effects;
 - iv. The off-premise digital sign shall not be configured to resemble a warning, danger signal, official signage used to control traffic or to cause a driver to mistake the digital sign for a warning or danger signal; and
 - v. No electronic animation, moving text, or streaming video shall be permitted.
5. Default Display. All off-premise digital signs must be designed and equipped to freeze the device in one position or immediately discontinue the display if a malfunction occurs.
6. Brightness.
- i. No sign may be brighter than is necessary for clear and adequate visibility and shall not exceed a maximum of 7500 Nits during daylight hours and 1000 Nits during nighttime hours;
 - ii. No sign may display light of such intensity or brilliance to cause glare or otherwise impair the vision of the driver or result in a nuisance to a driver;
 - iii. No sign may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device, or signal;
 - iv. All digital signs must be equipped with both a dimmer control and a photocell that automatically adjusts the display's intensity according to natural ambient light conditions; and
 - v. Prior to issuance of a sign permit, the applicant shall provide written certification from the sign manufacturer that the light intensity has been factory pre-set not to exceed 7500 Nits and that the intensity level is protected from end-user manipulation by password-protected software or other method determined appropriate by the Planning Director.
7. Text Size. Every line of text in the primary message of an off-premise digital sign must meet height requirements as indicated in the Table below. If there is insufficient room for the required text size in

the area allowed, then no digital display is allowed. These standards are not to be applied to copyright or other similar text.

Minimum Text Height in inches	Speed Limits in Miles per Hour (mph)
7	25-34
9	35-44
12	45-54
15	55+

8. A new off-premise sign permit is required to convert an existing qualified billboard into a digital sign.
9. The City of Asheville, through appropriate personnel, may exercise its police powers to protect public health, safety, and welfare by requiring emergency information to be displayed via digital signs.
10. Any sign found to be out of compliance with any standard of this ordinance must be stopped immediately.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved, and adopted this 13th day of May, 2008.

City Clerk

Mayor

Approved as to form:

City Attorney