

ORDINANCE NO. 2013-013

AN ORDINANCE relating to land use and zoning; adopting an immediate moratorium on the acceptance of applications for the installation, erection, construction, replacement, modification, or improvement of static billboards and digital billboards using changing electronic, digital, or changeable message copy, in all zoning districts; such moratorium to be effective for six months, through October 1, 2013; exempting from such moratorium vested applications for billboard installation or billboard relocation permits, and applications for repair of existing billboards for purposes or implementation of safety improvements mandated by state or federal standards; declaring an emergency in the passage of this ordinance providing for immediate effective date; and setting May 21, 2013 as the date for the public hearing on the moratorium.

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 authorize the City Council to adopt an ordinance imposing a moratorium and provide a process for public hearing which must be held within sixty days of the date of adoption of the moratorium; and

WHEREAS, the City of Yakima ("City") has previously adopted ordinances codified at Chapter 15.08 of the Yakima Municipal Code ("YMC") regulating signs and displays on signs in all zoning districts to reduce traffic hazards and visual blight; and

WHEREAS, billboards are currently permitted in several zoning districts in the City as described pursuant to YMC 15.08.130; and

WHEREAS, digital signs and billboards or electronic variable message signs and billboards are being installed throughout the United States that include digital technology, light emitting diodes ("LEDs"), and electronic graphic displays that permit signs to display an electronic image similar to a color television set and permit a displayed image to quickly change from one image to another; and

WHEREAS, changeable electronic message billboards, which allow operators to change content from remote locations in a matter of seconds, are erected for the purpose of trying to get the attention of pedestrians and motorists by changing messages and pictures for short durations using a series of contrasting images produced mainly by LED technologies; and

WHEREAS, the City is currently engaged in an extensive process to study and evaluate modifications to its billboard regulations for both static and digital billboards; and

WHEREAS, the City is currently engaged in a comprehensive review of sign standards and regulations pertaining to billboards in conjunction with traffic safety and abatement of visual clutter within the downtown core area, entryways into the City, and zoning districts within the City;

WHEREAS, the City Council finds and determines that current City codes and regulations do not adequately address static billboards, digital billboards, changeable electronic message billboards and billboards using such electronic LED technologies; and

WHEREAS, the City Council finds that a immediate moratorium is necessary and appropriate within all zoning districts of the City to preserve the status quo and prevent significant investment pending the development of a comprehensive code and regulations

pertaining to static billboards and changing electronic, digital, or changeable message billboards; and

WHEREAS, the City Council finds and determines that such moratorium shall not apply to applications for new billboards or permits for relocation of existing billboards that have vested prior to the effective date of this ordinance, permit applications to conduct repair of existing billboards, and permit applications to implement safety improvements for existing billboards as mandated by state or federal standards; and

WHEREAS, the adoption of such moratorium is exempt from SEPA threshold determination as an emergency action pursuant to WAC 197-11-880, but subject to further SEPA review and determination as deemed appropriate by the SEPA responsible official; and

WHEREAS, the City Council finds, determines and concludes that an emergency exists, to wit: (a) the City has received proposals for installation of static and electronic billboards within the City; (b) neither City staff nor the Planning Commission have had sufficient opportunity to review the effects of static and electronic billboards with regard to concerns for economic development, preservation and/or promotion of traffic and pedestrian safety, prevention of visual clutter and public nuisances associated with inadequate code provisions and regulation of static and electronic billboards, and development of a comprehensive plan, program or regulation of static and electronic billboards within all zoning districts of the City; and (c) the immediate imposition of this moratorium will preserve the status quo to enable the City to further study the effects of such uses and to devise appropriate zoning and regulatory controls to address the effects of such uses; and

WHEREAS, the City Council authorizes and directs the City Manager to review existing City codes and zoning regulations, further study the effects resulting from location of static and electronic billboards within the boundaries of the City, prepare comprehensive proposed amendments to the City codes and zoning regulations to address the effects of such uses, to confer with community members and City advisory commissions as appropriate, and to present recommended legislation addressing such issues to the City Council for consideration and action; and

WHEREAS, the City Council finds and determines that a public hearing on this moratorium should be held on May 21, 2013, whereupon the City Council may adopt findings of fact in support of the adoption of this moratorium, or modify the terms thereof; and

WHEREAS, notwithstanding the term of six months set forth above for the moratorium adopted herein, this moratorium may at any time hereafter be (a) modified by the City Council in accordance with applicable law; (b) extended for additional term(s) of six months upon action following public hearing and adoption of findings in support thereof; (c) terminated by the City Council upon adoption of appropriate zoning and regulatory codes; or (d) terminated by the City Council for any reason deemed necessary or appropriate; now, therefore:

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Recitals Adopted as Findings. The "Whereas" recitals above are hereby adopted as the City Council's findings of fact as if fully set forth herein.

