

November 12, 2013

City of Yakima  
Planning Commission



INTERNATIONAL SIGN ASSOCIATION

Dear Planning Commission,

On behalf of the International Sign Association (ISA) and the Northwest Sign Council (NWSC), I would like to submit our organization's comments with regard to Introductory Discussion of billboards and digital signs. The International Sign Association (ISA) is a 2000-member trade association, the members of which are manufacturers, users and suppliers of on-premise signs and other visual communications products from the 50 United States and 60 countries around the world. ISA supports, promotes and improves the visual communications industry, which sustains the nation's retail, distribution, service and manufacturing industries. ISA and the NWSC work actively with officials throughout the northwest to assist jurisdictions to create reasonable and effective sign regulations.

**ISA hopes that staff, City Council, and other involved stakeholders should consider the following resources as part of their information-gathering and ordinance-writing processes. In preparation for this meeting we took the liberty to review the sign code for, legal issues and best practices.**

For purposes of organization, I have organized my comments into three categories of feedback. The first grouping is **Changes Required to Protect the City**. The next category are **Changes Recommended as Best Practices in Drafting a Sign Ordinance**.

### **Changes Required to Protect the City**

#### **Substitution Clause**

A substitution clause permitting the display of non-commercial copy on any sign allowed under the ordinance is a modern *requirement* of every sign ordinance. Excellent discussions on this subject can be found within *A Framework For On-Premise Sign Regulations* (2009; Cleveland State Prof. Alan Weinstein/David Hartt) and the *Michigan Sign Guidebook* (2011; Michigan State Prof. Mark Wyckoff/Brian Connolly). The substitution clause need not be complex; a single-sentence statement permitting the substitution of non-commercial copy on any allowable sign is sufficient.

Substitution clause examples include the simple: *"Any sign that can be displayed under the provisions of this ordinance may contain a non-commercial message."*, or the more specific: *"Any sign allowed under this or a predecessor ordinance, by special exception, or by variance, may contain, in lieu of any other message or copy, any lawful noncommercial message that does not direct attention to a business*



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*operated for profit, or to a product, commodity, or service for sale or lease, or to any other commercial interest or activity, so long as said sign complies with the size, height, area, and other requirements of this ordinance.*

### **Severability Clause**

Another standard requirement of every modern sign ordinance is a severability clause, generally defined as a *“provision that keeps the remaining provisions of a . . . statute in force if any portion of that . . . statute is judicially declared void or unconstitutional.”* Given the large amount of litigation in the area of sign regulation, a city that fails to include a severability clause in its sign regulations exposes itself to the risk that the entire set of regulations will be voided should a court find.

Later in Article 17-17 of the Town Zoning Ordinance, a severability clause appears. However, it may be useful to cross-reference the severability clause within Article 13.

Examples of severability clauses include the simple: *“If any section or subsection of this Sign Code is found to be invalid by a court of competent jurisdiction, all remaining provision shall be deemed valid.”* and the more complex: *“This chapter and the various components, articles, sections, subsections, sentences and phrases are hereby declared to be severable. If any court of competent jurisdiction shall declare any part of this chapter to be unconstitutional or invalid, such ruling shall not affect any other provision of this chapter not specifically included in said ruling. Further, if any court of competent jurisdiction shall declare unconstitutional or invalid the application of any provision of this chapter to a particular parcel, lot, use, building or structure, such ruling shall not affect the application of said provision to any other parcel, lot, use, building or structure not specifically included in said ruling.”*

### **Time Limits on Permit Approvals**

Another complicated (and frequently litigated) area of sign regulation law concerns the subject of “prior restraints” on free speech. (Excellent discussions can be found on pg. 16 of Prof. Weinstein’s model ordinance or on pg. 11 of *A Legal and Technical Exploration of On-Premise Sign Regulation An Evidence Based Model Sign Code* by University of Oklahoma Prof. Dawn Jourdan) Prior restraints can occur in several ways; most commonly through either (a) unbridled discretion in approvals or (b) a failure to respond to a permit request in a reasonable amount of time.

“Reasonable” is a term that has disparate meaning to different individuals. Best practices suggest that, if permits are approved administratively by staff, appropriate time limits (that will withstand judicial scrutiny) are 30-60 days. Obviously, the sign industry would prefer a short duration.



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## **Changes Recommended as Best Practices**

### **Maintain separate and distinct regulations for on-premise and off-premise signs.**

The current sign code for Yakima has distinct and separate regulations for on premise and off premise signs. We strongly recommend that all of the regulations for on-premise and off-premise signs be maintained as entirely separate sections of the sign ordinance. This will ensure correct administration of these sections and minimize any confusion of the regulations for on-premise and off-premise signs.

See the attached information that outlines the differences between on-premise and off-premise signs.

### **Definition for electronic message center**

We recommend that a definition for an electronic message center be include in the definition section of the code.

ELECTRONIC MESSAGE CENTER (EMC) – A sign that is capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

## **Brightness Levels for Electronic Display Signs**

In 2008, ISA hired a lighting expert (and a former president of the Illuminating Engineering Society of North America) to develop recommendations for self-regulating industry standards to address concerns about EMC brightness. These standards are compliant with IES TM-11-00 ("Light Trespass: Research, Results, and Recommendations"). In summary:

**B. EMC Illumination Limits: The difference between the off and solid-message measurements using the EMC Measurement Criteria shall not exceed 0.3 footcandles.**

**C. Dimming Capabilities: All permitted EMCs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 footcandle measurements.**

We believe that the 0.3 foot-candles standard (which is typically equivalent to ~320 nits or less of an all-white EMC background at night) is proven to be an appropriate method for regulating brightness.

We find that correct brightness levels for EMCs is the most critical regulatory element for this sign type.



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**Again, ISA and the NWSC hopes that the Planning Commission, staff, Council, and other involved stakeholders should consider these suggestions to the language of the proposed ordinance. Thank you for your time and consideration to the ISA recommendations to the proposed regulations. ISA would be happy to offer any additional assistance in understanding issues involved in the regulation of on-premise signs.**

Sincerely,  
James Carpentier AICP  
Manager, State and Local Government Affairs

A handwritten signature in black ink that reads "James Carpentier". The signature is written in a cursive style with a long horizontal line extending from the end of the name.