Section 2. Moratorium Adopted. A moratorium is hereby adopted on the receipt of applications, permitting, installation, erection or construction of (a) any new off-

premises static billboard, including billboards displaying static printed message and material, within all zoning districts of the City, and (b) on-premises and off-premises digital billboards consisting of or including changing electronic, digital, or changeable message billboards in all zoning districts within the City, and (c) the alteration, modification, or replacement of any existing billboard, so that the existing billboard (as altered or modified) uses changing electronic, digital or video display or flashing, motion, animated, or changeable electronic variable message copy. Static copy on existing billboards may continue to be changed.

Section 3. Definitions. For purposes of this moratorium, “static billboard” means an off-premises sign greater than 72 square feet in size. This type of sign displaying static printed message and material, and is generally composed of poster panels or bulletins mounted on a building wall or free-standing structure, or painted directly on the wall or free-standing structure.

“Digital billboard” means an on-premises or off-premises sign greater than 72 square feet in size, utilizing changing electronic, digital or video display or flashing, motion, animated, or changeable electronic variable message copy, or digital message technology capable of changing the message or copy on the sign electronically.

In addition to the above definitions and as necessary to interpret or apply this Ordinance, the City hereby adopts those definitions and provisions of the Yakima Municipal Code pertaining to land use, zoning, design and regulation, including without limitation the provisions and definitions in Chapter 15.08 YMC.

Section 4. Exemption – Vested Rights – Repair and Mandated Safety Improvements. The moratorium shall not apply to applications for new billboards or permits for relocation of existing billboards that have vested prior to the effective date of this ordinance, permit applications to conduct repair of existing billboards, and permit applications to implement safety improvements for existing billboards as mandated by state or federal standards.

Section 5. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35.63.200, a public hearing will be held on Tuesday, May 21, 2013, for the purpose of taking testimony and, if this ordinance is passed, adopting written findings and conclusions justifying the moratorium established by this ordinance.

Section 6. Effective Period of Moratorium. The moratorium adopted by this ordinance shall become effective immediately upon passage and approval of this ordinance, and shall remain in effect for six months, through October 1, 2013, subject to adoption of findings and conclusions as provided in Section 5 above. This moratorium shall also terminate upon the adoption of permanent regulations governing the location, land use and regulation of drive-through facilities within the Downtown Yakima Business Improvement District. Notwithstanding the above, this moratorium may be extended as provided in RCW 36.70A.390 and RCW 35.63.200.

Section 7. Directive to City Manager. The City Council hereby authorizes and directs the City Manager to review existing City codes and zoning regulations; to further study the effects resulting from billboards and digital billboards; to prepare comprehensive proposed amendments to the City codes and zoning regulations to address the effects of such uses; to confer with community members and City advisory commissions as appropriate; and to present recommended legislation addressing such issues to the City Council for consideration and action.

Section 8. Declaration of Emergency. Pursuant to Article VI Section 2 of the Charter of the City of Yakima, the City Council finds, determines and declares that this ordinance is an emergency ordinance to provide for the immediate preservation of the public peace, property, health or safety. The unanimous vote of the City Council shall be necessary for the passage of this emergency ordinance.

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 10. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce as required by law or otherwise posted, published or recorded as permitted by law.

Section 11. Effective Date. This ordinance shall be in full force and effect immediately upon its passage and approval as provided by law and the City Charter.

PASSED BY UNANIMOUS VOTE OF THE CITY COUNCIL, signed and approved this 2nd day of April, 2013.

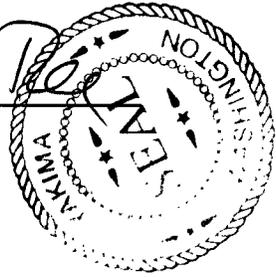


Micah Cawley, Mayor

ATTEST:

By 

City Clerk



Effective Date: April 2, 2013

Publication Date: April 5, 2013

Ordinance Approved by Unanimous Vote
of Council Members: April 2, 2013

CITY OF YAKIMA

Distributed at the
Meeting 4-2-13

LEGAL

DEPARTMENT

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MEMORANDUM

April 2, 2013

TO: Honorable Mayor and City Council
Tony O'Rourke, City Manager

FROM: Mark Kunkler, Senior Assistant City Attorney

SUBJECT: Moratorium – "Billboards" and Digital Signs

A. Scope of Moratorium.

The City Council has asked staff to develop a proposed ordinance enacting a moratorium on the approval and installation of "billboards." The attached proposed ordinance would impose a six-month moratorium on the receipt of applications for, approval of, and installation of the following signs.

(a) Any new sign, greater than 72 square feet in size, using "static" print and/or pictures, for the advertising of any product or service not made or provided on the premises of the property where the sign is located. (This is known as an "off-premises" advertising sign. Most signs commonly known as "billboards" are off-premises advertising signs)

(b) Any new sign, greater than 72 square feet in size, for the advertising of any product or service, whether made or provided on-premises or off-premises, where the sign uses changing electronic, digital, or changeable message copy.

The city's current code does not provide a definition of "billboard." The current code simply states that a billboard cannot exceed 300 square feet in size and must comply with certain proximity and maintenance standards. The current code does not specifically state that billboards are limited to off-premises advertising.

The city's current code has definitions for "changing message center sign," "electrical sign," and "flashing sign," but does not regulate any such signs. YMC 15.08.020.

B. Signs Not Affected by Moratorium.

The effect of the moratorium will leave available the following types of signs:

- On-premises advertising signs (that use “static” or printed copy and/or pictures) will be allowed in accordance with the existing city codes. (The moratorium would only stop placement of “static” off-premises advertising signs that exceed 72 square feet in size.)
- On-premises or off-premises advertising signs 72 square feet or less in size, which use changing electronic, digital, or changeable message copy, would be allowed in accordance with existing city codes. (Only digital signs greater than 72 square feet in size would be subject to the moratorium.)

The “72 square feet” standard has been drawn from a similar moratorium ordinance adopted by the City of Tacoma.¹

C. Reasons for Moratorium.

A number of scientific studies have recently become available describing the potential for driver distraction associated with electronic billboards. These are currently being reviewed by staff, but a comprehensive study is necessary. Staff and the Planning Commission will need time to properly study and assess these reports.²

Current code provisions do not define “billboards,” nor make any reference to whether such signs are limited to off-premises advertising. In fact, YMC 15.08.130 is entitled “Off-premises signs and billboards,” creating an ambiguity as to whether “off-premises signs” are different from “billboards.”

As noted above, current code has definitions for “changing message center sign,” “electrical sign,” and “flashing sign,” but does not regulate any signs on such basis

Without a moratorium, the city is without sufficient existing means to regulate billboards and larger digital signs.

¹ *City of Tacoma Ordinance Nos. 27982 (May 17, 2011), and 28009 (August 9, 2011)*

² *See, e.g., FEDERAL HIGHWAY ADMINISTRATION, “Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction,” (Final Report, September 11, 2001)*

D. Recommendation.

The attached ordinance would establish a moratorium crafted to reach off-premises billboard signs greater than 72 square feet in size, and on-premises/off-premises electronic or digital signs greater than 72 square feet in area.

The proposed moratorium would allow on-premises signs (using static copy or message) to be processed under existing city codes. It would also allow on-premises/off-premises electronic signs (72 square feet or less) to be processed in accordance with existing city codes. The scope of the proposed moratorium is intended to reach "larger" static signs, together with electronic signs greater than 72 feet in area, and leave room for businesses to proceed with appropriate on-premises sign application and installation.

Under state statutes governing moratoria, a public hearing must be held within 60 days to receive comment and testimony regarding the moratorium and its scope. A public hearing will be set for May 21, 2013 for these purposes.

Under the City Charter, adoption of a moratorium is an "emergency ordinance" that must be approved by the unanimous vote of all Council members considering the action *Charter*, Article VI, Section 2.